



**WATERFRONT**Toronto

<b>Procurement:</b> Procurement Policy	<b>Guideline #:</b> 1
<b>Effective Date:</b> December 4, 2019 (Replacing Existing Policy – November 9, 2018)	<b>Approved by:</b> George Zegarac

### **Objective**

To update and revise the Procurement Policy.

## **PROCUREMENT POLICY**

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## **SECTION 1 - POLICY OBJECTIVES**

- (1) The Government of Canada, the Province of Ontario and the City of Toronto (collectively “Government Partners” established the Toronto Waterfront Revitalization Corporation ( “Corporation” or “Waterfront Toronto”) in 2001 to lead and oversee the renewal of Toronto’s waterfront. Given the importance of its mandate, and the fact that it is publicly funded, the conduct of the Corporation’s procurement activities must meet the highest standards of reasonability, be economically achievable and support the Corporation’s overall objectives of fairness, openness, and transparency. The Corporation’s procurement activities are intended to both achieve maximum value for the Corporation and its stakeholders, and advance the Corporation’s strategic objectives.
- (2) Waterfront Toronto conducts its affairs in accordance with the Broader Public Service Procurement Directive (the “Directive”). This Procurement Policy is intended to complement the Directive and provide supplementary guidance to Waterfront Toronto and suppliers.
- (3) The objectives of the Corporation’s Procurement Policy are to ensure that:
  - (a) all goods and services are acquired in accordance with approved procurement processes;
  - (b) all goods and services are acquired within authorized budgets;
  - (c) all goods and services are acquired in accordance with applicable Contribution Agreements or revenue source;
  - (d) the Corporation receives value for money, by obtaining goods and services through a fair and competitive procurement process involving reputable suppliers;
  - (e) evaluation criteria are applied fairly to assess the merits of competitive bids, proposals, quotes and submissions;
  - (f) those seeking contracts for goods and services are required to disclose potential conflicts of interest;
  - (g) senior management and the Board of Directors are appropriately accountable for all material procurement;
  - (h) the entire competitive procurement process is fair, open and transparent.

## **SECTION 2 - GENERAL PROVISIONS**

In all cases, the following applies:

- (1) Departmental Vice-Presidents (“VP/SVP”), Chief Financial Officer (“CFO”), Chief Project Officer (CPO), Chief Operating Officer (“COO”), Chief Strategy Officer (“CSO”) or Chief Development Officer (“CDO”), collectively the “Executive”, shall provide overall Supervision throughout the procurement process;



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- (2) A standard contract outlining the terms and conditions must be executed prior to the commencement of work.
- (3) Subject to the allocation of responsibilities within the Corporation, the CPO and the Director, Procurement shall be responsible for ensuring that these policies and procedures are followed, and that purchasing practices meet the objectives of Section 1.
- (4) *The Discriminatory Business Practices Act, R.S.O. 1990, c. D.12* has been established to prevent discrimination in Ontario on the ground of race, creed, colour, nationality, ancestry, place of origin, sex, or geographical location of persons employed or engaging in business. Therefore, granting preference to local suppliers to supply goods and services to the Corporation cannot be undertaken.
- (5) The Director, Procurement may place a supplier's name on a list of disqualified suppliers for a period of two years on the basis of documented poor performance, non-performance, not adhering to the Procurement Policy or conflict of interest. This information may be accumulated from within the Corporation or through reference checks. A written notice of the decision will be provided to the vendor by the Procurement Department. Removal of names from the list will be at the sole discretion of the Corporation.
- (6) All vendors under contract with Waterfront Toronto shall abide by the Waterfront Toronto Procurement Code of Ethics, which can be read on Waterfront Toronto's website, [www.waterfronttoronto.ca](http://www.waterfronttoronto.ca), under the "Opportunities" tab and "Procurement" sub-tab.
- (7) The Director, Procurement may send invitations for Tenders, Requests for Proposals, Requests for Quotes, Pre-qualification Requests and Expressions of Interest to potential bidders, even if a Vendor of Record has been established, to ensure the best possible response.
- (8) Vendors or potential vendors shall not be requested to expend time, money or effort on design or in developing specifications or otherwise to help define a requirement beyond the normal level of service expected from vendors. When such services are required:
  - (a) Procurement must be advised;
  - (b) the vendor will be considered a consultant or professional service and will not be allowed to make an offer for the supply of the goods and services;
  - (c) a fee shall be paid; and
  - (d) the detailed specification shall become the property of the Corporation and can be used in obtaining competitive bids.



