



# Procurement of Goods and/or Services Policy

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## TABLE OF CONTENT

1.0	PURPOSE .....	1
2.0	DEFINITIONS .....	3
3.0	APPLICATION AND RESPONSIBILITIES .....	9
4.0	PROCEDURES .....	17
5.0	PROCUREMENT METHODS .....	23
6.0	SUPPLIER CONDUCT .....	49
7.0	CONTRACT DOCUMENTATION, EXECUTION AND PERFORMANCE GUARANTEES .....	56
8.0	RESOLUTION OF CONFLICT .....	59
9.0	INTERPRETATION .....	61
	ATTACHMENTS .....	62
	APPENDIX "A" - EXEMPTIONS .....	63
	APPENDIX "B" - IRREGULARITIES .....	67

## 1.0 PURPOSE

This is a policy of the Corporation to establish procedures for the procurement of Goods and/or Services, including for the purposes of section 270(1) of the *Municipal Act, 2001* (Ontario).

The purposes of this policy are to:

- (a) Protect the interests of the Corporation, the public and persons participating in the Corporation's procurements processes.
- (b) Maintain the integrity of the procurement process by ensuring that, appropriate methods of procurement will be used to obtain the best value for the Corporation.
- (c) Define the authorities, roles and responsibilities of those persons involved in the procurement process.
- (d) Enhance the efficient and effective use of municipal funds.
- (e) Ensure compliance with all legislative requirements and relevant trade agreements, including, without limitation, the Comprehensive Economic Trade Agreement (CETA) and Canadian Free Trade Agreement (CFTA) and any amendments to them or successor agreements which may bind the Corporation.
- (f) Promote, in the Corporation's discretion, opportunities through procurement to advance the protection of the environment, to support sustainable development and to procure and use goods and services that have a lesser impact on human health and the environment when compared to other competing goods and services.
- (g) Promote ethical standards of behaviour and leadership by Suppliers, their subcontractors and in the supply chain in the production, manufacturing, and distribution of goods and services ultimately purchased and or consumed by the Corporation.

## 2.0 DEFINITIONS

In this policy,

**"Administrative Staff"** shall mean employees designated by a General Manager, part of whose responsibilities relate to the Procurement of Goods and/or Services Policy.

**"Affiliated Persons"** shall include any company, enterprise, business venture, or partner owned by a Supplier or over which the Supplier can or is entitled to exercise any control or influence. Affiliated Persons also includes without limitation any owner in whole or in part, operator, partner, shareholder, officer, or director of a Supplier and each of their spouses, children, parents, grandparents, siblings, and extended family members. For the purposes of this definition, Spouse and Child shall have the same meanings identified in Section 1. of the *Municipal Conflict of Interest Act R.S.O. 1990, C. M-50*.

**"Approved Budget"** shall mean an operating or capital budget approved by Council subject to any Council approved adjustments.

**"Award"** shall mean the identification of a successful Supplier pursuant to a Bid Solicitation, subject to the reserved rights of the Corporation, any By-Law, this or any other policy of the Corporation, the terms and conditions of any Bid Solicitation, and the approval where indicated of Council, and **"Awarded"** shall have a corresponding meaning.

**"Bid"** shall mean an offer or submission from a Supplier in response to a Bid Solicitation which is subject to acceptance or rejection by the Corporation.

**"Bid Solicitation"** shall mean a solicitation issued by the Corporation, including without limitation a Request for Information, Request for Expression of Interest, Request for Supplier Qualifications, Request for Quotation, Request for Tenders Request for Proposals, or other procurement process whether completed through Electronic Tendering or otherwise.

**"Bidder"** shall mean any Supplier who has made an offer or submission in response to a Bid Solicitation.

**"Buying Group"** shall mean any other municipalities, regions, local boards and other public or not for profit agencies that provides collaborative procurement opportunities offering resources savings or economies of scale benefits to the Corporation.

**"CAO"** shall mean the Chief Administrative Officer of the Corporation or their designate.

**"City Clerk"** shall mean the City Clerk of the Corporation or their designate.

**"Conflict of Interest"** shall mean any situation or circumstances where a Supplier:

- (a) has commitments, relationships or financial interests or involvement(s) in any matter that:
  - (i) could or could reasonably be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the Corporation or its advisors or agents; or
  - (ii) could or could reasonably be seen to compromise, impair or be incompatible with the effective performance of the Supplier's obligations under an agreement with that Supplier; or
  - (iii) has contractual or other obligations to the Corporation that could or could be seen to have been compromised or impaired as a result of its participation in a procurement process; or
- (b) has knowledge of confidential information or other information internal to the Corporation of strategic and/or possible relevance to a procurement process that is not available to others and that could or could reasonably be seen to give the Supplier an unfair competitive advantage.

**"Contract"** or **"Agreement"** shall mean an agreement between the Corporation and a Supplier for the procurement of Goods and/or Services, including a Purchase Order.

**"Contractor"** shall have the same meaning as "Supplier".

**"Corporation"** or **"City"** shall mean the Corporation of the City of Cornwall.

**"Council"** shall mean the Council of the Corporation, comprised by the Members of Council who were elected by the registered voters or who have been appointed by virtue of a vacancy.

**"Designate"** shall mean a person or persons assigned the duties or responsibilities of another person.

**"Electronic Tendering"** shall mean the use of a computer-based system directly accessible by Suppliers irrespective of their location that provides them with information related to bid solicitations and can accept vendor submissions. For greater clarity, the acceptable methods of Electronic Tendering for any individual procurement will be set out in that procurement's solicitation documents.

**"Emergency"** shall mean a situation brought about by unforeseeable events that makes the procurement of Goods and/or Services necessary to address an immediate risk to health, safety, security, property, the environment and/or to other public interests which the Corporation has jurisdiction to serve.

**"Emergency Purchase"** means a limited tender or non-competitive procurement made in accordance with defined conditions in this Policy. Emergency purchases generally do not have an approved budget prior to purchase.

**"Environmentally Preferred"** means goods or services that have a lesser impact on human health and the environment when compared with competing goods or services. Notwithstanding anything else in this Policy, this comparison may consider without limitation Bidders' practices, the environmental attributes of a Bidder, any certification or the absence thereof possessed by a Bidder, regulatory offenses or environmental violations by a Bidder, the participation by a Bidder in any greenhouse gas emission target setting, reduction and disclosure program, Bidders' infrastructure and equipment, employment and outsourcing practices, materials acquisition, production, manufacturing processes, life cycle costs, recycled content, recyclability, the use of refurbished reusable or reconditioned parts, waste management, packaging, distribution transportation, fuels, re-use, operational costs, maintenance or disposal practices, costs or features and the availability of energy, water or fuel saving features. The same criteria may be considered in relation to a Bidder's subcontractor.

Environmentally preferred goods or services may in the discretion of the Corporation be required to have a certified environmental product declaration, or to meet the criteria or standards of a recognized third-party certification body selected by the Corporation from time to time where one exists for the product or service category being procured.

**"Ethically Preferred"** means goods and or services that are produced or delivered under conditions that meet or exceed national, provincial or territorial standards for employment and human rights. Notwithstanding anything else in this Policy, an assessment of ethically preferred goods and services may involve an evaluation of Bidder's and their Subcontractor's production and manufacturing processes, employment practices, the treatment of workers, respect for and adherence to human rights and the delivery by Bidders of foreign products and the adherence of the manufacturers of such goods with the mandatory minimum

employment standards and human rights of their country of origin, Where foreign goods are supplied to the Corporation, it will have the right to insist in its discretion, that the manufacturing processes involved in the production of such goods comply with the minimum human rights and employment practices and standards of Canada and or any Canadian province.

**"General Manager"** shall mean the General Manager, Director or Chief of a department of the Corporation or their designate.

**"General Manager, Financial Services"** shall mean the General Manager of Financial Services and Treasurer of the Corporation or their designate.

**"Goods"** shall mean all tangible and intangible property including but not limited to supplies, products, wares, merchandise, materials, equipment, and property insurance.

**"IT Manager"** shall mean the Manager, Information Technology and Innovation of the Corporation or their designate.

**"Legal Services"** shall mean the Corporation's Legal Services Department.

**"Life Cycle Cost"** shall mean the cost of a good or service over the full lifetime of the good or service and not just the initial purchase price. An analysis of Life Cycle Cost may take into account, without limitation, durability, performance, disposal costs and cost savings that by be achieved over the lifetime of the good or service through environmental efficiencies or potential revenues.

**"Manager"** shall mean a Manager, Deputy Treasurer, Administrator, Deputy Chief or City Clerk of a division within a department of the Corporation or their designate.

**"Mayor"** shall mean the Mayor of the Corporation or their designate.

**"Multi-use list"** shall mean a list of Suppliers that the Corporation has determined satisfies the conditions for participation in that list, and that the Corporation intends (but is not obligated) to use more than once.

**"Procurement"** shall mean the acquisition of Goods and/or Services by purchase, lease, rental, or exchange transaction.

**"Procurement Value"** shall mean the estimated maximum total value of the Deliverables being procured over the term of the Contract, whether awarded to one or more suppliers, taking into account all forms of remuneration and all potential options.

**"Purchase Order"** shall mean the purchasing document used to formalize a purchasing transaction with a Supplier, setting out the terms and conditions applicable to the supply of Goods and/or Services by a Supplier, and which may include reference to any other contract documents and the contract value.

**"Purchasing Supervisor"** shall mean the Purchasing Supervisor of the Purchasing Services Department of the Corporation or their designate.

**"Purchasing Services"** shall mean the Department of Purchasing Services of the Corporation, and any successor thereto.

**"Quotation"** shall mean a response to a Request for Quotation.

**"Request for Expression of Interest"** shall mean a process used to gather information on future Supplier interest in an opportunity or information on Supplier capabilities and qualifications.

**"Request for Information"** shall mean a process where information is requested from potential Suppliers to gather general information, including in respect of Suppliers, Goods and/or Services.

**"Request for Proposals (RFP)"** shall mean a formal request for prices and details on Goods and/or Services from Suppliers, where the Goods and/or Services may not be able to be fully defined or specified or when alternate methods are being sought to perform a certain function or service, at the time of request. RFPs may be evaluated on the basis of price as well as other criteria as set out in the RFP and may include a negotiable process or provision for negotiations prior to Award.

**"Request for Quotations"** shall mean a solicitation issued to obtain competitive Bids for Goods and/or Services of pre-determined quantity and/or quality.

**"Request for Supplier Qualifications"** shall mean a solicitation that is issued to gather information on Supplier capabilities and qualifications with the intention of creating a list of pre-qualified Suppliers for future selective solicitations, including:

- (a) a one-time future solicitation; or
- (b) a multi-use list for solicitations of a predefined scope and duration.

**"Request for Tenders"** shall mean a formal request for prices on Goods and/or Services from Suppliers, where the Goods and/or Services are able to be fully defined or specified at the time of the request.

**"Roster" or "Roster System"** shall have the same meaning as "Multi-use List".

**"Sealed Bid"** shall mean a formal, sealed response received as a part of response to a Bid Solicitation.

**"Selection Committee"** shall mean the committee created to review proposals received by the Corporation based on the evaluation criteria, reach consensus on the final rating results and ensure that the final rating results, with supporting documents, are kept in the procurement file with the Purchasing Supervisor.

**"Services"** shall mean non-Goods, including all professional Services and construction Services, all Services in relation to real property and personal property including the installation, construction, maintenance, rental, repair, restoration, demolition or removal of real property or personal property.

**"Subcontractor"** shall mean companies that provide goods or services or both to Suppliers for inclusion in the goods or services ultimately purchased by the Corporation. Subcontractors do not have a direct business relationship with the Corporation.

**"Supervisor"** shall mean a supervisor within a department of the Corporation or their designate.

**"Supplier"** shall mean a person or group of persons that provides or could provide Goods and/or Services to the Corporation. A Supplier shall include affiliated persons.

**"Supplier Arrangement"** shall mean an arrangement where negotiated prices with predetermined terms and conditions are offered by one or more Supplier(s) to provide Goods and/or Services, to the Corporation on an as-required basis for a specific period of time.

