

THE CORPORATION OF THE TOWN OF MILTON

BY-LAW NO. 061-2018

BEING A BY-LAW TO ESTABLISH POLICIES FOR THE PROCUREMENT OF GOODS AND SERVICES, AND THE DISPOSAL OF SURPLUS GOODS, AND TO REPEAL BY-LAW NO. 044-2017

WHEREAS the Council of The Corporation of the Town of Milton, recognizing its responsibility for the effective utilization of all of its resources, is desirous of codifying sound policies for the purpose of procuring goods and services in a manner that fulfils its mandate to provide effective, responsible government and efficiently deliver services to the residents of the Town of Milton;

AND WHEREAS in view of the complexity and volume of Town activities, it is recognized that external suppliers and service providers are required to ensure that the required quality and quantity of goods and services are procured in an efficient and economical manner;

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

AND WHEREAS the Finance Division is charged with the centralized responsibility for the acquisition of goods and services and the disposal of Town assets;

AND WHEREAS the Town of Milton will follow the guidelines set out in the codes of ethics established by the Purchasing Management Association of Canada and the National Institute of Government Purchasers;

AND WHEREAS Town Council is desirous of repealing By-law No. 044-2017

NOW THEREFORE the Council of the Corporation of the Town of Milton hereby enacts as follows:

1. **THAT** Schedule "A" forms part of this By-law and is hereby adopted.
2. **THAT** By-law No. 061-2018 shall be known as the Purchasing By-law.
3. **THAT** By-law No. 044-2017 is hereby repealed in its entirety.
4. **AND THAT** this By-law shall come into effect on the day it is passed.

PASSED IN OPEN COUNCIL ON JULY 23, 2018.

Gordon A. Krantz Mayor

Troy McHarg Town Clerk

SCHEDULE 'A'

**PURCHASING BY-LAW
TOWN OF MILTON**

Effective: July 24, 2018

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1. DEFINITIONS

1.1. In this By-law:

- 1.1.1. "Assignment" means the total scope of work, inclusive of all phases, awarded to a Consulting and Professional Services Supplier for a specific project or program. By way of example, the assignment for a consulting firm for a capital project may consist of the environmental assessment, design, and contract administration for that project.
- 1.1.2. "Award" means the authorization to proceed with the purchase of Goods or Services.
- 1.1.3. "Authority" or "Authorized" means the legal right to conduct the tasks outlined in this By-law as directed by Council or delegated through the Office of the Chief Administrative Officer to the Treasurer or as delegated by that officer to the Director, Finance and/or Manager, Purchasing and Risk Management. Authorized purchases also include those that have prior approval of Council either through this By-law, by resolution, delegated authority or are Emergency purchases.
- 1.1.4. "Authorized Staff" means any Town employee that is authorized by the applicable LMT Member to undertake a purchase in accordance with this By-law.
- 1.1.5. "Best Value" means the optimal balance of performance and cost. It may include a time horizon that reflects the overall life cycle of a given Good or Service.
- 1.1.6. "Bid" means an offer or submission from a Bidder received in response to a Bid Call.
- 1.1.7. "Bidder" means any legal entity that submits a Bid in response to a Bid Call.
- 1.1.8. "Bidding System" means the electronic bidding software used by the Town that may be amended from time to time.
- 1.1.9. "Bid Call" means a formal request for Bids from the Town and includes, but is not limited to, a Request for Proposal, a Request for Tender, a Request for Information, and an Expression of Interest.
- 1.1.10. "Bid Irregularity" means a deviation between the requirements set out in the Bid Call documentation, including with respect to the terms, conditions, specifications, or special instructions, and the information provided or omitted by a Bidder in a Bid.

- 1.1.11. "Blackout Period" means the period of time between the issuance of a Bid Call and the Award of the Contract to a Bidder.
- 1.1.12. "Blanket Contract" means a Contract between the Town and a Contractor under which the Contractor will sell a Good or Service to the Town for an agreed period of time, subject to the terms and conditions set out in the Contract.
- 1.1.13. "CAO" means any person holding the position of the Town's Chief Administrative Officer, or Designate.
- 1.1.14. "Code of Conduct" refers to the then current By-law established by the Town with respect to the conduct of Town staff.
- 1.1.15. "Commissioner" means the head of any Town Department and includes, but is not limited to, the Chief Financial Officer, the Deputy Chief Administrative Officer, Commissioner, Planning and Development, Commissioner, Community Services, and Commissioner, Engineering Services, or Designate.
- 1.1.16. "Compliant Bid" means a Bid which complies with the requirements set out in the Bid Call documentation and where the Bidder is deemed to be compliant pursuant to this By-law.
- 1.1.17. "Construction" means construction, reconstruction, demolition, repair or renovation of a building, structure, road, park, drainage feature, or any other facility, and includes preparation, excavation, drilling, seismic investigation, soil investigation, the supply of products and materials and the supply of equipment and machinery, if they are included in and incidental to the construction, and the installation and repair of fixtures to a building, structure, or any of the other facilities noted herein.
- 1.1.18. "Consulting and Professional Services" means those Services requiring the skills of a professional and includes, but are not limited to, the Services of architects, landscape architects, engineers, designers, surveyors, planners, accountants, auditors, management and marketing professionals, software and information technology experts, financial consultants, lawyers, law firms, real estate agents and brokers, environmental planners and engineers, hydro geologists, transportation planners and engineers, and communications consultants.
- 1.1.19. "Contingency" means costs that are in addition to, or exceed any stipulated Contract or price agreement and which result from unforeseen or unexpected conditions or circumstances that could not

have been reasonably anticipated, and which arise during the currency of the term of the Contract or price agreement.

- 1.1.20. "Contract" means any form of a legally binding agreement between two or more legal entities, awarded under this By-law (i.e. a Purchase Order, purchases via Purchasing Card, or other legal agreements).
- 1.1.21. "Contractor" means any Supplier to whom there has been an Award of a Contract.
- 1.1.22. "Council" means the municipal council of the Town.
- 1.1.23. "Department" means any department within the organizational structure of the Town.
- 1.1.24. "Designate" means a person or persons who has been assigned or delegated the Authority to act on behalf of the person otherwise charged with the Authority to take certain actions or decisions.
- 1.1.25. "Director, Finance" means any person holding the position of the Town's Director, Finance, or Designate.
- 1.1.26. "Dispute Committee" means the individuals as selected at the sole discretion of the Town and may include Town staff as well as outside consultants (i.e. legal counsel). Members of the Dispute Committee must not have been involved directly in the process, evaluation, or decision for which the Dispute Committee has been formed to review.
- 1.1.27. "Emergency" means an event or circumstance as determined by the CAO, a Commissioner, or an LMT Member where the immediate purchase of Goods or Services is necessary to prevent or alleviate serious delay, a threat to public health, safety or welfare, the disruption of essential Services, damage to public property, or significant financial loss.
- 1.1.28. "Expression of Interest" means an exercise whereby the Town makes a request to the market for the purpose of compiling a list of potential Bidders who may be interested in providing Goods or Services to the Town.
- 1.1.29. "Gift in Kind" means any Goods or Services donated to the Town but does not include cash.
- 1.1.30. "Goods" include, but are not limited to, any wares, products, supplies, merchandise, materials, equipment, or those goods related to

Construction, but does not include land purchases, sales, and property leases.

