

## **Municipality Of Chatham-Kent**

### **Finance, Budget and Information, Technology & Transformation**

#### **Financial Services**

**To:** Mayor and Members of Council  
**From:** Matt Torrance, Director, Financial Services  
**Date:** September 22, 2020  
**Subject:** Purchasing By-law Revisions

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#### **Recommendations**

It is recommended that:

1. By-law 3-2016, which regulates the procurement of goods and services by the Municipality of Chatham-Kent, be repealed.
2. The attached Purchasing By-law, to regulate the procurement of goods and services by the Municipality of Chatham-Kent, be adopted.

#### **Background**

Section 270(1) 3 of the Municipal Act, 2001 states that “A municipality shall adopt and maintain policies with respect to its procurement of goods and services.” Section 5 of the Municipal Act, 2001 states that the powers of a municipality be exercised by its Council through the enactment of by-laws.

The current Purchasing By-Law 3- 2016 was adopted by Council at the January 11, 2016 meeting. The By-law has not be revised since that time.

At the August 10, 2020 Council meeting, Administration brought a report entitled “2021 Budget Opportunities for 0%”. In that report, it was recommended that the Purchasing By-law be reviewed and updated for digitization, changes in limits and delegation authority.

#### **Comments**

A purchasing by-law regulates staff on how to purchase goods and services on behalf of the municipality and how the purchase is approved. This is a key document that ensures the integrity and reputation of the municipality is maintained. The guidelines in the policy are clearly stated and meticulously followed by all staff. The policy must be both legal and defensible in the courts. The by-law helps the municipality remain open, fair and transparent to the public in its purchases of goods and/or services.

As part of the Purchasing Policy review, the Purchasing Department sought feedback from the Tenders Group, a group of internal staff consisting of the Executive Management Team, the Senior Management Team, Managers, Supervisors and other staff that utilize the Purchasing Policy in their day-to-day work. The feedback received from staff was that the process is very time consuming, causing delays in getting jobs awarded, contracts signed and ultimately the work being completed. Additionally, the requirement to have Council approve tenders above \$250,000 was seen as unnecessary since all purchases have previously been approved through the budget process.

Goods and Services

As a result of this feedback and in consultation with Financial Services, Legal Services and the Executive Management Team, it is being recommended that the new Purchasing By-law, with the following approval authorities, be adopted.

<b>Level</b>	<b>How Procured</b>	<b>Dollar Value of Approval Level</b>	<b>Who Approves</b>
<b>\$0-\$5,000</b> (previously \$2,500)	No Process	<b>Up to \$5,000</b> (previously up to \$2,500)	Employee
<b>\$5,000 to \$30,000</b> (previously \$2,500 to \$15,000)	Simple Quote	<b>\$5,000 to \$30,000</b> (previously up to \$15,000)	Manager
<b>\$30,000 to \$100,000</b> (previously \$15,000 to \$75,000)	Detailed Quote/RFP	<b>\$30,000 to \$100,000</b> (previously up to \$75,000)	Senior Management Team
<b>Over \$100,000</b> (previously over \$75,000)	Tender/RFP	<b>\$100,000 to \$500,000</b> {previously up to \$150,000}	Executive Management Team
		<b>\$500,000 to \$1,000,000</b> {previously up to \$250,000}	Chief Administrative Officer
		<b>Over \$1,000,000</b> {previously over \$250,000}	Council

Key Changes

When a good or service is procured following the purchase process established in the by-law, Council generally only has two options: approve the recommendation or cancel the project. In an effort to reduce red tape, the by-law will see the CAO approve all

purchases that follow a legally binding process, up to \$1,000,000. All purchases need to have a Council approved budget before they can be put out for a public process (Section 37). By increasing the approval authority at all levels, projects can be awarded quicker, contracts signed sooner and work completed more efficiently.

As per Section 39, Council approval will still be required under the following scenarios:

- purchases that exceed the budget
- lowest bidder is not being recommended
- the company is owned (directly or indirectly) by an employee, member of a board or Council member
- an in-house bid is received from an internal department
- in a case where there are financing terms
- where Council is required to approve the purchase
- any other instance where the Chief Financial Officer, Chief Legal Officer or the Chief Administrative Officer decides it would be in the best interest of the Municipality to do so

Council will be provided more information in annual reports from Directors detailing the projects that will be completed in the year. For example, instead of approving individual tenders, Council will receive an annual list of projects budgeted to be completed under the lifecycle category of the approved budget, and only receive a tender report if required as listed above or over \$1,000,000.

### Roster

As per Section 111, a Roster List exists for the Services or a combination of Services and Goods sought to be purchased, Purchasing from such Roster List shall be required if the Purchase Price is less than \$100,000. This limit was increased from \$75,000 to \$100,000 to align with the detailed quote level.

### Consultants/Architects, etc.

In the current by-law, the procurement of professional services is separated into Infrastructure Projects and Specialty Projects, with each having different approval limits. In the proposed by-law, professional services are now consolidated into one group. This results in the approval limit at the lowest level being increased for both Specialty Projects and Infrastructure Projects. The proposed changes also allow for the CAO to approve professional services up to \$250,000. These changes will result in more clarity for staff and increase efficiency in getting work completed in a timely manner.

Level	How Procured	Dollar Value of Approval	Who Approves
\$0 to \$100,00 (previously \$75,000)	Direct Appointment	Up to \$100,000 (previously up to \$75,000)	Executive Management Team
\$100,000+ (previously over \$75,000)	Request for Proposal	\$100,000 to \$250,000 (previously up to \$100,000)	Chief Administrative Officer
		Over \$250,000 (previously over \$100,000)	Council

Single Source / Sole Source Purchases

As per Sections 122 and 125, the approval limit for Single Source and Sole Source purchases have been increased. The CAO will have approval authority up to \$250,000 (previously \$100,000) and Council will approve any purchase over \$250,000.

Housekeeping Items

The proposed by-law contains revisions under Section 29 (e) that provide for the Municipality to move forward with an e-bidding solution in 2021. This will assist vendors in no longer having to deliver documents in person.

The proposed by-law contains a revision under Section 57 permitting the petty cash limit for the Capitol Theatre to be increased from \$100 to \$300. This update was required as a result of operational issues on show days where the need for petty cash exceeded \$100.

**Areas of Strategic Focus and Critical Success Factors**

The recommendations in this report support the following areas of strategic focus:

- Economic Prosperity:  
Chatham-Kent is an innovative and thriving community with a diversified economy
- A Healthy and Safe Community:  
Chatham-Kent is a healthy and safe community with sustainable population growth
- People and Culture:  
Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community
- Environmental Sustainability:  
Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendations in this report support the following critical success factors:

- Financial Sustainability:**  
The Corporation of the Municipality of Chatham-Kent is financially sustainable
- Open, Transparent and Effective Governance:**  
The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership
- Has the potential to support all areas of strategic focus & critical success factors
- Neutral issues (does not support negatively or positively)

**Consultation**

The Executive Management Team and the Manager, Legal Services were consulted on the content of this report.

**Financial Implications**

The Purchasing By-law ensures procurement is fair, open and transparent, using a competitive process. A solid, defensible Purchasing By-law may reduce litigation expense and protect the Municipality from contract dispute issues.

Prepared by:

Reviewed by:

\_\_\_\_\_  
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Chief Financial Officer, Treasurer

Consulted and confirmed the content of the consultation section of the report by:

\_\_\_\_\_  
Dave Taylor  
Manager, Legal Services

Attachment: Procurement By-law

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**CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT**

**BY-LAW NO.**

**A by-law governing the purchasing and procurement of goods and services by the Municipality of Chatham-Kent.**

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WHEREAS the Council of The Corporation of The Municipality Of Chatham-Kent deems it expedient to adopt a Purchasing By-law, pursuant to Section 270 of the Municipal Act, 2001;

NOW THEREFORE the Council of The Corporation of the Municipality of Chatham-Kent hereby enacts the following:

1. That the Purchasing By-law set forth as Schedule "A" as attached hereto, shall come into force and take effect upon finally being passed.
2. That By-law 3-2016 be repealed.

FINALLY PASSED this      day of October, 2020.

