

**THE CORPORATION OF THE TOWN OF MIDLAND**

**BY-LAW 2018-52**

A by-law to provide policies for the procurement of goods, services and construction and to repeal By-law 2014-48, as amended.

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

**AND WHEREAS** the Corporation of the Town of Midland passed By-law 2014-48, as amended, to provide policies with respect to the procurement of goods, services and construction:

**AND WHEREAS** the Canadian Free Trade Agreement (CFTA), the Comprehensive Economic and Trade Agreement (CETA) and the Ontario-Quebec Trade and Cooperation Agreement (OQTCA) apply to the procurement of goods, services and construction by the Town of Midland;

**AND WHEREAS** Council deems it expedient to repeal By-law 2014-48, as amended, and adopt a new by-law to implement the required changes and enhancements for the procurement of goods, services and construction;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND HEREBY ENACTS AS FOLLOWS:**

1. That Schedule 1, attached hereto, being the Town of Midland Procurement Policy, as to form and content, forms part of the By-law and is hereby approved.
2. That By-law 2014-48, as amended, is hereby repealed.
3. That this By-law shall come into full force and effect on the final passage thereof.

**BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 25<sup>TH</sup> DAY OF JUNE, 2018.**

**THE CORPORATION OF THE TOWN OF MIDLAND**

  
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GORD MCKAY - MAYOR

  
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KAREN DESROCHES - CLERK

**Schedule 1 to By-law 2018-52**

**Town of Midland  
Procurement Policy**

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## 1. DEFINITIONS

- a) **“Acquisition”** means the process used for obtaining Goods, Services and/or Construction;
- b) **“Advertisement”** means the public communication of Bid opportunities through one or more predetermined methods which may include electronic mail, newspaper and/or an electronic tendering method to ensure an open, fair, transparent and competitive process;
- c) **“Agreement”** means the formal written document that will be entered into at the end of the procurement process;
- d) **“Alternate Dispute Resolution”** means a series of steps put in place to resolve competitive Bid process protests and Contract disputes without the use of litigation, where the unresolved issue is raised to a higher level of authority, as required, with the hope that a solution satisfactory to both parties can be found;
- e) **“Approval”** means authorization to proceed with the purchase or disposal of Goods, Services and/or Construction;
- f) **“Approval Authority”** means the authority delegated by the Town to a person designated to occupy a position to approve on its behalf one or more procurement functions within the specified dollar thresholds subject to the applicable legislation, regulations and procedures in effect at such time;
- g) **“Award”** means the authorization to proceed with a purchase or a disposal of Goods, Services and/or Construction,;
- h) **“Bid”** means an offer or submission received from a Proponent in response to a Bid solicitation, which is subject to acceptance or rejection;
- i) **“Bid Bond”** means an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Bidder will not withdraw the Bid; the Bidder will furnish the bond as required, and, if the Contract is offered to the bonded (insured) Bidder, the Bidder will accept the Contract as bid, or else the surety will pay a specified amount;
- j) **“Bidder”** means any proponent, respondent or other person or entity who has obtained official procurement documents for the purpose of submitting or who has submitted a Bid in response to a Procurement Process;
- k) **“Bid Irregularity”** means a deviation between the requirements (including terms, conditions, specifications, or special instructions) of a Bid Request and the information provided in response to such Bid Request;

- l) **“Bid Request”** means a written request for Bids or a solicitation, which may be in the form of a Call for Bid;
- m) **“Bid Review Committee”** means a committee constituted to review Bid Irregularities as required;
- n) **“Buying Group”** means a group of two or more members which combines the Purchasing requirements and activities of the members of the group into one joint Procurement Process;
- o) **“Call for Bid”** means a formal or informal request for Bid, on the terms and conditions set forth in the Town’s Bid documents, that may be in the form of a Request for Quotation, Proposal, or Tender;
- p) **“Chief Administrative Officer”** means the Chief Administrative Officer (CAO) for the Corporation of the Town of Midland and/or his/her designate;
- q) **“Collusion”** means an activity undertaken by two or more people for the purpose of dividing the market, setting prices, limiting production, or limiting open competition, by deceiving, misleading, or defrauding others of their legal rights, or to obtain an objective forbidden by law, typically by defrauding or gaining an unfair advantage;
- r) **“Competitive Procurement”** means a set of procedures for developing a procurement contract through a bidding or proposal process. The intent is to solicit fair, impartial, competitive bids;
- s) **“Compliant Bid” or “Compliant Bidder/Proponent”** means a responsive and responsible Bid or Bidder/Proponent that submits a Bid, respectively, that meets all requirements stipulated in the Call for Bid and that possesses that capacity and ability, including financial and technical abilities, to perform as contractually required;
- t) **“Confidential Information”** means any and all information and materials, which:
- are designated as confidential at the time of disclosure; or
  - a reasonable person, having regard to the circumstances, would regard as confidential (including Personal Information). “Personal Information” means any personal information which is required to be protected pursuant to MFIPPA or any laws (including regulations and common law) pertaining to the protection of personal, healthcare or insurance information.
- u) **“Conflict of Interest”** means a situation in which financial or other personal considerations have the potential to compromise or bias professional judgment and objectivity;

