

# The Corporation of the Town of Tecumseh

## By-Law Number 2021-60

Being a by-law to govern procurement policies and procedures

**Whereas** Section 270 of the Municipal Act, 2001, S.O. 2001, c.25 imposes upon municipalities the obligation to adopt policies with respect to the procurement of Goods and Services;

**And whereas** this By-law establishes the authority and sets out the methods by which Goods, Services or Construction will be purchased and disposed of for the purposes of the Town of Tecumseh subject to certain exceptions as set out herein;

**And whereas** the Council of the Corporation of the Town of Tecumseh deems it expedient to enact this by-law to make provisions to govern the procurement of all goods and services within the municipality of Tecumseh.

**Now therefore** the Council of the Corporation of the Town of Tecumseh enacts as follows:

### Short title

This By-law may be cited as the Town of Tecumseh "Purchasing By-law".

### 1.0 Part I – Objective

- 1.1 This By-law outlines the processes to be followed in order to obtain the best value when purchasing goods, or contracting services for the Town of Tecumseh.
- 1.2 The guiding principle is that procurement decisions will be made using a competitive process that is open, transparent and fair, and in accordance with applicable regulatory Trade Agreements.

### 2.0 Part II – General Provisions

- 2.1 Unless otherwise provided in accordance with this By-law, the Department Directors shall act for the Town of Tecumseh for the purchase of all goods and services and shall be responsible for providing all necessary advice and services required for such purchases in accordance with the method of purchase authorized by this By-law and the Purchasing Policy contained herein.
- 2.2 No purchase of goods and services shall be authorized unless it is in compliance with the Purchasing By-law and the Purchasing Policy contained herein.

- 2.3 Elected Officials shall not approve or acquire any goods and services.
- 2.4 Unless otherwise provided in accordance with this By-law and the Purchasing Policy contained herein as Schedule "C", the purchase of all goods and services shall be authorized in accordance with the provisions of Schedule "A" to this By-law.
- 2.5 No requirement for goods and services may be divided into two or more parts to avoid the provisions of this policy.
- 2.6 The Purchasing Coordinator, together with the Purchasing Officer, are authorized to make and promulgate from time to time administrative policies, procedures and directions respecting:
  - i) the preparation and development of specifications;
  - ii) the requirements and form of bid deposits;
  - iii) other securities and documentation required or advisable for sealed bids;
  - iv) procedures for the opening, evaluation and recommendation of tenders;
  - v) such other matters of an ancillary or incidental nature to more fully carry out the intent and purpose of this By-law.
- 2.7 Definitions specific to this By-law are documented in the Purchasing Policy contained herein.
- 2.8 Disputes shall be resolved as follows:
  - i) meeting between the bidder and the Department Director;
  - ii) if (i) does not lead to a resolution, the decision can be appealed to the Chief Administrative Officer;
  - iii) if (ii) does not lead to a resolution, the decision can be appealed to the Town Council.
- 2.9 This By-law will be reviewed and revised on a periodic basis. It is anticipated that reviews will be conducted every five years or more frequently as required.
- 2.10 Goods and services not subject to the By-law are listed in Schedule "B" to this By-law.

### 3.0 **Part III – Responsibilities and Authorities**

#### **Responsibilities**

##### 3.1 Department Directors:

- i) have responsibility for all procurement activities within their respective Department and are accountable to achieving best value while following the procurement principles; and have authority to purchase items as outlined in Schedule “A”.

##### 3.2 The Purchasing Officer is responsible for:

- i) providing professional procurement advice and services to Department Directors;
- ii) monitoring compliance with this By-law;
- iii) reporting to the Purchasing Coordinator whenever the specifications of a tender call or Request for Proposal cannot be met by two or more suppliers;
- iv) notifying the Purchasing Coordinator, in advance if possible, of non-compliance with this By-law and/or the Purchasing Policy contained herein;
- v) rejecting all purchase requisitions for services where the services could result in the establishment of an employee-employer relationship;
- vi) providing education and training sessions to all departments on an annual basis and as requested. Training sessions would include, but not be limited to; procurement legislation, electronic purchasing platform, procurement processes and procurement best practices.

#### **Single/Sole Sourcing/Direct Negotiation**

Single Source Procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required by the Town, but a single source is recommended by the Department Director or delegate.

- 3.3 In circumstances where there may be more than one source of supply in the open market, but only one of these is recommended by the Department Director, with the concurrence of the Purchasing Officer, for consideration on the grounds that it is more cost effective or beneficial to the Town; and where the expenditure is between \$10,000 and \$100,000, approval authority is required from the Department Director, Purchasing Coordinator and CAO. The Department Director or delegate shall be responsible for submitting the approval memo detailing the rationale supporting the use of the single source prior to negotiations with the single source.

- 3.4 In circumstances where there may be more than one source of supply in the open market, but only one of these is recommended by the Department Director, with the concurrence of the Purchasing Officer, for consideration on the grounds that it is more cost effective or beneficial to the Town; and where the expenditure will exceed \$100,000, approval must be obtained from Town Council prior to negotiations with the single source. The Department Director shall be responsible for submitting a report detailing the rationale supporting the use of the single source.

### **Sole Source Procurement**

- 3.5 Sole Source Procurement is one in which there is only one supplier available for the required goods or services.
- 3.6 In circumstances where there is only one source of supply for the required goods, services or equipment and where the expenditure is between \$10,000 and \$100,000, with the concurrence of the Purchasing Officer, approval authority is required from the Department Director, Purchasing Coordinator and CAO for the sole source prior to negotiations with the sole source supplier. The Department Director or delegate shall be responsible for submitting the approval memo detailing the rationale supporting the use of the sole source procurement.
- 3.7 If a Department Director requires goods, services or equipment deemed to be available from only one source of supply and where the expenditure will exceed \$100,000 the Department Director, with the concurrence of the Purchasing Officer, shall initiate a report to the Town Council requesting that the tendering procedure be waived and that the Department Director be authorized to negotiate with the sole source supplier.

### **Authority**

- 3.8 Department Directors are delegated the authority to award and execute contracts in the circumstances specified in the Purchasing Policy contained herein provided that the delegated power is exercised within the limits prescribed in Schedule "A" to this By-law, and the requirements of this By-law and the Purchasing Policy are met.
- 3.9 When a Department Director is of the opinion that a "triggering event" has occurred, the Department Director may authorize the purchase of such goods, services and construction as is considered necessary to remedy the situation without regard to the requirement for a bid solicitation and may award the necessary contract amendment.

The relevant details surrounding the "triggering event" shall be included in a report and submitted to Town Council as soon as possible.

- 3.10 The Town Clerk has the authority to purchase goods, services and equipment considered necessary or advisable to carry out the requirements of the Municipal Elections Act, R.S.O. 1996. The Town

Clerk shall whenever possible, be guided by the provisions of this By-law and the Purchasing Policy contained herein.

- 3.11 Despite any other provision of this By-law, the following contracts are subject to Town Council approval:
- i) any contract requiring approval from the Ontario Municipal Board;
  - ii) any contract prescribed by Statute to be made by Town Council;
  - iii) where the cost amount proposed for acceptance is higher than the Town Council approved budget for that expenditure or where the expenditure would result in insufficient remaining funds in the project budget to complete the project as budgeted;
  - iv) where a substantive objection emanating from the bid solicitation has been filed with the Chief Administrative Officer;
  - v) an extension of an existing contract where there is no option to extend included in the contract;
  - vi) where a major irregularity precludes the award of a tender to the supplier submitting the lowest bid, and
  - vii) where authority to approve has not been expressly delegated.
- 3.12 No appointed officer or employee of the Town will have any interest directly or indirectly, as a contracting party, partner, shareholder, surety or otherwise in any contract for goods or services or in any portion of the profits thereof, or any supplies to be used therein, or in any of the monies to be derived therefrom unless such interest has been declared and approved by Council prior to the close of the bid, or in the case of multiple small non-contracted jobs, on an annual basis.
- 3.13 Any contract with the Town, or with any person acting for the Town, and any contract for the supply of goods, materials or services to a contractor for work for which the Town pays or is liable, directly or indirectly, to pay in which a member of Council or any employee of the Town has an undeclared pecuniary interest, directly or indirectly may be voided.
- 3.14 All staff and others participating in the evaluation of proposals shall disclose any conflict of interest prior to the evaluation process and shall not be permitted to influence or participate in the evaluation.
- 3.15 All consultants awarded a contract shall disclose to the Town prior to accepting an assignment, any potential conflict of interest. If such a conflict of interest exists, the Town as directed by the Director of Chief Administrative Officer may, at its discretion, withhold the assignment from the consultant until the matter is resolved. Furthermore, if during the conduct of a Town assignment, a consultant is retained by another client

giving rise to a potential conflict of interest, then the consultant shall so inform the Town.

