

Mastercrete Construction Inc.

5100 South Service Rd Unit 36
Burlington, ON, L7L 6A5
P: (289)337-6140
info@mastercreteinc.com
www.mastercreteinc.com



June 1, 2021

City Of Mississauga

300 City Centre Drive

Mississauga, ON L5B 3C1

Attn: Madam Mayor and Council Members

Re: PRC002941-2021 Construction of Concrete/asphalt sidewalks at various locations in the City of Mississauga protest for possible bid rejection.

The reason I am writing this and forwarding some information is that my firm had placed the lowest compliant bid for the above-mentioned contract. We had submitted all required documents for the bid to be compliant:

1. The Bid prices
2. The Agreement to bond
3. The Bid security
4. The Signed all the declarations of the bid

The contract bid closing date was April 20, 2021 at 2:00 pm.

The Bid amounts were as follows:

1. \$1,178,000.00 Mastercrete Construction
2. \$1,183,795.00 2nd bidder
3. \$1,382,223.00 3rd bidder
4. \$1,537,825.00 4th bidder
5. \$1,540,675.00 5th bidder
6. \$1,572,890.00 6th bidder
7. \$1,603,223.60 7th bidder

On April 22, 2021 at approx. 12:56 Maria Torres the intermediate buyer had sent us a request for references titled Bidders Qualification Form. Although I thought it was very off that we were asked for references since I had completed work for the city of Mississauga in 2017 (2016 Intersection Improvements), especially after opening the bids, but I adhered to the request. The form was completed and sent back the same day listing 3 references 1. City of Mississauga itself, 2. City of Toronto, 3. Embee properties.

On May 6, 2021 7:43pm, without even a phone call, I received a letter stating our bid was rejected because the references did not demonstrate satisfactory performance on past projects and all were not acceptable to the City. As you may be aware, the purchasing agent with the city has the sole discretion to disqualify the bidder but must reject a bid with a major irregularity without further consideration.

On May 6, 2021 at 9:55 pm we sent out an email stating our dissatisfaction of unilateral rejection of our bid and explained we have been awarded other contracts with the Region of Halton and the City of Burlington for similar types of work.

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On May 9, 2021 at 3:36pm we had sent out another email further adding to our dissatisfaction of the rejection.

On May 13, 2021 at 9:22 am Erica Edwards the manager of Material Management, had sent us an email offering some more information as to what the rejection was based on. The information pertained to the references and the basis of rejection.

On May 13, 2021 at 9:47 am Mastercrete had responded to the email sent earlier in the morning.

On May 17, 2021 at 6:33 pm I had submitted another email with further reasons why the contract should be awarded to Mastercrete Construction.

On May 18, 2021 at 4:30 pm we had a virtual meeting with Erica Edwards, Maria Torres, Silvio Cesario, Linda Bai, Kenneth Troung, Frank Fusillo and myself. At this meeting we reviewed the reasons why the City justified the rejection of the bid. In this meeting the following was discussed:

1. The City stated the references were older than 3 years
2. The City stated that City of Toronto reference wasn't relevant
3. The City stated that Embee properties reference wasn't relevant
4. Silvio Cesario stated he wasn't happy with the past performance on the 2016 Intersection contract.

I have listed all the events that had occurred prior to meeting. The reasons maybe obvious as to why I am protesting the bid rejection of contract PRC002941-2021 construction of Concrete sidewalks to Mastercrete Construction Inc., but I will clarify the reasons because it is more detailed as listed below:

1. I have submitted a compliant bid meaning that the City of Mississauga placed an RFT to construct sidewalks which closed on April 20, 2021 at 2:00 pm, and my firm Mastercrete Construction had properly completed the form of tender and relevant documents were attached. Mastercrete Construction had the lowest price.

In summary for this reason Mastercrete should be awarded this contract

2. At no time in the past, or prior to this bid was Mastercrete Construction ever notified by the City of Mississauga as per section 23.1 of the purchasing by-laws 0374-2006 (attached) which states,

THE PURCHASING AGENT MAY EXCLUDE A BIDDER FROM ELIGIBILITY TO SUBMIT A BID FOR A PERIOD THE LATER OF 2 YEARS OR UNTIL AFTER THE NEXT BID OPPORTUNITY HAS OCCURRED WHERE THERE IS DOCUMENTED EVIDENCE OF POOR PERFORMANCE OR NON-PERFORMANCE IN RESPECT OF THE FULLFILLMENT OF A COMMITMENT,

and section 23.3 of the same bylaw states,

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PROSPECTIVE BIDDERS SHALL BE NOTIFIED OF THEIR EXCLUSION FROM ELIGIBILITY AND SHALL HAVE THE RIGHT TO PROTEST IN ACCORDANCE WITH APPLICABLE CITY POLICIES AND PROCEDURES.

-Based on these bylaws starting with 23.1 it clearly states that the purchasing agent may exclude a bidder from eligibility to submit a bid. The City of Mississauga did not ever give proper notice that Mastercrete is not eligible to submit a bid. So Mastercrete did submit a bid freely as Mastercrete did not know of any previous issues.

-23.3 clearly states, prospective bidders shall be notified of their exclusion, but we never were notified and again bid freely.

In summary based on section 10 of the bylaws and the policy statement of the corporate policy and procedure of the City of Mississauga did not act appropriately and for this reason alone the possible bid rejection should be reversed, and the contract awarded to Mastercrete Construction.

3. Mastercrete Construction bid this RFT on the basis there were no prior issues ever brought forward in writing. If the City of Mississauga felt this contract was different from any other contract such as the size, the scope or the company performance, the City could have put out as per the bylaws a prequalification as the city did for the new LRT. Under the bylaw 0374-2006 under section 1.37 Request for prequalification is states:

REQUEST WITH SPECIFIC QUALIFICATION CRITERIA WHICH WILL BE USED TO IDENTIFY AND PRE-SELECT BIDDERS, WHERE THE EXPERIENCE AND QUALIFICATIONS OF THE BIDDERS MUST BE CLEARLY ESTABLISHED AND VERIFIED PRIOR TO BIDDING.

Summary, if the City of Mississauga felt that this contract is complicated or required any experience outside the normal construction projects, they would have prequalified the contractors prior to bidding. The City did not have this prequalification process which could only mean the project was not very complicated. The City of Mississauga after the bid requested references and seemed to portray that this project requires specialized experience. In fact, it is one of the less complicated projects within the City portfolio.

4. The City of Mississauga had sent out a request for references To Mastercrete but had disqualified all references, they stated that the references were older than 3 years and that they are not satisfactory.
- First no where within the City of Mississauga purchasing bylaws and corporate policy and procedure does it state references must be within the past 3 years, this acknowledged by Erica Edwards who stated in our virtual meeting, the city will be changing this policy in future to read references must not be older than 3 years. The fact that the City of Mississauga sent Mastercrete Construction an Experience Requirement form that reads references must be over the past 3 years is somewhat of a leading statement.

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- The City of Mississauga had also stated 2 of our references were not representative of the scope of work and this meant they did not need to follow up. I had sent an email prior to our meeting explaining the similar work done on those contracts and was completely ignored.
- During our virtual meeting on May 18, 2021, it was revealed that staff was not happy with our past performance and for that reason the city would possibly be rejecting our Bid. To our shock and dismay staff stated we abandoned the contract and left unsafe situations. The project manager has since retired and all statements were recollections and not noted anywhere, this is totally subjective.

In summary I took the time to breakdown the references and explain each contract how they were relevant prior to our meeting of May 18, 2021 and no one took the time to read or even discuss any of the information I had submitted.

Because I was so disappointed with the outcome of the meeting and finally almost a month later learned that the City of Mississauga staff was the reason that our bid was being rejected, I contacted the inspector I worked with on our last project (Tim Watts) who has since retired, and I attach an email which he verifies a lot of the delays were not due to Mastercrete Construction, it was for reasons beyond our control and is all documented in his diary. I have also attached pictures of McLaughlin road taken recently and you can see after almost 4 years it is in great shape.

I have printed and attached all the correspondence between myself and the City of Mississauga since the bid closing until today. If you take the time to read, I have been treated unfairly and without any cause or any verification. Our virtual meeting to discuss the rejection was redundant because everyone's mind was made up, no one ever reading the detailed information I sent to them. No one has yet to send me any information in writing what the issue was with Mastercrete Construction, other than a few verbal comments at our meeting, again all hearsay and without written proof. Again, contradicting all the bylaws mainly:

Section 7 purchasing principles:

- a. Acquisition processes shall be efficient, effective, objective and accountable:
 - If the process was efficient why was Mastercrete never notified prior to bid that Mastercrete could have been disqualified?
 - If the process was efficient why were the references not checked instead of stating they were older than 3 years old and scope of work was not similar
 - If the process was objective why can staff state there were issues on previous contracts with no written evidence, does this not become subjective?
 - Who is accountable? Is it purchasing not following their own bylaws? Is it staff not searching for evidence prior to rejecting a bid?
- b. Transparency and fairness shall be ensured, and competitive value maximized:

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- It does not seem very transparent to us, why would the City ask for references when Mastercrete Construction did complete work for the City of Mississauga previous. The bylaws are clear to us, that if the City of Mississauga had a bad experience with a contractor that the contractor shall be notified and placed on probation for 2 years, which is not the case, so why ask for references?
 - If this process was fair and the City did want to use the references for argument's sake, should they not have considered the references in detail?
 - If Mastercrete Construction be rejected for this bid, this would eliminate the bidder for how long and when? In our meeting it was stated that Mastercrete would be allowed to bid future projects. Why not this one? Again, how fair is this?
- c. The acquisition of goods and services shall be conducted in an unbiased way not influenced by personal preferences, prejudices, or interpretations:
- The purchasing dept not adhering to the bylaw 0374-2006, the staff interrupting delays which were not cause by Mastercrete as outlined by inspector and documented in his diary. Not one document has presented to Mastercrete construction other than verbal rejection based on verbal findings. Would it not be fair to say documentation should have been presented when altering another person's life?

I would like to close with the following, I grew up in Mississauga, I also grew up in the construction industry working with my grandfather and my father, I am educated as a CET and have always enjoyed working for the various municipalities. I recently was awarded a city of Burlington sidewalk contract, a region of Halton contract, and commercial contracts with Embee properties and am still in awe of this decision the City of Mississauga is wanting to make to reject my bid for the construction of sidewalks. Myself and my family has a long list of contracts completed over the past 35 years, all in good order, not to mention awards won for the construction of Mississauga road at University of Toronto, the construction of the 4 corners park donated by our family in memory of my grandfather, and the construction of the Johnny Lombardi memorial within the City of Toronto. I have been apart of all those proud projects.

I have submitted to the City of Mississauga that my firm should be awarded this contract based on all the information above and if the City is not sure of our performance, then an evaluation should be completed during this contract and if the city of Mississauga is unhappy with our performance, then Mastercrete will accept proper notice as outlined in section 23 -disqualification of bidders. I am a young entrepreneur and the future of the industry; I ask that you take the time to read all my material and overturn the decision made by purchasing and award the contract to Mastercrete Construction.

Yours truly,

Matteo Fusillo

Mastercrete Estimating**INSPECTOR EMAIL FROM
2016 INTERSECTION****Subject:****FW: Re:****From:****Sent:** May 20, 2021 1:07 PM**To:** Mastercrete Estimating**Subject:** Re:

Tim Watts (retired city of Mississauga inspector)
October, 1987- April, 2020

To whom it may concern,

I have been contacted by the Fusillo family (Conker Construction and Mastercrete Construction) and have been asked to supply them with a work experience reference with their companies. Over the 33 years that I was employed by the City of Mississauga as a senior construction inspector, I would like to express my experiences dealing with them on multiple capital works projects. Some of the projects I was in charge of completed by these companies are as follows:

1. Burnhamthorpe Rd from Hwy 10 to east of Dixie.
2. Mississauga Rd. Dundas to Burnhamthorpe Rd. Plus all U of T works which include 3 new entranceways to U of T and a storm retention pond **which they were awarded project of the year in Ontario.**
3. The intersection contract (2016)
4. Tannery Rd from Mississauga Rd to Joymar (Including 2 tunnels under the railway and under the creek)

My experience with Mastercrete on the 2016 intersection contract was difficult and complex due to additions and changes in the design of the contract. During the McLaughlin construction site, we encountered many delays due to a retaining wall that had to be designed and constructed over and above the contract. It was an extra in the contract. This entailed several meetings with city forestry and design and stamped structural engineer drawings. Once the approval of the design was completed and accepted, the wall had to be manufactured due to irregular specifications which delayed the completion of the job. I would also like to refer to the Skymark traffic roundabout which was also part of the 2016 intersection project. We experienced huge delays due to scheduling with Mississauga transit which we had to make a temporary transit terminal to reroute the buses. We had to lower existing fibre optics in the roadway and lower existing gas main crossing in the roadway. These utility obstructions were shallow and in the road makeup which meant delays in construction due to the utility companies having to adjust the elevation of their products. When situations like this happen, there can only be 1 contractor on site at a time (**Constructor's Act**). This meant that Mastercrete had to mobilize and leave the job site to allow the utility companies to lower their products. Once this was completed, Mastercrete could remobilize back to the project and continue construction. This project was a rare and difficult experience due to adjustments in design and additions to work.

My working experience with these companies are as follows,

The end product is very good with minor deficiencies which have always been completed. The contractor superintendent was continuously communicating schedules and answering complaints. In closing, if I was still employed with the city, I would not hesitate to work with the Fusillo family again on any intricate or technical city contract.

Yours truly,

Tim Watts

From: Mastercrete Estimating [REDACTED]

Sent: May 19, 2021 3:09 PM

To: [REDACTED]

Subject:

Tim,
I hope all is well. I found your email and hope you don't mind I had reached out. I understand that you have since retired from the City of Mississauga and actually moved out of Province. I do hope all is well. I had reached out because you were the inspector on the 2016 intersection program with Mastercrete. I know that daily contact was maintained between yourself and myself and as well as Frank who worked at Conker Construction at the time. Well although I have done many jobs with The City of Mississauga in the past whether it was through Mastercrete or during my time at Conker, the City is wanting to reject my bid for the 2021 sidewalk program. I was low bid on the contract, and very close bid with 2nd bidder. After the closing the city had sent out a request for references and although I thought it was a little ridiculous I adhered to their request, but now they have since stated our references are not valid and we don't qualify for the contract. Like I had stated earlier we had a meeting yesterday with purchasing and part of engineering staff. During that meeting it became apparent that the references were not reviewed with scrutiny, but a quick review and I had also realized that staff mainly Silvio seemed to have issues with my company. Silvio had stated that our last contract 2016 Intersection improvements did not go well and for that reason they did not want to award the contract to Mastercrete.

I was totally disappointed because Kenneth was present in this meeting as well and I had supervised Burnhamthorpe rd with him and yourself from Hurontario to Dixie and that seemed to have gone well. Silvio stated in this meeting that he recalls Dagmar complained that we had abandoned the site on McLaughlin and had left a hole unsafe on skymark. First of all I don't recall these issues nor did anyone send me anything in writing at the time there was some issue. In fact until today I have never been warned by the City of Mississauga that there was any issues with Mastercrete and we should not bid any contracts. You were on site everyday and weekly meetings, did you ever hear the City convey to myself there was any issues, other than the everyday construction issues? I guess Tim we have worked together over many different contracts and was there any issue encountered on 2016 Intersection that you would say I hate working with these people because they are so disorganized or not cooperative?

If you recall there was a meeting held at the end of the contract to discuss the extras and liquidated damages claim. Again not sure if you can recall but we had a late start because legal took their time to sign the contracts and in fact affected our schedule because we anticipated to start asap after award. After our meeting the City reversed a large portion of the liquidated damages and that is only because it was a settlement and I didn't want to argue further with the project manager. We also had completed that retaining wall N. of Bristol a year later because the City didn't have a design until the winter of 2016. In conclusion I have to ask you these few questions:

1. Did you ever have an issue with communication with myself?
2. Did you ever not get cooperation from myself or any of our employees?
3. Did you ever deal with poor workmanship from Mastercrete?
4. Did Mastercrete ever have to remove or replace portion of the work due to workmanship?
5. Did Mastercrete ever deliver all work as per specification?

