

## THE CORPORATION OF THE CITY OF GUELPH

By-law Number (2018) – 20259

A By-law to provide for the procurement of goods and services by The Corporation of the City of Guelph.

**WHEREAS** paragraph 3 of subsection 270(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that a municipality shall adopt and maintain policies with respect to its procurement of goods and services;

**AND WHEREAS** The Corporation of the City of Guelph wishes to adopt this By-law as its policies with respect to its procurement of goods and services;

**NOW THEREFORE THE CORPORATION OF THE CITY OF GUELPH ENACTS AS FOLLOWS:**

### PART I – DEFINITIONS AND INTREPRETATION

1.1 In this By-law:

“Audit Committee” means Council’s Audit Committee or any successor committee of Council with responsibilities in the auditing field;

“Award” means authorization to proceed with a purchase of Goods and/or Services;

“Award Memo” means the method to grant an Award, and includes a Council Award Memo and a Staff Award Memo;

“Bid” means an offer or submission from a Bidder in response to a Bid solicitation;

“Bid Bond” means an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Bidder will not withdraw the Bid, the Bidder will furnish the bond as required, and, if the Contract is offered to the bonded (insured) Bidder, the Bidder will accept the Contract as bid, or else the surety will pay a specified amount;

“Bid Surety” means a monetary commitment by a Bidder in the form of a certified cheque, Irrevocable Stand-by Letter of Credit or a Bid Bond issued by a surety;

“Bidder” means one who submits a Bid;

“CAO” means the Chief Administrative Officer of the City or his/her Designate;

“City” means The Corporation of the City of Guelph;

“Civil Works” means the Construction or reconstruction of road, sewer, water, bridge or other municipal services;

“Competitive Bidding” means a method of bidding that provides for competition among Bidders, and includes the RFIQ, RFP, RFQ and RFT methods;

“Construction” means the process of utilizing labour, material and equipment to build, alter, repair, improve or demolish any structure, building or public improvement, but generally does not include routine maintenance, repair or operation of existing real property;

“Consulting Services” means services provided by architects, engineers, designers, surveyors, geoscience consultants, geo-technical consultants, planners, software consultants and any other similar professional services rendered on behalf of the City;

“Cooperative Purchasing” means the action taken when two or more entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits, pursuant to one of a variety of arrangements whereby two or more entities purchase from the same Supplier using a single Bid solicitation;

“Council” means the municipal council of the City;

“Council Award Memo” means an Award Memo authorized by Council;

“Deputy CAO” means the CAO or Deputy Chief Administrative Officer of the applicable Service Area or his/her Designate;

“Designate” means the person or persons assigned the duties and responsibilities on behalf of, or in the absence or incapacity of, the person charged with the principal authority to take the relevant action or make the relevant decision;

“Development Project” means the construction, erection, or placing of water, sanitary sewer and storm sewer service connections to one or more buildings or structures on land to service a housing subdivision or plaza;

“Dispute Committee” means the group created pursuant to the Performance Evaluation Program;

“Emergency” means an actual situation or threatened impending situation that creates unexpected conditions that pose a threat to the health, safety or welfare of the public, maintenance of essential City services, the City’s physical assets or other public property, the City’s financial interests, or security of the City;

“Environmental Sustainability” means protection and enhancement of the climate, ecology and natural resources for future generations, through approaches that reduce carbon dependency, enhance energy resilience, conserve energy and resources and reduce waste and toxins;

“Environmentally Responsible Goods and/or Services” means Goods and/or Services that have a lesser or reduced impact on the environment over their lifecycle when compared with other Goods and/or Services serving the same purpose, because of characteristics including:

- a. Reducing waste,
- b. Conserving and making efficient use of resources,
- c. Being energy efficient,
- d. Being durable and reusable, as opposed to being of single use or disposable,
- e. Having long service lives,
- f. Being capable of economic repair or upgrade,
- g. Being recyclable and capable of diversion from landfill,
- h. If not recyclable, being capable of safe disposal or return to vendor at end of life cycle,
- i. Containing recycled or sustainable materials, obtained and manufactured in an environmentally sound, sustainable manner,
- j. Minimizing packaging,
- k. Employing packaging made of reusable, recycled, recyclable or compostable materials,
- l. Employing reusable shipping packaging,
- m. Minimizing or reducing environmental impacts such as greenhouse gas and air pollutant emissions,
- n. Eliminating or reducing toxins that create hazards to the health or safety of workers or the community, or
- o. Resulting in minimal or no environmental impact during normal use and maintenance;

“Fair Trade” means the organized social movement that aims to help producers in developing countries to make better trading conditions and promote sustainability, and that advocates the payment of a fair price to producers and exporters as well as higher social and environmental standards;

“Fairness Monitor” means an individual appointed in accordance with the Procurement Process Policies of this By-law;

“Goods” includes, but is not limited to, any of the following or any combination of the following: wares, merchandise, materials, equipment;

“Guiding Principles” means those principles described in Part II (Guiding Principles) of this By-law;

“High Value Procurement” means a procurement for which the estimated monetary value, including contingency allowance, is \$100,000 or more;

“Irrevocable Stand-by Letter of Credit” means a document issued by a bank or credit union as permitted by City policy, authorizing the bearer to draw upon a specified amount from that bank or credit union or its agent, including a letter or similar statement extending credit up to a given amount at certain affiliated banks for a person who has paid or guaranteed that amount to the issuing bank or credit union;

“Labour and Material Payment Bond” means an instrument, from an Ontario based surety company, executed, subsequent to Award, by the successful Bidder, that protects the City from loss due to the Bidder’s inability to pay any or all subcontractors and/or suppliers associated with the Contract as agreed, and is a risk reduction mechanism that secures the fulfillment of all Contract requirements;

“Low Value Procurement” means a procurement for which the estimated monetary value, including contingency allowance, is \$35,000 or less;

“Lowest Compliant Bid” means a Bid which:

- a. Will provide the City with the desired Goods and/or Services at the lowest Total Acquisition Cost,
- b. Is not a Non-Compliant Bid,
- c. Meets all the mandatory requirements of the Bid solicitation, and
- d. Was submitted by a Bidder who:
  - i. Has the skills, ability and willingness to complete the Contract,
  - ii. Is a Responsible Bidder,
  - iii. Is a Responsive Bidder, and
  - iv. Has acceptable past performance, reputation and ethics;

“Manager of Procurement” means the individual primarily responsible for the procurement function of the City, or his/her Designate;

“Medium Value Procurement” means a procurement for which the estimated monetary value, including contingency allowance, is more than \$35,000, but less than \$100,000;

“Non-compliant Bid” means a Bid which fails to comply substantially with the Bid solicitation, and “Non-compliance” has a corresponding meaning;

“Opposing Party” means a Bidder who has an outstanding, unresolved claim or legal proceeding against the City, or a Bidder against whom the City has an outstanding, unresolved claim or legal proceeding;

“Performance Bond” means a written guarantee from a third party guarantor (usually a bank or an insurance company) submitted to the City by a Bidder upon Award and which ensures payment of a sum of money in case the Bidder fails in the full performance of the Contract;

"Performance Evaluation Program" means a program that assists the City to improve the performance of Suppliers receiving Awards in significant public Bid solicitations through evaluating the performance of Suppliers;

"Pilot Project" means an activity planned as a test or trial;

"Project Manager", in respect of a Bid solicitation, means the member of the applicable Service Area Staff who is primarily responsible for the Service Area's participation in that Bid solicitation;

"Purchase Order" means a standard form document, usually incorporating standard Purchase Order Terms and Conditions, used by the City to formalize a purchasing transaction with a Supplier of Goods and/or Services;

"Purchase Requisition" means an electronically transmitted request on an approved internal City standard form which is sent to the Manager of Procurement to purchase Goods and/or Services;

"Purchasing Card" means a payment method whereby authorized employees of the City are empowered, in accordance with the written Purchasing Card Policy agreement and procedure, to purchase directly from Suppliers using credit cards issued by a bank or major credit card provider, and supplied by the City;

"Responsible Bidder" means a Bidder who is fully capable, technically and financially, of supplying Goods and/or Services sought;

"Responsive Bidder" means a Bidder who correctly and completely responds to all of the requirements provided in a Bid solicitation;

"RFEOI" (Request for Expressions of Interest) means a non-bidding solicitation made to the marketplace, which will be used to determine the interest of the marketplace in providing Goods and/or Services which the City is contemplating procuring;

"RFI" (Request for Information) means a non-bidding solicitation made to the marketplace or to selected potential Suppliers for input (such as Goods and/or Services details, publicly available commodity costs, comments, feedback or reactions) with respect to a possible future procurement process and/or budget planning, and which is a market research tool that may identify Goods and/or Services available to meet City requirements;

"RFIQ" (Request for Informal Quotations) means a Bid solicitation, made to selected potential Bidders, for informal quotations for supplying Goods and/or Services, based on defined requirements (including Specifications) where a clear solution exists;

"RFP" (Request for Proposals) means a Bid solicitation, made to the marketplace or to selected potential Bidders for proposals for supplying Goods and/or Services, generally based on providing a solution to objectives stated in terms of reference;

"RFPQ" (Request for Pre-Qualification) means a pre-bidding solicitation made to the marketplace or to selected potential Bidders for detailed submissions of the experience, financial strength, education, background and personnel of potential Suppliers of specific Goods and/or Services;