SIGNED

SIGNED

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MAYOR – Darrin Canniff

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CLERK – Judy Smith

Schedule "A"



**Chatham-Kent**

*Cultivating Growth, Shore to Shore*

**By-Law # -2020  
to Regulate the  
Procurement of Goods and Services  
by the  
Municipality of Chatham-Kent**

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## **Part I - Ethical Considerations and Purchasing Goals**

### **Ethical Considerations**

1. The Municipality, in the performance of its Purchasing function, incorporates by reference the following, as amended from time:
  - the Code of Ethics adapted from the Ontario Public Buyer's Association; and
  - the Ontario Broader Public Sector Supply Chain Code of Ethics.

### **Mission Statement**

2. The purpose of this By-law is to develop and maintain process controls and administrative support for the procurement of goods and services assuring optimal cost, quality, accountability, and objectivity in a decentralized manner.
3. The Municipality strives to meet and balance the following goals:
  - a. Efficiency: Maintain the flow of goods and services to meet the Municipality's needs over both the short and long term in the most cost effective manner possible.
  - b. Quality and Value: Obtain Best Value for money.
  - c. Honesty: Ensure Purchasing is undertaken with fairness, honesty and integrity as to avoid even the appearance of impropriety.
  - d. Openness: Ensure equal access of Suppliers to opportunities to benefit from the expenditure of tax dollars by the Municipality.
  - e. Transparency: Ensure that Purchasing is undertaken in accordance with policies and procedures that are accessible to and understandable by all.
  - f. Accountability: Maintain accountability through the ongoing exercise of openness and transparency.
  - g. Improvement: Create an environment of continuous improvement by reducing costs, improving quality, and stimulating innovation.
  - h. Environmental Responsibility: Encourage the procurement of "green" goods (recycled, renewable, etc.) wherever possible and where goals (a) through (g) above can also be achieved.

## **Part II - Interpretation**

### **Definitions**

4. Within this By-law, the following words will have the following meanings:

<b>Term</b>	<b>Definition</b>
<b>Award</b>	When a Submission is formally accepted by the Municipality, either by Council or by delegated authority.
<b>Best Value</b>	The optimal balance of performance and cost. Best Value may include a time horizon that reflects the overall life cycle of a given asset.

Term	Definition
<b>Bid Documents</b>	Municipal documents used in connection with a Purchasing process, including but not limited to Request for Information s, Request for Tenders, Request for Proposals and Request for Quotations.
<b>Bid Security</b>	Security to ensure that the successful Supplier on a Solicitation enters into a Contract with the Municipality.
<b>Blanket Contract</b>	A form of Contract requiring a Supplier to supply Deliverables on an “as required” basis under prearranged terms, conditions, and pricing over the term of the Contract.
<b>Board</b>	A municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of the Municipality, excluding a school board and a conservation authority.
<b>Chief Administrative Officer (CAO )</b>	The Municipality’s Chief Administrative Officer.
<b>Chief Financial Officer / Treasurer (CFO)</b>	The Municipality’s Chief Financial Officer/Treasurer.
<b>Chief Legal Officer (CLO )</b>	The Municipality’s Chief Legal Officer.
<b>Closing Date</b>	The place, date and time set by the Bid Documents for receipt of Responses.
<b>Conflict of Interest</b>	A situation in which the personal interests of Respondents, Suppliers, Members of Council, Municipal or Board Employees, or Municipally engaged Consultants come into conflict, or appear to come into conflict, with the interests of the Municipality, including the interest to obtain Best Value as well as the principle of transparency and fairness in the purchase of goods and services.
<b>Construction</b>	Construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other work, but does not include Consulting

<b>Term</b>	<b>Definition</b>
	Services related to the Construction unless they are specifically included in the Purchase.
<b>Consulting Services</b>	The supply of expertise or strategic advice that is presented for consideration and decision-making, or the guidance of execution of a specific project or undertaking and includes professional services such as engineering and architecture.
<b>Contract</b>	A document to evidence an agreement for the purchase of Deliverables, and includes both a Purchase Order and a Formal Agreement.
<b>Council</b>	The Council and Mayor of the Municipality of Chatham-Kent.
<b>Deliverable</b>	The Good, Service or Construction being purchased.
<b>Department</b>	An area of operation of the Municipality as defined by its organizational charts.
<b>Designate</b>	An individual duly appointed to act on behalf of the authorized authority.
<b>Designated Official</b>	The most senior management staff member of the Board.
<b>Disposal</b>	The transfer of ownership of Property by the Municipality by sale, trade in, donation, alternative use or destruction.
<b>Emergency</b>	<ul style="list-style-type: none"> <li>a. An imminent or actual danger to the life, health or safety of an official, the public, or an Employee while acting on the Municipality's behalf;</li> <li>b. an imminent or actual danger of injury to, or destruction of, property belonging to the Municipality or a third party to whom the Municipality would be liable;</li> <li>c. an unforeseen interruption, or threat of an interruption, of an essential public service;</li> <li>d. an emergency as defined by the Emergency Management Act and the Emergency Response Plan formulated by the Municipality; or</li> <li>e. a spill of a pollutant as contemplated by the Environmental Protection Act.</li> </ul>
<b>Employee</b>	An employee of the Municipality or a Board.

<b>Term</b>	<b>Definition</b>
<b>Executive Management Team (EMT)</b>	The Municipality's Executive Management Team.
<b>Evaluation Team</b>	Individuals designated to evaluate Responses and make Award recommendations in accordance with this By-law.
<b>Fair Market Value</b>	The price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arm's length, fully informed and under no compulsion to transact.
<b>Formal Agreement</b>	A written Contract for the purchase of a Deliverable, executed by the Municipality and the Supplier.
<b>Goods</b>	Any moveable property, including the costs of installing, maintaining or manufacturing such moveable property, including raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid, gaseous or electronic form, unless they are purchased in connection with Construction.
<b>Manager</b>	A person appointed to a position of Manager by the Municipality.
<b>Mayor</b>	The Municipality's Mayor.
<b>Municipal Website</b>	The Municipality's website at <a href="http://www.chatham-kent.ca">www.chatham-kent.ca</a>
<b>Municipality</b>	The Corporation of the Municipality of Chatham-Kent.
<b>Prequalification</b>	A request for supplier qualification or RFSQ, a process used to gather information on supplier capabilities and qualifications with the intent of creating a list of prequalified suppliers for subsequent participation in an invitational Request for Tender or Request for Proposal.
<b>Property</b>	Includes all personal property, including but not limited to furniture, vehicles, equipment and stock.
<b>Proposal</b>	The submitted documents of an entity responding to a Request for Proposal.
<b>Proposal Review Committee</b>	The people selected by the Municipality to evaluate Proposals.
<b>Purchase</b>	The acquisition of Deliverables by any means, including rental and leasing, and the functions that pertain to the acquisition of Deliverables, and "Purchasing" shall have a corresponding meaning.

<b>Term</b>	<b>Definition</b>
<b>Purchase Order (PO)</b>	A standard Contract issued by the Municipality to a Supplier to evidence an agreement for the purchase of Deliverables.
<b>Purchase Price</b>	The amount payable by the Municipality for a Deliverable pursuant to a Contract.
<b>Purchasing Card</b>	A card issued in accordance with the Municipality's Purchasing card policy for the purchase of Deliverables.
<b>Purchasing Department</b>	The division of Financial Services charged with implementing and/or overseeing this By-law.
<b>Purchasing Officer</b>	The Purchasing Officer or, in his or her absence, the Chief Financial Officer.
<b>Request for Expression of Interest (RFEI)</b>	A request for expression of interest, a process used to gather information on Supplier interest in an opportunity, or information on Supplier capabilities and qualifications. An RFEI does not create a binding relationship between the Municipality and any Supplier.
<b>Request for Information (RFI)</b>	A request for information, a process used to research which products and services are available, scope out business requirements, and/or estimate project costs which may be used prior to issuing another type of competitive bid. An RFI does not create a binding relationship between the Municipality and any Supplier.
<b>Request for Proposal (RFP)</b>	A request for proposal, a process in which a need is identified, but the method by which it will be achieved is not necessarily prescribed at the outset and price is not the only evaluation criterion.
<b>Request for Qualifications</b>	Means a request for a list of qualified suppliers and firms who have an interest in providing services to the Municipality, typically through a two-stage process.
<b>Respondents</b>	Those entities that submit a Proposal in response to a Request for Proposal, EOI, Request for Information or Request for Quotation.
<b>Response</b>	A response to a Solicitation.
<b>Request for Quotation (RFQ)</b>	Request for Quotations, including simple and detailed quotations, but not including Request for Proposals or Request for Tenders.