6. Did you or were you ever present in any meetings or receive any notice that Mastercrete was sub par and would not qualify for any further contracts?
7. If your diary was reviewed would there be any negative comments about the work Mastercrete complete

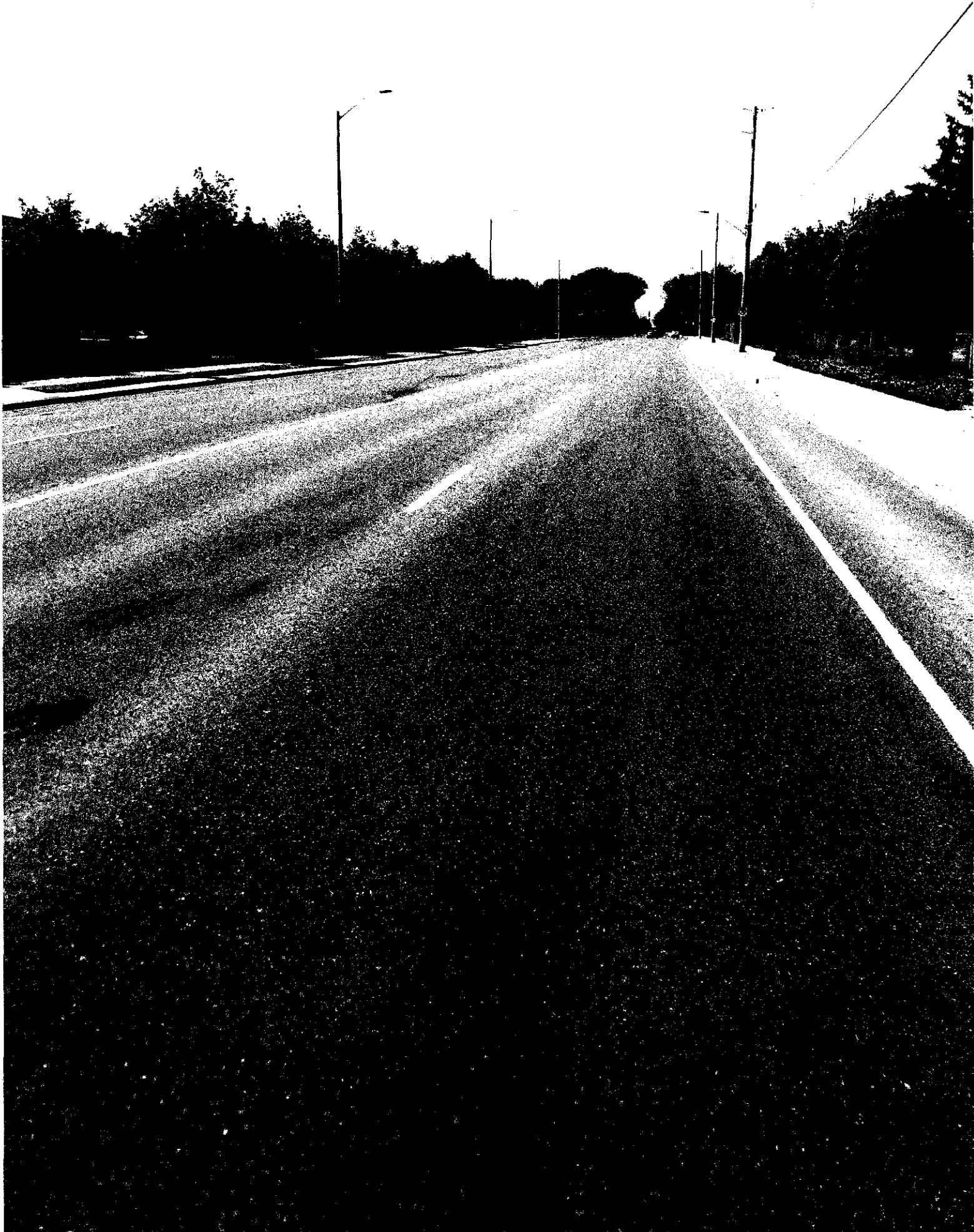
I am not sure if you are willing to answer any of these questions but truthy I feel like I am being treated unfairly and I thought who better to ask for reference than the guy who worked with myself everyday. Its funny any reference as we know is always subjective and I believe this may be the case, perhaps there could have been an incident on the job that certain staff members heard about , but that's perhaps 1 instance in 1000 instances. I tried to do go a good job and I took pictures today of McLaughlin rd and have attached them , so you can see how good the road is doing after 4 years, it looks awesome. Further my father Frank who you also know ,is now currently working with me full time. Again what was disturbing the City would not recognize the fact Frank has completed so many jobs within the city and no issues at all on any jobs completed , and no weight was placed on the fact Frank now is at Mastercrete full time. I believe you worked with him for many years as well.

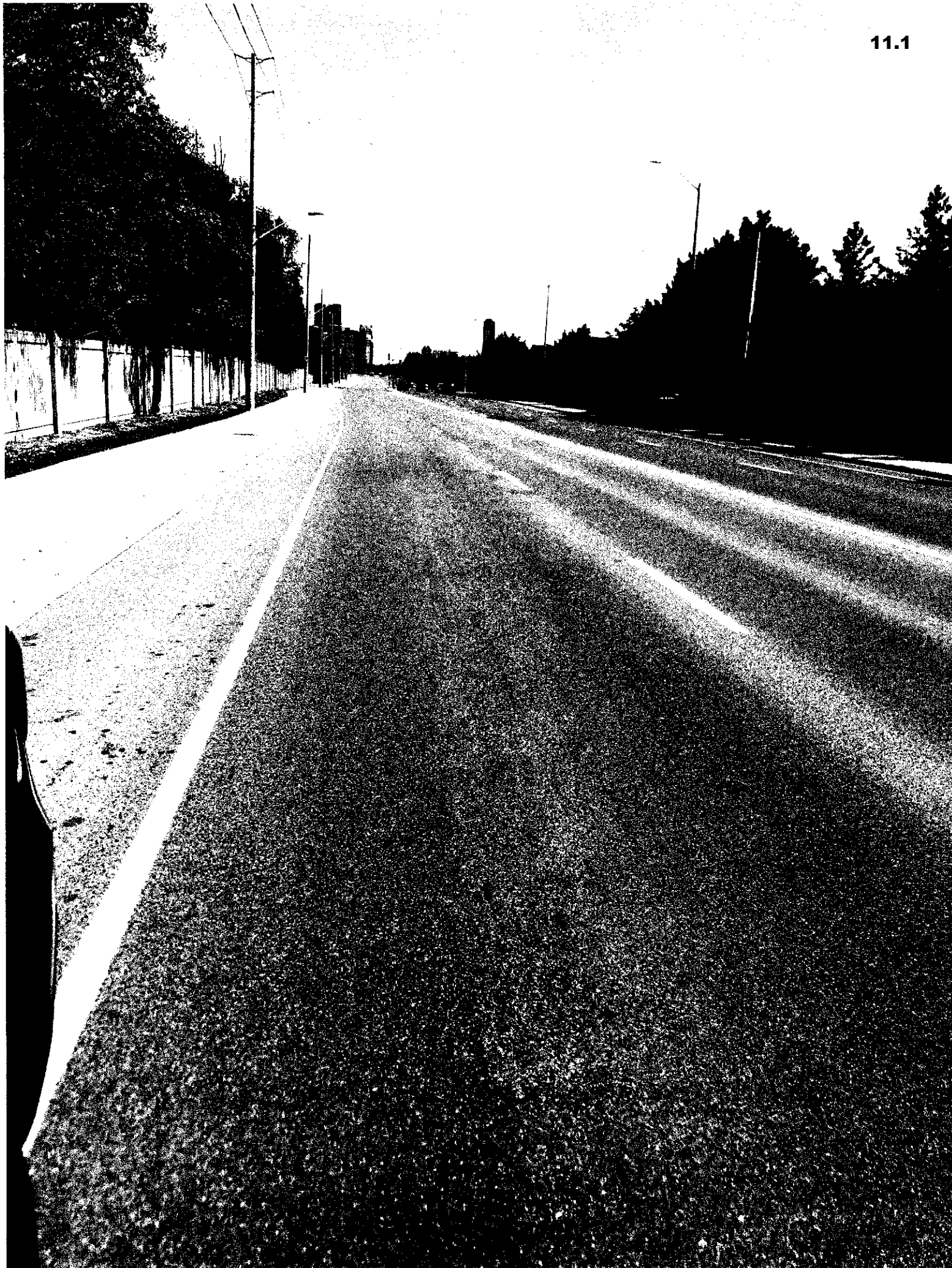
Again I wasn't sure if I should reach out but thought nothing to loose. I wouldn't have but this is very important to myself. I truly hope you are doing well and family are safe. I am sure you are enjoying the good weather.

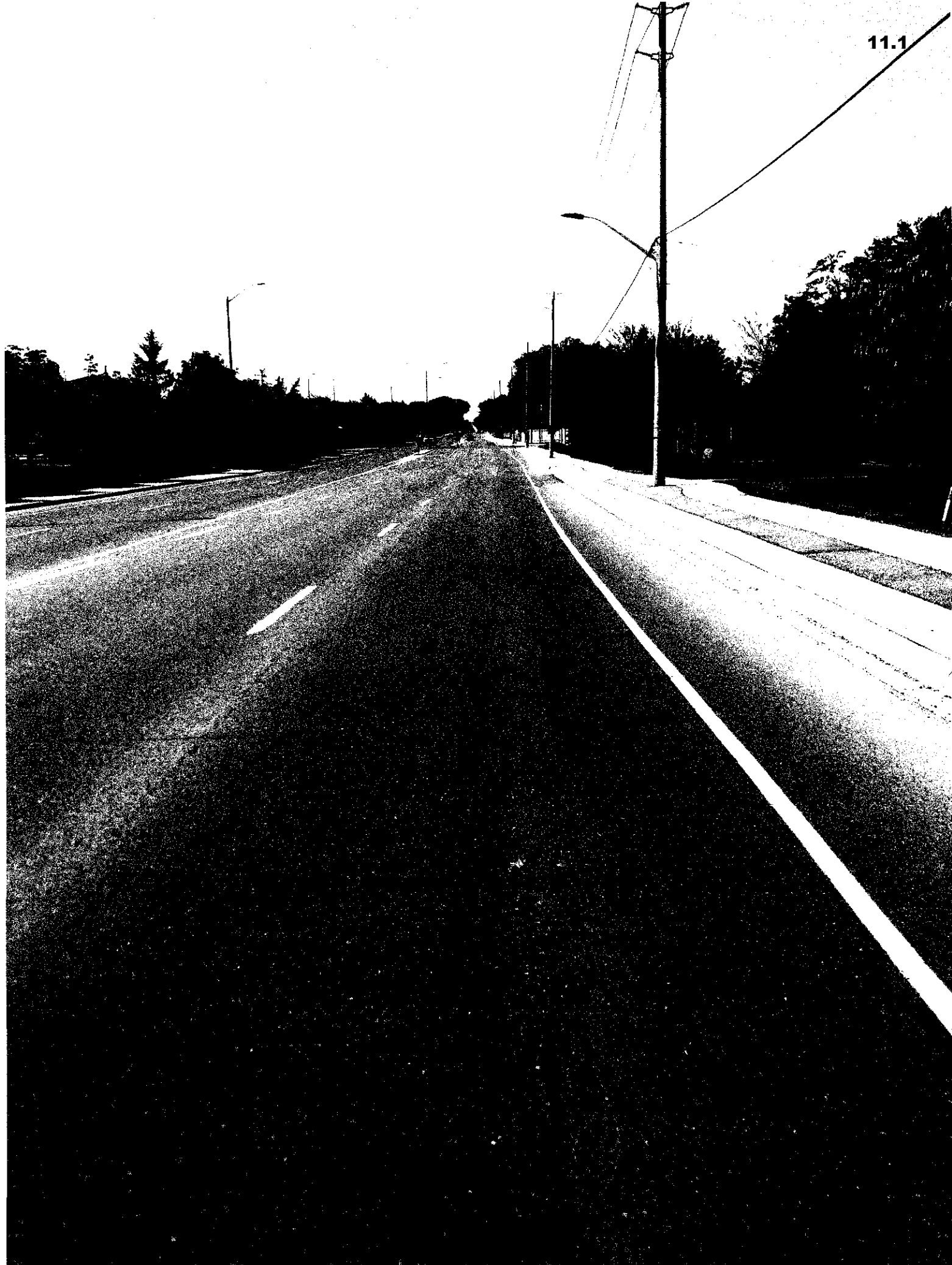
Matt Fusillo

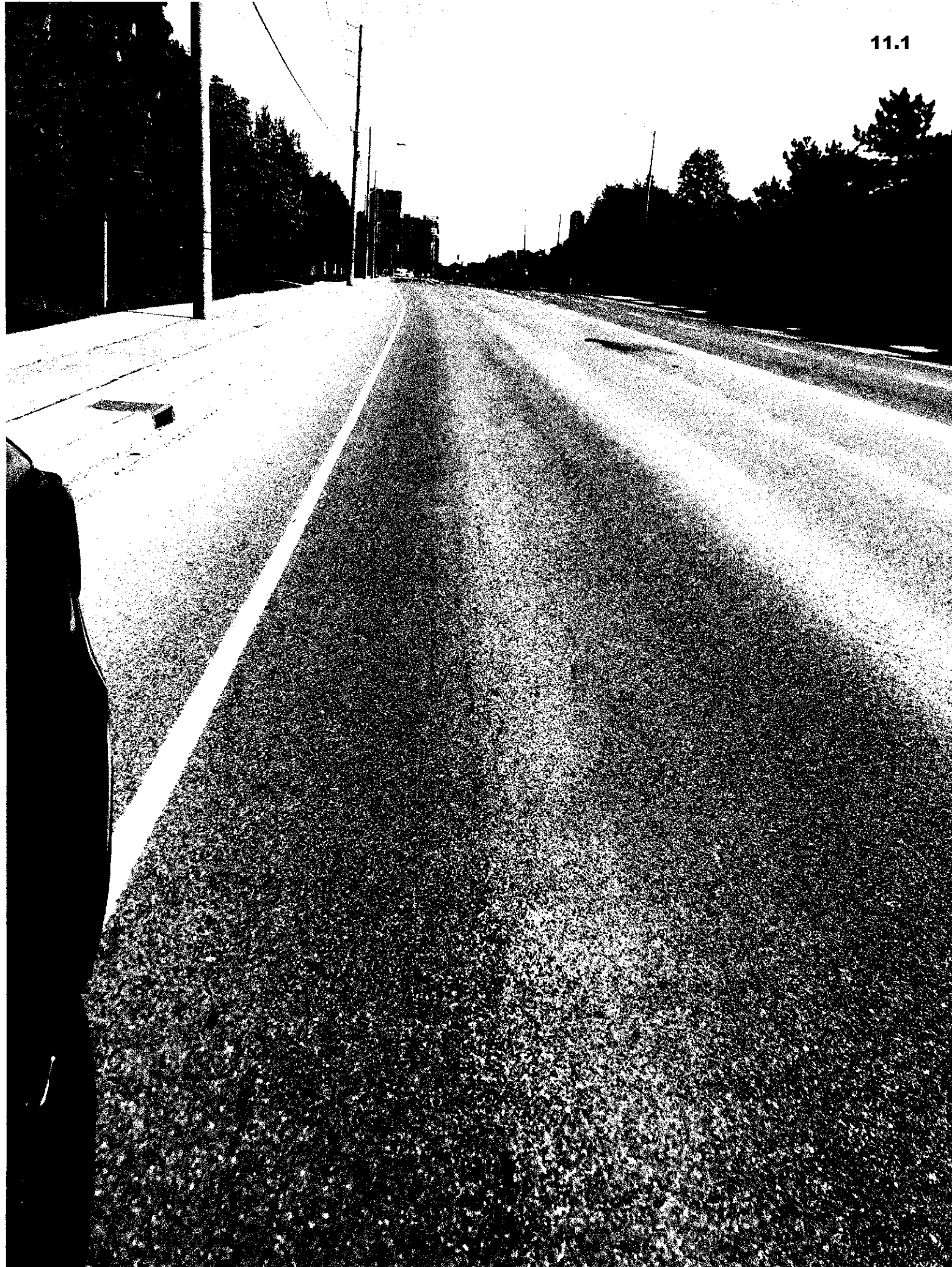
MAY 2021

PICTURES OF McLAUGHLIN RD. 11.1









frank

PROOF WALL DESIGN IN 2017

From: Dagmar Chang [REDACTED]
Sent: April 26, 2017 4:51 PM
To: frank
Subject: FW: Soils reports for along McLaughlin Road

From: Claudia Kang [REDACTED]
Sent: 2017/03/17 10:22 AM
To: Dagmar Chang [REDACTED]
Cc: [REDACTED] Dave Morris
Subject: RE: Soils reports for along McLaughlin Road

Hi Dagmar,

For the soil verification, the General Review Engineer (Nasiruddin Engineering Ltd) could do it on site. We have assumed the site soil parameters and. When the wall is being built, General Review Engineer needs to verify the site soil to make sure it is compatible with or better than our assumptions in design.

Please let me know if I could be of any help.

Regards

ONGOING DESIGN

Claudia Kang, P.Eng.

Senior
 Design Engineer



RisiStone
retaining wall systems

480 Harry Walker Pkwy S, Unit 10 | Newmarket ON L3Y 0B3

1.800.626.WALL (9255) | T 905.868.9255 x 203 | M 416.602.4675 | F 905.868.9254

www.risistone.com | The Solid Choice

From: Dagmar Chang [REDACTED]
Sent: Tuesday, March 14, 2017 3:13 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Soils reports for along McLaughlin Road

Hi Claudia,

Attached are 3 geotechnical reports in the vicinity of the wall for your reference.



MISSISSAUGA

Dagmar Chang, P.Eng.
 Capital Project Manager, Capital Works
 T 905.615.3200 [REDACTED]

[REDACTED]
City of Mississauga | Transportation and Works Department
Engineering and Construction Division

Please consider the environment before printing.

From: Dave Morris
Sent: 2017/03/14 11:54 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Soils reports for along McLaughlin Road

Dagmar:

I was able to locate 3 reports that could be considered close to the section of McLaughlin Road, between Eglinton Ave. and Bristol Road.

The delay in getting you these reports is because to find reports on the computer program that stores them, now takes 10 times as long, hours and sometimes days, as compared to minutes it used to take when these reports were on paper and organized in filing cabinets.

I hope these three reports can assist you.

Regards,
Dave



City of Mississauga
 Transportation and Works
 Engineering and Construction
 201 City Centre Drive, 8th Floor
 MISSISSAUGA ON L5B 2T4
 mississauga.ca

**MINUTES OF PRE-CONSTRUCTION MEETING
 CONTRACT 17 111 16101**

2016 INTERSECTION IMPROVEMENT PROGRAM

**Tuesday, June 21, 2016 at 10:00 a.m.
 3185 Mavis Road, Linda Weir Room**

Attendees:

City of Mississauga:	D. Chang S. Ford	T. Watts D. Koziol	G. Fendley
Mastercrete Construction Inc.:	M. Fusillo	F. Fusillo	

Items Discussed:

- 0.1 The Contractor returned three (3) copies of contracts documents to be executed by the City. No work can be started until the contract is fully executed.
- 0.2 Extra copies of the contract documents were distributed to all parties.
- 0.3 The Contractor indicated that he would like to start work on July 4th, 2016 on McLaughlin Road. This is dependant on contract documents being executed.
- 0.4 The City Inspector for this contract will be T. Watts. The survey crew will be lead by G. Fendley for survey layout and measurements for payment.
- 0.5 Dave Morris will be the coordinators for material testing. The City laboratory testing will be completed by Davroc.
- 0.6 Site Safety was reviewed by D. Chang. All necessary safety precautions with respect to this project are to be taken by the Contractor and he is to meet all requirements of the Occupational Health and Safety Act and WIMUS legislation. A pre-construction information package will be sent to the Contractor. The package includes the following items:
 - Example of Powerline Encroachment policy (this policy has to be on site at all times),
 - Safety of moving on the ground,

Matt Fusillo

From: Dagmar Chang [REDACTED]
Sent: Thursday, August 25, 2016 10:50 AM
To: Carolyn Parrish
Cc: Geoff Wright; Darek Koziol; Paul Hutchison; Tim Watts; Michael Cardinale; Silvio Cesario; Andy Harvey; Sunil Kanamala; Bryan MacMillan; Matt Fusillo
Subject: Explorer Drive at Skymark Avenue Roundabout

Hello Councillor Parrish,

The roundabout at Explorer Drive and Skymark Avenue is currently under construction. Due to unforeseen circumstances we will have to extend the road closure by one more week to September 3, 2016. Transit has a detour route in operation and we will change the posted signs to indicate the revised date. Emergency services will also be notified. The road will be opened before Labour Day.