- 1.1.31. "LMT Member" means the head of any Town Division who reports directly to a Commissioner or the CAO, or Designate.
- 1.1.32. "Manager, Purchasing and Risk Management" means any person holding the position of the Town's Manager, Purchasing and Risk Management, or Designate.
- 1.1.33. "Municipal Act" means the Municipal Act, 2001, S.O. 2001, c. 25, as amended from time to time.
- 1.1.34. "PDA Report" means a Purchasing Delegated Authority Report which is an internal Town document that summarizes the details of a Bid Call for the purposes of making an Award under delegated Authority. An approved PDA Report contains the signatures of the required Town staff members.
- 1.1.35. "By-law" means this purchasing By-law as set out herein.
- 1.1.36. "Purchase Order" means the legal document that is the Town's commitment to the Supplier for the purchase of the Goods or Services ordered on the terms outlined.
- 1.1.37. "Purchasing Card" means a Town credit card that can be used by Authorized Staff of the Town to purchase Goods or Services on behalf of the Town in accordance with this By-law.
- 1.1.38. "Purchasing" means the purchasing services group within the corporate structure of the Town, which is responsible for procurement pursuant to this By-law.
- 1.1.39. "Request for Information" means an information gathering exercise where the Town makes a request to the market for the purpose of gaining information on certain Goods or Services.
- 1.1.40. "Request for Proposal" means a Bid Call where desired results are defined and Bids are assessed based on a set of evaluation criteria, with the successful Bidder having the highest scoring Bid.
- 1.1.41. "Request for Pre-qualification" means a process where the Town makes a request to the market for information from potential Bidders with respect to whether the potential Bidder has the capacity to undertake a project.

- 1.1.42. "Request for Tender" means a Bid Call where the specifications are defined and where the successful Bidder has the lowest Compliant Bid.
- 1.1.43. "Roster" means a Council approved list of Suppliers also referred to as "roster companies" that are eligible to Bid on work Assignments related to a category of specific Consulting and Professional Services during a designated time period for that Roster.
- 1.1.44. "Services" includes, but are not limited to, Consulting and Professional Services, Construction, repairs, inspection, training, installation, or maintenance Services, but does not include land purchases, sales, or property leases.
- 1.1.45. "Authorized Staff" means any Town employee that is authorized by the applicable LMT Member to undertake a purchase in accordance with this By-law. By-law
- 1.1.46. "Supplier" means the vendor, Contractor, or consultant who supplies or Bids to provide Goods or Services to the Town.
- 1.1.47. "Town" means The Corporation of the Town of Milton.
- 1.1.48. "Town Division" means a division of a Department at the Town.
- 1.1.49. "Treasurer" means any person holding the position of the Town's Treasurer, or Designate.
- 1.1.50. "Unsolicited Proposal" is a proposal submitted to the Town on the initiative of an offering Supplier for the purpose of obtaining a Contract with the Town, and that is not in response to a Bid Call, broad Town announcement, or any other Town-initiated solicitation or program. Unsolicited Proposals include offers for trial of Goods or Services.

2. PURPOSE

2.1 The purpose of this By-law is to establish sound policies for the procurement of Goods and Services by the Town in a manner that is efficient, ethical, professional, accountable, and of Best Value. The Town, the public, and the business community should have confidence in the integrity of the procurement process and the Town's staff involved in that process. For further clarity, the purpose is to ensure:

2.1.1 objectivity and integrity in the procurement process;

2.1.2 fair treatment of all Bidders;

- 2.1.3 openness, accountability, transparency, and non-discriminatory access in all business transactions;
- 2.1.4 responsible management of public funds and Town finances and assets;
- 2.1.5 Best Value is achieved for the Town; and
- 2.1.6 Consideration is given to the administrative capacity available to support the procurement process, as well as the timeliness of the resulting Awards relative to program demands.

3. SCOPE AND ETHICS

- 3.1 This By-law shall apply to the procurement of Goods and Services by the Town. No expenditure, procurement, or commitment shall be incurred or made by the Town for Goods or Services except as provided in this By-law or otherwise approved by Council.
- 3.2 Council and all Town staff shall comply with this By-law and are to adhere to the following:
 - 3.2.1 all individuals involved with procurement process should act, and be seen to act, with integrity and professionalism, honesty, and care;
 - 3.2.2 due diligence shall be integral to all supply chain activities within and between Broader Public Sector (BPS) organizations, Contractors, and other stakeholders;
 - 3.2.3 respect shall be demonstrated for all participants in the procurement process and for the natural environment;
 - 3.2.4 confidential information shall be safeguarded;
 - 3.2.5 activities that may create, or may appear to create, a conflict of interest shall not be engaged in and the Town's Code of Conduct shall be adhered to;
 - 3.2.6 preferential treatment shall not be provided by the Town contrary to this By-law. The Town will on occasion accommodate requests for performance references, or may participate in initiatives (such as educational sessions) with Contractors and Bidders. In no instance should one Bidder be provided an unfair advantage over another;
 - 3.2.7 ensure that in-house Bids in competition with outside firms is not permitted;

- 3.2.8 ensure that public sector resources are used in a responsible, economical, efficient, and effective manner; and
 - 3.2.9 ensure that supply chain activities are open, accountable, transparent, and have non-discriminatory access and that those involved in supply chain related activities comply with professional ethics and the laws of Canada.
- 3.3 Council and Town staff who fail to act in accordance with the provisions of this By-law will be subject to appropriate action in accordance with Town procedures, the Code of Conduct, and all applicable law.

4. RESPONSIBILITIES AND AUTHORITY

4.1 Council

- 4.1.1 Council hereby delegate purchasing authority as set out in this By-law or as otherwise delegated by Council. Except as otherwise provided, no member of Council, no committee established by Council, and no Town staff shall enter into any Contract on behalf of the Town without express authority from Council or as otherwise permitted under this By-law. Contracts entered into without authorization shall be unenforceable and non-binding on the Town.
- 4.1.2 Council may approve the budgets associated with the delivery of Town projects and programs. The availability of sufficient funding from a budget approved by Council or through authority delegated by Council is required for all purchases outlined in this By-law, except for purchases as otherwise permitted under this By-law.
- 4.1.3 Unless express Authority is provided by Council, the Town shall not purchase Goods or Services from any Town staff or member of Council.

4.2 Chief Administrative Officer (CAO)

- 4.2.1 Despite any other provisions of this By-law, during any period that regular Council meetings are suspended either during the summer period or for any other reason, or during the period that the acts of Council are restricted under Section 275 of the Municipal Act, the CAO shall be authorized to Award any Contract through a PDA Report so long as the value of the Contract can be accommodated within the approved budget for that project.

4.3 Director, Finance

- 4.3.1 The Director, Finance shall oversee the operation of a centralized procurement business unit on behalf of the Town in accordance with the requirements of this By-law and any corresponding financial policies.
- 4.3.2 The Director, Finance acts as a signing Authority within the prescribed limits provided for in this By-law.
- 4.3.4 The signature of the Director, Finance, is required for all PDA Report approvals where there is an unfavourable budget variance, a request to add provisional items, and/or to have any favourable variances remain in the project.

4.4 LMT Members

- 4.4.1 LMT Members have the following authorities and responsibilities:
 - (a) may Authorize Purchase Orders up to \$10,000 (but for clarity, not other types of Contracts);
 - (b) shall be the second signatory for any Purchase Orders with a value greater than \$10,000 but not exceeding \$25,000 (an Authorized Staff member shall be the first signatory);
 - (c) shall be the second signatory for any Blanket Contract releases with a value greater than \$10,000 but not exceeding \$50,000 (an Authorized Staff member shall be the first signatory); and
 - (d) shall be the second signatory for any Blanket Contract releases with a value greater than \$50,000 (an Authorized Staff member shall be the first signatory and the Manager, Purchasing and Risk Management shall be the third signatory).
- 4.4.2 LMT Members shall sign all PDA Reports for their Town Division, concurring with the Award recommendation and stated budget.
- 4.4.3 LMT Members shall report any Emergency as soon as possible to the Director, Finance and the Manager, Purchasing and Risk Management.
- 4.4.4 LMT Members shall ensure that their Town Division is in compliance with the provisions of this By-law.

- 4.4.5 LMT Members shall ensure there is no splitting of purchases with the intent to avoid any of the provisions or processes outlined in this By-law.
- 4.4.6 LMT Members shall ensure that any purchases are planned effectively to allow sufficient time to follow the requirements of this By-law and that the Bidders will have reasonable time to submit a Bid in accordance with this By-law.
- 4.4.7 LMT Members shall ensure that the specifications, terms of references, or statements of work are accurate and reflective of the project expectations. The Project Manager shall cooperate with Purchasing in the finalization of the specifications.