"RFQ" (Request for Quotations) means a Bid solicitation made to selected potential Bidders for quotations for supplying Goods and/or Services, based on defined requirements (including Specifications) where a clear solution exists;

"RFT" (Request for Tenders) means a Bid solicitation made to the marketplace or to selected potential Bidders, for tenders for supplying Goods and/or Services, based on defined requirements (including Specifications) where a clear solution exists;

"Service Area" means any applicable administrative unit of the City;

"Service Area Evaluation Committee" means the group of Service Area Staff, from all applicable Service Areas, chosen to make the initial selection and recommendation of successful Bids in a specified procurement process;

"Service Area GM" means the CAO, Deputy CAO or General Manager of the applicable Service Area or his/her Designate;

"Service Area Staff", in respect of a particular Service Area, includes the CAO, Deputy CAO, General Manager, Manager, Supervisor or other officer or employee in that Service Area that have the appropriate signing authority;

"Services" includes, but is not limited to, any of the following or any combination of the following: janitorial or cleaning services, Consulting Services, legal surveys, training, rental, installation, inspection, repair, maintenance, Construction, reconstruction, Civil Works, building, altering, repairing, improving and demolishing;

"Single Sourcing" means, although Goods and/or Services are available from more than one potential Supplier, the City selects a single Supplier because of one or more of the reasons set out in Schedule "A" (Reasons for Single Sourcing);

"Sole Sourcing" means the City selects a sole Supplier because it is the only known source of supply of the required Goods and/or Services because of one or more of the reasons set out in Schedule "B" (Reasons for Sole Sourcing);

"Specifications" means plans, designs, terms of reference and other criteria which describe Goods and/or Services;

"Staff Award Memo" means an Award Memo authorized by City staff;

"Supplier" means any individual, partnership or corporation providing Goods and/or Services to the City;

"Tied Bids" means two or more compliant Bids that are equal in all material respects;

"Total Acquisition Cost" means the total aggregate cost of a single purchase transaction or Purchase Order amount and includes, but is not limited to, the extended amount of the unit value, any ongoing relevant service charges, fees, life cycle costs, calibration and accuracy of readings etc. applicable to the purchase, all applicable taxes, freight, duty, licensing and other related costs, less any applicable rebates or discounts; and

"Treasurer" means the General Manager Finance, Treasurer of the City or his/her Designate.

1.2 Other terms not defined in this By-law, are as defined in the National Institute of Government Purchasing Inc. (NIGP) Public Procurement Dictionary of Terms.

1.3 Any reference in this By-law to legislation, policies or rules is to such legislation, policies or rules as amended, extended, re-enacted or replaced from time to time.

## PART II – GUIDING PRINCIPLES

### Introduction

2.1 Except as provided otherwise in this By-law, the following Guiding Principles shall govern the City's procurement of Goods and Services:

- a. Fairness;
- b. Transparency;
- c. Accountability;
- d. Best overall value
- e. Competitive Bidding;
- f. Conflict of interest;
- g. Environmental Sustainability;
- h. Accessibility for persons with disabilities;

- i. Ethics;
  - j. Fair Trade; and
  - k. Compliance with Codes of Conduct.
- 2.2 In order to maintain the integrity of the procurement process, and to protect the interests of the City, of persons participating in the procurement process and of the public, the City shall, except as provided otherwise in this By-law, apply these Guiding Principles in:
- a. Conducting procurements pursuant to this By-law;
  - b. Making decisions pursuant to this By-law; and
  - c. Interpreting this By-law.

Specific Guiding Principles

2.3 The particulars of the Guiding Principles are as follows:

Principle a. Fairness

- 2.3.a.1. The City shall generally utilize standard documents (instructions to Bidders, terms and conditions, bidding forms, etc.) to ensure consistency of content and format, but these documents are subject to change as required in particular circumstances.
- 2.3.a.2. The City shall clearly specify all details regarding closing dates, times and locations of particular procurements.
- 2.3.a.3. The City shall apply the requirements of Bid acceptance consistently.
- 2.3.a.4. The City shall treat all Bidders and all Bids equally, objectively and without bias or favouritism at all times, except as provided otherwise in this By-law.
- 2.3.a.5. The City shall not give preference to Suppliers who provide unsolicited products, samples or demonstrations of Goods and Services.
- 2.3.a.6. If the City answers Bidder questions about a procurement, raised during the procurement, it shall provide, to the extent possible, such answers to all Bidders and potential Bidders in that procurement.
- 2.3.a.7. The City may appoint a Fairness Monitor to confirm that a procurement is conducted in a way that is procedurally fair and to communicate to external observers, including prospective and actual Bidders, that fairness, objectivity, impartiality, clarity, openness and transparency are of concern to the City and have been maintained throughout the entire procurement.

Principle b. Transparency

- 2.3.b.1. The City shall communicate its needs to Bidders clearly.
- 2.3.b.2. The City shall specify the method of evaluating Bids and the evaluation criteria at the outset of each procurement.
- 2.3.b.3. The City shall include definitions and interpretations of the terminology used in Competitive Bidding documents.
- 2.3.b.4. In Bid solicitation documents, the City shall set out clearly the method and format for submitting Bids.
- 2.3.b.5. When appropriate and practicable, the City shall advertise its methods for exploring the marketplace on an acceptable Internet website.

Principle c. Accountability

- 2.3.c.1. The City shall ensure that all Bids in each procurement are kept secure prior to the closing date, during the evaluation period and following Award.
- 2.3.c.2. The City shall maintain confidentiality (in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56) of all Bids and proprietary information submitted in confidence.
- 2.3.c.3. The City shall ensure that its Service Area Evaluation Committees are representative, allowing for various perceptions and opinions.
- 2.3.c.4. The City shall ensure that all Bids, final rating results and related supporting documentation are retained in accordance with the City's Retention By-law.
- 2.3.c.5. The City shall review its procurement procedures on a regular basis to ensure that they are clear, logical, current, and in accordance with accepted industry standards.
- 2.3.c.6. The City shall ensure that the City's procurement procedures, facilities, resources and staff are employed for the procurement of Goods and/or Services for only the City, and not for any officer, employee or member of Council of the City.

Principle d. Best Overall Value

- 2.3.d.1. The City shall seek the best overall value for the City and for the taxpayers, which value will ordinarily be obtained through the use of Competitive Bidding methods, but in some circumstances, may only be obtained through the use of other means or processes.
- 2.3.d.2. The City shall protect its financial interests in implementing this By-law.
- 2.3.d.3. To ensure best overall value for the City in public procurements, the City shall, despite the other provisions of this By-law, employ a Performance Evaluation Program whereby the performance of Suppliers is evaluated, in order to avoid entering future Contracts with Suppliers whose performance was previously unsatisfactory.
- 2.3.d.4. The City may use Purchasing Cards as a payment method to reduce the number of acquisitions of Goods and/or Services of low monetary values that would otherwise require the full Purchase Order procedures and would be subject to this By-law.

Principle e. Competitive Bidding

- 2.3.e.1. The City shall ordinarily use the Competitive Bidding methods, but shall not ordinarily use the Competitive Bidding methods for the items included in Schedule "C" (Items Exempt from Competitive Bidding) to this By-law.
- 2.3.e.2. The City shall, whenever possible, develop Specifications that are not restrictive and allow for open competition from the marketplace.
- 2.3.e.3. When appropriate and practicable, the City shall advertise its Competitive Bidding opportunities on an acceptable Internet website.
- 2.3.e.4. The City shall not grant a preference to local Suppliers contrary to the *Discriminatory Business Practices Act*, R.S.O. 1990, c. D.12.
- 2.3.e.5. The City shall, where applicable, comply with relevant International, National and Inter-Provincial Trade treaties and agreements.

2.3.e.6. The City shall not ordinarily consider unsolicited proposals. However, if a legitimate need exists for the Goods and/or Services offered, then the City may commence a procurement process in accordance with this By-law.

Principle f. No Conflict of Interest

2.3.f.1. The City shall include conflict of interest guidelines in all Competitive Bidding documents to minimize the risk of Bidders trying to influence officers, employees or members of Council of the City during the bid evaluation process.

2.3.f.2. Unless prior Council approval has been provided, the City shall not purchase any Goods and/or Services from any member of Council or employee of the City, or any associate or family member of any member of Council or employee of the City.

Principle g. Environmental Sustainability

2.3.g.1. The City shall show community leadership by having due regard to Environmental Sustainability and by considering lifecycle costs of Goods and/or Services in its procurement processes.

2.3.g.2. Whenever possible and economically feasible, the City shall ensure that Specifications provide for consideration of environmental characteristics.

2.3.g.3. The City shall endeavour to increase the use by the City of Environmentally Responsible Goods and/or Services.

Principle h. Accessibility for Persons with Disabilities

2.3.h.1. The City shall promote and have regard to the requirements of the *Ontarians with Disabilities Act, 2001*, S.O. 2001, c. 32 and the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 in applying this By-law.

Principle i. Ethics

2.3.i.1. The City shall insist upon adherence by all Bidders and Suppliers to a strict morally correct standard.

2.3.i.2. The City shall require that all Bidders and Suppliers become knowledgeable of, and adhere to, any ethics policies adopted by the City.

