



CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2014-27

A BY-LAW TO DEFINE THE PROCUREMENT POLICIES FOR THE CORPORATION OF THE TOWN OF NEWMARKET

WHEREAS Section 270 of the *Municipal Act, 2001, as amended* provides that a municipality shall adopt and maintain policies with respect to its procurement of goods and services.

AND WHEREAS Council enacted By-law Number 2011-74 to define the Procurement policies and procedures for the Corporation of the Town of Newmarket, herein after, called "the Owner" and it is now deemed necessary to enact a new by-law and to repeal By-law Number 2011-74;

THEREFORE BE IT ENACTED by the Municipal Council of the Corporation of the Town of Newmarket as follows:

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1. PURPOSES, GOALS, AND OBJECTIVES OF THIS BY-LAW

The purposes, goals, and objectives of this by-law, and of each of the methods of procurement authorized, herein are:

- a) To encourage competition among Bidders;
- b) To make goods, service(s) and construction Contractors to be accountable to the Owner and the public;
- c) To provide the highest level of government service at the least possible cost;
- d) To ensure fairness and objectivity amongst Bidders during the procurement process;
- e) To ensure openness, accountability and transparency while protecting the financial best interests of the Owner;
- f) To obtain the Best Value for the Owner when procuring goods and service(s) and construction;
- g) To avoid conflicts between the interests of the Owner and those of the Owner's employees and elected officials;
- h) To ensure compliance with applicable International, national and Inter-Provincial Trade treaties or agreements, as amended;
- i) To promote Responsible Purchasing which encourages procurement practices which encompass social, ethical and environmental considerations when acquiring goods, services and construction.
- j) To contribute to the reduction of waste, toxic or harmful emissions and substances and to increase the development and awareness of environmentally responsible procurement, the Governments Incorporating Procurement Policies to Eliminate Refuse (GIPPER) Guide, as amended may be referenced in acquiring goods and services and/or other best green procurement practices available when developing the Bid Call Document for goods, services and construction. It is recognized that a product and cost analysis may be required;
- k) To promote, where applicable, the requirements of the *Ontarians with Disabilities Act* (ODA) and the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA), as amended in procurement activities of the Owner as well as any requirements contained in other legislation (either provincial or federal) which may impact the procurement activities of the Owner.

2. PROCUREMENT PRINCIPLES AND PRACTICES

Public Procurement affects and is affected by the public sector organization as a whole, and the community it serves, whether at the local, provincial, or national level. Therefore, the Corporation of the Town of Newmarket (the Owner) has adopted the Public Procurement Principles and Practices, as amended, as follows;

Accountability:

Taking ownership and being responsible to stakeholders for our actions. This value is essential to preserve the public trust and protect the public interest.

Ethics:

Acting in a manner true to these values. This value is essential to preserve the public's trust.

Impartiality:

Unbiased decision-making and action. This value is essential to ensure fairness for the public good.

Professionalism:

Upholding high standards of job performance and ethical behavior. This value is essential to balance diverse public interests.

Service:

Obligation to assist stakeholders. This value is essential to support the public good.

Transparency:

Easily accessible and understandable policies and processes. This value is essential to demonstrate responsible use of public funds.

3. DEFINITIONS OF THIS BY-LAW

“Advanced Contract Award Notice” (ACAN) means a public notice, advertised in accordance with Schedule “D” Thresholds, and the estimated project cost (to be released, at the discretion of the Owner), indicating to Suppliers that the Owner intends to award a goods, services or construction Contract to a pre-identified Supplier, thereby allowing other Suppliers to signal their interest in bidding by submitting a statement of capabilities. If no other Supplier submits a statement of capabilities that meets the requirements set out in the ACAN, on or before the closing date stated in the ACAN, the Manager of Procurement may then proceed with the award of the contract. If other Supplier(s) do submit a statement of capabilities that meet the requirements set out in the ACAN, the Manager, Procurement Services may then proceed with a solicitation in accordance with Schedule “D” Thresholds.

“Agreement on Internal Trade” (AIT) means an intergovernmental trade agreement signed by Canadian First Ministers that came into force in 1995. Its purpose is to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investment within Canada and to establish an open, efficient, and stable domestic market.

“Authority” or “Authorized” means the legal right to conduct the tasks outlined in this by-law as directed by Council and delegated through the office of the C.A.O. to the Commissioners and subsequently to the Manager, Procurement Services. Authorized purchases are those that have prior approval of Council either through resolution or through the departmental budget.

“Award or Acceptance” The notification to a bidder of acceptance of a bid, which brings a contract into existence

“Best Interest” means the discretion the Owner has to take the most advantageous action on behalf of the Owner.

“Best Value” means the best combination of price, technical merit, and quality, as determined by the Owner. The best value might not be the lowest cost.

“Bid” means a Tender, Proposal or Quotation submitted in response to a solicitation from the Owner.

Solicitations for Bids may be in the form of an Informal Quick Bid (Request for Quotation (QB) or Quick Bid Request for Proposal (QBRFP)), Request for Tender (RFT), Request for Proposal (RFP) or Sale (S).

“Bid Bond” means a bond given to guarantee entry into a Contract. This bond is given to indemnify the Owner against increased costs if the Bidder does not carry out the specified undertaking to enter into a Contract. A bond given by a Bidder to guarantee entry into a Contract if the Contract is awarded to that Bidder

“Bid Deposit” means a deposit by the Bidder to the Owner of a sum of money, a cheque or other acceptable cash alternative such as an irrevocable letter of credit or a guarantee that the Bidder will enter into a Contract with the Owner if the Bid is accepted. The Bid Deposit may also be in the form of a Bid Bond issued by a Surety and deposited with a procurement activity

guaranteeing the Bidder will not withdraw for a specified period of time, will furnish Bonds or Letter of Credit as required, and will accept a Contract if awarded, or forfeit the Bid Deposit.

“Bid Call Document” means the Owner’s solicitation document which may be in the form of an Informal Quick Bid (Request for Quotation (QB) or Quick Bid Request for Proposal (QBRFP)), Request for Tender (RFT), Request for Proposal (RFP) or Sale (S).

“Bid Dispute Resolution” means a provision in the Procurement Policies and Procedures manual, which outlines procedures to ensure that a protest to a bid is handled in an ethical, fair, reasonable and timely fashion.

“Bid Irregularity” means any defect or non-compliance contained within a Bid or the Bidding process. Schedule “B” Bid Irregularities of this by-law establishes the action that shall be taken.

“Bidder” means any Person who submits a response to a Solicitation. For clarity, for this by-law only; the word “Bidder” shall also include “Proponent” and “Offeror”.

“Bid Review Panel” means two or more persons appointed pursuant to this by-law to review Bid Irregularities or other issues pertaining to a Bid including, a Bid Protest, in accordance with the Owner’s Procurement Policies and Procedures, or to review matters involving Contractor Performance, in accordance with the Contractor Performance Procedure, Schedule “F” of this By-Law.

“Black-Out Period” means the period of time from when the Bid Call Document is issued and when the agreement is signed by the Owner and the selected Proponent.

“Bond” means a form of financial protection against non-performance, a binding agreement executed by a Contractor and a 3rd party (Surety) to guarantee the performance of certain obligations or duties to the Owner. See Labour and Material and Performance Bond.

“C.A.O.” means the Chief Administrative Officer of the Corporation of the Town of Newmarket or designate.

“Calendar Days” means any day of the week, Monday through Friday, including Saturday and Sunday and any recognized statutory holidays.

“Comprehensive Economic and Trade Agreement” (CETA) is a proposed free trade agreement between Canada and the European Union

“Commissioner” means a person appointed by C.A.O. with administrative responsibilities for a group of departments or designate.

“Conflict of Interest” means a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.

“Construction” means the process of utilizing labour to build, alter, repair, improve or demolish any structure, building or public improvement and generally does not apply to routine maintenance, repair or operations of existing real property.

“Consultant Services” means services of an advisory nature required to support policy development, decision making, administration, or management of a business or public entity, generally provided by individuals or organizations who possess specific knowledge, technical skills or unique abilities not usually available in-house or from the entity.

“Contract” means a Purchase Order and/or the agreement in writing between the Owner and the Contractor in respect of the Goods and/or Services to be provided under a Bid Call Document.

“Contractor” means the selected Bidder that has a Contract with the Owner to perform the Work and/or Services described in a Bid Call Document. For clarity, for this by-law only, “Contractor” includes “Consultant” and “Supplier”.

“Contractor Performance Procedure” means the policy provided in Schedule “F” of this by-law, which provides a framework for the Owner to evaluate and improve the performance of all Contractors awarded Town Contracts by (i) pro-actively managing the performance of Contractors during the term of awarded Contracts, and (ii) creating a record of past performance for use as an evaluation tool in future Solicitations.

“Co-operative Purchasing” means; a) the action taken when two or more entities combine their requirements to obtain advantages of volume purchases including administrative savings and other benefits. b) a variety of arrangements whereby two or more public procurement entities purchase from the same Contractor(s) using a single Solicitation.

Cooperative purchasing efforts may result in a contract that other entities may Piggyback.

“Council” means the elected Council for the Corporation of the Town of Newmarket, or Local Boards.

“Debriefing” means a practice used primarily during the Request for Proposal process, whereby the Owner’s Procurement representative for a Solicitation will meet in person, but typically telephonically with those parties requesting a debriefing, whose proposals were not deemed appropriate for award. It is viewed as a learning process for Proponents who may gain a better understanding regarding perceived deficiencies contained within their submitted proposal.

“Department” means a department or commission of the Town.

“Designate” means a person authorized by the C.A.O., Commissioner, Director, Assistant Director or Manager to act on his/her behalf, for the purpose of this by-law.

“Director” means the title provided to a senior Town staff official responsible for the operational department.

“Electronic Bidding (Facsimile, Email or Internet)” means a method of issuing Solicitations and/or receiving written Bids where the process of issuing and/or receiving Bids by facsimile, email or internet is considered appropriate.

“Emergency” means an event or circumstance where the immediate purchase for goods or service(s) or the entering into of a construction contract is essential or necessary to prevent or alleviate serious delay, a threat to public health, safety or welfare, the disruption of essential services or damage to public property or any other expenditure that is necessary to respond to any emergency of the Owner.

“Emergency (Municipally declared)” means an event or circumstance where the Mayor or the Chief Administrative Officer of the Town declare that an emergency exists in the Town or in any part thereof and may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the Owner and to protect property and the health, safety and welfare of the inhabitants of the emergency area or as required under the *Emergency Management and Civil Protection Act* (as amended).

“Emergency Management Purchasing Card” - The Manager, Procurement Services, the Director, Finance or their designates may utilize this card to acquire goods, service(s) or construction, in response to a Municipally declared emergency.

“Evaluation Committee” means a component of the Request for Proposal process, whereby a committee is established to conduct proposal evaluations, interviews and negotiations during Proposal evaluation for goods, service(s) or construction. It is usually comprised of three or more persons from the functional area identified in the scope of work and chaired by a member of the Procurement Services Department.

“Ghost Card” means; a) a single Purchasing Card account number that is assigned to a Contractor for high volume purchases; b) a payment method for utility services and leases or for acquiring goods and/or services off an established contract; c) a single Purchasing Card account number for use during a declared Municipally Emergency.

No actual Purchase Card is produced. Responsibility for monitoring and reconciliation of the account usually rests with the user department. A ghost card account resembles a charge account.

“**Goods**” means anything purchased other than Services or Real Property.

“**Letter of Credit**” means a document issued by a bank authorizing the bearer to draw a specified amount from that bank or its agent; a letter or similar statement extending credit up to a given amount at a Canadian Chartered bank for a person who has paid or guaranteed that amount to the issuing bank, may be considered in lieu of a performance or labour and material bond.

“**Labour and Material Bond**” means a bond given to guarantee payment, as required to all persons supplying labour or material for the completion of work under the Contract. The Labour and Material Bond shall be from an Ontario based Surety

“**Litigation**” means any formal dispute between the Owner and any other party, including third party and cross claims, where a legal proceeding has been commenced for an injunction, a mandatory order, a declaration, or the recovery of money, or an arbitration proceeding.

“**Local Board**” means 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 one or more municipalities, excluding a school board and a conservation authority.

“**Low Value Purchase**” (LVP) means a purchase for goods, service(s) or construction, which is not included as part of an existing contract and is not available out of the Owner’s inventory, and which authority has been delegated to Town staff up to the amount stated in Schedule “D” Thresholds of this by-law (excluding taxes), except for the position(s) stated in Schedule “E” Position Exceptions.

“**Manager**” means a Town staff member responsible for oversight of a business unit or functional cluster.

“**Manager, Procurement Services**” means the Manager of Procurement Services or designate who is responsible for the Town’s centralized procurement function and is hereby authorized to act as an agent in all such matters pertaining thereto.

“**May**” means the permissive in a contract clause or specification. *Also see “Shall”.*

“**Multi-Step Bid Call**” means a method of source selection involving two competitive steps. The first step may require the submission of technical and price Bids with only the technical Bid being evaluated and scored. The second step involves the opening of price Bid(s) of those Bidders which have achieved the highest or have met or exceeded the stated minimum technical score(s).

“**Municipal Solicitor**” means the Director, Legal Services of the Corporation of the Town of Newmarket or designate.

“**Offeror**” means a Person that makes an offer in response to a sale of Personal or Real Property. Also see the definition of “Bidder”.

“**Owner**” means the Corporation of the Town of Newmarket and its local boards.

“**P-Card**” means Purchase Card.

“**Performance Bond**” means a Bond given to guarantee the performance or completion of a contract in accordance with its terms and conditions.

The performance bond shall be from an Ontario based Surety

“Performance Review Forms” has the meaning given to such term in the Owner’s Contractor Performance Procedure (Schedule “F” of this by-law).