<b>Term</b>	<b>Definition</b>
<b>Request for Tender (RFT)</b>	Request for Tender, a process to request supplier responses to supply Deliverables in compliance with stated requirements, performance specifications and terms and conditions and evaluation is made solely on price.
<b>Roster List</b>	List of Suppliers who will be permitted to participate in certain non-competitive Contracts anticipated to be required on a regular basis in the future.
<b>Services</b>	Intangible products not having a physical presence.
<b>Single Source</b>	The Purchase of Deliverables, by non-competitive means, from one selected supplier, even though there are other suppliers that provide the deliverable.
<b>Senior Management Team (SMT)</b>	The Municipality's Senior Management Team.
<b>Sole Source</b>	The Purchase of Deliverables where there is only one supplier that provides the product.
<b>Solicitation</b>	Formal Request for Quotation, Request for Tender, Request for Proposal, Request for Information, Request for Expression of Interest issued in either written or electronic format by the Municipality.
<b>Specifications</b>	Description of the physical or functional characteristics or the nature of a supply, service, equipment or construction item and may include requirements for inspection, testing, or preparing a Deliverable, and may also include drawings or samples or other means of illustrating the requirements.
<b>Successful Respondent</b>	The entity that is selected to enter into negotiations with the Municipality for an Agreement to complete the work.
<b>Supplier</b>	A person, corporation or other entity that responds or intends to respond to a Solicitation or provides Deliverables to the Municipality including but not limited to contractors, consultants, suppliers, service organizations.
<b>Total Life Cycle Cost</b>	An estimate or calculation that considers all direct and indirect costs of a Deliverable over its useful life, from acquisition to disposal including Contract Prices, implementation costs, upgrades, carrying costs, maintenance contracts, support contracts, licence fees and disposal costs.



Term	Definition
<b>Trade Agreements</b>	Annex 502.4 to the Agreement on Internal Trade and Agreement on opening of Public Procurement for Ontario and Quebec as amended or superseded from time to time.

### **Interpretation**

5. Unless the context requires otherwise, use of the singular also implies the plural, and vice versa.
6. Whenever the words “include”, “includes” or “including” or other similar terms are used in this By-law, they are deemed to be followed by the words “without limitation.”
7. Any reference in this By-law to any statute or any section of a statute shall, unless expressly stated, be deemed to be reference to the statute as amended, restated or re-enacted from time to time. Any reference to a By-law or Municipality policy shall be deemed to be a reference to the most current state of the By-law or Municipality policy and any replacement By-law or policy.
8. All dollar amounts are expressed in this By-law are in Canadian dollars.
9. Any reference to a day refers to a calendar day.
10. Any headings in this By-law are non-binding and are intended for explanatory purposes only and are not to be considered or taken into account in construing or interpreting this By-law.
11. All Solicitations and processes under this By-law shall be conducted in English.

### **Part III - Application**

#### **Application**

12. This By-law applies to all Purchasing activities carried out by the Municipality and any Board using this By-law with the exception of:
  - a. those Purchasing activities set out in Schedule A;
  - b. the Purchase or Disposal of Deliverables where the laws of Ontario or Canada require the Purchase or Disposal to be carried out in some manner other than by this By-law; and
  - c. a circumstance in which Council directs by Council Resolution that the Purchase or Disposal of Deliverables shall be carried out in some manner other than by this By-law.
13. A Council Resolution adopted by Council under Section 12(c):

- a. shall be a matter of public record;
  - b. shall state that Council is satisfied that it is necessary in the public interest that the Purchase or Disposal be carried out in otherwise than in accordance with this By-law and shall give the reason or reasons for so concluding; and
  - c. before adopting a Council Resolution under Section 12(c), Council shall afford the Chief Legal Officer and Purchasing Officer an opportunity to be heard and to provide oral advice concerning the proposed Council Resolution.
14. Unsolicited offers are to be reviewed by the Purchasing Officer and the relevant Executive Management Team Member. Any Purchase resulting from an unsolicited Supplier offer must comply with this By-law.

## **Part IV - Integrity of the Purchasing Process**

### **Conflict of Interest**

15. All Employees are subject to the Employee's Code of Conduct Policy and shall disclose all conflicts of interest as required by the policy and shall take adequate steps to address any actual or perceived conflicts of interest.
16. No Employee or Member of Council shall knowingly cause or permit anything to be done or communicated to anyone that is likely to cause any Supplier to have an unfair advantage or disadvantage in any Purchasing opportunity.

### **Dispute Resolution**

17. The following dispute resolution process shall be available to Suppliers who:
  - a. dispute the fairness of a Purchasing process;
  - b. dispute an Award or results of a Prequalification; or
  - c. dispute the fairness of an evaluation of Contract performance.
18. Within sixty (60) days of Award or other circumstance giving rise to the dispute, the Supplier shall provide a written request for a meeting with the Purchasing Officer detailing the legal and factual grounds underlying the dispute and the desired outcome and including any relevant documents.
19. The Purchasing Officer shall convene a meeting with the Supplier within twenty (20) days of receipt of the request. The Purchasing Officer will have the option of conducting the meeting in writing, in person or by teleconference.
20. If the Purchasing Officer is satisfied that action should be taken, he or she will prepare a report to the Executive Management Team Member responsible for the Award or other circumstance giving rise to the dispute, advising that such action be taken. The Executive Management Team Member will then either implement the recommended action or take such other steps as he or she deems appropriate.

21. After the Executive Management Team Member has implemented the recommended action or taken such others steps as he or she deems appropriate, the Supplier may appeal the decision to the Chief Administrative Officer within thirty (30) days by providing notice in writing to the Chief Administrative Officer. The Chief Administrative Officer or designate shall interview, by telephone or in person, the Supplier who has filed the appeal. The Chief Administrative Officer or designate shall interview the GM, Purchasing Officer and any other persons the Chief Administrative Officer or designate wishes to interview before making a final decision. The decision of the Chief Administrative Officer or designate shall be issued in writing, with or without reasons.
22. The decision of the Chief Administrative Officer or designate is final and binding. No appeal from the decision of the Chief Administrative Officer or designate lies to any other person, body corporate, or court of law, including the Municipal Council.
23. The Purchasing Officer, Executive Management Team Member and Chief Administrative Officer shall consult and receive legal advice from the Chief Legal Officer throughout the dispute resolution process.

### **No Discrimination**

24. The Discriminatory Business Practices Act and the Trade Agreements forbid the granting of a preference to a local Supplier as a form of discrimination, therefore in compliance with the law and the Trade Agreements:
  - a. The Municipality shall not discriminate between the Deliverables of a particular province, municipality or geographic region and the Deliverables of another province, municipality or geographic region.
  - b. The Municipality shall not discriminate between the Suppliers of a particular province, municipality or geographic region and the Suppliers of another province, municipality or geographic region.

## **Part V - Roles and Responsibilities**

### **Delegates**

25. Where any person is authorized to undertake any act under this By-law, such act may also be undertaken by a person properly designated by the authorized person.

### **Council**

26. Council shall:
  - a. establish the Municipality's Purchasing policy through this By-law;
  - b. prioritize the Municipality's purchasing needs through the budget process; and
  - c. refer all Supplier inquiries to the Purchasing Officer.

## **Chief Administrative Officer**

27. The Chief Administrative Officer shall:
- a. impose restrictions on Purchasing activities from time to time where he or she considers necessary and in the best interests of the Municipality;
  - b. ensure the implementation of the policies established in this By-law; and
  - c. support Council in satisfying Council's role.

## **Executive Management Team Members**

28. Executive Management Team Members shall:
- a. oversee all Purchasing activities in their areas of responsibility and be accountable for the Purchasing activities of the Employees under their supervision;
  - b. achieve Best Value while observing the requirements of this By-law;
  - c. identify single and multi-functional projects in budget submissions to ensure the correct dollar thresholds and Purchasing processes are used; and, require those Employees under their supervision having Purchasing authority to complete Purchasing By-law training.