**"Supplier Code of Conduct and Discipline Policy"** shall mean the Supplier Code of Conduct and Discipline Policy of the Corporation in use from time to time.

**"Unbalanced Bid"** shall mean, without limitation, a Bid that the Purchasing Supervisor believes has been manipulated created or developed in order to gain an advantage in the bidding process and can include without limitation circumstances such as where Bids contain overall prices or particular line item Bid prices that appear to be unreasonably high, inflated, excessive or exaggerated, unreasonably low; the inclusion of line items that have not been requested; wide disparities in Bid prices between one Bid submission and other Bid submission(s) and/or submission of artificially highly priced items in Bids or high overall Bid prices for the early stages of a project.



**“Urgent Procurement”** shall mean a procurement that is strictly necessary to complete for reasons of urgency brought about by events which were unforeseeable for the Corporation and the goods and services which were the subject of the procurement could not be obtained in time using open tendering.

**"Vendor Management Program"** shall mean the program used to manage Supplier performance run by the Corporation as set out in the Supplier Code of Conduct and Discipline Policy.

**"Vendor of Record System"** shall have the same meaning as "Multi-Use List".

### **3.0 APPLICATION AND RESPONSIBILITIES**

#### **3.1 Application**

All Goods and/or Services required by the Corporation, its Council, committees, and its departments shall be acquired and disposed of in accordance with:

- (a) the provisions of this policy;
- (b) any procurement procedures established by the Purchasing Supervisor;
- (c) any other applicable policies approved by Council; and
- (d) in accordance with the requirements of applicable laws, including the Ontario Human Rights Code, the Ontarians with Disabilities Act, 2001 and the Accessibility for Ontarians with Disabilities Act, 2005.

#### **3.2 Exemptions**

This policy does not apply to the procurement of Goods and/or Services set out in Appendix "A".

#### **3.3 Mandatory Consultation**

Mandatory consultation is required for Procurements involving:

- (a) project management for municipal building assets, municipal accessibility plan initiatives, and security initiatives. Procurements involving any of the foregoing may only be issued if there has been prior consultation with the Facilities Division; and written approval of

the procurement requirements related to the Facilities Division has been provided by the Manager of the Facilities Division.

- (b) information technology and office automation acquisitions or communications services. Procurements involving any of the foregoing may only be issued if there has been prior consultation with the Information Technology and Telecommunications Division and written approval of the procurement requirements related to the ITT Division has been provided by the IT Manager.

### **3.4 Procurement Planning**

Procurement planning is essential in ensuring that the Procurement function serves as a conduit to achieving the Corporation's objectives. Effective planning ensures the responsible management of corporate resources and the timely delivery of goods and services as required.

- (a) All Procurements will be executed in accordance with this Policy, and any related or relevant policies and procedures.
- (b) Departments shall consult with Purchasing Services annually to establish and finalize their annual procurement plan which shall reflect both capital and operating expenditures.
- (c) Prior to initiating any Procurement process for Goods and/or Services the Department Contract Manager shall:
  - (i) Ensure that the Goods and/or Services are legitimately required for Corporation purposes;
  - (ii) Consider the Corporation's purposes for Procurement and determine the costs, quantities and supply duration, short-term and long-term requirements, any ongoing maintenance, support and licensing requirements and overall project requirements to meet Corporation's needs;
  - (iii) Confirm availability of funding;
  - (iv) Allow sufficient time to complete the Procurement processes as required by Purchasing Services; and
  - (v) Prepare detailed unbiased specifications, statements of work and/or quantity requirements to encourage full, open, and fair competition.

- (d) Prior to issuing a competitive Procurement, the following may be issued for the purposes of gathering information, as determined by Purchasing Services: Request for Supplier Qualifications; Request for Information (RFI); or Request for Expression of Interest (RFEOI).
- (e) During the Procurement planning phase seek legal advice from Legal Services, as required.

### **3.5 Legal Review Requirements**

Legal Services shall review and advise on a Procurement prior to Purchasing Services issuing a Procurement in the following circumstances:

- (a) Procurements with a term of more than 5 years including Contract extensions that when combined with the initial term exceed five (5) years;
- (b) Lease agreements;
- (c) Contracts not utilizing the Corporation's contract templates or where changes to the template are required;
- (d) Procurements where personal information will be collected, accessed, or maintained by the Corporation, or by a Supplier on behalf of the Corporation.
- (e) Any other Procurement matters at the discretion of the Purchasing Supervisor, or the General Manager of requesting department, in consultation with General Manager, Financial Services.

### **3.6 Procurement Value**

The Procurement Value must be appropriately estimated in accordance with the section below in order to determine the appropriate Procurement method and to ensure compliance with the requirements of this policy.

In estimating Procurement Value, all forms of remuneration must be taken into account, whether awarded to one or more Suppliers, including:

- (a) all estimated premiums, fees, commissions and interest;
- (b) all estimated costs to the Corporation, including, if applicable, delivery, installation, training, operation, maintenance, replacement and disposal, but excluding sales taxes, and less applicable rebates or discounts; and

- (c) if the Procurement provides for the possibility of contract renewal options, the total value of all such contract renewal options.

### **3.7 Purchasing Services Responsibilities**

Purchasing Services shall have the following responsibilities, which are to be performed in the manner that is determined by the Purchasing Supervisor from time to time.

- (a) Be responsible for the overall administration of procurement policies, procedures and guidelines.
- (b) Providing all departments, on request, with advice on various procurement matters.
- (c) Reviewing the corporate use of Goods and/or Services to ensure the Corporation is receiving the best value.
- (d) Ensuring the Corporation's procurement and disposition transactions are conducted ethically and professionally.
- (e) Maintaining a system for notifying Suppliers who have expressed an interest in doing business with the Corporation of the availability of applicable procurement documents.
- (f) Conforming to good material management practice by simplifying and standardizing, wherever possible, procurement documents and processes for the Corporation.
- (g) Preparing Agreements in conjunction with the General Manager, Financial Services.
- (h) Maintaining records of procurement transactions pursuant to the Corporation's document retention policy and in accordance with the requirements of any applicable trade agreements, as required.
- (i) Consulting external advisors on procurement matters, as appropriate.
- (j) Any other matter which the Corporation decides from time to time is appropriate to be undertaken by Purchasing Services.

### 3.8 Purchasing Supervisor Responsibilities

The Purchasing Supervisor shall have the authority and responsibility:

- (a) Approving and prescribing procurement procedures not specifically provided for in this policy, in consultation with the General Manager, Financial Services and/or the CAO.
- (b) Coordinating Bid Solicitations on behalf of the Corporation, subject to the approval thresholds in Section 5.1.
- (c) Determining the appropriate form and method of procurement by which Goods and/or Services shall be procured on behalf of the Corporation, including Collaborative Procurement and limited tendering purchasing.
- (d) Reviewing procurement specifications and providing recommendations on improvements or changes to ensure consistency with the Policy.
- (e) Determining the appropriate means for issuing procurement information and receiving bid submissions, including through Electronic Tendering or any other means.
- (f) Establishing templates for procurement process documents.
- (g) Administering the Corporation's conduct of the procurement process, including planning, implementing, monitoring and supervising the appropriate:
  - (i) solicitation method;
  - (ii) development of evaluation criteria or related Supplier performance requirements;
  - (iii) advice and support on evaluation and Award; and
  - (iv) reporting to Council and the public, as required.
- (h) The identification of those Goods and/or Services which are more effectively acquired through a Supplier Arrangement.
- (i) Establishing a procedure for analyzing Bids and proposals to determine if the Corporation has received an Unbalanced Bid and the actions the Corporation may take in response to a materially Unbalanced Bid, including rejection.

- (j) Administering the Supplier Code of Conduct and Discipline Policy, including any Vendor Management Program and any discipline or other actions taken by the Corporation pursuant to those policies.
- (k) Preparing quarterly information reports to Council listing procurement awards meeting the following conditions:
  - (i) Competitive Procurements, within the Approved Budget, with a value of \$150,000.01 or greater pursuant to Table 1, in section 5.1;
  - (ii) Non-Competitive Procurements, within the Approved Budget with a value of \$75,000.01 or greater pursuant to Table 2, in section 5.1;
  - (iii) Any Procurement exceeding the Approved Budget by between \$75,000.01 and \$250,000, approved by the CAO pursuant to Table 3, section 5.1;
  - (iv) Non-Budgeted Procurements with a value between \$75,000.01 and \$150,000 pursuant to Table 4, section 5.1;
  - (v) Emergency and Urgent Procurements with a value of \$75,000.01 or greater pursuant to Table 4, section 5.1.
- (l) Such other authorities and responsibilities as are set out in this policy or otherwise delegated to the Purchasing Supervisor.
- (m) Any other matter which the Corporation decides from time to time is appropriate to be undertaken by the Purchasing Supervisor.

The Purchasing Supervisor may delegate any aspect of a procurement process to a department as the Purchasing Supervisor may determine to be necessary or desirable.

### **3.9 General Manager / Manager / Supervisor Responsibilities**

- (a) Advising the Purchasing Supervisor of departmental procurement plans and specific upcoming procurements including attempts to determine the amount of time which is sufficient to complete the procurement as may be stipulated in the procurement policies or procurement procedures;

- (b) Participating in the development of template specifications, quality requirements, scopes of work and other stipulated requirements including the development of other Contract documentation for routine procurements conducted by their department;
- (c) Ensuring that procurements made by staff are carried out in compliance with the requirements of this policy;
- (d) Directing and overseeing the management of all Contracts led by or coordinated by their department including, without limitation, the approval of subcontracting, assignment, amendments, optional renewals, terminations, enforcement of warranties and performance securities and the adoption of related contract management procedures; and
- (e) Any other matter which the Corporation decides from time to time is appropriate to be undertaken by a General Manager.

### **3.10 Financial Services General Manager and Treasurer Responsibilities**

- (a) The Financial Services General Manager and Treasurer is ultimately responsible for overseeing Purchasing Services and ensuring corporate compliance with this policy.
- (b) The Financial Services General Manager and Treasurer may assume some or all of the responsibilities of the Purchasing Supervisor.

### **3.11 Chief Administrative Officer (CAO) Responsibilities**

- (a) Exercise general control and management of the affairs of the Corporation for the purpose of ensuring the efficient and effective operation of the Corporation and the staff placed under their supervision.
- (b) Any other duties outlined as being the responsibility of the CAO pursuant to this policy.

### **3.12 Council of the City of Cornwall Responsibilities**

- (a) It is the role of Council to establish policy and approve expenditures through the Corporation's Budget approval process.

- (b) Council delegates authority to the Corporation's employees to incur expenditures through Procurements in accordance with this Policy.

### **3.13 All Employees Responsibilities**

- (a) All City employees are responsible for complying with this policy. Individual employees involved in procurement activities shall clearly understand their obligations and responsibilities under this policy and shall consult with Purchasing Services in respect of any questions regarding the application or interpretation thereof.
- (b) Failure to adhere to the requirements outlined in this Policy may lead to disciplinary action up to and including termination of employment.

### **3.14 Conflict of Interest**

- (a) Employees of the Corporation shall comply with the Corporation's policies on conflict of interest.
- (b) At no time during the Procurement process, beginning with the planning stage through to the Award and the Contract, shall any City employee accept, directly or indirectly, from any Bidder or Supplier, anything of any value, tangible or intangible, including but not limited to rebates, gifts, meals, money, or special privileges. No preference will be given to Bidders who provide solicited or unsolicited goods or samples to the Corporation or who demonstrate the operation of such goods or samples.
- (c) City employees and their immediate family shall not have a financial interest, either directly or indirectly, in any Contract or with any person acting for the Corporation in any Contract, unless such interest has been declared pursuant to the Code of Conduct for Employees. Such declaration shall be in writing, to their manager, with a copy to the Purchasing Supervisor, indicating the specific nature of the conflict of interest.
- (d) City employees must declare in writing to their manager, with a copy to the Purchasing Supervisor, any real or perceived conflicts of interest arising from interacting, managing, supervising, or overseeing the work of any family member, former employee of the City or anyone with whom they have a close personal relationship or personal interest, who is working for a Supplier in any capacity.