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- (9) Where the Corporation is pursuing a claim against a vendor in contract, tort, or negligence or where a vendor is pursuing a similar claim against the Corporation, the vendor shall not be eligible to respond to any quotation, unless any member of the Executive determines that it is in the best interests of the Corporation to permit the vendor to respond.

### **SECTION 3 - ADMINISTRATIVE PROCEDURES**

- (1) The signing thresholds for the procurement of goods and services are set out in the “Signing Threshold Policy.”
- (2) No contract shall be artificially divided into smaller contracts for the sole purpose of avoiding the thresholds as defined in the “Signing Threshold Policy.”
- (3) The Director, Procurement or delegate shall have the authority to execute and issue all contracts for goods and services, Professional Services, non-standard items, Consulting Services and construction services provided that proper authorization has been obtained as approved in the “Signing Threshold Policy.”
- (4) It will be the responsibility of all employees of the Corporation to ensure that all requirements of this policy are complied with.
- (5) The CEO shall have the authority to approve additional procedures to this policy, including forms and Procurement Department templates.
- (6) No employee of the Corporation, or Member of the Board, or immediate family member of such persons, may bid on the Corporation’s proposed purchase of goods and services.
- (7) No personal purchases shall be made by the corporation for Members of the Board or employees of the Corporation unless authorized by the Executive and CEO.
- (8) No employee or Member of the Board shall purchase or offer to purchase, on behalf of the Corporation, any goods or services except in accordance with this policy.
- (9) Except in the case of an emergency, the requisitioning department should complete and obtain approval of a Procurement Requisition and approval of the Electronic Financial System - prior to committing the Corporation.
- (10) All responses for Requests for Qualifications, Proposals and Tenders must be evaluated using the standard evaluation template as modified to meet the specific requirements of the Request for Qualifications, Proposals or Tender process. The Evaluation Committee assigned to a procurement process must document the conclusions of the evaluation process.
- (11) The selection of a preferred or successful proponent must be based upon the evaluation criteria set out in the Prequalification Documents, the Request for Proposal or the Tender documents.



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- (12) In determining whether a bid or proposal is compliant with the requirements of the quotation documents, the Corporation shall consider the terms and conditions of the Tender and the Request for Proposal documents.
- (13) In all cases, and irrespective of the type of procurement process that is carried out, care must be taken to ensure that the overall procurement objectives of the Corporation are met, that the transaction is documented in accordance with this policy, and that where appropriate the selected proponent accepts the Terms and Conditions as denoted in the Corporation’s contract.
- (14) To ensure the Corporation’s procurement process is fair, open and transparent to all proponents, there shall be no communication between Corporation and the proponents with the exception of the official representative(s) noted in the quotation document. This blackout is for the period of time immediately following the release of the quotation until the final award of the bid. All questions asked by proponents during the course of procurement must be submitted in writing to the official representative and the questions and responses must be circulated to all proponents. Lobbying during the procurement process will not be permitted and may result in the disqualification of the proponent.
- (15) The Corporation is not required to accept the lowest bid and may base its evaluation on both quality and price (as appropriate to the goods or services being purchased) and may adopt a “best value” approach to the evaluation of price.
- (16) Procurement and contract documents should include, where applicable, provisions that permit the re-scoping of a project in the event that prices submitted exceed amounts budgeted for the contract.