## **Purchasing Officer**

29. The Purchasing Officer shall:
- a. act as the legal purchasing agent for the Municipality under the direction of the Chief Financial Officer;
  - b. provide professional purchasing advice to Departments;
  - c. monitor adherence to this By-law;
  - d. interpret and apply this By-law to all Purchasing activities and exercise discretion as prescribed where alternative courses of action are permitted;
  - e. determine the best format in which a Solicitation is to be delivered (written, electronically or by any other means)
  - f. notify Managers of non-compliance with this By-law;
  - g. notify Chief Administrative Officer and Executive Management Team Member of non-compliance with this By-law if the non-compliance cannot be rectified;
  - h. provide ongoing training and education regarding this By-law;
  - i. ensure conduct of Purchasing activities in an efficient and timely manner;
  - j. establish all necessary procedures, forms, methods and documents to carry out the objectives of this By-law.

## **Employees**

30. Employees shall:
  - a. comply with the provisions of this By-law in the performance of their duties; and
  - b. at all times make reasonable efforts to obtain Best Value for the Municipality.
31. All Employees given authority to Purchase Deliverables under this By-law are accountable and responsible to ensure that proper budgets exist within their Departments and that Purchases do not violate any Municipal, legal, or other statutory policy, including Trade Agreements, and will be held accountable for their decisions and actions.

## **Suppliers**

32. Suppliers:
  - a. shall be required to disclose any and all Conflicts of Interest to the Municipality prior to or contemporaneously with making a Response;
  - b. shall not engage in any form of bid rigging or collusion of any nature; and
  - c. shall be forbidden to engage in any conduct which is or could reasonably be construed as any form of political or other lobbying, or as an attempt to influence the outcome of any Purchasing process during the currency of any process prior to an Award.
33. Failure by a Supplier to adhere to the standards established in this Part may result in disqualification from participating in the Municipality's Purchasing opportunities, at the discretion of the Chief Administrative Officer.

## **Part VI - Approval Authorities**

### **Threshold Calculation and Anti-Avoidance**

34. In calculating the Purchase Price for the purposes of determining the necessary approvals and procedures, all taxes and duties shall be included. In the case of multi-year Contracts, the Purchase Price will be the total amount payable under the Contract.
35. No action shall be taken to subdivide Purchases in order to reduce the estimated Contract Price or to otherwise avoid or circumvent the application of any of the provisions of this By-law.

### **Administrative Approval**

36. Employees with Purchasing Authority shall purchase goods and/or services as follows:

#### **Goods and Services**

Level	How Procured	Dollar Value of Approval Level	Who Approves
0 to \$5,000	No Process	Up to \$5,000	Employee
\$5,000 to \$30,000	Simple Quote	\$5,000 to \$30,000	Manager
\$30,000 to \$100,000	Detailed Quote/RFP	\$30,000 to \$100,000	Senior Management Team
Over \$100,000	Tender/RFP	\$100,000 to \$500,000	Executive Management Team
		\$500,000 to \$1,000,000	Chief Administrative Officer
		Over \$1,000,000	Council

Consultants/Architects, etc.

Level	How Procured	Dollar Value of Approval	Who Approves
\$0 to \$100,000	Direct Appointment	Up to \$100,000	Executive Management Team
\$100,000+	Request for Proposal	\$100,000 to \$250,000	Chief Administrative Officer
		Over \$250,000	Council

37. Where no funds exist within the Council-approved budgets, Council approval is required prior to the initiation of the Purchase of a Deliverable.
38. The General Manager of the Public Utilities Commission and the Chief of Police are authorized to act in the Chief Administrative Officer's place for awarding projects and the Public Utilities Commission and the Police Service Board in Council's place for awarding projects, as required.

**Council Approval**

39. Council must approve the purchase of any Deliverables where:
  - a. the lowest compliant Response exceeds the approved budget, including any

contingency allowance;

- b. any Response other than the lowest compliant Response received is recommended for acceptance;
  - c. the company being awarded is owned directly or indirectly, in whole or in part, by an Employee of the Municipality or Board;
  - d. the company being awarded is owned directly or indirectly, in whole or in part, by a member of Council;
  - e. an in-house bid is received from an internal Municipal Department;
  - f. federal or provincial government or any other body having jurisdiction requires Council approval for a Purchase or Contract;
  - g. the Contract includes financing terms;
  - h. Council requires that it approve the purchase; or,
  - i. any other instance in which the Chief Financial Officer and the Chief Legal Officer acting together, or the Chief Administrative Officer acting alone, decide it would be in the best interests of the Municipality to do so.
40. In the event of a conflict, the sections in this Part supersede any other provision in this By-law.

## **Part VII - Purchasing Planning**

### **Specifications**

41. Departments are responsible to provide all Specifications necessary for a Solicitation and are responsible for the accuracy and suitability of those Specifications.
42. The Purchasing Department may review and recommend improvements or clarifications to Specifications when, in the opinion of the Purchasing Officer, it is necessary to meet the objectives of the Solicitation.
43. Specifications shall be a clear description of the requirements to be met in the Contract and should not be brand-specific if possible.
44. In order to contribute to waste reduction and to increase the development and awareness of environmentally sound purchasing, acquisition of Deliverables will ensure that wherever possible, specifications 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 Deliverable and providing that a cost analysis supports that these products are made available at competitive prices.
45. If the scope or nature of the Deliverable to be purchased is unclear, a Request for

Information shall be used to gather information from the marketplace on the availability of goods and services.

46. If the level of Supplier interest in supplying a Deliverable is unclear, a Request for Expression of Interest shall be used to gather information from the marketplace on Supplier interest.
47. A Response to a Request for Information or a Request for Expression of Interest shall not be used as a Prequalification and shall have no influence on a Supplier's chances of Award on a subsequent Solicitation.

### **Non-Arm's Length Relationships**

48. Entities that are in a non-arm's length relationship (as defined in the *Income Tax Act*), with a consultant appointed by the Municipality, are not permitted to submit quotes, tenders or Request for Proposals where the Consultant participates in the preparation or evaluation of those quotes, tenders or Request for Proposals.

### **Prequalification**

49. A Prequalification may be used where:

It is desirable to create a list of Suppliers to use for one or more future Purchases;

- a. the qualifications of the Supplier are paramount having regard to the complexity, cost, potential Occupational Health and Safety Act risk, or to specialized equipment, material or financing requirements; or,
- b. the standard of performance of the Deliverables has been established.

50. The Prequalification shall include:

- a. a description of the Deliverable affected by the Prequalification;
- b. duration of validity of the Prequalification;
- c. a statement that only Prequalified Suppliers will be permitted to participate in the Solicitation; and,
- d. a provision that the Municipality is in no way obligated to call on a Supplier as a result of the Prequalification to supply the Deliverable referenced in the Prequalification.

51. Where a Prequalification is established for a Solicitation, only prequalified Suppliers may participate in the Solicitation.

### **Consumer Price Index (CPI)**

52. All Contracts, Request for Proposals and Request for Tenders with a term of 3 (three) years or less should be requested to be bid at a fixed price, with no increases or



adjustments, whenever possible. Exceptions must be approved by the Chief Financial Officer.

53. All Contracts, Request for Proposals and Request for Tenders on a 3 to 5 (three to five) year term should be reviewed on an individual good or service basis on whether to include any escalation clauses (such as fuel variability, paper mill costs or good or service specific increases).
54. For all Contracts, Request for Proposals and Request for Tenders with a term beyond 5 (five) years, administration should be allowed the option to select multiple criteria pricing, based upon fixed pricing and maximum pricing that would include incremental increases in the contracts evaluated by an appropriate valuation method. Certain escalation clauses may be added to both methods.
55. Incremental increases should be capped at the national annual average change of Consumer Price Index (CPI) for all items figure. On Contracts that have separate escalation clauses, CPI measures must exclude those components for any pricing adjustments (i.e. fuel escalation).

## **Part VIII - Purchasing Methods**

### **Determination**

56. Purchasing methods are determined based on the threshold calculation rules under Part VI. Purchasing methods cannot be combined.

### **Petty Cash**

57. Departments have the authority to use petty cash for Purchases up to \$100.00, except for Capitol Theatre that it have the authority to use petty cash for Purchases up to \$300.00
58. No Purchasing process is required for petty cash Purchases.

### **Corporate, Credit and Purchasing Cards**

59. The Chief Financial Officer / Treasurer is delegated authority to prepare and implement policies regarding the issuance of credit, corporate, purchasing and other similar cards, for use by Municipal staff.