4.5 Manager, Purchasing and Risk Management

- 4.5.1 This By-law authorizes the Manager, Purchasing and Risk Management to act as the legal purchasing agent for the Town. The Manager, Purchasing and Risk Management shall determine the method of procurement and the form of Contract to be used for an Award.
- 4.5.2 The Manager, Purchasing and Risk Management has the following authorities and responsibilities:
 - (a) may approve any Contracts with a value from \$0 up to \$100,000 inclusive;
 - (b) may approve all Contracts in excess of \$100,000 up to \$1,000,000 in accordance with Section 6.2.12 under this By-law or as otherwise delegated by Council;
 - (c) notwithstanding Sections 4.5.2(a) and (b), where there is an unfavourable budget variance, a request to add provisional items, and/or to have any favourable variances remain in the project, approval from the applicable LMT Member and the Director, Finance, is also required;
 - (d) notwithstanding Sections 4.5.2(a) and (b), where there is a Blanket Contract release over \$50,000, the Manager, Purchasing and Risk Management, shall be a third signatory to such release, in addition to the applicable LMT Member and an Authorized Staff;

- (e) must prepare, in consultation with the Town Clerk, all legal agreements over \$100,000 for execution by the Mayor and Town Clerk; and
- 4.5.3 The Manager, Purchasing and Risk Management shall monitor adherence to the provisions of this By-law and the procedures adopted for its use.
- 4.5.4 The Manager, Purchasing and Risk Management is responsible for ensuring, except as otherwise stipulated, any purchase of Goods or Services is made using a competitive procurement process, in keeping with accepted public purchasing practices and in accordance with the applicable federal, provincial, and municipal laws and all applicable trade agreements.
- 4.5.5 The Manager, Purchasing and Risk Management shall be responsible for supporting Contractor relations and for the conduct of all Contracts, Contract negotiations, and dispute resolution, subject to the other provisions of this By-law. The Manager, Purchasing and Risk Management shall be provided with assistance from the applicable Department prior to the outset of a Bid Call in matters that require further expertise, and may request the applicable Department undertake research into specific Goods, Services, or Bidders.
- 4.5.6 The Manager, Purchasing and Risk Management shall, as soon as possible, submit a report to Council setting out the details of any Contracts Awarded under Section 4.2 of this By-law.
- 4.5.7 The Manager, Purchasing and Risk Management may review and recommend improvements to the specifications, terms of reference, or statements of work for a project when deemed necessary and may reject any specification not consistent with the By-law.

4.6 Authorized Staff

- 4.6.1 Authorized Staff have the following authorities and responsibilities:
 - (a) may Authorize Purchase Orders up to \$10,000;
 - (b) shall be the first signatory for any Purchase Orders with a value greater than \$10,000 but not exceeding \$25,000 (the applicable LMT Member shall be the second signatory);
 - (c) shall be the first signatory for any Blanket Contract releases with a value greater than \$10,000 but not exceeding \$50,000

(the applicable LMT Member shall be the second signatory);
and

- (d) shall be the first signatory for any Blanket Order Contract releases with a value greater than \$50,000 (the applicable LMT Member shall be the second signatory and the Manager, Purchasing and Risk Management shall be the third signatory).

4.7 Any Authority provided to a Town staff member pursuant to this By-law or any other delegation by-law, are also hereby provided to the more senior staff member to whom that staff member reports, within the Town's organizational structure.

5. PROCEDURES APPLICABLE TO ALL TYPES OF BIDS

- 5.1 Where the Town enters into a Contract with the private sector, the policies and procedures of the Town shall apply.
- 5.2 All Bid Calls are posted on the Town's website. Through the utilization of the Town's Bidding System, every effort will be made to send notification to Bidders that are registered. The onus is on interested Bidders to review the website for planned and open procurements.
- 5.3 All Bids shall be submitted through the Town's Bidding System, unless an alternate method is provided otherwise by the Manager, Purchasing and Risk Management.
- 5.4 All Bid Calls shall require that a Bidder's Bid be submitted on a certain day and time. The Town will not accept a late Bid.
- 5.5 When the Town's needs for Goods or Services exceed the threshold of the current Contract, the Manager, Purchasing and Risk Management, may extend the current Contract for the sole purpose of allowing additional time for the issuance of a new Bid Call to the marketplace. The length of the Contract extension shall be limited to the time period required to undertake the Bid process.
- 5.6 Except as otherwise provided by this By-law or by Council, no commitment to purchase Goods or Services shall be made until such time as a Contract have been issued and all documents and approvals received, in accordance with this By-law.
- 5.7 Each Bid received in response to a Bid Call shall be reviewed to determine whether a Bid Irregularity exists. Bid Irregularities are subject to Section 23 of this By-law.

- 5.8 If only one Bid is received in response to a Bid Call, the Manager, Purchasing and Risk Management, in consultation with the applicable LMT Member, has the option of not Awarding a Contract and may cancel the Bid Call.
- 5.9 Where the lowest Compliant Bid meeting specifications and the terms and conditions exceed the approved budget of the Goods and Services and it is impractical to re-bid, the Manager, Purchasing and Risk Management in consultation with the applicable LMT Member, has the option of not Awarding a Contract and may cancel the Bid Call.
- 5.10 During the Blackout Period, Bidders must direct all communications regarding the procurement process to the designated Town staff member as indicated in the Bid Call documents. Communications while the Bid is in the marketplace should be done through the Town's Bidding System.
- 5.11 Where possible, product presentations or demonstrations may be included as part of the formal competitive bid process. Situations may occur where a product presentation or demonstration may be required or beneficial in advance of a procurement process. The Manager, Purchasing and Risk Management may provide guidelines or establish procedures with respect to carrying out product presentations or demonstrations.

6. PURCHASING METHODS

- 6.0.1 The dollar amount limits which set the purchasing process to be followed in this By-law, except as otherwise stated, shall be the total cost including other costs (i.e. delivery, freight, customs) and exclusive of taxes.
- 6.0.2 Provided that the total cost does not exceed the available approved budget, the procurement of the Goods or Services listed in Section 20 are not subject to the policies and procedures established in this By-law, but must conform to the authorization provisions of this By-law.
- 6.0.3 The required authorization for Town staff to use a Purchasing Card or Purchase Order, and all applicable insurance, worker's compensation, and accessibility documentation required from the Contractor, is to be in place prior to the delivery of Goods or the supply of Services. Any contravention of this process must be reported to the Director, Finance and the applicable LMT Member(s).

6.1 Minor Purchases

- 6.1.1 Where the requirement for a Good or Service can be specified, is not included in any existing Contract or Blanket Contract, and is

estimated that its total value does not exceed \$25,000, it shall be acquired directly by the requisitioning Department either by:

- (a) Purchasing Card (as per established limits and up to a maximum of \$10,000);
 - (b) Purchase Order; or
 - (c) petty cash (in accordance with applicable Town policies as amended from time to time).
- 6.1.2 For any purchase pursuant to Section 6.1.1 with a value exceeding \$10,000, approval of two (2) Town staff members from the requisitioning Department is required. One of the approvals must be from the applicable LMT Member and the other must be from an Authorized Staff.
- 6.1.3 For any purchase pursuant to Section 6.1.1, the applicable LMT Member is responsible for ensuring Best Value is acquired by the Town and for retaining or preparing any documentation to evidence this.
- 6.1.4 No report to Council is necessary under this section. However, any Purchase Orders or Purchasing Card purchases provided to the same Contractor, that total over \$25,000 shall be reported to Council as a single source purchase.