#### 4.0 Part IV – Requirement for approved funds

4.1 The exercise of authority to award a contract is subject to the identification and availability of sufficient funds in appropriate accounts within Town Council approved budget with the exception of provisions in Section 4.4. Pending Council's approval of proposed budgetary estimates, Department Directors are authorized to spend up to 50% of the previous year's approved Operating Budget.

4.2 Where goods and services are routinely purchased or leased 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 within Town Council approved budget; and
- ii) the requirement for the goods or services will continue to exist in subsequent years and, in the opinion of the Town Treasurer, the required funding can reasonably be expected to be made available.

#### 4.3 Over budget and Unbudgeted Projects

Over budget projects – Where a project will be over budget, departments must take the following steps to mitigate the financial impact:

- i) Scale back the scope of the project to come within budget (applies to budgeted projects only);
- ii) Cancel another current or prior year capital project with the same funding source; A report will go to Council to advise what project is being cancelled and where they are redirecting the funds;
- iii) Cancel the project, close the capital account and resubmit the project for the subsequent year's budget/long range capital plan;
- iv) Under budget amounts from previously awarded capital projects and /or operating budgets are **not** eligible funding sources;

Unbudgeted projects – where a requirement exists to initiate a project for which goods and/or services are required and funds are not contained within the Council approved budget to meet the proposed expenditure, the Department Director shall, prior to commencement of the purchasing process, submit a report to Council containing:

- v) Information surrounding the requirement to Contract;

- vi) Information on the availability of funds within existing budgets, which were originally approved by Council for other purposes, or on the requirement of additional funds;

Reports to Council relating to any financial impacts shall be reviewed by the Purchasing Coordinator (Director of Finance/CFO) prior to being placed on the Council agenda.

#### 4.4 Expenditures Exceeding Approved Budget Funding

The Department Director or delegate must seek Council approval when;

- i) Regardless of which Bid Solicitation process is utilized, in the event the cost amount proposed for acceptance is higher than the Town Council approved budget for that expenditure and where the cost of a project is in excess of the greater of \$10,000 or 10% of the Council approved budget;
- ii) The report should be completed prior to incurring the over expenditure or at the earliest opportunity subsequent to the over expenditure. The report should outline the following items at a minimum;
  - a) Approved budget for the project;
  - b) Amount of awarded contract;
  - c) Overall cost of the completed project;
  - d) The amount of and the reasons for the over budget situation;
  - e) Source of financing for the over budget amount.

#### 5.0 Repeal

- 5.1 That By-law No 2017-63 and any by-law inconsistent with this by-law is hereby repealed.

**Read** a first, second, third time and finally passed this 27th day of July, 2021.



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Gary McNamara, Mayor

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Laura Moy, Clerk

## Schedule "A" - to By-Law 2021-60

### Levels of contract approval authority

Note: Sales taxes, excise taxes, goods and services taxes and duties shall be included in determining the price of a contract for the supply of goods or services for the purpose of the relationship of the price to the preauthorized expenditure limit.

In the case of multi-year supply and/or service contract, the preauthorized expenditure limit shall refer to the estimated annual expenditure under the contract.

### Regular Purchases

<b>Dollar Value</b>	<b>Procurement Process</b>	<b>Approval Authority</b>	<b>Source of Bids</b>
\$10,000 or less	No formal quotes required.	Any employee authorized by the Department Director	Purchase from the competitive marketplace where possible and practicable
\$10,000 to \$50,000	Informal Quotation - written quotation required	Department Director	Three (3) written quotes to be obtained
\$50,000 to \$500,000	Formal Quotation -written quotation required by Request for Quotation/Proposal/Tender	Department Director, Purchasing Coordinator and Chief Administrative Officer	Advertised on website and /or direct invitation
Greater than \$500,000	Written quotation required by Request for Tender/Proposal/ Quotation	Town Council	Advertised on website and/ or direct invitation



**Single/Sole Sourcing/Direct Negotiation**

<b>Dollar Value</b>	<b>Procurement Process</b>	<b>Approval Authority</b>	<b>Source of Bids</b>
Greater than \$10,000 less than \$100,000		Department Director, Purchasing Coordinator and Chief Administrative Officer	
Greater than \$100,000		Town Council	

**Irregular Result**

<b>Dollar Value</b>	<b>Procurement Process</b>	<b>Approval Authority</b>	<b>Source of Bids</b>
Greater than \$10,000 less than \$100,000		Department Director, Purchasing Coordinator and Chief Administrative Officer	
Greater than \$100,000		Town Council	

## **Schedule “B” – to By-law 2021-60**

### **Goods and Services not subject to this by-law**

1. Petty cash items
2. Training and education including:
  - i. conferences, courses, seminars, professional development, staff development/workshops;
  - ii. magazines and periodicals;
  - iii. memberships;
  - iv. staff relations.
3. Refundable employee expenses including:
  - i. cash advances;
  - ii. meal allowances, accommodation and travel expenses.
4. Employer’s general expenses including:
  - i. payroll deduction remittances;
  - ii. medicals;
  - iii. insurance premiums;
  - iv. tax remittances;
  - v. grants to agencies;
  - vi. payments of damages;
  - vii. charges to/from other Government or Crown Corporations.
5. Licenses, certificates, and other approvals required.
6. Ongoing maintenance for existing computer hardware and software
7. Professional and special services including:
  - i. additional non-recurring accounting and auditing services;
  - ii. legal services;
  - iii. surveying services;
  - iv. property taxation services;
  - v. banking services where covered by agreements;
  - vi. public debenture sales;
  - vii. group benefits (health or social services);
  - viii. realty services regarding the lease, acquisition, demolition, sale of land and appraisal of land;
  - ix. policing services.

8. Advertising services required by the Town on or in but not limited to radio, television, newspaper and magazines
9. Utilities
  - i. Postage;
  - ii. water, sewer, hydro electricity and natural gas;
  - iii. internet services.



## The Corporation of the Town of Tecumseh

### Policy Manual

<b>Policy Number:</b>	<b>17</b>
<b>Effective Date:</b>	<b>July 27, 2021</b>
<b>Supersedes:</b>	RCM 320/17 – September 12, 2017 RCM
<b>Approval:</b>	RCM 263/21 – July 27, 2021 RCM
<b>Subject:</b>	<b>Purchasing Policy</b>

#### Table of Contents

<b>Policy Number: 17</b> .....	1
Subject: Purchasing Policy.....	1
1.0 Part I Interpretation.....	5
1.1 Definitions.....	5
2.0 Part II General Procurement Policy.....	9
2.1 Procurement Documentation.....	9
3.0 Part III General Procurement Procedures.....	10
3.1 Objectives.....	10
Objective 1: Corporate Efficiency.....	10
Objective 2: Competitive Process.....	10
Objective 3: Open Process.....	10
Objective 4: Transparent Process and Accountability.....	10
Objective 5: Fair Process.....	10
Objective 6: Insurance and Risk Management.....	11

---

Objective 7: Authorization of Capital Works .....	11
Objective 8: Standardization .....	11
Objective 9: Environmental Considerations .....	11
Objective 10: Total Cost Consideration.....	11
3.2 Director Purchase .....	11
3.3 Informal Quotation (Greater than \$10,000 but not greater than \$50,000) .....	12
3.4 Formal Quotation (Greater than \$50,000 but not greater than \$500,000).....	13
3.5 Request for Tender .....	14
3.6 Request for Proposal .....	16
3.7 Request for Pre-Qualification Process .....	18
3.8 Blanket Contract Purchases.....	19
3.9 Non-Competitive Purchases .....	20
3.10 Procurement in Emergencies.....	21
3.11 Direct Negotiation .....	21
3.12 Cooperative Purchasing.....	22
3.13 Tender Call Before and After Approvals Received.....	23
3.14 Expression of Interest Letter (EOI).....	23
3.15 Two Envelope Bidding Process .....	23
4.0 Part IV Bid and Contract Administration .....	25
4.1 Changes to Contract Under Call .....	25
4.2 Submission of Bids .....	25
4.3 Awarding of Contract .....	27
4.4 No Acceptable Bid or Equal Bids Received .....	29
4.5 Only One Bid Received.....	29

---

4.6	Guarantees of Contract Execution and Performance.....	30
4.7	Contractual Agreement .....	32
4.8	Exercise of Contract Renewal Options .....	33
4.9	Contract Amendments and Revisions.....	33
4.10	Execution and Custody of Documents .....	34
4.11	Exclusion of Bidders in Litigation .....	34
4.12	Exclusion of Bidders due to Poor Performance.....	35
4.13	Bidder Eligibility.....	35
4.14	Access to Information .....	36
5.0	Part V General.....	37
5.1	Direct Solicitation of Departments.....	37
5.2	Ethics in Purchasing .....	37
5.3	Resolution of Questions of Policy .....	37
5.4	Amendment or Rescinding of Policy .....	37
6.0	Part VI Disposal of Surplus or Scrap Materials and Equipment.....	38
6.1	Items Considered Obsolete or Surplus by Departments .....	38
6.2	Periodic Bids for Auctioneer Services .....	38
6.3	Disposal of Scrap Material .....	38
	Appendix A.....	40
	Irregularities Contained in Bids.....	40
	Appendix B.....	42
	Pre-Qualification of Contractors.....	42
	Appendix C.....	44
	Statement of Ethics.....	44



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## 1.0 Part I Interpretation

### 1.1 Definitions

In this policy, unless contrary intention appears,

“accountability” means having responsibility to account for ones conduct in an explicable and understandable manner;

“agreement” means a formal written legal agreement or contract that binds the Town of Tecumseh and all other parties for the supply of goods, services, equipment or construction;

“best value” means the optimal balance of performance and cost determined in accordance with the pre-defined evaluation plan. Best value may include a time horizon that reflects the overall life cycle of a given asset;

“bid deposit” means currencies, certified cheques, bond surety issued by a surety company or other form of negotiable instrument to ensure the successful bidder will enter into an agreement;

“Buying Group” means the cooperative arrangement in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the Buying Group administers procurement for group members. Buying groups may consist of a variety of entities, including any combination of procuring entities, private sector entities, or not-for-profit organizations.