### **Simple Quotation**

60. Departments have the authority to solicit quotations for Deliverables without the direct involvement of the Purchasing Department when all of the following apply:
  - a. total dollar amount between \$2,500 and \$15,000;
  - b. clearly defined Specification; and,
  - c. no Blanket Contract exists for the Deliverables.

61. Only those Suppliers invited to give quotations will receive notice.
62. Suppliers shall be informed, via the Municipal Website, as to Specifications, Response requirements (including place, date and time for making Responses), and information that could influence a Supplier's decision to provide a Response or influence Supplier pricing.
63. Each Supplier shall:
  - a. only be permitted to submit one quotation; and,
  - b. not be permitted to change its quotation or negotiate after submitting its quotation.
64. The Purchasing Department shall have the authority to solicit additional quotations if it is in the best interests of the Municipality to do so.
65. The Supplier submitting the most favourable compliant Response will be awarded a Contract for the Deliverables. A Formal Agreement may be required, as provided for under section 141.
66. The Purchasing Department shall receive all records of Supplier Responses from the requisitioning department prior to issuing a Purchase Order for the Deliverables.

#### **Detailed Quotation**

67. The Executive Management Team member in consultation with the Purchasing Officer has the authority to solicit formal quotations for Deliverables when all of the following apply:
  - a. total dollar amount between \$15,001 and \$75,000;
  - b. clearly defined Specifications; and,
  - c. no Blanket Contract exists for the Deliverables.
68. Suppliers shall be informed, via the Municipal Website, as to Specifications, Response requirements (including place, date and time for making Responses), and information that could influence a Supplier's decision to provide a Response or influence Supplier pricing.
69. Response requirements shall provide that Suppliers:
  - a. only be permitted to submit one written quotation;
  - b. not be permitted to change their written quotations or negotiate after making a submission; and,
  - c. be required to reflect the Specifications in their Response.

70. The Supplier submitting the most favourable compliant Response will be awarded a Contract for the Deliverables.
71. A Purchase Order and/or a Formal Agreement will be required, as provided for under sections 140, 141 and 142
72. The Purchasing Officer has the discretion to require an Request for Tender or an Request for Proposal  
be conducted for Deliverables even if the estimated Purchase Price is less than \$75,000.

### **Request for Tender/Request for Proposal**

73. An Request for Tender shall be issued when all of the following apply:
  - a. two or more sources are considered capable of supplying the Deliverable;
  - b. the estimated Contract Price is \$75,000 or greater;
  - c. a Blanket Contract does not exist;
  - d. clearly defined Specifications; and,
  - e. Purchase Price is the sole criterion for Award.
74. If a cost-sharing agreement is in place for a Construction project of which the Municipality is not the owner, a Request for Tender must be issued if the amount of the Municipality's share exceeds the greater of 10% of the cost-sharing agreement value or \$75,000.
75. An Request for Proposal shall be used when the requirements for goods and/or services needed cannot be definitively specified and where such Proposal could result in specific offers by the Respondents to fulfil the requirements, services or function at a particular price. An Request for Proposal should be used where one or more of the criteria for issuing a Request for Tender cannot be met, such as:

Owing to the nature of the requirement, Suppliers are invited to propose a solution to a problem, requirement or objective and the selection of the Supplier is based on the effectiveness of the proposed solution rather than on price alone;

  - a. It is expected that negotiations with one or more Respondents may be required with respect to any aspect of the requirement;
  - b. The precise goods, service(s) or construction, or the specifications are not known or are not definable, and it is expected that the Respondents will further define them; or,
76. The services required are Consulting Services.  
The Request for Proposal procedure shall be used where:

- a. the requirement is best described in a general performance specification;
  - b. innovative solutions are sought;
  - c. 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;
  - d. purchase Price is not the sole criterion for Award.
77. Executive Management Team Members (or delegate) in consultation with the Purchasing Officer shall identify appropriate evaluation criteria which may include but not be limited to factors such as qualifications and experience, strategy, approach, methodology, scheduling and past performance, facilities, equipment, pricing, life cycle costing, standardization of product, and aspects that would support environmental procurement. Cost will always be included as a significant factor, as Best Value includes but is not limited to quality and cost.
78. The Executive Management Team Member (or delegate) shall be responsible for preparing the Request for Proposal documents. No changes to the Request for Proposal template may be made without the approval of the Purchasing Officer. All suggested amendments shall be included in a Schedule "B" to the Request for Proposal template. The completed Request for Proposal documents and the evaluation criteria to be applied in evaluating the proposals submitted shall be provided to the Purchasing Officer for approval prior to the Request for Proposal being issued.
79. The Request for Proposal process and procedure to be followed is set out in the Request for Proposal template. The "two envelope" system of evaluating Proposals shall be the method of evaluation used for all Request for Proposals, unless specific approval is given by the Purchasing Officer for an alternate method of evaluation.
80. The weight to be given to the Price Score of a Proposal in the determination of a Final Score for a Proposal shall be not less than 30% of the Final Score unless otherwise approved by Council prior to the Request for Proposal being issued.
81. The Municipality shall determine, in its sole discretion,
- a. the membership of the Proposal Review Committee;
  - b. which Respondents and how many Respondents, based on the evaluation process, will be short-listed;
  - c. the scores of a Respondent;
  - d. the rankings of the Respondent; and
  - e. whether a Proposal or a Respondent
    - i) is disqualified; or

ii) will cease to be considered in the evaluation process.

82. Notice of Request for Tender/Request for Proposal shall be given to the Supplier at least fourteen (14) days prior to the Closing Date. In exceptional circumstances this period may be shortened to at least seven (7) days by the Chief Financial Officer / Treasurer and Executive Management Team member responsible for the purchase, acting together.
83. Notice shall be given:
- a. on the Municipality's Website; and
  - b. in any publication or forum deemed relevant by the Executive Management Team Member and/or Purchasing Officer and/or Chief Legal Officer.
84. Every Request for Tender/Request for Proposal shall use the approved template that set outs, at a minimum, the following:
- a. the manner in which communications are handled during the Request for Tender/Request for Proposal;
  - b. Response requirements, including time, date and location of the Closing Date;
  - c. any information that could influence a Supplier's decision to submit a Response, or could influence Purchase Price;
  - d. the manner in which the Response is to be evaluated, including a listing of mandatory requirements and any rating criteria;
  - e. required Contract terms, including provisions for any extension or renewal options;
  - f. time, date and location of public opening, if any; and,
  - g. that Responses may be withdrawn upon the submission of written instructions to do so submitted prior to the Closing Date.
85. The Purchasing Officer has the discretion to set fees for the purchase of Specifications for Request for Tender/Request for Proposal, the means of distribution of the Request for Proposal/Request for Tender, and the registration of Suppliers as registered bidders.
86. Suppliers shall be required to register with the Purchasing Department, via the Municipal Website by acquiring Specifications, paying any applicable fee authorized under Section 85, and providing any required information. The Purchasing Officer has the discretion to reject the Response of any Supplier who has not registered with the Purchasing Department.
87. During the currency of an Request for Proposal/Request for Tender:
- a. except at a meeting to which Suppliers have been invited, no oral questions will be

taken and no oral answers will be given; and

- b. all Supplier questions will be asked in writing, and any response given will be given in writing to all Suppliers participating in the Request for Proposal/Request for Tender; and,
  - c. communication by Suppliers and potential Suppliers with the Municipality shall be through the Purchasing Department only, in the manner directed in the Request for Proposal/Request for Tender document.
88. The Closing Date for all Request for Proposal/Request for Tender shall be set for a weekday, excluding provincial and national holidays.
  89. Only Responses meeting the requirements set out in the Request for Proposal shall be opened. Any Response not meeting the Submission requirements shall be returned unopened to the Supplier. If multiple Responses are received from a Supplier, the last Response made before the Closing Date supersedes all prior Responses, except in the case of a Request for Proposal in which alternate Responses are permitted.
  90. Request for Tenders shall be opened at a public meeting as specified in the Request for Tender. Supplier names and total tendered prices shall be read, along with such other information as may be required by any Purchasing procedure in place pursuant to this By-law.
  91. Request for Proposals shall be opened in private at a meeting of the Evaluation Team.
  92. Evaluation of Responses shall be in accordance with the terms of the Request for Proposal/Request for Tender. Any Response disqualified during the evaluation process shall not be further evaluated or considered.
  93. Irregularities in Responses shall be addressed in accordance with Schedule B to this By-law.
  94. If two equal Responses are received, any process described in the Bid Documents shall be followed to end the tie. If no process is prescribed in the Bid Documents to address equal Responses, or if the process fails to end the tie, the Executive Management Team Member and the Purchasing Officer may, in his or her discretion, re-evaluate the Responses in accordance with their terms to attempt to end the tie, or select a successful Supplier through a coin toss or drawing of lots performed by the Municipality in the presence of the tied Suppliers.
  95. Request for Proposals/Request for Tenders may be cancelled by the Purchasing Officer at the request of an Executive Management Team Member requiring the Purchase at any time until Award if:
    - a. adequate budget is not available; or,
    - b. the Deliverable is no longer required; or,
    - c. only one Response was received; or,

d. the Purchasing process was or may have been compromised.