- (e) All City employees participating in the development of specifications and/or the evaluation process for a Procurement process will be required to declare any real or perceived conflict of interest in accordance with the applicable Procurement procedures.
- (f) Department Contract Managers must be impartial in their treatment of all Suppliers and in managing Contracts, including approval of any payments.

## **4.0 PROCEDURES**

### **4.1 Financial Authorities**

- (a) Unless otherwise approved by Council, no expenditures or commitments shall be incurred or made, and no account shall be paid, by the Corporation for Goods and/or Services, except as authorized in accordance with this policy.
- (b) Notwithstanding any provision contained herein, all expenditures shall be within the current Council-approved annual budget or within Council-approved estimates. In the event that the annual budget has not yet been approved by Council, expenditures can be made provided the expenditures are not more than fifty percent (50%) greater than the previous year's approved budget authority amount:
  - (i) for the same or substantially similar purchase of Goods and/or Services;
  - (ii) the expenditure is for routine operating and recurring expenditures;
  - (iii) the expenditure is required under applicable laws; or
  - (iv) unless otherwise directed by Council.
- (c) A Bid Solicitation may only provide for an option to renew where the total value of the original term and the renewal term of the proposed Contract is:
  - (i) within the authorization level of the person approving the purchase pursuant to Section 5.1;
  - (ii) within the Council-approved annual budget amount or estimate; or

- (iii) otherwise approved by Council.
- (d) Where Goods and/or Services are routinely purchased on a multi-year basis, the exercise of authority to Award a Contract is subject to:
  - (i) the identification and availability of sufficient funds in appropriate accounts for the current year, or other Council appropriation of funds; and
  - (ii) the demand for the Goods and/or Services continuing to exist in subsequent years, and where, in the opinion of the Purchasing Supervisor, the required funding can reasonably be expected to be made available.

## **4.2 Conditional Bid before Annual Budget Adoption**

The Purchasing Supervisor is authorized to obtain, prior to the adoption of the current year's budget by Council, Bids for construction Services and/or additional or replacement equipment, provided that the procurement documents used include a clause specifically stating that the acceptance of any such Bid and any Award is subject to budget approval by Council, that the items specified are subject to change in quantity and/or deletion and that the Bid Solicitation may be withdrawn at any time in the discretion of the Corporation without any liability to the Corporation.

## **4.3 Provisions / Practices**

All Bid Solicitations, Contracts and other procurement process documents shall include appropriate terms and conditions as determined by the Purchasing Supervisor in consultation with the General Manager, Financial Services.

## **4.4 Process Integrity**

- (a) All Bid Solicitations issued by the Corporation shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of Bids and, where appropriate, generally, the methods of weighting and evaluating the criteria. In addition, all Bid Solicitations issued will, where the Purchasing Supervisor determines it is appropriate:

- (i) Outline mandatory, rated, and other criteria that will be used to evaluate Bids, including the weight of each criterion, but not necessarily sub-criteria.
  - (ii) State that Bids that do not meet the mandatory criteria may be disqualified.
  - (iii) Establish the formula for calculating the total price/cost.
  - (iv) Allocate weighting to the price/cost component of the evaluation criteria.
  - (v) Contain specifications that are not designed or written so as to clearly express a preference for any one Supplier or, that contain reference to a specific brand and model as a benchmark unless it is necessary to do so, in the view of the Purchasing Supervisor. However, notwithstanding this provision and the requirement in subsection (g) hereof, the Corporation may in its discretion give preference to Environmentally Preferred and or Ethically Preferred Goods and or Services.
- (b) The Corporation shall ensure that all information marked and identified in Bids by a Supplier as proprietary is kept secure prior to the closing date and during the evaluation period. Thereafter, the Corporation shall handle all such Supplier's proprietary information in accordance with, and subject to, the Municipal Freedom of Information and Protection of Privacy Act (Ontario) (MFIPAA).
  - (c) The Corporation shall ensure that all Bid Solicitations, Bids, Contracts and other procurement process documents are kept on file in accordance with the Corporation's document retention policy.
  - (d) The scheduling of a procurement process must not be intentionally delayed as a means of making the procurement qualify under any exception to a policy.
  - (e) No requirement for the payment of Goods and/or Services received by the Corporation shall be divided, split or otherwise structured in order to reduce the Procurement value or contract value in order to avoid or circumvent any of the requirements of this policy.
  - (f) Irregularities in Bid submissions will be addressed by the procedures outlined in Appendix "B" — Irregularities.

- (g) No local preference will be given to any Supplier. All procurement processes are to be conducted so as not to unduly exclude local vendors, while at the same time maintaining the duty to be fair, open, and transparent to all Bidders in accordance with legislation, trade agreements, and best practices. The Corporation endeavours to achieve the best value in its commercial transactions. Accordingly, the Corporation will not be bound to purchase Goods or Services based upon Canadian content, nor shall the Corporation practice local preference in Awarding contracts, unless specifically permitted to do so under the authority of the Province of Ontario or the Government of Canada.
- (h) Elected officials, appointed officers and employees of the Corporation shall not knowingly cause or permit anything to be done or communicated to anyone in a manner which is likely to cause any potential Supplier to have an unfair advantage or disadvantage in obtaining a contract for the supply of Goods and/or Services to the Corporation. This also includes a Contract with any other municipality, local board or public body involved in the purchase of Goods and/or Services either jointly or in cooperation with the Corporation.
- (i) Where it is determined that an Elected Official has contravened subsection (h), the Corporation in its discretion, may terminate any affected solicitation or contract entered into in such circumstances and any such termination shall be entirely without cost to the Corporation. No Supplier shall have any right to assert any claim for breach of contract, negligence, intentional interference with economic relations or inducing breach of contract, or damages of any kind including lost profits or lost opportunities in such circumstances.
- (j) Elected officials of the Corporation shall separate themselves from the procurement process and have no involvement whatsoever in specific Bid Solicitations. Elected officials of the Corporation should not see any documents or receive any information related to a particular Bid Solicitation while the procurement process is ongoing. Elected officials of the Corporation who receive inquiries from Suppliers related to any specific Bid Solicitation shall immediately direct those inquiries to the General Manager, Financial Services.

#### **4.5 Notification of Procurement Opportunities**

- (a) Notifications of procurement opportunities with a value less than \$100,000.00 for goods or services, excluding construction, or less than \$250,000.00 for construction or such increased sums as required by applicable trade agreements (as they may be amended) may be made by means of open Electronic Tendering, or any other method as determined by the Purchasing Supervisor.
- (b) Notifications of procurement opportunities with a value of \$100,000.00 or greater for goods or services, excluding construction, or \$250,000.00 or more for construction or such increased sums as required by applicable trade agreements (as they may be amended) from time to time must be made by means of Electronic Tendering.
- (c) If a method other than Electronic Tendering is used for notification of procurement opportunities, consideration shall be given to ensuring wide dissemination and equal opportunity for Suppliers.

#### **4.6 Timelines for Posting Procurements**

With regard to timelines for posting procurements, procedures shall be implemented that ensure Suppliers are provided with an adequate response time that meets the minimum requirements outlined in applicable laws, including trade agreements referred to in paragraph 1.0(e) hereof. Where no trade agreement applies, the Purchasing Supervisor will determine the appropriate response time for a Bid Solicitation. In absence of any other measure, a minimum response time of forty (40) days is required for Goods and/or Services valued in excess of three hundred thousand dollars (\$300,000) and for construction Services contracts valued in excess of eight million dollars (\$8,000,000) or such increased sums as required by applicable trade agreements (as they may be amended) from time to time. Response times may be further reduced as follows:

- (a) For open procurements, the minimum response time is reduced to thirty-five (35) days if the procurement notice is posted through Electronic Tendering means, to thirty (30) days if the procurement documentation is made available by Electronic Tendering means from date of publication notice, and further reduced to twenty five (25) days if submission by Electronic Tendering means is accepted.
- (b) The posting period for open procurements may be further reduced to ten (10) days if a notice of planned procurement is published at least

forty (40) days and not more than twelve (12) months in advance of the publication notice of intended procurement.

- (c) Bid posting periods for commercial Goods and/or Services may be reduced to thirteen (13) days if both the publication notice and procurement documentation are published through Electronic Tendering means and may be further reduced to ten (10) days if submissions are received through Electronic Tendering means.
- (d) For selective procurements using a Supplier list, response time may be reduced to ten (10) days by agreement between the municipality and the selected Suppliers.
- (e) Other than situations of Emergency, as herein defined, procurements shall be posted for not less than ten (10) days.

#### **4.7 Confidentiality**

This policy is subject to the MFIPPA. Persons applying this policy should be aware of this legislation when disclosing information received relevant to the issue of Bid Solicitations, Bids, or the Award of Contracts resulting from Bid Solicitations. The Corporation will disclose all information in accordance with MFIPPA.

#### **4.8 Personal Purchases**

No purchase shall be processed for personal items of employees of the Corporation or any member of Council except where permitted by this policy.

#### **4.9 In-house Bids**

Bids from a department or division of the Corporation may be obtained for the procurement of Goods and/or Services in circumstances where the CAO considers it appropriate. Otherwise in-house Bids will not be encouraged. If any Bid Solicitation permits the receipt of in-house Bids, all Suppliers shall be made aware of this fact in the Bid Solicitation documentation. In such situations the following clause, subject to any modifications approved by the Purchasing Supervisor, will be incorporated into the Bid Solicitation document:

*"Suppliers should note that the Corporation has the capacity to supply the need described herein. Consequently, a division(s) of the Corporation has*

*been invited to submit a bid which will be included in our evaluation process."*

In-house Bids will be received and evaluated in the same manner as external Bids. However, the evaluation of such In-house Bids may include an assessment of savings to the Corporation if an in-house Bid is accepted. Every Supplier acknowledges that In-house Bids have potential inherent advantages and waives any objection, complaint or cause of action of any kind to the use, evaluation, or acceptance of any In-house Bid.

#### **4.10 Environmentally Preferred Procurement and Ethically Preferred Goods and Services**

Notwithstanding anything else in this Policy, the purchase of environmentally preferred Goods and/or Services may be targeted by the Corporation and given preference during the evaluation stage of a procurement. In such circumstances, the procurement documents shall outline criteria and weighting which may be used in the evaluation of bids as well as Bidders and their subcontractors which may include in the Corporation's discretion, without limitation, the matters described in the definition of environmentally preferred goods or services as well as life cycle costs.

Notwithstanding anything else in this Policy, the Corporation may in its discretion target ethically preferred goods and or services in any Solicitation and give preference to Suppliers in any Solicitation whose production, distribution, transportation and or delivery or disposal of goods and services meets or exceeds national or provincial standards with respect to employment and human rights. Solicitation documents may set out both evaluation criteria and the weighting the Corporation may give to such criteria in respect of Ethically preferred goods and services.

## **5.0 PROCUREMENT METHODS**

### **5.1 Financial Limitations and Authority Levels for Awards**

- (a) The tables in this Section 5.1:
  - (i) Set out the applicable Bid Solicitation process available, based on the nature of the procurement; and
  - (ii) Establish the position within the Corporation which must approve an Award.

- (b) The amounts in this Section 5.1, value of Goods and/or Services are to be exclusive of HST and delivery charges.
- (c) All procurements of Goods and/or Services must otherwise comply with this policy, including the Council-approved budget or estimate requirements of Section 4.1.

**5.1.1 Competitive and Non-Competitive Procurements within Budget (Tables 1 – 2)**

- (a) If the amount spent on the procurement is within the Approved Budget by Council, and no additional funds are required, the Purchasing Supervisor will include the procurement as part of a quarterly Council Report, if it has a value of \$150,000.01 or more.