- v) **“Construction”** means construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work that includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement;
- w) **“Consultant”** means a person or entity that under an agreement, other than an employment agreement, provides expert or strategic advice and related services for consideration and decision-making;
- x) **“Consulting and Professional Service”** means the provision of expertise or strategic advice that is presented for consideration and decision-making by architects, engineers, designers, surveyors, planners, accountants, auditors, management professionals, marketing professionals, software and information technology experts, financial consultants, lawyers, law firms, real estate agents and brokers, environmental planners and engineers, hydro geologists, transportation planners and engineers, communication consultants and any other consulting or professional services required by the Town;
- y) **“Contract”** means a legally binding agreement between two or more parties that creates an obligation to supply Goods, Services and/or Construction in return for money or other consideration;
- z) **“Cooperative Purchasing”** means two or more public procurement entities combine their requirements in a single procurement process to obtain the benefits of volume purchases from the same supplier(s)/vendor(s) or contractor(s);
- aa) **“Council”** means the Council of the Corporation of the Town of Midland;
- bb) **“Disposal”** means the removal of materials owned by the Town by sale, trade-in, auction, alternative use, gift or destruction which are deemed surplus;
- cc) **“Electronic Tendering System”** means an internet/web based platform used by the Town as a method of electronically issuing solicitations and/or receiving Bids where the process of email or internet is considered appropriate. Also referred to as electronic tendering/bidding;
- dd) **“Emergency Purchase”** means a purchase made in a crisis situation where immediate action is required to prevent or correct dangerous or potentially dangerous conditions, further damage, to restore minimum service or ensure the safety of the public;

- ee) **“Evaluation Committee”** means a group of individuals involved in evaluating submissions and may include one or more representatives from Procurement to facilitate the process where required in accordance with the Procurement Policy and Procedures;
- ff) **“Evaluation Criteria”** means a benchmark or standard against which accomplishment, conformance, performance and suitability of an individual, alternative, activity, product or plan is measured to select the best supplier/vendor through a competitive process. Criteria may be qualitative or quantitative in nature;
- gg) **“GBAPPC”** means the Georgian Bay Area Public Purchasing Cooperative;
- hh) **“Goods”** means moveable property including the cost of installing, operation, maintaining, or manufacturing such moveable property, and any necessary raw materials, products, supplies, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are produced as part of a Construction Contract;
- ii) **“Goods and Services”** means all goods and/or services including construction, consulting services and information technology;
- jj) **“In-house Bid”** means a bid made by internal staff to compete with external entities for procurement opportunities;
- kk) **“Invitational Competitive Procurement”** means any form of requesting a minimum of three (3) qualified suppliers/vendors to submit a written proposal in response to the defined requirements outlined by the Town;
- ll) **“Lease”** means a time limited grant of either real or personal property from the owner of that property (known as the “lessor”) to another party (known as the “lessee”) under which the lessee is entitled to the use and benefit of the property in question for the period so granted, in exchange for the payment of a stipulated rent or other consideration to the owner;
- mm) **“Low Cost Purchase” or “LCP”** means a purchase of Goods, Services and/or Construction at the thresholds indicated in this Procurement By-law;
- nn) **“Manager”** means the Director or Manager of a department or service area for the Town of Midland and/or his/her designate;
- oo) **“MFIPPA”** means The Municipal Freedom of Information and Protection of Privacy Act. This Act provides individuals with a right of access to certain records and personal information under the custody or control of institutions covered by the Act.