“Person” means and includes any natural person, corporation, company, limited liability company, trust, joint venture, association, incorporated organization, partnership, governmental authority or other entity, and shall be construed to include such Person’s successors and permitted assigns.

“Personal Property” means tangible or intangible property, other than real property. Movable property subject to ownership, with exchange value.

“Piggyback” means a form of intergovernmental cooperative purchasing in which the Owner will be extended the pricing and terms of a contract established by another entity. Generally a larger entity will competitively award a contract that will include language allowing for other entities to utilize the contract which may be to their advantage in terms of pricing, thereby gaining economies of scale that they normally would not receive if they competed on their own. The Owner may participate with other government agencies or public authorities in co-operative purchasing where it is in the best interests of the Owner to do so. The Owner will have a Piggyback clause in most Solicitations, which permits the Owner to extend the pricing, terms and conditions of a Contract to other government entities, upon approval of the Contractor.

“Privilege Clause” means a standard clause used in the Owner’s Bid Call Document and Bid advertisement. The privilege clause may include such language as “reserves the right to accept or reject all or part of any Bid and also reserves the right to accept other than the lowest Bid and to cancel this Bid at any time”. For a proposal, the privilege clause may include such languages as “The Owner reserves the right to: accept or reject any Proposal, to award in whole or in part, to award to the proposal that is in the Best Interest of the Owner and the right to cancel this Proposal call at any time without obligation”. For a sale, the privilege clause may include such language as “reserves the right to award to other than the highest offer or and to reject any or all offers.

“Procurement” means; a) purchasing, renting, leasing or otherwise acquiring any goods, service(s) or construction; includes all functions that pertain to the acquisition, including the description of requirements, preparation, solicitation, selection and award of contract and all phases of contract administration. b) The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage and disposal operations.

“Professional Services” means any professional or general service work performed which does not result in the delivery for goods or materials.

“Project Evaluator(s)” means one or more person(s) from the Town’s functional area identified in the Solicitation scope of work user department(s) that will be evaluating the Contractor’s performance by completing Performance Review Forms in accordance with Schedule “F” the Contractor Performance Procedure.

“Proponent” means one who submits a response to a Request for Proposal (RFP) or Quick Bid Request for Proposal (QBRFP). For clarity, for this by-law only, “Bidder” shall also include “Proponent”. Also see the definition of “Offeror”

“Proposal” means a document submitted by a Proponent in response to a Request for Proposal (RFP) or Quick Bid Request for Proposal (QBRFP) to be used as the basis for negotiation or for entering into a contract. For clarity, for this by-law only, Bid shall also include “Proposal”.

“Proposal Irregularity” means any defect or non-compliance contained within a Proposal or the Bidding process. Schedule “C” Proposal Irregularities of this by-law establishes the action that shall be taken.

“Purchase” means the act and function of responsibility for the procurement for goods, service(s) or construction.

“Purchase Card” (see also Ghost Card) means a payment method whereby employees of the Town authorized by C.A.O., Commissioner and/or Director are empowered to deal directly with Contractors for LVP purchases, subject to the exceptions stated in both Schedule “E” Position Exceptions, using a credit card issued by a bank or major credit card provider. Generally, a pre-established credit limit is established for each card issued. The cards enable e-Procurement and facilitate on-line ordering, frequently from pre-approved Contractors under contracts. The Purchase Card may be used for additional usage, in addition to Low Values Purchases, as described in the Purchase Card Program Policies and Procedures.

“Purchase Order” means; a) the Owner’s written document to a Contractor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, delivery schedule, terms of payment and transportation. b) The Purchase Order (hard copy or verbal) issued by the Procurement Services Department or Low Value Purchase Orders issued by individuals authorized by the Commissioner and/or Director, to a Contractor as a written or verbal acceptance of an offer received in accordance with this by-law. A Purchase Card or Ghost Card may also be used in lieu of a Purchase Order to acquire goods, services or construction and/or a payment method.

“Procurement Services” means the department responsible for procurement for goods, service(s), and construction and the purchase and disposal of real and personal property for the Owner.

“Quick Bid (QB)” means a Solicitation document used to solicit bids for low dollar value requirements estimated to be up to the amount stated in Schedule “D” Thresholds of this by-law (excluding taxes), from one or more suppliers. It is a request to Bidders, which is evaluated with the objective of accepting the lowest-priced responsive quotation from a Responsible Bidder.

“Quick Bid Request for Proposal (QBRFP)” means a Solicitation document used to solicit proposals for low dollar value requirements estimated to be up to the amount stated in Schedule “D” Thresholds of this by-law (excluding taxes) from Proponents. Price is usually not the primary evaluation factor. A QBRFP may provide for negotiation of all terms, including price prior to contract award. A QBRFP may include the provision for the negotiation of best and final offers and may be a single step or multi-step process.

“Real Property” means Land and its permanently affixed buildings or structures. Any property which is not personal property.

“Request for Information” (RFI) means a non-binding method whereby the Owner states its need for input from interested parties for a possible upcoming Solicitation. A procurement practice used to obtain comments, feedback or reactions from potential Bidders prior to the issuing of a Solicitation. Generally price or cost is not required. Feedback may include best practices, industry standards, technology issues, etc.

“Request for Pre-Qualification” (RFPQ) means a document used to screen potential Bidders in which factors such as financial capability, reputation, and management are considered in order to develop a list of qualified Bidders who may then be allowed to submit Bids.

“Request for Proposal” (RFP) means the document used to solicit proposals for goods, service(s) or construction. Price is usually not the primary evaluation factor. An RFP may provide for negotiation of all terms, including price prior to contract award. An RFP may include the provision for the negotiation of best and final offers and may be a single step or multi-step process, as per the thresholds stated in Schedule “D” Thresholds of this by-law (excluding taxes).

“Request for Tender” (RFT) means a Solicitation document used to solicit for bids for the provision of goods, service(s) or construction to the Owner, with the objective of accepting the lowest-priced responsive bid from a Responsible Bidder.as per the thresholds stated in Schedule “D” Thresholds of this by-law (excluding taxes).

“Respondent” means the legal entity submitting a response to a Request for Pre-Qualification or Request for Information.

“Responsible Bidder” means a Bidder whose reputation, past performance, and business and financial capabilities are such that the Bidder would be judged by the Owner to be capable of satisfying the Owner’s needs for a specific Contract. A Bidder, as the context requires, that is fully capable to meet all the requirements of the Solicitation or other process and subsequent contract. Such Bidder shall possess the full capability, including financial and technical capability, satisfactory past performance, including a satisfactory Owner’s Contractor Performance Review Form (where applicable) to perform as contractually required and shall be able to fully document the ability to provide good faith performance.

“Responsive Bidder” means Bidder that has complied in all material respects with the requirements of the Bid Call Document.

“Responsible Purchasing” means utilizing procurement practices that encompass social, ethical and environmental considerations when acquiring goods, services and construction.

“Reverse Auction” means an online auction in which Bidders bid against each other to win the Owner’s business. Typically used to purchase commodities from multiple pre-qualified providers. Also referred to as eAuction.

“Sale” means the act of selling Owner property or Real Property that is no longer needed by the Owner and is designated for disposal outside of the government organization.

“Service” means a Solicitation for a contractor’s time and effort, and can include Professional Services. The furnishing of labour, time or effort by a contractor, which may involve to a lesser degree, the delivery or supply of products.

“Shall” means the mandatory requirements or specifications. Also see “May”.

“Single Source” means a procurement decision whereby purchases for goods, service(s) or construction are directed to one source because of standardization, warranty, or other factors, even though other competitive sources may be available.

“Sole Source” means a situation created due to the inability to obtain competition. May result because only one contractor possesses the unique ability or capability to meet the particular requirements of the solicitation.

“Solicitation” means the Owner’s Bid Call Document. Also see definition of “Bid”.

“Spending Authority” means the authority assigned to the Town staff by the C.A.O., or Commissioner or Director to incur expenditures, including advance and progress payments on behalf of the Owner.

“Strategic Leadership Team” means a senior leadership team consisting of the C.A.O. and Commissioners.

“Supplier” means a supplier of goods and services. Distinguished from a “Contractor”.

“Surety” means a pledge or guarantee by a (Surety) Insurance company or Canadian Chartered Bank, authorized by law to do business in the Province of Ontario and acceptable to the Owner on behalf of the Bidder which protects against default or failure of the Bidder/Contractor to satisfy the contractual obligations.

“Suspension Period” means a period of two years, during which a Supplier’s Bid will not be considered in accordance with the Owner’s Contractor Performance Procedure (Schedule “F” of this by-law).

“Term Contract” means a type of contract in which a source of supply is established for a specified period of time for specified services or supplies, usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.

“Procurement Representative” means the Procurement Representative of the Corporation of the Town of Newmarket (the Owner), specified in the Bid Call Document.

“Procurement Value” means the estimated total financial cost of the procurement including all forms of remuneration such as premiums, fees and commissions over the life of the commitment. (Excluding taxes).

“Tie Bid” means two or more Bids from Responsive and Responsible Bidders that are equal in all respects after evaluation, including price for goods, service(s), sale of real or personal property or construction.

“Town” means the Corporation of the Town of Newmarket and its local boards. Herein called “the Owner”.

“Town Clerk” means the Director, Legislative Services or designate.

“Undertaking to provide a Bond or Letter of Credit” means a pledge or guarantee by an insurance company, bank, individual or Owner on behalf of the Bidder which (the Surety) protects against default or failure of the principal to satisfy the obligations of a contract.

“Unsolicited Offer / Proposal” means an offer/proposal submitted by a contractor or consultant in the absence of a solicitation from the Owner, which may be submitted in response to a perceived need but not in response to a Solicitation.

“Probation Letter” has the meaning given to such term as stated in the Owner’s Contractor Performance Procedure (Schedule “F” of this by-law).

“Working Day” means Monday through Friday, excluding any recognized statutory holiday.

To establish the definition of any other procurement terms not herein included, reference may be made to the latest edition of the Institute for Public Procurement (NIGP) Public Procurement Dictionary of Terms and/or, the Government of Canada Supply Manual Glossary.

4. INTERPRETATION

Unless otherwise expressly stated, any reference within this By-law to a statute, an agreement, an instrument or any other document, shall be construed in each case as referring to such statute, agreement, instrument or other document as from time to time amended, supplemented, replaced or otherwise modified.

5. APPLICATION

This by-law shall apply to all departments of the Town and public agencies and local boards prescribed in this by-law;

No purchase for goods, service(s) or construction or disposal of Personal Property and Real Property shall be authorized unless it is in compliance with this procurement by-law.

This by-law does not apply to those items listed in Schedule “A” Exceptions to this by-law.

6. RESPONSIBILITIES

6.1 Commissioners, Directors, Managers shall be responsible for:

- a) The responsibility and authority for all department procurement activity within the prescribed limits of this by-law;
- b) Delegating spending authority limits to staff in compliance with this by-law and all applicable policies;
- c) That all of Section 1 Purposes, Goals, and Objectives of this by-law are complied with;
- d) That all procurement activities and decisions shall be authorized by this By-law and shall be carried out within the financial and other limits set out in Schedule “D” Thresholds of this by-law;

- e) That no procurement activity or decision shall be contrary to this by-law;
- f) That monitoring of all contract expenditures and financial limitations have been complied with;
- g) That all accounts are paid within the times set out in the contract (provided the contractor has met all conditions of the contract) this precludes any processes undertaken by the Accounts Payable department;
- h) That all goods, service(s) or construction contracted for have been received;
- i) That all authority to award a contract is subject to the identification and availability of sufficient funds in appropriate accounts within Council approved budgets or that the required funding can reasonably be expected to be made available in the current, or future years; and
- j) That contracts are monitored and documented in compliance with the Owner's Contractor Performance Procedure (Schedule "F" of this by-law) are followed for all publicly bid contracts. The Manager, Procurement Services shall be notified if action is to be taken to correct the performance of a contractor where it falls below the standard required by the contract.

6.2 The Manager, Procurement Services shall be responsible for:

- a) Providing procurement advice and services to each department, the C.A.O., Council, Local Boards and public agencies for the purposes of fulfilling the procurement needs of the Owner;
- b) All aspects for the Solicitation process and ensuring compliance to the terms and conditions of the Bid Call Document;
- c) Ensuring the Owner's staff compliance with this by-law and reporting non-compliance, in writing, to the appropriate Commissioner, Director, the Commissioner of Corporate Services and the C.A.O.;
- d) The standardization of all goods and service(s) where appropriate and possible, in collaboration with the user department(s);
- e) The disposal of Personal Property which has been declared surplus by a Commissioner and/or Director;
- f) The disposal of Real Property which has been declared surplus by Council;
- g) Participating in co-operative purchasing with other levels of government, municipalities, boards, agencies, commissions, or private sector entities where it is in the best interests of the Owner. The Owner will abide by the calling agency's terms and conditions;
- h) Compliance with Section 1 Purposes, Goals, and Objectives of this by-law;
- i) If a Bid has been approved by Council and awarded to the selected Bidder and the selected Bidder fails to enter into a contract, the Manager, Procurement Services shall be granted the authority to proceed to the next lowest responsive and responsible Bidder or the next highest evaluated responsive and responsible Proponent for a Proposal, for the award of the contract, without going back to Council for approval, providing the requirements remain unchanged and the new contract is within budget. The approval shall be obtained from the Director, Commissioner and C.A.O. The Director shall prepare a report to Council for information purposes; and the Bidder that refused to enter into a contract with the Owner may be placed on a two (2) year suspension, subject to the procedure set out in the Owner's Contractor Performance Procedures (Schedule "F" of the by-law).