**Table 1 - COMPETITIVE PROCUREMENT  
within Budget**

<b>Financial Limits (\$)</b>	<b>Method(s)</b>	<b>Authority Level</b>
<b>Under \$5,000</b>	Low-Value Procurement Credit Card	Administrative Staff as designated by General Manager requisitioning department
<b>\$5,000.01 to \$10,000</b>	Request for Quotation	Supervisor, requisitioning department
<b>\$10,000.01 to \$20,000</b>	Request for Quotation Request for Proposals	Manager, requisitioning department
<b>\$20,000.01 to \$50,000</b>	Request for Quotation Request for Proposals Request for Tender	General Manager, requisitioning department
<b>\$50,000.01 to \$75,000</b>	Request for Quotation Request for Proposals Request for Tender	General Manager, Financial Services
<b>\$75,000.01 to \$150,000</b>	Request for Proposals Request for Tender	CAO
<b>\$150,000.01 or more if within Approved Budget</b>	Request for Proposals Request for Tender	CAO and disclosed in quarterly Report to Council.

**Table 2 - NON-COMPETITIVE PROCUREMENT  
within Budget**

<b>Financial Limits (\$)</b>	<b>Method(s)</b>	<b>Authority Level</b>
<b>Under \$100</b>	Petty Cash	Administrative Staff as designated by Manager of requisitioning department
<b>Under \$5,000</b>	Credit card or Negotiation pursuant to Section 5.14	Manager of requisitioning department
<b>\$5,000.01 to \$50,000</b>	Negotiation pursuant to Section 5.14	General Manager of requisitioning department
<b>\$50,000.01 to \$75,000</b>	Negotiation pursuant to Section 5.14	General Manager, Financial Services
<b>\$75,000.01 or more if within Approved Budget</b>	Negotiation pursuant to Section 5.14	CAO and disclosed in quarterly report to Council.

**5.1.2 Over-Budget Expenditure (Table 3)**

- (a) If the procurement exceeds the Approved Budget by Council between \$75,000.01 to \$250,000, the Purchasing Supervisor will include the procurements approved by CAO in the quarterly Council Report noting the source of funding for the over-expenditure.
- (b) For the procurements that exceed the Approved Budget by Council by \$250,000.01 or more, a separate report shall be submitted to Council prior to award by the Purchasing Supervisor which shall include:
  - (i) a general description of the Goods and/or Services to be procured;
  - (ii) information surrounding the circumstances for exceeding budget;
  - (iii) information on the proposed funding source for the over-expenditure.

**Table 3 - OVER BUDGET EXPENDITURES**

<b>Financial Limits (\$)</b>	<b>Authority Level</b>
Over the budgeted amount to a maximum of \$50,000	General Manager of requisitioning Department
Over the budgeted amount between \$50,000.01 and \$75,000	General Manager, Financial Services
Over the budgeted amount between \$75,000.01 to \$250,000	CAO and disclosed in quarterly report to Council.
\$250,000.01 or more over budgeted amount	Council in a separate report

### 5.1.3 Non-Budgeted Expenditures (Table 4)

Where a requirement exists to initiate a project for which Goods and/or Services are required and funds are not contained within the current year's approved budget to meet the proposed expenditure, then, prior to the commencement of the procurement process approval shall be required as per authority levels in table 4.

- (a) If the procurement value is between \$75,000.01 to \$150,000, the Purchasing Supervisor will include the non-budgeted procurements approved by CAO in the quarterly Council Report noting the source of funding.
- (b) For the procurements of a value of \$150,000.01 or more, a separate report shall be submitted to Council prior to award by the Purchasing Supervisor which shall include:
  - (i) information surrounding the requirement to initiate the procurement process;
  - (ii) a general description of the Goods and/or Services to be procured; and
  - (iii) information on the proposed funding source for the expenditure, which states that funding is both available and accessible.

**Table 4 - NON-BUDGETED EXPENDITURES**

<b>Financial Limits (\$)</b>	<b>Method(s)</b>	<b>Authority Level</b>
<b>Under \$10,000</b>	Low-Value Procurement Credit Card Request for Quotation Negotiation pursuant to Section 5.14	Manager of requisitioning department
<b>\$10,000.01 to \$50,000</b>	Request for Quotation Request for Proposals Request for Tender Negotiation pursuant to Section 5.14	General Manager of requisitioning department
<b>\$50,000.01 to \$75,000</b>	Request for Quotation Request for Proposals Request for Tender Negotiation pursuant to Section 5.14	General Manager, Financial Services
<b>\$75,000.01 to \$150,000</b>	Request for Proposals Request for Tender Negotiation pursuant to Section 5.14	CAO and \$75,000.01 to \$150,000 disclosed in quarterly report to Council.
<b>\$150,000.01 or more</b>	Request for Proposals Request for Tender Negotiation pursuant to Section 5.14	Council in a separate report
<b>Emergency and Urgent Procurements \$75,000.01 or more</b>	Pursuant to Section 5.14.1 and 5.14.2	CAO and disclosed in quarterly report to Council.

## **5.2 Purchasing Card / Credit Card**

A credit card (purchasing card) is a mechanism to provide departments with a simplified, direct purchasing method for the purchase and payment of Goods and/or Services. The credit card (where possible) will be used instead of petty cash.

### **5.2.1 General Requirements**

- (a) Cardholders must be designated employees of the Corporation. The General Manager shall approve in their discretion which employees are eligible to be cardholders. The General Manager, Financial Services, will have final approval regarding the issuance of all corporate credit cards.
- (b) A municipal department responsible for any purchase shall ensure that Goods and/or Services acquired using a credit card is within the approved budget for within the current operating year.
- (c) All credit cards will have a predetermine "single transaction limit", and a "monthly credit limit" as determined and authorized by the General Manager of the applicable department and approved by the General Manager, Financial Services.
- (d) Financial Services shall monitor the use of credit cards and ascertain that the spending limits approved fall under the approved format.
- (e) Every cardholder shall be informed in writing of their responsibilities and the restrictions regarding the use of the credit card and shall agree to them in writing.
- (f) By accepting to act as a cardholder, the cardholder authorizes the Corporation access to the account file, as well as to have both internal and external audits performed on the file. The Cardholder is deemed to accept that the Corporation can perform (or have a third party perform) audits at any time and reason within its discretion.
- (g) Every cardholder shall review any associated credit card terms and conditions from the issuer and ensure that they abide by such terms and conditions.
- (h) No Elected Official or employee shall gain personal benefit through the collecting of reward points, such as, but not limited to, air miles, gasoline company points, grocery store points, etc. while making a purchase on behalf of the Corporation. Any rewards points that accrue from the use of a cardholder's purchasing card shall accrue or be converted to the use and benefit of the City of Cornwall.

## 5.2.2 Prohibitions

- (a) The credit card shall not be used:
  - (i) when a contract is in effect for the Goods and/or Services (unless pre-authorized by the Purchasing Supervisor);
  - (ii) for personal purchases of any kind;
  - (iii) for information technology and office automation acquisitions or communications Services (unless pre-authorized by the IT Manager);
  - (iv) for any purchase of Goods and/or Services that may be prohibited under any other policy approved by Council;
  - (v) for cash advances;
  - (vi) for telecommunication equipment such as telephones, cellular phones. Batteries for cell phones and cell phone accessories may be purchased with a credit card;
  - (vii) for splitting of total purchase cost, singly or between cardholders to avoid transaction limits;
  - (viii) for third party client purchases;
  - (ix) for clothing (small dollar value items are to be approved by Purchasing Services prior to purchasing);
  - (x) for office equipment, office furniture (small dollar value items are to be approved by Purchasing Services prior to purchasing);
  - (xi) for alcohol purchases, unless approved by the General Manager of the Department; and
  - (xii) for souvenirs.
- (b) The credit card is not transferrable to any other employee and shall not be used by any person other than the authorized cardholder.
- (c) Cardholders will be held liable for any misuse or willful disregard of policies or operating procedures that result in a loss of money, fraud or collusion.
- (d) No cardholder may accept cash or a cheque from a Supplier who is making a refund pertaining to a transaction previously charged to a

credit card account. The Supplier in all cases must issue a credit voucher.

- (e) Financial Services will review the Purchasing Card Statements and documentation and advise the Supervisor of any employee who has not adhered to this policy.
- (f) Cardholders who do not adhere to the requirements set out in this policy, may have their credit card privileges limited and/or revoked or be subject to other discipline up to and including termination.
- (g) The Corporation may terminate access to a Purchasing Card or its associated account or permission to use a Purchasing Card at any time for any reason in its absolute discretion.

### **5.2.3 Administration, Reconciliations and Audits**

- (a) Every month, cardholders must provide a transaction report including all receipts of all transactions detailing the itemized purchases to their Supervisor or Manager for approval.
- (b) Cardholders may not approve their own Statement.
- (c) Cardholders are required to attach to the Statement all sales receipts, packing slips and any other documents related to the transactions listed on the credit card statement in the order as they appear on the statement.
- (d) If a receipt cannot be obtained after a reasonable effort, the Cardholder shall complete the Lost Receipt Declaration Form. Continued failure to provide receipts may result in disciplinary action up to and including termination of employment.
- (e) The Cardholders' Supervisor or Manager shall review the monthly reconciliation of the Statements, and send them to the Financial Services by the prescribed deadline.
- (f) The Corporation may conduct internal or external audits of Cardholder purchases, the Logs and associated receipts/documentation at any time and for any reason at its discretion.

## 5.2.4 Cardholder Responsibilities

- (a) Cardholders are responsible for the following:
- (i) Adhering to all conditions and restrictions imposed on the Purchasing Card by the Corporation and the issuing bank.
  - (ii) Completing the Purchasing Card Cardholder Agreement Form acknowledging, and submitting that they have read, understood and accept the conditions, once they have received the card.
  - (iii) Ensuring that the Purchasing Card and other documents bearing the Card number are kept in a secure location.
  - (iv) Immediately notifying the issuing bank and the Deputy Treasurer of the loss or theft of the Card.
  - (v) Informing the Deputy Treasurer of the cancellation, or change in the employee's area of responsibility.
  - (vi) Returning the Card to the Deputy Treasurer for cancellation, as appropriate.
  - (vii) Verifying the amount of Harmonized Sales tax (HST) paid, to allow for accurate rebates as applicable for the Corporation.
  - (viii) Resolving disputed but not fraudulent charges. Notify the Deputy Treasurer regarding potential fraudulent purchases.
  - (ix) Keeping supporting documentation (i.e., sales slips, cash register and credit card receipts, Supplier notices, etc.) related to all purchases made with the Purchasing Card for reconciliation, account verification and audit purposes. If no receipt is available, this must be noted in the Log.
  - (x) Completing a transaction report on a monthly basis, for all purchases made with the Purchasing Card.
  - (xi) For over-the-counter transactions, or services rendered, the cardholder will certify that the goods have been received when goods are shipped, the cardholder must ensure that the shipment matches the order or sales slip.
  - (xii) For telephone, online and over-the-counter orders, the cardholder should have the Supplier provide a copy of the



detailed receipt or instruct the Supplier to supply a copy of the receipt with the shipment.

### **5.3 Low-Value Procurements**

Where the Procurement Value does not exceed \$5,000, the Corporation may procure by obtaining one or more informal quote(s) from Suppliers. Quotes may be obtained through several informal methods, including public advertisements, Supplier catalogs, or by contacting Suppliers directly. Departments may conduct Low-Value Procurements independently but are required to keep all supporting documentation pertaining to the procurement.

### **5.4 Request for Quotations**

- (a) When Quotations are sought from potential Suppliers the request should contain a list or description of all relevant Goods and/or Services intended to be purchased.
- (b) When a Request for Quotations is used, a minimum of three (3) written quotations shall be required before Purchasing Services makes an Award.
- (c) Where it is impractical to request a minimum of three (3) written quotations or where three written quotations are not received, an Award may be made with the approval of the Purchasing Supervisor.
- (d) Requests for Quotations may be issued through a public process such as Electronic Tendering or depending on the value of the request by placing a notice in the appropriate print publications, or by "Invitation Only" to select Suppliers with proven expertise and experience.
- (e) The Manager or Supervisor of the requisitioning department shall be responsible to review the submissions and to verify that all requirements of the Request for Quotation are met. Once a recommendation is made by the Manager or Supervisor, the Purchasing Supervisor may issue a Contract, including a Purchase Order, to the selected Supplier.
- (f) Unless terms for a Request for Quotation states otherwise, the issuance of a Request for Quotation or receipt of a Request for Quotation shall not result in nor create any preliminary contractual or other obligations or duties on the Corporation.