- pp) **“Negotiation”** means the action or process of conferring with one or more suppliers/vendors with the intent of leading to an agreement on the acquisition of the required goods and services under the conditions outlined in this by-law;
- qq) **“Procurement/Purchase”** means acquisition by lawful means, including by purchase, rental, lease or conditional sale of goods and/or services;
- rr) **“Procurement Card (P-Card)”** means an organizational credit card program primarily used for low-cost, non-inventory, non-capital items, such as office supplies. The card allows procurement or field employees to obtain goods and services without going through the requisition and authorization procedure. P-cards may be set up to restrict use to specific purchases and certain thresholds with pre-defined suppliers/vendors or stores, and offer central billings;
- ss) **“Procurement Coordinator”** means the staff position responsible for facilitating a procurement process and/or his/her designate;
- tt) **“Proponent”** means the entity or person who submits a response to a Request for Quotation, Pre-Qualification, Proposal or Tender;
- uu) **“Proposal”** means a written submission received in response to a Request for Proposal;
- vv) **“Purchase Order”** means a written order to a successful Bidder/Proponent setting out the terms and conditions for the purchase deliverables;
- ww) **“Quotation”** means a written offer received in response to a Request for Quotation;
- xx) **“Request for Expression of Interest” or “RFEOI”** means a written, formal, non-binding solicitation document to determine if there is any interest in the market place to provide the Goods, Services and/or Construction that the Town is contemplating procuring. It is typically used when it is unknown if a market for the desired Goods, Services and/or Construction exists. A subsequent Call for Bid may follow an RFEOI;
- yy) **“Request for information” or “RFI”** means a written, formal, non-binding solicitation document to obtain information on product or service details, comments, feedback, or reactions from potential Bidders/Proponents prior to issuing a Call for Bid. It is typically used when the specifications are unknown. Price is generally not required. Feedback may include best practices, industry standards, and technology issues;

- zz) **“Request for Proposal”** means a written, informal or formal, Call for Bid document to obtain proposal submissions from firms and/or individuals where detailed specifications are not able to be clearly identified and/or where price is not the primary evaluation factor. RFP’s may have provisions for Negotiations and may be in a single or multi-step process;
- aaa) **“Request for Quotation” or “RFQ”** means a written, informal or formal, Call for Bid document used for Acquisitions based on clearly defined specifications;
- bbb) **“Request for Standing Offer” or “RFSO”** means a written, formal Call for Bid document used for Acquisition based on clearly defined specifications from one or more Suppliers/Vendors to provide pricing for a defined time period on an “as needed” basis, where there are no defined quantities nor commitment to utilize the awarded Suppliers/Vendor(s);
- ccc) **“Request for Supplier Qualification” or “RFSQ”** means a written, formal, non-binding solicitation document to obtain detailed information from firms and/or individuals that may include their experience, financial strength, education background and personnel, to prequalify to supply Goods, Services and/or Construction to the Town. The RFPQ may be a precondition to a further Call for Bid opportunity;
- ddd) **“Request for Tender” or “RFT”** means a written formal, Call for Bid document used for Acquisitions based on clearly defined specifications;
- eee) **“Services”** means action and/or work undertaken on behalf of the Town under contract and may include consulting and professional advice;
- fff) **“Single Source”** means although Goods and/or Services are available from more than one potential Supplier/Vendor, the Town selects a single Supplier/Vendor because of one or more of the reasons set out in Section 7.2;
- ggg) **“Sole Source”** means the Town selects a sole Supplier/Vendor because it is the only known source of supply of the required Goods and/or Services because of one or more reasons set out in Section 7.3;
- hhh) **“Supplier/Vendor”** means any person or entity supplying goods or services to the Town including, but not limited to, contractors, consultants, suppliers, vendors, project managers and service providers;
- iii) **“Surplus”** means Goods fully owned by the Town that have been deemed surplus by the applicable responsible Manager and are no longer required by the Town;
- jjj) **“Trade Agreement”** means any applicable trade agreement to which Ontario is a signatory;

- kkk) **“Tender”** means a bid specifically provided in response to a Request for Tender;
- lll) **“Town”** means the Corporation of the Town of Midland;
- mmm) **“Treasurer”** means the Treasurer for the Corporation of the Town of Midland and/or his/her designate.