2.3.i.3. The Manager of Procurement shall comply with the "Statement of Ethics" of the Ontario Public Buyers Association attached to this By-law as Schedule "D" (Statement of Ethics).

2.3.i.4. No officer or employee of the City shall divide the quantity of the Goods and/or Services being purchased, with the sole intent of avoiding the requirements, including the monetary limits, of this By-law.

Principle j. Fair Trade

2.3.j.1. The City shall show community leadership by supporting Fair Trade purchasing principles and considering Fair Trade in its procurement processes.

2.3.j.2. Where possible, the City shall consider the procurement and use of Fair Trade certified Goods and/or Services.



Principle k. Compliance with Codes of Conduct

- 2.3.k.1. In respect of the procurement of Goods and/or Services, all members of Council shall comply with the Code of Conduct for Council.
- 2.3.k.2. In respect of the procurement of Goods and/or Services, all employees of the City shall comply with the Code of Conduct for employees.

PART III – AUTHORITY

3.1 The CAO has the following authority:

- 3.1.1 The CAO is authorized to exercise the powers and shall carry out the duties provided in this By-law for the CAO.
- 3.1.2 The CAO may approve actions and sign documents under this By-law, up to the dollar limits of Council-approved budgets.
- 3.1.3 The CAO shall appoint one or more Designates.
- 3.1.4 The CAO may impose additional restrictions on procurement when necessary and in the best interest of the City.

3.2 The Deputy CAO has the following authority:

- 3.2.1. Each Deputy CAO is authorized to exercise the powers and shall carry out the duties provided in this By-law for the Deputy CAO.
- 3.2.2 Each Deputy CAO may approve actions and sign documents under this By-law, up to the dollar limits of Council-approved budgets.
- 3.2.3 Each Deputy CAO shall appoint one or more Designates.
- 3.2.4 Each Deputy CAO shall appoint Service Area Staff to exercise the powers and carry out the duties provided in this by-law for Service Area Staff.
- 3.2.5 Each Deputy CAO shall appoint, or provide for the appointment of, Designates for Service Area Staff.
- 3.2.6 Each Deputy CAO shall ensure that Service Area Staff exercise the powers and carry out the duties provided in this By-law for Service Area Staff.

3.3 The Manager of Procurement has the following authority:

- 3.3.1 The Manager of Procurement is authorized to exercise the powers and shall carry out the duties provided in this By-law for the Manager of Procurement.
- 3.3.2 The Manager of Procurement shall appoint one or more Designates.
- 3.3.3 The Manager of Procurement may amend the Schedules to this By-law from time to time, without Council approval.
- 3.3.4 The Manager of Procurement shall:
  - a. Develop, implement and maintain procedures for the procurement of Goods and/or Services for the City;
  - b. Provide advice and assistance to Council, the CAO, Treasurer, Deputy CAOs and Service Area Staff regarding the procurement of Goods and/or Services;
  - c. When appropriate and feasible, standardize and coordinate the procurement of Goods and/or Services for multiple Service Areas; and
  - d. Act as the City's representative in Cooperative Purchasing groups and Cooperative Purchasing initiatives.

- 3.4 Service Area Staff have the following authority:
- 3.4.1 Service Area Staff are authorized to exercise the powers and shall carry out the duties provided in this By-law for Service Area Staff.
  - 3.4.2 Unless varied by the CAO or Deputy CAO, the following levels of staff (regardless of job titles) may approve actions and sign documents as provided in this By-law, up to the following corresponding dollar limits:
    - a. Supervisor Level: \$25,000;
    - b. Manager Level: \$50,000; and
    - c. General Manager Level: \$100,000.
  - 3.4.3 The foregoing limits apply to the following actions and documents:
    - a. Bid solicitations;
    - b. Single Sourcing;
    - c. Sole Sourcing;
    - d. Purchase Requisitions; and
    - e. Purchase Orders.
  - 3.4.4 The CAO and Deputy CAO may vary the foregoing limits higher or lower based on factors including:
    - a. The need for efficiencies in processing approvals;
    - b. The type of approvals;
    - c. The magnitude of approvals; and
    - d. The functionality of the particular Service Area.

#### PART IV – PROCUREMENT PROCESS POLICIES

##### Introduction

- 4.1. This By-law does not apply to Low Value Procurements. Service Area Staff shall conduct Low Value Procurements outside the provisions of this By-law.
- 4.2. Unless otherwise indicated, where a value or price is referred to in this By-law, such value or price will be interpreted as being in Canadian dollars and as excluding all applicable taxes.
- 4.3. The City's process of procuring Goods and/or Services may involve the following steps:
  - a. Assessing needs for Goods and/or Services;
  - b. Exploring the marketplace;
  - c. Monitoring fairness;
  - d. Soliciting Bids;
  - e. Receiving and Opening Bids;
  - f. Taking special actions;
  - g. Recommending successful Bids;
  - h. Approving successful Bids; and
  - i. Managing Contracts.
- 4.4. If the CAO determines that:
  - a. An Emergency exists;
  - b. Addressing the Emergency requires the procurement of certain Goods and/or Services; and
  - c. The immediacy of the requirement for the Goods and/or Services precludes the Manager of Procurement from proceeding with a usual procurement process;

then the CAO may conduct, or authorize the conducting of, the procurement of those Goods and/or Services with or without the involvement of the Manager of Procurement, and without employing the processes provided in this By-law, but employing the most expedient and economical means possible. If the monetary value of the expenditure thus undertaken is more than \$500,000, the CAO shall,

as soon as reasonably possible, provide to Council a written report of the particulars of the Emergency and the procurement.

- 4.5. This Part contains higher-level policies governing the various steps in the procurement process. Detailed procedures applicable to the steps in the procurement process are set out in Schedule "E" (Procurement Process Procedures), Schedule "F" (Performance Evaluation of Suppliers – Obligations of City Staff), and Schedule "G" (Performance Evaluation of Suppliers – Outline for Potential Bidders) to this By-law. The particulars of the higher-level policies are as follows:

Step a. – Assessing Needs for Goods and/or Services

- 4.5.a.1. Each Deputy CAO shall adopt, implement and maintain for his/her Service Area a system of materials management and inventory control for Goods and/or Services required for the Service Area.
- 4.5.a.2. Each Deputy CAO shall ensure that adequate levels of inventory for the Service Area are maintained in a cost effective manner.
- 4.5.a.3. The Manager of Procurement shall keep informed of current developments in pricing, market conditions and new products related to Goods and/or Services required by the City.
- 4.5.a.4. Service Area Staff shall keep informed of current developments in pricing, market conditions and new products related to Goods and/or Services required by their respective Service Areas.
- 4.5.a.5. Service Area Staff shall prepare, in writing, any necessary Specifications for the Goods and/or Services required for the Service Area, and shall provide such Specifications to the Manager of Procurement for review and approval prior to adoption by the Service Area Staff.
- 4.5.a.6. Service Area Staff may retain outside professional consultant assistance in the preparation of Specifications that will be required of all Bidders in a particular procurement, but, in such case, Service Area Staff shall:
- a. So advise the Manager of Procurement; and
  - b. In advance of any expenditure of time, money or effort by the consultant, agree with the consultant on the fee to be paid for developing such Specifications, and that such Specifications shall be the property of the City.
- 4.5.a.7. If Service Area Staff request a potential Supplier of Goods and/or Services to expend time, money or effort in developing Specifications for those Goods and/or Services, which Specifications will be required of all Bidders in a particular procurement, or otherwise to help define or create a requirement, then such potential Supplier will be considered a consultant and will be disqualified from Competitive Bidding for those Goods and/or Services.
- 4.5.a.8. If new Specifications are developed for a particular procurement either internally or by an external consultant, and these Specifications will apply to all Bids in that procurement, then such Specifications are the property of the City, and the City may use them in any processes for exploring the marketplace or soliciting Bids.

Step b. – Exploring the Marketplace

- 4.5.b.1. The City may employ the following methods for market research prior to commencing a method for procuring bids:
- a. RFI;
  - b. RFEOI;
  - c. RFPQ; and
  - d. Other appropriate methods of market research.

- 4.5.b.2. The City may employ the foregoing methods for market research to assist in activities including developing Specifications or scopes of Goods and/or Services and selecting qualified potential Bidders.
- 4.5.b.3. An RFI, RFEOI or RFPQ will not create any contractual obligation between the City and any interested potential respondent.
- 4.5.b.4. The City may make the submission of a response to an RFEOI or RFPQ a specific pre-condition to any particular procurement process.

Step c. – Monitoring Fairness

- 4.5.c.1. The Deputy CAO shall determine whether a Fairness Monitor is required for a particular procurement. In reaching such determination, the Deputy CAO shall consult the CAO, the Manager of Procurement and the City's Solicitor.
- 4.5.c.2. If the City will be appointing a Fairness Monitor for a procurement, it shall conduct an RFP for the Fairness Monitor services. It shall advertise the RFP on the City's website and elsewhere as appropriate. The Fairness Monitor must be an independent, outside, third party individual.
- 4.5.c.3. The City shall appoint a Fairness Monitor by means of a Contract which outlines the terms of the appointment.