“certificate of clearance” from the Workplace Safety and Insurance Board means a certificate issued by an authorized official of the Workplace and Insurance Board certifying that the Board waives its rights under subsection 9(3) of the Workers’ Compensation Act, R.S.O. 1990, Chapter W.11;

“contract” means any formal or deliberate written agreement for the purchase of goods, services, equipment or construction;

“contract record” is a document which outlines the terms and conditions of the agreement;

“Cooperative Procurement” means the purchase of Goods or Services as part of a Buying Group.

“declaration respecting Workers Compensation Act, R.S.O. 1990/Corporation Tax Act” means a declaration that the bidder has paid all assessments or compensation payable and has otherwise complied with all requirements of the Workplace Safety and Insurance Board and that the bidder has paid all taxes and/or penalties imposed on it pursuant to the Corporation Tax Act, R.S.O., 1990;



“Department Director” shall mean the Director of any department for the Town or designate(s);

“Electronic Bid Submission” or E-Bid Submission is the electronic transfer of a proposal, tender or quotation bid data between a potential supplier and contracting authority.

“Electronic Purchasing” refers to an internet based process wherein the complete tendering processes, from advertising to receiving and submitting tender related information are done online.

“emergency” means a situation, or the threat of an impending situation, which may affect the environment, the life, safety, health and/or welfare of the general public, or the property of the residents of the Town of Tecumseh, or to prevent serious damage, disruption of work, or to restore or to maintain essential service to a minimum level;

“executed agreement” means a form of agreement, either incorporated in the bid documents or prepared by the Town or its agents, to be executed by the successful bidder and the Town;

“insurance documents” means certified documents issued by an insurance company licensed to operate by the Government of Canada or the Province of Ontario certifying that the bidder is insured in accordance with the Town’s insurance requirements as contained in the bid documents;

“irregular result” means that in any procurement process where competitive bids or proposals are submitted, any of the following has occurred or is likely to occur:

- a) the lowest responsive bid or proposal exceeds the estimated cost or budget allocation;
- b) the lowest responsive bid or proposal contains an irregularity as described in Appendix “A”;
- c) the specifications of a tender call or request for proposal cannot be met by two or more suppliers; or
- d) concurrence cannot be achieved between the Department Director and the Purchasing Officer

“irregularities contained in bids” is defined in Appendix “A” and includes the appropriate response to those irregularities;

“irrevocable letter of credit” means an irreversible or unalterable commitment on the part of a Chartered Bank that is contained on the Town’s standard letter of credit form, to pay the Town a sum of money on demand.

“labour and material bond” means a bond issued by a surety company to ensure that the contractor will pay his or her suppliers and thereby protects the Town against items that might be granted to supplier should the contractor not make proper payments;

“letter of agreement to bond” means a letter or other form issued by a bonding agency licensed to operate by the Government of Canada or the Province of Ontario advising that, if the bidder is successful the bonding agency will issue the required bonds;

“negotiation” means conferring with one or more vendors to reach an agreement on needed goods or services under the conditions outlines in this policy;

“performance bond” means a sum of money put up as a guarantee by a surety company that the named Vendor will perform in accordance with the contract;

“proposal” means a request for bids comprised of technical and financial approaches and plans, subject to evaluation using criteria established by the Municipality.

“Purchasing Coordinator” is the Director of Financial Services/Chief Financial Officer or his/her designate

“Purchasing Officer” reporting directly to the Director of Financial Services/Chief Financial Officer will coordinate the procurement process for the municipality in accordance with the competitive bidding law, current regulation, the Municipality’s Purchasing By-law and industry best practices.

“quotation” means a request for prices on a specific goods and/or services from selected vendors that are submitted verbally, in writing or transmitted by facsimile as specified in the Request for Quotation;

“Related Party” in relation to a bidder means any party that is directly or indirectly owned or controlled by a combination of the bidder and/or any one or more officers, directors, and/or shareholders of the bidder.

“request for information” is used prior to issuing a tender call as a general market research tool to determine what products and services are available, scope out business requirements, and/or estimate project costs. The response may be subject to further requests;

“request for prequalification” means a formal Town solicitation for details on suppliers’ backgrounds, capabilities and resources, and the goods or services they are offering, such information shall be used to pre-qualify suppliers and/or their goods and services to be invited to submit bids;

“sealed bid” is a document enclosed in a sealed envelope and is submitted in a response to invitation to bid. Sealed bids received up to a deadline date are generally opened at a stated time and place usually in the presence of anyone who may wish to be present and evaluated for the award of contract.

“single source” means when two or more suppliers can supply the commodity, technology and/or perform the services required but a single source is recommended by the Department Director or delegate.

“sole source” means the only supplier of particular goods or services;

“tender” means a sealed bid which contains an offer in writing to execute some specified services, or to supply certain specified goods, at a certain price, in response to a publicly advertised request for bids;

“Town” shall mean the Corporation of the Town of Tecumseh:

“trade agreements” means the Canadian Free Trade Agreement (CFTA) and the Canadian and European Union Comprehensive Economic and Trade Agreement (CETA).

“transparency” means the condition of being easily seen through, discerned, evident or obvious in a way that is understandable, frank and open to all persons;

“triggering event” means an occurrence resulting from an unforeseen action or consequence of an unforeseen event, which must be remedied on a time sensitive basis to avoid a material financial risk or serious or prolonged risk to persons or property;

“unsolicited offer” means an offer to supply goods or services to the Town which was not asked for and which may or may not represent a thing of value to the Town;

“value analysis” typically refers to a life cycle costing approach to valuing a given alternative, which calculates the long-term expected impacts of implementing the particular option;

## **2.0 Part II General Procurement Policy**

### **2.1 Procurement Documentation**

- a) In order to maintain consistency, guidelines shall be provided to Department Directors on procurement policies and procedures and on the structure, format and general content of procurement documentation
- b) Procurement documentation shall avoid use of specific products or brand names.
- c) Notwithstanding Subsection 2.1b) a Department Director may specify a specific product, brand name or approved equal for essential functionality purposes to avoid unacceptable risk or for some other valid purpose. In such instances, the Department Director and the Purchasing Officer shall manage the procurement to achieve a competitive situation if possible.
- d) Department Directors shall:
  - i) give consideration to the need for value analysis comparison of options or choices,
  - ii) ensure that adequate value analysis comparisons are conducted to provide assurance that the specification will provide best value, and
  - iii) include the value analysis documentation in the procurement file.

## **3.0 Part III General Procurement Procedures**

### **3.1 Objectives**

The Town's overall purchasing objectives are as follows:

#### **Objective 1: Corporate Efficiency**

Purchases must be for unique Departmental requirements such that corporate purchasing power or standardization is not a factor in costing. Requirements cannot be split in order to qualify for this process.

#### **Objective 2: Competitive Process**

A competitive process is undertaken whereby the most open bidding process practicable for the acquisitions of goods and services is used. Care must be taken as to how bids are sought, bidder's lists are maintained and how competition is encouraged.

#### **Objective 3: Open Process**

Departmental needs are communicated to bidders, who are able to bid on goods or services they are qualified to provide. There should be no limitation of bids to an established listing.

#### **Objective 4: Transparent Process and Accountability**

The process is undertaken based on clear definition of the product or service requirement, and a clear outline of the review and criteria to be undertaken. The decision to choose a bidder will be based solely on the requirements as documented, the bidder document, and the application of the review criteria. The same decision should be arrived at each time given the same set of facts, which will facilitate the dispute resolution process.

#### **Objective 5: Fair Process**

The process will be fair, such that no action is undertaken by Town staff to allow any given bidder an unfair advantage. This does not however, require Town action to ensure that existing conditions are changed to ensure that any conversion costs from an incumbent to another supplier are ignored in an evaluation – it is in the best interest of the Town to ensure that such “leveling of the playing field” is not required.