## 5.5 Request for Tender

- (a) Requests for Tender can be used for the procurement of Goods and/or Services of any value.
- (b) Requests for Tenders may be used where the Goods and/or Services sought are able to be fully defined or specified at the time of the request.
- (c) A minimum of three (3) written Bids are to be requested wherever possible and practicable.
- (d) Where it is impractical to request a minimum of three (3) written Bids, or where three (3) written Bids are not received, the approval of the Purchasing Supervisor is required.
- (e) Requests for Tenders may be issued through a public process such as Electronic Tendering or depending on the value of the request by placing a notice in the appropriate print publications, or by "Invitation Only" to select Suppliers with proven expertise and experience.
- (f) Submissions in response to Request for Tenders are not formally opened in public, nor is it necessary to publicly disclose the prices or terms of a submission at the time of submission or Bid opening.
- (g) Submissions will be electronically sealed by the bidding system until the closing date and time.
- (h) Request for Tenders may or may not include pre-qualification or Expression Interest.
- (i) After Bids are opened they shall be reviewed by the Purchasing Supervisor to determine whether:
  - (i) all requirements of the tender have been met;
  - (ii) all unit prices have been correctly extended; and
  - (iii) the extensions have been correctly totaled.
- (j) Tender Awards shall generally, but not exclusively, be made to the lowest Bidder provided that the Bid meets requirements and specifications of the tender. However, in determining the lowest responsive Bidder, consideration may be given, in addition to price, to the Supplier's:

- (i) ability, capacity, skill and experience to meet the requirements of the procurement;
  - (ii) financial capacity, commercial and technical abilities of the Supplier;
  - (iii) the quality, availability and adaptability of the Goods and/or Services to the particular use required;
  - (iv) past performance and past experience;
  - (v) all criteria set out in the Bid Solicitation;
  - (vi) such other criteria that the Purchasing Supervisor, in consultation with the General Manager, Financial Services, determines is appropriate in the circumstances.
- (k) Unless terms of a Request for Tender states otherwise, the issuance of a Request for Tender or receipt of a submission in response to a Request for Tender shall not result in or create any preliminary contractual or other obligations or duties on the Corporation.
- (l) Following approval of the Award under a Request for Tenders, the Purchasing Supervisor shall inform the successful Supplier that its Bid has been accepted and shall notify all other Suppliers of the Award, the name of the successful Supplier and such other information required to be disclosed by any applicable trade agreement.
- (m) Following approval of the Award, the results of the tender and such other information required to be disclosed by any applicable trade agreement are to be published in the same manner as the Request for Tender or such other method as approved by the Purchasing Supervisor.

## **5.6 Request for Proposals**

- (a) Requests for Proposals can be used for a procurement of Goods and/or Services of any value.
- (b) Request for Proposals shall generally be used when:
  - (i) the requirements for Goods and/or Services cannot be precisely defined;

- (ii) the expectation is that Suppliers may propose solutions to arrive at the result desired by the Corporation;
  - (iii) the evaluation criteria to determine best value may include more than factors such as price; and/or
  - (iv) the Goods and/or Services are of a unique or complex nature.
- (c) Requests for Proposals shall contain the Terms and Conditions developed by the department in consultation with Purchasing Services and approved by the Purchasing Supervisor.
- (d) Requests for Proposals shall clearly establish required project scope, outcome and/or requirements.
- (e) Requests for Proposals shall clearly outline the technical and pricing evaluation criteria and applicable ratings assigned that will form the basis of the contract award. The bids shall be evaluated based on those criteria and weighting, subject to amendments to the same released by an Addendum. The effectiveness of the proposal is measured against a set of evaluation criteria, which may include but is not limited to: approach, experience and qualifications, methodology, past performance, scheduling, demonstration of the equipment, price and/or strategy.
- (f) A minimum of three (3) written proposals are to be requested wherever possible and practicable before an Award is made under a Request for Proposals.
- (g) Where it is not practical to request a minimum of three (3) written proposals or where three (3) written proposals are not received, approval of the Purchasing Supervisor is required.
- (h) Requests for Proposals may be issued through a public process such as Electronic Tendering, depending on the value of the request by placing a notice in the appropriate print publications, electronically or by "Invitation Only" to select Suppliers with proven expertise and experience.
- (i) Request for Proposals are not formally opened in public, nor is it necessary to publicly disclose the prices or terms of a submission in response to a Request for Proposals at the time of submission or Bid opening.

- (j) Requests for Proposals may or may not include a pre-qualification process or an Expression of Interest. Depending on its terms, the process may involve negotiations subsequent to the submission of proposals on any or all of the specifications, contract terms, and prices, including without limitation, best and final offers from one or multiple bidders as outlined in a Request for Proposals document. Alternatively, the Corporation may Award a contract on the basis of initial offers received, without discussion.
- (k) After opening, each Bid shall be reviewed by the Purchasing Supervisor to determine whether all mandatory requirements of the Bid Solicitation have been met, in which case the Bid will be distributed to the Selection Committee.
- (l) A Selection Committee will be established prior to the closing time of the Request for Proposal and shall comprise of a minimum of two representatives with the relevant expertise from the initiating department and should include the Purchasing Supervisor.
- (m) A minimum of one representative from the Information Technology and Telecommunications Division of the Corporation must be on every Selection Committee for procurements involving software development that will interact with the Corporation's mainframe computer.
- (n) In order to maintain integrity and accountability in the procurement process, members of a Selection Committee shall only be comprised of individuals who are employees of the Corporation and/or employees of the other public body on behalf of whom the Corporation is procuring.
- (o) The Selection Committee will review all proposals based on the evaluation criteria, reach consensus regarding the final rating of the proposal and ensure that the final rating, with supporting documents, are kept in the procurement file with the Purchasing Supervisor. Unless the terms for a Request for Proposal states otherwise, the issuance of a Request for Proposal or receipt of a submission in response to a Request for Proposal shall not result or create any preliminary contractual or other obligations or duties on the Corporation.
- (p) Following approval of an Award, the Purchasing Supervisor shall, subject to the Corporation's reserved rights and the terms of the applicable trade agreements, inform the successful Supplier that its

Bid has been accepted and notify all other prospective Suppliers of the Award, the name of the successful Supplier and such other information required to be disclosed by any applicable trade agreement.

- (q) Following approval of the Award, the results of the procurement process and such other information required to be disclosed by any applicable trade agreement are to be published in the same manner as the Request for Proposal or such other method approved by the Purchasing Supervisor.

## **5.7 Other Processes**

### **5.7.1 Request for Supplier Qualifications**

- (a) A Request for Supplier Qualification may be used for selective Bid Solicitations to establish a list of pre-qualified Suppliers that will later be eligible to respond to:
  - (i) a specific solicitation; or
  - (ii) a multi-use list.
- (b) A call-up protocol shall be disclosed in the Request for Supplier Qualifications which sets out the subsequent selection process and the general terms and conditions that will govern any future work assignments and, where applicable, any proposed framework pricing. The call-up protocol contained in a Request for Supplier Qualifications shall also disclaim any contractual commitment to call-up any specific amount of Goods and/or Services, or other obligation of the Corporation to call on any Supplier on the specific or multi-use list to provide Goods and/or Services.
- (c) Approval of any subsequent Award to a Supplier under the Request for Supplier Qualifications call-up protocol shall be made in accordance with the authority to Award open competitive Bid Solicitations.
- (d) When using a multi-use list, the Corporation shall allow Suppliers to apply at least annually, or if a Request for Supplier Qualification is published by Electronic Tendering means, it is made available continuously, for inclusion in accordance with the notice of intended procurement for the

Request for Supplier Qualifications. Notwithstanding the foregoing, if a multi-use list will be valid for three years or less, the Corporation may publish the Request for Supplier Qualification once only, at the beginning of the period of the validity of the list provided the Request for Supplier Qualification:

- (i) states the period of validity and that further Request for Supplier Qualification will not be published; and
- (ii) is published by Electronic Tendering means and is made available continuously during its period of validity.

### **5.7.2 Information Gathering**

- (a) Prior to issuing a competitive Bid Solicitation, the following solicitation documents may be issued for the purpose of gathering information:
  - (i) a Request for Information (RFI); or
  - (ii) a Request for Expressions of Interest (RFEI).
- (b) The receipt of a submission in response to a Request for Information or a Request for Expressions of Interest does not create a legal contract or legal duties or obligations on the part of the Corporation and the submission of a response to a Request for information or a Request for Expressions of Interest shall be deemed to be a waiver by a respondent of any claim, remedy, cause of action or complaint.
- (c) The Corporation shall not use a response from a Request for Information or Request for Expressions of Interest to pre-qualify potential Suppliers and shall not use the response to influence the chances of the participating Suppliers from becoming the successful proponent in any subsequent opportunity.

### **5.8 Purchase by Negotiation**

- (a) The Purchasing Supervisor may conduct negotiations with Suppliers if:

- (i) the Bid Solicitation indicates the intent to conduct negotiations; or
  - (ii) it appears from the evaluation that no Bid is obviously the most advantageous in terms of the specific evaluation criteria set out in the Bid Solicitation.
- (b) The Purchasing Supervisor shall ensure that any elimination of Suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the Bid Solicitation, and shall:
  - (i) if negotiations are conducted concurrently with multiple Suppliers, provide a common deadline for the participating Suppliers to submit any new or revised Bids; or
  - (ii) if negotiations are conducted consecutively with one Supplier at a time, provide a deadline for the participating Supplier to submit any new or revised Bid prior to proceeding to negotiate with the next ranked Supplier.

In the course of negotiations, the Corporation shall not give an unfair advantage to, or discriminate against, a Supplier.

## **5.9 Two-Stage Process**

- (a) The two-stage Bid process may be used where it is deemed that the technical and qualitative information of a given Bid Solicitation is to be evaluated without being influenced by prior knowledge of the corresponding pricing information. The "two-stage" Bid process may be used when a Request for Proposal is issued. The Corporation shall advise all Suppliers when the two-stage Bid process is to be used.
- (b) The two-stage process means the proposal is submitted with the pricing sealed separately. The pricing is un-sealed if the Proponent meets the minimum threshold score listed in the RFP document.
- (c) In a two-stage Bid process, each Supplier must submit qualitative and technical information separately from pricing information. In instances where physical copies of bids are accepted by the Corporation, the qualitative and technical information must be placed in a sealed envelope, and the pricing information must be provided in a separate sealed envelope. In instances where electronic bids are submitted to the Corporation, bidders must submit the qualitative and technical information separately from their pricing information, in



accordance with the electronic submission service's process for "sealing" documents.

- (d) The technical submission shall be opened and evaluated by the Selection Committee and rated according to a pre-determined point system. Only the pricing information of those Bids meeting the specifications of the Request for Proposal shall be opened and evaluated. If a proposal is not eligible to proceed to price evaluation, the Supplier shall be disqualified from further consideration and pricing submission shall not be opened.

### **5.10 Tied Bids**

If the lowest compliant Bids from two or more Bidders are identical in cost or unit price, the Purchasing Supervisor, in consultation with the General Manager, Financial Services and the requesting department, are authorized to enter into negotiations with the Suppliers who have submitted the identical prices in an attempt to resolve the tied Bids. The Corporation, in its discretion, may consider any of the following options in the negotiations:

- (a) awarding the work to multiple Suppliers, if practical;
- (b) basing the price on an alternative factor submitted in the Bids i.e., several items may have been bid, but only one was the price used to Award;
- (c) providing an opportunity for the tied Suppliers to submit new prices;
- (d) In the case of tied Bids between more than two Suppliers, the successful Bidder may be determined with reference to which Bidder is able to supply the goods or services contracted for at the earliest date, if the Bid Solicitation documents provide for this method of tie-break;
- (e) in the case where two Suppliers are tied, the successful Bidder may be determined by a coin toss; or
- (f) in the case of tied Bids between more than two Suppliers, the successful Bidder may be determined by the drawing of a name.