6.2 Request for Tenders

- 6.2.1 For the procurement of Goods or Services with an estimated value greater than \$25,000, a Request for Tender shall be issued in the following manner and subject to the following requirements:
- (a) the Project Manager shall file a Bid checklist with Purchasing prior to the start of the Request for Tender process;
 - (b) Purchasing shall prepare the formal Request for Tender documents which should contain clear instructions, specifications, terms, and conditions of the Contract;
 - (c) the requisitioning Department shall provide technical assistance in the preparation of the tender (i.e. specifications, drawings, etc.);

- (d) a Request for Tender shall be advertised using the Bidding System for a minimum of ten (10) calendar days preceding the closing date for the Bid Call;
- 6.2.2 A Request for Tender shall have a specified closing date and time. Bids received after the set closing date and time will not be accepted.
- 6.2.3 A Contract shall be awarded to the lowest Compliant Bid meeting all requirements specified in the Request for Tender documents.
- 6.2.4 If two or more Compliant Bids are submitted in the same amount, those Bidders will be advised of this and will be permitted twenty four (24) hours to revise the amount of their Bids. If the amounts are still the same after this process, Council shall determine the successful Bidder. The outcome of the tie breaking method is final.
- 6.2.5 The Town is not required to Award a Contract and may choose to either cancel the Request for Tender or recall Bids at a later date in any of the following circumstances:
 - (a) when only one Bid has been received in response to a Request for Tender;
 - (b) when the lowest Compliant Bid exceeds the available project budget for the required Goods or Services;
 - (c) when all Bids submitted fail to comply with the specifications or requirements contained in the Request for Tender documentation; or
 - (d) when a material change in the scope of work or specifications is required
- 6.2.6 Following the approval of the Bid award report, the Manager, Purchasing and Risk Management shall notify the successful Bidder of the Town's intent to Award the Contract.
- 6.2.7 Where a formal Contract is required, it shall be submitted, at the time of notification, to the successful Bidder for execution.
- 6.2.8 Where a Bidder has been notified of the Town's intent to Award the Contract, and the successful Bidder fails to execute the Contract or fails to provide any required documents within the specified time, the Manager, Purchasing and Risk Management may:
 - (a) grant the successful Bidder additional time to fulfill the requirements;

(b) Award the Contract to the Bidder with the second lowest Compliant Bid; or

(c) cancel the Request for Tender and not Award a Contract.

6.2.9 Award reports and executed Contracts shall be kept on file with the Request for Tender documents in Purchasing.

6.2.10 The Town shall publish an Award notice using the Town's Bidding System.

6.2.11 Changes or modifications to the terms and conditions of the Contract, including changes that result in an increase in price shall be documented by the Manager, Purchasing and Risk Management on the Purchase Order and in the Contract file.

6.2.12 The limits and requirements for the approval of Request for Tender Bids are:

Procurement Value	Approval Authority	Award Details
Greater than \$25,000 but not exceeding \$100,000	Manager, Purchasing and Risk Management	Award recommendation is completed by Purchasing. Requisitioning Department staff is to confirm they are in agreement with the Award.
Greater than \$100,000 but not exceeding \$1,000,000	Manager, Purchasing and Risk Management	A PDA Report is prepared by Purchasing and is signed off by the LMT Member. The Director, Finance will also sign the PDA Report in event there is an unfavourable variance, optional items are being recommendation for award, or there is a favourable variance that is being left in the project budget.
Greater than \$1,000,000	Council Approval	A schedule for the monthly purchasing report or a stand-alone report is prepared by Purchasing for Council to approve the Award.

- 6.2.13 In addition to the above, on Construction projects where there are warranty provisions by the installing Contractor, Town staff will issue a Blanket Contract to this Contractor for regular maintenance requirements, during this warranty period, without having to submit a single source schedule to Council. Upon expiry of the warranty period, the Service will either be rolled into an existing Contract or openly bid.

6.3 Request for Proposal

- 6.3.1 Under a Request for Proposal, Bidders are invited to propose a solution to a problem or requirement and a cost for that solution. The selection of the successful Bidder is based on the effectiveness of the proposed solution rather than on price alone. The effectiveness of the proposal is measured against a set of evaluation criteria, which may include but is not limited to: approach, experience and qualifications, methodology, past performance, scheduling, price and/or strategy. Acceptance of the proposal may be subject to further negotiations.
- 6.3.2 A Request for Proposal is used where comprehensive technical specifications cannot be fully defined or specified, or when alternate methods are being sought to perform a certain function or Service. Request for Proposal is also used to procure Consulting and Professional Services.
- 6.3.3 Request for Proposal documents shall include detailed deliverables and an outline of the evaluation criteria that will be used to score the responding Bids.
- 6.3.4 Request for Proposals shall have a specified closing date and time. Bids received after the set closing date and time will not be accepted.
- 6.3.5 A Contract shall be Awarded to the highest ranked Compliant Bid based on a set of evaluation criteria as set out in the Request for Proposal documents.
- 6.3.6 The Town is not required to Award a Contract and may choose to either cancel the Request for Proposal or recall the Bids at a later date in the following circumstances:
- (a) when only one Bid has been received in response to a Request for Proposal;
 - (b) when the highest ranked Bid exceeds the available project budget for the Good or Service;

- (c) when all Bids submitted fail to comply with the specifications or requirements contained in the Request for Proposal documentation; or
 - (d) when a material change in the scope of work or specifications is required.
- 6.3.7 Following the approval of the Bid Award report, the Manager, Purchasing and Risk Management shall notify the successful Bidder of the Town's intent to Award the Contract.
- 6.3.8 Where a formal Contract is required, it shall be submitted, at the time of notification, to the successful proponent for execution.
- 6.3.9 Where a Bidder has been notified of the Town's intent to award the Contract, and the successful Bidder fails to execute the Contract or fails to provide any required documents to the Town within the specified time, the Manager, Purchasing and Risk Management may:
 - (a) grant the successful Bidder additional time to fulfill the requirements;
 - (b) enter into negotiations with the next highest ranked Bidder; or
 - (c) cancel the Request for Proposals and not Award a Contract.
- 6.3.10 All executed Contracts shall be kept on file with the Request for Proposal documents in Purchasing including all individual and consensus scoring documents.
- 6.3.11 On request, the Town shall provide an unsuccessful Bidder with reasons why the Town did not select its Bid.
- 6.3.12 The Town shall publish an Award notice using the Town's Bidding System.
- 6.3.13 Changes or modifications to the terms and conditions of the Contract, including changes that result in an increase in price shall be documented by the Manager, Purchasing and Risk Management on the Purchase Order and in the Contract file.

6.3.14 The limits and requirements for the approval of Request for Proposal Bids are:

Procurement Value	Approval Authority	Award details
Greater than \$25,000 but not exceeding \$100,000	Manager, Purchasing and Risk Management	Award recommendation is completed by Purchasing. Requisitioning Department staff is to confirm they are in agreement with the Award to the highest scoring Bidder.
Greater than \$100,000	Council Approval	A schedule for the monthly purchasing various report or a stand-alone report is prepared by Purchasing and Council approval is required to Award

6.4 Professional Services Roster

6.4.1 A Request for Proposal shall be used for forming a Roster for Consulting and Professional Services that will be used for a specified period of time for various projects during that term, and it shall be subject to the following:

- (a) a Request for Proposal will be used to create the Roster.
- (b) the term of the Roster will be for a period up to three (3) years; and
- (c) a report shall be submitted to Council for approval in order to assign successful Bidders to the Roster.

6.4.2 The Award of the Assignments to Bidders on the Roster shall adhere to the following:

- (a) for Consultant and Professional Services with an anticipated per Assignment total cost of \$250,000 or less, the applicable LMT Member can award the Assignment in consultation with the Manager, Purchasing and Risk Management through a direct appointment from the Roster. Assignments will be distributed amongst Roster companies on a rotational basis as well as a “best fit” basis. This will ensure that there is a reasonably equitable distribution of the Assignments, based on the total dollar value of the work. This method allows the Town to employ a number of different professionals while

matching the particular talents of a professional to the project needs. Awards will occur via PDA Report.