## 2. INTRODUCTION

### 2.1 Purpose, Goals and Objectives

The purposes, goals and objectives of this by-law are set out in the Recitals and they form part of the operative provisions of this by-law.

- i) To purchase, rent or lease the required quality and quantity of Goods, Services and/or Construction by promoting and open, fair and transparent competitive process in an efficient, professional and cost effective manner while maintaining budgetary control and protecting the best interest of the Town;
- ii) To encourage an open, fair and transparent competitive process for the Acquisition and Disposal of Goods and Services
- iii) To consider all costs and relevant factors, including, but not limited to, Acquisition, operating, training, maintenance, quality, warranty, payment terms, Disposal value and Disposal costs, in evaluating bid submissions from qualified, responsive and responsible suppliers/vendors;
- iv) To utilize comprehensive and unbiased specifications in order to maximize competition;
- v) To give full consideration to the annual aggregate value or to consider the total project cost of specific Goods, Services and or Construction that will be required by each department and by the Town as a whole prior to determining the appropriate Acquisition Method;
- vi) To conduct centralized purchasing through the Procurement Department;
- vii) To encourage the purchase of environmentally responsible Goods, Services and Construction with due regard to the preservation of the natural environment; Suppliers/Vendors may be selected to supply Goods made by methods resulting in the least damage to the environment and supply Goods incorporating recycled material where practicable;
- viii) To avoid real conflicts between the interests of the Town and those of the Town's employee's, elected officials and committee members and to ensure compliance with the *Municipal Conflict of Interest Act, R.S.O. 1990, c. M.5*, as amended;
- ix) To promote respect for international and interprovincial trade treaties and agreements;

- x) To promote and implement procurement practices that support the principles of the *Ontarians with Disabilities Act, 2001, S.O. 2001, c. 32* and the *Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c.11*.

## **2.2 Application**

This Procurement By-law applies to all elected officials, committee members and employees of the Town.

Where there is a conflict between the provisions of this by-law and those of any other by-law, the provisions of this by-law shall prevail.

## **2.3 Title and Administration**

This by-law may be referred to as the "Procurement By-law". The Treasurer is responsible for the oversight and administration of this by-law, which includes updating and evaluating the effectiveness, as appropriate at a minimum of every five (5) years.

## **2.4 Validity and Severability**

Should any section, subsection, clause, paragraph or provision of the by-law be declared by a court of competent jurisdiction to be invalid or unenforceable, the decision shall not affect the validity or enforceability of any other provision of the Procurement By-law as a whole.

## **2.5 Interpretation**

In this Procurement By-law;

- i. The word "may" is permissive
- ii. The words "shall" and "will" are imperative
- iii. Words used in the present terms include future
- iv. Words in the singular number include the plural number and vice versa
- v. Where employees of the town are authorized to do any act, such act may be done by their authorized delegate unless specifically stated otherwise
- vi. Where the context so requires, the masculine gender shall include the feminine and neutral genders and vice versa

## **2.6 Public Purchasing Code of Ethics**

All employees authorized to purchase Goods, Service and/or Construction on behalf of the Town shall adhere to the following principles, which are based on the tenets of the Ontario Public Buyer Association's Code of Ethics:

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

### 3. GENERAL CONDITIONS

- 3.1 No Town employee, elected official or committee member shall purchase or offer to purchase, on behalf of the Town, any Goods, Services or Construction except in accordance with this by-law and following the rules set out in the Procurement Procedures, as amended from time to time.
- 3.2 Any employee who intentionally and knowingly acquires or disposes of any Goods or Services for the Town in contravention of this Procurement By-law or the Procurement Procedures, as amended from time to time, may be subject to disciplinary action.
- 3.3 Exceptions to this by-law are identified in Schedule A.

- 3.4 All purchases must have appropriate approved funding prior to the preparation of a Call for Bid.
- 3.5 A Manager shall not Award where the Treasure has determined that the provisions of this Procurement By-law have not been adhered to and he or she so advised the Manager.
- 3.6 No employee or designated representative for the Town shall prepare, design or otherwise structure Procurement, select an evaluation method or divide Procurement requirements into two or more parts in order to circumvent any obligation and/or threshold of this by-law.
- 3.7 The Town shall not enter into any Contract for Goods, Services or Construction where there would be the establishment of an employee-employer relationship, except as exempted under Schedule A.
- 3.8 For the purpose of determining whether a Contract falls within the prescribed financial limits of the Contracts that may be awarded under the authority of a Manager or provides financial limits on Contracts required to be reported to Council, the Contract amount shall be the sum of all costs to be paid to Proponent under the Contract, including the non-rebated portion of tax.