Step d. – Soliciting Bids

- 4.5.d.1. The Manager of Procurement, with the assistance of Service Area Staff, shall establish standard performance evaluation criteria and a standard performance evaluation form for each type of Goods and/or Services in respect of which performance may be evaluated, and may revise those criteria and forms from time to time.
- 4.5.d.2. Performance evaluation will form part of a particular procurement if the Goods and/or Services comprise:
  - a. Construction with a monetary value of more than \$100,000;
  - b. Consulting Services with a monetary value of more than \$100,000;
  - c. Consulting Services with a monetary value of up to \$100,000, but where the underlying Construction has a monetary value of more than \$100,000; or
  - d. A commodity with a monetary value of more than \$100,000, whether as a single line purchase or a grouped purchase.
- 4.5.d.3. The Manager of Procurement, in consultation with the Service Area Staff, may determine that performance will be evaluated for any procurement not described in the foregoing section.
- 4.5.d.4. Service Area Staff shall select the RFP method for use when the requirement for Goods and/or Services is based on providing a solution to objectives stated within applicable terms of reference.
- 4.5.d.5. Service Area Staff shall select the RFT method for use when the City intends to accept the Lowest Compliant Bid without negotiation.
- 4.5.d.6. For a Medium Value Procurement or High Value Procurement the City may use:
  - a. Competitive Bidding;
  - b. Single Sourcing, if the procurement meets the definition; or
  - c. Sole Sourcing, if the procurement meets the definition.

- 4.5.d.7. In a Competitive Bidding procurement:
- a. The Manager of Procurement shall, in consultation with Service Area Staff, select the specific method of Competitive Bidding;
  - b. For a Medium Value Procurement, the methods available are the RFIQ, RFP, RFQ and RFT;
  - c. For a High Value Procurement, the methods available are the RFP and RFT; and
  - d. The City shall solicit Bids by means of an electronic or paper procurement document.
- 4.5.d.8. When the RFP method is employed, the Bid solicitation document will:
- a. Contain clear terms of reference, clear evaluation criteria and clear weightings for the criteria; and
  - b. Provide that the weighting for price will not be less than 10% of the total weighting of all criteria.
- 4.5.d.9. A Bid solicitation for Construction or Civil Works that is a High Value Procurement will require, in forms satisfactory to the City:
- a. A Bid Surety of at least 5% of the value;
  - b. A Performance Bond of at least 50% of the value; and
  - c. A Labour and Material Payment Bond of at least 50% of the value.
- 4.5.d.10 For Bid solicitations for Construction, the City may include in its terms and conditions standard precedent Specifications such as:
- a. The Ontario Provincial Standards Specifications for Civil Works, General Conditions of Contract;
  - b. CCDC Canadian Construction Documents Committee for Construction Contracts conditions;
  - c. The City's Supplementary General Conditions of Contract; or
  - d. The City's Linear Infrastructure Standards Standard Contract Specifications for Civil Works,
- all subject to necessary amendments for the particular circumstances.
- 4.5.d.11 When soliciting Bids in situations where the potential Bidders might include or involve Suppliers whose previous performance was unsatisfactory, the Bid solicitation documents will require each Bidder to disclose:
- a. Whether the Bidder's performance has ever been determined by the City to be unsatisfactory, and if so, the particulars;
  - b. Any change of the Bidder's name;
  - c. All the Bidder's proposed subcontractors;
  - d. If the Bidder is a corporation, all its directors and officers and, if the corporation is privately held, all its principal shareholders;
  - e. If the Bidder is a partnership, all its partners;
  - f. If the Bidder is a proprietorship, its proprietor;
  - g. All the Bidder's senior managers; and
  - h. All the Bidder's managers who might be involved with the supply of these Goods and/or Services to the City.
- 4.5.d.12 For every Competitive Bidding procurement that is a Medium Value Procurement or High Value Procurement, the Bid solicitation document will provide that all information will be public.
- 4.5.d.13 When the RFIQ method is employed, the Bid solicitation document may be provided to only those potential Bidders from whom Service Area Staff wish to solicit Bids.
- 4.5.d.14 When the City conducts an RFI process preliminary to an RFP or RFT process, it shall, when practical, advertise the RFI on the City's bids and tenders website.

- 4.5.d.15 Unless potential Bidders have been selected through an RFPQ process, the City shall advertise all RFPs and RFTs on the City's bids and tenders website so that the Competitive Bidding opportunities are accessible to all potentially interested Bidders.
- 4.5.d.16 Every Bid solicitation document will specify how all questions or comments about the Bid solicitation must be directed and in what format the questions are to be directed. The Bid solicitation document will also specify that no questions or comments from potential Bidders may be directed to members of Council.
- 4.5.d.17 In respect of Cooperative Purchasing, the City may:
- a. Join and participate in Cooperative Purchasing groups, including Cooperative Purchasing arrangements with other municipalities, agencies, boards and commissions;
  - b. Participate in Cooperative Purchasing Bid calls conducted by other members of the Cooperative Purchasing group; and
  - c. If allowed in the Bid solicitation document, tailgate or piggy back.
- 4.5.d.18 When the City participates in a Cooperative Purchasing Bid call conducted by another member of a Cooperative Purchasing group, the purchasing requirements, policies and procedures of that other member will prevail over this By-law to the extent of any conflict.

Step e. – Receiving and opening Bids

- 4.5.e.1. The City shall ordinarily receive Bids electronically, in its electronic bidding system.

Step f. – Taking Special Actions

- 4.5.f.1. The Manager of Procurement and Service Area Staff may jointly negotiate with one or more Bidders for a bargain better for the City if:
- a. Low Tied Bids have been received from Bidders that are Responsible Bidders and Responsive Bidders;
  - b. Only one Bid has been received;
  - c. All Bids received fail to meet the Specifications, and it would be impractical to re-issue the procurement process;
  - d. The lowest Bid from a Bidder that is a Responsible Bidder and a Responsive Bidder substantially exceeds the budgeted amount for the Goods and/or Services, or is excessive in total cost as compared to the usual cost for such Goods and/or Services; or
  - e. The subject matter of the negotiation is:
    - i. Improved revenue returns for advertising;
    - ii. Rebates, based on annual purchase value, from the Bidder or Bidders;
    - iii. Improved discounts for early payment of invoices by the City;
    - iv. The substitution of alternative Goods and/or Services offering equal or higher performance at lower costs;
    - v. A gain by way of barter, such as the reduction or elimination of charges for City services;
    - vi. Better warranties for the City; or
    - vii. The provision of extras at no charge to the City.
- 4.5.f.2. The Manager of Procurement may, with the approval of Service Area Staff, cancel a Competitive Bidding procurement, in whole or in part, if, in the opinion of the Manager of Procurement:
- a. The Competitive Bidding procurement document contains errors or omissions which would result in an unfair process if an Award was granted;
  - b. The Goods and/or Services are no longer needed;

- c. Circumstances have changed and the procurement, in its current form, would be inappropriate;
- d. The Competitive Bidding procurement has been compromised; or
- e. All acceptable Bids received exceed either the budget for the acquisition or the fair market value of the Goods and/or Services.

Step g. –Recommending Successful Bids

4.5.g.1. The following table shows, for each type of Competitive Bidding procurement, who may recommend a successful Bid:

<u>Monetary Value of the Procurement</u>	<u>Procurement Process Used</u>	<u>Who Recommends the Successful Bid</u>
Medium Value Procurement	RFP	Service Area Evaluation Committee
	RFQ	Manager of Procurement
	RFT	Manager of Procurement
High Value Procurement	RFP	Service Area Evaluation Committee
	RFT	Manager of Procurement

- 4.5.g.2. In respect of each Competitive Bidding process other than an RFP procurement, the Lowest Compliant Bid will be recommended as the successful Bid in that process.
- 4.5.g.3. Unless the CAO, in consultation with the City’s Solicitor, has decided to the contrary, the City shall reject any Bid submitted by a Bidder who:
  - a. Is an Opposing Party;
  - b. Proposes an Opposing Party as a subcontractor; or
  - c. Is not at arm’s length from an Opposing Party.
- 4.5.g.4. The City shall reject any Bid submitted by a Service Area in competition with external Bidders for the provision of Goods and/or Services.
- 4.5.g.5. Unless Council has decided to the contrary, the City shall reject any Bid submitted by:
  - a. An officer, employee or member of Council of the City;
  - b. A business of which an officer, employee or member of Council of the City is a director or officer; or
  - c. A person who is not at arm’s length from an officer, employee or member of Council of the City.
- 4.5.g.6. The City shall reject any Bid from a Bidder who expended time, money or effort on developing Specifications or otherwise to help define or create a requirement in the procurement.
- 4.5.g.7. If a Supplier’s performance in a prior procurement has been found to be unsatisfactory pursuant to the City’s Performance Evaluation Program, then the City shall, for a period of four years after such finding, reject any Bid from a Bidder who:
  - a. Is that Supplier;
  - b. Proposes that Supplier as a subcontractor; or
  - c. Is not at arm’s length from that Supplier.

4.5.g.8. If the final performance evaluation of a Supplier under an existing Contract has not been completed when that Supplier's Bid is being considered under a new procurement, then the City may consider such interim performance evaluations of that Supplier as are available under that existing Contract.