- (b) for Consulting and Professional Services with an anticipated per Assignment total cost that is greater than \$250,000 but not exceeding \$500,000, the Manager, Purchasing and Risk Management, in consultation with the applicable LMT Member, will use a Request for Proposal to solicit Bids from the approved companies on the Roster for that specific specialty. The financial criteria will carry a heavier weight in the evaluation process in this circumstance. Awards will be made via a PDA Report and granted to the highest scoring Bidder from the Roster responding to the Request for Proposal.
- (c) For Consulting and Professional Services with a per Assignment total cost that is greater than \$500,000, the Manager, Purchasing and Risk Management in conjunction with the LMT Member will use a Request for Proposal to solicit Bids from the approved companies on the Roster for that specific specialty. The financial criteria will carry a heavier weight in the evaluation process in this circumstance. A report to Council will be prepared and Council approval will be required in advance of Award.

- 6.4.3 Purchasing will report to Council on an annual basis on the value of awarded Assignments made through the approved Roster.
- 6.4.4 The Town reserves the right to go to the open market for any project, regardless of the value or scope of the project. The Roster companies will be eligible to Bid on this work.

6.4.5 The limits and requirements for appointing Suppliers and Awarding Assignments are as follows:

Procurement Value	Approval Authority	Award details
Appointing Suppliers to the Professional Services Roster		
Not Applicable	Council Approval	Staff will prepare a report for Council based on results of Bid process. Council must approve all Suppliers added to Roster.
Awarding Assignments to Suppliers on the Professional Services Roster		
Up to \$250,000	Manager, Purchasing and Risk Management or LMT Member	The Manager, Purchasing and Risk Management will make a direct Award from the Roster using a PDA Report.
Greater than \$250,000 but not exceeding \$500,000	Manager, Purchasing and Risk Management or LMT Member	The Manager, Purchasing and Risk Management, in consultation with the LMT Member, will request proposals from the approved Suppliers on the Roster for that specific specialty. Award will occur via PDA Report.
Greater than \$500,000	Council Approval	The Manager, Purchasing and Risk Management, in consultation with the LMT Member will request proposals from the approved Suppliers on the Roster for that specific specialty. Award will occur via Council approval.

6.5 Request for Information / Expression of Interest

- 6.5.1 The Manager, Purchasing and Risk Management, in conjunction with the applicable LMT Member, may issue a Request for Information to the market for the purpose of gaining additional information on a certain Good or Service.
- 6.5.2 The Manager, Purchasing and Risk Management, in consultation with the LMT Member, may issue an Expression of Interest to the market for the purpose of compiling a list of potential Bidders and

also to determine whether there is sufficient market interest to justify proceeding with a competitive procurement process.

- 6.5.3 The Request for Information or Expression of Interest would request detailed information such as, but not limited to, the background of the Bidder, its key personnel, relevant experience, and what the Bidder can offer the Town.
- 6.5.4 A Request for Information and an Expression of Interest do not create any contractual obligations on the part of the Town.

6.6 Request for Pre-Qualification

- 6.6.1 The Manager, Purchasing and Risk Management may conduct a Request for Pre-Qualification for any Goods or Services for the purpose of selecting qualified Bidders to respond to a Request for Proposal or Request for Tender.
- 6.6.2 When a Request for Pre-Qualification is issued, a pre-qualification Bid document shall be available to potential Bidders setting out the criteria for pre-qualification, which may include but is not limited to:
 - (a) experience for similar work,
 - (b) specialized skills,
 - (c) schedule management,
 - (d) reference provided from the other customers for similar work,
 - (e) verification of applicable licenses and certificates and,
 - (f) financial capability
- 6.6.3 The selection of qualified Bidders following a Request for Pre-Qualification shall not create any contractual obligation between the Town and the qualified Bidder. When utilized, the Request for Pre-qualification is a precursor to a Bid Call (i.e. Request for Tender, Request for Proposal, etc.).
- 6.6.4 Only Bidders who are prequalified are eligible to submit a Bid on such Bid Calls where a Request for Pre-Qualification was used.
- 6.6.5 In response to Bids submitted on a Request for Pre-Qualification, the Manager, Purchasing and Risk Management and the applicable LMT Member, shall determine which Bidders are prequalified to submit a Bid on a particular Bid Call or Bid Calls.

7. CONTRACT ADMINISTRATION

7.1 Contingencies

- 7.1.1 Where any purchase of Goods or Services has been authorized under this By-law, the applicable LMT Member may, in the case of a Contingency, authorize disbursement of additional funds provided such cumulative additions do not exceed 10% of the total cost of the original Contract value or where the revised Contract value is still below Council reporting limits. Any such Award requires that the additional funds required are available in the approved budget and that an Authorized Staff and LMT Member have both provided their approval.
- 7.1.2 Where, due to unique circumstance or risk, a greater than 10% Contingency is warranted or the revised Contract value exceeds Council reporting limits, Council must authorize such expenditure before it is incurred, generally at the time of the original Contract Award. The requisitioning Department will advise Purchasing, and that Department will prepare a schedule for the monthly purchasing report or a separate staff report for Council approval.

7.2 Change in Scope

- 7.2.1 Where Goods or Services have been purchased under this By-law pursuant to a Contract, and a change in the scope of the project to which the Contract relates occurs which necessitates the purchase of additional or related Goods or Services, such additional Goods or Services shall not be purchased unless the Manager, Purchasing and Risk Management, submits a report to Council and a change order is executed by Purchasing upon receiving Council approval.
- 7.2.2 Despite any requirements of this By-law, the CAO may authorize the purchase of additional Goods or Services provided that they could not reasonably have been anticipated at the time of the Award of the original Contract or the purchase of additional Goods or Services are required to prevent interruption in service delivery or to avoid incurring extra costs. An informational report shall be submitted to Council by the Manager, Purchasing and Risk Management.
- 7.2.3 Where a change in scope is requested and the revised total value of the revised Contract is still less than the limits for reporting to Council, the requisitioning Department shall advise Purchasing and the change order will be verified for available budget. A report to Council is not required. Where the revised total Award exceeds \$10,000 up to \$25,000, the applicable LMT Member and the

Manager, Purchasing and Risk Management, must both approve the revised Award.

7.3 Settlement of Claims

7.3.1 In the event that there is a claim against the Town in regards to a Contract, the Manager, Purchasing and Risk Management, in consultation with the Director, Finance, applicable LMT Member(s), and Legal Counsel if retained, may authorize settlement up to \$250,000. A confidential summary report to Council shall be presented to Council post-settlement. If the settlement is over \$250,000, the Manager, Purchasing and Risk Management will prepare a report for Council and Council’s approval is required.

7.3.2 Despite any requirements of this By-law, the CAO may authorize the settlement of claims over \$250,000 provided that it is required to prevent interruption in service delivery or to avoid incurring extra costs.

7.4 The limits and requirements for Contract Administration are as follows:

Procurement Value (cumulative)	Approval Authority	Award details
Contingency		
10% or less of original Contract value or where revised Contract value is still below Council reporting limits	LMT Member and Authorized Staff	Requisitioning Department staff will initiate the change order request and approval process.
Greater than 10% of original Contract value and revised Contract value exceeds Council reporting limits	Council Approval	Purchasing, in consultation with the LMT Member, will prepare a schedule for the monthly purchasing report or a separate staff report for Council approval.
Change of Scope		
All dollar values and where Section 7.2.2 and Section 7.2.3 are not met	Council Approval	Purchasing, in consultation with the LMT Member, will prepare a schedule for the monthly purchasing report or a separate staff report for Council approval.