- j) In cooperation with the user department ensuring the procedures set out in the Owner's Contractor Performance Procedures (Schedule "F" of the by-law), are followed for all publicly bid contracts.

6.3 The C.A.O. has the Authority to:

- a) Instruct Commissioners and/or Directors not to award contracts, and to submit recommendations to Council for approval, and may provide additional restrictions concerning procurement where such action is considered necessary and in the Best Interest of the Owner.
- b) Award contracts during the time that regular Council meetings are suspended, during a period of recess, or for an emergency, the C.A.O. shall be authorized to award contracts as a result of a Solicitation that normally would require Council approval, provided that a report is submitted to Council, as soon as reasonably possible, setting out the details of any contract awarded pursuant to this authority.
- c) Delegating spending authority limits to staff in compliance with this by-law and all applicable policies.

Despite any other provision of this by-law, the following contracts require the approval of the C.A.O. and the Commissioner(s) responsible for the user department(s), prior to award.

- a) Where a Bid in response to a Solicitation contains an irregularity not resolved by the Bid Review Panel; and
- b) Where there has been a challenge submitted, in accordance the Owner's Bid Dispute Resolution procedures that has not been resolved by the Bid Review Panel.

7. RESTRICTIONS AND EXCEPTIONS

- a) The open and competitive procurement procedures set out in this by-law shall not apply to the purchase of those items listed in Schedule "A" Exceptions to this by-law or Low Value Purchases, or as otherwise listed in this by-law.
- b) No contract for goods, service(s) or construction may be divided into two or more parts to avoid the application of the provisions of this by-law.
- c) No personal purchases shall be made by the Owner for members of Council or any appointed member of a Local Board or for corporate employees or their families with the exception of corporate sponsored employee programs.
- d) No employee, member of Council or local board member of the Owner shall personally obtain any real or personal property that have been declared surplus unless it is obtained through a public process.
- e) No employee or member of Council shall purchase, on behalf of the Owner, any goods, service(s) or construction, except in accordance with this by-law.
- f) All procurement undertaken by the Owner shall be undertaken in accordance with the Owner's code of conduct, policies and procedures manual, as amended and in accordance with the *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50, as amended.
- g) Where an applicable national (i.e.: Agreement on Internal Trade (AIT)) or international (i.e. Comprehensive Economic and Trade Agreement (CETA) trade agreement is in conflict with this by-law, the trade agreement shall take precedence.
- h) The Owner may use the Privilege Clause contained in the Owner's Bid Call Documents for consideration of the acceptance or rejection of any Bid received by the Owner pursuant to this by-law; and
- i) The Owner may consider, amongst other items during the consideration of award of Owner contracts, previously completed Contractor Evaluations to determine if a Bidder is responsible.

8. PRESCRIBED COUNCIL APPROVAL

Despite any other provision of this by-law, save and except for the circumstances in Section 6.3 Authority, the following contracts require Council approval, prior to award:

- a) Any contract requiring approval from the Ontario Municipal Board;
- b) Any contract prescribed by statute to be made by Council;
- c) Any contract prescribed by a court order;
- d) Where the procurement by-law is being waived;
- e) Where the cost amount proposed for acceptance is higher than the Council approved budget and the necessary adjustments cannot be made;
- f) Where authority to approve has not been expressly delegated;
- g) Any contract having a Procurement Value, requiring Council approval in accordance with Schedule "D" Thresholds of this by-law;
- h) Any Single or Sole Source contract having a Procurement Value exceeding the threshold dollar limit, stated in Schedule "D" Thresholds of this by-law.

9. BID REVIEW PANEL (BRP)

- a) There shall be a Bid Review Panel hereinafter referred to as "BRP" composed of the following members of the Town's staff:
 - The Manager, Procurement Services or designate;
 - A Solicitor from Legal services;
 - (And if required) a representative from the Department requesting the procurement of the goods, service(s) or construction; and
 - Any other party deemed appropriate by the BRP.
- b) THE BRP's responsibilities include, but are not limited to reviewing and making decisions on;
 - Bid Irregularities or other issues pertaining to a Bid;
 - Bid challenges, and/or:
 - Matters involving Contractor Performance or appeals, in accordance with the Contractor Performance Procedure, Schedule "F" of this By-Law.
- c) The BRP shall use Schedule "B" Bid Irregularities to this by-law, to determine the action that shall be taken if a Bid Irregularity exists, except for Proposal Irregularities, which shall be determined in accordance with Schedule "C" Proposal Irregularities to this by-law.
- d) The BRP shall follow the procedure outlined in the Corporate Services – Procurement Services Department Procedures Manual and the Contractor Performance Procedure, Schedule "F" of this By-Law.

10. OPERATING AND CAPITAL BUDGET FINANCIAL CONTROLS

Operating and Capital Budget Financial Controls shall be in accordance with the Corporate Policy Operating and Capital Financial Policy, as amended.

11. PROCUREMENT PROCESS

Where applicable each of the procurement methods set out below shall be undertaken in compliance with the following process:

- a) The scope of the goods, service(s) or construction shall be clearly and extensively defined by the Bid Call Document;
- b) The Bid Call Document shall be, to the extent possible, standardized using common forms and processes;
- c) The Solicitation shall be advertised (except for Low Value Purchases (LVP) and Informal Quick Bid (Request for Quotation (QB) or Request for Proposal (QBRFP)) which may be advertised to ensure the best, most comprehensive and competitive response to the Solicitation, at the discretion of the Manager of Procurement in compliance with Schedule "D" Thresholds;
- d) Advertising of a Solicitation shall be in compliance with the Agreement on Internal Trade (AIT) or other Agreements having jurisdiction, as amended;
- e) All Bids received by the Owner shall be kept together in a secure place until the time for opening. Solicitations requiring the submission of proprietary information or information containing intellectual property protected by law shall contain provisions for protecting the confidentiality of same, in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection and Electronic Document Act* and the *Personal Health Information Protection Act* as amended;
- f) The Owner may elect to receive Bids electronically and the procurement process will be stated in the Bid Call Document.
- g) Bids shall be reviewed and/or evaluated using an open, fair and transparent process within the circumstances of the particular Solicitation;
- h) For Proposals, the evaluation criteria and weighting shall be identified in the Proposal document and shall be evaluated based on those criteria and weighting, subject to amendments to the same released by an Addendum
- i) All Bid Call Documents shall clearly set out the requirements for the price element of the Bid Call Document, specifying whether the bid price is submitted on a unit price or subtotal or total price basis and whether it is net of any taxes, or may include provision for early payment discounts, premiums, financing charges, administrative costs, cost of living or other escalations, contingencies or other deductions or additions and how any contract extras shall be dealt with;
- i) Bids shall be awarded based on the terms and conditions clearly specified in the Owner's Bid Call Documents;
- j) Bid records shall be filed and shall not be destroyed for seven (7) years or in accordance with the Owner's record retention procedures, as amended, following the completion of the procurement contract;
- k) All selected Bidders shall, where required by this by-law, be required to comply with the contract preparation and execution requirements of Section 15 Contract Execution; and
- l) Contracts shall be monitored and documented by the Commissioner and/or Director in accordance with Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule "F" of this by-law.

12. STANDARD PROCUREMENT METHODS

The method of procurement for goods, service(s) and construction shall be in accordance with the methods described in this section, (as recommended by the Manager, Procurement Services) and shall be advertised, reported, approved and the contract executed in accordance with Schedule "D" Thresholds of this by-law.

12.1 REQUEST FOR INFORMATION (RFI)

A request which will be used as a general market research tool to determine what goods and service(s) are available which will meet business or operational requirements and acquisition strategies and/or may occasionally request project estimate costs for the purpose of developing a Solicitation.

12.2 REQUEST FOR PRE-QUALIFICATION (RFPQ)

A Request for Pre-Qualification (RFPQ) may be conducted for any goods, service(s) or construction to select the number of qualified Bidders that may bid on the subsequent procurement process by the Owner, under any of the following circumstances:

- i. The work is considered "high risk" with respect to regulations governed under the Occupational Health and Safety Act, as amended;
- ii. The work is such that contract administration costs (work inspection, follow-up, extra fee negotiations) could result in a substantial cost to the Owner if the work is not satisfactorily performed the first time;
- iii. The goods or equipment to be purchased shall meet national safety standards or demonstrate an acceptable level of performance;
- iv. The work involves complex, multi-disciplinary activities; or
- v. Wherever the Manager, Procurement Services deems appropriate.

When the Request for Pre-Qualification (RFPQ) is utilized, a Pre-Qualification Document shall be provided to the potential Respondents setting out the evaluation criteria and weighting for pre-qualification and may be advertised in accordance with the advertising procedure, set out in Schedule "D" Thresholds.

The selection of qualified Bidders following a pre-qualification process does not create any contractual obligation between the Owner and the pre-qualified Respondents(s). Pre-qualification may be made a specific pre-condition of any other procurement procedure utilized by the Owner.

Advertisement of the Pre-Qualification shall be based on the estimated contract value, in accordance with Schedule "D" Thresholds of this by-law.

12.3 LOW VALUE PURCHASE (LVP)

A Low Value Purchase (LVP) shall be conducted for the procurement for goods or service(s), which is not covered by a term contract or cooperative contract, having an estimated contract value as stated in Schedule "D" Thresholds of this by-law, as amended. These purchases may be made utilizing a Purchase Order or a corporate Purchasing Card. The C.A.O., Commissioner and/or Director may appoint individuals and assign a limit of spending authority to make low value purchases. These purchases are within the discretion of the Commissioner and/or Director. The Commissioner and/or Director are responsible to ensure only purchases, which can be demonstrated to have been made at fair value, shall be made. This acquisition process can be performed by the Department, or if they so desire, by the Procurement Services Department. Advertising is not required.

The only exception to the threshold limits for low value purchases shall be for those position(s) or policy stated in Schedule "E" Position Exceptions of this by-law.

At the discretion of the Director, the selected Bidder may be subject to the requirements set out in Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule "F" of this by-law.

12.4 THREE QUOTE PROCESS (Department Led)

Department staff will be responsible for requesting a minimum of three (3) written quotes by email or in a form or format as prescribed by Procurement Services for acquisitions not already available under existing active procurement contracts with a **procurement value** of between **10,000.01 to \$25,000.00**.

The **procurement value** is the maximum total value of the procurement over its duration and must include all anticipated costs to the Town, excluding sales taxes, taking into account all remuneration, premiums, fees, commissions, interest, and the total value of all anticipated options and terms. The quotes requested must be for the same goods / services from all suppliers contacted.

Department staff will be responsible for maintaining all written quotes requested and received for auditing purposes. Procurement will require that Departments produce evidence of the quotes requested and obtained in order to generate a Purchase Order for the Department.

In cases where less than three (3) quotes were requested, the acquisition will be considered a non-competitive acquisition and prior approval of the acquisition required in accordance with the single and sole source provisions in sections 13.5 and 13.6, if any apply, and delegated authority as specified in Schedule "D" Table 5 of the Procurement By-Law.

Situations or urgency are treated in accordance with Section 13.4 Emergency Purchases of the Procurement By-Law which would not otherwise be conducive to seeking quotations as a result of the urgency.

Department staff may alternatively request Procurement Services to lead the procurement process on behalf of the Department.

12.5 QUICK BID (REQUEST FOR QUOTATION (QB) or QUICK BID REQUEST FOR PROPOSAL (QBRFP)

An informal Quick Bid shall be conducted for the procurement for goods, service(s) or construction having an estimated contract value as stated in Schedule "D" Thresholds of this by-law.

The Bid may be done on an invitational basis and/or advertised as stated in Schedule "D" Thresholds of this by-law.

Advertising of the Solicitation is not required.

Any irregularities in the Bid shall be dealt with in accordance with Schedule "B" Bid Irregularities or Schedule "C" Proposal Irregularities of this by-law, as amended and in compliance with the procedures stated in this by-law.

The selected Bidder shall be required to comply with the contract requirements set out in Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule "F" of this by-law.

12.6 REQUEST FOR TENDER (RFT)

A Request for Tender (RFT) shall be conducted for the procurement for goods, service(s) or construction having an estimated contract value as stated in Schedule "D" Thresholds of this by-law, and where all the following criteria apply:

- i) Two or more sources are considered capable of supplying the goods, service(s) or construction;
- ii) The specifications for goods, service(s) or construction can be adequately defined; and
- iii) The market conditions are such that Bids can be submitted on a competitive pricing basis.
- iv) It is intended that the lowest cost Responsive Bid from a Responsible Bidder(s) shall be accepted.

The Bid shall be advertised. In the case of a pre-qualified Solicitation, only the selected pre-qualified Respondents shall be notified and shall be eligible to submit a Bid.

Any irregularities in the Bid shall be dealt with in accordance with Schedule “B” Bid Irregularities of this by-law, and in compliance with the procedures stated in this by-law.

The selected Bidder shall be required to comply with the contract requirements set out in Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule “F” of this by-law.

12.7 REQUEST FOR PROPOSAL (RFP)

Price is usually not the primary evaluation factor. An RFP Bid Call Document may provide for negotiation of all terms, including price prior to contract award. An RFP may include the provision for the negotiation of best and final offers and may be a single step or multi-step process.

The goal of an RFP is to implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining unique proposals designed to meet broad outcomes to a complex problem or need for which there is no clear or single solution. To select the Proposal that earns the highest score and meets the requirements specified in the competition, based on qualitative, technical and pricing considerations.

This method of acquisition for goods, service(s) or construction can be used for any dollar value, when the requirements cannot be definitely specified. An RFP may be conducted for the procurement for goods, service(s) or construction when; any of the following criteria apply:

- i) The selection of the Proponent depends more upon the effectiveness of the proposed solution, than the price alone;
- ii) It is expected that negotiation with one or more Proponents may be required with respect to any aspect of the Contract; and
- iii) The precise goods, service(s) or construction, or the specifications therefore are not known or are not definable and it is expected that the Proponent will further define them.