4.5.g.9. For the purposes of the foregoing sections, the Manager of Procurement may determine that a Bidder is not at arm's length from an Opposing Party or a Supplier who previously performed unsatisfactorily if, in his/her opinion, there is a substantial connection between any of the directors, officers, shareholders, partners, proprietors, senior managers or relevant managers of the Bidder and any of the directors, officers, shareholders, partners, proprietors, senior managers or relevant managers of the said Opposing Party or Supplier. Upon making such a determination, the Manager of Procurement shall so notify the Bidder and shall advise the Bidder in writing that it may, within five days after receipt of such notification, request an appeal to the Dispute Committee, which shall decide whether the Bidder is at arm's length from the said Opposing Party or Supplier.

4.5.g.10 The City shall reject Bids that are Non-compliant Bids.

Step h. – Approving Successful Bids

4.5.h.1. Before a Contract in respect of a recommended Competitive Bid can be offered, the Bid must be approved by all the applicable individuals or groups specified in the following table:

<u>Monetary Value of the Procurement</u>	<u>If the Procurement has an approved Council Budget</u>	<u>If the Procurement is a Development Project</u>	<u>If the Procurement does not have an approved Council Budget</u>
Medium Value Procurement	Service Area Staff, plus either the Service Area Manager, GM, the Deputy CAO, or the CAO	Service Area Staff, plus either the Service Area GM, the Deputy CAO, or the CAO	Either the, Deputy CAO, or CAO, plus Council
High Value Procurement	Treasurer, plus either the GM Service Area GM, Deputy CAO, or CAO	Either the Service Area GM, Deputy CAO, or CAO plus the Treasurer	Either the Deputy CAO, or CAO plus the Treasurer and Council

4.5.h.2. Before a Contract in respect of a recommended Single Sourcing Bid or Sole Sourcing Bid can be offered, the Bid must be approved by the Treasurer and either the Service Area GM or the Deputy CAO or CAO.

4.5.h.3. Before a Contract in respect of a Pilot Project, where, if the Pilot Project proves successful, the City will be paying for the Goods and/or Services, can be offered, the bid must be approved by Council.

4.5.h.4. The CAO may approve a Bid on behalf of Council in the following situation:

- a. The Bid requires Council approval during a period when Council is in recess, Council meetings are suspended or Council is otherwise unable to act;
- b. No challenges have been made to the Bid solicitation process; and



- c. The recommended Bid is the lowest compliant Bid from a Bidder that is a Responsible Bidder and a Responsive Bidder, or is the Bid from the Bidder who is the highest-evaluated Responsible Bidder and Responsive Bidder.

As soon as reasonably possible after such an approval, the CAO shall provide to Council a written report of the particulars of the Bid approval.

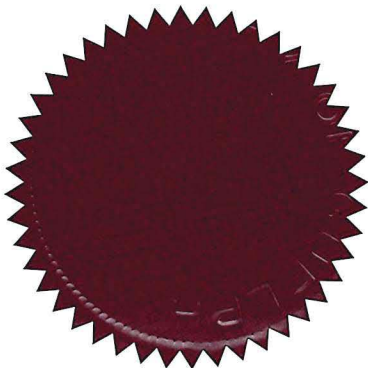
Step i. – Managing Contracts

- 4.5.i.1. The Mayor and City Clerk are authorized to sign and seal all Contracts and other documents relating to Awards granted pursuant to this By-law. Despite this general authority, specific City staff may sign Contracts and other documents as authorized by this By-law.
- 4.5.i.2. The Manager of Procurement shall purchase Goods and/or Services pursuant to Contracts entered into pursuant to this By-law.
- 4.5.i.3. Service Area Staff may purchase Goods and/or Services in accordance with the Purchasing Card procedures.
- 4.5.i.4. The City may proactively manage the performance of a Supplier, during the Supplier's provision of Goods and/or Services, by evaluating the Supplier's performance and, if the Supplier's performance is unsatisfactory, may:
  - a. Request the Supplier to correct its unsatisfactory performance;
  - b. Extend the Supplier's contract for up to two years, in order to give the Supplier time to correct deficiencies in performance;
  - c. Terminate the Supplier's Contract; and/or
  - d. Take other action, in the City's best interest.
- 4.5.i.5. Typically, the City shall not pay for Goods and/or Services prior to receiving them, such as by way of deposit or advance payment. However, the Manager of Procurement may authorize exceptions to this.

PART V – GENERAL

- 5.1 The Schedules to this By-law form part of this By-law.
- 5.2 By-law Number (2014) – 19771 is hereby repealed.
- 5.3 This By-law will be referred to as the "Procurement By-law".

**PASSED this TWENTY-SIXTH day of MARCH, 2018.**



Cam Guthrie – Mayor

Dylan McMahon – Deputy City Clerk

By-law (2018)-20259  
Schedule "A"

REASONS FOR SINGLE SOURCING  
(Referred to in the definition of "Single Sourcing")

1. An attempt to acquire the Goods and/or Services by use of the Competitive Bidding process has already been made in good faith, but has failed to identify a willing, capable and compliant Supplier;
2. It would not be in the public interest to use the Competitive Bidding process because of the confidential nature of the procurement;
3. The selected Supplier is another public body, and it would be advantageous to the City to acquire the Goods and/or Services from another public body;
4. The procurement relates to Goods and those Goods are purchased on a commodity market;
5. The Goods and/or Services include Construction, renovations, repairs or maintenance in respect of a building leased by the City from a landlord, and those Goods and/or Services may only be provided by the landlord in accordance with the lease;
6. The Goods and/or Services can be purchased under circumstances which are exceptionally advantageous to the City, such as in the case of a bankruptcy or receivership;
7. An outside party is funding, or substantially funding, the acquisition, and has selected the Supplier, and the provisions relating to the acquisition are acceptable to the City;
8. The Goods and/or Services must be compatible with, or must maintain and support, a City standard, and:
  - a. No reasonable alternatives, substitutes or accommodations exist, and/or
  - b. The Goods and/or Services must not violate warranties and/or guarantees;
9. The procurement relates to Services, and the Services are sought from instructors, coaches, or trainers for recreation programs and the Services are not readily suitable for Competitive Bidding;
10. An existing agreement for the purchase of Goods and/or Services has expired or is about to expire, and the City would benefit from extending that agreement, rather than commencing a new competitive bidding process, because:
  - a. The City requires time to begin and proceed with a comprehensive and accurate Competitive Bidding process,
  - b. The City requires time to fulfill all its obligations, such as making final payments, under the existing agreement for the Goods and/or Services, or
  - c. The market conditions, such as timing and Specifications, are in flux;
11. Funding and project completion timelines imposed by senior government programs would not allow sufficient time for a Competitive Bidding process; and/or
12. The Goods and/or Services available from the selected Supplier would be compatible with existing Goods and/or Services or City facilities, and such compatibility is a paramount consideration.

By-law Number (2018)-20259  
Schedule "B"

REASONS FOR SOLE SOURCING  
(Referred to in the definition of "Sole Sourcing")

1. A statutory monopoly;
2. A market-based monopoly;
3. Exclusive rights, such as patent, copyright or licence;
4. A supply of the Goods and/or Services despite scarcity of supply in the marketplace; and/or
5. The required Goods and/or Services comprise a grouping which is only available, as a complete grouping, from the sole Supplier, and no alternative or substitute grouping exists.

By-law Number (2018)-20259

Schedule "C"

ITEMS EXEMPT FROM COMPETITIVE BIDDING  
(Referred to in the Guiding Principle re Competitive Bidding)

The following items are excluded from the requirements of this By-law for Competitive Bidding, although all other applicable provisions of this By-law will apply:

1. Training and education Goods and/or Services:
  - a. Conferences, conventions, courses and seminars,
  - b. Books, magazines, periodicals and subscriptions, and
  - c. Trade, professional or corporate memberships, licenses and registrations;
2. Utilities Goods and/or Services:
  - a. Water and sewer,
  - b. Electricity,
  - c. Natural gas, and
  - d. Telephone;
3. Professional Goods and/or Services:
  - a. Medical, laboratory and pharmacy,
  - b. Legal and witness,
  - c. Audit, and
  - d. Insurance;
4. Real estate Goods and/or Services:
  - a. All interests in land,
  - b. All licences and other rights relating to land, and
  - c. All leasehold improvements associated with leases;
5. Goods and/or Services from governments and governmental agencies:
  - a. Licences (e.g. vehicles),
  - b. Permits, permissions, approvals, and
  - c. Postage;
6. Goods and/or Services requiring special payments:
  - a. Refundable employee expense payments (e.g. advances, meal allowances, travel, entertainment, misc.),
  - b. General employer expense payments (e.g. reimbursed employee expenses, payroll remittances, medical expenses, payment for employment),
  - c. Grant payments,
  - d. Goods and/or Services obtained pursuant to Community Benefit Agreements with non-profit parties,
  - e. Honorarium payments,
  - f. Damage claim payments,
  - g. Petty cash replenishment payments,
  - h. Tax payments,
  - i. Refund payments (e.g. reimbursement of tax/fee/charge overpayments), and
  - j. Goods and/or Services payments for Performing Artist
7. Advertising of City news in a local print newspaper;
8. Waste and recyclable materials procured for the purpose of selling; and
9. Goods and/or Services specifically excluded by Council, the CAO or the Manager of Procurement.