## **Objective 6: Insurance and Risk Management**

WSIB certificates of clearance, where required, must be obtained at the commencement of the project and periodically as the work is completed. The Performance and Labour and Material Bonds are to be maintained and updated throughout the contract and released upon completion.

## **Objective 7: Authorization of Capital Works**

References to budget must be made to ensure that there are sufficient funds to pay for the contract and the project is part of the budget allocation.

## **Objective 8: Standardization**

In order to assist in ensuring that legal and insurance risks are controlled, standard formats should be followed for Requests for Quotation, Tender and Proposal, where possible. These formats will be updated as appropriate.

## **Objective 9: Environmental Considerations**

In order to contribute to waste reduction and to increase the development and awareness of environmentally sound purchasing, acquisitions of goods and services will ensure that, wherever possible, specifications are amended to provide for expanded use of durable products, reusable products and products (including those used in services) that contain the maximum level of post-consumer waste and/or recyclable content, without significantly affecting the intended use of the product or service. It is recognized that cost analysis is required in order to ensure that the products are made available at competitive prices.

## **Objective 10: Total Cost Consideration**

In evaluating quotations, tenders and proposals, consideration is to be given, wherever possible, to the total cost of acquisition, repair, staff training, operation and disposal rather than only the lowest invoice price to ensure the best value is being obtained for the price to be paid.

### **3.2 Director Purchase**

- a) Refers to the ordering and purchase of goods and service from a supplier with or without negotiation.

- b) Generally used for the purchase of normal ongoing supplies, equipment and service that is repetitive in nature.
- c) Supplier is selected at the discretion of the Department Director, or designate
- d) For purchases under \$200:
  - i) Petty cash funds may be used where immediate payment is required upon receipt of goods.
  - ii) All petty cash disbursements shall be evidenced by proof of purchase/receipt.
  - iii) Should only be used when it is not feasible to use a credit card and is not practical to be invoiced for the good or service.
  - iv) No quotes are required.
- e) For purchases between \$200 and \$10,000:
  - i) Departments have authority to make purchases in such an amount to meet the requirements of the Department.
  - ii) All such purchases shall be supported by invoices or delivery slips initialed as approved by the Department Director, or designate.
  - iii) No quotes are required; informal quotations may be used where it is in the interest of the Corporation to do so.

### **3.3 Informal Quotation (Greater than \$10,000 but not greater than \$50,000)**

- a) Refers to a competitive process where suppliers are requested to submit quotations on specific goods or service. This process does not involve advertising, receipt of sealed bids or the preparation of formal quotation documents.
- b) Generally used where the specifications for the goods and service are clearly defined and the terms of purchase have been established.
- c) The Department Director, or designate, shall consider the relevant specifications, budget authorization, approval authority and terms and conditions for the purchase of goods, services or construction.

- d) The Department Director, or designate, shall obtain a minimum of three (3) bids either by way of phone, e-mail, fax or similar communication method, vendor advertisements or vendor catalogues. The award of the contract shall be to the lowest bid, in keeping with the specifications. Evidence of the selected informal quotation shall be attached to the invoice.
- e) In circumstances where three quotes could not be obtained, the Department Director, or designate shall notify the Purchasing Officer, through written correspondence, documenting the rationale as to why three quotes were not obtained. The Purchasing Officer will retain this information for audit and reporting purposes.
- f) The Town reserves the right to accept or reject any submissions.

### **3.4 Formal Quotation (Greater than \$50,000 but not greater than \$500,000)**

- a) Refers to a competitive process where suppliers are requested to submit quotations on specific goods or service.
- b) Generally used where the specifications for the goods and service are clearly defined and the terms of purchase have been established.
- c) The Purchasing Officer shall work with the Department Director or delegate to develop the documentation. The formal process includes:
  - i) The preparation of a quotation document, which provides the prospective suppliers with clear instructions, specifications, terms and conditions;
  - ii) A quotation form on which bids can be submitted;
  - iii) A clear indication of the final time and place for receipt of bids; and
  - iv) Notice, by the Purchasing Officer, of the Request for Quotation will be advertised on the eBids & Tenders website, which can be accessed via the Town's website. Notification of the Request for Quotation may also be sent directly to vendors.
- d) The Department Director shall consider the relevant specifications, budget authorization, approval authority, and terms and conditions for the purchase of goods, services or construction.



- e) The Purchasing Officer, in consultation with the Department Director or delegate, shall prepare a report outlining a summary of the bids and recommend the award of the contract to the lowest responsive quote, subject to the specifications and contractor performance:
  - i) Where the value is under \$500,000 to the Department Director, Purchasing Coordinator and Chief Administrative Officer, for approval
  - ii) Where the value is over \$500,000 to Council, for approval.
- f) The Town reserves the right to accept or reject any submission.

### **3.5 Request for Tender**

- a) Refers to a competitive method of procurement, which may include supplier or contractor pre-qualification, where suppliers are requested to submit bids in response to an advertisement requesting sealed tenders
- b) Generally used where:
  - i) More than one supplier or contractor are considered capable of meeting the requirement;
  - ii) The requirement can be precisely defined for which a clear or single solution exists;
  - iii) Bids can be submitted on a common pricing basis, and
  - iv) Best value for the Town can be achieved by an award selection made on the basis of the lowest bid that meets specifications.
- c) The Purchasing Officer will coordinate the tendering process which includes:
  - i) Contractor and supplier pre-qualification, (if applicable);
  - ii) Development of specifications and contract terms;
  - iii) Publication and solicitation of tenders;
  - iv) Receiving and opening of bids, and
  - v) Bid evaluation and selection.

- d) The Tender documents will contain at least the following:
  - i) Name of the tender, closing date and time and contact person;
  - ii) Non-technical information that advised the potential bidders of the general terms and conditions that applies to the tender of goods and/or services;
  - iii) The requirement for bidder to provide either a performance guarantee/financial guarantee in the form of a bid deposit, irrevocable letter of credit, or bond (performance, labour and/or material);
  - iv) Specifications detailing the nature, scope and extent of the goods and/or services required, and
  - v) Tender form, which when properly completed and signed is a legal offer by the bidder to carry out the tendered work. The tender form should include an acknowledgement from the bidder that he has reviewed and understands all of the tender documents and is prepared and capable of carrying out the contemplated works.
  - vi) Notice, by the Purchasing Officer, of the Request for Tender will be advertised on eBids & Tenders which can be accessed via the Town's web site.
- e) The Department Director shall consider the relevant specifications, budget authorization, approval authority and terms and conditions for the purchase of goods, services or construction.
- f) The Purchasing Officer, in consultation with the Department Director or delegate shall prepare a report outlining a summary of the bids and recommend the award of the contract to the lowest responsive quote, subject to the specifications and contractor performance,
  - i) Where the value is under \$500,000 to the Department Director, Purchasing Coordinator and Chief Administrative Officer, for approval
  - ii) Where the value is over \$500,000 to Council, for approval.
- g) With respect to all reports initiated for tenders, there shall be a report on the sources of financing, allocation of revenues, and other financial commentary as considered appropriate.
- h) The Town reserves the right to accept or reject any submission.

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### 3.6 Request for Proposal

- a) Refers to a competitive method of procurement, which may include supplier or contractor pre-qualification, where suppliers are requested to submit a creative solution to a problem, requirement or objective. The selection of the successful proponent is based on the effectiveness of the proposed solution rather than on price alone.
- b) Generally used where:
  - i) the requirement is best described in a general performance specification;
  - ii) there may be negotiations with one or more bidders with respect to any aspect of the agreement;
  - iii) innovative solutions are sought; and
  - iv) to achieve best value, the award selection will be made on an evaluated point per item or other method involving a combination of mandatory and desirable requirements.
- c) The Purchasing Officer will coordinate the Request for Proposal process which includes:
  - i) Contractor and supplier qualification (if applicable);
  - ii) Development of desired outcome to a stated problem, requirement or objective;
  - iii) Publication and solicitation of RFP;
  - iv) Receiving and opening of RFP;
  - v) Notice, by requesting department, of the Request for Proposal on eBids & Tenders which can be accessed through the Town's website; and
  - vi) RFP evaluation and selection.
- d) The Request for Proposal document will contain at least the following:
  - i) Name of the RFP, closing date and time and contact person;
  - ii) Non-technical information that advises the potential bidders of the general terms and conditions that applies to the RFP;

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- iii) Specifications detailing the nature, scope and extent of the goods and/or services required;
  - e) A Request for Information may be issued in advance of a proposal to assist in the development of a more definitive set of terms and conditions, scope of work/service and the selection of qualified Vendors.
  - f) Where the requirement is not straightforward or an excessive workload would be required to evaluate proposals, either due to their complexity, length, number or any combination thereof, a procedure may be used that would include a pre-qualification
  - g) A list of suggested evaluation criteria for assistance in formulating an evaluation scheme when using a Request for Proposal shall be maintained. This may include factors such as qualifications and experience, strategy, approach, methodology, scheduling and past performance, facilities, equipment, and pricing
  - h) Department Directors, Purchasing Coordinator and the Purchasing Officer shall identify appropriate criteria, including the weighting, which will be included in the proposal, from the list maintained for use in a Request for Proposal but are not limited to criteria from the list. Cost will always be included as a factor, as best value includes both quality and cost.
  - i) The Department Director shall consider budget authorization, approval authority, terms of reference and evaluation criteria to be applied in assessing the proposals submitted.
  - j) A Selection Committee, composed of a minimum of one representative from the Department and the Purchasing Officer shall review all proposals against the established criteria, reach consensus on the final rating results, and ensure that the final rating results, with supporting documents, are retained.
  - k) During the proposal process all communications with bidders shall be through the Department Director or designate via the question portal of the website.
  - l) The Purchasing Officer in consultation with the Department Director or delegate shall forward an evaluation summary to:
    - i) Council for those \$500,000 or higher, for approval

- ii) The Purchasing Coordinator and Chief Administrative Officer for those less than \$500,000, for approval

as well as the Committee's recommendation for award of the contract to the supplier meeting all mandatory requirements and providing best value as stipulated in the Request for Proposal. Where the lowest bid is not accepted, the Department Director is responsible for documenting the determination of best value, in a confidential report to the Purchasing Coordinator prior to award of contract.