We apologize for any inconvenience. Please do not hesitate to contact me if you have any questions or concerns.

Thank you

**MISSISSAUGA**

Dagmar Chang, P.Eng.

Capital Project Manager, Capital Works
T. 905-615-3200 [REDACTED]

City of Mississauga | Transportation and Works Department
Engineering and Construction Division

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Mastercrete Estimating

From: Maria Torres [REDACTED]
Sent: April 22, 2021 12:56 PM
To: Mastercrete Estimating
Subject: FW: PRC002941 - 2021 Construction of Concrete Sidewalks at Various Locations
Attachments: Bidders' Qualification Forms.docx

Importance: High

Hi Matthew,

The above project is under evaluation and City requires references. Please complete the above form and send it to me ASAP.

Your attention to the above request is greatly appreciated.



Maria Torres
Intermediate Buyer
T 905-615-3200 [REDACTED]
[REDACTED]

City of Mississauga | Corporate Services Department, Revenue and Materiel Management Division

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EXPERIENCE REQUIREMENT FORM

Please provide minimum of three (3) reference projects, which includes all three work scopes - sidewalk installation, road resurfacing, and concrete vehicle lane pavement. The reference projects should be not less than \$1,300,000.00 for each contract over the past three (3) years. The bidder shall fill out the form for each project.

PROJECT 1

Project Name:	
Project Owner:	
Contract Number:	
Scope of Work:	
Contract Value:	
Approximate Total Length of the Work:	
Year of Completion:	
Project Owner's Contact (Name and Title):	
Telephone:	
Email:	

PROJECT 2

Project Name:	
Project Owner:	
Contract Number:	
Scope of Work:	
Contract Value:	
Approximate Total Length of the Work:	
Year of Completion:	
Project Owner's Contact (Name and Title):	

EXPERIENCE REQUIREMENT FORM

Telephone:	
Email:	

PROJECT 3

Project Name:	
Project Owner:	
Contract Number:	
Scope of Work:	
Contract Value:	
Approximate Total Length of the Work:	
Year of Completion:	
Project Owner's Contact (Name and Title):	
Telephone:	
Email:	

Mastercrete Estimating

From: Erica Edwards [REDACTED]
Sent: May 6, 2021 7:43 PM
To: Mastercrete Estimating
Cc: Maria Torres
Subject: PRC002941
Attachments: PRC002941 Letter to Mastercrete Inc..pdf

Please see letter attached.



Erica Edwards, CSCMP
Manager, Materiel Management – External Services
T 905-615-3200 [REDACTED]
[REDACTED]

City of Mississauga | Corporate Services Department,
Revenue and Materiel Management Division

Please consider the environment before printing

May 6, 2021

Mastercrete Construction

E-mail: [REDACTED]

Re: **NOTICE OF BID REJECTION**

Procurement No: PR002941 - 2021 Construction of Concrete Sidewalks at Various Locations

Dear Mr. Fusillo

Thank you for your bid on the above-mentioned procurement. As per the Standard Instructions to Bidders, item 10.0 References, Bidders must provide references satisfactory to the City, demonstrating its ability to perform the work. The references Mastercrete provided were reviewed; they did not demonstrate satisfactory performance on past projects and are not acceptable to the City.

Furthermore, as per item 10.4 of the Standard Instructions to Bidders - Purchasing Agent's Discretion to Disqualify - The Purchasing Agent or designate shall have sole discretion to disqualify the Bidder on the grounds of unsatisfactory references or past performance on a City contract.

In accordance with the City's Bid Openings and Bid Irregularities Policy (03-06-02):
"*...The Manager must reject a bid with a Major Irregularity without further consideration...*"
The City's policy for Bid Openings and Bid Irregularities can be found by following this [link](#).

Should you have any questions, please direct them in writing to the undersigned no later than 4:00 p.m. on May 11, 2021.

Yours truly,

Erica Edwards, Manager Materiel Management – External Services

Tel: 905-615-3200, [REDACTED]

Email: [REDACTED]

Mastercrete Estimating

From: Mastercrete Estimating
Sent: May 6, 2021 9:55 PM
To: Erica Edwards; carolyn.parrish [REDACTED]; george.carlson [REDACTED]; karen.ras [REDACTED]; Silvio Cesario; Matt Fusillo; Frank Fusillo; [REDACTED]
Cc: Maria Torres [REDACTED]
Subject: RE: PRC002941
Attachments: RE: Intent to Award RFT-21-305; S-3362A-21 Concrete Roadworks at the Oakville Southwest WWTP - Letter of Intent; burlington references.jpg; mississauga references1.jpg; city of mississauga references 2.jpg

Erica,

I received your letter and am very disturbed at this decision not to award the 2021 sidewalk contract to our firm. First of all I have completed work for the City of Mississauga directly in the past, second of all Frank Fusillo had reached out to Silvio Cesario letting him know that Frank himself will be looking directly after the work. Not only has Frank completed over a billion dollars of work for the City of Mississauga, we have both grown up in the City of Mississauga and our family has worked with the city in contributing the park located at the 4 corners in Mississauga and received an award for the project for which I was involved.

The most disturbing part is the following:

1. We recently bid a city of Burlington contract and find attached the award letter. You will see that within the Burlington bid attached the references were 1. Region of Halton 2. City of Mississauga 3. City of Toronto. The City has checked references and awarded the contract.
2. The Region of Halton also awarded us a contract for a concrete pavement.

So the City of Burlington checks our references and states we are accepted. The Region of Halton states we are accepted because we have completed contracts with them and are satisfied with our work and award the contract.

Find attached the City of Mississauga experience requirement form which we give references 1. City of Mississauga 2. City of Toronto (the same as Burlington) 3. Embee properties.

So the 2 of the references are the same for Burlington as we submitted to Mississauga 1. City of Mississauga 2. City of Toronto, which it seems to be good enough for City of Burlington but not Mississauga. The 3rd reference is Embee properties, I spoke to Tony Bunetti at 8:00pm this evening and after I asked him did the City contact him, he stated that he was contacted by the City of Mississauga a few weeks ago and stated they were to send some paper work to him for references and he got a missed call later but never spoke to anyone since, basically did not offer any formal reference. Embee properties has hired us to complete 2 more plaza works starting next week. How can it be we submitted to the City of Mississauga references such as Halton Region who awarded a contract last week and Embee properties who has also awarded us 2 contracts this past month? So basically 2 of the references are pleased with our work and willingly give us more work.

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There seems to be an issue with your reference procedure and I am requesting that a meeting be held to discuss this ASAP. We will not accept this decision and I ask the City of Mississauga to reconsider as I am counting on this work and

have passed on other contracts believing there would be no issues with the award considering all my references have awarded us further works with the exception of yourself. In these times of COVID it is already difficult to conduct business without having issues like this arise. I have copied some of the members of council on this contract because we have completed work within their ward and find our work satisfactory.

Matt Fusillo/Frank Fusillo
Mastercrete Construction

From: Erica Edwards [REDACTED]
Sent: May 6, 2021 7:43 PM
To: Mastercrete Estimating [REDACTED]
Cc: Maria Torres [REDACTED]
Subject: PRC002941

Please see letter attached.



Erica Edwards, CSCMP
Manager, Materiel Management – External Services
T 905-615-3200 [REDACTED]
[REDACTED]

City of Mississauga | Corporate Services Department,
Revenue and Materiel Management Division

Please consider the environment before printing

Mastercrete Estimating

From: Mastercrete Estimating
Sent: May 9, 2021 3:36 PM
To: erica.edwards@mississauga.ca; Maria Torres; Silvio Cesario
Cc: ron.star@mississauga.ca; carolyn.parrish@mississauga.ca; george.carlson@mississauga.ca; karen.ras@mississauga.ca; Matt Fusillo; Frank Fusillo
Subject: FW: award for sidewalk contract

Erica,

Further to your letter of May 6, 2021 and my email of the same day I would like to add the following information:

1. Within the standard instructions to bidders 10.0 References under 10.1 the bidder must demonstrate its ability to perform the work, the size , scope and nature and complexity of the bidders contract with each reference. We had again supplied references for which Mastercrete Construction had conducted work. Again some of the references made no formal statement and in fact has hired us again this year to complete more work, therefore one must agree they were satisfied with the work previous. If the City made no contact with this reference or was unable to do so (perhaps not received) ;within the fairness clauses should have contacted us to assist.
2. 10.2 references from other sources, I had also sent references for Frank Fusillo who has managed contracts that were much larger , more difficult scope and more complex than this contract. Myself and my father , especially my father has completed many contracts within the city of Mississauga . These were completed, all on time and in many cases has assisted the City in making changes for the benefit of the contract. In fact Joe Pituska , former director had asked Frank Fusillo to come into the city and discuss with all the project managers to assist and make suggestions in writing the contracts, because of his knowledge and understanding of the contracts. Feel free to contact Joe Pituska regarding this approach.
3. Corporate Policy and Procedure: This statement in summary describes major irregularities and minor irregularities. Under the Major irregularities which is automatic rejection , Mastercrete Construction has adhered to all the listed 9 items. Under minor irregularities we could see under item 3 technical documents such as references(although we have already completed works within the city). Minor irregularities allow time to rectify , perhaps reevaluate the process.
4. Bidders recourse: Bidders have the right to protest as we have already done
5. 9.9. of the Standard Instructions to ensure fairness or best value , the manager may review the process that was conducted by city staff and a re-evaluation may be requested and the results adjusted accordingly if the manager finds that there was an error or omission in the process. As we believe that some of the references were not completely reviewed , we ask to reevaluate the process and in particular our bid.
6. We are prepared to meet and discuss at your earliest convenience.

In summary as previously stated Frank Fusillo is working full time with Mastercrete Construction and will be the full time supervisor/administrator on the project . Not only has the city requested Frank in previous years to assist in reviewing contracts and assist in updating infrastructure specifications for the City of Mississauga, he has extensive

experience in projects within the City of Mississauga, grew up in the City, made various contributions to city charitable groups, and completed all projects on time and in good order.

We have summarized a partial listing of contracts we both have been part of ;starting from the north to south within Mississauga alone:

1. Hwy 10, Derry rd to 407
2. Netherhart, Britannia to Courtney park
3. Britannia rd, Dixie road to Luke rd
4. Kennedy rd, Eglinton to Britannia
5. Hershey center ring road
6. Mavis,Eglinton to Britannia
7. Central Pkwy, Dundas to Burnhamthorpe
8. Eglinton, 403-Dixie
9. Eglinton,Dixie to city limits
10. Burnhamthorpe, Hwy 10-Dixie
11. Living arts dr
12. Princess royal
13. Confederation,Dundas to Burnhamthorpe
14. Confederation, Burnhamthorpe to 403
15. McLaughlin, 401-derry
16. Terry fox, Eglinton to Derry
17. Britannia, creditview to Mississauga rd
18. 9th line, brittania to city limit
19. 10th line, brittania to city limit
20. Winstonchurchill, 403 to Eglinton
21. Hwy 10, Queensway to burnhamthorpe
22. Dundas, Mavis to Erindale station
23. Mississuaga rd, Dundas to Burnhamthorpe
24. Lakeshore rd, Winston to southdown
25. Avonhead
26. Royal Windsor , Winston to southdown

These are some of the major projects which are way more complex and demanding than the sidewalk contract. These are some of the major street widenings .

There are many more secondary street reconstructions, intersection improvements, and sidewalk contracts too many to list.

Although my fathers company completed these contracts , I have worked on most of these projects along side of him, with many of the current staff and of course on my own projects. What is unfair about your approach to references is that even if one job was not perfect , it is always subjective of the person offering the reference(not that this is the case). But in all fairness our firm and our employees that comprise the firm have more knowledge and experience and have completed way more complex jobs within the City of Mississauga than any bidder on the list of bidders for this project.

How can the city of Mississauga not award this contract to Mastercrete Construction based on all the facts and experience mentioned above?

As part of your fairness rules ,we ask that this decision be reevaluated and in all fairness that a meeting be convened to discuss the overall approach of the job, the management, the supervision and how we can effectively plan to save the city of Mississauga monies on this project and future works. The City of Mississauga has benefited for many years of our family working here, as stated by previous city staff , Mayors and council members. It has been pointed out that if Frank

Fusillo did not bid jobs within the city of Mississauga, the tax payers would pay more for the infrastructure works. This statement can also be true within Halton Region and Region of Peel.

We appreciate you reviewing this bid/tender.

Matt Fusillo/Frank Fusillo

Mastercrete Estimating

From: Erica Edwards [REDACTED]
Sent: May 13, 2021 11:18 AM
To: Frank Fusillo; Mastercrete Estimating; Carolyn Parrish; George Carlson; Karen Ras; Silvio Cesario; Matt Fusillo; [REDACTED]
Cc: Maria Torres; Ron Starr
Subject: RE: PRC002941

Thank you for your email. We will contact you directly to set up a meeting for next week.

Regards,



MISSISSAUGA

Erica Edwards, CSCMP
 Manager, Materiel Management – External Services
 T 905-615-3200 [REDACTED]
 [REDACTED]

City of Mississauga | Corporate Services Department,
 Revenue and Materiel Management Division

Please consider the environment before printing

From: Frank Fusillo [REDACTED]
Sent: Thursday, May 13, 2021 9:47 AM
To: Erica Edwards [REDACTED]; Mastercrete Estimating <[REDACTED]>; Carolyn Parrish [REDACTED]; George Carlson <[REDACTED]>; Karen Ras [REDACTED]; [REDACTED]; Silvio Cesario [REDACTED]; Matt Fusillo [REDACTED]; [REDACTED]
Cc: Maria Torres [REDACTED]; Ron Starr [REDACTED]
Subject: Re: PRC002941

Erica ,
 Obviously that is not the decision we wanted to see.
 I have a few comments regarding your decision.

1. The form of tender not the instructions to bidders does not have any mention of references past 3 years or size.
2. The city of Mississauga must have forgotten what happened to the liquidated damages claim. The intersection contract had a specific start date of June 1 and we have emails from the project manager stating legal was backed up and was started 30 days later which in turn caused a delay of 30 days at the back end . It was totally u justified to charge liquidated damages so an adjustment was made.
3. City of Toronto was not just a watermain contract but involved concrete road a large portion and resurfacing much larger than in your contract .
4. Embee scope of work again was 5 times larger than your contact .

I have reached out multiple times to meet so these items can be discussed and u der stood. Again I believe we have contributed many years idle service to the city and at least dserve that .

I ask we meet to discuss. I understand that there was a minimal amount between 1 st and 2 Nd bidder and that's is why your decision seems much easier but if there was half a million dollars difference would it be easier ?

In the spirit of bidding and the spirit of fair business I again ask we all sit down to hear our side of the story . And perhaps better understand what makes your contract so difficult that the city won't at least hear us out . You do realize that 3 rd bidder was at least 20 percent higher than 1 st and 2 Nd. If you loose bidders the tax payers will be paying a considerable amount of money more for the work .

Let us know when it is convenient for a meet . We still don't agree wi th your decision .

Thanks

Matt/frank

Get Outlook for iOS

From: Erica Edwards [REDACTED]

Sent: Thursday, May 13, 2021 9:22:45 AM

To: Mastercrete Estimating [REDACTED]; Carolyn Parrish [REDACTED]
George Carlson <George.CARLSON@mississauga.ca>; Karen Ras [REDACTED] Silvio Cesario
[REDACTED]; Matt Fusillo [REDACTED] Frank Fusillo [REDACTED]

Cc: Maria Torres [REDACTED]; Ron Starr [REDACTED]

Subject: RE: PRC002941

Good morning Messrs. Fusillo;

Further to your email of May 6, 2021, we have reviewed your concerns and the City's decision to reject the bid received from Mastercrete remains unchanged. However, we offer the following in response.

Reference requirements were for the three scopes of work included in the contract; sidewalk installation, road resurfacing and concrete vehicle lane pavement, and that the reference projects should be not less than \$1,300,000 for each contract over the past three years. The references are required for projects completed by Mastercrete, who is the Bidder.

The City requires that reference projects are relevant and representative of the scope and nature of the City's contract requirements. The City further requires that the references are satisfactory to the City. The references provided by Mastercrete are not current (for the past three years as requested) and are not satisfactory, as follows:

- **Project 1 - 2016 Intersection Improvements, City of Mississauga**
 - The project experienced delays and the City was not satisfied with Mastercrete's performance.
 - There were delays on large portions of the project work. As a result, the City issued a claim for liquidated damages to Mastercrete in October 2017.
 - This project was not within the past three years.
- **Project 2 – Water Main Project, City of Toronto**
 - This reference project was a water main and not similar to Mississauga's sidewalk project. It did not include sidewalk and road resurfacing as is required for Mississauga's contract.
 - This project was in 2015, which is not within the past three years.
- **Project 3 – Appleby Mall Plaza Project, Embee Properties**
 - The Embee Properties reference was contacted by phone and they provided project details. They did not fill out the reference form.

- This reference project was not similar to the requirements of Mississauga's contract. It was a plaza site service project, mainly construction of new storm water sewer, sanitary sewer and asphalt pavement in the plaza. It is not a municipal road project and only a 500 foot long sidewalk inside the plaza is included in the work scope.
- This project was not within the past three years.

Each municipality has its own requirements. We see that your recent award from the City of Burlington is for a lower value, and please note that the City of Mississauga did not provide a reference. The Halton Region award, at \$258,000, is for considerably different work.

We understand that Con-Ker Construction successfully completed numerous projects for the City of Mississauga in the past. However, we are looking to the references for Mastercrete. The references provided do not demonstrate that Mastercrete has recent, relevant experience.

The City's Reserved Rights, Item 14 of the Standard Instructions, provides that the City, without liability, cost or penalty, and in its sole discretion, may disqualify and reject any Bid at any stage of the Bid Request process in any of the following circumstances: (d) the references submitted by the Bidder are deemed unacceptable by the City. Accordingly, the City is exercising its right to reject the bid received from Mastercrete on this occasion.