96. Notice of Contract Award shall be published on the Municipality's Website.
97. Debriefing is available to Suppliers participating in a Request for Tender/Request for Proposal upon written request to the Purchasing Officer.

### **In-House Submissions**

98. Where it is in the best interests of the Municipality to permit Municipality Departments to compete for the opportunity to supply the Deliverable, the Bid Documents shall contain provisions providing that the decision whether or not to Award a contract shall rest solely with Council.
99. Municipal Departments shall be entitled to appear as delegations to Council to present financial, service, staffing and any other relevant information to Council when Council deliberates whether or not to Award a Contract to a Supplier or, in the alternative, to seek an internal source for the Deliverables. Municipal Departments must prepare a report to Council outlining the full costs of their bid, including costs already provided by the overall existing municipal budget (including but not limited to overhead, insurance, any increase in support required from other departments such as finance, human resources, information technology services, legal, etc.). The Chief Financial Officer / Treasurer must agree that the report to Council includes all costs of the in-house bid.

## **Part IX - Special Circumstance Purchases**

### **Lease and Financing**

100. It is the responsibility of all Municipal Departments to ensure that they involve the Chief Financial Officer and Chief Legal Officer in all leasing transactions.
101. Rental agreements are considered a form of lease financing and fall under this section.
102. It is the responsibility of the Chief Financial Officer to ensure that due diligence, as set out in the provincial regulations, occurs in all such transactions.
103. It is the responsibility of the Chief Financial Officer to report to Council on all such transactions if the total value exceeds \$100,000, before the agreement is signed.
104. All departments are required to keep copies of all lease agreements that they enter into.

### **Blanket Contracts**

105. Where a Blanket Contract exists for Deliverables to be purchased, those Deliverables must be purchased under the Blanket Contract.
106. Blanket Contracts can be established by the Purchasing Department when all of the following criteria are met:

- a. one or more Departments repetitively orders the same Deliverables or range of Deliverables and the actual demand (including quantity, delivery date, and delivery point) is not known in advance;
  - b. the Deliverables are readily available to be ordered (“called up”) as and when the requirement arises; and,
  - c. prearranged prices or a prearranged pricing basis can be established at the outset and there is no need or intention to negotiate them at call-up.
107. Blanket Contracts shall be established by the competitive Purchasing method prescribed by the estimated annual value of the Blanket Contract.
108. The Purchasing Officer shall maintain a list detailing Blanket Contracts and the associated Deliverables, Suppliers and pricing.

### **Negotiation**

109. Unless permitted by the Bid Documents, no negotiation shall be permitted within a Solicitation.
110. Deliverables may be acquired through negotiation if previously approved by the Purchasing Officer and/or Chief Financial Officer and/or Chief Legal Officer based on one of the following circumstances:
- a. Goods being purchased by Single Source under Part X;
  - b. Only one bid is received on a Solicitation;
  - c. Where the lowest compliant Bid exceeds the available budget and it is impractical to recall the Solicitation;
  - d. No compliant bids are received on a Solicitation and it is impractical to recall the Solicitation; or,
  - e. Goods or services are required in response to an Emergency as defined by this By-law.

### **Roster**

111. Where a Roster List exists for the Services or a combination of Services and Goods sought to be purchased, Purchasing from such Roster List shall be required if the Purchase Price is less than \$100,000
112. Roster Lists shall be developed only when it is determined that a Roster List would assist the Municipality in the formation of strategic relationships to better serve the Municipality’s Purchasing needs. Council must approve all Roster Lists.
113. Roster Lists shall only be valid for a maximum of three (3) years and thereafter cannot be used unless updated by a new Solicitation. The length of term for the Roster List



shall be made known at the time the Solicitation is issued.

114. Roster List Awards shall be made at the discretion of the responsible Executive Management Team Member based on an equitable distribution of Awards to the Suppliers on the relevant Roster List and provided that an acceptable Contract can be negotiated with the Supplier.
115. Roster List Awards shall be evidenced by a Formal Agreement.

### **Cooperative Purchasing**

116. The Purchasing Officer is authorized to enter into arrangements with area municipalities, local boards and other public bodies or authorities for the purchase of Deliverables on a cooperative or joint basis where there are economic advantages to doing so; provided that under any such approved arrangement the methods utilized are competitive and adequate arrangements have been made for the provision of all necessary support required by the Purchasing method chosen.
117. The Purchasing Officer is authorized to enter into arrangements with vendors that were obtained through a competitive process, by the Province of Ontario, the Federal Government of Canada or an Ontario municipality, school board, hospital, college, or university, in the previous 3 years, provided the terms of the contract are still in effect.
118. Cooperative Purchases will be approved according to the levels set out in Section 36 of this By-law.

## **Part X – Exceptions to the Competitive Process**

### **Emergency Purchases**

119. In the event of an Emergency requiring the purchase of Goods or Services to alleviate the Emergency, Goods and Services may be purchased by the most economical and expedient means, notwithstanding this By-law, as follows:
  - a. Under \$100,000: Senior Management Team members have the authority to approve Emergency Purchases under \$100,000.
  - b. Between \$100,000 and \$200,000: Executive Management Team members have the authority to approve Emergency Purchases between \$100,000 and \$200,000.
  - c. \$200,000 and above: the Chief Administrative Officer has the authority to approve Emergency Purchases of \$200,000 and above.
120. As soon as reasonably possible, and no later than three (3) months following the emergency, the authorizing Employee (Senior Management Team, Executive Management Team or Chief Administrative Officer ) shall prepare and submit an information report to Council describing
  - a. the circumstances of the Emergency,

- b. the reason and necessity of purchasing the Goods or Services outside the competitive process,
- c. the total purchase price,
- d. the name of the Supplier, and
- e. any other relevant details or information

### **Single Source**

121. While it is the intention of the Municipality that purchases will be performed in a competitive manner, it is recognized that in some limited situations a non-competitive method of purchasing may be required. A non-competitive direct award of Contract may be used to purchase Deliverables under the following circumstances:
- a. Where there is one (1) or no (0) Response to a competitive process;
  - b. To recognize exclusive rights, or to maintain specialized products that must be maintained by the manufacturer or its representative or where the Municipality is contractually bound to purchase a Deliverable from one Supplier;
  - c. To purchase an item for testing or trial use;
  - d. Where Deliverables are in short supply due to market conditions, including geographic limitations and lack of competition;
  - e. To exercise a purchase option under a rental contract;
  - f. To purchase Goods offered for sale by auction or tender;
  - g. Where a competitive method of purchasing could interfere with the Municipality's ability to maintain security or order, or to protect human, animal or plant life. For clarity, this exception only applies where the competitive method of purchasing is what causes the interference, not where the good or service being purchased affects the ability to maintain security or order, or protects human, animal or plant life.
  - h. Where an unforeseeable situation of urgency exists and competitive methods of purchasing would result in the Municipality's inability to obtain the Deliverable in time. For clarity, this exception cannot be used where the urgency was foreseeable;
- Or,
- i. Where Deliverables relating to matters of a confidential or privileged nature are required and disclosure of these matters could reasonably be expected to compromise confidentiality, cause economic disruption, or otherwise be contrary to the public interest.
122. Single Source purchases that meet one of the above circumstances must have prior

approval authorized by:

- i. The Chief Administrative Officer up to \$250,000;
- ii. Council above \$250,000.

123. Single Source purchases must comply with Trade Agreements and provincial legislation.
124. Single Source purchases require a written report addressed to the approving authority, being Chief Administrative Officer or Council, and must include comments in writing from the Purchasing Officer indicating agreement or disagreement with the recommendation. The report will be in a format pre-approved by the Purchasing Officer.