Advertising of the RFP shall be in accordance with Schedule “D” Thresholds of this by-law. In the case of a pre-qualified RFP, only the selected pre-qualified Proponents shall be notified.

Any irregularities in the Proposal submitted in response to an RFP shall be dealt with in accordance with Schedule “C” Proposal Irregularities of this by-law and in compliance with the procedures stated in this by-law.

The selected Proponent shall be required to comply with the contract requirements set out in Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule “F” of this by-law.

13. ALTERNATIVE PROCUREMENT METHODS

13.1 MULTI-STEP BID CALL

A “Multi-Step Bid Call” is a bidding procedure consisting of two stages:

Step 1 consists of a request for technical Bid, evaluations and discussion without pricing requirements and the selection of responsive and responsible Bidder(s) whose requirements are considered most acceptable; and

Step 2 consists of reviewing sealed Bid prices from only those Bidder(s) whose technical requirements have been rated most acceptable in Step 1.

The Bid shall be advertised in accordance with Schedule “D” Thresholds. In the case of a pre-qualified Bid, only the selected pre-qualified Respondents shall be notified.

13.2 UNSOLICITED BIDS

Unsolicited bids received by the Owner shall be reviewed by the Commissioner and/or Director and the Manager, Procurement Services.

Any procurement activity resulting from the receipt of an unsolicited bid shall comply with the provisions of this by-law pertinent thereto, including the Owner's Contractor Performance Procedure, Schedule "F" of this by-law.

Where a contract resulting from an unsolicited bid is awarded on a noncompetitive basis, the single or sole source purchase provisions of this by-law shall apply; or

Instead of the above process, the Manager, Procurement Services may utilize an Advanced Contract Award Notice (ACAN).

13.3 NEGOTIATION

Negotiation may be used for the procurement for goods, service(s) or construction or for the sale of Personal or Real Property for any contract when any of the following criteria apply:

- i. The goods, service(s) or construction are deemed necessary by the C.A.O., Commissioner and/or Director as a result of an emergency purchase which would not reasonably permit the use of any other prescribed procurement process;
- ii. After the Request for Proposal (RFP) process has closed, it may be necessary for discussion to clarify;
- iii. Due to abnormal market conditions, the goods, service(s) or construction required are in short supply;

- iv. Where competition is precluded or severely restricted due to the existence of any patent right, copyright, technical secret or control of raw material;
- v. Where there is a single or sole source of the goods, service(s) or construction which would be acceptable and cost effective;
- vi. Where only one proposal/bid is received and it exceeds the amount budgeted for the procurement, negotiations may be conducted; provided the Bidder is responsive and responsible;
- vii. With the highest Offeror in response to Sale of Personal or Real property;
- viii. With the highest evaluated responsive and responsible Proponent to a Request for Proposal. If a negotiated settlement cannot be reached, the Owner may proceed to negotiate with the next highest evaluated responsive and responsible Proponent;
- ix. Where the extension or reinstatement of an existing contract with Council approval would be more cost effective or beneficial to the Owner;
- x. Where, for security or confidentiality reasons, it is in the best interest of the Owner; or
- xi. Where authorized by Council to do so.

The selected Proponent shall be required to comply with the contract requirements set out in Section 15 Contract Execution, Section 16 Contractor Performance, and the Owner's Contractor Performance Procedure, Schedule "F" of this by-law.

13.4 EMERGENCY PURCHASES

Notwithstanding the provisions of this by-law, an emergency purchase shall be made, when an event occurs that is determined by the Mayor, the C.A.O. or the Commissioner and/or Director to be a threat to any of the following:

- i. Public health;
- ii. The maintenance of essential corporate services or to prevent the disruption of essential corporate services;
- iii. The welfare of persons or of public property; or
- iv. The security of the Owner's interests and the occurrence requires the immediate delivery for goods, service(s) or construction and time does not permit for competitive Bids.

When any of the above criteria are applicable the following process shall be conducted:

- A. Where it is estimated that the expenditure is within the authority of the Commissioner and/or Director as stated in Schedule "D" Thresholds of this by-law; the Manager, Procurement Services, upon the recommendation of the Commissioner and/or Director, shall secure any goods, service(s) or construction required, in an efficient, expeditious manner that is in the best interest of the Owner:
 - i. A Purchase Order shall be issued or Purchasing Card or the Emergency Management Purchasing Card shall be used; and
 - ii. In case of an after hour emergency, a purchase order will be issued the next business day.
- B. Where it is estimated that the expenditure exceeds the authority of the Commissioner as stated in Schedule "D" Thresholds of this by-law, the prior approval of the C.A.O. shall be obtained; the Manager, Procurement Services, upon the recommendation of the C.A.O., the Commissioner and/or Director, shall secure any goods, service(s) or construction required; in an efficient, expeditious manner that is in the best interest of the Owner;
 - i. An information report shall be submitted by the Commissioner and/or Director to Council explaining the actions taken and the reason(s) therefore;

- ii. A Purchase Order shall be issued; or Purchasing Card or the Emergency Management Purchasing Card shall be used; or
- iii. In case of an after hour emergency, if a Purchasing Card or Emergency Management Purchasing Card is not available, a Purchase Order shall be issued the next business day.

13.5 SOLE SOURCE

A Sole Source purchase may be conducted for the procurement for goods, service(s) or construction of any contract value without the competitive Bid process, when any of the following circumstances apply:

- i. May be based on proprietary technology.
- ii. Copyright; or
- iii. A Supplier's unique capability.
- iv. And other exceptions, expressly permitted under the Agreement on Internal Trade, as amended.

Where possible a Sole Source purchase shall be arranged by the Procurement Services Department and shall be in compliance with Schedule "D" Thresholds of this by-law.

Sole Source purchases shall be required to comply with the contract requirements of Section 15 Contract Execution and Section 16 Contractor Performance of this by-law.

A semi-annual report of all Sole Source Purchases will be given to the C.A.O and the Commissioner of Corporate Services by the Manager, Procurement Services.

13.6 SINGLE SOURCE

Single Source purchasing may be conducted for the procurement for goods, service(s) or construction of any contract value without the competitive Bid process, when any of the following circumstances apply:

- i. For reasons of standardization, warranty, function or service, such as: technical qualifications;
- ii. To obtain the services from a public utility;
- iii. Where compatibility with an existing product, equipment, facility or service is a paramount consideration;
- iv. Where a good is purchased for testing or trial use;
- v. Where the contractor possesses the unique and singularly available capability to meet the requirements, such as, skills related to and/or existing knowledge of the nature of the service;
- vi. Ability to deliver at a particular time;
- vii. Where the Owner has a rental contract and an offer to buy out the equipment or extend the rental contract which may be beneficial to the Owner;
- viii. For matters involving security, police matters, or confidential issues, a purchase may be made in a manner that protects the confidentiality of the contractor or the Owner. Such purchases may be made as a Single Source purchase;
- ix. An Emergency purchase situation;
- x. ~~Notwithstanding anything in this by-law, where a purchase is determined by Council to be fair and reasonable and is made from a non-profit corporation supported by the Owner, the Owner may make such a purchase as a single source purchase; and~~

- xi. Where goods are offered for sale to the Owner by auction or negotiation, such purchase will be deemed to be a Single Source purchase and the C.A.O. may authorize the submission of a bid or the conduct of negotiations where he/she determines the purchase to be clearly in the best interest of the Owner.
- xii. And other exceptions, expressly permitted under the Agreement on Internal Trade, as amended.

Where possible a Single Source purchase shall be arranged by the Procurement Services Department and shall be in compliance with Schedule "D" Thresholds of this by-law.

Single Source purchases shall be required to comply with the contract requirements of Section 15 Contract Execution and Section 16 Contractor Performance of this by-law.

A semi-annual report of all Single Source Purchases will be given to the C.A.O and the Commissioner of Corporate Services by the Manager, Procurement Services.

13.7 CONSULTING SERVICES

Where it is estimated that the expenditure for Consulting Services is within the monetary value stated in Schedule "D" Thresholds of this by-law; the Director or Commissioner or C.A.O. as applicable, will select and recommend approval of the choice of Contractor to perform the work, in consultation with the Manager, Procurement Services.

This process shall not be used to retain Consulting Services, where a short list of pre-qualified Bidders is in place for the services requested. The process stated in the pre-qualification process or subsequent Request for Proposal (if applicable) for specific consulting services shall be used to retain Contractors.

The acquisition of Consulting Services, exceeding the values stated in Schedule "D" Bid Threshold of this by-law, shall be performed by one or both of the following methods:

- i. Pre-Qualification process.
- ii. Request for Proposal process.

The selected Contractor shall be required to comply with the contract requirements set out in Section 15 Contract Execution, Section 16 Contractor Performance, and the Owner's Contractor Performance Procedure, Schedule "F" of this by-law.

13.8 CO-OPERATIVE PURCHASING AND PIGGYBACK

The Owner may participate in Co-operative Purchasing with other government agencies or public authorities where it is in the best interests of the Owner to do so.

The Owner may Piggyback on other government agencies or public authorities Contracts where it is in the best interests of the Owner to do so. The Owner may also allow other government agencies or public authorities to Piggyback contracts established by the Owner.

If the Owner decides to participate in a Co-operative Purchase or Piggyback contract, then the policies and procedures of the government agencies or public authorities calling the Bid on behalf of the participants are to be the accepted policies and procedures, even if they conflict with this By-law.

The terms of reference of the York Purchasing Co-operative and any other originating Co-operative shall form the basis of accepted policy and procedure when participating in, or calling, co-operative bids.

13.9 REVERSE AUCTIONS

The Manager, Procurement Services may consider procuring goods, services and construction using Reverse Auction bidding strategies in situations where, in the opinion of the Manager,

Procurement Services, it is in the best interest of the Owner. The Reverse Auction may be conducted online, at the discretion of the Manager, Procurement Services.

Advertising of the bid opportunity shall be done in compliance with Schedule “D” of this by-law. This may include a pre-qualification of Bidders, and the selected short-listed Bidders would be invited to participate in the reverse auction.

The Bidder shall be required to comply with the contract requirements set out in Section 15 Contract Execution, Section 16 Contractor Performance, and the Owner’s Contractor Performance Procedure, Schedule “F” of this by-law.

13.10 NON-BINDING REQUEST FOR PROPOSAL

The Manager, Procurement Services, may utilize a non-binding Request for Proposal (RFP), where in the opinion of the Manager, Procurement Services, it is in the best interest of the Owner.

Advertising of the bid opportunity shall be done in compliance with Schedule “D” of this by-law. This may include a pre-qualification of Proponents, and the selected short-listed Proponents would be invited to participate in the proposal process.

It is not the intent of the Owner, nor the effect of this non-binding RFP to initiate or form contractual relations by the submission of a Proposal by any Proponent in response to this RFP. The RFP is merely a call for proposals and not a bid call intending to place legally binding obligations on the Owner or any Proponent to enter into a definite agreement or to be bound by any of the terms of this RFP, unless and until, the Owner had completed the evaluation, negotiation and finalization of a proposal satisfactory to both the Owner and the selected Proponent.

14. MATHEMATICAL ERRORS

In compliance with Schedule “B” Bid Irregularities, the Manager, Procurement Services or designate will check and correct errors in any extensions. The unit prices shall govern as provided for in Schedule “B” Bid Irregularities of this by-law. The responsibility for checking and correcting mathematical errors may be delegated to the requisitioning department and/or consultant.

15. CONTRACT EXECUTION

Selected Bidder(s) may be required to submit additional documentation prior to execution of the Contract, including but not limited to: a Bond, Letter of Credit, Certified Cheque, Money Order, Insurance, a Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB), the Contractor’s Health & Safety policy and/or project schedule.

The award of a Contract may be made by way of an agreement and/or a Purchase Order in accordance with Schedule “D” Thresholds of this By-law. The Manager, Procurement Services shall have the sole discretion to decide whether the terms and conditions between the selected Bidder and the Owner are to be set out in a Purchase Order and/or in a written agreement.

16. CONTRACTOR PERFORMANCE

The Director and/or Manager shall be responsible for monitoring the performance of all procurement Contracts in accordance with the Owner’s Contractor Performance Procedure, Schedule “F” of this by-law.

17. REPORTING TO COUNCIL

Goods, service(s) or construction shall be awarded in accordance with Schedule “D” Threshold of this by-law.

The Manager, Procurement Services shall prepare a semi-annual Information Report to Council with the following information:

- i. All goods, service(s) or construction awarded in the amount of \$250,000.00 and over in accordance with Schedule “D” Threshold of this by-law.
- ii. All emergency purchases exceeding \$50,000.00 awarded in accordance with Schedule “D”

Threshold of this by-law.

- iii. All Single and Sole Source purchases.

18. ACCESS TO INFORMATION

The disclosure of information received relevant to the issue of Bids or the award of contracts shall be made by the appropriate officers in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act*, as amended.