We look forward to receiving bids from you in the future as Mastercrete continues to develop experience relevant to the City. We have refrained from proceeding with the award process in order to address your concerns. Should you require additional information and if you continue to wish to meet, please contact me by 4:00 p.m. on Friday, May 14, 2021, after this time we will proceed with the award process.

Regards,



MISSISSAUGA

Erica Edwards, CSCMP
Manager, Material Services
T 905.815.3200

City of Mississauga | Corporate Services Department,
Revenue and Material Management Division

Please consider the environment before printing

From: Mastercrete Estimating [REDACTED]
Sent: Thursday, May 6, 2021 9:55 PM
To: Erica Edwards [REDACTED]; Carolyn Parrish [REDACTED]; George Carlson [REDACTED]; Karen Ras [REDACTED]; Silvio Cesario [REDACTED]; Matt Fusillo <matt@mastercreteinc.com>; Frank Fusillo [REDACTED]
Cc: Maria Torres [REDACTED]; Ron Starr [REDACTED]
Subject: RE: PRC002941

Erica,

I received your letter and am very disturbed at this decision not to award the 2021 sidewalk contract to our firm. First of all I have completed work for the City of Mississauga directly in the past, second of all Frank Fusillo had reached out to Silvio Cesario letting him know that Frank himself will be looking directly after the work. Not only has Frank completed over a billion dollars of work for the City of Mississauga, we have both grown up in the City of Mississauga and our

family has worked with the city in contributing the park located at the 4 corners in Mississauga and received an award for the project for which I was involved .

The most disturbing part is the following:

1. We recently bid a city of Burlington contract and find attached the award letter. You will see that within the Burlington bid attached the references were 1. Region of Halton 2. City of Mississauga 3. City of Toronto. The City has checked references and awarded the contract.
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Matt Fusillo/Frank Fusillo
Mastercrete Construction

From: Erica Edwards [REDACTED]
Sent: May 6, 2021 7:43 PM
To: Mastercrete Estimating [REDACTED]
Cc: Maria Torres [REDACTED]
Subject: PRC002941

Please see letter attached.



Erica Edwards, CSCMP
Manager, Materiel Management – External Services

T 905-615-3200

City of Mississauga | Corporate Services Department
Revenue and Materiel Management Division

Please consider the environment before printing

Mastercrete Estimating

Subject: FW:
Attachments: City of Mississauga Delays and References.pdf

From: Mastercrete Estimating
 Sent: May 17, 2021 6:33 PM
 To: [REDACTED] Maria Torres [REDACTED]
 Cc: Matt Fusillo [REDACTED]
 Subject: FW:

Erica,

We thank you for setting up the meeting on Tuesday. I would like to send some information prior to the meeting .

REFERENCES:

Under Standard instructions 10.0 GENERAL it states that the bidder must on request provide references satisfactory to the city, demonstrating its ability to perform the work and , if applicable subcontractors and/or suppliers. The city will consider the size, scope, nature and complexity of the bidders contract with each reference provided and its comparability with the City,s requirement.

The City had sent us an EXPERIENCE REQUIREMENT FORM which states to supply 3 references , which includes all three work scopes-sidewalk installation, road resurfacing, and concrete vehicle lane pavement. The references should not be less than \$1,300,000.00 for each contract over the past 3 years.

Section 10.0 makes no mention to references or the most recent 3 years. Your Experience Requirement Form also makes mention that each reference shall demonstrate 1,300,000.00 for the following scopes of work 1. Asphalt paving 2. Sidewalk works, and 3. Concrete lane pavement.

Our bid for the sidewalk contract was only \$1,178,000.00 , there was a contingency lump sum for \$100,000.00 which as we all know may never be used, meaning the actual work bid is \$1,078,000.00. Would your reference requirement not only be for a max of \$1,100,000.00 ?

The following is a breakdown of the scope of work for the sidewalk contract valuing \$1,078,000.00.

- removals and excavation : \$97,320.00-9%
- sidewalk and curb works : \$318,130.00- 30%
- concrete lane pavement : \$37,600.00- 4%
- asphalt works : \$218,600- 20%
- sewer/watermain works : \$124,500.00-12%
- line markings : \$79,200.00- 7%
- sod : \$76,650.00- 7%
- misc works - \$126,000.00- 7%

In summary the main works involved with your sidewalk contract can be broken down as follows 1. Sidewalk/concrete work-30%, 2. Asphalt paving -20%, 3. Watermain works-12%,4. Line markings, and misc. works -all 7% each, 5. Concrete lane pavement-4%. I would think the fair way to evaluate references would be based on Concrete works, asphalt works and watermain works.

REFERENCE 2.

In your email dated May13, 2021 reference 2 City of Toronto , you state this project was not similar to the sidewalk project. In fact this was the most similar project. This contract involved a watermain, sidewalk and curb, concrete road base, and concrete lane pavement, sodding, and lane markings. I am attaching a copy of the payment certificate for the City of Toronto contract which shows the contract in fact was much larger than your contract , award price \$3,592,425.00. Also within the City of Toronto payment certificate (attached)you will find the items which are similar to your contract.

ASPHALT ITEMS

Item : 28/29/38/62/63/84/103/104/118/131/132/146 totalling \$194,765.00

CURB/SIEWALK ITEMS

Item : 36/86/87/119/120/130/147/148/150/service items restoration included-\$280,000.00

CONCRETE LANE PAVEMENT

Item 64/126/127/144 totalling -\$121,750.00

The remainder of the contract involved many watermain items and restoration items.

Based on the breakdown of the City of Mississauga contract and the City of Toronto contract the following observation's could be made:

1. The asphalt size and scope are very similar
2. The curb and sidewalk size and scope are very similar
3. The concrete laneway pavement , City of Toronto contract is much larger
4. The watermain component within the City f Toronto contract is much larger than the Mississauga contract

In summary if a fair comparison was made it can be determined in fact the City if Toronto contract had the same scope of work, much larger in size, many different locations similar to Mississauga contract, and far more demanding with traffic control. The City of Toronto involved working in the downtown core with many pedestrians and vehicle traffic.

Although the City of Mississauga believed this was not a good comparison , the attached will show it is.

Based on these I cannot see why this is not a good reference. Perhaps again if someone at the City of Mississauga would have contacted us , we could have assisted in clarifying the reasons why we named the City of Toronto contract as a reference.

REFERENCE 3.

You state that Embee properties was contacted but didn't fill out a form and the scope and size was not similar. We currently are working on another EMBEE properties site as I write this email. I spoke to Tony at Embee on site and he stated that someone had called him and he had a hard time understanding what they were looking for, understanding it was a reference for Mastercrete , he stated a further call came but no message left. He stated he never filled out the form but because he had a verbal conversation with this person and stated Embee was satisfied with Mastercrete s past performance , Tony believed nothing further was required from him. He also stated he thought he would only mention the 500 ft. of sidewalk because it was on the city of Burlington roadway. In fact the contract was yes for a plaza but a large plaza totalling over \$4,000,000.00. Although it was not a road way reference it had all the same elements of the City of Mississauga contract. Underground servicing , 4000 lin.m. of curb , 4000 sq.m. of sidewalk and 5,000 t of asphalt. Although it was not a municipal contract the construction of sidewalks is exactly the same on the City sidewalk as it is on private property. Two forms are placed on either side of the new sidewalk, it is graded, and concrete is poured and finished. Very simple and similar.

I believe there was a breakdown in communication between the City and Embee , therefore again I believe if the City of Mississauga would have asked Mastercrete for assistance perhaps there would have been more clarity.

Reference 1:

The City of Mississauga itself. I have attached many documents regarding the claim of liquidated damages which seems to be controversial and somewhat subjective. In fact Mastercrete was not treated fairly but in the spirit of working with The City and trying to provide a final outcome, Mastercrete accepted a small liquidated damage claim and move on. It seems that City of Mississauga is now using this acceptance as basis to disqualify Mastercrete Construction from this contract. Mastercrete completed the entire previous contract with similar scope, size and complexity. The contract did extend 3 weeks beyond the expected completion date. The reasons for the delay was not Mastercretes fault. I attached the following correspondence:

1. Preconstruction meeting minutes June 21/2016 for the 2016 Intersection Improvement program and you will read under items 1 and 3, it clearly was discussed the contract cannot start until it is fully executed.
2. Mastercrete letter dated Aug. 14, 2017 which outlines the delays caused by the City. The city in fact wanted to charge liquidated damages and ask for more to be completed the following year.
3. Copy of an email from Dagmar Chang to Carolyn Parrish where the city has acknowledged unforeseen issues on the contract.
4. Letter from Mastercrete to City Sept. 28, 2016 outlining extra works and reasons for extension in time.
5. Letter from Mastercrete dated Aug.23, 2016 stating additional issues with road closures

There is much more information we could offer up including the City of Mississauga could not get flagging for a portion of the works on Alpha Mills so this portion was deleted from the contract causing Mastercrete costs. There was a wall left to complete on McLaughlin rd. which the design was finalized in April of 2017, almost 7 months after the completion date.

Mastercrete had sat down and finalized all the issues caused by the City and the 3 weeks late completion. At no time did the City state they were unhappy with the work completed, state Mastercrete will not be able to bid any further contracts, or offer a rating for review. The ultimate outcome is that the City after our meetings realized there were some issues caused by the City and repaid most of the monies they deducted for liquidated damages and we came to a resolution. A few years have passed and now the city states they were not pleased with the completion date. I have not once heard our end product didn't meet specifications. The work is still there and can be inspected today.

I am sorry to say that your process is totally subjective as we have offered above reasons why your process for References may not work. I have completed many more works above and beyond those I had submitted. The fair thing to have done or do is to have the meeting on Tuesday and perhaps discuss your concerns as to why you want to reject our bid.

I have reviewed your letters and your complete rejection is based on the fact that there was a disagreement with the City of Mississauga over a contract completed 3 weeks later than what the contract stated. I recently reviewed off the city web site the acceptance of the low bid for the new LRT. The paragraph regarding fairness and openness states: SELECTION OF PROPOSAL WAS THE RESULT OF A COMPREHENSIVE, OPEN, FAIR AND COMPETITIVE PROCESS OBSERVED BY A THIRD PARTY FAIRNESS ADVISOR. The City hired a third party to do a complete study of the bids. Our bid was processed and checked in the same way by whom?

In review of the purchasing by law 0374-2006 I have the following to offer :

SECTION 23-disqualification of Bidders:

23.1 The purchasing agent may exclude a bidder from eligibility to submit a bid for a period of 2 years or until after the next bid opportunity has occurred where there is a documented evidence of poor performance or non performance in respect of the fulfillment of a commitment, or there is documented evidence that the bidder either violated a provision of this bylaw or the request submitted an improper bid, as determined by the purchasing agent.

23.3 Prospective bidders shall be notified of their exclusion from eligibility and shall have the right to protest in accordance with applicable City policies and procedures.

Summary of SECTION 23: Mastercrete Construction had completed work for the City of Mississauga and yes there was a minor dispute but resolved. At no time did the City offer a statement we would be excluded from eligibility on future

projects as stated in 23.3 . The city of Mississauga states is has fairness policies and openness . Shortly after we were low bid on the contract , we tried to reach out to staff to say hello and see when we can start and perhaps start getting resources in place. Total shock when we heard the bid was going to be rejected, totally contradicting your statement in 23.3 . in all fairness to Mastercrete we would have been more than willing to sit down and review any concerns brought forward if we were warned there was some underlying issues.

SECTION 1- Definitions

1.4- BEST VALUE- means the optimal value balance of efficiency , performance, and cost having regard to the citys objectives in respect of the acquisition timing, quality, and quantity as well as the procurement process and evaluation process criteria for the acquisition .

Summary: Has the city evaluated the bidder properly? Mastercrete Construction is very competitive and has saved various municipalities monies by being efficient and knowledgeable . I have stated previous that other owners are pleased to work with us. Has the City of Mississauga considered the loss of potential bidders and what would happen once the bidders are eliminated? The prices will be much higher. Mayor Hazel McCallion many years ago would actually call our family directly if we were not bidding jobs , the prices actually were coming in over budget if our family did not bid work.

SECTION 7-Purchasing principles

7a -acquisition processes shall be efficient, effective , objective and accountable.

7b-transparency and fairness shall be ensured, and competitive value maximized, through full and open procurement processes.

7c-the acquisition of goods and services shall be conducted in an unbiased way not influenced by personal preferences, prejudices and interpretations.

Summary: If all these hold true, why was Mastercrete Construction never told or warned that if they submit a bid with the city of Mississauga it would be rejected. Your evaluation process has been totally unfair because we have done work for the city and there was no need for a list of references. No where it states within your bylaws , your special instructions , contract documents that a contractor who has done work for the city must produce references for the next bid. The City should evaluate the project itself and if there is an issues , the contractor should be notified and may not bid further contracts. THAT WAS NOT DONE. How can this be all fair and open according to your by laws.

SECTION 11-Competitive acquisitions (3)(B)I Approval and award:

I The manager or purchasing agent , as applicable in accordance with schedule B , is responsible for approval of the acquisition process , which shall include confirmation of the following:

- A. Department head approval
- B. Verification was conducted in accordance with this bylaw
- C. Identification of complete price and costing information
- D. Identification of an upset limit
- E. Approval of the department head
- F. Confirmation from the department head the funds are available
- G. Verification the bid is the best value bid
- H. There are no unresolved bidder protests

Summary: We believe that all conditions are fulfilled with exception of H where we are in protest.

In summary I still don't understand why we are here, Mastercrete Construction has much experience , has good references and I also have a family, our employees count on us to keep them working and provide for their families. I was a competitive bid, winning fair and square, again myself and my family contributing to the community , our family

saving the residents and rate payers millions of dollars over the years and now without any notice there is an issue which I still don't understand holding us back.

I want to offer a suggestion which we could discuss at our meeting. Mastercrete be awarded the contract on this basis, Mastercrete offer a schedule of the works as this seems to be the only issue outstanding and in accordance with bylaw 0374-2006 section 23, a non subjective performance review be done and if at the end of the contract Mastercrete Construction does not perform we understand that we may be placed on a 2 year waiting period. This seems to be the only way to be open and fair.

Matt Fusillo/ Frank Fusillo

Mastercrete Estimating

From: Mastercrete Estimating
Sent: May 19, 2021 10:08 AM
To: Erica Edwards; Matt Fusillo; Dayna Obaseki
Cc: Silvio Cesario; Linda Bai; Maria Torres
Subject: RE: PRC002941 - Request for Tender for 2021 Construction of Concrete Sidewalks at Various Locations

Erica,

Yes it very unfortunate that we must go through this process but I guess it is what it is. Thank you for the time yesterday and also the information below, we will prepare our protest asap.

Thanks

Matt

From: Erica Edwards <Erica.Edwards@mississauga.ca>
Sent: May 19, 2021 9:21 AM
To: Mastercrete Estimating <[REDACTED]> Matt Fusillo <[REDACTED]> Dayna Obaseki <[REDACTED]>
Cc: Silvio Cesario <[REDACTED]> Linda Bai <[REDACTED]> Maria Torres <[REDACTED]>
Subject: PRC002941 - Request for Tender for 2021 Construction of Concrete Sidewalks at Various Locations

Thank you for meeting with us yesterday. It is unfortunate we were unable to resolve your concerns regarding the above-noted procurement. As a result, you may make a Formal Bid Protest before City Council. Please contact the Office of the City Clerk, Dayna Obaseki, Legislative Coordinator, [REDACTED] within five (5) business days (by May 26th) to register a Formal Bid Protest and request a deputation before General Committee at their session on June 9th, 2021.

Please refer to City Policy # 03-06-08 Bid Awards and Bid Protests: <https://web.mississauga.ca/wp-content/uploads/2018/11/09161813/03-06-08-Bid-Awards-and-Bid-Protests.pdf>



Erica Edwards, CSCMP
 Manager, Materiel Management – External Services
 T 905-815-3200
 [REDACTED]

City of Mississauga | Corporate Services Department,
 Revenue and Materiel Management Division

Please consider the environment before printing

Mastercrete Estimating

From: Mastercrete Estimating
Sent: May 19, 2021 10:23 AM
To: Dayna Obaseki
Subject: FW: PRC002941 - Request for Tender for 2021 Construction of Concrete Sidewalks at Various Locations

Hi Dayna,

As per Ericas, email below I would like to register a formal bid protest and request a deputation before general committee .

If I can know the steps involved ?

Thanks

Matt Fusillo

From: Erica Edwards <[REDACTED]>
Sent: May 19, 2021 9:21 AM
To: Mastercrete Estimating <[REDACTED]> Matt Fusillo <[REDACTED]> Dayna Obaseki <[REDACTED]>
Cc: Silvio Cesario <[REDACTED]> Linda Bai <[REDACTED]> Maria Torres <[REDACTED]>
Subject: PRC002941 - Request for Tender for 2021 Construction of Concrete Sidewalks at Various Locations

Thank you for meeting with us yesterday. It is unfortunate we were unable to resolve your concerns regarding the above-noted procurement. As a result, you may make a Formal Bid Protest before City Council. Please contact the Office of the City Clerk, Dayna Obaseki, Legislative Coordinator, <[REDACTED]> within five (5) business days (by May 26th) to register a Formal Bid Protest and request a deputation before General Committee at their session on June 9th, 2021.

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Erica Edwards, CSCMP
 Manager, Materiel Management - External Services
 T 905.615.0000

City of Mississauga | Corporate Services Department,
 Revenue and Materiel Management Division

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City of Mississauga

Corporate Policy & Procedure



Policy Title: Bid Awards and Bid Protests

Policy Number: 03-06-08

Section:	Corporate Administration	Subsection:	Acquisition/Disposal of Goods and Services
Effective Date:	January 1, 2017	Last Review Date:	January, 2020
Approved by: Council		Owner Division/Contact: Manager, Materiel Management, Revenue and Materiel Management Division, Corporate Services	

Policy Statement

Bidders may receive Awards for the supply of Goods or Services only in accordance with this policy and the Purchasing By-Law. Bidders who respond to a Bid Request have the right to register a Formal Bid Protest if they feel that the City's actions in conducting purchasing activities such as evaluating Bids or recommending the Award of a Contract have been unfair or inappropriate.

Purpose

This policy outlines the following processes:

- Bid selection and Award
- Notification to Bidders, including the Bid protest procedure
- How to register a Formal Bid Protest

Scope

This policy applies to all Medium Value and High Value Acquisitions undertaken and approved in accordance with the Purchasing By-Law.