- m) A report on the sources of financing, allocation of revenues, and other financial commentary as considered appropriate, shall be prepared.
- n) Reporting will not include summaries of bids where this information may need to remain confidential. Any disclosure of information shall be made in accordance with the provisions of the Municipal Freedom on Information and Protection of Privacy Act, R.S.O. 1990.
- o) Unsuccessful proponents may, upon their request, attend a debriefing session with the Department Director review their bid submission. Discussions relating to any bid submissions other than that of the proponent present will be strictly prohibited.
- p) The Town reserves the right to accept or reject any submission.

### **3.7 Request for Pre-Qualification Process**

- a) A Request for Pre-qualification may be used where:
  - i) construction work is required under Sections 4, 74 and 78 of the Drainage Act having a value up to \$500,000;
  - ii) construction work is required for road, storm sewer, sanitary sewer, sidewalks or building repairs having a value up to \$500,000;
  - iii) best value for the Town can be achieved by an award selection made on the basis of the lowest bid that meets specifications.

Suppliers and contractors will be invited to submit information as outlined in Appendix "B" to pre-qualify for the invitation of quotations and tenders on an annual basis.

- b) The Department Director will undertake such investigations to ensure that the applicant is a bonafide registered company or business and will undertake other searches and enquiries to ensure that the

applicant has the technical and financial capacity appropriate to the pre-qualification class being sought. Searches will not necessarily be confined to references proposed by the applicant and may include information gathered from other agencies.

- c) To be considered for pre-qualification, the applicant must demonstrate the criteria as outlined in Appendix "B".
- d) Applicants may apply for pre-qualification in one or more categories, with a separate application required for each category, as outlined in Appendix "B".
- e) Pre-qualified contractors shall be invited to submit quotations/tenders for the project where costs are greater than \$10,000. For costs greater than \$10,000 and up to \$50,000 a minimum of three quotes shall be obtained. The project will not be publicly tendered where costs are less than \$75,000.
- f) Failure to supply all of the information requested in the application form shall result in the application being rejected. Applicants who are unable to demonstrate that they meet the requirements listed for the class and level applied for shall be rejected. Applicants will receive written notice of the outcome of the assessment within four (4) weeks from the date of receipt of the application and related documentation.
- g) Applicants may file an appeal of the decision of pre-qualification or a suspension in pre-qualification to Town Council within fourteen (14) days of being advised of the outcome of the application or review. The applicant/contractor shall have the right of appearance before council if they desire. The decision of Town Council will be final and will be forwarded to the applicant within five (5) days of their review.

### **3.8 Blanket Contract Purchases**

- a) A Request for Blanket Contract may be used where:
  - i) one or more departments repetitively order the same goods or services and the actual demand is not known in advance, or
  - ii) a need is anticipated for a range of goods and services for a specific purpose, but the actual demand is not known at the outset, and delivery is to be made when a requirement arises.

- b) The Department Director shall establish and maintain Blanket Contracts that define source and price with selected suppliers for all frequently used goods or services.
- c) To establish prices and select sources, the Department Director shall employ the provisions contained in this Policy for the acquisition of goods, services and construction.
- d) More than one supplier may be selected where it is in the best interests of the Town and the bid solicitation allows for more than one.
- e) Where purchasing action is initiated by a department for frequently used goods or services, it is to be made with the supplier or suppliers listed in the Blanket Contract.
- f) In a Request for Blanket Contract, the expected quantity of the specified goods or services to be purchased over the time period of the agreement will be as accurate an estimate as practical and be based, to the extent possible, on previous usage adjusted for any known factors that may change usage.

### **3.9 Non-Competitive Purchases**

- a) The requirement for competitive bid solicitation for goods, services and construction may be waived under joint authority of the appropriate Department Director and the Purchasing Coordinator and replaced with negotiations by the Department Director under the following circumstances:
  - i) where competition is precluded due to the application of any Act or legislation or because of the existence of patent rights, copyrights, technical secrets or controls or raw material;
  - ii) where due to abnormal market condition, the goods, services or construction required are in short supply;
  - iii) where only one source of supply would be acceptable and cost effective;
  - iv) where there is an absence of competition for technical or other reasons and the goods, services or construction can only be supplied by a particular supplier and no alternative exists;
  - v) where the nature of the requirement is such that it would not be in the public interest to solicit competitive bids as in the case of security or confidentiality matters;

- vi) where in the event an “Emergency” as defined by the Policy, a requirement exists;
  - vii) where the requirement is for a utility for which there exists a monopoly.
- b) When a Department Director intends to select a supplier to provide goods, services or construction pursuant to subsection 3.9 a), a written report indicating the compelling rationale that warrants a non-competitive selection will be submitted by the Department Director to Town Council for approval for those purchases over \$100,000.

### **3.10 Procurement in Emergencies**

Where, in the opinion of the Chief Administrative Officer, or two Department Directors, an emergency has occurred requiring the immediate procurement of goods, services or construction,

- a) the Department Director, with authorization by the Chief Administrative Officer, or two Department Directors, may initiate a purchase in excess of the preauthorized expenditure limit by the most expedient and economical means; and
- b) any purchase under such conditions together with a source of financing shall be justified and reported to the next meeting of the Town Council following the date of the purchase.

### **3.11 Direct Negotiation**

Unless otherwise provided in accordance with the Purchasing By-law and this policy, goods and services may be purchased using Direct Negotiation method only if one or more of the following conditions apply:

- a) the required goods and services are reasonably available from only one source by reason of the scarcity of supply in the market or the existence of exclusive rights held by any supplier or the need for compatibility with goods and services previously acquired and there are no reasonable alternatives or substitutes;
- b) the required goods and services will be additional to similar goods and services being supplied under an existing contract (i.e. contract extension or renewal);



- c) an attempt to purchase the required goods and services has been made in good faith using a method other than Direct Negotiation under Section 3.2 through 3.7 of this policy which has failed to identify a successful supplier and it is not reasonable or desirable that a further attempt to purchase the goods and services be made using a method other than Direct Negotiation;
- d) the goods and services are required as a result of an emergency, which would not reasonably permit the use of a method other than Direct Negotiation;
- e) the required goods and services are to be supplied by a particular vendor or supplier having special knowledge, skills, expertise or experience.

### **3.12 Cooperative Purchasing**

- a) The Town may participate with other government agencies or public authorities in cooperative purchasing where it is in the best interests of the Town to do so and where the purposes, goals and objectives of this policy are complied with by such government agencies and public authorities.
- b) The policies of the government agencies or public authorities calling the cooperative Bid Solicitation are to be the accepted policy for that particular purchase.
- c) To the extent practicable, the Town shall ensure that the procurement is carried out in a manner consistent with applicable Trade Agreements.
- d) The Town shall publish a notice of its participation with the Buying Group at least annually on a tendering website normally used and the notice shall direct potential Suppliers to the buying group tender notices website if it is different from the Town's tendering website or systems.
- e) A department may choose to work collectively with other government agencies, public authorities or a buying group to leverage their purchasing power. The Department who is participating in the cooperative purchase shall notify the Purchasing Officer of their interest in participating in the cooperative purchase. The Purchasing Officer will review the purchasing policy and documentation of the third party to ensure it either meets or exceeds the Town's policy prior to participation.

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### **3.13 Tender Call Before and After Approvals Received**

- a) Following the adoption of the capital budget by Council, the Department Director is authorized to call tenders for municipal construction projects and the acquisition of equipment.
- b) Notwithstanding a) above, the Department Director may call tenders for municipal construction projects and the acquisition of equipment prior to the adoption of the capital budget by Council provided the call and award of such tenders are specifically subject to receipt of such approvals.
- c) The Department Director is authorized to obtain, prior to the adoption of the capital budget by Council, sealed bids for additional and replacement equipment, provided that the documents include a clause specifically stating that the acceptance of a bid and placing of the order is subject to budget approval by Council and the items specified are subject to change in quantity and/or deletion.
- d) The exercise of authority to award a contract is subject to the identification and availability of sufficient funds in appropriate accounts within Town Council approved budget. Pending Council's approval of proposed budgetary estimates, Department Directors are authorized to spend up to 50% of the previous year's approved Operating Budget.