Procurement Value (cumulative)	Approval Authority	Award details
All dollar values and Section 7.2.2 is met	CAO	Purchasing will acquire approval from the CAO through prescribed procedures as required. A report will be presented to Council for information.
All dollar values and Section 7.2.3 is met	Manager, Purchasing and Risk Management and LMT Member	The requisitioning Department staff will prepare a change order request and forward same to Purchasing and the signature of the Authorized Staff and applicable LMT Member must be on the change order (for cumulative amounts greater than \$10,000, but not exceeding \$25,000)
Settlement of Claims against Town with respect to Contracts		
Up to \$250,000	Manager, Purchasing and Risk Management	A report will be presented to Council post-settlement
Greater than \$250,000 and Section 7.3.2 is not met	Council Approval	The Manager, Purchasing and Risk Management will prepare a report and Council approval is required.
Greater than \$250,000 and Section 7.3.2 is met	CAO	Purchasing will acquire approval from the CAO through prescribed procedures as required. A report will be presented to Council for information.

8. CO-OPERATIVE PURCHASING

- 8.1 The Manager, Purchasing and Risk Management shall have the authority to join or participate with other public authorities or government agency, as a named agency, including local boards, commissions and agencies in co-operative purchasing, and bulk buying of Goods and Services. The Manager, Purchasing and Risk Management may acquire any Goods or Services from an existing government contract if it is deemed by the Manager, Purchasing and Risk Management, to be in the best interest of the Town.
- 8.2 If the Town participates with another government agency or public authority in co-operative purchasing, the policies of the agency calling the co-operative bid shall apply.
- 8.3 Purchases made through co-operative buying procedures will still follow all approvals and reporting as outlined in this By-law.

9. NON-COMPETITIVE PROCUREMENT / NEGOTIATION

- 9.1 In certain circumstances, it may not be possible or preferred for the Town to proceed with a competitive bid process. The Town may engage in a non-competitive procurement in the following situations:
- (a) Single Sourcing – where purchases are made through a selected Supplier, even though there are other Suppliers that provide similar Goods or Services;
 - (b) Sole Sourcing – where there is only one available Supplier for the source of the Good or Service;
 - (c) Standardization / Compatibility – is the adoption of a single Good, Service, or support activity to be used by one Department or a number of Departments, whereby a particular Supplier may be identified based on technical specifications, and sourced to the exclusion of others. This process will allow for a reduction in the number of Goods or Services required, maximize volume buying opportunities, reduced handling, training and storage costs;
 - (d) where a Bid Call has been publicly advertised and no submissions were received, no Bids conformed to the essential requirements of the Bid Call documents, or no Bidders satisfied the conditions for participation; and
 - (e) where in the judgment of the Manager, Purchasing and Risk Management, Goods are judged to be in short supply due to market conditions.
- 9.2 All non-competitive procurement Awards with a value of \$25,000 or less may be Awarded through Section 6.1 of this By-law.
- 9.3 All non-competitive procurement Awards with a value greater than \$25,000 require Council approval. The requisitioning Department shall advise Purchasing, who will prepare a schedule for the monthly purchasing report or a separate staff report for Council approval.
- 9.4 For all non-competitive procurement Awards under Section 9.1 with a value greater than \$25,000, prior to making a commitment to a Supplier or prior to commencing any work, the Project Manager shall prepare a non-competitive procurement award report detailing the rationale for requesting non-competitive procurement. The Manager, Purchasing and Risk Management shall assist and guide any negotiation process to ensure the Town employs fair and ethical practices in accordance with this By-law.
- 9.5 Any executed Contracts shall be kept on file with the single source award report in Purchasing.

9.6 All non-competitive procurement greater than \$100,000 shall be Awarded on the Town's Bidding System as required by any trade agreement.

9.7 The limits and requirements for non-competitive Awards are as follows:

Procurement Value	Approval Authority	Award details
\$25,000 or less	Manager, Purchasing and Risk Management or LMT Member or as provided under s.6.1	Requisitioning Department staff can acquire in accordance with Section 6.1 of this By-law.
Greater than \$25,000	Council Approval	Requisitioning Department staff will advise Purchasing who will guide negotiation and prepare a schedule for the monthly purchasing report or a separate staff report for Council approval.

10. REPORTS

10.1 Council approval will be required if one of the following circumstances exists:

- (a) the lowest Compliant Bid is not being recommended in a Request for Tender;
- (b) the procurement exceeds the budget by an amount that cannot be addressed through staff delegated authority;
- (c) the lowest Bid is being recommended but does not meet major specifications;
- (d) this By-law is being waived;
- (e) Awards for a Request for Proposal (non-Roster) over \$100,000 (note: renewal options will be approved via PDA Report so long as the terms of renewal have been incorporated into an Award that was previously approved by Council);
- (f) Roster Assignments over \$500,000;
- (g) Awards for a Request for Tender over \$1,000,000;
- (h) the assignment of Bidders to the Roster;

- (i) authorizing a contingency greater than 10%;
- (j) authorizing a change in scope;
- (k) settlement of a claim over \$250,000 against the Town in regards to a Contract;
- (l) acceptance of an offer of a Gift in Kind with a value over \$250,000;
- (m) the CAO requests a report be written;
- (n) entering into a Financing Lease;
- (o) entering into a Contract with a Bidder, inclusive of its sub-contractor, who has instituted a legal proceeding against the Town or against whom the Town has instituted a legal proceeding against the Bidder;
- (p) identical Bids were received in a Request for Tender;
- (q) one or more of the Bidders have an unacceptable conflict of interest;
- (r) the lowest compliant Bidder has current or pending legal action resulting from a previous Contract with the Town; or
- (s) an Award for non-competitive procurement exceeds \$25,000.

10.2 The Award report will be submitted by the Manager, Purchasing and Risk Management in consultation with the requisitioning Department and the Director, Finance. Upon approval, the Manager, Purchasing and Risk Management shall execute a Purchase Order or the Mayor and the Town Clerk shall execute a Contract with the Contractor.

10.3 All Bids that are being Awarded to the Bidder with the lowest Compliant Bid and that are within the delegated authorities will be Awarded by the Manager, Purchasing and Risk Management via PDA Report. The PDA Report will be prepared by the Manager, Purchasing and Risk Management and signed by the requisitioning Department when the Award is within the approved budget, and additionally by the Director, Finance when it is over the budget but within staff delegated authority, or where a favourable variance has been requested to remain in the budget, or where provisional items have been requested for consideration.

10.4 The Manager, Purchasing and Risk Management shall submit an annual summary of the Awards over \$10,000 to Council.

11. EMERGENCY PURCHASES

- 11.1 During an Emergency, Town staff, in accordance with the chart under Section 11.2, and with the assistance of the Manager, Purchasing and Risk Management, have the authority to make purchases and Award Contracts to respond to any such Emergency event and is authorized to do so by the most expedient and economical means reasonably possible in the circumstances. The Manager, Purchasing and Risk will prepare a report to Council for information as soon as practicable thereafter.
- 11.2 The Authority to make a purchase during an Emergency under Section 11.1 shall be subject to the following:

Procurement Value	Award details
Up to \$100,000	LMT Members have Authority to Award
Greater than \$100,000 and up to \$250,000	Commissioners have the Authority to Award
Greater than \$250,000	The CAO has the Authority to Award

- 11.3 In the case of an emergency declared under the Town's Emergency Plan, that plan shall supersede this By-law.
- 11.4 Details of the cause of the Emergency and the action taken to resolve the Emergency shall be submitted by the the Department having made purchases as a result of the Emergency, to the Manager, Purchasing and Risk Management within two (2) working days following the resolution of the Emergency. Where the Emergency situation may be prolonged, the applicable LMT Member shall contact the Manager, Purchasing and Risk Management to determine the course of action moving forward.

12. UNSOLICITED PROPOSALS

- 12.1 All Unsolicited Proposals shall be directed to the Manager, Purchasing and Risk Management for review.
- 12.2 No procurement resulting from the receipt of an Unsolicited Proposal shall occur without compliance with the provisions of this By-law.