This policy applies to original Awards only and does not cover Contract amendments, extensions, renewals, etc.

This policy does not include Bid openings. For information on Bid openings refer to Corporate Policy and Procedure – Acquisition/Disposal of Goods and Services – Bid Openings and Bid Irregularities – Publicly Advertised High Value Acquisitions.

Legislative Authority

This policy is written in compliance with the *Municipal Act, 2001* and the Purchasing By-Law 374-06. Disclosure of information is subject to the *Municipal Freedom and Protection of Privacy Act*

Policy Number: 03-06-08

Effective Date: January 1, 2017

Policy Title: Bid Awards and Bid Protests

Last Review Date: January, 2020

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(MFIPPA). For additional information on MFIPPA refer to Corporate Policy and Procedure - Corporate Administration – Freedom of Information and Protection of Privacy.

Definitions

For the purposes of this policy:

“Award” means the selection by the City of the Bidder and the Bidder’s Goods and/or Services as a result of a Bid Request.

“Bid” means an offer or submission from a Bidder, received in response to a Bid Request from the City.

“Bid Request” means a formal solicitation (“request”) from the City that is issued to external suppliers, inviting them to submit expressions of interest, proposals, quotations, tenders, etc.

“Bidder” means any legal entity submitting a Bid.

“Buyer” means a Buyer in the City's Materiel Management division who is assigned responsibility for a particular acquisition.

“Contract” means a commitment to acquire or potentially acquire, Goods or Services or both.

“Contract Manager” means a City employee who has been authorized and assigned the responsibility of overseeing a particular Bid or Contract.

“Formal Bid Protest” means a request registered by a Bidder with the Office of the City Clerk to make a deputation before an appropriate committee of Council.

“Goods” means goods of all kinds, including both tangible and intangible goods, including but not limited to supplies, materials, equipment and licences.

“High Value Acquisition” or “HVA” means an acquisition of Goods or Services or both, having a value of more than \$100,000, exclusive of taxes.

“Manager” means the Manager, Materiel Management, Revenue and Materiel Management, Corporate Services or their designate in writing.

“Medium Value Acquisition” or “MVA” means an acquisition of Goods or Services or both, having a value of more than \$5,000 and up to \$100,000, exclusive of taxes.

“Notice of Award Recommendation” or “Notice” means the written notification from the Buyer to all HVA Bidders, prior to the Award of a Contract, which outlines the results of the Bid evaluation.

Policy Number: 03-06-08

Effective Date: January 1, 2017

Policy Title: Bid Awards and Bid Protests

Last Review Date: January, 2020

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“Procurement Authorization Request Form” (PAR Form) means an electronic form that is contained within the Procurement Centre. The purpose of the PAR Form is to obtain authority to award, change or terminate a contract, establish a short-list of bidders or cancel a Bid Request. The PAR Form provides a summary of the relevant departmental and purchasing information; specifies the details of the authorization request; and confirms the outcome of the procurement process/step.

“Purchasing Agent” means the City's Director, Revenue and Materiel Management or their designate, in writing.

“Purchasing By-Law” or “By-Law” means the City's By-Law 374-06, as amended, which pertains to the acquisition of Goods and Services and the disposition of surplus Goods.

“Services” means services of all kinds, including labour, construction, maintenance and professional and consulting services.

“Vendor” means a legal entity, including an individual, with whom the City has entered into a Contract to acquire Goods or Services or both.

Accountability

Departmental Directors

All departmental directors are accountable for:

- Ensuring all applicable managers/supervisors are aware of this policy and of any subsequent revisions, and
- Ensuring compliance with this policy

Managers/Supervisors

Managers/supervisors with staff who are responsible for Bid Requests and/or Awards are accountable for:

- Ensuring staff in their respective work units are aware of this policy and any subsequent revisions
- Ensuring applicable staff are trained on this policy, as well as any subsequent revisions, with respect to their specific job function, and
- Ensuring staff comply with this policy

Background

In accordance with the *Municipal Act, 2001*, Council has authorized the Purchasing Agent, either directly or through permitted delegation to Materiel Management Staff, to conduct purchasing activities and award Contracts where the procurement processes have been conducted in accordance with the By-Law.

Policy Number: 03-06-08

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Last Review Date: January, 2020

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Prior to requesting Bids, documents setting out the details for the Goods or Services required, the strategy for Award and the terms and conditions under which the City would consider entering into a Contract are prepared, if necessary. A procurement process is then conducted and Bids are evaluated in accordance with the information outlined in the Bid Request.

All Awards for Goods or Services must be authorized on a PAR Form in accordance with the By-Law before a Contract may be issued. In certain cases identified in the By-Law, approval must also be obtained from Council. Awards may not be made based on unsolicited proposals.

Roles and Responsibilities

Departmental staff determine the Award, including which Vendor(s) should be selected and which Vendor offer for the required Goods or Services should be chosen.

Acquiring Directors

Acquiring directors are responsible for delegating responsibility for conducting procurement processes, recommending Awards and authorizing PAR Forms in accordance with Schedule "B" of the By-Law.

Manager, Materiel Management

The Manager, Materiel Management, is responsible for:

- Providing guidelines, advice and support to City staff as appropriate
- Providing guidance, training and support to Materiel Management staff
- Authorizing PAR Forms in accordance with the By-Law
- Reviewing Award reports to Council and forwarding them to the Purchasing Agent for approval, and
- Managing Formal Bid Protests

Contract Managers

Contract Managers are responsible for:

- Conducting, analysing and evaluating MVA Bids and determining the acceptability, final scope and value of the Award, in accordance with the Bid Request
- Conducting reference checks of Bidders if appropriate
- Recommending Awards, including selection of the Bidder, the Goods or Services and acceptable terms and conditions
- Preparing MVA PAR Forms and forwarding to Materiel Management, together with all Bids and supporting documentation, such as related drawings, plans, schedules, specifications, etc., which may be incorporated into the Contract, and
- Maintaining copies of all correspondence with Bidders, Award recommendations (including the supporting documentation), PAR Forms and Council reports

Materiel Management Purchasing Staff

Materiel Management purchasing staff are responsible for:

- Providing guidance and support (including templates and procedures) to Contract Managers to facilitate reference checking
- Reviewing departmental Award recommendations and supporting documentation and ensuring compliance with the By-Law
- Issuing Notices to HVA Bidders
- Advising Bidders of the Bid dispute process when appropriate
- Advising the Contract Manager of any Bid disputes and the status of any Formal Bid Protests
- Preparing PAR Forms for HVA Bid Requests and obtaining the appropriate approvals, as outlined in Schedule B of the By-law
- Maintaining supporting documentation forwarded from Contract Managers, original PAR Forms and Contracts, process information such as Bidder registrations, advertisements, management directives, etc., evaluation results, purchasing staff correspondence with Bidders, Formal Bid Protest documentation and Council reports, and
- Advising Legal Services if a Bidder initiates or threatens legal action against the City at any time

Legal Services

Legal Services are responsible for:

- Assessing legal risk and providing legal advice and support to Contract Managers and/or Materiel Management staff on Bidder selection, Bid rejection and negotiations, in writing if requested
- Interpreting the legal terms and conditions of Contract documents
- Reviewing reports to Council, on request
- Notifying the Manager, Materiel Management, of any Bidder who has brought a lawsuit against the City
- Drafting and/or reviewing Contract documents in accordance with Schedule C of the By-Law, and
- Drafting and/or reviewing the legal terms and conditions of Contract documents for any acquisition upon the request of the Contract Manager or Materiel Management

MVA Process

Departmental Contract Managers conduct MVA procurements and evaluate MVA Bids to ensure they are acceptable and meet the requirements of the Bid Request. Reference checks may be conducted by the Contract Manager, if needed.

The Contract Manager should attempt to resolve any concerns which may be raised by non-successful Bidders. If Bidders are not satisfied, the matter may be referred to the Buyer, who will determine a course of action on a case by case basis.

The Contract Manager prepares a PAR Form and reviews the Award Recommendation with the Buyer prior to obtaining departmental authorizations as required in Schedule B of the By-Law.

Policy Number: 03-06-08

Effective Date: January 1, 2017

Policy Title: Bid Awards and Bid Protests

Last Review Date: January, 2020

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The recommendation (PAR Form) is then sent to the Buyer, who reviews the process and documentation and obtains purchasing staff approval of the Award in accordance with the By-law.

HVA Process

Buyers conduct all HVA processes on behalf of City departments.

Bid Irregularities

At the close of a HVA Bid Request, the Buyer conducts a review of the Bids for irregularities and notifies the Manager if any potential major irregularities are identified. Irregularities may also be identified during the more in-depth evaluation completed in consultation with the Contract Manager. If a potential major irregularity is identified and confirmed, the Manager notifies the Bidder as soon as possible. Refer to Corporate Policy and Procedure - Acquisition/Disposal of Goods and Services – Bid Openings and Bid Irregularities for more information.

Evaluation Process

Bids with no major irregularities are evaluated in depth by comparing each Bid to the requirements in the Bid Request. In determining which Bid or Bids will result in an Award, consideration will first be given to compliant Bids based on the criteria for Award specified in the Bid Request. If no criteria are identified (e.g. when tenders have been called), then consideration will be given based on the lowest priced submission (not including prices for optional items).

Reference checks of Bidders may be conducted, with the guidance and support of the Buyer. The City may reject Bids received from Bidders for whom unacceptable references have been obtained. In this event, the Manager should provide the Bidder an opportunity for rebuttal before taking action to reject the Bid. The City shall have the right to determine the Award and may rely on information from any source in making its decision.

The PAR Form and supporting documents, as approved by departmental management in accordance with Schedule B of the By-Law, are submitted to Materiel Management purchasing staff for final review and authorization.

If it is found that the process was not fair and objective, the Manager may request further actions to be taken including a re-evaluation of the Bids.

Bid Requests may be cancelled in accordance with the By-Law.

Notice to HVA Bidders

Prior to processing the PAR Form for approvals, the Buyer must send a Notice to all Bidders advising them of the results.

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Effective Date: January 1, 2017

Policy Title: Bid Awards and Bid Protests

Last Review Date: January, 2020

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Bidders are advised that requests for debriefings or objections to the recommendations must be made to the Manager, in writing, by the deadline stipulated in the Notice, usually three days. Otherwise, the Award recommendation will proceed to approval.

Responding to Bidder Objections

The Buyer must provide an initial response to Bidder questions or objections to the City's decision within 48 hours, when possible. If the Bidder requires further information, the Buyer will notify the Bidder to forward specific issues and requests, in writing, to the Manager.

The Manager will provide a response, when possible, within 10 working days of receipt of the written Bidder request for information. Or, at the Bidders request, the Manager will arrange a meeting to discuss the Bidder's concerns, in which case, the Manager may respond, in writing, following the meeting.

Prior to the meeting the Buyer and/or the Manager will review the evaluation information with the Contract Manager to clarify the details, confirm the reasons for non-selection of the Bid and discuss what information may be made available to the requesting Bidder.

If the Bidder is not satisfied with the information provided, the Manager must notify the Bidder that a Formal Bid Protest may be made. In this event, the Bidder must notify the Manager of the intent to register a Formal Bid Protest within five (5) working days of receiving the Manager's notification.

Registering a Formal Bid Protest

Upon receipt of a notice of intent to register a Formal Bid Protest, the Manager must advise the Bidder that the Bidder is responsible for contacting the Office of the City Clerk within five (5) business days to register a Formal Bid Protest and that only those issues which have been raised and which staff have had an opportunity to investigate and formally respond to, may be addressed in the Formal Bid Protest. The Manager must then advise Legal Services and the Office of the City Clerk of the Bidder's intent to file a Formal Bid Protest.

Formal Bid Protests must be heard by General Committee and may be heard by Council, prior to the Bid Award. The Office of the City Clerk will confirm a date for the Bidder to appear before General Committee and advise the Bidder and the Manager, in writing, of the committee meeting date. The Manager may prepare a report summarizing staff's position. General Committee makes a decision by way of a recommendation that will go to Council for final adoption. Any action taken by General Committee or Council as a result of a Formal Bid Protest will be determined according to the merits of each individual case.

Notice of Award

Once all Formal Bid Protests have been addressed or the five (5) day deadline for filing has passed; Council approval obtained where required; and the PAR Form approved, the successful Bidder will be notified of the Award decision.

Contract Negotiations

Negotiations, if any, should be completed and all Contract terms and conditions prepared prior to authorizing the PAR Form. In extenuating circumstances, as determined by the Purchasing Agent, a PAR Form may be authorized prior to the completion of the negotiations and finalization of the Contract terms and conditions. However, in this event, the decision must be supported with documentation outlining the situation, the reason further negotiations are required and the plan for implementing the Contract.

No Goods or Services shall be ordered, requested, delivered or performed until after a Contract is executed.

PAR Form Source and Content

Materiel Management provides PAR Form templates on its website. The PAR Form confirms the results and outcomes of the procurement process. Recommendations for Contract Award reflect the City's maximum potential spend, based on the amounts and/or quantities set out in the Bid Request, including any option for renewal of the Contract.

Information must be provided on the PAR Form to fully explain:

- The need for the Goods and/or Services
- The current supply situation
- The procurement process conducted
- The evaluation results
- The approach being taken for supply in the future, such as scope, duration, type of commitment (e.g. one-time purchase; blanket purchase; annual versus multi-year plan; life-cycle; etc.)
- The applicable by-law provision (reference)
- The name of the City project or program affected
- The approved funding amounts and source (accounts)
- The scope of the award in terms of time and potential financial commitment level, and
- If Council approval is required

Bid amounts must be identified and, if different from the recommended Contract Award value, explained in detail. Briefing notes, spreadsheets or other documents which are necessary to outline or clarify the information must accompany the PAR Form. Handwritten changes must be initialled and dated by the person making the change.

Reporting to Council

PAR Forms and all Contract negotiations should be prepared prior to completion of all reports to Council to ensure that information about the procurement process, Bid results and the Vendor offer is accurate and complete. Council reports recommending Awards on behalf of specific departments are prepared by departmental staff. Council reports recommending Awards for City-wide Contracts are prepared by Materiel Management purchasing staff.

Policy Number: 03-06-08

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Council reports should be reviewed by applicable staff in other departments involved, such as Corporate Services Information Technology (IT) for procurements involving IT systems, before being finalized by the acquiring department or Materiel Management purchasing staff, as applicable. Staff preparing the report should include the PAR Form, Statement of Work or other supporting documents as an appendix, if necessary to clarify the information and provide details of the Award. All Council reports recommending Awards must be approved by the Purchasing Agent.

All Contracts having a term in excess of ten years require the approval of Council.

Execution of the Contract

Once the PAR Form has been authorized and Council approval obtained, if applicable, successful Bidders must submit documentation as specified in the Bid Request such as proof of insurance.

Contracts must include clear terms and conditions, complete financial information, such as pricing and payment structures, detailed requirements and, if applicable, may include drawings, sureties, etc. Contracts are reviewed by Legal Services in accordance with Schedule "C" of the Purchasing By-Law or upon the request of the Contract Manager or Materiel Management. Once the Contract has been executed by the Vendor and designated City staff, as stipulated in the By-Law, it is entered into the City's electronic financial system and a specific document control number is assigned.

Record Keeping

All documentation related to an Award, such as PAR Forms and all attachments, Council reports and Contracts, represents official corporate records and must be kept in accordance with the Records Retention By-Law 0097-2017, as amended. Where Materiel Management's retention periods are more stringent than those in the Records Retention By-Law and depending on the nature of the acquisition, documentation must be kept in accordance with Materiel Management procedures. Materiel Management is responsible for the safekeeping of all Award reports.

Revision History

Reference	Description
GC-0459-2011 – 2011 07 06	
March 22, 2012	Housekeeping change to name of Bid Opening policy
December, 2015	Scheduled review. No changes required.
December 22, 2016	Administrative update to replace BAR Form with PAR Form to align with the new Procurement Centre process

Policy Number: 03-06-08

Effective Date: January 1, 2017

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Last Review Date: January, 2020

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Reference	Description
January, 2020	Scheduled review. No changes required.