19. DISPOSAL OF PERSONAL PROPERTY

- 19.1 The Commissioner and/or Director shall submit to the Procurement Services Department reports of furniture, vehicles, equipment, stocks of all supplies, and other goods and material, which are no longer used or which have become obsolete, worn out, or incapable of being used.
- 19.2 The Procurement Services Department staff shall first offer the surplus Personal Property to other departments or local boards. Any surplus assets not required by departments or local boards shall be offered through the York Purchasing Cooperative consisting of Municipalities, the Region, School Boards, Libraries and Hydro Corporations in York Region. The Manager, Procurement Services Department will determine the value of the asset. Any Personal Property still available after the provisions of subsection 19.2 have been carried out shall be disposed of by one of the following methods:
- a) Sale: If it is determined by the Manager, Procurement Services that the highest return for personal property is by a Sale Solicitation, a Sale Solicitation shall be issued and advertised on an electronic tender system or daily newspaper. Offers shall be submitted by facsimile, electronically or sealed bid, as determined by the Manager, Procurement Services; or
 - b) Public auction: If it is determined by the Manager, Procurement Services that the highest return for Personal Property is by public auction, the Manager, Procurement Services shall arrange for the Personal Property to be sold at auction. A minimum bid may or may not be set and shall be determined by the Manager, Procurement Services, the Commissioner and/or Director; or
 - c) Return to the original Supplier: If it is determined by the Manager, Procurement Services that a higher return net of disposal cost can be achieved by Sale or Trade-in of the Personal Property to the original Supplier or Suppliers in that line of business, the Manager, Procurement Services shall sell such Personal Property at the highest return.

No employee, member of Council or board member of the Owner shall personally obtain any Personal Property that has been declared surplus unless it is obtained through a public process.

Any Personal Property still available after the provisions of subsection 19.2 (a to c) have been carried out shall be disposed of by one of the following methods:

- a) The Manager, Procurement Services shall notify community interest and/or non-profit agencies for relevant items of the Owner's disposal intent. These agencies shall submit to the Manager, Procurement Services in writing a letter of interest.
- b) Where Personal Property has little or no value, the Manager, Procurement Services may dispose of the items in an alternative manner; for example; as scrap metal.

20. DISPOSAL OF REAL PROPERTY

See the Corporation of the Town of Newmarket By-law number 2013-06, as amended for the Sale of Real Property owned by the Owner.

No employee, member of Council or board member of the Owner shall personally obtain any Real Property that has been declared surplus unless it is obtained through a public process.

21. TIE BIDS RECEIVED

In the case of tie bid between two or more Responsive and Responsible Bidders and where multiple awards are not possible, the Owner shall determine the selected Bidder by the following method:

Where an Owner's Contractor Performance Evaluation rating is on file for each of the Bidders, the Bidder with the best evaluation rating shall be selected.

If the above procedure cannot determine the selected Bidder;

In the case of a tie bid between two Responsive and Responsible Bidders and multiple awards are not possible a coin toss as prescribed in the Procurement Services Department Procedures Manual, shall be conducted by the Manager, Procurement Services.

In the case of tied bids between three or more Responsive and Responsible Bidders and multiple awards are not possible, the Owner shall determine the selected Bidder by a lottery draw as prescribed in the Procurement Services Department Procedures Manual.

The complete Tie Bid procedure to be conducted is outlined in the Corporate Services – Procurement Services Department Procedures Manual.

22. CONTRACTOR INTEGRITY

The Owner may reject Bids and/or terminate existing Contracts for reasons including but not limited to circumstances where a Contractor:

- a) has been suspected or convicted of; corruption, collusion, bid-rigging any other anti-competitive activity or any other offence under the Criminal Code;
- b) the Owner is likely to incur increased staff legal costs in the administration of the Contract if it is awarded to the Bidder;
- c) has failed to satisfy an outstanding debt to the Owner or one of its local boards or corporations; or
- d) There are reasonable grounds to believe it would not be in the Best Interests of the Owner to enter into a contract with the Bidder.

Notwithstanding the foregoing, in cases where the basis for rejection or termination, as set out above is with respect to an individual who is currently an owner or member of the board of directors of the Contractor, and the individual resigns or is dismissed within a reasonable period of time, the Owner may continue or award the Contract or supply arrangement with heightened scrutiny.

The Owner may, within the limits of the law, have to contract with a Supplier who has been convicted of an offense, when required to do so by law or legal proceedings, or when the Owner

considers it necessary to the public interest for reasons which include, but are not limited to the exceptions, set out in Section 23 Litigation / Probation / Suspension.

23. LITIGATION/PROBATION/SUSPENSION

The Bid Review Panel shall reject a Bid from any Bidder or any other party (including any related or affiliated entities and any principal thereof) who is in unresolved litigation with the Owner or who is currently serving a Suspension Period, in accordance with Schedule “F” Contractor Performance Procedure. Furthermore, the Owner shall retain the right to reject Bids which may have been received and/or awarded by the Owner, notwithstanding efforts by the Owner to screen the acceptance of Bids from parties engaged in unresolved litigation with the Owner or serving a Suspension period, once the Owner becomes aware of such unresolved litigation or Suspension period.

Notwithstanding the foregoing, where it is the Owner’s best interest, the Owner may award a Contract to a Bidder who is:

- i. In unresolved litigation with the Owner or
- ii. Currently serving a Suspension Period, or is on Probation, in accordance with the Owner’s Contractor Procedures.

In the following circumstances:

- i) Where there is only one Bidder/Contractor and the C.A.O. has approved the award;
- ii) In the case of an Emergency Purchase as outlined in this by-law;
- iii) Where there is a legal obligation on the part of the Owner to enter into the contract; or
- iv) Where the proposed Contract is pursuant to an inter-municipal or cooperative agreement and where another public agency has approved the award.

24. BLACK-OUT PERIOD

The Black-Out Period begins when the Bid Call Document is issued and ends when the agreement is signed by the Owner and the selected Bidder. During the Black-Out Period, Bidders must conduct all communication about the procurement only with the Procurement Representative stated on the first page of the Bid Call Document.

Any communication initiated by a Bidder to elected officials or staff of the Owner other than to the Procurement staff during the “Black-Out Period” may be grounds for disqualifying the offending Bidder from consideration for contract award.

During the competitive period (Black-Out Period) Bidders may submit an emailed written question to the Procurement representative. The Procurement representative may issue a written addendum to provide clarification or modification to the Bid Call Document. The addendum will be published on the Owner’s Bid Opportunities website.

25. LOBBYING PROHIBITED

If any director, officer, employee, agent or other representative of a Respondent or Bidder, including any other parties that may be involved in a joint venture, consortium or similar business relationship with the Respondent or Bidder, makes, from the time the Bid Call Document is released, any representation or solicitation to any elected representative or employee or agent of the Owner including project consultants, or to the media, with respect to the Bidder’s Bid, the Owner will be entitled to reject the Bid. This requirement does not extend to any public deputations.

26. INCENTIVES AND LIQUIDATED DAMAGES

The Manager, Procurement Services or designate, may utilize Incentive and Liquidated Damages clauses in any bid, with the approval of the Director or Commissioner or C.A.O., where it is in the best interest of the Owner.

The Incentive and liquidated damages clauses may be used where there will be a financial and/or operational benefit to the Owner if the project is substantially completed to the satisfaction of the Owner prior to a stated completion date and/or there will be a financial and/or operational liability to the Owner if the project is delayed past that stated date. Accordingly, the Contractor and the Owner agree that the Contractor should be rewarded for substantially completing the project expeditiously and the Contractor should be assessed damages if the project is delayed.

27. DEBRIEFING

Upon request of a Proponent in accordance with the Instructions to Proponents, the Owner will provide such Proponent a debriefing of their Proposal submission. The debriefing shall not take place until after the Contract has been executed.

28. BID DISPUTE RESOLUTION

Bidders shall advise the Procurement Representative, prior to the deadline of written questions, if a Bidder needs to address any discrepancies, errors, concerns and/or omissions in the Bid Call Document, or if they be in doubt as to any part thereof.

After the award of the Bid, Bid challenges pertaining to the above matters shall not be considered by the Owner.

The Owner may consider all bid challenges in accordance with the Procurement Services Department Policies and Procedures Manual.

29. BY-LAW REVIEW

This Procurement By-law shall be reviewed to evaluate its effectiveness every five (5) years or earlier by the Manager, Procurement Services or if Council deems it appropriate.

30. AMENDMENTS

Schedules "A" through "F" to this by-law may be amended from time to time upon the approval of the C.A.O or the Strategic Leadership Team in order to add or delete or modify matters listed.

31. SEVERABILITY

If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in force.

32. SHORT TITLE

The short title of this shall be the "Procurement By-law".

33. REPEAL

By-law 2011-74 and any amendments thereto are hereby repealed.

34. EFFECTIVE DATE

The provisions of this By-law shall come into force and be effective upon the final passage thereof.

ENACTED THIS 5TH DAY OF MAY, 2014.

Tony Van Bynen, Mayor

Andrew Brouwer, Town Clerk

SCHEDULE "A" EXCEPTIONS TO BY-LAW 2014-27

The Procurement methods described in this by-law do not apply to the following items:

1. Training and Education
 - a. Conferences, conventions, courses and seminars.
 - b. Magazines, books and periodicals.
 - c. Memberships.
 - d. Facilitators and Program Hosts.
2. Refundable Employees Expenses
 - a. Advances.
 - b. Meal allowances.
 - c. Travel.
3. Employer's General Expenses
 - a. Payroll deductions remittances.
 - b. Medical.
 - c. Licenses (vehicle, firearms, elevators, etc.).
 - d. Debenture payments.
 - e. Grants to agencies.
 - f. Damage claims.
 - g. Petty cash replacement.
 - h. Tax remittances.
 - i. Charges to and from other government bodies, including Crown Corporations.
 - j. Sinking fund payments.
 - k. Payments for employment.
4. Professional and Special Services
 - a. Committee fees.
 - b. Medical, laboratory, and pharmacy services.
 - c. Legal fees for expert or professional legal services for all Corporation of the Town of Newmarket requirements and Insurance matters.
 - d. Fees for Professional Witnesses - appearing on the Owner's behalf at the administrative Court Hearings
 - e. Medical fees.
 - f. Appraisal fees.
 - g. Honorariums.
5. Postage.

SCHEDULE "A" EXCEPTIONS TO BY-LAW 2014-27 CONT'D

6. Commodities such as Electricity, Natural Gas, Fuel, etc, under the regulation O. Reg 653/05, as amended or replaced, is defined as "whether in the original or processed state, an agricultural product, a forest product, a product of sea, a mineral, a metal, a hydro-carbon fuel, electricity, a precious stone or other gem and other physical goods but does not include chattel paper, a document of title, an instrument, money or securities". – see Owner's Commodity Hedging Policy- Policies and Goals, as amended, for the consideration of commodity price hedging by the Owner.
7. Utilities (monthly charges, maintenance, utility relocations, construction, acquisition or where proprietary).
 - a. Water and Sewer.
 - b. Telephone (excludes cellular).
 - c. Cable Television.
8. Events supporting local non-profit organizations.
9. The purchase of Real Property.
10. Employee Purchase Plans (Corporate sponsored employee programs).
11. Licenses, Certificates and other approvals required.
12. Entertainers for theatre or special events.
13. Cost sharing agreements approved by Council.
14. Investments, as recommended by the Treasurer and/or C.A.O.
15. Acquisitions from governmental bodies, non-governmental bodies that exercise governmental authority delegated to them and non-profit organizations as provided for in the Canadian Free Trade Agreement (CFTA) or other applicable Canadian or International trade treaties.
16. Any additional Exceptions, expressly permitted in the Agreement on Internal Trade, as amended.

SCHEDULE “B” BID IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY

For the purposes of this by-law, the following actions shall be taken regarding Bid Irregularities, as defined in this by-law, excluding Proposal Irregularities.

ITEM #	DESCRIPTION	ACTION
1.	Late Bid	Automatic rejection
2.	Bid submitted in other than the original Bid Form format.	Automatic rejection
3.	Bid completed in other than ink or a typed format;	Automatic rejection
4.	Bid not legible.	Automatic rejection, unless; in the opinion of the Bid Review Panel, the illegibility is not pricing and is considered to be immaterial to the Owner which may upon request by the Owner, remedied by the Bidder, within five (5) Working Days or the Bid shall be rejected
5.	Bid Form not signed	Automatic rejection
6.	Incomplete Bid.	Automatic rejection, unless: (i) it is stated in the Bid Call Document that partial Bids are acceptable, and the Bid is complete in respect of the portion of the scope of work or deliverable(s) bid upon; or (ii) In the opinion of the Bid Review Panel, the omission is of a minor nature and is upon request by the Owner, remedied by the Bidder, within five (5) Working Days or the Bid shall be rejected. Incomplete pricing shall not be considered minor in nature and the Bid shall be rejected, with the exception of those irregularities stated in accordance with paragraphs 14 and 15 below. Failure to submit a Schedule of the List of Subcontractors (when required) shall not be considered minor in nature and the Bid shall be rejected.
7.	All Addendum(s) not acknowledged or enclosed in the Bidder's Bid.	Automatic rejection, unless the relevant addendum issued is solely for the purpose of revising a closing date and/or time and the Bid is received in accordance with the revised closing date and/or time.
8.	Bid submitted by a Bidder who is in unresolved litigation with the Owner.	Automatic rejection, unless it is subject to the exceptions stated in the Owner's Procurement by-law, Section 23 Litigation/Suspension/Probation.