### **5.11 One Bid & Bids Exceeding Budget**

- (a) In any of the following circumstances, the Purchasing Supervisor, in consultation with the General Manager, Financial Services, may

choose to either cancel the Bid Solicitation and/or reissue the Bid Solicitation at a later date:

- (i) when only one compliant Bid has been received;
  - (ii) when the lowest compliant Bid exceeds the available project budget for the Goods and/or Services;
  - (iii) when all Bids received are non-compliant with the specifications or quotation terms and conditions, or
  - (iv) when it is not in the public interest to award a contract.
- (b) Where only one compliant Bid has been received as outlined in Section 5.11(a)(i), the Purchasing Supervisor, in consultation with the requesting department, may also accept the Bid as submitted or negotiate changes required to achieve an acceptable Bid.
- (c) Where the lowest compliant Bid exceeds the available project budget as outlined in Section 5.11(a)(ii), the Purchasing Supervisor, in consultation with the requesting department, may also proceed to negotiate changes to pricing, terms or conditions with the lowest compliant Supplier to achieve an acceptable Bid.
- (d) Where all Bids received are non-compliant as outlined in Section 5.11(a)(iii), it is prudent to cancel the solicitation process and recall Bids if time permits. However, where time does not permit, the Purchasing Supervisor, in consultation with the requesting department, may make changes to the specifications, terms or conditions that were set out in the Bid Solicitation. In such cases all Suppliers who provided a response to the Bid Solicitation before the closing date shall have a further opportunity to present a new Bid based on the revised specification, terms or conditions.

## **5.12 Bid Withdrawal**

Any prospective Supplier who has submitted a Bid may request that it be withdrawn. Withdrawal requests shall be directed to the Purchasing Supervisor in writing. Withdrawal shall be allowed if the request is made prior to closing. Generally, Bids withdrawn prior to closing shall be returned unopened to the Supplier. Whether Bids may be withdrawn post closing on any Bid Solicitation will be governed by the terms of that Bid Solicitation.

### **5.13 Cancellation of a Bid Solicitation**

A General Manager with the concurrence of the Purchasing Supervisor and the General Manager, Financial Services may cancel a Bid Solicitation at any time for any reason, including that it is not in the public interest to award a contract, provided the contract has not yet been awarded.

If a Bid Solicitation is cancelled prior to the award of contract, the Corporation may decline to disclose the prices of the Bids received.

### **5.14 Non-Competitive Procurements**

When the Purchasing Supervisor in consultation with the General Manager, Financial Services determines it is advisable, the Corporation may procure Goods and/or Services pursuant to a non-competitive procurement process of any nature acceptable to it. Without limiting the generality of the matters listed in (a) to (m) below, the following are circumstances where a non-competitive procurement process may be used:

- (a) no Bids were submitted, or no Suppliers asked to participate in a procurement process;
- (b) no Bids were submitted that conformed with the essential requirements of the tender documentation;
- (c) no Suppliers satisfied the conditions for participation of the Bid Solicitation;
- (d) the submitted Bids in an existing procurement process were collusive;
- (e) if the Goods and/or Services can be supplied only by a particular Supplier and no reasonable alternative, or substitute Goods and/or Services exist for any of the following reasons:
  - (i) the requirement is for a work of art;
  - (ii) the protection of patents, copyrights, or other exclusive rights;
  - (iii) due to an absence of competition for technical reasons;
  - (iv) the supply of Goods and/or Services is controlled by a Supplier that is a statutory monopoly;

- (v) to ensure compatibility with existing Goods, or to maintain specialized Goods that must be maintained by the manufacturer of those Goods or its representative;
  - (vi) work is to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work; or
  - (vii) work is to be performed on a leased building or related property, or portions thereof, that may be performed only by the lessor;
- (f) for additional deliveries by the original Supplier of Goods and/or Services that were not included in the initial procurement, if a change of Supplier for such additional Goods and/or Services:
  - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, Services, or installations procured under the initial procurement; and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the Corporation;
- (g) for Goods purchased on a commodity market;
- (h) if the Corporation procures a prototype or a first Good or Service that is developed in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first Good or Service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the Good or Service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (i) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular Suppliers;
- (j) if a contract is awarded to a winner of a design contest provided that:
  - (i) the contest has been organized in a manner that is consistent with the principles of this policy, in particular relating to the publication of a tender notice; and

- (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner;
- (k) if Goods and/or Services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest; or
- (l) such other circumstances as may be authorized by Council.

For purchases made pursuant to Table 2 in Section 5.14 that are greater than \$75,000, the Purchasing Supervisor will include the details of the circumstances of the purchase in the quarterly report to Council.

#### **5.14.1 Emergency Procurements**

For the purposes of this section, "Emergency" means an event or occurrence that the General Manager deems an immediate threat to:

- (a) Public Health;
- (b) The maintenance of essential City service; or
- (c) The welfare and protection of persons, property, or the environment; and the event or occurrence necessitates the immediate need for Goods and/or Services to mitigate the emergency and time does not permit for a competitive procurement process.

In an Emergency, the Procurement of Goods and/or Services may be authorized without a competitive process. The requesting Department shall contact the Purchasing Supervisor, if possible, for direction on an appropriate Procurement process and possible sources of supply. A list of pre-qualified Suppliers or Vendors of Record will be used to select Suppliers, whenever possible.

The General Manager shall notify the CAO, General Manager, Financial Services and the Purchasing Supervisor of all emergency purchases within 24 hours following the purchase(s).

Upon return to normal business operations, Emergency Purchases in excess of \$75,000 will be reported to Council, as information, to inform Council of the nature and cause of the Emergency and actions taken to resolve the Emergency.

If a formal declared Emergency exists, the Purchasing Supervisor, in conjunction with the General Manager, Financial Services and the CAO will determine the appropriate limits and procedure to be followed for P-Cards, Quotations, Proposals and Tenders, taking appropriate steps to obtain the necessary goods and/or services.

### **5.14.2 Urgent Procurements**

For the purposes of this section, an “Urgent Procurement” is a procurement that is strictly necessary to complete for reasons of urgency brought about by events which were unforeseeable for the Corporation and the goods and services which were the subject of the procurement could not be obtained in time using open tendering.

An Urgent Procurement may be authorized without a competitive process. The requesting Department shall contact the Purchasing Supervisor, for direction on an appropriate Procurement process and possible sources of supply. A list of pre-qualified Suppliers or Vendors of Record will be used to select Suppliers, whenever possible.

The General Manager shall notify the CAO, General Manager, Financial Services and the Purchasing Supervisor of all Urgent Procurements within 24 hours following the procurement.

Urgent Procurements in excess of \$75,000 will be reported to Council, as information, to inform Council of the nature and cause of the urgency, what unforeseeable circumstances caused the need for the Urgent Procurement, and why the goods and services could not be obtained in time using open tendering.

### **5.15 Exercise of Contract Renewal Options**

Where a Contract contains an option for renewal, the Purchasing Supervisor and the applicable Manager or Supervisor will consult on whether such renewal option should be exercised provided that:

- (a) the Supplier's performance in supplying the Goods and/or Services is considered to have met the requirements of the Contract;
- (b) the Purchasing Supervisor agrees that the exercise of the option is in the best interest of the Corporation, subject to the levels of authority set out in Section 5.1 of this policy;

- (c) funds are available in appropriate accounts within the Council approved estimates;
- (d) the Corporation may consider any other factor it considers relevant.

The Manager or Supervisor shall provide the Purchasing Supervisor with an explanation, in writing, as to why exercising the renewal option is in the best interest of the Corporation and include comment on applicable market situation and trends, if any. Any decision to exercise a renewal option shall be in the Corporation's sole discretion.

Where the Corporation exercises an option to renew and circumstances change such that the goods or services are no longer necessary or in demand, or the Corporation's budget can no longer accommodate such expenses, then the Corporation shall be entitled to terminate any renewal after it is exercised without cost to the Corporation.

## **5.16 Collaborative Procurement**

In lieu of a Corporation-run competitive process, the Corporation may participate with a Buying Group in collaborative procurement initiatives where it is in the best interests of the Corporation to do so, with the approval of Procurement Services, and where:

- (a) Combining the volume of Goods and/or Services to be purchased by the Corporation and the Buying Group would result in the Best Value for the Corporation;
- (b) Where the Buying Group is initiating the Procurement, the Procurement process will be conducted in accordance with the procurement policies or by-laws of the Buying Group;
- (c) Where the Corporation is initiating the Procurement, the Procurement process will be conducted in accordance with this Policy; and
- (d) Legal Services shall be consulted to determine the appropriate agreements required to conduct such initiatives with the other Buying Group.

The Buying Group initiating the Procurement may determine the Award. If the Award is not in the best interest of the Corporation or is in violation of this Policy, the Purchasing Supervisor may decline acceptance of the Award.

## 5.17 Disposal of Surplus Goods

- (a) Where any Goods, equipment or inventory stock are surplus, obsolete or not repairable, they shall be identified as surplus by the disposing department to the Purchasing Supervisor. The Purchasing Supervisor shall then circulate a list of surplus assets prior to the sale or disposal of such items.
- (b) If Goods, equipment or inventory stock which are identified as surplus by the disposing department are not required by any other departments, then the Goods may be declared surplus by the Purchasing Supervisor.
- (c) Goods, equipment or inventory stock declared surplus by the Purchasing Supervisor shall be disposed of by the Corporation in the following manner, set out by order of priority:
  - (i) trade-in as part of the procurement of other similar Goods being acquired by the Corporation;
  - (ii) be sold by external advertisement, formal request, auction or tender (where it is deemed appropriate, a reserve bid may be established);
  - (iii) donation to a not-for-profit charitable organization that is registered as such with the Canada Revenue Agency. Where there are several charitable organizations who have expressed interest in receiving a donation in the same items, the successful organization shall be selected by negotiation;
  - (iv) classifying as waste and recycling, scrapping, dismantling, destroying and/or disposing; and/or
  - (v) in any other way determined by the Purchasing Supervisor.
- (d) No disposition of such good(s) shall be made to employees, elected officials, or their family members unless such good(s) are sold through external advertisement, formal request, auction or public tender.
- (e) The net proceeds of the disposal of surplus assets shall be credited to the Corporation's appropriate reserve account or used to fund the replacement Goods, except if Council has otherwise directed.



## **5.18 Leasing**

In certain circumstances, it may be economically advisable for the Corporation to enter into a Financing Lease to acquire the rights to use capital equipment rather than an outright purchase. In which case, the Corporation will follow the Municipal Act, 2001, and the Ontario Regulation 653/05 or as amended in addition to the other applicable requirements of this policy and the trade agreements.

## **5.19 Standardization**

Standardization identifies specific procedures, documents, requirements, equipment, or manufacturers that best fit the Corporation's needs and may limit Suppliers. The Corporation may apply the following standardization provisions for procurements which are not subject to the requirements of any applicable trade agreements.

- (a) All standardization recommendations must be approved in accordance with authority levels in Section 5.1 and have a reasonable time limitation of no longer than five (5) years before a re-evaluation.
- (b) Following approval of the standardization, procurements (including any non-competitive procurements) may proceed with specific products, equipment, or Suppliers within the time limitation no longer than five (5) years.
- (c) Authorization to Award Contracts related to a Procurement of standardized, goods or services shall be in accordance with the authority levels (within the thresholds and method of procurement employed) and will be reported in accordance with Section 5.1.

## **6.0 SUPPLIER CONDUCT**

### **6.1 Honesty and Good Faith**

- (a) Suppliers must respond to the Corporation's Bid Solicitations in an honest, fair and comprehensive manner that accurately reflects their capacity to satisfy the requirements stipulated in the Bid Solicitation.
- (b) Suppliers shall submit a Bid only if they know they can satisfactorily perform all obligations of the proposed Contract in good faith.