### **3.14 Expression of Interest Letter (EOI)**

The Purchasing Officer will issue an EOI at the request of the initiating Director to determine a set list of users who are capable of providing a particular product or service, when the availability of said product or service is unknown. EOIs do not result in the award of a contract, and usually precede a call for bids and do not request pricing information. EOI are advertised publicly, and responses to the EOI are required by a designated date and time

### **3.15 Two Envelope Bidding Process**

- a) Refers to a competitive process where suppliers are requested to submit their technical specifications and their financial bid in two separate envelopes.
- b) The technical specifications are scored by a designated Evaluation Committee using an evaluation scheme outlined in the document. If

the proponent has met a predetermined minimum scoring requirement the cost envelope will be opened. If the submission does not meet the minimum scoring the cost envelope will remain on file unopened and the submission will not be considered for the project.

- c) Price is a consideration during the evaluation and the weight of the proposal price shall vary based on the specific project program.
- d) Submissions are not awarded solely on the proposal price, but are awarded based on the highest scoring compliant submission and at the recommendation of the Evaluation Committee.

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## **4.0 Part IV Bid and Contract Administration**

### **4.1 Changes to Contract Under Call**

- a) A list of the name, address, telephone number and email address is to be maintained of all prospective bidders to facilitate distribution of addenda and when necessary to extend or cancel a contract under call.
- b) Interpretations will be made in reply to queries from bidders only in the form of written addendum. When it becomes necessary to revise, delete, substitute or add to any tendering material or contract under call, the Purchasing Officer shall forward by email to each Contractor/Supplier who obtained tender forms for the contract a copy of the addendum. A copy of the addendum shall be stapled to each tender form not yet distributed and advertised in the same publication as originally stated
- c) When it is advisable to cancel a contract under call, an advertisement shall be prepared for insertion in the same publication as originally stated. Each Contractor/Supplier who received tender documents shall be notified by telephone and or email that the contract has been cancelled and will have any tenders, if submitted, returned unopened by hand or certified mail.
- d) When it is advisable to extend a closing date for receiving tenders, an advertisement shall be prepared for insertion in the same publication as originally stated. Each Contractor/Supplier who received a tender document shall be notified of the extension by telephone or email. If a tender has already been received before the notification of the extension of time, and the extension of time is two weeks or less, the Contractor/Supplier shall be advised by email or certified mail that his tender will be returned, unopened, upon request. If the extension of time is more than two weeks, all tenders will be returned unopened.

### **4.2 Submission of Bids**

- a) Bids shall be submitted in paper or electronic form to the dedicated web based service or the Purchasing Officer at the time and date specified by the tender call.
- b) When a tender is received, the envelope shall be time stamped using Coordinated Universal Time - Eastern Standard (computer) and date stamped, regardless of when it is received. The tender shall be

deposited unopened, with the Purchasing Officer and recorded on a list of tenders received. The number of bids received and the names of bidders are confidential and shall not be divulged prior to the tender opening.

- c) A bidder who has already submitted a tender bid may submit a further tender bid at any time up to the official closing time and date specified by the tender call. The last tender bid received shall supersede and invalidate all bids previously submitted by that bidder.
- d) A bidder may withdraw his or her tender bid at any time up to the official closing time by letter bearing his or her signature as in his or her bid submitted to the Purchasing Officer. Telephone requests will not be considered. When the withdrawal is made in person and the person is other than a senior official of the company, and for letter withdrawals, the authenticity of the request must be confirmed by telephoning a responsible official of the company.
- e) The closing time for receiving tender bids shall be 2:00 pm on Thursday. If the tender is received late, it shall be returned unopened to the bidder either in person or by mail. If a late bid is received without a return address on the envelope it shall be opened, address obtained and then returned. The covering letter should state why the envelope could not be returned unopened.
- f) The opening of bids shall commence at 2:05 p.m. unless the Purchasing Officer or designate acting reasonably postpones the start to some later hour, but the opening shall continue, once started, until the last bid is opened.
- g) The Purchasing Officer shall be responsible for arranging for the public opening of tender bids at the time and date specified by the tender call. There will normally be in attendance at that time,
  - i) The Department Director or his/her designate and;
  - ii) The Purchasing Officer or his/her designate.
- h) Each tender shall be attached to the applicable tender envelope and the bid deposit clipped to the tender form.
- i) If correspondence is found enclosed with a tender in the tender envelope, that tender shall be considered to be an improper bid and shall be so noted in the record of tenders opened and the tender read out in the normal manner. The correspondence and the tenders may

be referred to the solicitor for recommendation as to acceptance or rejection.

- j) When tenders have been opened, the Purchasing Officer shall check the listing of tenders received, and the number of tenders opened to ensure that all tenders received is accounted for. If a discrepancy occurs, the tender opening proceedings shall be delayed until all tenders have been accounted for.
- k) When all tenders have been accounted for, the Purchasing Officer shall announce the number of bids received, the name of the bidder and the total bid amount.
- l) Once the tenders have been read out loud, the Purchasing Officer shall collect all of the tenders and scan copies of the submissions and forward them to the responsible Manager and Director and file the scanned copies electronically. The Purchasing Officer will keep all of the documentation together and in safe keeping until the award is approved.
- m) The checking of tenders shall be completed as soon as possible following the public portion of the tendering opening. Any tender that has been rejected or is improper shall be so noted on the Record of Tenders opened.

### **4.3 Awarding of Contract**

- a) Upon award of the contract, the Department Director shall immediately send a notification of acceptance to the successful bidder advising him that his tender has been accepted and advising that the contract documents will follow for execution.
- b) Following review of the tenders, all bid deposit other than the low and second low bidders shall be returned to the applicable bidders by mail or picked up by the bidder. The tender certified bid deposits that are retained shall not be cashed.
- c) The successful bidder, if requested in the tender document shall submit the following documentation in a form satisfactory to the Town within ten (10) working days from the date of mailing of the notice by the Town to the tenderer to do so by the Town:
  - i) Executed performance bonds and labour and material bonds;
  - ii) Executed agreement;

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- iii) Insurance documents in compliance with the tender documents;
  - iv) Declarations respecting the Workplace Safety and Insurance Board;
  - v) Certificate of clearance from the Workplace Safety and Insurance Board; and
  - vi) Any other documentation requested to facilitate the execution of the contract.
- d) If a contract has been award and copies of the executed contract are returned and found acceptable to the Municipality, the bid deposits of the successful bidder and the second low bidder shall be returned by certified mail or be picked up by the bidder.
- e) If a contract has been awarded and the successful low bidder fails to sign the contract or provide the necessary documents as outlined within the specified time, the Town may grant additional time to fill the necessary requirements or may recommend either awarding the contract to the next lowest bidder or canceling the contract. If additional time is not granted, the deposit of the low bidder shall be forfeited. If the contract is to be awarded to the second low bidder, his bid deposit shall be retained until he has actually signed the contract. If the second low bidder fails, or declines, to execute the contract if awarded to him his deposit shall be forfeited.
- f) Accessibility for Ontarians with Disabilities Act (AODA) – contractors and service providers, including subcontractors if applicable, that provide services to the public or third parties on behalf of the Town of Tecumseh shall ensure that all its employees, agents, volunteers or others for whom the contractor is legally responsible receive training regarding the provision of the goods and services to persons with disabilities in accordance with Section 6 of the Ontario Regulations 429/07 ( the Regulation) made under the Accessibility for Ontarians with Disabilities Act, 2005, as amended ( the Act). The contractor shall ensure that the training includes a review of the purposes of the Act and the requirements of the Regulation, a review of the Town’s Policy on Accessible Customer Service Standards, as well as instruction regarding all matters set out in Section 6 of the Regulation. The vendor shall furnish any required records of accessible customer service training to the Town within ten days of the Town’s request, unless otherwise agreed upon by the Town. The Town reserves the right to require the contractor to amend its training policies to meet the requirements of the Act and the Regulation.