### **Sole Source**

125. A direct Award of Contract may be used to purchase Deliverables from Municipal funds if there is only one Supplier that provides the product. Sole Source purchases that meet this criteria must have prior approval authorized by:
  - a. The Chief Administrative Officer up to \$250,000;
  - b. Council above \$250,000.
126. Sole Source purchases require a written report addressed to the approving authority, being Chief Administrative Officer or Council, and must include comments in writing from the Purchasing Officer indicating agreement or disagreement with the recommendation. The report will be in a format pre-approved by the Purchasing Officer. Sole Source purchases of Deliverables must comply with the Trade Agreements and provincial legislation and require consultation with the Purchasing Officer.

## **Part XI - Security, Insurance and Indemnity**

### **Bid Security**

127. The Municipality reserves the right to require Bid Security in the form of any one or more of the following, all satisfactory in form to the Purchasing Officer:
  - a. financial bonds issued by a bonding company approved to transact business in Ontario;
  - b. certified cheque, bank draft or money order drawn on any bank named in Schedule I or II to the Bank Act (Canada), any trust or loan company registered under the Loan and Trust Company Act (Ontario), the Province of Ontario Savings office, or a credit union as defined in the Credit Unions and Caisses Populaires Act (Ontario);
  - c. an irrevocable letter of credit naming the Municipality as beneficiary.

## **Performance Security and Labour and Materials Security**

128. Performance security and labour and material payment security are required for all Construction Purchases over \$100,000.
129. Performance security is required for all non-Construction Purchases over \$100,000.
130. The Purchasing Officer may require labour and material payment security for non-Construction projects over \$100,000 if the Purchasing Officer deems such security to be in the best interests of the Municipality.
131. The Purchasing Officer may require labour and material payment security any projects if the Purchasing Officer deems such security to be in the best interests of the Municipality.
132. Where performance security and labour and material payment security are required, the amount of such security shall be 100% of the amount of the total Purchase Price, including all applicable taxes.

## **Indemnity**

133. The Municipality shall be indemnified for and against any claim, loss, cost or damage resulting from a Supplier's obligations under a Contract.

## **Insurance**

134. Bid documents shall disclose all necessary insurance as established by the Chief Legal Officer.
135. All insurance must be in a form satisfactory to the Purchasing Officer and shall be delivered prior to the commencement of work, to remain in force for the duration of the Contract inclusive of any maintenance period and shall:
  - a. name the Municipality and any Municipality consultants as an additional insured;
  - b. be primary and non-contributing;
  - c. contain a "cross liability/separation of insureds" clause; and,
  - d. not be altered, cancelled or permitted to lapse without thirty (30) days' prior written notice to the Municipality by the insurer
136. The Supplier shall also maintain adequate insurance of its own interests in completing the Contract.
137. The Chief Legal Officer has the authority to modify or waive insurance requirements if, in his or her sole discretion, to do so would not result in harm or undue risk to the Municipality.

## **Occupational Health and Safety**

138. Prior to the commencement of the work, the Supplier shall deliver a Certificate of Clearance from the Workplace Safety and Insurance Board to evidence an account in good standing, or, if the Supplier is exempt from membership, satisfactory evidence of such exemption.
139. All Suppliers shall strictly comply with all Occupational Health and Safety Act requirements and shall indemnify and hold harmless the Municipality in respect of same, including any legal costs, fines or other penalties incurred by the Municipality resulting from the Supplier's performance of the Contract terms.

## **Part XII - Contracts**

### **Types of Contracts**

140. An Award must be evidenced by a Purchase Order or where required under section 140 or 141, a Formal Agreement.
141. All Purchases made through a Request for Proposal or Request for Tender, Purchases of Construction, and Consulting Services must be evidenced by a Formal Agreement.
142. The Purchasing Officer, in consultation with the Chief Legal Officer, shall determine whether a Formal Agreement is required with a Supplier for Purchases not covered by section 140, having regard to the nature of the Deliverable, the complexity of the Purchase, and the risks, terms and conditions applicable to the Purchase. All staff must obtain a determination from the Purchasing Officer as to whether a Formal Agreement is necessary for each Purchase.
143. The Purchasing Officer, in consultation with the Chief Legal Officer, may exempt a specific Purchase, or class of Purchases, from the general requirement for a Formal Agreement, but in any such exemption a Purchase Order shall still be required.
144. The Chief Legal Officer shall prepare or approve any Formal Agreement required by section 140 or section 141.

### **Administrative Authority to Sign Contracts**

145. If a Formal Agreement is required under section 140 or section 141 for a Purchase that would fall within the administrative purchasing authority of a Manager, Senior Management Team, Executive Management Team Member or Chief Administrative Officer under this By-law and would therefore not otherwise require Council approval, the Mayor and Municipal Clerk are authorized to sign the Formal Agreement on behalf of the Municipality, provided the Formal Agreement is satisfactory in form to the Chief Legal Officer.
146. Unless otherwise duly authorized by Council Resolution or By-law, no other Employees are permitted to sign Contracts on behalf of the Municipality for the Purchase of any Deliverable.

## **Contract Renewals and Extensions**

147. Where a Contract contains an option for renewal, the Executive Management Team may request the Purchasing Department to exercise such option provided that:
- a. in the opinion of the Executive Management Team Member and the Purchasing Officer, the Supplier's performance under the prior term of the Contract has been satisfactory and has met the requirements of the Contract;
  - b. the Executive Management Team Member and the Purchasing Officer agree that the exercise of the option is in the best interests of the Municipality;
  - c. funds are available in the appropriate accounts within the Council approved budget including authorized revisions to meet the proposed expenditure;
  - d. the dollar amount does not exceed \$250,000;
  - e. the Contract is not otherwise required to be brought before Council, and
  - f. the extension option was clearly presented in the original report to Council.

## **Contract Amendments and Revisions**

148. No amendment or revision to a Contract shall be made unless, in the opinion of the Chief Legal Officer, that amendment or revision is in the best interests of the Municipality.
149. No amendment changing the original Purchase Price of a Contract shall be agreed to without a corresponding change in the requirement or scope of work.
150. The Chief Administrative Officer has the authority to approve Contract amendments where:
- a. the amended Purchase Price is less than \$250,000 and it does not exceed the Council approved budget; or,
  - b. the Contract was originally approved by Council, and the amendment is less than the lesser of 10% of the original Purchase Price or \$250,000,
151. Council must approve amendments that result in:
- a. a significant change in the scope of work;
  - b. an overrun of the approved budget.

## **Part XIII – Supplier and Material Management**

### **Supplier Suspension**

152. The Municipality may, but shall not be obligated to, at the discretion of the Chief

Administrative Officer, suspend a Supplier from participating in the Municipality's Purchasing activities by reason of:

- a. litigation by the Supplier or any officer or director of the Supplier, directly or indirectly through another corporation, in legal action against the Municipality, Municipality Consultants engaged by the Municipality in respect of a specific Solicitation, or Employees in relation to any other Contract or service or any matter arising from the Municipality's exercise of its powers, duties or functions if the litigation is likely to affect the Supplier's ability to work with Employees or Municipality Consultants or to cost additional staff and legal costs in the administration of a Contract with the Supplier;
  - b. poor past performance by the Supplier, failure to meet specifications or health and safety violations, as documented by the Executive Management Team Member and provided to the Purchasing Officer;
  - c. a failure by the Supplier to satisfy a debt due to the Municipality;
  - d. The refusal to follow reasonable directions of the Municipality or to cure a default under an contract with the Municipality as and when required by the Municipality or the Municipality's representatives; or
  - e. Only in the case of a Supplier's Response through a non-electronic bidding process in respect of an RFT or RFP, a withdrawal by a Supplier of a Response after the public opening of a Request for Tender, or after Award of a Request for Proposal.
153. The Chief Administrative Officer, in consultation with the Chief Legal Officer and the Purchasing Officer, may prohibit a Supplier from participating in Municipality Purchasing activities due to poor performance.
154. A Supplier shall be given an opportunity to respond to an allegation of poor performance.
155. A suspension shall be lifted at the discretion of the Chief Administrative Officer if the suspended Supplier demonstrates to the Municipality that the reasons leading to the suspension have been satisfactorily addressed and that the Supplier no longer poses a performance risk to the Municipality.