- (c) Suppliers shall alert the Purchasing Supervisor to any factual errors, omissions and ambiguities that they discover in a Bid Solicitation as early as possible in the process to avoid the Bid Solicitation being cancelled. The failure of a Supplier to identify such error or omission or ambiguity prior to Bid closing shall result in the Supplier having deemed to accept such error, omission or ambiguity.
- (d) Suppliers and their subcontractors shall at all times comply with all federal, provincial, municipal and territorial laws, this Policy and the Supplier Code of Conduct and Discipline Policy. Failure to comply with applicable law, this Policy or the Corporation's Supplier Code of Conduct and Discipline Policy may lead to the disqualification of a Supplier under any Solicitation, or an exclusion from eligibility to bid on or be awarded any contract with the Corporation.

## **6.2 Confidentiality**

Suppliers shall maintain confidentiality of all confidential information that the Corporation discloses to the Supplier as part of the Bid Solicitation process.

## **6.3 Conflict of Interest**

Suppliers must declare and fully disclose any actual or potential Conflict of Interest related to the preparation of their Bid or where the Supplier foresees an actual or potential Conflict of Interest in the performance of the Contract, including, without limitation:

- (a) engaging any family members, friends or private business associates of any public office holder which may have, or appear to have, any influence on the procurement process, or subsequent performance of the Contract;
- (b) prior involvement by the Supplier or affiliated persons in developing the technical specifications or other evaluation criteria for the Bid Solicitation;
- (c) prior access to confidential Corporation information by the Supplier, or affiliated persons that is related to the Bid Solicitation and that was not readily accessible to other prospective Suppliers or other information of the Corporation that was not readily accessible to other Suppliers or their affiliated persons;

- (d) the Supplier or its affiliated persons are indebted to or engaged in past, ongoing or proposed litigation with the Corporation in relation to a previous contract.

#### **6.4 Unethical Bidding Practices**

No Supplier may discuss or communicate, directly or indirectly, with any other Supplier or their agents, officers, directors or employees about the preparation of the Supplier's submission including, without limitation, any connection, comparison of figures or arrangements with, or knowledge of any other Supplier making a submission for the same work. Suppliers shall disclose to the Purchasing Supervisor any affiliations or other relationships with other Suppliers that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.

#### **6.5 Illegal Conduct**

A Supplier shall disclose to the Corporation any previous convictions, findings of guilt, misconduct or transgression by itself or its affiliated persons in relation to any conduct prohibited by the Criminal Code of Canada, (including without limitation for collusion, bid-rigging, price-fixing, bribery, fraud or other behaviour of any kind), prohibited under the Competition Act, or by any other federal, provincial, municipal or territorial law or regulation. The Corporation may consider any such information in the assessment of a bid under any Solicitation including as grounds not to award a Supplier a contract or as a basis for disqualification under the Corporation's Supplier Code of Conduct and Discipline Policy

#### **6.6 Litigation**

Suppliers shall disclose upon request any and all litigation, proceedings, matters, or investigations in which they, or any of their affiliated persons or subcontractors are involved or have been involved (for period of time specified by the Corporation) in the Superior Court of any province or territory, the Federal Court of Canada, or before any federal, provincial, municipal or territorial tribunal, board, commission or investigative body agency or police authority. The Corporation shall have the right to inspect and audit any document or thing associated with such matters. Suppliers will provide the Corporation with access to all documents related to such matter(s) or where necessary, a written consent to the Corporation to allow it to receive any and all information in relation to such matters from any third party. The involvement of a Supplier in any such matter may be considered by the Corporation as grounds not to award a Supplier a

contract under any Solicitation, or as grounds for disqualification of a Supplier for eligibility to bid on or be awarded any contract with the Corporation under its Supplier Code of Conduct and Discipline Policy.

## **6.7 Interference**

- (a) No Supplier may lobby, threaten, intimidate, harass, or otherwise interfere with any Corporation employee or public office holder in relation to their procurement duties or otherwise communicate with any employee or agent of the Corporation in a manner inconsistent with the terms of a Bid Solicitation. No Supplier may likewise lobby threaten, intimidate, harass, or otherwise interfere with an effort by any other Supplier to respond to a Bid Solicitation or to perform any contract awarded by the Corporation.
- (b) No Supplier shall offer gifts, favours or inducements of any kind to the Corporation, or its employees, agents or public office holders, or otherwise attempt to influence or interfere with their duties in relation to the procurement process or management of a Contract.

## **6.8 Misrepresentation**

Suppliers are prohibited from misrepresenting their relevant experience and qualifications in relation to any Bid Solicitation and must acknowledge that the Corporation's process of evaluation may include a review of information provided by the Supplier's references as well as records of past performance, past experience or reputation on previous contracts with the Corporation or other public or private bodies or such other information as is available from any other source.

## **6.9 Prohibited Communication during the Bid Solicitation**

No Supplier, or affiliated person, may discuss or communicate either verbally, or in writing, with any employee, public office holder, or the media in relation to any Bid Solicitation between the time of the issuance of the Bid Solicitation to the Award and execution of final form of Contract. All Supplier communications shall be with the Purchasing Supervisor or the employee specifically designated for that purpose in the Bid Solicitation.

## **6.10 Failure to Honour Bid**

Suppliers shall honour their Bids, except where they are permitted to withdraw their Bids in accordance with this Policy, the terms of a Bid Solicitation, or the process disclosed in the Bid Solicitation. Suppliers shall not refuse to enter into a Contract if they have not withdrawn their bid in accordance with this Policy, the terms of a Bid Solicitation, or the process disclosed in the Bid Solicitation or refuse to fully perform the Contract once their Bid has been accepted by the Corporation.

## **6.11 Supplier Performance**

- (a) Suppliers shall fully perform their Contracts with the Corporation and follow any reasonable direction from the Corporation to cure any default.
- (b) Suppliers shall be fully responsible for the conduct of their employees, agents and subcontractors and shall ensure that any employees, agents and subcontractors fully perform all relevant terms and conditions of the Contracts with the Corporation as applicable..
- (c) No Supplier shall in the performance of a Contract with the Corporation fail to perform the terms and conditions of the Contract satisfactorily, including, without limitation, fail to comply in any way with this Policy or any other of the Corporation's applicable policies, including, but not limited to:
  - (i) Supplier Code of Conduct and Discipline Policy;
  - (ii) Harassment in the Workplace Policy
  - (iii) Workplace Violence Policy
  - (iv) Integrated Accessibility Policy
  - (v) Information Technology Polices, andas the same may be amended from time to time.
- (d) The Corporation shall have the right to evaluate a Supplier's performance pursuant to the Corporation's Vendor Management Program.

- (e) In the event that the Corporation awards a contract to the Supplier, the Corporation shall have at all times the right to demand, receive and inspect any document or thing associated with the work under any Contract or with respect to the Supplier's obligations under this or any other Policy of the Corporation. The Corporation shall have the right to enter any premises of a Supplier and a Supplier shall be deemed to consent to such entry by the Corporation to secure a copy (in electronic or other form) of any such document or thing.
- (f) The General Manager shall enforce all rights and remedies of the Corporation under a Contract in compliance with that Contract.
- (g) The General Manager shall ensure that evidence is documented and advise the Purchasing Supervisor in writing where the performance of a Supplier has been deficient. A Supplier shall be provided an opportunity to respond to allegations of poor performance or non-compliance in any manner contemplated in the associated Contract or as otherwise permitted by the Corporation's Supplier Code of Conduct and Discipline Policy.

## **6.12 Disqualification of Suppliers for Non-Compliance**

- (a) Any contravention of Section 6.0 by a Supplier, including, without limitation, any failure to disclose actual or potential Conflicts of Interest, may be grounds for the Purchasing Supervisor to disqualify a Supplier or its affiliates from being awarded a Contract.
- (b) Any failing grade given by the Corporation to a Supplier as part of the Vendor Management Program, may be grounds for the Purchasing Supervisor to disqualify a Supplier or its affiliates from being awarded another Contract.
- (c) The Purchasing Supervisor, in consultation with the General Manager, Financial Services, may also disqualify any Supplier who may otherwise have a Conflict of Interest that cannot be resolved in relation to any procurement.
- (d) A contravention of Section 6.0 may also be grounds for the Purchasing Supervisor to terminate any Contract to that Supplier and require the return of any advance payments made to the Corporation.
- (e) Any contravention of any provision in this or any other Policy of the Corporation as amended from time to time may lead to the disqualification of any Supplier under any Solicitation or to its

ineligibility to bid on or be awarded any Contract with the Corporation.

- (f) The rights of disqualification set out in this policy are in addition to any rights set out in the Corporation's Supplier Code of Conduct and Discipline Policy as the same may be amended from time to time.
- (g) Nothing in Section 6.12 shall prohibit the Corporation from including additional terms relating to the disqualification of Suppliers in any Bid Solicitation.

### **6.13 Exclusion of Suppliers**

- (a) The Purchasing Supervisor, in consultation with the General Manager, Financial Services, may prohibit a Supplier or its affiliates from participating in present or future Bid Solicitations under the following conditions:
  - (i) bankruptcy or insolvency of the Supplier;
  - (ii) false declarations of the Supplier;
  - (iii) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
  - (iv) final judgments or convictions for or in respect of crimes or other offences of the Supplier;
  - (v) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Supplier;
  - (vi) failure to pay federal, provincial or municipal taxes by the Supplier; or
  - (vii) such other grounds as the Purchasing Supervisor in consultation with the General Manager, Financial Services, determines is appropriate.
- (b) Any Supplier being excluded from present or future Bid Solicitations due to any of the above grounds will be reported to the CAO and respective General Manager.
- (c) The rights of exclusion set out in this policy are in addition to any rights set out in the Corporation's Supplier Discipline Policy as the same may be amended from time to time.

- (d) Nothing in Section 6.13 shall prohibit the Corporation from including additional terms relating to the exclusion of Suppliers in any Bid Solicitation.

## **7.0 CONTRACT DOCUMENTATION, EXECUTION AND PERFORMANCE GUARANTEES**

### **7.1 Procurement Documentation**

In order to maintain consistency, the Purchasing Supervisor may provide guidelines to Corporation's departments on all procurement policies and procedures and on the structure, format and general content of procurement documentation.

- (a) The Purchasing Supervisor shall be responsible for all procurement documents, in accordance with this policy.
- (b) Departments shall be responsible to prepare and provide, in writing, to the Purchasing Supervisor specifications and approved budget amount to support preparation of procurement documentation. The Purchasing Supervisor shall review all specifications, terms and conditions and have the authority to change the documentation as deemed necessary.

### **7.2 Contractual Agreement**

Where an Award of a Contract has been made, then in addition to any other general or specific authority delegated by Council regarding contract execution:

- (a) The form of Contract may be disclosed in the Bid Solicitation, including any process and scope for contract negotiations.
- (b) All Awards are subject to the execution of a Contract or issuance of a Purchase Order by the Corporation.
- (c) Awards shall be made by way of a written notification to the selected Supplier.
- (d) No municipal employee is permitted to sign or forward an Agreement to a Supplier other than in accordance with this policy.
- (e) All Purchasing Contracts to be entered into by the Corporation, whether to be executed physically or digitally, shall be forwarded to



the City Clerk for signature endorsement. For physical contracts, the City Clerk shall ensure that the proper signatures and, if appropriate, the corporate seal are appended on the contracts in accordance with the relevant by-law or delegated authority, and subject to the approvals contemplated in Section 5.1. In the case of electronic contracts, in addition to the above requirements, as applicable, the City Clerk shall ensure that the signatures are digitally verified and the contract is otherwise in compliance with all relevant by-laws or delegated authority, and subject to the approvals contemplated in Section 5.1. The Mayor and City Clerk may enter into and execute any Contracts in relation to any Award.

- (f) Purchasing Services shall have the authority to execute written notification or Purchase Orders issued in accordance with these provisions.
- (g) The City Clerk shall be responsible for safeguarding the original Agreement in the case of a physical agreement, or in the case of a digital agreement, a copy with verified signatures, for archival purposes. Duplicate signed original or a signed copy will be forwarded to Purchasing Services and the Supplier for their records.