## **SECTION 4 - STANDARD DOCUMENTATION**

All procurement activities carried out by the Corporation, including procurement activities carried out by Eligible Recipients or Construction Managers on behalf of the Corporation, shall be carried out using existing standard procurement documents adopted by the Corporation. If an Eligible Recipient or Construction Manager has its own procurement documents that meet the requirements of this Procurement Policy, then the Director, Procurement may approve the use of those documents.

## **SECTION 5 - PROCEDURES AND PROCUREMENT METHODOLOGIES**

### **5.1 Choice of Procedure**

Before any procurement takes place, the issuing department must:

- (1) identify the goods or services to be acquired.



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- (2) evaluate the value of the goods or services as defined by the scope of work. For the purposes of estimating, the value means the estimated total financial commitment including the value of renewal options.
- (3) determine if the project is properly funded. Projects that do not have sufficient funds must be authorized by a member of the executive and CEO prior to proceeding with the procurement process.

## 5.2 Procurement Methodologies

For ease of reference, the most common procurement methodologies that the Corporation should use and the appropriate circumstances for use are as follows:

- (1) *Tender* – Used in circumstances where the Corporation has determined a clearly defined scope of the goods or services and the only remaining matter to be resolved is establishing a competitive price. Successful proponents are normally (but not exclusively) chosen based on the price submitted. The evaluation of price can include an evaluation of “best value” rather than simply the lowest price.
- (2) *Request for Proposals (RFP)* – Typically used when the Corporation wishes to carry out a quality assessment of a service provider or the product or service they provide. In most cases, price is a “weighted” factor but not the determining factor. Request for Proposals are also used where it is not practical to prepare precise specifications, or where alternatives to detailed specifications will be considered, which may be subject to further negotiation. This process allows vendors to propose solutions to arrive at the end product or desired result and allows for evaluation based on predetermined criteria in addition to price. The term “Request for Proposal” also includes the flexible RFP also known as the Best and Final Offer (BAFO) RFP.
- (3) *Request for Quotation* – A formal or informal inquiry to determine the price of a specific good or service. Successful proponents are normally (but not exclusively) chosen based on the price submitted, although the evaluation can also allow for predetermined criteria in addition to price. The proponent’s response should be submitted in writing.
- (4) *Prequalification Request* – Similar to a formal Request for Proposal but without factoring price. Its purpose is to develop a short list of qualified suppliers/service providers that will subsequently be invited to submit a proposal or tender at the next stage of the procurement process.



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- (5) *Request for Expressions of Interest, Research and Market Sounding* – All market sounding (which may be referred to as a Request for Expression of Interest or RFEI) required to determine market interest and develop scope will be conducted through the Procurement department to ensure an equitable process.

Research and market sounding will not be used to:

- (a) pre-qualify potential suppliers;
- (b) provide an unfair advantage for any proponent;
- (c) and influence the chances of a vendor’s success or failure in future procurement opportunities.

Research and market sounding does not constitute the initiation of a procurement process, therefore, no conflict of interest is created between vendors participating in the market sounding and vendors participating in future procurement opportunities.

- (6) *Advanced Contract Award Notice (“ACAN”)* – A federally accepted competition process to award a contract to a pre-identified vendor. A notice of the proposed purchase is publicly posted on MERX for a period of 15 calendar days. If no acceptable response is received, the Corporation is permitted to award a sole source contract to the identified vendor after receipt of the appropriate management approvals.
- (7) Procurements with an estimated value over \$100,000 must be procured through an open, competitive process.
- (8) Construction procurements estimated to be over \$5,000,000 require that the Director, Procurement and the COO determine a delivery and contracting methodology and fee structure. This procurement strategy will be reviewed with the Finance, Audit and Risk Management Committee (FARM) and form part of the Capital Approval request package issued to the Board for approval.

In determining the methodology, consideration will be given to; health and safety, liabilities to Waterfront Toronto, risk transfer and the premiums associated with the transfer of risk. The following project delivery methods will be considered; general contracting, construction management, design-build and public-private-partnership. Furthermore, the following contract types and fee structures will be evaluated; unit cost, lump sum, percentage fee and guaranteed maximum price, or other possible incentive arrangements.