STATEMENT OF ETHICS

(Referred to in the Guiding Principle re Ethics)

The Ontario Public Buyers Association's Code of Ethics is based upon the following tenets and members of OPBA attempt to consistently practice their profession and deal with their day-to-day responsibilities according to these principles. Members are encouraged to display this statement in their Service Areas as well as in other locations in their agencies.

1. **OPEN AND HONEST DEALINGS WITH EVERYONE WHO IS INVOLVED IN THE PURCHASING PROCESS** – This includes all businesses with which this agency contracts or from which it purchases goods and services, as well as all members of our staff and of the public who utilize the services of the purchasing Service Area.
2. **FAIR AND IMPARTIAL AWARD RECOMMENDATIONS FOR ALL CONTRACTS AND TENDERS** – This means that we do not extend preferential treatment to any vendor, including local companies. Not only is it against the law, it is not good business practice, since it limits fair and open competition for all vendors and is therefore a detriment to obtaining the best possible value for each tax dollar.
3. **AN IRREPROACHABLE STANDARD OF PERSONAL INTEGRITY ON THE PART OF ALL THOSE DESIGNATED AS PURCHASING AGENTS FOR THIS AGENCY** – Absolutely no gifts or favors are accepted by the purchasing agents of this agency in return for business or the consideration of business. Also, the purchasing agents of this agency do not publicly endorse one company in order to give that company an advantage over others.
4. **COOPERATION WITH OTHER PUBLIC AGENCIES IN ORDER TO OBTAIN THE BEST POSSIBLE VALUE FOR EVERY TAX DOLLAR** – This agency is a member of a cooperative purchasing group. Made up of several public agencies, this group pools its expertise and resources in order to practice good value analysis and to purchase goods and services in volume and save tax dollars.
5. **CONTINUOUS DEVELOPMENT OF PURCHASING SKILLS AND KNOWLEDGE** – All members of the purchasing Service Area of this agency take advantage of the many opportunities provided by the Ontario Public Buyers Association to further their knowledge of good public purchasing principles and to maintain excellent skills.

Schedule "E"

PROCUREMENT PROCESS PROCEDURES

(Referred to in the introduction to the Procurement Process Policies)

The particulars of the procedures are as follows:

Step a. – Assessing Needs for Goods and/or Services

- E.a.1 The Manager of Procurement and Service Area Staff shall establish documents, necessary for the procurement process, that are, to the extent possible, standardized as to form and content.
- E.a.2. The Manager of Procurement and Service Area Staff shall ensure that, whenever possible and economically feasible, Specifications provide for consideration of Environmentally Responsible Goods and/or Services.

Step b. – Exploring the Marketplace

- E.b.1. The City may employ the RFPQ process to determine Bidders qualified to bid on Goods and/or Services if:
  - a. The Goods and/or Services are "high risk" pursuant to regulations under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1;
  - b. The value and complexity of the Goods and/or Services are such that Contract administration costs (for work inspection, follow up, delay, extra fee negotiations, etc.) would result in substantial additional costs and/or losses to the City if the Goods and/or Services provided were unsatisfactory;
  - c. The Goods and/or Services must meet fundamental, mandatory, recognized standards of the federal government, the provincial government or the City;
  - d. Provision of the Goods and/or Services requires stipulated performance and experience levels;
  - e. Provision of the Goods and/or Services requires elements of confidentiality and/or security; or
  - f. The Manager of Procurement determines that pre-qualification is appropriate.
- E.b.2. When the RFPQ process is employed:
  - a. The Manager of Procurement shall provide Service Area Staff with valuation guidelines;
  - b. The pre-qualification document provided to potential respondents will outline the criteria and weighting to be considered in the pre-qualification, and the scope of the Goods and/or Services for the envisioned ensuing procurement process;
  - c. If fewer than two respondents survive the pre-qualification process, the City may cancel and re-issue the RFPQ; and
  - d. Selection of a respondent as pre-qualified will not create any contractual obligation between the City and that pre-qualified respondent.

Step c. – Monitoring Fairness

- E.c.1. In determining whether a Fairness Monitor is required for a particular procurement, the Deputy CAO and the consulted staff shall consider the following characteristics of the procurement:
  - a. Whether the procurement will have a high value;
  - b. Whether the procurement may be complex;
  - c. Whether the procurement is in respect of a high risk project;
  - d. Whether an innovative form of procurement is being proposed;
  - e. Whether the Goods and/or Services comprise new technologies, such as waste management or information systems;
  - f. Whether the Goods and/or Services have previously been supplied by a long-term incumbent;
  - g. Whether the Goods and/or Services involve development or new use or operation of a significant public site, facility or property;
  - h. Whether the procurement represents an anticipated high profile and controversial project;

PROCUREMENT PROCESS PROCEDURES

(Referred to in the introduction to the Procurement Process Policies)

- i. Whether there may be pressure to select the winning Bid based on low price regardless of evaluations of other factors; and
- j. Whether a public-private partnership, which may be complex or controversial, may be involved.

E.c.2. The Fairness Monitor, if appointed in respect of a specific procurement, shall, in respect of that procurement:

- a. Carry out the duties specified in his/her engagement letter;
- b. Monitor whether:
  - i. The advertised procurement procedure is followed;
  - ii. All Bidders are treated equally during the procurement; and
  - iii. All procedural problems, including conflicts of interest, are identified and, if possible, cured in a manner that does not prejudice any Bidders;
- c. Focus on the fairness of the process described in the Bid solicitation document, rather than on the fairness of the result (such as whether the City obtained the "right" Goods and/or Services);
- d. During his/her engagement, work with relevant City staff;
- e. Be ultimately accountable to Council through the Audit Committee;
- f. Prior to each key decision or action in the procurement, meet with the individual or group who will be making such key decision or taking such key action, with a view to:
  - i. Receiving information updates;
  - ii. Reviewing documents relating to the procurement;
  - iii. Asking any questions that he/she deems necessary to test the logic, fairness and merit behind such key decision or action;
  - iv. Providing advice and perspective on requests from prospective and actual Bidders; and
  - v. Reporting on whether he/she is satisfied that the actions and decisions are fair, reasonable and consistent with the procurement process described in the Bid solicitation and whether those actions and decisions have been reasonably implemented and materially complied with;
- g. In any case of a difference of opinion between himself/herself and relevant City staff regarding any aspect of his/her mandate as described in the engagement letter or this By-law, liaise with the Chair of the Audit Committee to try to resolve the matter;
- h. At the completion of his/her engagement, unless specifically provided to the contrary in the engagement letter, provide the City, through the Chair of the Audit Committee, with a full, written, public report summarizing his/her activities, findings and opinions on the fairness of the procurement; and
- i. If requested by the City, respond to public and media inquiries in relation to his/her report.

Step d. – Soliciting Bids

E.d.1. Each Bid solicitation document will provide that:

- a. The City will ordinarily accept only Bids submitted by electronic means, and only from Bidders who have created vendor accounts on the City's electronic bidding system; and
- b. The City reserves the right, in case of problems with its electronic bidding system, to change, at any time, to a paper-based bidding system.

E.d.2. If the City will be evaluating performance in a particular procurement, then the Bid solicitation documents for that procurement will clearly state that performance will be evaluated in accordance with the City's Performance Evaluation Program.

PROCUREMENT PROCESS PROCEDURES  
(Referred to in the introduction to the Procurement Process Policies)

- E.d.3. If a procurement will include evaluation of whether the Goods and/or Services are Environmentally Responsible Goods and/or Services, then Service Area Staff shall ensure that the Bid solicitation document clearly brings such inclusion to the attention of potential Bidders.
- E.d.4. For a procurement employing the RFIQ method:
- a. Service Area Staff shall prepare the Bid solicitation document;
  - b. The Bid solicitation document will include at least a price schedule;
  - c. The Bid solicitation document will specify whether the City will accept emailed, faxed or written Bids in sealed envelopes, or any combination of such forms of Bids;
  - d. Service Area Staff may advertise the Bid solicitation in media selected by Service Area Staff;
  - e. Service Area Staff shall select at least three specific potential Bidders to receive the Bid solicitation document; and
  - f. Service Area Staff shall distribute the Bid solicitation document.
- E.d.5. For a procurement employing the RFQ method:
- a. The Manager of Procurement shall prepare the Bid solicitation document and Service Area Staff shall provide the technical particulars;
  - b. The Goods and/or Services will be adequately and generically defined, including by means of clear Specifications, in the Bid solicitation document, so as to permit direct comparison of Bids;
  - c. If potential Bidders have already been selected through an RFPQ process, then no advertising is required and Bid solicitations may be provided to only such pre-qualified potential Bidders;
  - d. If potential Bidders have not been selected through an RFPQ process, then Service Area Staff may advertise the Bid solicitation in media selected by Service Area Staff;
  - e. If potential Bidders have not been selected through an RFPQ process, and the Bid solicitation has not been advertised, then the Manager of Procurement, in consultation with Service Area Staff, shall select at least three specific potential Bidders to receive the Bid solicitation;
  - f. The Manager of Procurement shall send the Bid solicitation document to any selected potential Bidders; and
  - g. Bidding will be by means of written Bids submitted on the Quotation documents provided.
- E.d.6. For a procurement employing the RFP method:
- a. The Manager of Procurement shall prepare the Bid solicitation document with technical assistance from Service Area Staff;
  - b. The Goods and/or Services will be adequately and generically defined, including by means of clear Specifications, in the Bid solicitation document, so as to permit direct comparison of Bids;
  - c. The Bid solicitation document will provide that selection of the successful Bid will be by means of the ranking of the proposed solution on the stated criteria;
  - d. The criteria upon which selection will be based may include, but are not limited to:
    - i. Qualifications of Bidder;
    - ii. Experience of Bidder;
    - iii. References for Bidder;
    - iv. Health and safety practices of Bidder; and
    - v. Price;
  - e. If potential Bidders have already been selected through an RFPQ process, then no advertising is required and Bid solicitations may be provided to only such pre-qualified potential Bidders; and
  - f. Bidding will be by means of electronic submission through the City's website.