SCHEDULE "B" BID IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY cont'd

ITEM #	DESCRIPTION	ACTION
9.	Alterations, additions, deletions or qualifying statements (referred to as a "variation") made to or provided with the Bid Form.	Automatic rejection, unless in the opinion of the Bid Review Panel, such variation is considered to be immaterial to the Owner.
10.	Strikeouts, erasures, whiteouts or overwrites made to the Bid Form, not initialed by an authorized person.	Automatic rejection, unless in the opinion of the Bid Review Panel, the failure to initial is minor in nature and is capable of being remedied. Upon request of the Owner, the Bidder shall be given five (5) Working Days to initial, or the Bid shall be rejected, or, alternatively, the failure to initial is otherwise immaterial to the Owner. Un-initialed alterations to pricing information shall be dealt with in accordance with paragraphs 11 to 13 below.
11.	Mathematical errors which are not consistent with the Unit Price; Mathematical errors such as tax calculation errors.	Upon request of the Owner, Bidder shall accept and initial corrections made by the Owner within five (5) Working Days or the Bid shall be rejected.
12.	Unit Price in the Schedule of Prices which has been changed but not initialed and the Unit Price extension is consistent with the Unit Price as amended.	Upon request of the Owner, Bidder shall initial within five (5) Working Days or the Bid shall be rejected.
13.	Unit Price in the Schedule of Prices which has been changed but not initialed and the Unit Price extension is not consistent with the Unit Price as amended.	Automatic rejection.
14.	If a unit price has been given but the corresponding extended total has been omitted,	The extended total will be calculated from the unit price and the estimated quantity by the Owner
15.	If an extended total has been given but the corresponding unit price has been omitted,	The unit price will be calculated from the extended total and the estimated quantity by the Owner.
16.	Where there is a calculation error in the addition of individual lump sum prices into a subtotal price.	The Owner may make the appropriate mathematical correction to the subtotal price and/or subtotal contract price, as the case may be, so that the calculation is correct. The Bidder shall be given five (5) Working Days to accept and initial corrections made by the Owner.

SCHEDULE "B" BID IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY cont'd

ITEM #	DESCRIPTION	ACTION
17.	Bid received by a Bidder serving a Suspension Period, in accordance with the Contractor Performance Procedure Schedule "F" of this by-law.	Automatic rejection unless, at the Owner's sole discretion, it is subject to the exceptions stated in the Owner's Procurement by-law, Section 23 Litigation/Suspension/Probation.
18.	Bid received by a Bidder who has served the Suspension Period and the Bidder cannot provide, in the Owner's sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule "F" of this by-law.	Automatic rejection unless, at the Owner's sole discretion, it is subject to the exceptions stated in the Owner's Procurement by-law, Section 23 Litigation/Suspension/Probation.
19.	Bid received by a Bidder that has been issued an active Probation letter or has received a Cautionary performance rating by the Owner and the Bidder cannot provide, in the Owner's sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule "F" of this by-law.	Automatic rejection unless, at the Owner's sole discretion, it is subject to the exceptions stated in the Owner's Procurement by-law, Section 23 Litigation/Suspension/Probation.
20.	Failure to provide Bid Deposit and/or Undertaking to provide a Bond or Letter of Credit	Automatic rejection, unless; A copy of the Undertaking to provide a Bond or Letter of Credit is submitted with the Bid and the signature(s) shall be visible. Upon request by the Owner, five (5) Working Days shall be given to the Bidder to submit the original Undertaking to provide a Bond or Letter of Credit Form to the Owner or the Bid shall be rejected.
21.	Insufficient Bid Deposit	Automatic Rejection, unless in the opinion of Bid Review Panel, the insufficiency in the Bid Deposit is trivial or insignificant. Upon request by the Owner, five (5) Working Days shall be given to the Bidder to remedy.
22.	Bidder did not attend a mandatory site meeting.	Automatic rejection
23.	Other Bid Irregularities.	Referred to the Bid Review Panel for review, consideration, and determination. Upon Request of the Owner, the Bidder may be given five (5) Working Days to correct such Bid Irregularity

SCHEDULE "B" BID IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY cont'd

All Bid Irregularities (except late bids that were automatically rejected) shall be forwarded to the Bid Review Panel for review, consideration, and determination in accordance with Section 9 – Bid Review Panel of this by-law.

Where, at the request of the Owner, a Bidder has been given five (5) Working Days to correct an irregularity, should the Bidder fail to make the correction within that time period, then the Bidder shall be deemed to be in default and;

- the Bid shall be rejected and the Bidder's Bid Deposit (where applicable) shall be forfeited, retained and applied for use by the Owner and
- At the discretion of the Bid Review Panel, the Bidder may be suspended for a period of two years.

SCHEDULE "B" BID IRREGULARITIES - APPLICABLE TO ELECTRONIC BIDDING ONLY

For the purposes of this by-law, the following actions shall be taken regarding Bid Irregularities (as defined in this by-law, excluding Proposal Irregularities).

ITEM	DESCRIPTION	ACTION
1.	Late Bid	Automatic rejection. Electronic Bidding system shall not accept late Bid submissions.
2.	Bid submitted in other than the original Bid Form format.	Automatic rejection
3.	Bid Form not signed	Automatic rejection. The Electronic Bidding system shall not accept bids unless the Bidder has checked a box confirming authority to submit a bid on behalf of the Bidder.
4.	All Addendum(s) not acknowledged (if issued).	Automatic rejection.
5.	Bid received by a Bidder who is in unresolved litigation with the Owner.	Automatic rejection unless, at the Owner's sole discretion, it is subject to the exceptions stated in the Owner's Procurement by-law, Section 23 Litigation/Suspension/Probation.
6.	Bid received by a Bidder serving a Suspension Period, in accordance with the Contractor Performance Procedure Schedule "F" of this by-law.	Automatic rejection unless, at the Owner's sole discretion, it is subject to the exceptions stated in the Owner's Procurement by-law Section 23 Litigation/Suspension/Probation,
7.	Bid received by a Bidder who has served the Suspension Period and the Bidder cannot provide, in the Owner's sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule "F" of this by-law.	Automatic rejection unless, at the Owner's sole discretion, it is subject to the exceptions stated in the Owner's Procurement by-law Section 23 Litigation/Suspension/Probation, .

SCHEDULE “B” BID IRREGULARITIES - APPLICABLE TO ELECTRONIC BIDDING ONLY cont’d

ITEM	DESCRIPTION	ACTION
8.	Bid received by a Bidder that has been issued an active Probation letter or has received a Cautionary performance rating by the Owner and the Bidder cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
9.	Failure to provide Bid Deposit and/or Undertaking to provide a Bond or Letter of Credit	Automatic rejection.
10.	Insufficient Bid Deposit	Automatic Rejection, unless in the opinion of Bid Review Panel, the insufficiency in the Bid Deposit is trivial or insignificant. Upon request by the Owner, five (5) Working Days shall be given to the Bidder to remedy.
11.	The Owner is unable to verify Digital Bond(s).	Upon request by the Owner, the Bidder shall be given five (5) Working Days to either; remedy the verification to the Owner’s satisfaction or to submit the original Bid Deposit and/or Undertaking to provide a Bond or Letter of Credit form to the Owner or the Bid shall be rejected.
12.	Bidder did not attend the mandatory site meeting.	Automatic rejection
13.	Other Bid Irregularities.	Referred to the Bid Review Panel for review, consideration, and determination. Upon Request of the Owner, the Bidder may be given five (5) Working Days to correct such Bid Irregularity

All Bid Irregularities (except late Bids that were automatically rejected) shall be forwarded to the Bid Review Panel for review, consideration, and determination in accordance with Section 9 – Bid Review Panel of this by-law.

Where, at the request of the Owner, a Bidder has been given five (5) Working Days to correct an irregularity, should the Bidder fail to make the correction within that time period, then the Bidder shall be deemed to be in default and;

- the Bid shall be rejected and the Bidder’s Bid Deposit (where applicable) shall be forfeited, retained and applied for use by the Owner and
- At the discretion of the Bid Review Panel, the Bidder may be suspended for a period of two years.

SCHEDULE “C” PROPOSAL IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY

For the purposes of this by-law, the following actions shall be taken regarding Proposal Irregularities (as defined in this by-law, excluding Bid Irregularities).

ITEM	DESCRIPTION	ACTION
1.	Late proposal.	Automatic rejection.
2.	Proposal completed in other than ink or a typed format.	Automatic rejection.
3.	Proposal not legible.	Automatic rejection, unless; In the opinion of the Bid Review Panel, the illegibility is not pricing and is considered to be immaterial to the Owner which may upon request by the Owner, remedied by the Proponent, within five (5) Working Days or the Proposal shall be rejected.
4.	Proposal not signed	Automatic rejection.
5.	All Addendum(s) not acknowledged or enclosed in the Proponent’s Proposal (if issued).	Upon request of the Owner, the Proponent shall be given five (5) Working Days to acknowledge acceptance of the Addendum(s), provided such acknowledgement does not alter the Proponent’s Proposal in any manner, apart from the acknowledgement of the Addendum /Addenda, otherwise the Proposal shall be rejected
6.	Proposal received by a Proponent who is in unresolved litigation with the Owner.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
7.	Proposal received by a Proponent serving a Suspension Period, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
8.	Proposal received by a Proponent who has served the Suspension Period and the Proponent cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law Section 23 Litigation/Suspension/Probation,

SCHEDULE “C” PROPOSAL IRREGULARITIES- APPLICABLE TO HARD COPY BIDDING ONLY
cont’d

ITEM	DESCRIPTION	ACTION
9.	Proposal received by a Proponent that has been issued an active Probation letter or has received a Cautionary performance rating by the Owner and the Proponent cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
10.	Failure to provide Proposal Deposit and/or Undertaking to provide a Bond or Letter of Credit	Automatic rejection, unless; A copy of the Undertaking to provide a Bond or Letter of Credit is submitted with the Proposal and the signature(s) shall be visible. Upon request by the Owner, five (5) Working Days shall be given to the Proponent to submit the original Undertaking to provide a Bond or Letter of Credit Form to the Owner or the Proposal shall be rejected.
11.	Insufficient Proposal Deposit	Automatic Rejection, unless in the opinion of Bid Review Panel, the insufficiency in the Proposal Deposit is trivial or insignificant. Upon request by the Owner, five (5) Working Days shall be given to the Proponent to remedy.
12.	Proponent did not attend a mandatory site meeting.	Automatic rejection
13.	Other Proposal Irregularities, including deviations in terms.	Referred to the Bid Review Panel for review, consideration, and determination. Upon Request of the Owner, the Bidder may be given five (5) Working Days to correct such Bid Irregularity

All Proposal Irregularities (except late proposals that were automatically rejected) shall be forwarded to the Bid Review Panel for review, consideration, and determination in accordance with Section 9 – Bid Review Panel of this by-law.

Where, at the request of the Owner, a Proponent has been given five (5) Working Days to correct an irregularity, should the Proponent fail to make the correction within that time period, then the Proponent shall be deemed to be in default and;

- the Proposal shall be rejected and the Proponent’s Proposal Deposit (where applicable) shall be forfeited, retained and applied for use by the Owner and
- At the discretion of the Bid Review Panel, the Proponent may be suspended for a period of two years.

SCHEDULE "C" PROPOSAL IRREGULARITIES -APPLICABLE FOR ELECTRONIC BIDDING ONLY

For the purposes of this by-law, the following actions shall be taken regarding Proposal Irregularities (as defined in this by-law, excluding Bid Irregularities).

ITEM	DESCRIPTION	ACTION
1.	Late Proposal	Automatic rejection. Electronic Bidding system shall not accept late Proposal submissions.
2.	Bid Form not signed	Automatic rejection. The Electronic Bidding system shall not accept proposals unless the Proponent has checked a box confirming authority to submit a proposal on behalf of the Proponent.
3.	All Addendum(s) not acknowledged (if issued).	Automatic rejection.
4.	Proposal received by a Proponent who is in unresolved litigation with the Owner.	Automatic rejection unless, at the Owner's sole discretion, it is subject to the exceptions stated in the Owner's Procurement by-law, Section 23 Litigation/Suspension/Probation.
5.	Proposal received by a Proponent serving a Suspension Period, in accordance with the Contractor Performance Procedure Schedule "F" of this by-law.	Automatic rejection unless, at the Owner's sole discretion, it is subject to the exceptions stated in the Owner's Procurement by-law Section 23 Litigation/Suspension/Probation, .
6.	Proposal received by a Proponent who has served the Suspension Period and the Proponent cannot provide, in the Owner's sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule "F" of this by-law.	Automatic rejection unless, at the Owner's sole discretion, it is subject to the exceptions stated in the Owner's Procurement by-law, Section 23 Litigation/Suspension/Probation.

SCHEDULE “C” PROPOSAL IRREGULARITIES - APPLICABLE FOR ELECTRONIC BIDDING ONLY cont’d

7.	Proposal received by a Proponent that has been issued an active Probation letter or has received a Cautionary performance rating by the Owner and the Proponent cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law Section 23 Litigation/Suspension/Probation, .
8.	Failure to provide Proposal Deposit and/or Undertaking to provide a Bond or Letter of Credit	Automatic rejection.
9.	Insufficient Proposal Deposit	Automatic Rejection, unless in the opinion of Bid Review Panel, the insufficiency in the Proposal Deposit is trivial or insignificant. Upon request by the Owner, five (5) Working Days shall be given to the Proponent to remedy.
10.	The Owner is unable to verify Digital Bond(s).	Upon request by the Owner, the Proponent shall be given five (5) Working Days to either; remedy the verification to the Owner’s satisfaction or to submit the original Proposal Deposit and/or Contract Security to the Owner or the Proposal shall be rejected.
11.	Proponent did not attend the mandatory site meeting.	Automatic rejection
12.	Other Proposal Irregularities, including deviations in terms.	Referred to the Bid Review Panel for review, consideration, and determination. Upon Request of the Owner, the Proponent may be given five (5) Working Days to correct such Proposal Irregularity

All Proposal Irregularities (except late proposals that were automatically rejected) shall be forwarded to the Bid Review Panel for review, consideration, and determination in accordance with Section 9 – Bid Review Panel of this by-law.

Where, at the request of the Owner, a Proponent has been given five (5) Working Days to correct an irregularity, should the Proponent fail to make the correction within that time period, then the Proponent shall be deemed to be in default and;

- the Proposal shall be rejected and the Proponent’s Proposal Deposit (where applicable) shall be forfeited, retained and applied for use by the Owner and
- At the discretion of the Bid Review Panel, the Proponent may be suspended for a period of two years.