### **Material**

156. Executive Management Team Members shall be responsible for inventory management and shall ensure a physical inventory of stock items be taken on a periodic basis and shall allow for adequate inventory obsolescence.
157. The Purchasing Officer may alter the source of supply of a Deliverable if it is in the best interests of the Municipality to do so.
158. Upon receipt of Deliverables, Departments shall:
- a. promptly inspect the Deliverable for compliance with the terms of the Contract;

- b. advise the Purchasing Department promptly of any deviation from the terms of the Contract; and,
- c. assist the Purchasing Department as required to rectify deficiencies or deviations.

## **Part XIV - General Administration of this By-law**

### **Records and Information**

- 159. Purchasing records will be retained in accordance with the Municipality's Record Retention By-law Number 287-1999, or any By-law in place to replace this By-law.
- 160. The Municipality is subject to the Municipal Freedom of Information and Protection of Privacy Act. Subject to the provisions of that Act, the Municipality will use reasonable efforts to safeguard the confidentiality of any information identified by a Supplier as confidential, but shall not be liable in any way whatsoever if such information is disclosed.

### **Review of By-law**

- 161. This By-law is the responsibility of the Purchasing Officer and shall be reviewed and
- 162. Internal and external stakeholders shall be consulted in making amendments to this By-law.

### **Procedures**

- 163. The Purchasing Officer has the authority to establish procedures for implementing this By-law and to amend those procedures as required in the best interests of the Municipality with the concurrence of the Chief Administrative Officer and Chief Legal Officer.

### **Schedules**

- 164. Schedules A and B form part of this By-law.

### **Review of Purchasing Files**

- 165. The Purchasing Officer has the authority to randomly review Departmental purchasing files to monitor the effectiveness of the By-law and Procedures, and to ensure compliance with this By-law.

### **Board Use of By-law**

- 166. Where the authority to enter into a Contract for the Purchase of Deliverables is a decision entirely within the jurisdiction of a Board, the Board may use the services of the Purchasing Department. All terms and conditions of this By-law and the Procedures will apply, except any reference to "Council" shall be read as a reference to the "Board" and any references to the "Chief Administrative Officer" shall be read as reference to a "Designated Official".



**Repeal**

167. By-law 177-2015 and all previously adopted purchasing policies or By-laws BE REPEALED upon the effective date of this By-law.

**Effective Date**

168. This By-law shall come into force and take effect on the day after the final passing thereof.

**Transition Rules**

169. Notwithstanding its repeal, any Purchases (or policy vs by-law) begun but not yet completed by the Effective Date of this By-law shall be completed in accordance with the terms of By-law 177-2015.

**Title**

170. This By-law shall be referred to as the "Purchasing By-law" or "Purchasing Policy".

## **Schedule A to By-law 3-2016 – EXEMPTIONS**

**Note:** The following are exempt from this By-law in that they don't require a Solicitation, but may require a Purchase Order and/or a Contract.

### **Exempt Purchases**

In acquiring the following Goods and Services, operating departments shall not be required to follow the procedures and methods described in this By-law:

#### **1. Training and Education – exempt if employee paid and reimbursed through payroll**

- a. Conferences, conventions, workshops, courses and seminars
- b. Magazines, subscriptions, newspapers, books and periodicals
- c. Memberships
- d. Staff development and training including all related equipment, resources and supplies
- e. Staff workshops including all related equipment, resources and supplies

**Note:** Volunteer Fire Fighter Training and Education Expenses will be paid through A/P or payroll

#### **2. Refundable Employee Expenses – exempt if reimbursed through payroll**

- a. Meal Allowances
- b. Travel
- c. Entertainment
- d. Miscellaneous non-travel

**Note:** Volunteer Fire Fighter Refundable Expenses will be paid through A/P or payroll

#### **3. Employer's General Expenses**

- a. Advances (incl. Brewers Retail/LCBO)
- b. Reimbursed Employee expenses
- c. Payroll and remittances
- d. Honoraria remittances
- e. Workplace Safety and Insurance Board (WSIB) remittances
- f. Medical exams
- g. Government license fees
- h. Grants and levies payable to outside agencies
- i. Grants pursuant to community improvement plans and other similar initiatives
- j. Damage and insurance deductible claims
- k. Petty cash replenishment – Maximum \$100 per transaction
- l. Tax remittances
- m. Realty taxes
- n. Payment for employment (i.e. Pump Commissioners)
- o. Bank charges and services payable to the Council-approved banker
- p. Commodity Price Hedging Agreements if done in accordance with the Municipal By-law/Policy affecting such agreements

- q. Debenture Payments
- r. Claim Settlements and Adjuster Services
- s. Temporary staffing agencies and services
- t. ALL for Kids Program Disbursements
- u. Burial expenses
- v. Cheque Requisitions to Community Partners
- w. Any refund (i.e. Refunds/overpayments of taxes/fees, Building/Development permit refunds & deposit returns, Recreation/Cultural program/facility refunds
- x. Governmental Charges to and from other governmental bodies including Federal, Provincial and Municipal
- y. Housing Providers – Rent Supplements – paid by Social Housing
- z. Advertising required by law or not exceeding \$15,000
- aa. Police Vehicle Leasing
- bb. Specialized Police Equipment
- cc. Services provided by licenced:
  - Medical doctors
  - Dentists
  - Nurses
  - Pharmacists
  - Dieticians
  - Medical Laboratories
- dd. Personal Services for the residents of the Municipality's long term care facility not performed by a member of a regulated health profession, including:
  - Hairdressing
  - Clergy
  - Aesthetics

#### **4. Professional and Special Services**

- a. Special tax, accounting and audit services and advice from the Council-approved auditor
- b. Legal fees and services as authorized by Legal Department
- c. Witness fees
- d. Council honoraria
- e. Honourarium where a Social Insurance Number shall be provided
- f. Arbitration Fees
- g. Medical fees
- h. Committee fees

#### **5. Utilities**

- a. Water and Sewage
- b. Natural Gas/Propane
- c. Hot Water Tank Rental
- d. Electricity
- e. Postage & Courier Services
- f. Other regulated authorities operating within and across municipal right of ways (e.g. CN Rail, Bell Canada)
- g. Utility or Rail Works Services where the public utility or the railway, as the case may

be, carries out works at the behalf of the Municipality

**6. Real Property Interests**

- a. All real estate transactions

## **Schedule B to By-law 3-2016 – IRREGULARITIES**

### **Nature of Irregularity**

1. Any deviation from the requirements of the Bid Documents is an irregularity. An irregularity may be:
  - a. Major, affecting price, quality, quantity or delivery and is material to the Contract or required by the Bid Documents; or,
  - b. Minor, affecting form rather than substance.
2. Where discretion exists to determine whether an irregularity is major or minor, the Purchasing Officer, the responsible Executive Management Team Member and the Chief Legal Officer shall jointly evaluate the irregularity to determine its nature in the context of the applicable Solicitation.
3. Except as noted herein, irregularities cannot be cured.

	<b>Irregularity</b>	<b>Action</b>
A.	Late Response	Response rejected Response returned unopened to Supplier
B.	Envelope not sealed	Response rejected Response returned unopened to Supplier
C.	Addendum Missing	Response rejected
D.	Response completed or signed in erasable medium or white out used	Response rejected
E.	Response does not bear an original signature	Response rejected
F.	All sections of Bid Documents not completed	Response rejected if the effect is a Major irregularity
G.	Response submitted by unregistered Supplier	Supplier must pay all necessary fees to become Registered Supplier prior to the opening; if not, Response rejected

	<b>Irregularity</b>	<b>Action</b>
H.	Minor clerical errors on Response	3 business days to initial
I.	Minor mathematical errors on Response	Unit pricing prevails; 3 business days to initial
J.	Unbalanced bids	Unbalanced item(s) may be cause for rejection of the Tender
K.	Missing Deposit/Bid Bond	Response rejected
L.	Insufficient Deposit/Bid Bond	Response rejected, unless insufficiency is \$1.00 or less, in which case this may be waived by the Purchasing Officer, if the correct deposit is supplied within 2 business days
M.	Missing or insufficient agreement to bond	Response rejected
N.	Qualified Response if no qualifications permitted	Response rejected
O.	Any other Major irregularity	Response rejected
P.	Any other Minor irregularity	May be waived at discretion of Purchasing Officer and responsible Executive Management Team Member