### **7.3 Guarantees and Performance**

- (a) The Purchasing Supervisor may require that a Bid be accompanied by a bid bond or other similar security. The Purchasing Supervisor may determine that the bid bond or other similar security must be provided in a digital form, submitted through Electronic Tendering means, and/or conform to any additional requirements to confirm such security's validity, such as that it be encrypted with embedded digital certificates which are verifiable by the Corporation.
- (b) The Purchasing Supervisor shall select the appropriate means to guarantee execution and performance of a Contract. Means may include, without limitation:
  - (i) security deposits;
  - (ii) provisions for liquidated damages;
  - (iii) progress payments;
  - (iv) holdbacks;
  - (v) performance bonds;

- (vi) payment bonds;
  - (vii) labour and materials bonds;
  - (viii) irrevocable letters of credit; or
  - (ix) any other types of bonds or security that is deemed appropriate.
- (c) The guarantee means selected will:
- (i) be those which are necessary or desirable for the Corporation; and
  - (ii) comply with applicable laws.

#### **7.4 Insurance**

- (a) As part of any Solicitation and or prior to commencement of work and where deemed appropriate by the Purchasing Supervisor, evidence of Insurance Coverage satisfactory to the Purchasing Supervisor must be obtained by all Suppliers, ensuring indemnification of the Corporation from any and all claims, demands, losses, costs or damages of any kind, including without limitation resulting from the performance or failure of the Supplier to perform or adequately perform a Supplier's obligations under the contract.
- (b) Purchasing Services shall request from Suppliers providing Services to the Corporation a certificate of insurance. The certificate shall be in a form satisfactory to the Purchasing Supervisor either during the Solicitation or prior to the commencement of any work, for no less than the minimum amounts stated as determined by the Purchasing Supervisor and in force for the entire Contract period, including any warranty period.

#### **7.5 Occupational Health and Safety Requirements**

If the Purchasing Supervisor determines it is appropriate, a Supplier shall deliver a Certificate(s) of Clearance from the Workplace Safety and Insurance Board or such other board or authority prior to commencing any work pursuant to any Contracts stating that the Supplier and its subcontractors are in good standing with the Board as of the current date and every ninety (90) days thereafter ensuring ongoing good standing with the Workplace Safety and Insurance Board or such other board or authority.

## **8.0 RESOLUTION OF CONFLICT**

### **8.1 Exercise of Delegated Powers**

Should any ambiguity arise as to the authorizations which are applicable under this Policy, or inconsistent with the authorizations given under this Policy, any such inconsistencies shall be referred to the Purchasing Supervisor for resolution and direction.

### **8.2 Pre-Award Bid Dispute**

Suppliers should seek a resolution of any pre-Award dispute by communicating directly with the Purchasing Supervisor as soon as possible from the time when the basis for the dispute became known to them. The Purchasing Supervisor may, in its discretion delay an Award, or any interim stage of a procurement, pending the acknowledgement and resolution of any pre-Award dispute.

### **8.3 Supplier Debriefing**

The purpose of a debriefing is to assist the Supplier to understand both the Procurement process that occurred and how it may improve its future bids. The Corporation will not discuss or disclose information about other Bids or Suppliers during a debriefing.

- (a) For competitive procurement processes valued at \$50,000 or more, the Purchasing Supervisor shall inform all unsuccessful Suppliers about their entitlement to a debriefing.
- (b) The Purchasing Supervisor will allow unsuccessful Suppliers up to sixty (60) calendar days following the date of the Award notification to request a debriefing.

### **8.4 Post Award Bid Dispute Resolution**

- (a) Any dispute of an Award decision must be received in writing by the Purchasing Supervisor no later than ten (10) days after the date of the Award notification, or where a debriefing has been requested, ten (10) days after the debriefing has occurred. Any dispute that is not received in a timely way or in writing will not receive further consideration.

- (b) The complaint should contain the identity of the complainant and the procurement process at issue as well as a clear and detailed statement of the legal and/or factual grounds upon which the complaint is based. The complaint should also include, as attachments, any information or documents relevant to the complaint that are in the Supplier's possession.
- (c) For the purpose of a complaint under this policy, the Purchasing Supervisor will review and address any complaint in a timely and appropriate manner.
- (d) Any written dispute that cannot be resolved by the Purchasing Supervisor shall be referred by the Purchasing Supervisor to the General Manager, Financial Services and/or CAO for an impartial review.
- (e) The General Manager, Financial Services in consultation with the CAO and Legal Services, may dismiss the dispute or accept the dispute and direct the Purchasing Supervisor to take appropriate remedial action.
- (f) The Purchasing Supervisor may adopt and publish such further procedures as are necessary to ensure an independent and timely review and resolution of post Award bid disputes.

## **8.5 Limitation on Liability**

The following are limitations on the Corporations liability with respect to procurements:

- (a) For procurements to which the trade agreements do not apply. Each Supplier, by submitting a Bid, fully and irrevocably waives any right to claim or assert any action or proceeding against the Corporation or any of its employees, advisors, representatives, servants or agents for judicial review, injunctive relief, damages, expenses or costs including (without limitation), loss of profits, loss of opportunity or any consequential loss or damages. This waiver shall include an action or proceeding caused for any reason, including by reason of any tort, negligence, breach of contract, bad faith, any actual or alleged unfairness on the part of the Corporation at any stage of the Bid Solicitation process, if the Corporation does not Award or execute a contract, if the Corporation cancels a Bid Solicitation, or if the Corporation is subsequently determined to have accepted a non-

compliant Bid or otherwise breached the terms of any Bid Solicitation, any of its own policies including this one or the provisions of any trade agreement. This section is deemed to be and shall be incorporated by reference into every Bid Solicitation and every Contract Awarded by the Corporation.

- (b) For procurements to which the trade agreements apply, the provisions of subparagraph (a) apply, except that a Supplier can claim for costs of the preparation of its bid.

## 9.0 INTERPRETATION

- (a) Each section of this policy and every part of each section is an independent section or part of a section, and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect the validity of any other sections or parts thereof.
- (b) Headings are for reference purposes only and shall not affect in any way the meaning or interpretation of the provisions of this policy.
- (c) References in this Policy to any statute, regulation, Corporation Policy, by-law, procedure, guide, or code of conduct, includes, in each case, any amendments made from time to time.
- (d) This policy includes the Appendices annexed hereto.
- (e) References to currency or to "\$" shall be deemed to be a reference to the currency of Canada.

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Justin Towndale  
Mayor

## **ATTACHMENTS**

APPENDIX "A" - EXEMPTIONS

APPENDIX "B" - IRREGULARITIES

## APPENDIX "A" - EXEMPTIONS

Subject to compliance with applicable laws and trade agreements, the procurement of the following Goods and/or Services are exempt from this policy:

1. The acquisition or rental of land, existing buildings or other immovable property or the rights thereon
2. Non legally binding agreements
3. Any form of assistance, such as grants, loans, equity infusions, guarantees and fiscal incentives
4. Public employment contracts
5. Measures necessary to protect intellectual property, provided that the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between parties where the same conditions prevail or are a disguised restriction on trade
6. Procurement or acquisition of:
  - (a) fiscal agency or depository services;
  - (b) liquidation and management services for regulated financial institutions; or
  - (c) services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes, and other securities;
7. Procurement of:
  - (a) financial services respecting the management of government financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
  - (b) health services or social services;

- (c) services that may, under applicable law, only be provided by licensed lawyers or notaries; or
- (d) services of expert witnesses or factual witnesses used in court or legal proceedings; or

8. Procurement of Goods or Services:

- (a) financed primarily from donations that require the procurement to be conducted in a manner inconsistent with the trade agreements;
- (b) by a procuring entity on behalf of an entity not covered by the trade agreements;
- (c) between enterprises that are controlled by or affiliated with the same enterprise, or between one government body or enterprise and another government body or enterprise;
- (d) by non-governmental bodies that exercise governmental authority delegated to them;
- (e) from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities;
- (f) under a commercial agreement between a procuring entity which operates sporting or convention facilities and an entity not covered by the trade agreements that contains provisions inconsistent with the trade agreements;
- (g) conducted for the specific purpose of providing international assistance, including development aid, provided that the Corporation does not discriminate on the basis of origin or location.

9. Training and education in the nature of:

- (a) Conferences
- (b) Courses
- (c) Conventions
- (d) Seminars



- (e) Memberships
  - (f) Subscriptions, books, magazines, newspapers, periodicals
  - (g) Staff development and workshops
10. Employee/Council expenses in the nature of:
- (a) Advances
  - (b) Expense Reimbursements
11. Employer's general expenses in the nature of:
- (a) Employee Income
  - (b) Honoraria
  - (c) Payroll deduction Remittances
  - (d) Medical
  - (e) Licenses
  - (f) Temporary staffing agencies and services
  - (g) Grants to Agencies
  - (h) Payments of Damages
  - (i) Tax Remittances
  - (j) Loan Payments
12. Professional and special services in the nature of:
- (a) Witness Fees
  - (b) Arbitrators, Mediators, Conciliators or judicial and like bodies
  - (c) Legal Settlements
  - (d) Insurance Premiums, Claim Settlements, and Adjuster Services

13. Utilities
  - (a) Postage
  - (b) Water and Wastewater
  - (c) Electricity
  - (d) Natural Gas
  - (e) Cable or Television
  - (f) Telephone (basic services), Cellular and Wireless Devices
  - (g) Utility Relocation
  - (h) Services and inspections of the Technical Safety Standards Association (TSSA)
14. Funding to service providers, including Human Services providers, childcare providers and housing providers.
15. Renewals of Licenses and annual maintenance, support for procured software or application.
16. Translation, interpretive services, Braille services, Text Telephone (TTY)
17. Advertising

Any exemption and/ or non-application that can be established to be in accordance with applicable trade agreements, as amended.

These exemptions do not preclude a procurement process where competition may exist. It is expected that the intent of the Policy is followed wherever possible to ensure the best interests of the Corporation are taken into consideration.

Approvals are to follow the authorization level pursuant to Section 5.1, this policy and practices. Proof of Insurance(s) and WSIB coverage as required wherever applicable.

## APPENDIX "B" - IRREGULARITIES

### IRREGULARITY

An irregularity is a deviation between the requirements (terms, conditions, specifications, special instructions) of a Bid request and the information provided in a Bid response. For the purposes of this policy, Bid irregularities are further classified as "major irregularities" or "minor irregularities".

A **"major irregularity"** is a deviation from the bid request that affects the price, quality, quantity or delivery, and is material to the Award. If the deviation is permitted, the Bidder could gain an unfair advantage over competitors. The Purchasing Supervisor in consultation with the General Manager, Financial Services must reject any Bid, which contains a major irregularity. However, the Corporation can decide, in its discretion, whether it will allow a process for correction of a major irregularity to be set out in any Bid Solicitation. The Corporation may, but has no duty to, issue a Bid Solicitation which provides for the correction of any major irregularity.

A **"minor irregularity"** is a deviation from the Bid request, which affects form, rather than substance. A minor irregularity is an effect on the price, quality, quantity or delivery is not material to the Award. If the deviation is permitted or corrected, the Bidder would not gain an unfair advantage over competitors. The Purchasing Supervisor in consultation with the General Manager, Financial Services may permit the deviation or allow the Bidder to correct the minor irregularity.

### MATHEMATICAL ERRORS - RECTIFIED BY STAFF

The Purchasing Supervisor may correct errors in mathematical extensions and/or taxes, and the unit prices will govern. The responsibility for correcting mathematical errors may be delegated to the requisitioning department. The Corporation is under no duty to correct such errors.

### ACTION TAKEN

The Purchasing Supervisor shall have the authority and responsibility, subject to Council policies, for assessing compliance with submission requirements by determining whether irregularities are major or minor and rejecting submissions with major irregularities.

The Purchasing Supervisor may establish procedures for resolving common Bid irregularities for open competitive Bid Solicitations. In the event of any conflict between the evaluation criteria disclosed in a Bid Solicitation and the list of

common irregularities contained in any purchasing procedure, the evaluation criteria disclosed in the open competitive Bid Solicitation shall govern.

In exercising judgment with respect to any Bid irregularity, the Purchasing Supervisor shall consider the advice of the General Manager, Financial Services. The Corporation shall have no liability for any breach regarding the Corporation's assessment of major or minor irregularities.