SCHEDULE "D" THRESHOLDS

The award amounts shall be within the scope and budget approved by Council

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra *see note	METHOD OF PROCUREMENT	ADVERTISING	Reporting	Authority	Contract Agreement Requirements And Parties responsible for Contract Execution
TABLE 1. DELEGATED AUTHORITY FOR LOW VALUE PURCHASES					
Up to \$10,000.00	Low Value Purchase (LVP) By Department Staff or through Procurement Services.	Purchases made from the competitive marketplace where possible and practicable. Advertising not required.	Not Applicable	P-Card, or through a LVP Purchase Order by staff delegated by the Director or Commissioner or C.A.O.	No Agreement

SCHEDULE "D" THRESHOLDS – cont'd

The award amounts shall be within the scope and budget approved by Council

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra *see note	METHOD OF PROCUREMENT	ADVERTISING	Reporting	Approval Authority	Contract Agreement Requirements And Parties responsible for Contract Execution
TABLE 2. AUTHORITY FOR BID CALL PROCESS (Effective Sept. 20th 2022)					
<p>\$10,000.01 to \$ 25,000.00</p>	<p>Minimum three (3) written quotes must be requested & obtained by Department Staff</p> <p>Note: Staff may also request Procurement Svcs. to lead the Procurement process instead.</p>	<p>Advertising Not Required</p>	<p>Written Approval to proceed with recommendation to award provided to Department Staff by Approval Authority</p> <p>Written Approval and (3) Written Quotes to be maintained by Department</p>	<p>DEPARTMENT MANAGER</p> <p>Method of Payment: Purchase Order</p> <p>Note: Procurement Services requires evidence of request for 3 written quotes and Approval Authority in order to generate PO.</p>	<p>Purchase Order Terms</p> <p>or</p> <p>Agreement, executed by the Department Manager</p>
<p>\$25,000.00 to \$100,000.00</p>	<p>QUICK BID (QB) or QUICK BID REQUEST FOR PROPOSAL (QBRFP) through Procurement Services.</p>	<p>Advertising (invitational or public) is at the discretion of the Manager, Procurement Services and will be done in accordance with Trade Agreements.</p>	<p>Recommendation for Award to be approved by Approval Authority in consultation with the Manager of Procurement Services</p>	<p>DIRECTOR, in consultation with the Manager of Procurement Services</p> <p>Method of Payment: Purchase Order or P-Card as recommended by Procurement</p>	<p>Agreement</p> <p>Executed by Department Director and Manager, Procurement Services</p>
<p>\$100,000.01 to \$249,999.99</p>	<p>FORMAL BID: REQUEST FOR TENDER (RFT) OR REQUEST FOR PROPOSAL (RFP) through Procurement Services.</p>	<p>Open Public advertising is required.</p>	<p>Recommendation for Award to be approved by Approval Authority in consultation with the Manager of Procurement Services</p>	<p>DIRECTOR, in consultation with the Manager of Procurement Services</p> <p>Method of Payment: Purchase Order or P-Card as recommended by Procurement</p>	<p>Agreement</p> <p>Executed by Department Director and Manager, Procurement Services</p>
<p>\$250,000.00 AND OVER</p>	<p>FORMAL BID: REQUEST FOR TENDER (RFT) OR REQUEST FOR PROPOSAL (RFP) through Procurement Services.</p>	<p>Open Public advertising is required.</p>	<p>Recommendation for Award to be approved by Approval Authority in consultation with the Manager of Procurement Services</p>	<p>COMMISSIONER, in consultation with the Manager of Procurement Services</p> <p>Method of Payment: Purchase Order or P-Card as recommended by Procurement</p>	<p>Agreement</p> <p>Executed by Commissioner and Manager, Procurement Services</p>

*For the Agreement on Internal Trade (AIT) - the "Procurement Value" definition differs in that the valuation includes taxes. Advertising of bids shall be done in accordance with AIT.

SCHEDULE "D" THRESHOLDS cont'd

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra	METHOD OF PROCUREMENT	ADVERTISING	Report to	Authority	Contract Agreement Requirements And Parties responsible for Contract Execution
TABLE 3. EMERGENCY PURCHASES					
Up to \$50,000.00	Not Applicable	Advertising not required	Not Applicable	Directors or Commissioner or C.A.O. Or Managers with the prior written approval of their Director or Commissioner. A JD Edwards Emergency Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required
\$50,000.01 to \$99,999.99	Not applicable	Advertising not required	Not applicable	Commissioner or C.A.O. A JD Edwards Emergency Purchase Order is generated by Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required
\$100,000.00 and over	Not applicable	Advertising not required	Information report shall be submitted by the Director and /or Commissioner to Council explaining the actions taken and the reason(s) therefore	C.A.O. A JD Edwards Emergency Purchase Order is generated by the Procurement Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required

TABLE 4. MUNICIPAL DECLARED EMERGENCIES under the Emergency Management and Civil Protection Act, as amended

The C.A.O. or Commissioner or Director may authorize the Manager, Procurement Services to increase staff Delegated Authority limits for low value purchases and/or Authority limits upon the declaration of a Municipal Emergency by the Mayor and/or C.A.O.

SCHEDULE "D" THRESHOLDS cont'd

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra	METHOD OF PROCUREMENT	ADVERTISING	Reporting	Authority	Contract Agreement Requirements And Parties responsible for Contract Execution
TABLE 5. SOLE OR SINGLE SOURCE PURCHASES					
Up to \$10,000.00	Not applicable	Advertising not required	Director	Director and in consultation with the Manager, Procurement Services. A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required
\$10,000.01 to \$25,000.00	Not applicable	Advertising not required	Commissioner	Commissioner in consultation with the Manager, Procurement Services. A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required
\$25,000.01 to \$99,999.99	Not applicable	Advertising not required	C.A.O.	C.A.O. in consultation with the Manager, Procurement Services. A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	Agreement optional Director and Manager, Procurement Services.
\$ 100,000.00 and over	Not applicable	Advertising not required	Council	Council A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	Agreement optional Director and Manager, Procurement Services.

SCHEDULE "D" THRESHOLDS cont'd

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra	METHOD OF PROCUREMENT	ADVERTISING	Reporting	Authority	Contract Agreement Requirements And Parties responsible for Contract Execution
TABLE 6. CONSULTING SERVICES					
Up to \$ 20,000.00	Not applicable	Advertising not required	Not Applicable	<p style="text-align: center;">Director or Commissioner Or C.A.O. in consultation with the Manager, Procurement Services. A JD Edwards Consulting Purchase Order is generated by the Procurement Services Department</p>	<p style="text-align: center;">Agreement Optional Manager, User Department Manager, Procurement Services</p>

SCHEDULE "D" THRESHOLDS cont'd

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra	METHOD OF PROCUREMENT	SOURCE OF BIDS/ ADVERTISING	Report to	Authority	Contract Agreement Requirements And Parties responsible for Contract Execution
TABLE 7. REQUEST FOR INFORMATION					
N/A	RFI	Advertising not required.	Director and/or Commissioner and/or C.A.O. (where appropriate).	Not Applicable	Not Applicable

TABLE 8. REQUEST FOR PRE-QUALIFICATION					
N/A	PRE-QUAL	Advertisement of the Pre-Qualification shall be based on the estimated contract value, in accordance Schedule "D" Thresholds	Not Applicable	Pre-qualified Contractors approved by Evaluation Committee	Not Applicable

SCHEDULE "D" THRESHOLDS cont'd

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra	METHOD OF PROCUREMENT	SOURCE OF BIDS/ ADVERTISING	Report to	Authority	Contract Agreement Requirements And Parties responsible for Contract Execution
TABLE 9 – EXCEPTIONS – # 15. Acquisitions from Governmental Bodies, Non-Governmental Bodies that Exercise Governmental Authority Delegated to them and Non-Profit Organizations					
\$10,000.01 to \$50,000.00	Not Applicable	Not Required	Manager	Manager	Agreement Optional Director and Manager, Procurement Services
\$50,000.01 to \$99,999.99	Not Applicable	Not Required	Director	Director	Agreement Optional Director and Manager, Procurement Services
\$100,000.00 to \$249,999.99	Not Applicable	Not Required	Commissioner	Commissioner	Agreement Optional Director and Manager, Procurement Services
\$250,000 and Over	Not Applicable	Not Required	CAO	CAO	Agreement Optional Director and Manager, Procurement Services

SCHEDULE "E" POSITION EXCEPTIONS

Position exemptions to the dollar value limit for Low Value Purchases

1. Fire Chief
2. Deputy Fire Chiefs
3. Manager, Facility Services
4. Manager, Parks and Property Services
5. Manager, Operations
6. Manager, Water and Waste Water
7. Fleet Supervisor
8. Mechanics
9. Procurement Systems Officer
10. For Financial Services staff to make a payment for a public bid up to \$99,999.99 (inclusive of taxes), where it is in the best interest of the Owner and approved by the Treasurer or
11. When a Emergency (Municipally declared) is declared by the Mayor and/or CAO, the limits for any or all Staff P-Cards will increase, as per the Procurement By-law Schedule "D", or
12. Emergency Municipal P-Cards may be used by Procurement staff up to an unlimited value during an Emergency (Municipally declared), when pre-approved in writing, as per the Procurement By-law Schedule "D", or
13. The Manager, Procurement Services may at the direction of a Director, Commissioner or C.A.O., add additional positions or permit temporary transaction increases to other positions, that are exemptions to the transaction dollar value of Low Value Purchases, where it is in the best interest of the Owner.

SCHEDULE "F" CONTRACTOR PERFORMANCE

CONTRACTOR PERFORMANCE SYSTEM PROCEDURAL DOCUMENT

Revision date: May 25, 2015

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1. DEFINITIONS

“Performance Evaluation Form” has the meaning set out in Section 4.1 of this procedure document, as amended.

“Probation” means the action that results when a Contractor receives a rating of **“NOT SATISFACTORY”** in any category, on a Final Performance Evaluation form, subject to the terms and conditions of this document

“Project Evaluator(s)” means one or more person(s) from the Owner’s user department(s) and/or a consultant to the Owner, that will be evaluating the Contractor’s performance by completing Performance Evaluation Forms in accordance with this procedural document, as amended.

“Suspension” means the action that results when a Contractor receives a rating of **“UNACCEPTABLE”** in any category, on a Final Performance Evaluation form, subject to the terms and conditions of this document

All other initially capitalized terms not defined above shall have the meanings given to such terms in the Owner’s Procurement Bylaw #2014-27, as amended.

2. PURPOSE

This procedure provides a framework for the Owner to evaluate and improve the performance of all Contractors awarded publicly bid Contracts by;

- (i) pro-actively managing the performance of Contractors during the term of awarded Contracts, and
- (ii) creating a record of past performance for use by the Manager, Procurement Services, in determining the award for future Solicitations.

Project Evaluator(s) may utilize this Contractor Performance Procedure for all other contracts including but not limited to; invitational bids, Single or Sole Source purchases, Emergency Purchases and wherever it is in the Best Interest of the Owner.

3. PROJECT EVALUATORS

Each Project Evaluator and Procurement shall confirm by signing off on the evaluation that he or she does not have a Conflict of Interest.

Project Evaluators and Procurement staff shall at all times abide by the Owner’s Employee Code of Conduct, as amended.

4. PROJECT EVALUATION FORMS

Project Evaluators are to use one of the following Project Evaluation Forms, as provided in Schedule “A” of this procedural document:

- i. Infrastructure Consultant Project Evaluation Form (includes Construction Admin)
- ii. Consultant Performance Evaluation Form (no construction admin.)
- iii. Equipment/Vehicle Supplier Project Evaluation Form
- iv. Supplier of Goods/Services Project Evaluation Form
- v. Contractor Project Evaluation Form

5. FREQUENCY OF PERFORMANCE EVALUATIONS

- 5.1 The Procurement Services Department strongly recommends that Project Evaluators perform an **Interim Performance Evaluation** using the applicable form in Schedule “A” (the “Performance Evaluation Forms”) of this procedural document, at least every twelve (12) months for all Contracts with a term longer than one (1) year. Additional Performance Evaluation Forms may be completed and discussed with the Contractor at any time throughout the term of the Contract, as needed, based on the Contractor’s performance.
- 5.2 It is good practice to keep the Procurement Representative assigned to the Solicitation informed throughout the course of a Contract of any performance concerns with the Contractor. Departmental project managers should not hesitate to contact the Procurement representative for advice or assistance regardless of the significance of the problem or to attend a meeting with the Contractor.
- 5.3 Project Evaluators shall ensure that each completed Performance Evaluation Form is clearly marked as either “**Interim**” or “**Final**”.
- 5.4 Project Evaluators should complete a **Final Performance Evaluation Form** for all Contracts using the applicable form in Schedule “A” (the “Performance Evaluation Forms”) of this procedural document, as amended, in a timely manner, preferably within two (2) weeks of the following occurrences, depending on the type of good, service or construction:
- (i) For Construction contracts; upon the issuance of a Certificate of Final Completion or
 - (ii) For Consulting contracts; upon completion of the Contract or
 - (iii) For Goods; upon delivery and inspection of goods and/or after the expiry of any applicable deficiency or
 - (iv) for Services, upon completion of services and/or after the completion of deficiencies or
 - (v) for Vehicles and Equipment; upon deliver and inspection and/or after the expiration of the warranty period or
 - (vi) upon termination of a Contract for any reason prior to the Contract end date.
- 5.5 Contractor’s receiving an Interim Performance Evaluation Form with a rating(s) of **CAUTIONARY OR BELOW**, in any category, should be requested in writing, to provide, a written response and appropriate corrective action within an acceptable timeframe, in accordance with the Terms and Conditions of the Solicitation and failure of the Contractor do so, in the sole opinion of the Owner, may lead to termination of the Contract.
- 5.6 Project Evaluators are not obliged to complete Performance Evaluation Forms for Contracts obtained through a non-competitive procurement process, but may do so at their discretion.
- 5.7 Project Evaluators shall complete all Performance Evaluation Forms, for approval, by their immediate Supervisor and the Manager, Procurement Services. The approved Evaluation form will be sent to the Contractor by Procurement Services. The Bid Review Panel, as defined in the Procurement Bylaw 2014-27, as amended, shall review Final Performance Evaluations, where, the Contractor has received a rating of “**NOT SATISFACTORY OR UNACCEPTABLE**” in any category(s) on a **Final** Performance Evaluation Form and to consider its options stated in this procedural document.