THE CORPORATION OF THE CITY OF MISSISSAUGA
PURCHASING BY-LAW 0374-2006

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MISSISSAUGA

THE CORPORATION OF THE CITY OF MISSISSAUGA

Purchasing By-law 0374-2006

(Amended by 0092-2010, 0120-2010, 0065-2012, 0080-2012, 0098-2012, 0096-2013, 0159-2013, 0144-2018)

WHEREAS the *Municipal Act 2001*, S.O. 2001, c. 25, Part VI, Section 271 stipulates that municipalities and local boards shall adopt policies with respect to their acquisition of goods and services;

AND WHEREAS The Corporation of the City of Mississauga has hereby undertaken a comprehensive review of its purchasing processes to identify accountability, transparency, and efficiency improvements;

AND WHEREAS the Council of The Corporation of the City of Mississauga deems it desirable to repeal, in its entirety, By-law 613-91, as amended, and pass a new by-law with respect to the acquisition of goods and services, and the disposition of surplus goods;

NOW THEREFORE the Council of The Corporation of the City of Mississauga ENACTS as follows:

SECTION 1 - DEFINITIONS

1. In this by law, the following terms shall have the meanings indicated:
 - (1) **"Acquisition"** means the acquisition by purchase, lease, rental or exchange transaction of Goods and/ or Services. (0120-2010)
 - (2) **"Applicable Law"** means any applicable federal, provincial or municipal law, statutes, by laws, regulations, rules, lawful orders or lawful directives applicable in Ontario from time to time.
 - (3) **"Award"** means the selection of the Bidder and the Bidder's Goods and/or Services, as accepted by the City. (0120-2010)
 - (4) **"Best Value"** means the optimal value balance of efficiency, performance and cost having regard to the City's objectives in respect of the Acquisition timing, quality and quantity as well as the procurement process and evaluation criteria for the Acquisition. (0120-2010)
 - (5) **"Bid"** means an offer or submission from a Bidder received in response to a Bid Request.
 - (6) **"Bid Request"** means a solicitation from the City to external suppliers to submit a quotation, tender, proposal, or best and final offer.
 - (7) **"Bidder"** means any legal entity submitting a Bid.
 - (8) **"Buyer"** means a buyer in Materiel Management assigned responsibility for a particular Acquisition.
 - (9) **"City"** means The Corporation of the City of Mississauga.
 - (10) **"City Manager"** means the City Manager of the City and any person to whom the authority of the City Manager is subsequently delegated by Council and includes any person who has been authorized, in writing, to temporarily act as City Manager during absence or vacancy in that office.
 - (11) **"City Standard"** means specific Goods approved by Council that best fill a long-term City-wide need or requirement. (0092-2010)

- (12) **“Commitment”** means a contract to acquire, or potentially acquire, Goods and/ or Services. (0120-0010)
- (13) **“Co-operative Acquisition”** means a procurement process conducted jointly by the City and one or more Public Bodies. (0120-2010)
- (14) **“Council”** means the council of the City. (0120-2010)
- (15) **“Department”** (“Departmental”) means an organizational unit of the City headed by a Department Head.
- (16) **“Department Head”** means the City Manager and any of the Commissioners appointed by Council with administrative responsibility for a Department and includes any person who has been authorized, in writing, to temporarily act during absence or vacancy in that office.
- (17) **“Departmental Director”** means a Divisional director in a Department and includes any person who has been authorized, in writing, to temporarily act during absence or vacancy in that office. (0120-2010)
- (18) **“Departmental Manager”** means a sectional manager in a Department who has been delegated with cost centre approval up to \$50,000 by the Department Head. (0120-2010)
- (19) **“Division” or “Divisional”** means a division within a Department. (0120-2010)
- (20) **“Emergency”** means a situation where it has been determined that a threat to public health, or life, or property or the environment exists such that the immediate Acquisition of Goods and/ or Services is essential to prevent serious delays, or damage to persons or property, or to restore or maintain essential City services. (0120-2010)
- (21) **“Goods”** means goods of all kinds, including both tangible and intangible goods, and shall include supplies, materials, equipment, structures and fixtures to be delivered, installed and/ or constructed, and licences. (0120-2010)
- (22) **“High Value Acquisition”** means an Acquisition of Goods and/ or Services having a value of more than \$100,000, and that is not a Medium Value Acquisition as approved by the Purchasing Agent or Council under section 11(2). (0120-2010)
- (23) **“Legal Services Division”** means the City’s Legal Services Division. (0120-2010)
- (24) **“Low Value Acquisition”** means an Acquisition of Goods and/ or Services having a value of \$10,000 or less. (0120-2010, 0065-2012)
- (25) **“Major Irregularity”** means a deviation from a Bid Request which, as determined by the Manager is substantial and material to the Award, and which if permitted, could give the Bidder an unfair advantage over competitors. (0120-2010, 0065-2012)
- (26) **“Manager”** means the person holding the management position of Manager, Materiel Management and includes any person who has been authorized, in writing, to temporarily act during absence or vacancy in that office.
- (27) **“Materiel Management”** means an organizational unit of the Department of Corporate Services responsible for all Acquisitions of Goods and Services for the City.
- (28) **“Medium Value Acquisition”** means an Acquisition of Goods and/ or Services that has a value of less than \$100,000 and that is not a Low Value Acquisition or that has a value of more than \$100,000 but is otherwise approved by the Purchasing Agent or Council in accordance with section 11(2). (0120-2010)
- (29) **“Minor Irregularity”** means a deviation from a Bid Request which, as determined by the Manager, affects form rather than substance, with no material

impact to the Award, and which if permitted, would not give the Bidder an unfair advantage over competitors. (0120-2010, 0065-2012)

- (30) **"Original Commitment"** means the Commitment made after an Award, and does not include any amendments or interim extensions, or renewals made to the Commitment. (0120-2010, 0065-2012)
- (31) **"Public Body"** means any local board, commission, non-profit corporation or municipal or government entity and shall include any corporation of which the City is a shareholder or any one of them alone or in any combination of them acting together.
- (32) **"Publicly Advertised Bid Process"** means the advertising by the City of Bid Requests in print publications widely available to the public or on the internet. (0120-2010)
- (33) **"Purchasing Agent"** means the Director of Revenue and Materiel Management whose responsibility it is to supervise and carry out the Acquisition function on behalf of the City. In the absence of the Director of Revenue and Materiel Management, the responsibility shall be carried out by the Commissioner of Corporate Services. (0120-2010)
- (34) **"Request for Best and Final Offer"** means a multi-stage procurement process that contemplates a final stage whereby the short-listed vendors may submit a best and final offer for the City's evaluation and final selection. (0120-2010)
- (35) **"Request for Expression of Interest"** means a request which will be used to determine the interest of the market place to provide Goods and/ or Services which the City is contemplating purchasing and may result in the determination of a short list of Bidders to respond to a Bid Request. (0120-2010, 0096-2013)
- (36) **"Request for Information"** means a request which will be used as a general market research tool to determine what Goods and/ or Services are available which will meet business or operational requirements and Acquisition strategies and/or to estimate project costs for the purpose of developing a Bid Request. (0120-2010)
- (37) **"Request for Pre-Qualification"** means a request with specific qualification criteria which will be used to identify and pre select Bidders, where the experience and qualifications of the Bidders must be clearly established and verified prior to bidding.
- (38) **"Request for Proposal"** means a request which will be used to obtain a Bid or Bids for Goods and/ or Services in cases where the City can specify the performance requirements but the bidders must determine the optimal approach and the quantity and quality of their Goods or Services based on their particular attributes. (0120-2010)
- (39) **"Request for Quotation"** means a request which will be used to obtain a Bid or Bids in cases where the City has determined the quantity and quality of the Goods and/ or Services for Low or Medium Value Acquisitions or Single/Sole Source Acquisitions of any value. (0120-2010)
- (40) **"Request for Tender"** means a request which will be used to obtain irrevocable Bids for Goods and/ or Services for High Value Acquisition in cases where the City has determined the quantity and quality of the Goods and/ or Services. (0120-2010)
- (41) **"Single/Sole Source"** means an Acquisition permitted under the distinct and unique circumstances set out in Schedule "A" attached hereto.
- (42) **"Senior Buyer"** means a Buyer in Materiel Management accorded the title of Senior Buyer.
- (43) **"Services"** means services of all kinds, including labour, construction, maintenance and professional and consulting services. (0120-2010)

- (44) **“Unforeseen Site Condition”** means a pre-existing condition of the site (in which construction work is to take place/taking place in accordance with a Commitment) that was not anticipated despite best efforts in planning for the Acquisition and that would require additional work to be conducted on the site. (0120-2010)
- (45) **“Vendor”** means a legal entity with whom the City has entered into a Commitment.

SECTION 2 - MONETARY REFERENCES

2. (1) All references to dollar amounts in this by-law are to Canadian dollars.
- (2) For Bid evaluation purposes, all Bids submitted in currencies other than Canadian dollars shall be converted to Canadian dollars, at the exchange rate established by the Finance Division of the Corporate Services Department at the date of Bid closing.
- (3) All references to dollar amounts in this by-law do not include applicable taxes. (0120-2010)

SECTION 3 - APPLICABILITY

3. (1) The provisions of this by-law shall apply to all Acquisitions of Goods and/ or Services undertaken by or on behalf of Departments, excluding: (0120-2010)
- (a) real estate;
 - (b) consulting or professional services that are delivered in a manner which constitutes an employer/employee relationship, in accordance with City policies and procedures as amended from time to time;
 - (c) Acquisitions related to reimbursable expenses incurred by employees or elected officials in accordance with City policies and procedures as amended from time to time;
 - (d) professional and other services limited to: (0120-2010, 0096-2013, 0156-2013)
 - (i) legal services and other professional services required for the provision of legal services, as required by the City Solicitor or designate;
 - (ii) professional services related to the defence of an insurance claim made against the City, as required by the Manager, Risk and Insurance;
 - (iii) arbitrators;
 - (iv) realty appraisers;
 - (v) court reporters and interpreters;
 - (vi) honoraria;
 - (vii) committee fees;
 - (viii) performers for City produced Culture events; (0144-2018)
 - (ix) acquisition, installation, inventory, maintenance, de-accessioning and disposal of City acquired art; and
 - (x) acquisition of objects and items for the Museums of Mississauga collections.
 - (e) general City expenses limited to: (0120-2010)
 - (i) postal charges;

- (ii) any payments made by the City under statutory authority (for example licences);
 - (iii) insurance premiums for insurance procured through the City's insurance broker; and (0065-2012)
 - (iv) legal and insurance settlements.
- (2) No Commitment shall be entered into, no debt shall be incurred, no expenditure shall be made and no account shall be paid in respect of a Commitment for Goods and/ or Services except in accordance with the provisions of this by-law. (0120-2010)
 - (3) City Acquisitions shall be conducted in accordance with this by-law and City policies including its policies on purchasing, employee conduct, financial matters, the environment, health and safety and records management. (0120-2010)
 - (4) Delegation of responsibility under this by-law shall only occur as specifically provided.

SECTION 4 - ETHICS IN PURCHASING

- 4. (1) The Purchasing Agent and Materiel Management staff shall comply with the codes of purchasing ethics established by the National Institute of Governmental Purchasing, Inc. and the Purchasing Management Association of Canada in respect of all Acquisition processes.
- (2) The City adheres to and insists upon adherence to a strict ethical standard in all City Acquisitions by all Bidders and Vendors. All Bidders and Vendors shall be required to become knowledgeable with and adhere to the City's policies in this regard, as may be amended from time to time.

SECTION 5 - AUTHORITIES AND DUTIES OF PURCHASING AGENT

- 5. The Purchasing Agent shall have the authority and be responsible, either directly or through permitted delegation to Materiel Management staff, for: (0120-2010)
 - (a) overseeing corporate Acquisition and developing corporate standards for the City's Goods and/ or Services if such standards are practicable and will achieve better financial value for the City; (0120-2010)
 - (b) ensuring that responsible Departmental staff, Bidders, and Vendors are aware of the ethical standards relating to purchasing and that adherence to those standards is maintained; (0120-2010)
 - (c) co-ordinating Medium and High Value Acquisition services including special Acquisition initiatives involving corporate administration and governance;
 - (d) establishing standards and evaluation committees to deal with procurement processes for corporate-wide Acquisitions;
 - (e) providing training for responsible Departmental staff; (0120-2010)
 - (f) determining, in accordance with all related policies and procedures as may be adopted or provided from time to time, the appropriate Acquisition method by which Goods and/ or Services should be acquired, including the form of any Commitment, in consultation with the Legal Services Division, the circumstances and means for the pre-selection of equipment and materials, and the pre-qualification of Bidders; (0120-2010)
 - (g) developing and maintaining all policies, procedures, directives, and practices and advising Bidders and all staff involved;
 - (h) providing professional advice and guidance, including strategic advice, fairness monitoring and advice on Vendor performance and contract implementation issues, to Departments in respect of Acquisitions;
 - (i) reporting to Council as required, pursuant to the provisions of this by-law;
 - (j) monitoring Departmental compliance with this by-law; and

- (k) the receipt, custody and safe keeping of all Acquisition Commitments, Award reports, and specified evaluation documentation for Medium Value Acquisitions and High Value Acquisition. (0120-2010)

SECTION 6 - CONFLICTS OF INTEREST

- 6. (1) Elected officials shall comply with the *Municipal Conflict of Interest Act* and officers and employees of the City shall comply with City policies on conflict of interest.
- (2) At any time during an Acquisition, beginning with the planning stage as set out in Section 9 of this by-law, through to the Award and Commitment stage, no person shall accept, directly or indirectly, from any person or organization to which any Acquisition is, or might be awarded, any thing of any value including rebates, gifts, meals, money or special privileges.
- (3) No preference will be given to providers or suppliers who provide unsolicited products or samples to the City or who demonstrate the operation of such products or samples.
- (4) With respect to the disposal of surplus items, no City employee or member of such employee's family may acquire an item if the employee was responsible for declaring the item surplus to the City's needs; or is or was otherwise involved in the disposal of such items.

SECTION 7 - CITY OF MISSISSAUGA'S PURCHASING PRINCIPLES

- 7. The City of Mississauga's purchasing principles are:
 - (a) Acquisition processes shall be efficient, effective, objective, and accountable;
 - (b) Transparency and fairness shall be ensured, and competitive value maximized, through full and open procurement processes;
 - (c) The Acquisition of Goods and Services shall be conducted in an unbiased way not influenced by personal preferences, prejudices or interpretations;
 - (d) Efforts shall be made to achieve the Best Value for the City; (0120-2010)
 - (e) Acquisition processes and approvals of Awards shall not be conducted by the same individual and, at all times the Departmental Director shall ensure segregation of process and Award Functions; (0120-2010)
 - (f) The total cost of purchasing, maintenance, continuing support, repair, staff training, operation, disposal, and other related costs shall be considered, rather than only the lowest invoice price;
 - (g) Efforts shall be made to acquire Goods and Services in a socially responsible manner and a manner which will conserve energy and help to preserve and protect the ecosphere; (0096-2013)
 - (h) The Acquisition of Goods and Services shall be conducted in a manner which will promote, and incorporate whenever possible, the requirements of the *Accessibility for Ontarians with Disabilities Act, 2005*. (0120-2010)
 - (i) The Acquisition of Goods and Services shall be conducted in accordance with the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*, the *Municipal Act, 2001*, *Business Discrimination Act*, as may be applicable;

- (j) The Acquisition of Goods and Services shall be conducted in compliance with international/interprovincial trade treaties or agreements, as applicable, including the *North American Free Trade Agreement*, the *Agreement on the Opening of Public Acquisition for Ontario and Quebec* and the *Agreement on Internal Trade*. (0120-2010)

SECTION 8 - FUNDING AND COMMITMENTS

- 8. (1) No Commitment shall be entered into in respect of an Acquisition unless:
 - (a) funding for the Acquisition has been authorized by Council in the acquiring Department's operating or capital budget; or (0065-2012)
 - (b) special funding for the Acquisition has been approved by Council; or
 - (c) the Commitment is made conditional upon funding approval by Council.
- (2) Where Acquisitions are contingent upon funding from external parties, the funding arrangement shall be verified, in writing, prior to any Acquisition process being undertaken.
- (3) The form and content of the Commitment and ancillary documents and agreements shall be approved by the Purchasing Agent, the Manager or the Buyer, in accordance with Schedule "B", prior to execution of the Commitment. Form and content of all Commitments as described in Schedule C shall be drafted in concert with the Legal Services Division. The Commitment shall clearly specify any and all consideration being paid to the Vendor as a result of the Acquisition Award, including the maximum allowable upset amount where the precise requirement is not yet fixed. (0120-2010)
- (4) The total value on the form of Commitment shall not in any event exceed the total amount approved in accordance with this by-law.
- (5) The Departmental staff responsible for the Acquisition shall ensure that no Goods or Services are ordered, requested, delivered or performed until after a Commitment is executed in accordance with this bylaw. (0120-2010)
- (6) Where Council approval for an Award is required, the Purchasing Agent may specify the form and shall require the inclusion of appropriate purchasing content, including the recommendations(s), in any report. (0065-2012)
- (7) Commitments having a term in excess of ten (10) years shall require the approval of Council.
- (8) Repealed by By-law 0120-2010

SECTION 9 - PLANNING FOR ACQUISITION

- 9. (1) The acquiring Department shall, prior to initiating any Acquisition process for Goods and/ or Services: (0120-2010)
 - (a) ensure that the Goods and/ or Services are legitimately required for City purposes; and (0120-2010)
 - (b) consider short and long-term requirements with respect to quantities and time lines, or total project cost considering the life span of the program; and
 - (c) consider the cost of ongoing maintenance, support, and licensing etc. requirements; and
 - (d) confirm availability of funding; and
 - (e) allow sufficient time to complete the Acquisition as may be stipulated by City policy or directive, as amended from time to time; and (0096-2013)

- (f) prepare detailed specifications and quantity requirements with the underlying premise of encouraging full, open and fair completion. (0096-2013)
- (2) Where Goods and/ or Services of the same kind or type are required in connection with one project, all of those Goods and Services shall be included in determining the estimated value of the Acquisition, including all contemplated phases of the project. (0120-2010, 0065-2012)
- (3) The Departmental Manager, in respect of competitive Acquisitions over \$10,000 and up to \$50,000, shall execute all planning documentation stipulated by the Manager. (0065-2012)
- (4) The Departmental Director shall be responsible for directing and overseeing all Departmental Acquisition processes and shall execute all planning documentation stipulated by the Manager for all competitive Acquisitions over \$50,000 and all High Value and Single/Sole Source Acquisitions whether planned or on an Emergency basis.
- (5) Section Repealed by By-law 0096-2013
- (6) Acquisitions shall not be divided to avoid the requirements of this by-law.
- (7) The Purchasing Agent shall determine, in consultation with the acquiring Department, whether the Acquisition should be conducted so as to establish a City Standard, in accordance with the applicable City policies and procedures as may be amended from time to time. (0120-2010)
- (8) The Purchasing Agent may require that the Department report to Council prior to undertaking an Acquisition process or an Award, based on an evaluation of potential risk to and/or opportunity for the City.
- (9) Legal advice from Legal Services Division shall be sought for Acquisitions that are of the type as provided in Schedule "C". (0120-2010)

SECTION 10 - ACQUISITIONS FROM INTERNAL SOURCES

- 10. (1) Goods and Services which are available from existing corporate services or supply centres, such as the print shop, central stores, etc. shall not be obtained from other suppliers unless there is a compelling requirement for an alternate source Acquisition.
- (2) Goods and Services which are available from existing corporate Commitments, such as office supplies, courier services, etc. shall not be obtained from other suppliers unless there is a compelling requirement for an alternate source Acquisition.
- (3) Internal or in-house Bids, whereby an internal Department competes with external Bidders for Acquisition opportunities, may only be considered where Council considers it appropriate to do so and has provided approval prior to the Bid process. Any and all such internal or in-house Bids shall comply with this by-law, City policies, and procedures as amended from time to time. (0120-2010)

SECTION 11 – COMPETITIVE ACQUISITIONS

- 11. (1) Low Value Acquisitions (\$10,000 or less) (0065-2012)
 - (a) General
 - (i) Low Value Acquisitions shall be conducted by staff specifically delegated with this responsibility by the Departmental Director, with the assistance of a Buyer as needed, and which Acquisition shall be conducted strictly in accordance with this by-law, City policies and procedures, as amended from time to time. (0120-2010)

- (ii) The Manager or designate shall monitor Low Value Acquisitions for compliance with relevant City policies and procedures as amended from time to time, and shall:
 - A. advise Departmental Directors of any issues with respect to Low Value Acquisitions; and
 - B. make recommendations to the Purchasing Agent on the need for corporate contracts; and
 - C. advise Departmental Directors of relevant information such as existing corporate suppliers, timing, appropriate Acquisition methods, surety and insurance requirements, disqualified Vendors, etc.