The preceding analysis will be documented and put on file.



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### 5.3 Vendor of Record (“VOR”)

- (1) The purpose of a VOR is to provide the Corporation with a readily available list of qualified firms. VORs are established through a publicly issued Prequalification Request or Request for Proposals which defines the general parameters of the scope and the length of time the list will be valid. The list will generally (but not always) result in standing offers being established with the chosen vendors.
- (2) The VOR is not a replacement for a competitive quote; therefore, where possible, quotations for goods or services should be sent to multiple vendors within the list of qualified firms. The proposal with the best value to the Corporation will be issued a release to their standing offer detailing the scope and price.
- (3) The Corporation may either establish its own VOR for a particular good or service or rely on VOR lists established by any of its Government Partners or their agencies.

### 5.4 Evaluation Process

All procurements where price is not the single deciding factor must have the criteria (and sub-criteria if necessary) developed for the evaluation process prior to the closing date of the procurement or before any submissions are opened. The criteria will expand the broad categories listed in the quotation document.

*Furthermore:*

- (1) All meetings are to be coordinated through Procurement.
- (2) A Procurement staff member will act as facilitator during all evaluations.
- (3) The evaluation team should consist of at least three staff members (from the department accountable for the outcome of the procurement. For larger complex procurements a member of the Executive team should be included. To further complement the evaluation team, additional members may be drawn from any department within the Corporation. There are to be no vendors on the evaluation team unless they are required to act in an advisory capacity to the team. The composition of the teams will be reviewed by Procurement and any exceptions to any of the above conditions must be approved by the Director of Procurement.
- (4) The CEO may sit in on any Procurement evaluation as an ex-officio member of that review team. The CEO should not influence the proceedings but may ask questions to seek clarification.
- (5) For large complex procurements, a Fairness Advisor maybe retained to oversee the complete procurement process to ensure fairness to all proponents. At the end of the procurement the Fairness Advisor should issue a letter of opinion regarding the process which will be retained with





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the procurement documents. The retention of a Fairness Advisor must be approved by the Director, Procurement.

### **5.5 Bid Dispute Resolution and Tie Breaker**

The bid dispute resolution process is intended to ensure that any dispute is handled in an ethical, fair, reasonable and timely fashion.

This bid dispute resolution procedure complies with bid protest or dispute resolution procedures set out in the applicable trade agreements.

Where a vendor wishes to dispute the outcome of a bid, subsequent to a debriefing with the Procurement department, the process outlined below is to be followed:

- (1) The aggrieved party is to file its bid protest with the Director, Procurement within 15 business days of the debriefing meeting. The aggrieved party's filing should include:
  - The name and address of the vendor;
  - Identification of the contract or bid solicitation being protested;
  - Detailed and factual statement of the grounds for protest;
  - Supporting documentation; and
  - Desired relief, action or ruling
- (2) The Director, Procurement will respond to the aggrieved party within 10 business days of receiving the bid protest notice.
- (3) If a resolution cannot be achieved, the aggrieved party must contact the CPO and copy the Director, Procurement within 10 business days of receiving the first response from the Director, Procurement.
- (4) The CPO will respond to the aggrieved party within 10 business days of receiving the bid protest notice.
- (5) The final decision on the issue will be made by the CPO and will be resolved within 10 business days of receiving the bid protest.
- (6) In the event of a tie during the evaluation, the tied proponents will be invited to an interview in an effort to break the tie. The interview will have a set agenda and scored by the evaluation team.



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## **SECTION 6 - NON-COMPETITIVE PROCUREMENT – GOODS AND SERVICES (INCLUDING PROFESSIONAL SERVICES)**

Professional Services is defined as any licensed professional service provided by medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, chartered accountants, lawyers and notaries in their regulated capacities.