PROCUREMENT PROCESS PROCEDURES  
(Referred to in the introduction to the Procurement Process Policies)

- E.d.7. For a procurement employing the RFT method:
- a. The Manager of Procurement shall prepare the Bid solicitation document with technical assistance from Service Area Staff;
  - b. The Goods and/or Services will be adequately and generically defined, including by means of clear Specifications and/or criteria, in the Bid solicitation document, so as to permit direct comparison of Bids;
  - c. If potential Bidders have already been selected through an RFPQ process, then no advertising is required and Bid solicitations may be provided to only such pre-qualified potential Bidders; and
  - d. Bidding will be by means of electronic submission through the City's website.

Step e. – Receiving and opening Bids

- E.e.1. The City receives Bids in Competitive Bidding procurements directly into the City's electronic bidding system and leaves them sealed until the closing date and time indicated in the electronic bidding system.
- E.e.2. The opening of bids will consist of publishing on the City's bids and tenders website the names of the Bidders that have provided a submission and the price that was submitted, with the exception of the RFP process in which case only the names of the bidders that have supplied a proposal to the RFP call will be published. These unofficial results will be posted online no later than 24hours after the closing date and time published on the bids and tenders website.
- E.e.3. The Manager of Procurement confirms the mandatory procurement requirements are met and forwards those submissions that have met the mandatory procurement requirements to the Service Area Staff for review.

Step f. – Taking Special Actions

- E.f.1. If a negotiation will be employed, then the Manager of Procurement and Service Area Staff shall agree on the negotiation strategy to be employed, even if only one of them directly negotiates with the Bidder or Bidders.

Step g. –Recommending Successful Bids

- E.g.1. Before initial recommendation of a successful Bid, Service Area Staff shall:
- a. Identify the account from which the purchase funds will eventually be taken;
  - b. Ensure that there are (or will be) sufficient funds available in the identified account; and
  - c. If applicable, identify the budget provision for the purchase.
- E.g.2. If the Specifications in a Bid solicitation provide that the Goods and/or Services will be evaluated on the extent to which they are Environmentally Responsible Goods and Services, then Service Area Staff shall ensure that the analysis of Bids actually includes an analysis of such extent.
- E.g.3. In respect of each RFP, RFQ and RFT procurement:
- a. The Manager of Procurement shall review and analyze each Bid and determine whether it complies with all the mandatory requirements of the procurement and shall notify Service Area Staff of his/her determination;
  - b. In reviewing and analyzing each Bid, the Manager of Procurement shall determine what action should be taken in the case of any Bid irregularity;
  - c. For any Bid irregularity listed in the table of Bid Irregularities below, the action indicated therein will be taken; and
  - d. For any minor irregularity not listed in the table of Bid Irregularities below, the Manager of Procurement shall consult with Service Area Staff and decide whether the Bid should be accepted or the Bidder should be requested to rectify the minor irregularity.

Bid Irregularities

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>ACTION FOR PAPER BIDDING</u>	<u>ACTION FOR ELECTRONIC BIDDING</u>
1.	Bid receipt: a. Bid late by any amount of time	Automatic rejection	Automatic rejection. Electronic bidding system will not accept late Bid submissions
	b. Bid envelope unsealed	Automatic rejection	N/A
	c. Proper response envelope or label not used	Acceptable if envelope received on time nonetheless	N/A
	d. Multiple Bids from same Bidder, not identified as alternative or optional Bids and not subsequently the subject of withdrawal notices	Bid bearing the most recent date/time stamp considered the intended submission, and older Bids considered withdrawn and to be returned to Bidder	N/A
2.	Contents of envelope: a. No Bid submission document b. No Bid Surety (if required)	Automatic rejection	N/A
	c. Bid submission document other than that provided in Bid solicitation document	Rejection unless specified otherwise in the Bid solicitation document	N/A
3.	Bid Bond: a. Corporate seal or signature missing b. Bonding company not licensed to carry on bonding business in Ontario c. Bid Bond not in effect for duration required in Bid solicitation documents d. Monetary amount lower than required	Automatic rejection	Automatic rejection
4.	Irrevocable Stand-by Letter of Credit: a. Signature of bank/credit union missing b. Bank/credit union not authorized by City policy c. Monetary amount lower than required	Automatic rejection	Automatic rejection

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Bid Irregularities (continued)

5.	Certified cheque: a. Cheque not certified b. Monetary amount lower than required	Automatic rejection	N/A
6.	Agreement to bond: a. Corporate seal or signature missing b. Bonding company not licensed to carry on bonding business in Ontario c. Agreement to bond not in effect for required duration d. Monetary amount lower than required	Automatic rejection	Automatic rejection
7.	Bid submission document: a. Pricing page(s) missing	Automatic rejection	N/A
	b. Bid not signed	Automatic rejection	Automatic rejection. Electronic bidding system will not accept Bids unless the Bidder has checked a box confirming authority to submit the Bid on behalf of the Bidder
	c. Bid completed in pencil or any other erasable/modifiable medium d. Bid not legible	Automatic rejection	N/A
	e. Where a corporate Bidder, no proof of authority to bind the corporation	Automatic rejection	Automatic rejection. Electronic bidding system will not accept Bids unless the Bidder has checked a box confirming authority to submit the Bid on behalf of the Bidder
	f. City unable to verify Digital Bond(s)	N/A	Automatic rejection
	g. Part Bid (not all items bid)	Acceptable unless Bid submission document requires complete Bid	Acceptable unless Bid submission document requires complete Bid
	h. Un-initialed strikeouts, erasures, whiteouts or overwrites to price(s) or schedule of prices.	Automatic rejection	N/A
	i. Un-initialed strikeouts, erasures, whiteouts or overwrites to minor portion of Bid submission document (e.g. Bidder's address)	Bidder to have 3 business days to correct and initial; City reserves right to waive initialing and accept Bid	N/A

Bid Irregularities (continued)

	j. Alternate item bid in whole or in part	Rejection unless Bid solicitation document permits alternate Bid	N/A
	k. Minor mathematical error (e.g. inconsistency with unit prices)	Bidder to have 3 business days to correct and initial (e.g. showing unit price to govern)	N/A
	l. Bid submission document form not entirely completed	Rejection unless Manager of Procurement determines that the missing information is minor and would not adversely affect an award decision	N/A
	m. Any addendum not acknowledged	Automatic rejection	Automatic rejection. Electronic bidding system will not accept Bids unless the Bidder has checked a box confirming all addenda
	n. Bidder did not attend mandatory site meeting	Automatic rejection	Automatic rejection

E.g.4. In respect of each RFP procurement:

- a. Service Area Staff shall select a Service Area Evaluation Committee; and
- b. The Service Area Evaluation Committee shall review and analyze the Bids and select and recommend the highest ranking Bid that best meets the evaluation criteria and comes from a Responsible and Responsive Bidder.

Step h. - Approving Successful Bids

E.h.1. When Council approval of a successful Bid is not required in a Medium Value Procurement, the applicable City staff shall apply the following procedure:

- a. The Manager of Procurement shall Service Area Staff shall prepare a Purchase Requisition for the Goods and Services;
- b. If the RFIQ method was employed in the procurement, then Service Area Staff shall also scan and attach to the Purchase Requisition an electronic copy of all applicable quotations;
- c. Purchasing staff will forward the submission summary document to Service Area Staff who shall sign and return it, with the appropriate approval, for approval by the Manager of Procurement;
- d. Once the final approved submission summary document is received by the Manager of Procurement, he or she shall ensure that the successful Bidder is notified, requesting the required contractual documents, and the Service Area Staff shall initiate preparation of the Contract;
- e. Service Area Staff shall prepare and submit the Purchase Requisition, with any required documentation if applicable, to a member of the Service Area Staff with the appropriate approval authority, for approval;
- f. Upon such approval, Service Area staff shall submit the Purchase Requisition, with any required documentation if applicable, to the Manager of Procurement;
- g. If the Purchase Requisition, all required applicable documentation, and proper signing authority are satisfactory, the Manager of Procurement shall approve the Purchase Requisition and issue a Purchase Order;



- c. For a Low Value Procurement, once the Contract value exceeds the maximum defined value for a Low Value Procurement a Single Source or Sole Source Memo must be generated.

E.h.5. When a change order is required in a Single Sourcing procurement or a Sole Sourcing procurement, increasing the current dollar amount of a Contract, the City shall reissue the Single Source Memo or Sole Source Memo (as applicable) reflecting the change.