13. PERFORMANCE EVALUATION

- 13.1 The Manager, Purchasing and Risk Management may initiate a performance evaluation at the substantial completion of a Contract, or more frequently if determined by the Manager, Purchasing and Risk Management in consultation with the applicable LMT Member(s).
- 13.2 The Project Manager responsible for overseeing the project, in conjunction with the Manager, Purchasing and Risk Management, shall conduct the performance evaluation.
- 13.3 The performance evaluation shall rate the performance of the Contractor on criteria determined by the Manager, Purchasing and Risk Management and the Project Manager to be appropriate in determining if the Town has obtained a satisfactory level of performance by the Contractor. The performance evaluation form and criteria adopted from time to time shall be provided to the Contractor in advance of the execution of the Contract and shall remain constant for the duration of the term of the Contract. The same evaluation criteria shall apply to all Consulting and Professional Services or Construction projects undertaken for the Town, but may be amended from time to time by the Manager, Purchasing and Risk Management.
- 13.4 The performance evaluation shall determine:
 - (a) whether the Contractor is allowed to respond to Bid Calls for future Contracts with the Town and under what conditions; or
 - (b) whether the Contractor will be prohibited from bidding on any Contracts with the Town during a specified period.
- 13.5 In reaching a determination, the Project Manager and Manager, Purchasing and Risk Services shall be entitled to rely upon the evaluation criteria determined in advance of the project and all relevant materials including, but not limited to, any correspondence, consultant notes, and the results of prior performance evaluations relating to other Contracts performed by the same Contractor.
- 13.6 The Contractor shall be provided with the written results of the performance evaluation and shall have twenty (20) days following delivery of the evaluation to request an appeal.
- 13.7 A Dispute Committee shall conduct the appeal at a time and place appointed in writing. The decision of the Dispute Committee shall be in writing, a copy of which shall be provided to the Contractor and the Town, and the decision of a majority of the Dispute Committee shall be final.

13.8 Section 13.4 applies to parties related to a Contractor. In determining whether a Bid is being received from a related party, any Contractor submitting a Bid to the Town shall be required to submit a statement disclosing its principal shareholders (if a privately held corporation), the members of its Board of Directors, its partners or proprietors, its senior management, and those managers having specific responsibility for completion of the proposed Contract with the Town. The Manager, Purchasing and Risk Management may determine that the Bidder is related if there is a substantial connection between the shareholders, directors, partners, proprietors, senior management or managers proposed to be in charge of the work for the Town, and those persons holding similar positions with probationary or prohibited Contractors. The decision of the Manager, Purchasing and Risk Management may be appealed to the Dispute Committee within five (5) days of the delivery of the Manager, Purchasing and Risk Management's decision to the Contractor. The composition of the Dispute Committee, its procedure, and the finality of its decision, shall be as outlined above.

14. LOCAL PREFERENCE

14.1 As the Town will endeavour to achieve Best Value in its commercial transactions, the Town will not practice local preference in Awarding Contracts. This will allow the Town to comply with the *Discriminatory Business Practices Act*, R.S.O. 1990, c. D.12, as amended, or any successor legislation thereto.

15. SUSTAINABLE PRODUCTS AND SERVICES

15.1 The purchase of sustainable Goods and Services will be considered by the Town and may form part of the specifications of the Bid Call documentation. These Goods and Services are defined as those having a lesser or reduced effect on human health and the environment when compared to other Goods or Services that serve the same purpose. Sustainable products are those that:

- (a) use recycled materials;
- (b) are durable, reusable or are designed to be recycled;
- (c) consume fewer resources in their manufacture or their use; and
- (d) Services that use sustainable responsible practices.

16. LOBBYING PROHIBITED

16.1 If any director, officer, employee, agent or other representative of a Bidder, including any other parties that may, directly or indirectly, be involved in a

joint venture, consortium, or business relationship with the Bidder, makes any representation or solicitation to any members of Council, staff, agent of the Town, or to the media for the period between Bid issuance and Bid Award, with respect to the Bidder's Bid, the Town will be entitled to reject said Bid. This requirement does not extend to any public deputations that may be made to any Town Council or Committees in accordance with the Town's Procedural By-law. The Manager, Purchasing and Risk Management in consultation with the requisitioning Department and the Director, Finance will issue any notice of rejection pursuant to this section.

17. DISPOSAL OF SURPLUS ASSETS

- 17.1 Where any Goods are surplus, obsolete or unrepairable, they shall be declared surplus by the Manager, Purchasing and Risk Management with the approval of the applicable LMT Member.
- 17.2 When no other use can be found for surplus items in other Departments, they shall be added to the surplus list and, at the discretion of the Manager, Purchasing and Risk Management and while considering the best interests of the Town, disposed of through formal auction, internet auction, tender, quotation, or trade-in. Any remaining surplus items may be awarded to any non-profit entity.
- 17.3 When surplus items are unrepairable the Manager, Purchasing and Risk Management may dispose of the items through a licensed waste hauler or by other legally permitted disposal.
- 17.4 Where surplus items has limited market value the Manager, Purchasing and Risk Management may, to the benefit of the Town, dispose of the items in a manner other than the ones listed above.
- 17.5 An annual information report shall be submitted to Council indicating the surplus items and the value obtained for the surplus items as a whole.

18. CONFLICT OF INTEREST

- 18.1 Town staff involved in procurement activities with Bidders shall adhere to the Town's Code of Conduct.
- 18.2 The Manager, Purchasing and Risk Management reserves the right to solely determine whether any situation or circumstance constitutes a conflict of interest.
- 18.3 The Manager, Purchasing and Risk Management, in consultation with the LMT Member(s), reserves the right to disqualify Bidders from a Bid Call due to a conflict of interest.

- 18.4 Bidders participating in a procurement process shall declare any actual, perceived, or potential conflict of interest.
- 18.5 Contractors shall avoid or disclose any conflict of interest that arise during the performance of their contractual obligations for the Town.
- 18.6 The Town reserves the right to prescribe the manner in which a Contractor shall resolve a conflict of interest.
- 18.7 The Town may terminate a Contract where a Contractor fails to disclose an actual or potential conflict of interest or fails to resolve a conflict of interest as directed by the Town. The Town may terminate a Contract where a conflict of interest cannot be resolved.
- 18.8 Town staff shall be aware of the potential conflict of interest created when a Contractor is involved in the development of competitive documents or is involved in a study that will lead to a requirement for development of competitive documents and also has the ability to fulfill the procurement needs that are being contemplated in those competitive documents.
- 18.9 Town staff shall be very clear and insist on documented agreements that any Contractor involved in developing competitive documents or studies affecting competitive documents cannot be involved in the creation of the response to those competitive documents.
- 18.10 When involved in a Bid Call, Town staff, advisors, and members of Council are expected to declare any conflicts of interest and the Manager, Purchasing and Risk Management shall request that a conflict of interest declaration be signed by such person making such declaration. Town staff, advisors, or members of Council are ultimately responsible and accountable to use good judgment in the exercise of the Town's duties and shall:
- (a) disclose conflicts of interest to the Manager, Purchasing and Risk Management or his or her Department supervisor or Designate in writing;
 - (b) avoid situations that may present conflicts of interest while dealing with persons or organizations doing business or seeking to do business with the Town; and
 - (c) comply with the Town's Code of Conduct and where applicable, the *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50, as amended, and any successor legislation, or any other applicable law.

18.11 Situations that might result in a conflict of interest for Town staff or members of Council include the following:

- (a) engaging in outside employment;
- (b) not disclosing an existing relationship that may be perceived as being a real or apparent influence on their objectivity in carrying out an official role;
- (c) providing assistance or advice to a particular Bidder participating in a competitive procurement process;
- (d) having an ownership, investment interest, or compensation arrangement with any entity participating in a competitive procurement process;
- (e) having access to confidential information; and
- (f) accepting favours or gratuities from those doing business with a Bidder.