- (1) In the event of extraordinary circumstances, the Corporation reserves the right to offer a contract for the provision of goods or services to a sole supplier.
- (2) Single source procurements above \$75,000 (Cdn.) are only permitted through the public posting of an ACAN unless the procurement meets the conditions described under Section 6(7). If a procurement meets the conditions described under Section 6(7), it will be considered to be competitively procured.
- (3) Single source procurements above \$25,000 (Cdn.) shall be permitted only where circumstances prevent competitive purchasing, including:
  - (a) emergencies;
  - (b) extreme urgency or time constraints;
  - (c) economy or value in continuing prior work;
  - (d) protection of copyrights or trade-marks;
  - (e) a public and open competitive process has been undertaken but has failed to identify a viable supplier or service provider;
  - (f) absence of competition for technical or commercial reasons, with no available substitutes;
  - (g) circumstances where the nature of work is such that it would not be in the public interest to solicit bids or proposals;
  - (h) exceptions in accordance with applicable trade agreements as referenced in the Directive; and
  - (i) circumstances where a government body instructs Waterfront Toronto to contract with a specific vendor following that government body's selection of that vendor in accordance with its procurement policy. A letter from the government body stating this request must be attached to the requisition.

Sole sourced procurements where only one supplier is able to meet the requirements shall be permitted under the following circumstances:



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- (a) To ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
  - (b) Where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
  - (c) For the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
  - (d) For the purchase of goods on a commodity market;
  - (e) For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
  - (f) For work to be performed on property by a contractor according to provisions of a warranty of guarantee held in respect of the property or the original work;
  - (g) For a contract to be awarded to winner of a design contest;
  - (h) For the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
  - (i) For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
  - (j) For the procurement of original works of art;
  - (k) For the procurement of subscriptions to newspapers, magazines or other periodicals; and
  - (l) For the procurement of real property.
- (4) When under extreme emergencies and authorities are not available to authorize work in accordance with the Signing Threshold Policy, an employee responsible for a given project may authorize emergency work up to a value of \$25,000.00, if in the employee's opinion that failure to do so could result in a hazardous situation which could cause personal injury or damage to Waterfront Toronto property. The employee authorizing the emergency work shall notify the appropriate signing authorities in writing within 48 hours of the emergency, describing the nature of the emergency, the measures taken by the employee, and the estimated total cost of work.
- (5) Waterfront Toronto will not pay for any hospitality, food or incidental expenses. Transportation and accommodation expenses are eligible for payment only if they are directly related to the consultant's assignment at hand, and require prior authorization by the Waterfront Toronto staff overseeing the assignment.
- (6) In accordance with the "Signing Threshold Policy", all non-competitive procurements for goods and services with a value of \$1,000,000 or more will be authorized by the Board of Directors.



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- (7) Waterfront Toronto reserves the right to award a contract to an entity without going out for quote if it meets any of the following:
- the provision of services from any of our Government Partners or their divisions or agencies. This includes but is not limited to: the Government of Canada, the Province of Ontario, the City of Toronto, and any of their component divisions and departments, as well as any federal, provincial or municipal agency, crown corporation or other government entity that is cooperating with Waterfront Toronto to deliver a project. These organizations include, but are not limited to: Toronto Economic Development Corporation (“TEDCO”), Ontario Infrastructure and Lands Corporation, Toronto and Region Conservation Authority (“TRCA”), Toronto Transit Commission (“TTC”), Toronto Police Services, Toronto Hydro, Toronto Water, The Board of Governors of Exhibition Place, Ontario Place Corporation, , Harbourfront Corporation (1990), hospitals, universities, colleges, school boards and organizations within their control.
  - the provision of services from any utility including, but not limited to Bell, Rogers, Beanfield Metroconnect and Enbridge.

## **SECTION 7 - NON-COMPETITIVE PROCUREMENT – CONSULTING SERVICES**

Consulting Services is defined as provision of expertise or strategic advice that is presented for consideration and decision-making. Consulting Services do not include any licensed Professional Services provided by medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, chartered accountants, lawyers and notaries in their regulated capacities.