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#### **4.4 No Acceptable Bid or Equal Bids Received**

- a) Where bids are received in response to a bid solicitation but exceed budget, are not responsive to the requirement, or do not represent fair market value, a revised solicitation shall be issued in an effort to obtain an acceptable bid unless Subsection 4.4 b) applies.
- b) The Department Director and the Purchasing Coordinator jointly may waive the need for a revised bid solicitation and enter into negotiations with the lowest responsive bidder under the following circumstances:
  - i) The total cost of the lowest responsive bid is in excess of the funds appropriated by Town Council for the project and
  - ii) The Department Director and the Purchasing Officer agree that the changes required to achieve an acceptable bid will not change the general nature of the requirement described in the bid solicitation.
- c) The method of negotiation shall be that accepted as standard negotiating procedures that employ ethical public procurement practices.
- d) The Town of Tecumseh has the right to cease negotiations and reject any offer.
- e) If two equal bids are received the bidders shall be advised that the tender to be accepted will be decided by means of a draw. The names of the tied bidders shall be placed in a container and the tender to be accepted shall be drawn by the Purchasing Officer or designate. The time and location of the draw shall be set by the Purchasing Officer or designate and the bidder shall be so advised in order that they may be present. Should any bidder elect not to be represented at the draw, the draw will proceed regardless.

#### **4.5 Only One Bid Received**

- a) In the event only one bid is received in response to a request for tender, the Department Director may return the unopened bid to the bidder when, in the opinion of the Department Director and the Purchasing Officer, using criteria, based on the number of bids which might reasonably be expected on a given type of bid, additional bids could be secured. In returning the unopened bid the Department



Director shall inform the bidder that the Town may be recalling the tender at a later date.

- b) In the event that only one bid is received in response to a request for tender, the bid may be opened and evaluated in accordance with the Town's usual procedures when, in the opinion of the Department Director and Purchasing Officer, the bid should be considered by the Town. If, after evaluation by the Department Director and Purchasing Officer, the bid is found not to be acceptable, they may follow the procedures set out in Subsection 4.4 a) to d).
- c) In the event that the bid received is found acceptable, it will be awarded as an Irregular result under Schedule "A" of the Purchasing By-law.

#### **4.6 Guarantees of Contract Execution and Performance**

- a) The Department Director may require that a bid be accompanied by a Bid Deposit or a Bid Bond to guarantee entry into a contract.
- b) In addition to the security referred to in Subsection 4.6 a), the successful supplier may be required to provide:
  - i) A Performance Bond to guarantee the faithful performance of the contract and;
  - ii) A Labour & Material Bond to guarantee the payment for labour and materials to be supplied in connection with the contract.
- c) The Department Director shall select the appropriate means to guarantee execution and performance of the contract. Means may include one or more of, but are not limited to, financial bonds or other forms of security deposits, provisions for liquidated damages, progress payments, and holdbacks.
- d) A bid deposit shall be required to accompany and be included in the envelope or electronic submission containing the bid documents in the following circumstances:
  - i) All bids for municipal construction projects greater than \$50,000
  - ii) Special maintenance contracts, except for those contracts, whose price in the opinion of the Purchasing Officer is disproportionate to the cost to the contractor of obtaining a bid deposit.

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- e) When a bid deposit is required the amount of the bid deposit shall be ten (10%) percent of the bid submitted.
  - f) Prior to commencement of work and where deemed appropriate, evidence of Insurance Coverage satisfactory to the Department Director must be obtained, ensuring indemnification of the Town of Tecumseh from any and all claims, demands, losses, costs or damages resulting from the performance of a supplier's obligations under the contract.
  - g) Prior to payment to a supplier, a Certificate of Clearance from the Workplace Safety and Insurance Board shall be obtained ensuring all premiums or levies have been paid to the Board to date.
  - h) The Department Director shall ensure that the guarantee methods selected will:
    - i) Not be excessive but sufficient to cover financial risks to the Town;
    - ii) Provide flexibility in applying leverage on a supplier so that the penalty is proportional to the deficiencies, and
    - iii) Comply with provincial statutes and regulations
  - i) All bidders shall include in the tender/sealed bid envelope or the electronic submission the following:
    - i) The tender/bid form issues by the Town or its agent; and
    - ii) The statutory declaration, if applicable.
  - j) When a performance bond or labour and material bond is required, the amount of the bond shall be 100 percent of the amount of the tender bid, unless the Department Head recommends and the Purchasing Officer approves a lower level of bonding.
  - k) A minimum payment holdback of 10 percent shall be mandatory on all construction contracts for costs greater than \$15,000.
  - l) The Town, at their discretion, may also implement a 2 percent holdback up to a maximum of \$15,000 on all construction projects for the stipulated maintenance period of the contract.
  - m) The responsible Department Director may release the holdback funds on construction contracts upon:

- i) the contractor submitting a statutory declaration that all accounts have been paid and that all documents have been received for all damage claims;
  - ii) receipt of clearance from the Workplace Safety and Insurance Board for any arrears of Workplace Safety and Insurance Board assessment;
  - iii) all the requirements of the Construction Lien Act, R.S.O. 1990, being satisfied;
  - iv) receipt of certification from the Town solicitor, where applicable, that liens have not been registered, and
  - v) substantial performance.
- n) Treasury is authorized to cash and deposit cheques in the Town's possession that are forfeited as a result on non-compliance with the term, conditions and/or specifications of a sealed bid.

#### **4.7 Contractual Agreement**

- a) The award of a contract may be made by way of a formal agreement, Contract Record or Purchase Order.
- b) A Purchase Order or Contract Record is to be used when the resulting contract is straightforward. A formal agreement is to be used when the resulting contract is complex.
- c) It shall be the responsibility of the Department Director and/or Town Solicitor to determine if it is in the best interest of the Town to establish a formal agreement with the supplier.
- d) Where it is determined that Subsection 4.7 c) is to apply, the formal agreement may be reviewed and approved for execution by the Town Solicitor.
- e) Where a formal agreement is required, as a result of the award of a contract, and approval for such a formal agreement has been provided in accordance with Schedule "A" of By-law Number 2021-60, the Mayor and Town Clerk shall execute the agreement in the name of the Town of Tecumseh.
- f) Where a formal agreement is not required, where approval for a Purchase Order or Contract Record has been provided in accordance with Schedule "A" of By-Law Number 2021-60, the Department

Director shall execute a Purchase Order or Contract Record incorporating the terms and conditions relevant to the award of contract.

#### **4.8 Exercise of Contract Renewal Options**

- a) Where a contract contains an option for renewal, the Department Director may exercise such option provided that all of the following apply:
  - i) the supplier's performance in supplying the goods, services or construction is considered to have met the requirements of the contract;
  - ii) the Department Director and the Purchasing Officer agree that the exercise of the option is in the best interest of the Town;
  - iii) funds are available in appropriate accounts within Town Council approved budget including the authorized revisions to meet the proposed expenditure; and
  - iv) a valid business case has been completed.
- b) Where a contract does not contain an option for renewal, the Department Director may consider an extension for no more than the term of the original contract provided that all of the criteria as outlined in 4.8 a) apply. The extension in this case is to be approved by Council.
- c) The business case shall be authorized by the Department Director and shall include written explanation as to why the renewal is in the best interest of the town and include comment on the market situation and trend.

#### **4.9 Contract Amendments and Revisions**

- a) No amendment or revision to a contract shall be made unless the amendment is in the best interest of the Town.
- b) No amendment that changes the price of a contract shall be agreed to without a corresponding change in requirement or scope of work.
- c) Amendments to contracts are subject to the identification and availability of sufficient funds in appropriate accounts within Town Council approved budget including authorized revisions.

- d) Department Directors may authorize amendments to contracts provided that the total amended value of the contract is within the approval authority as noted in Schedule "A".
- e) Where expenditures for the proposed amendment combined with the price of the original contract exceeds Town Council approved budget for the project, a report prepared by the Department Director shall be submitted to Town Council recommending the amendment, and proposing the source of financing.

#### **4.10 Execution and Custody of Documents**

- a) The Mayor and Town Clerk are authorized to execute formal agreements in the name of the Town of Tecumseh for which the award was made.
- b) Department Director shall have the authority to execute Purchase Orders and/or Contract Records issued in accordance with these provisions.
- c) The Clerk shall be responsible for the safeguarding of original contract documentation for the contracting of goods, services or construction for which the award is made.

#### **4.11 Exclusion of Bidders in Litigation**

- a) The Town may, in its absolute discretion, reject a Tender or Proposal submitted by the bidder if the bidder, or any shareholder, officer or director of the bidder or Related Party is or has been engaged, either directly or indirectly through another corporation, in a legal action against the Town, its elected or appointed officers and employees in relation to:
  - i) any other contract or services; or
  - ii) any matter arising from the Town's exercise of its power, duties, or functions.
- b) In determining whether or not to reject a quotation, tender or proposal under this clause, the Town will consider whether the litigation is likely to affect the bidder's ability to work with the Town, its consultants and representatives, and whether the Town's experience with the bidder indicated that the Town is likely to incur increased staff and legal costs in the administration of the contract if it awarded to the bidder.

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## 4.12 Exclusion of Bidders due to Poor Performance

At the completion of every contract where the tender documents identified a performance evaluation review will be performed for goods and services, the Director or Manager must complete a vendor performance evaluation. Such evaluation must be kept in accordance with the Town's records management and retention policies and be available for review.