6. RECOMMENDED STEPS TO RESOLVING CONTRACTOR PERFORMANCE

- 6.1 It is important to have open communication with the Contractor throughout the project and to inform the Contractor in writing when their performance is a concern and to request appropriate corrective action within an acceptable timeframe, in accordance with the Solicitation’s terms and conditions. It is equally important to keep a written record of all correspondence with the Contractor.
- 6.2 If the Contractor’s response or corrective action is still a concern, departmental staff should involve the Procurement Representative. Where it is deemed appropriate an Interim Performance Evaluation should be performed by the Project Evaluator(s) and provided to the Contractor by the Procurement department. The Contractor will be held responsible for the performance of its sub-contractors.

Contractor Performance Evaluation

6.3 If the Contractor’s response or corrective action continues to be a concern, the terms and conditions of the contract regarding non-performance may be enforced by the Manager, Procurement Services.

7. RECORD RETENTION

Project Evaluators shall maintain the following documents and Bid records for seven (7) years or in accordance with the Owner’s record retention procedures, as amended, following the completion of the Project warranty or maintenance period as supporting rationale to augment the Performance Evaluation Form:

- i. internal and external correspondence (e.g. emails, letters, telephone logs describing the issues discussed, copies of faxes);
- ii. meeting minutes describing all issues discussed, decisions made, issues unresolved, and action items assigned;
- iii. progress reports;
- iv. project diaries which record significant daily events;
- v. inspection and laboratory reports;
- vi. photographs and video tapes; and
- vii. rejected project deliverables.

8. PERFORMANCE EVALUATION SYSTEM

Project Evaluators shall assign Contractors one of the following ratings to each category set out on the Performance Evaluation Form. A critical aspect of the assessment rating system described below is the **second sentence** of each rating that recognizes the Contractor's resourcefulness in overcoming challenges that arise in the context of Contract performance.

Rating		Description of Rating
A	Exceptional	Performance <i>significantly exceeds</i> Contract requirements to the Owner's benefit, for example, the Contractor implemented innovative or business process reengineering techniques, which resulted in added value to the Owner. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the Contractor were highly effective.
B	Good	Performance meets contractual requirements and <i>exceeds in some area(s)</i> to the Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the Contractor were effective
C	Satisfactory	Performance <i>meets</i> contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which proposed corrective actions taken by the Contractor appear satisfactory, or completed corrective actions were satisfactory.
D	Cautionary	Performance did not quite <i>meet</i> contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which proposed corrective actions taken by the Contractor appear to be a continued minor concern, or completed corrective actions were slightly below satisfactory.
E	Not Satisfactory	Performance <i>does not meet some</i> contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the Contractor has submitted minimal corrective actions, if any. The Contractor's proposed actions appear only marginally effective or were not fully implemented.
F	Unacceptable	Performance <i>does not meet</i> contractual requirements and/or <i>recovery is not likely</i> in a timely or cost effective manner. The contractual performance of the element or sub-element contains serious problem(s) for which the Contractor's corrective actions appear or were ineffective.

9. IMPACT OF FINAL PERFORMANCE EVALUATIONS

- 9.1 In addition to the provisions set out in Item 9 Impact of Final Performance Evaluation, the Owner, at its sole discretion, may;
- terminate a Contract prior to completion of a project or prior to the expiration of a Contract period term due to Contractor performance issues or
 - Or take other action, in the Owner's best interest.
- 9.2 Final Performance Evaluation Forms shall be used by the Owner for consideration of award of Solicitations, (if a Final has not been performed at time a Solicitation award is under review, an Interim evaluation, if available, may be used by the Owner to:
- i. determine if a Bidder submitting a Bid is a Responsible Bidder, and/or
 - ii. To evaluate past performance in Proposal Solicitations.
- 9.3 A Contractor that has received an "EXCEPTIONAL" rating in the majority (50% or more) of the categories and at least a "GOOD" rating in all other categories (except for costs which may be at the "Satisfactory" rating); on the Contract's Final Performance Evaluation Form:
- a) The Contractor may be considered a Responsible Bidder for future similar Bid submissions to the Owner,
 - b) For a multi-year term Contract, the Contract may be extended up to an additional two (2) year term, at the discretion of both the Owner and Contractor. Costs for the extension shall be based on either:
 - i. any inflationary contract annual increase stated in the Bid Call Document or any inflationary contract annual increase stated by the Contractor in their original Bid submission or
 - ii. The same costs as stated in a firm fixed price multi-year Contract.

Where a Bid Call Document did not state or request any inflationary annual Contract increase or where the Contractor is not willing to hold pricing for a firm fixed price multi-year Contract, the Contract shall be re-bid by Procurement Services.

- 9.4 A Contractor that has received a "GOOD" rating or above in the majority (50% or more) of the categories and at least a "SATISFACTORY" rating in all other categories on the Final Performance Evaluation Form;
- a) The Contractor may be considered a Responsible Bidder for future similar Bid submissions to the Owner, and
 - b) For a multi-year term Contract, the Contract may be extended for an additional one (1) year term, at the discretion of both the Owner and Contractor. Costs for the extension shall be based on either:
 - i. any inflationary contract annual increase stated in the Bid Call Document or any inflationary contract annual increase stated by the Contractor in their original Bid submission or
 - ii. The same costs as stated in a firm fixed price multi-year Contract.

Where a Bid Call Document did not state or request any inflationary annual Contract increase or where the Contractor is not willing to hold pricing for a firm fixed price multi-year Contract, the Contract shall be re-bid by Procurement Services.

- 9.5 A Contractor that has received at least a "SATISFACTORY" rating or above in all categories of the Performance Evaluation Form;

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- a) The Contractor may be considered a Responsible Bidder for future similar Bid submissions to the Owner, and
- b) For multi-year Contracts, is not eligible for an extension term to the current Contract.
- 9.6 A Contractor that has received at least a “CAUTIONARY” rating in any category of the Final Performance Evaluation Form;
- a) May or may **not** be considered a Responsible Bidder for future similar Bid submissions to the Owner, and
- b) For multi-year Contracts, is not eligible for an extension term to the current Contract.
- c) Prior to awarding the Contractor any future Contracts, the Owner may request the Bidder to demonstrate in writing or by other acceptable means to the Manager, Procurement Services that the Contractor has corrected all previously documented areas of “**CAUTIONARY**” performance concerns to a standard satisfactory to the Owner. In addition, a list of new references may be required by the Owner in respect of work completed by the Contractor since the date of the Performance Evaluation Form where a rating of “**CAUTIONARY**” in any category was given. The Owner reserves the right, at its sole discretion not to award a Contract to any Contractor, for an indefinite period that fails to provide satisfactory evidence of correcting any documented past performance concerns by the Owner.
- 9.7 A Contractor that has received a “NOT SATISFACTORY” rating in any one category on the Final Performance Evaluation Form;
- a) The Contractor may or may **not** be considered a Responsible Bidder for future similar Bid submissions to the Owner;
- b) The Contractor will receive an active “**Probation Letter**” advising the Contractor that if a second “**NOT SATISFACTORY OR WORSE**” rating in any category is received on the next Final Performance Evaluation Form the Contractor may be subject to a suspension period, as stated in 9.8 of this procedural document.
- c) For a multi-year Contract, a Contractor receiving a “**NOT SATISFACTORY**” rating in any one (1) category on a Final Performance Evaluation, is **not** eligible for an extension term to the current Contract and
- d) The Owner may terminate the current Contract due to poor performance.
- e) Prior to awarding the Contractor any future Contracts, the Owner may request the Bidder to demonstrate in writing or by other acceptable means to the Manager, Procurement Services that the Contractor has corrected all previously documented areas of “**NOT SATISFACTORY**” performance concerns to a standard satisfactory to the Owner. In addition, a list of new references may be required by the Owner in respect of work completed by the Contractor since the date of the applicable Final Performance Evaluation Form where a rating of “**NOT SATISFACTORY**” in any category was given. The Owner reserves the right, at its sole discretion not to award a Contract, for an indefinite period, to any Contractor that fails to provide satisfactory evidence of correcting any documented past performance concerns by the Owner.
- 9.8 A Contractor that has received (i) an “UNACCEPTABLE” rating in any one category or (ii) a “NOT SATISFACTORY” rating in two or more categories, on a Final Performance Evaluation Form, or (iii) a “NOT SATISFACTORY” rating in at least one category on two consecutive Final Performance Evaluations;
- a) The Contractor shall not be considered a Responsible Bidder and shall be Suspended for at least a two (2) year period
- b) For a multi-year Contract, a Contractor receiving an “**UNACCEPTABLE**” rating in any one (1) category on a Final Performance Evaluation, is **not** eligible for an extension term to the current Contract and
- c) The Owner may terminate the current Contract due to poor performance and
- d) The Owner will issue a letter to the Contractor confirming the Suspension Period setting out the requirements for reinstatement, which shall include at a minimum;

- i. Expiration date of the Suspension Period, and
 - ii. Prior to awarding the Contractor any future Contracts after the above expiration date, the Owner may request demonstration by the Bidder in writing or by other acceptable means to the Manager, Procurement Services that the Contractor has corrected all previously documented areas of “**NOT SATISFACTORY**” or “**UNACCEPTABLE**” performance concerns to a standard satisfactory to the Owner. In addition, a list of new references may be required by the Owner in respect of work completed by the Contractor since the date of the Performance Evaluation Form which resulted in the Suspension. The Owner reserves the right, at its sole discretion not to award a Contract, for an indefinite period, to any Bidder that fails to provide satisfactory evidence of correcting any documented past performance concerns by the Owner.
- 9.9 Any Bidder that refuses or fails to execute a Contract awarded to that Bidder by the Owner may be subject to a Suspension Period, at the discretion of the Owner based on the recommendation of the Bid Review Panel.
- 9.10 The Owner may apply the Suspension or Probation period, where it is in the best interest of the Owner, based either on:
- i. **Commodity Basis:** this will be specific to the commodity of good(s) and/or service or construction evaluated on the applicable Final Performance Evaluation or on a
 - ii. **Blanket Basis:** this will cover all contracts regardless of the type of good, service or construction evaluated on the applicable Final Performance Evaluation.
- 9.11 If a Bidder has multiple Performance Evaluation Forms on record with the Owner, the Owner will consider the most recent Final Performance Evaluation completed for similar contracted goods, services or construction.
Where a Bidder has a Performance Evaluation for an unrelated good/service/construction, the Owner reserves the right to consider this Evaluation amongst other sources in determining if a Bidder is Responsible.
- Furthermore the Owner reserves the right to consider Interim Performance Evaluation(s), in determining if a Bidder is Responsible, if a Final Performance Evaluation has not been completed, or in addition to a completed Final Performance Evaluation.
- Where a Contract has multiple departments or facilities completing an Evaluation (either Interim or Final), the Contractor’s overall performance rating for either an Interim Evaluation or Final Evaluation shall be based on the lowest evaluation rating received by a department or facility.

10. CONTRACTOR RESPONSE PROCESS

The Contractor shall have ten (10) calendar days to:

- i. Submit a written response to an Interim or Final Performance Evaluation, utilizing the Owner’s response form and /or
- ii. Submit a written request to appeal a **Final** Performance Evaluation rating, utilizing the Owner’s response form.

If no response is received within that timeframe the Evaluation rating shall be final.

11. APPEAL PROCESS

- 11.1 Within two (2) weeks of receiving an appeal response form in respect of a Final Performance Evaluation Form where the Contractor received a rating of “**SATISFACTORY**” or **better** in any category(s), the Manager, Procurement Services and the head(s) of the functional area(s) which worked directly with the Contractor shall have sole discretion to decide if any rating should be adjusted in any or all categories, based on information received in the appeal response form. The Owner may render a final decision based on the appeal information or

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request additional information of the Contractor. The Owner's decision shall be final and binding on all parties.

- 11.2 Within two (2) weeks of receiving an appeal response form in respect of a Final Performance Evaluation where the Contractor received a rating of **“CAUTIONARY” or below** in any category(s), the Manager, Procurement Services will arrange a meeting with the Bid Review Panel as defined in the Procurement Bylaw 2014-27, to review the appeal response form. The Owner may render a final decision based on the appeal information or request additional information of the Contractor. The Probation or the Suspension Period shall be upheld during any appeal under review by the Owner. The Owner's decision shall be final and binding on all parties.

12. OTHER INCENTIVES FOR CONTRACTORS

The Owner may consider other incentives in future Bid projects to ensure satisfactory and above Contractor performance and/or to provide a financial bonus for completing a project on time. These types of incentives are to be used at the discretion of the Manager, Procurement Services upon approval of the Director or Commissioner or C.A.O., depending on the value of the incentive, in accordance with the Staff authority limits stated in the Procurement Bylaw # 2014-27.

13. AWARD OF EXTENSION YEAR(S)

The Manager, Procurement Services or designate with the approval of the authority position(s) that originally approved the Contract shall have authority to award up to two (2) extension year(s) (as per Item 9.3 or 9.4 of this procedural document) to a multi-year Contract in compliance with this Contractor Performance System Procedural Document, as amended.