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TIED BIDS PROCEDURE

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, May 2, 2007, from the Commissioner of Finance:

1. RECOMMENDATIONS

It is recommended that:

1. the tie-breaking procedure, as described in *Attachment 1* to this report, be approved for the purpose of determining the lowest, cost-responsive bidder in circumstances where there are two or more identical low bids.
2. the Chief Administrative Office have the delegated authority to award a contract to the bidder who has been determined, in accordance with the tie-breaking procedure, to be the lowest, cost-responsive bidder in accordance with the Region's Purchasing By-law.
3. the Region's Tendering/Proposal Procedures to be amended to include the tie-breaking procedure to be used in the event of any future tied bid situations.

2. PURPOSE

The purpose of this report is to establish procedures that will result in the selection of the lowest, cost-responsive bidder in the event that two or more identical low bids are received.

These procedures will address the procedure to be followed in circumstances where there are two low bids with the identical bid price, and where there are three or more low bids with the identical bid price. The procedure will be followed for tenders.

The procedure will also assist the Region in determining the successful bidder on the tender for contract T-07-07 for the construction of the Tom Taylor Place multi-residential apartment building on Fernbank Drive, in the Town Newmarket, where there is a tie between the two lowest, cost-responsive bidders The Atlas Corporation and Bondfield Construction Company Limited at the total bid price of \$9,381,000.00.

3. BACKGROUND

3.1 Public Procurement within the Region

Public procurement within the Region is governed by the Purchasing By-Law and the Tendering/Proposal Procedures. The Purchasing By-Law and the Tendering/Proposal Procedures have been implemented by the Region to maintain the fairness and integrity of the Regional procurement process by ensuring that all bidders are made aware of the rules and procedures which govern Regional purchasing, and by applying these rules and procedures in a way that ensures the fair and equal treatment of all bidders.

The Region's Purchasing By-Law and Tendering/Proposal Procedures do not include a procedure to be followed in circumstances where there is a tie between two or more low, cost-responsive bidders. Tied low bid scenarios are an area of procurement which very infrequently occurs, however, implementing a procedure to address tied low bids, would assist the Region in resolving any such instances, and would assist in maintaining an open and fair process for the award of contracts.

Within the public procurement field there are practices that are accepted as common and which are followed in the event that a by-law or policy does not directly provide a resolution to an issue in the bidding process which may arise from time to time.

In the scenario where there is a tied bid situation the Region would rely on industry best practices and procedures to resolve the issue. Accordingly, it is being recommended that the industry practice in dealing with tied bids, as described in this report, be formalized into an approved procedure to address our current situation.

3.2 Tom Taylor Place Tender Details

This contract provides for the construction of a multi-residential apartment building on Fernbank Drive which is on the south side of Mulock Drive between Bayview Avenue and Leslie Street in the Town of Newmarket. The building will be known as Tom Taylor Place.

Eleven prospective contractors were pre-qualified for the opportunity to bid on this contract through a prequalification process that was initiated in late 2006. Tender documents contract T-07-07 were prepared and released by the Region's Supplies and Services Branch on April 3, 2007. The tender call closed on April 24, 2007 at 1:00 p.m. A total of seven bids were received, the lowest responsive bidders for this contract were The Atlas Corporation and Bondfield Construction Company Limited at the total bid price of \$9,381,000.00.

4. ANALYSIS AND OPTIONS

4.1 Tied Bid Procedure

Tied bid situations are very infrequent but a public organization can run in to this situation over time, particularly given the volume of tenders that the Region issues in each year. Staff's research has disclosed that over the last three years the City of Toronto has encountered several instances of tie bids, and during the 1980's Durham Region had a tie bid. In the case of the City of Toronto they broke the two way tie by implementing the industry standard of a formal coin toss. Since then the City of Toronto has developed and enhanced a Tied Bids Procedure which includes details related to the procedures to follow for a coin toss in the event of a tie between two low bidders, and lottery in the event of a tie between three or more low bidders.

Our recommended approach, which is described in *Attachment 1* to this report, is consistent with industry best practices and with the current tie-breaking procedures of the City of Toronto.

4.2 Coin Toss for Tender T-07-07

Supplies and Services staff have obtained the written consent of both The Atlas Corporation and Bondfield Construction Company Limited to submit to, and be bound by the results of, the proposed coin toss procedure described in *Attachment 1*.

Staff have also discussed the proposed coin toss procedure with the Ontario General Contractors Association (OGCA), and have obtained the full support of the OGCA's President, Clive Thurston.

Regional staff therefore recommend that the Tied Bids Procedure be approved and adopted by Council so that the procedure can be utilized to determine the successful bidder under contract T-07-07.

5. FINANCIAL IMPLICATIONS

The two low bids received by the Region on April 24, 2007, with respect to the tender are summarized in Table 1 below:

Table 1
Lowest Bidders List

Firm	Tender Price
The Atlas Corporation	\$9,381,000.00
Bondfield Construction Company Limited	\$9,381,000.00

The award of contract T-07-07 to either of The Atlas Corporation or Bondfield Construction Company Limited shall not result in an increased cost to the Region as the bid amounts are identical.

6. LOCAL MUNICIPAL IMPACT

There is no Local Municipal Impact.

7. CONCLUSION

The Region currently does not have a procedure in place to determine the successful bidder in circumstances where there is a tie between two or more lowest, cost-responsive bidders.

By approving the procedure described in *Attachment 1*, the Region is formalizing a Tie Breaking procedure that can be automatically implemented and allow for the award of contract T-07-07 and any subsequent awards where there is a tie between the lowest, cost-responsive bidders.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause was included in the agenda for the May 3, 2007 Committee meeting.)