- a) The Department Director shall document evidence and advise the Purchasing Officer in writing where the performance of a supplier has been unsatisfactory in terms of failure to meet contract specifications, terms and conditions or for Health and Safety violations. Documented poor performance or non-performance on any Town contract may be used to determine the eligibility of a Vendor to: (a) continue to provide goods or services to the Town on a current contract, (b) remain a qualified Vendor, and (c) participate in future procurements as set out in Part 4.13 (Bidder Eligibility).
- b) The pre-qualification of a contractor shall be reviewed and suspended by the Department Director where the Director becomes aware of:
  - i) Unsatisfactory performance on Town contracted works;
  - ii) Material adverse change in a contractor's technical, financial, managerial or organizational capability.
- c) The Purchasing Coordinator and Purchasing Officer may, in consultation with the Town Solicitor, prohibit and unsatisfactory supplier/existing pre-qualified contractor from bidding on future Contracts for a period of up to three years.

## 4.13 Bidder Eligibility

Without limiting or restricting any other right or privilege of the Town and regardless of whether or not a bid otherwise satisfies the requirements of an RFX the Town may reject any bid from a vendor where:

- a) The Failure of the vendor to pay, in full, all outstanding payments (and maintain in good standing) and any costs owing to the Town by such vendor after the Town has made demand for payment. The Town shall have the right to recover outstanding payments by way of reduced payment of invoices.
- b) The vendor's refusal to enter into a contract with the Town after the vendor's Bid has been accepted.

- c) Documented poor performance of a vendor, including the vendor's refusal to perform or to complete the performance of a Contract with the Town.
- d) The vendor having unlawfully or unreasonably threatened, intimidated, harassed, or interfered with an attempt by any other possible vendor to bid for a Town contract or to perform any contract awarded by the Town to that vendor.
- e) The vendor having communicated or discussed, directly or indirectly with an elected member of Council or Council Funded Group during the procurement process.

#### **4.14 Access to Information**

The disclosure of information received relevant to the issue of bid solicitations or the award of contracts emanating from bid solicitations shall be made by the appropriate officers in accordance with the provisions of the *Municipal Freedom of Information and Protections Privacy Act*. R.S.O.1990, as amended.

## **5.0 Part V General**

### **5.1 Direct Solicitation of Departments**

- a) Unsolicited Proposals received by the Town shall be reviewed by the Department Director.
- b) Any procurement activity resulting from the receipt of an Unsolicited Proposal shall comply with the provisions of the By-law.
- c) A contract resulting from an Unsolicited Proposal shall be awarded on a non-competitive basis only when the procurement complies with the requirements of a non-competitive procurement.

### **5.2 Ethics in Purchasing**

The code of purchasing ethics established by the Ontario Public Buyers Association shall apply to all staff involved in the procurement policy.

### **5.3 Resolution of Questions of Policy**

Any questions involving the meaning or application of this policy is to be submitted to the Chief Administrative Officer who will resolve the question.

### **5.4 Amendment or Rescinding of Policy**

The Chief Administrative Officer and the Treasurer from time to time, at his/her discretion, may make recommendations regarding the rescinding, remaking or amending this policy or any provision.



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## **6.0 Part VI Disposal of Surplus or Scrap Materials and Equipment**

### **6.1 Items Considered Obsolete or Surplus by Departments**

- a) All departments shall notify the Treasurer when items become obsolete or surplus to their requirements to ascertain if the items can be of use by another department rather than disposed of.
- b) Items that are not claimed for use by another department may be offered for sealed bids, public auction or other public sale, depending in the opinion of the Treasurer on which method is most suitable for the equipment or material involved.
- c) A major auction shall be held annually or as required dependent upon individual circumstances such as delivery of replacement items and storage capacity.
- d) The revenue from the sale of obsolete material shall be credited to the appropriate account.

### **6.2 Periodic Bids for Auctioneer Services**

The Treasurer is authorized to obtain sealed bids for auctioneer services on a periodic basis from qualified auctioneers.

### **6.3 Disposal of Scrap Material**

- a) Where scrap material is available for disposal, the relevant Department director will advise the Treasurer who shall be responsible for its disposal.
- b) The Treasurer, after determining the value and possible alternate use of the scarp material, may dispose of the material by:
  - i) General advertising to secure sealed bids;
  - ii) Direct contact with the appropriate dealers to view the scrap and submit offers to purchase;
  - iii) Public auction; or
  - iv) Other methods as deemed appropriate.

- c) The revenue from the sale of scrap material shall be credited to the appropriate account.

## Appendix A

### Irregularities Contained in Bids

Irregularity	Response
1 Late bids	Automatic rejection, not read publicly and returned unopened to the bidder
2 Unsealed envelopes	Automatic rejection
3 Bid surety insufficient or not submitted with the bid when the bid request (or any addenda) indicated that such surety is required	Automatic rejection
4 Execution of Bid Bonds: <ul style="list-style-type: none"> <li>• Corporate seal or equivalent proof of authority to bind company or signature of the BIDDER or both missing</li> <li>• Corporate seal or equivalent proof of authority to bind company or signature of BONDING company missing</li> </ul>	Automatic rejection
5 Other Bid Security: <ul style="list-style-type: none"> <li>• Cheque which has not been certified</li> </ul>	Automatic rejection
6 Documents, in which all necessary Addenda have not been acknowledged	Automatic rejection
7 Failure to attend mandatory site visit	Automatic rejection
8 Bids received on documents other than those provided by the Town of Tecumseh	Automatic rejection
9 Failure to insert the Tenderer's business name in the Form of Tender	Automatic rejection
10 Signature page missing	Automatic rejection
11 Failure to complete document in ink or typed. Must be legible	Automatic rejection
12 Pricing page missing	Automatic rejection
13 Conditions placed by the Tenderer on the Total Contract Price	Automatic rejection
14 Part bids (all items not bid)	Acceptable unless complete bid has been specified in the request

<b>Irregularity</b>	<b>Response</b>
15 Bids containing minor clerical errors	2 working days to correct initial errors. Town reserves the right to waive initialing and accept bid
16 Alternate items bid in whole or in part	Available for further consideration unless specified otherwise in request
17 Unit prices in the schedule of prices have been changed but not initialed	2 working days to correct initial errors. Town reserves the right to waive initialing and accept bid
18 Mathematical errors which are not consistent with the unit prices	2 working days to initial corrections. Unit prices will govern.
19 Other mathematical errors	a) If both the unit price and the total price are left blank, then both shall be considered as zero b) If the unit price is left blank but a total price is shown for the item, the unit price shall be established by dividing the total price by the estimated quantity c) If the total price is left blank for a lump sum item, it shall be considered as zero d) If the tender contains an error in addition and/or subtraction and/or transcription in the approved tender documentation format requested (i.e. not the additional supporting documentation supplied), the error shall be corrected and the corrected total contract price shall govern
20 Bid documents which suggest that the bidder has made a major mistake in calculations or bid	Consultation with a Solicitor on a case-by-case basis

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## Appendix B

### Pre-Qualification of Contractors

i. To be considered for pre-qualification, the applicant must demonstrate the following criteria:

- have the experience and the ability in the type of construction relevant to the pre-qualification class;
- have a manager active in the construction operations;
- have appropriate equipment to carry out the works;
- have financial viability and where required, provide proof of the ability for bonding or surety to the Town;
- be familiar with all applicable provisions of the Occupational Health and Safety Act and Regulations for construction projects. He shall have in place all Corporate Health and Safety Policies and Procedures as required under the legislation. Copies of said policies shall be provided to the municipality upon request;
- provide, when required a certificate of good standing from the Workplace Safety and Insurance Board.

ii. Applicants may apply for pre-qualification in one or more categories, with a separate application required for each category, as follows:

- OD – open drain construction: Includes open channel construction and maintenance works including brush removal, erosion protection works and corrugated steel pipe culvert (bridge) installations.
- CD – closed drainage works: Includes the installation or repair of tile drainage systems, catch basin, manholes, and mechanical pump stations
- R – road works: Includes road reconstruction and related works.
- B – bridge installations: Includes the installation and/or repair of corrugated steel pipe culverts, pre-cast concrete box culverts and end treatment systems.

- ST – storm sewer works: Includes the installation, repair, improvement or maintenance of storm sewer systems and appurtenances.
- SA – sanitary sewer works: Includes the installation, repair, improvement or maintenance of sanitary sewer systems and appurtenances.
- W – water distribution works: Includes the installation, repair, improvement or maintenance of watermains, connections and appurtenances.
- BM – building maintenance: Includes roofing and siding and minor general repairs.
- SW – sidewalk maintenance: Includes installation and repairs

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## Appendix C

### Statement of 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 departments as well as in other locations in their agencies.

#### **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 department.

#### **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.

#### **An Irreproachable Standard of Personal Integrity on the Part of All Those Designated as Purchasing Agents for this Agency**

Absolutely no gifts or favours are accepted by the purchasing agents of this agency do not publicly endorse one company in order to give that company an advantage over others.

#### **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.

#### **Continuous Development of Purchasing Skills and Knowledge**

All members of the purchasing department 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.