(b) Award and Commitment

- (i) The Departmental Director shall ensure that a separate staff member, with City authority to manage cost centres, is responsible for approving the Commitment in accordance with Schedule B. (0120-2010)

(2) Medium Value Acquisitions (more than \$10,000 and up to \$100,000) (0065-2012)

(a) General

- (i) Departmental Staff members delegated with process responsibility shall consult with a Buyer when planning a Medium Value Acquisition in accordance with City policies and procedures. Buyers shall provide direction with respect to the proper Acquisition process to ensure Best Value Awards which may include direction as to existing suppliers, timing, evaluation criteria, surety and insurance requirements, disqualified Bidders, and the consideration of additional Bidders, among others.
- (ii) Medium Value Acquisitions must be conducted by the issuance of a written Bid Request and shall be in compliance with City policies and procedures, as amended from time to time.
- (iii) Medium Value Acquisition processes may be conducted by the Departmental staff members delegated with process responsibility by the Departmental Director, through the competitive bid process and obtaining three (3) written Bids if possible. (0120-2010, 0065-2012)
- (iv) Section Repealed by By-law 0096-2013
- (v) Following Bid evaluation, prior to an Award being made, a Buyer shall review the Acquisition process which was undertaken to ensure that it meets the requirements of this by-law and relevant City policies and procedures, as amended from time to time.

(b) Approval and Award

- (i) Following Bid evaluation and determination of the Best Value Bid, the applicable Departmental staff as provided in Schedule B shall execute the Bid Award form as set out by the Purchasing Agent to indicate that funds are available for the Acquisition, that the Acquisition process was conducted in accordance with this by-law, and that the Award is approved by the Department. (0120-2010)
- ii) If despite best efforts to estimate the cost of the Acquisition, the Best Value Bid exceeds \$100,000, an Award without Council approval may be made subject to all of the following conditions: (0120-2010, 0065-2012, 0098-2012)

- (i) The Buyer is responsible for determining the method, conducting and managing all High Value Acquisitions including the evaluation process and the maintenance of information and results.
 - (ii) The staff member delegated with process responsibility by the Departmental Director is responsible for developing the specifications or statement of work and quantity requirements. The Manager or the Buyer is responsible for reviewing the specifications and quantity requirements, developing appropriate Bid Request requirements, evaluation method and criteria and conducting the Bid process ensuring that the purchasing principles outlined in Section 7 are followed. (0120-2010)
 - (iii) A Publicly Advertised Bid Process must be initiated. The methods for calling Bids include, but are not limited to:
 - A. Request for Information;
 - B. Request for Expression of Interest;
 - C. Request for Pre-Qualification;
 - D. Request for Tender;
 - E. Request for Proposal;
 - F. Request for Best and Final Offer; or
 - G. A multi-step process which may involve a combination of the above.
- (b) Approval and Award
- (i) The Manager or Purchasing Agent, as applicable in accordance with Schedule "B", is responsible for approval of the Acquisition process, which shall include confirmation of the following: (0120-2010)
 - A. Department Head approval of the Award; and
 - B. verification that the Acquisition, was conducted in accordance with this by-law, and
 - C. identification of complete price and costing information; and
 - D. identification of an upset limit or total expenditure as well as the basis for approving work or receipts and releasing payment; and
 - E. approval by the Department Head or designate of the operational terms and conditions; and
 - F. confirmation from the Department Head that funds are available within existing approved budgets, without detrimental impact or elimination of any other planned Acquisition; and
 - G. verification that the Bid is the Best Value Bid from amongst the Bids submitted; and (0120-2010)
 - H. there are no unresolved Bidder protests.
 - (ii) In addition, Council approval of the Award is required when:
 - A. funds are not available; or
 - B. the Bid is not the Best Value Bid of the Bids submitted; or (0120-2010)
 - C. there are unresolved Bidder protests; or

- D. Repealed by By-law 0065-2012
 - E. the term of the Commitment exceeds ten (10) years; or
 - F. at the discretion of the Purchasing Agent.
- (iii) When Council approval of the award is required as outlined above, the Department Head shall report to Council as stipulated by Section 8(6). (0120-2010)
- (c) Commitment
- The Manager or Purchasing Agent, as applicable in accordance with Schedule B, shall execute Commitments in respect of High Value Acquisitions when the Acquisition has been approved in accordance with section 11(3)(b) and the form of the agreement has been prepared in concert with the Legal Services Division as required under Schedule C. (0120-2010)

SECTION 12 – NON-COMPETITIVE ACQUISITIONS (SINGLE/SOLE SOURCE AND EMERGENCY)

12 (1) General

- (i) An Acquisition may only be conducted using a Single/Sole Source Vendor if the Acquisition meets the specific criteria set out in Schedule “A”. (0120-2010)
- (ii) The Purchasing Agent or Manager shall have the final right of determination as to whether an Acquisition meets the relevant criteria. (0120-2010)
- (iii) This section applies to Medium Value Acquisitions and High Value Acquisitions only. Low Value Acquisitions are not required to meet with the Schedule “A” criteria. (0120-2010)

(2) Medium Value Single/Sole Source Acquisitions

- (a) General
 - (i) Departmental staff members delegated with process responsibility shall consult with a Buyer when planning a Single/Sole Source Medium Value Acquisition in accordance with City policies and procedures. Buyers shall provide direction with respect to the proper Acquisition process to ensure a Best Value Award which may include direction as to the appropriateness of a competitive process, existing suppliers, timing, evaluation criteria, surety and insurance requirements and disqualified Bidders. (0120-2010)
 - (ii) A written Bid Request shall be issued, prior to any negotiations or entering into a Commitment, to clearly set out the requirements and to be used as a basis for determining terms and conditions.
 - (iii) Following Bid evaluation, prior to an Award being made, a Buyer shall review the Acquisition process which was undertaken to ensure that it meets the requirements of this by-law and relevant City policies and procedures, as amended from time to time.
- (b) Approval and Award
 - (i) Following Bid evaluation and determination of an acceptable Single/Sole Source Bid, the applicable Departmental staff as provided in Schedule B shall execute the Bid Award form as set out by the Purchasing Agent to indicate that funds are available for the Acquisition and that the Award is approved by the Department.

Justification, as specified in Schedule A, shall be cited in writing. (0120-2010)

- (ii) In addition to the approval process under section 12(2)(b)(i), the Manager or Purchasing Agent, as applicable under Schedule B, shall review the Acquisition process and justification to ensure that the requirements of this by-law and relevant City policies and procedures, as amended from time to time, have been met. (0120-2010)

(c) Commitment

- (i) The Buyer or Manager, as applicable under Schedule B, is authorized to execute Commitments in respect of Single/Sole Medium Value Source Acquisitions when: (0120-2010)
 - A. the Award has been approved in accordance with this by-law; and
 - B. satisfactory terms and conditions have been obtained and agreed to; and
 - C. the complete price and costing information has been identified; and
 - D. an upset limit or total as well as the basis for approving work or receipts and releasing payment are clearly established; and
 - E. the form of the Commitment has been prepared in concert with the Legal Services Division if the Commitment is for an Acquisition listed in Schedule C.
- (ii) Where any of the conditions listed in Section 12(2)(c) (i) have not been met, then Council approval must be obtained through submission of a report from the Department Head, which shall include the advice of the Purchasing Agent as contemplated in Section 8(6) prior to Commitment. (0120-2010)

(3) High Value Single/Sole Source Acquisitions

(a) General

- (i) The staff member delegated with process responsibility shall prepare a justification and shall obtain approval from the Manager or Senior Buyer that the proposed Acquisition meets the Schedule "A" criteria in advance of the submission of specifications to Materiel Management.
- (ii) The staff member delegated with process responsibility by the Departmental Director is responsible for developing the specifications, quantity requirements and statement of work. The Manager or the Buyer is responsible for reviewing the specifications and quantity requirements, developing appropriate Bid Request requirements, evaluation method and criteria and conducting the Bid process ensuring that the purchasing principles outlined in Section 7 are followed. (0120-2010)
- (iii) A Bid Request shall be issued to the selected Vendor, prior to negotiation or the entering into of a Commitment, to clearly set out the requirements and to be used as a basis for determining terms and conditions. (0120-2010)

(b) Approval and Award

- (i) The Purchasing Agent is responsible for approval of the Acquisition process in accordance with this subsection. Said approval shall include confirmation of the following: (0120-2010)

- A. Department Head approval of the Award; and
 - B. verification that the Acquisition, was conducted in accordance with this by-law; and
 - C. identification of complete price and costing information; and
 - D. identification of an upset limit or total expenditure as well as the basis for approving work or receipts and releasing payment; and
 - E. approval by the Department Head or designate of the operational terms and conditions; and
 - F. confirmation from the Department Head that funds are available, within existing approved budgets, without detrimental impact or elimination of any other planned Acquisition; and
 - G. verification that the Bid is justified and appropriate in accordance with the criteria set out in Schedule "A".
- (ii) Council approval of the Award is required except: (0120-2010, 0096-2013)
- A. in the specific instance stipulated in section 1(b)(viii) of Schedule A which shall require the approval of the Purchasing Agent; or (0096-2013)
 - B. for construction services provided by utilities, railway companies, or adjacent property owners required by the City as a result of City road or building construction. (0096-2013)
- (iii) When Council approval of the Award is required as outlined above, the Department Head shall report to Council as stipulated by Section 8(6). (00120-2010)
- (c) Commitment
- The Manager or the Purchasing Agent, as applicable in accordance with Schedule B, shall execute Commitments in respect of Single/Sole Source High Value Acquisitions when the Acquisition has been prepared in accordance with s.12(3)(b) and the form of the agreement has been prepared in concert with the Legal Services Division as required under Schedule C. (0120-2010, 0065-2012)

4. Emergency High Value Acquisitions

- (a) This section 12(4) shall apply to High Value Acquisitions only. Medium Value Acquisitions during an Emergency shall be governed by section 12(2) except that the Commitment execution may occur after the Acquisition has taken place. (0120-2010, 0096-2013)
- (b) In an Emergency, the Departmental staff member shall, if possible, contact the Manager or the assigned Buyer for Emergencies for direction on an appropriated Acquisition process and possible sources of supply. The approval of the applicable persons as provided in Schedule B shall be obtained before any Commitment is made. (0120-2010, 0096-2013, 0156-2013)
- (c) Where it is not possible to do so before the Emergency, the staff member shall document the detail of the Acquisition in a form set out by the Purchasing Agent as soon as possible following the Emergency. The form shall be authorized by the applicable Departmental staff as provided in Schedule B and forwarded to the Manager. (0120-2010, 0096-2013)
- (d) The Commitment shall be executed by the applicable Materiel

Management staff as provided in Schedule B for all Emergency Acquisitions, although such execution may occur after the Acquisition has taken place. (0120-2010, 0096-2013)

- (e) The Purchasing Agent shall report details of High Value Acquisition Emergencies to the Mayor and members of Council as stipulated in Section 26 as soon as is practicable. (0065-2012, 0096-2013)

SECTION 13 - CANCELLING AND REISSUING BID REQUESTS

- 13. (1) Subject to other requirements in this section 13, the Manager or the Buyer (as applicable) may cancel a Bid Request, in whole or in part if: (0120-2010)
 - (a) the Bid Request document contains errors or omissions which, in the opinion of the Manager, would result in an unfair process if an Award was made; or
 - (b) the Goods and Services are no longer needed; or
 - (c) all acceptable Bids received exceed the budget for the Acquisition or the fair market value and negotiating with the Bidder with the Best Value Bid is unlikely to yield an acceptable offer; or
 - (d) an opportunity arises and it is advantageous for the City to buy off from or tie on to another government contract; or
 - (e) a determination has been made that the bidding process has been compromised; or
 - (f) the scope of the Acquisition has changed.
- (2) In respect of High Value Acquisitions, the Manager may cancel a Bid Request, in accordance with section 13(1) with the concurrence of the Department Head. (0120-2010)
- (3) In respect of Medium Value Acquisitions, the Manager or the Buyer may cancel a Bid Request in accordance with section 13(1) with the concurrence of the Departmental Director. (0120-2010)
- (4) If a Bid Request has been cancelled, the Manager or the Buyer may authorize the issuance of a new Bid Request in respect of the Acquisition, by invitation to the original Bidders or by public advertisement. (0120-2010)

SECTION 14 – NEGOTIATIONS

- 14. (1) In the instance of Medium Value Acquisitions or High Value Acquisitions, the Manager or the Buyer, in consultation with the staff members delegated with process responsibility by the Departmental Director, may enter into negotiations with the Bidder submitting the Best Value Bid or with a Single/Sole Source supplier when such actions are in the best interests of the City and will not create an unfair situation for Bidders or Vendors. The Manager or the Buyer must maintain a record of any such negotiations. (0120-2010, 0065-2012)
- (2) In the instance of Medium Value Acquisitions or High Value Acquisitions where disclosed in the bid document, the Manager or the Buyer, in consultation with the staff members delegated with process responsibility by the Departmental Director, may enter into concurrent negotiations with more than one bidder. (0065-2012)

SECTION 15 - COMPLAINTS AND BIDDER PROTESTS

- 15. (1) All Bidder complaints, whether addressed to an elected official, a Department Head or any other City staff shall be referred to Materiel Management and dealt with in accordance with the applicable City policies and procedures, as may be amended from time to time. (0120-2010)

SECTION 16 - POINT OF CONTACT

16. (1) Contact for the purposes of this section relates to communications to and from City employees, consultants engaged by the City, elected officials or Council and Bidders during the time a Bid Request is in process.
- (2) For Medium Value Acquisitions, unless otherwise specified by the Buyer, the Departmental staff person delegated with process responsibility shall act as the official contact person and shall respond to all communications in respect of the Bid Request from the date of issuance, up to and including the announcement of an Award with the exception of Bidder complaints or protests which shall be forwarded to the Buyer. (0120-2010)
- (3) For High Value Acquisitions the Manager or the Buyer shall act as the official contact person and shall respond to all communications. The Buyer may, if appropriate, consult with a Departmental staff person in order to obtain required information to be communicated. (0120-2010)
- (4) If new information to a Bid Request is required, an addendum shall be issued by Departmental staff in the case of a Medium Value Acquisition, with notification to the Buyer, and by the Buyer in the case of a High Value Acquisition. (0120-2010)
- (5) Any Bidder found to be in breach of this section is subject to disqualification from participating in the current Bid Request.

SECTION 17 - RECEIPT AND OPENING OF BIDS

17. (1) Materiel Management is responsible for the safekeeping and recording of all original vendor submissions in respect of Medium Value Acquisitions and High Value Acquisitions. (0120-2010)
- (2) All sealed High Value Acquisition Bids received in response to Publicly Advertised Bid Requests shall be opened at public bid openings conducted by Materiel Management staff. Any member of Council, City staff or the general public may attend public bid openings. Late submissions shall be rejected. (0065-2012)
- (3) Bid amounts shall be made available to the public and officially recorded, subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. Bid amounts so recorded shall not necessarily be determinative of the Award.
- (4) All High Value Acquisition Bids will be reviewed by the Manager or the Buyer to determine whether either a Major Irregularity or Minor Irregularity exists in accordance with City policies and procedures, as amended from time to time. If, in the opinion of the Manager, a Major Irregularity exists, the Bid will be rejected without further consideration. If, in the opinion of the Manager a Minor Irregularity exists, the Bidder may be permitted to correct the irregularity or the Manager may waive the irregularity and make the Award. Obvious errors in mathematical extensions, decimal point additions and/or taxes may be corrected by the Manager, and the unit prices will govern unless stipulated otherwise in the specific solicitation. (0120-2010, 0065-2012)
- (5) In the event of two or more identical or tied Bids, those Bids shall be evaluated against the principles set out in Section 7 of this by-law. In the event that two Bid Requests are tied or identical following such evaluation, the Manager or the Buyer shall, in the presence of the Departmental staff person delegated with process responsibility, toss a coin. The Award shall then be made to the winner of the coin toss. In the event that three or more tied or identical Bids remain following evaluation, the Manager or the Buyer shall, in the presence of the departmental staff person, conduct a lottery draw. The Award shall then be made to the winner of the lottery. (0120-2010)

- (6) Evaluation committees shall be established by the Manager or the Buyer for all High Value Acquisitions and Publicly Advertised Bid Processes. The Committee shall evaluate all Bids received against clear specifications, terms, and conditions. The Manager or the Buyer shall maintain a record of the evaluation process and results.
- (7) Results of all Publicly Advertised Bid Requests shall be posted on the City's website. (0120-2010, 0096-2013)
- (8) The Manager or the Buyer shall notify the successful Bidder of their Award.
- (9) The Manager or the Buyer shall notify non-successful Bidders: (0120-2010)
 - (a) if they are not selected to submit a Bid following a Request for Expression of Interest or a Request for Pre-Qualification;
 - (b) if they submitted a low Bid and have not been selected; or
 - (c) if their Bid was rejected.

SECTION 18 – AMENDMENTS, INTERIM EXTENSIONS, RENEWALS & TERMINATIONS

18. (1) General

- (a) If the City has entered into a Commitment in respect of a Medium Value Acquisition or High Value Acquisition, any amendment to the terms and conditions of the Commitment (including any increase to its value), any interim extension to the term of the Commitment, or any renewal of the Commitment shall follow the requirements within this section 18. Amendments, interim extension or renewal of Low Value Acquisition Commitments are not required to follow the requirements of this section 18. (0120-2010)
- (b) Amendments, interim extension or renewals of Commitments shall only be made if: (0120-2010)
 - (i) the amendment, interim extension, or renewal meets the conditions of this by-law and is not contrary to the principles set out in Section 7; and
 - (ii) funding is available within existing approved budgets and without detrimental impact or elimination of any other planned Acquisition; and
 - (iii) the amendment, interim extension, or renewal is within the scope of the Original Commitment.
- (c) Notwithstanding sections (18)(2) and 18(3), the applicable Materiel Management staff (as authorized in Schedule B) may extend the term on an interim basis or amend the value of a Commitment for sanding, salting, ploughing, snow removal, or water, electricity or fuel without regard to the percentage or dollar increase of the Commitment if: (0120-2010, 0096-2013)
 - (i) the basis for determining fees and charges is not being changed; and
 - (ii) the interim extension of the term or amendment is required due to operations or maintenance requirements; and
 - (iii) the weather or market conditions at any time during the term of the Commitment are/were worse than expected such that an interim extension of the term or the total value of the Commitment needs to be amended.