Step i. – Managing Contracts

E.i.1. The Manager of Procurement shall determine for which Bid solicitations the Contract shall comprise:

- a. A Purchase Order;
- b. A Purchase Order incorporating a written agreement; or
- c. A written agreement.

E.i.2. If the City will be evaluating performance in a particular procurement, then:

- a. Throughout the provision and use of the Goods and/or Services, Service Area Staff shall identify, record in writing, and report to the Supplier in writing, every aspect of substandard performance;
- b. Service Area Staff shall complete performance evaluation forms and provide copies, in writing to the Supplier:
  - i. During the provision of the Goods and/or Services, at the frequency established in advance,
  - ii. During the provision of the Goods and/or Services, on occasions beyond the established frequency if a problem arises,
  - iii. At the end of the period during which the Goods and/or Services are provided, and
  - iv. After completion of the provision of the Goods and/or Services, if a problem arises;
- c. If possible, the City shall give the Supplier a reasonable opportunity to cure any unsatisfactory performance by conducting an interim performance evaluation of the Supplier;
- d. After substantial completion of the provision and use of the Goods and/or Services and any opportunity for curing unsatisfactory performance, Service Area Staff shall make a final performance evaluation as to whether the Supplier's performance was satisfactory or unsatisfactory in this particular procurement, complete the performance evaluation form and provide a copy to the Supplier; and
- e. The Supplier may request an appeal of its final evaluation within ten days after receiving it.

E.i.3. If a Supplier requests an appeal of its final evaluation, the appeal shall be heard by the Dispute Committee and the Dispute Committee shall decide whether the Supplier's performance was satisfactory or unsatisfactory.

E.i.4. When an appeal is made to the Dispute Committee, the Dispute Committee shall:

- a. Comprise, at a minimum, the Manager of Procurement, the Project Manager, the manager of the Project Manager and any additional team members selected by the Dispute Committee as required;
- b. Have a quorum of three of the members;
- c. Appoint in writing a time and place for the hearing of the appeal;
- d. Hear from both the Supplier and the City;
- e. Rely on information relating to the particular procurement, as well as information relating to such other procurements as it considers relevant; and
- f. Render a written decision, with reasons, copied to both the Supplier and the City, which decision will be final.

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Schedule "F"

PERFORMANCE EVALUATION OF SUPPLIERS – OBLIGATIONS OF CITY STAFF\*  
(Referred to in the introduction to the Procurement Process Policies)

General Preparation

1. If called on by the Manager of Procurement, help him/her establish standard performance evaluation criteria and a standard performance evaluation form for evaluating the performance of Suppliers who provide applicable types of Goods and/or Services.

Preparation for a Specific Procurement

2. If called on by the Manager of Procurement, help him/her decide whether Supplier performance will be evaluated for a specific procurement, even though that specific procurement falls in a class of procurements that don't ordinarily require performance evaluations.
3. If the City will be evaluating Supplier performance in a specific procurement, be sure that the Bid solicitation documents for that procurement posted on the City's Bids and Tenders website include:
  - a. A clear statement that performance of the successful Supplier will be evaluated in accordance with the City's Performance Evaluation Program;
  - b. The performance evaluation criteria that will be used; and
  - c. The performance evaluation form that will be used.

Evaluating Performance during a Specific Contract

4. In a Contract where the Supplier's performance is being evaluated, be careful, throughout the provision and use of the Goods and/or Services, to:
  - a. Identify every aspect of substandard performance;
  - b. Record it in writing;
  - c. Report it to the Supplier in writing; and
  - d. Complete a performance evaluation form and provide a copy to the Supplier at the frequency established in advance, but also each time a problem arises.

If the Supplier's Performance is unsatisfactory

5. If the Supplier's performance is unsatisfactory:
  - a. Request the Supplier to correct its unsatisfactory performance;
  - b. Give the Supplier a reasonable opportunity to cure the unsatisfactory performance;
  - c. If appropriate, extend the Supplier's contract for up to two years, in order to give the Supplier time to correct the deficiencies in performance;
  - d. If appropriate, terminate the Supplier's Contract; and/or
  - e. If appropriate, take other action, in the City's best interest.

Evaluating the Supplier's Performance after a Contract is complete

6. After substantial completion of the provision and use of the Goods and/or Services under a Contract:
  - a. Make a final performance evaluation as to whether the Supplier's performance was satisfactory or unsatisfactory in this particular Contract;
  - b. Complete the final performance evaluation form; and
  - c. Provide a copy to the Supplier.

\*For actual wordings please consult the full By-law.

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Schedule "G"

PERFORMANCE EVALUATION OF SUPPLIERS – OUTLINE FOR POTENTIAL BIDDERS\*  
(Referred to in the introduction to the Procurement Process Policies)

Purpose of Program

1. The City carries out a Performance Evaluation Program that assists it to improve the performance of Suppliers awarded Contracts. The Program involves evaluating the performance of successful Bidders carrying out Contracts. This helps the City to avoid entering future Contracts with Suppliers whose performance has previously been unsatisfactory.

Advance Notice that Performance Evaluation will be part of a Procurement

2. If the City will be evaluating performance in a particular procurement, then:
  - a. The Bid solicitation documents for that procurement will clearly state that performance will be evaluated in accordance with the City's Performance Evaluation Program;
  - b. The City will post the evaluation criteria and the evaluation form on the City's Bids and Tenders website; and
  - c. The City will require the following extra information from each Bidder:
    - i. Whether the Bidder's performance has ever been determined by the City to be unsatisfactory, and if so, the particulars,
    - ii. Any change of the Bidder's name,
    - iii. All the Bidder's proposed subcontractors,
    - iv. If the Bidder is a corporation, all its directors and officers and, if the corporation is privately held, all its principal shareholders,
    - v. If the Bidder is a partnership, all its partners,
    - vi. If the Bidder is a proprietorship, its proprietor,
    - vii. All the Bidder's senior managers, and
    - viii. All the Bidder's managers who might be involved with the supply of these Goods and/or Services to the City.

How Performance is evaluated

3. If the City is evaluating performance in a Contract, then:
  - a. Throughout the provision and use of the Goods and/or Services, City Staff will identify, record, and report to the Supplier, in writing, every aspect of substandard performance;
  - b. City Staff will fill out performance evaluation forms and provide copies to the Supplier at the following times:
    - i. During the provision of the Goods and/or Services, at the frequency established in advance,
    - ii. During the provision of the Goods and/or Services, on occasions beyond the established frequency if a problem arises,
    - iii. At the end of the period during which the Goods and/or Services are provided, and
    - iv. After completion of the provision of the Goods and/or Services, if a problem arises;
  - c. If possible, the City will give the Supplier a reasonable opportunity to cure any unsatisfactory performance by conducting interim performance evaluations of the Supplier;
  - d. After substantial completion of the Contract and any opportunity for curing unsatisfactory performance, City Staff will make a final performance evaluation as to whether the Supplier's performance was satisfactory or unsatisfactory in this particular Contract, will fill out the final performance evaluation form and will provide a copy to the Supplier; and
  - e. The Supplier may request an appeal of its final evaluation within ten days after receiving it.



Penalties for unsatisfactory Performance during a Contract

4. If a Supplier's performance is unsatisfactory during a Contract, the City may:
  - a. Request the Supplier to correct its unsatisfactory performance;
  - b. Extend the Supplier's contract for up to two years, in order to give the Supplier time to correct deficiencies in its performance;
  - c. Terminate the Supplier's Contract; and/or
  - d. Take other action, in the City's best interest.

Penalties for unsatisfactory performance after a Contract has ended

5. If a Supplier's performance in a prior Contract has been found to be unsatisfactory under the City's Performance Evaluation Program, then the City will, for a period of four years after that finding, reject any Bid from a Bidder who:
  - a. Is that Supplier;
  - b. Proposes that Supplier as a subcontractor; or
  - c. Is not at arm's length from that Supplier.
6. If the City is considering a Bid from a Bidder whose final performance evaluation under a previous Contract has not yet been completed, the City may consider any interim performance evaluations of that Bidder that are available under that previous Contract.
7. A Bidder is not at arm's length from a Supplier who previously performed unsatisfactorily if there is a substantial connection between any of the directors, officers, shareholders, partners, proprietors, senior managers or relevant managers of the Bidder and any of the directors, officers, shareholders, partners, proprietors, senior managers or relevant managers of the previous Supplier. If the City determines that a Bidder is not at arm's length from a previous unsatisfactory Supplier, the City will advise the Bidder in writing that it may, within five days after receipt of that notification, request an appeal to the Dispute Committee. The Dispute Committee will decide whether the Bidder is at arm's length from the previous Supplier or not.

Appeal

8. If a Supplier requests an appeal of its final evaluation, the appeal will be heard by the City's Dispute Committee and the Dispute Committee will decide whether the Supplier's performance was satisfactory or unsatisfactory.

The Dispute Committee will:

  - a. Have a quorum of three members;
  - b. Appoint in writing a time and place for the hearing of the appeal;
  - c. Hear from both the Supplier and the City;
  - d. Rely on information relating to the particular Contract, as well as information relating to such other Contracts as it considers relevant; and
  - e. Render a written decision, with reasons, copied to both the Supplier and the City, which decision will be final.

\*For actual wordings please consult the full By-law.