19. LEGAL CLAIMS

19.1 No Bid will be accepted from any Bidder, inclusive of its sub-contractor, which has a claim or instituted a legal proceeding against the Town or against whom the Town has a claim or instituted a legal proceeding with respect to any previous Contract (alone or in conjunction with others), without prior approval by Council.

20. BID PROCESS NOT REQUIRED

20.1 A Bid Call will not be required for the Goods or Services that do not lend themselves to a competitive bid process. If it is determined that a Bid Call would not be applicable, all other requirements of contracting for those Goods or Services, are still applicable (i.e. Purchase Order, insurance, WSIB, etc.). The following items or class of items do not require a Bid Call:

- (a) targeted staff-related requirements (i.e.: training, education, seminars, memberships, medical reviews, etc.);
- (b) refundable employee expenses;
- (c) special Services (including but not limited to Committee fees, witness fees, court reporter fees, honoraria, Committees of Council, arbitrators, legal settlements, legal Services, specialized financial

Services, Election Services, entertainment acts, camp destination excursions, trade show rentals, advertising,);

- (d) utilities (i.e.: Postage, water, sewer, gas, hydro);
- (e) expenses relating to other government agencies, except where Services can be openly bid, including where another government agency specifically requests the purchase of Goods or Services under the terms of an executed agreement (i.e. road maintenance contracts)

21. ADMINISTRATION

- 21.1 The Manager, Purchasing and Risk Management may bring forward from time to time amendments to this By-law to update the By-law.
- 21.2 In this By-law, unless the context requires otherwise, words importing the singular shall include the plural and words importing the masculine gender, shall include the feminine.

22. GIFT IN KIND

- 22.1 The Town welcomes and encourages Gifts in Kind to assist in the provision of the Town's projects and fund raising goals. All Gifts in Kind shall be consistent with the Town's vision and values and will not compromise or contradict any Town by-law, Town policies, the Town's public image, or any other applicable law.
- 22.2 To ensure that a fundraising program is open, transparent and fair, the process must:
 - (a) have the specific fundraising program authorized by Council;
 - (b) have the fundraising program advertised as an Expression of Interest on the Town's website; and
 - (c) have a corporate staff team in place to evaluate the submissions. The corporate staff team will be established when Council approval of the program has been approved.
- 22.3 All responses will be evaluated by the corporate staff team to determine the usefulness of the Gift in Kind. If it is determined that the Gift in Kind will be accepted, it will be assigned a project to be applied to.
- 22.4 The acceptance of a Gift in Kind is subject to the following:

- (a) a Gift in Kind with a value up to \$250,000 requires the execution of the Expression of Interest Offer Form by the corporate staff team facilitator and the Director, Finance;
- (b) a Gift in Kind with a value over \$250,000 requires a report prepared by Purchasing to be submitted to Council for approval.
- (c) the Gift in Kind is not the Town's endorsement of the Good or Service;
- (d) the Gift in Kind does not provide a Town staff member to receive any Goods or Services for personal gain or use; and
- (e) the Gift in Kind shall not invoke future considerations or be perceived to influence the day-to-day business of the Town.

22.5 At the end of a specific fundraising program, all Gifts in Kind will be summarized in a report to Council.

23. BID IRREGULARITIES

23.1 The Manager, Purchasing and Risk Management, in consultation with the requisitioning Department, will review Bid Irregularities. Unless otherwise decided upon by the Manager, Purchasing and Risk Management, Bid Irregularities shall be resolved as follows:

	Type of Bid Irregularity	Action Taken
1.	Late Bid: Bid received after the closing date and time specified in the Bid Call documents	Late Bids will be rejected without consideration. Bidding System does not accept late Bids.
2.	Addenda: Addenda not acknowledged	Bids that do not have the addendum acknowledged, will have 48 hours to submit the acknowledgment. Bidding System does not accept Bids that have not acknowledged all addenda.
3.	Site Meeting: Bidder did not attend a mandatory site meeting	Bids received that have not fulfilled the mandatory required will be deemed non-compliant and not considered for an award.

		Bidding System does not accept Bid from Bidders that did not attend the mandatory site meeting.
4.	Method of Delivery: Where a Bid was submitted via a method other than the method(s) permitted in the Bid Call documents	Bid declared non-compliant
5.	Suspended Bidder: Bid submitted by a Bidder who has been suspended from the bidding process	Bid declared non-compliant unless, at the Town's sole discretion, it is subject to the exceptions stated in the Town's By-law.
6.	Format: Bid not on the form supplied by the Town or not in the format specified in the Bid Call documents.	Bid declared non-compliant
7.	Bid Bond/Agreement to Bond: Bond is missing.	Bids received without the required bonding will be declared non-compliant. Bidding System does not accept Bids that do not have the Bid Bond or Agreement to Bond attached.
8.	Bid Bond/Agreement to Bond: The amount of the Bond is less than the amount required as indicated in the Bid Call documents.	Bidder shall be given five (5) business days to remedy, failing which the Bid is declared non-compliant, unless in the opinion of the Manager, Purchasing and Risk Management, the insufficiency is trivial or insignificant.
9.	Bid Bond/Agreement to Bond: The bonding company is not licensed to conduct business in Ontario.	Bid declared non-compliant
10.	Bid Bond: Bond is not an electronically verifiable or enforceable (e-Bond) as indicated in the Bid Call documents.	Bidder shall be given two (2) business days to remedy verification
11.	Documents: Documents provided by the Bidder through the Bidding System were not the required ones or documents are not legible	Bid declared non-compliant

12.	<u>Qualified Bid</u> : Where the Bid has been qualified by changes to specification or major requirements and acceptance would allow an unfair advantage over competitors	Bid declared non-compliant
13.	<u>Bid Does Not Meet Major Specifications</u> : Where a Bid has been submitted but does not satisfy the major specifications provided in the Bid Call documents	Bid declared non-compliant
14.	<u>Bid Does Not Meet Minor Specifications</u> : Where a Bid has been submitted but does not satisfy the minor specifications provided in the Bid Call documents	The Manager, Purchasing and Risk Management in consultation with the applicable LMT Member may declare the Bid non-compliant.
15.	<u>Bid Form Not Signed</u>	Bid would be declared non-compliant. The Bidding System does not accept Bids unless the Bidder has checked a box confirming authority to submit a Bid on behalf of the Bidder.
16.	<u>Failure to Execute</u> : Successful Bidder fails to execute a Contract or supply supplementary documents after Intent to Award letter has been issued	The Manager, Purchasing and Risk Management may declare the Bid non-compliant. This may further result in the banning of further bidding, the calling of a bond, or the Bidder may be restricted from bidding for a period of time.
17.	<u>Bid Pricing</u> : Discrepancy between the pricing submitted in Bidding System Pricing Table and the pricing submitted in an uploaded Bid file	Bid Pricing submitted in the Bidding System Pricing Table will prevail.
18.	<u>Part Bids</u> : Bidder submits a Part Bid	Part Bids are not accepted unless specified in the Bid Call documents.
19.	<u>Minor Clerical Errors</u> : Bid contains minor clerical errors	The Bidder will be provided two (2) working days to correct errors. The Town reserves right to accept Bid notwithstanding these errors.

20.	<u>Alternate Items Bid in Whole or In Part</u>	Available for further consideration unless specified otherwise in request.
21.	<u>Other Mathematical Errors</u> Which are Not Consistent with the Unit Prices	The Bidder will be provided with two (2) working days to initial corrections as made by Purchasing.
22.	<u>Missing Pages</u> : Bid submitted by a Bidder is missing pages	The Bidder will be provided with two (2) working days to supply the missing pages. The Town reserves the right to accept or reject Bids that are missing pages.
23.	<u>Major Error in Bid</u> : Bid submitted by a Bidder contains a major error	Reviewed on a case-by-case basis. May result in Automatic Rejection.
24.	<u>Other Bid Irregularities</u>	The Manager, Purchasing and Risk Management may declare the Bid non-compliant. The Bidder may be given up to five (5) business days to remedy the Bid Irregularity depending on the situation.