(2) Amendments

- (a) In addition to subsection 18(1)(b), amendments of Commitments shall only be made if the basis for determining fees and charges is not being changed unless the amendment is made under subsection 18(2)(e)(iv). (0120-2010, 0096-2013)
- (b) All amendments to Medium Value Acquisition Commitments and High Value Acquisition Commitments shall be approved and executed by the applicable person in accordance with Schedule B. (0120-2010)
- (c) No amendments may be made to Medium Value Acquisition Commitments if the total amount of the Original Commitment, all prior amendments, and the requested amendment exceeds \$120,000. (0120-2010, 0065-2012)
- (d) For amendments to High Value Acquisition Commitments, Council approval is required if the amendment is of a value that, on its own or if added together with any and all previous amendments made to the Original Commitment, the cumulative value of all amendments are: (0120-2010, 0065-2012)
 - (i) greater than 20% of the Original Commitment and greater than \$100,000; or
 - (ii) over \$1,000,000
- (d.1) For High Value Acquisition Commitments where Council has previously given approval under subsection (d), the Department Head and the Purchasing Agent may approve a further increase of up to \$100,000 to a Commitment to make a final payment on the Commitment. Council approval is otherwise required for any other amendment to the Commitment. (0096-2013)
- (e) Notwithstanding subsection (d) and (d.1) no Council approval for amendments to a High Value Acquisition is required if: (0120-2010, 0065-2012, 96-13)
 - (i) the amendment is for work required to address an Unforeseen Site Condition, in which case, the Purchasing Agent may execute the amending Commitment if the City Manager approves it; or
 - (ii) the amendment is requested by and paid for by other Public Body/Bodies with which the City has entered into the Co-operative Acquisition in which the City holds the contract with the Vendor on behalf of itself and other Public Body/Bodies. Council approval is still required if the amendment is a result of additional work requested by the City; or
 - (iii) Council has provided direction otherwise on the procurement at issue; or
 - (iv) the amendment is required to increase the value of a multi-year Acquisition where increases in quantity and/or price were contemplated in the Bid Request and Original Commitment but were not confirmed with the exact quantity and/or price. For greater clarity, this subsection (iv) shall apply only if:
 - A. the Commitment creates a relationship with a Vendor to provide goods and services over a multi-year supply contract but shall not include Commitments where the goods and/or services are supplied towards a single project requiring more than one year to complete (e.g. a construction project that requires more than one year to complete); and
 - B. additional quantity is required as a result of changes to staffing levels, number, and/or size of City facilities or lands, consumption or usage; and

- C. the method of determining the price has been established in accordance with the Commitment and the resulting price represents Best Value.

(3) Interim Extension

- (a) An interim extension of a Commitment may be required if: (0120-2010, 0096-2013)
- (i) further opportunity is required to comprehensively and accurately complete a procurement process and issue an Award; and/or
 - (ii) additional time is required to fulfill all the obligations in progress at the time of the Commitment's expiry and to make final payments; and/or
 - (iii) the market conditions, including timing and specifications (relating to either the procurement of the Goods and Services or the particular industry), are in flux and that it would be more advantageous for the City to wait before proceeding with the issuance of a Bid Request.
- (b) An Award may be made to extend a High Value Acquisition Commitment under section 18(3)(a) on an interim basis if: (0120-2010)
- (i) the Purchasing Agent and the Manager are jointly of the opinion that it is advantageous to extend the Commitment on an interim basis; and
 - (ii) a new procurement process is being prepared or is underway; and
 - (iii) the term of the interim extension does not exceed one year; and
 - (iv) the requirements under section 12(3)(b) are complied with, except that no Council approval is required if the Award of the interim extension is in compliance with all the requirements of this section 18(3)(b)
- (c) No interim extension under this section 18(3) may be made for Medium Value Acquisition Commitments, except as determined in section 18(3)(a)(ii). (0065-2012)
- (d) Section 12(3)(c) shall apply to the execution of any interim extension to an existing Commitment if all the requirements of this section 18 for the interim extension are met. (0120-2010)

(4) Renewals

The Manager may renew a Commitment only when the terms and condition of the Bid Request, Award report, and original Commitment provide for the renewal. Said renewal may not occur unless the conditions set out in section 18(1)(b) have been met. Where the terms and conditions of the original Commitment do not provide for renewal, a new Acquisition shall be conducted. (0120-2010)

(5) Termination

If the City has entered into a Commitment in respect of an Acquisition and the Department(s) for which the Goods and/or Services are acquired wishes to terminate the Commitment prior to the end of the term of the Commitments as a result of non-performance by the Vendor or that the Goods and/or Services contemplated under the Commitment are no longer required, the Department(s) shall consult with Materiel Management and the Legal Services Division to determine the appropriate course of action in terminating the Commitment. Commitments may be terminated upon the joint approval of the Department Head, the Purchasing Agent, and the City Solicitor, or their respective designate, or as otherwise authorized by Council. (0120-2010)

SECTION 19 - UNSOLICITED QUOTATIONS, TENDERS OR PROPOSALS

19. (1) No Award may be made based on unsolicited proposals. (0120-2010)
- (2) If it is determined that there is a legitimate need for the Goods or Services offered by way of an unsolicited offer, then an Acquisition process shall be conducted in accordance with this by-law.

SECTION 20 - CO-OPERATIVE ACQUISITION

20. (1) The City may participate with a Public Body in Co-operative Acquisition initiatives where it is in the best interest of the City to do so and where: (0120-2010)
 - (a) combining the volume of Goods and Services to be purchased by the City and a Public Body would result in a better value; or
 - (b) operational costs would be contained or reduced; and
 - (c) the Acquisition and Commitment are in substantial compliance with the provisions of this by law.
- (2) The Manager or a Buyer shall conduct all Co-operative Acquisition initiatives on behalf of Departments. Legal Services Division shall be consulted to determine the appropriate agreements required to conduct such initiatives with other Public Bodies. (0120-2010)
- (3) The Public Body initiating the Acquisition may determine the Award. In the event that the Award is not in the best interests of the City, the Manager may decline acceptance of the Award subject to any agreements that the City may have with the Public Body/Bodies involved in the Co-operative Acquisition. Where the City is initiating the Acquisition, the Acquisition process will be conducted in accordance with this by-law; and all requirements including approval and Commitment requirements according to the dollar value of the Acquisition must be met. (0120-2010)

SECTION 21 - SPECIAL RELATIONSHIPS

21. (1) In cases where the Acquisition of Goods and Services is involved, the City may enter into agreements with the private sector including but not limited to joint ventures, co-marketing agreements, public benefit planning agreements, public private partnerships, shared-use agreements, sponsorship arrangements, corporate and individual donation agreements, and advertising, subject to Council approval.
- (2) The Manager may conduct an Acquisition process, according to the dollar value of the Acquisition. All requirements of this by-law must be met, except that the Award must be approved by Council.
- (3) Council approval of the Award shall be obtained by the Department Head. All such reports shall be as stipulated by Section 8(6). (0120-2010)

SECTION 22 - VENDOR COMPLAINTS AND VENDOR PERFORMANCE

22. (1) The Departmental staff person who has been assigned responsibility for managing Commitments by the Departmental Director shall be responsible for dealing with Vendor inquiries and resolving Vendor disputes.
- (2) The Manager or the Buyer in consultation with appropriate Departmental, technical, Legal Services Division and risk management staff, shall resolve Vendor disputes not otherwise resolved by the Departmental staff person. (120-10)
- (3) Section Repealed by By-law 0120-2010
- (4) Section Repealed by By-law 0120-2010

- (5) Departmental and Materiel Management staff shall maintain records of poor Vendor performance on all Commitments, which shall be used to ensure contract compliance, to supplement a pre qualification process review or to justify rejecting a Bid or disqualifying a Bidder.

SECTION 23 - DISQUALIFICATION OF BIDDERS

- 23. (1) The Purchasing Agent may exclude a Bidder from eligibility to submit a Bid for a period the later of two years or until after the next Bid opportunity has occurred where there is documented evidence of poor performance or non performance in respect of the fulfillment of a Commitment, or there is documented evidence that the Bidder either violated a provision of this by-law or the Request or submitted an improper Bid, as determined by the Purchasing Agent. (0065-2012)
- (2) The Purchasing Agent may exclude a Bidder from a current Bid Request process if the Bidder is found to be in violation of section 16 (Point of Contact). (0065-2012)
- (3) Prospective bidders shall be notified of their exclusion from eligibility and shall have the right to protest in accordance with applicable City policies and procedures. (0065-2012)

SECTION 24 - BIDDER REGISTRATION

- 24. Repealed by By-law 0065-2012

SECTION 25 - DISPOSITION OF SURPLUS GOODS

- 25. (1) Departmental staff may recommend that items including material, equipment, furnishings and vehicles owned by the City are surplus to the City's needs and have a cash value or are refuse items.
- (2) The manager of the Departmental operating area may declare such items to be surplus and shall then advise the Buyer of any items including materials, equipment, furnishings and vehicles owned by the City which in his or her opinion are surplus and have a cash value.
- (3) Items declared surplus and having a cash value may be disposed of by the Buyer by the most advantageous means, which may include:
 - (a) redistribution throughout the City; or
 - (b) a recognized charitable organization in Mississauga registered as such with the Canada Revenue Agency (Charities Directorate); or
 - (c) public auction; or
 - (d) the issuance of a Bid Request; or
 - (e) trade in at fair market value as part of the Acquisition of other similar items or items required by the City; or
 - (f) as Council may otherwise authorize.
- (4) Refuse items shall be disposed.
- (5) Funds received from the disposal of surplus items shall be credited to the appropriate accounts, as determined by the Finance Division of the Corporate Services Department.

SECTION 26 - INFORMATION REPORTS

- 26. (1) The Manager shall provide information reports, on a monthly basis, to the Purchasing Agent, in respect of all Acquisitions in the previous month, or as otherwise required by this by-law.

- (2) The Purchasing Agent shall provide information reports, on a monthly basis, to the Mayor and members of Council in respect of all High Value Acquisitions, which shall include the names of all successful Bidders and the dollar amount of any Award. In addition, the Purchasing Agent shall provide information reports, on a monthly basis, to the Mayor and members of Council in respect of all contract amendments, interim extensions, and renewal for all High Value Acquisitions that have been approved in the previous month, which shall include the names of all Vendors and details of the applicable amendments, extensions, and renewals. (0120-2010, 0065-2012)
- (3) Section Repealed by By-law 0065-2012

SECTION 27 – RECORDS

- 27. (1) The Manager shall be responsible for the care, custody and control of records in respect of all Medium Value Acquisition and High Value Acquisition Commitments.
- (2) All records retained pursuant to this by-law shall be retained in accordance with the City's Records Retention By-law.

SECTION 28 – REVIEW COMMITTEES

- 28. The Purchasing Agent, in consultation with Department Heads and the City Manager, shall undertake a comprehensive review of this by law at least once every five years.

SECTION 29 - SEVERING

- 29. Should any provisions, clauses, sections, phrases or parts of this by-law, or the application thereof, be held by a court or tribunal of competent jurisdiction to be invalid, the remainder of this by-law, or the application of such provisions, clauses, sections, phrases or parts of this by-law shall not be affected.

SECTION 29.1 INTERPRETATION

- 29.1 (1) A reference to the singular number shall be deemed to refer to the plural, and vice versa, as the context may require. (0120-2010)
- (2) A reference to the masculine gender shall be deemed to refer to the feminine gender, and vice versa, as the context may require. (0120-2010, 0096-2013)

SECTION 30 - GENERAL

- 30. (1) This by-law comes into force on January 1, 2007.
- (2) By-law 613-91, as amended is repealed as of the date this by-law comes into force.
- (3) Commitments in effect on January 1, 2007 shall continue until the expiration of their term or other termination.
- (4) The short title of this By-law is the "Purchasing By-Law". (0120-2010)

ENACTED AND PASSED this 13th day of September, 2006.
Signed by Acting Mayor, Katie Mahoney and City Clerk, Crystal Greer

SCHEDULE "A"
CRITERIA FOR NON-COMPETITIVE ACQUISITIONS (SINGLE/SOLE SOURCE AND
EMERGENCY)

(Amended by 0092-2010, 0120-2010, 0065-2012, 0096-2013)

1. Pursuant to Section 12 Non-competitive (Medium Value Acquisitions and High Value Acquisitions), Acquisitions may be conducted using a Single/Sole Source supplier only if one or more of the conditions listed in either (a) or (b) below apply, the Purchasing Agent or Manager having the right of final determination, and a process is undertaken to obtain the Best Value under the circumstances for the City:
 - (a) The Goods and/or Services are only available from one supplier by reason of:
 - (i) a statutory or market based monopoly; or
 - (ii) scarcity of supply in the market; or
 - (iii) the existence of exclusive rights such as patent, copyright or licence; or
 - (iv) the complete item, service, or system is unique to one vendor and no alternative or substitute exists within Canada.
 - (b) The Goods and/or Services are available from more than one source, but there are good and sufficient reasons for selecting one supplier in particular, as follows:
 - (i) An attempt to acquire the required Goods and/or Services by soliciting competitive Bids has been made in good faith, but has failed to identify a willing, capable and compliant supplier; or
 - (ii) The Goods and/or Services are required as a result of an Emergency which would not reasonably permit the solicitation of competitive Bids; or
 - (iii) The confidential nature of the requirement is such that it would not be in the public interest to solicit competitive Bids; or
 - (iv) The solicitation of competitive Bids would not be economical to the City; or
 - (v) Construction, renovations, repairs, maintenance etc. in respect of a building leased by the City may only be done by the lessor of the building, in accordance with a lease agreement; or
 - (vi) The Goods are purchased under circumstances which are exceptionally advantageous to the City, such as in the case of a bankruptcy or receivership; or
 - (vii) It is advantageous to the City to acquire the Goods and/or Services from a supplier pursuant to the procurement process conducted by another Public Body; or
 - (viii) It is advantageous to the City to acquire the Goods and/or Services directly from another Public Body or public service body; or
 - (ix) Another organization is funding or substantially funding the Acquisition and has determined the supplier, and the terms and conditions of the Commitment into which the City will enter are acceptable to the City; or
 - (x) The Acquisition is for a particular brand of Goods and/or Services that are intended solely for resale to the public and no other brand is desirable and the brand is not available from any other source; or
 - (xi) A need exists for compatibility with, or for the maintenance and support of a City Standard and there are no reasonable alternatives, substitutes, or accommodations; or
 - (xii) A need exists to avoid violating warranties and guarantees where support or Service is required for a City Standard; or
 - (xiii) Instructors, coaches, trainers and other specialized services for recreation programs for which Bids cannot readily be called; or
 - (xiv) The Acquisition is an interim extension contemplated under section 18(3); or
 - (xv) The Acquisition is for entertainment at a major City Event; or
 - (xvi) Funding and project completion timelines imposed by senior government programs do not allow adequate time for a competitive bidding process.

SCHEDULE "B"

**METHODOLOGY AND APPROVAL REQUIREMENTS
(UNLESS OTHERWISE SPECIFIED IN THE BY-LAW)**

(Amended by 0065-2012, 0080-2012)

Original Commitment Value	Acquisition Method/ Section Reference	Departmental Approval	Process Approval	Commitment Execution
Low Value Up to \$10,000	Card or Cheque Requisition [sections 11(1)]	Supervisors with Cost Centre Authority	As per Departmental Approval	In accordance with City policies and procedures
Medium Value \$10,001 up to \$50,000	Competitive [sections 11(2), 18(2)] ^A	Departmental Manager	Buyer	Buyer
	Non-competitive (Single/Sole Source) [section 12(2)]	Departmental Director	Manager	Buyer
	Emergencies [section 12(4)]	Departmental Director	Departmental Director	Senior Buyer
Medium Value \$50,001 up to \$100,000 (unless otherwise approved under section 11(2)(b)(ii), in which case the Medium Value Acquisition may be up to \$120,000)	Competitive [sections 11(2), 18(2)] ^A	Departmental Director	Senior Buyer	Senior Buyer
	Non-competitive (Single/Sole Source) [section 12(2)]	Department Head	Purchasing Agent	Manager
	Emergencies [section 12(4)]	Department Head	Department Head	Manager
High Value \$100,001 or more	Competitive [sections 11(3), 18(2)] ^B	Department Head	Manager up to \$500,000 Purchasing Agent if over \$500,000	Manager up to \$500,000 Purchasing Agent if over \$500,000
	Non-competitive (Single/Sole Source) [sections 12(3), 18(2)]	Council, upon recommendation of Department Head	Purchasing Agent	
	Emergencies [section 12(4)]	City Manager	City Manager	Purchasing Agent

^A The same approval process for the Original Commitment would apply to an amendment of the Commitment, except that no amendments may be made if the total amount of the original Commitment, all prior amendments, and the requested amendment exceeds \$120,000. (See section 18(2)(c)).

^B This approval process for a competitive High Value Acquisition would also apply to an amendment of any High Value Acquisition Commitment, the value of which amendment plus all other previous amendment to that Original Commitment, is less than \$100,000, or 20% of the Original Commitment and does not exceed \$1,000,000. For any other amendment of a High Value Acquisition Commitment, the approval process for a non-competitive High Value Acquisition would apply.

SCHEDULE "C"**LEGAL REVIEW REQUIREMENTS**

(Amended by 0065-2012)

The following types of Acquisitions shall be conducted with legal advice provided by the Legal Services Division and the Commitments executed for these types of Acquisitions (including any amendments thereof) shall be prepared in concert with the Legal Services Division:

1. Any Acquisition with a value of \$500,000.00 or more;
2. Co-operative Acquisitions;
3. Acquisitions for a Commitment with a term of 5 or more years;
4. Acquisitions in relation to money handling and financial services;
5. High Value Acquisitions involving technology;
6. Special relationship arrangements under section 21 of the by-law;
7. Acquisitions where personal information will be collect, accessed or maintained by the City, or by a vendor on behalf of the City; and
8. Any other Acquisitions at the discretion of the Manager or designate, or the Departmental Director or designate.