- (1) As required by the Broader Public Sector Procurement Directive, dated July 2011, all consulting services must be acquired through a competitive procurement process. Where the estimated value is over \$100,000, it must be publicly posted via a tendering network, such as MERX.
- (2) The competitive procurement process for Consulting Services may be waived in the following circumstances:
  - (a) Due to an unforeseen situation of urgency, the Consulting Services cannot be obtained by means of a competitive procurement process;
  - (b) Matters of a confidential or privileged nature would have to be disclosed through a competitive procurement process, thereby compromising Waterfront Toronto confidentiality or the public interest or threatening economic disruption;
  - (c) Waterfront Toronto’s ability to maintain security or order or to protect human, animal or plant life or health would be compromised by a competitive procurement process;
  - (d) No bids are received in response to a competitive procurement process;
  - (e) Only one supplier is able to meet the requirements of a procurement, due to compatibility issues with existing products or the fact that the supply of certain goods and services are controlled by a statutory monopoly; and



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- (f) Where a government body instructs Waterfront Toronto to contract with a specific vendor following that government body’s selection of that vendor in accordance with its procurement policy.

In accordance with the “Signing Threshold Policy”, all exceptions in Section 7(2) must be authorized by the CEO where the estimated value is less than \$1,000,000. Exceptions with an estimated value of \$1,000,000 or more will be authorized by the Board of Directors.

- (3) Waterfront Toronto will not pay consultants for any hospitality, food or incidental expenses. Transportation and accommodation expenses are eligible for payment only if they are directly related to the consultant’s assignment at hand, and require prior authorization by the Waterfront Toronto staff overseeing the assignment.

## **SECTION 8 - LENGTH OF CONTRACTS**

- (1) Except as provided in Section 8(2), contracts must be for a fixed term not to exceed five-years.
- (2) The Corporation may enter into longer-term contracts under the following circumstances:
  - (a) contracts relating to:
    - (i) major design, build or construction initiatives where the project period is known to exceed five-years;
    - (ii) services that are less than \$25,000 annually and any change in vendor would not create value for money.
  - (b) Consulting, Professional Services and/or services that:
    - (i) are specialized in nature;
    - (ii) are the result of a management decision to outsource functions;
    - (iii) would cause disruption to the Corporation’s business activities if such services were re-procured or changed more frequently including such services as program management, legal services, Information Technology Services, insurance services, auditing services, financial services, urban planning services, subject to the Corporation being satisfied it is receiving value for money; and

All exceptions in Section 8(2) must be authorized by the CEO.



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If a contract permits a renewal or extension beyond the original term, the Project Manager responsible for the contract shall assess the quality of the service provided and shall submit, if satisfied, an extension for approval in accordance with the “Signing Threshold Policy”.

## **SECTION 10 - CHANGE ORDERS**

Change orders to established contracts must be entered into the Financial System as a requisition by the Project Manager. The requisition must be completed in detail identifying the reason for the change, change value, along with the appropriate backup, and must be approved through the Financial System prior to authorizing the change; with the exception of Construction Contracts where change orders, still within the approved contingencies may be authorized as per the Signing Threshold Policy. In doing so, the Corporation shall apply the following principles:

- (1) The change order process in contracts shall permit only changes still within the general scope of the project and/or for unforeseen issues arising out of the project, and should not be used for increases to the original scope. Any changes to the original scope should be procured through a competitive process;
- (2) Change orders shall be approved only after an assessment of the additional cost and project schedule; and
- (3) Change orders shall be approved in accordance with the “Signing Threshold Policy”. Any change order for a non-competitive contract that takes the total contract value over \$75,000 must be preceded by an uncontested ACAN.

## **SECTION 11 - REPORTING**

- (1) Internal: On a quarterly basis, the Procurement Department shall submit comprehensive reports to the FARM Committee covering:
  - (a) any exceptions to these policies;
  - (b) all contracts awarded in excess of \$5 million
- (2) External: Award Disclosure - To complement Waterfront Toronto’s open and transparent Procurement process, Procurement will:
  - (a) Publish the winners and prices of all Tenders and RFPs with a value over \$50,000 (before HST) on Waterfront Toronto’s website.