### 3.9 Standardization

It shall be the intent of the Town, whenever possible, to standardize the purchase of Goods, Services and Construction to allow for:

- i. Reduced number of Goods, Services and Construction required;
- ii. Increased volume on common cross departmental items or services;
- iii. Maximizing volume buying opportunities;
- iv. Providing economies of scale;
- v. Reduced handling, training and storage costs;
- vi. Minimizing maintenance costs,
- vii. Cooperative Purchasing activities;
- viii. More competitive Bid results; and
- ix. Reduced overall costs.

### 3.10 No Local Preference and Non-Discrimination

The Town shall not practice local preference in awarding purchases, pursuant to the *Discriminatory Business Practices Act, R.S.O. 1990, c. D12; Agreement of Internal Trade Implementation Act, S.C. 1996, c. 17; and, the Competition Act, R.S.C. 1985, c. C-34*

### 3.11 Town's Code of Conduct and Conflict of Interest

All Procurement by the Town shall be undertaken in accordance with the Town's Staff Code of Conduct and Conflict of Interest policies, as amended from time to time, the Town's Code of Conduct for Council Members policy as amended from time to time, and the *Municipal Conflict of Interest Act, R.S.O. 1990, c.M.50*, as amended.

### 3.12 Supplier/Vendor Code of Conduct and Conflict of Interest

The Town expects its Suppliers/Vendors to act with integrity and conduct business in an ethical manner;

- i. Suppliers/vendors must respond to the Town's solicitations in an honest, fair and comprehensive manner that accurately reflects their capacity to satisfy the requirements stipulated in the solicitation;
- ii. Suppliers/vendors shall submit a bid only if they know they can satisfactorily perform all obligations of the contract in good faith;
- iii. Suppliers/vendors shall alert the Procurement Coordinator to any factual errors, omissions and ambiguities that they discover in the solicitation as early as possible in the process to avoid the solicitation being cancelled;
- iv. Suppliers/vendors must maintain confidentiality of any confidential Town information disclosed to the supplier/vendor as part of the solicitation process;
- v. Suppliers/vendors must acknowledge in their bid that their bid information will be subject to the confidentiality and disclosure requirements of the Municipal Freedom of Information and Protection of Privacy Act, 1990.

The Town may refuse to do business with any supplier/vendor that:

- i. Has engaged in illegal or unethical bidding practices;
- ii. Has an actual or potential conflict of interest
- iii. Has an unfair advantage in the procurement process; or
- iv. Fails to adhere to ethical business practices

#### Conflict of Interest

All Suppliers/Proponents participating in a procurement process must declare any possible or actual conflicts of interest:

- i. Engaging current or former Town employees or public office holders to take any part in the preparation of the bid or the performance of the



- contract if awarded, any time within two (2) years of such persons having left the employ or public office of the Town;
- ii. Engaging any family members, friends or private business associates of any public office holder which may have, or appear to have, any influence on the procurement process, or subsequent performance of the contract;
  - iii. Prior access to confidential Town information by the supplier/vendor, or affiliated persons, that is materially related to the solicitation and that was not readily accessible to other prospective suppliers/vendors; or

Where a Supplier/Vendor is retained to participate in the development of a solicitation document or the specifications for inclusion in a solicitation document, that Supplier/Vendor will not be allowed to respond, directly or indirectly, to that solicitation document.

#### Collusion or Unethical Bidding

No supplier/vendor may discuss or communicate, directly or indirectly, with any other supplier/vendor or their affiliated persons about the preparation of the supplier's/vendor's submission including, but not limited to, any connection, comparison of figures or arrangements with, or knowledge of any other supplier/vendor making a submission for the same work.

Suppliers/vendors shall disclose to the Procurement Coordinator any affiliations or other relationships with other suppliers/vendors that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.

#### Illegality

A supplier/vendor shall disclose any previous convictions of itself or its affiliated persons for collusion, bid-rigging, price-fixing, bribery, fraud or other similar behaviours or practices prohibited under the Criminal Code, the Competition Act or other applicable law, for which they have not received a pardon.

A supplier/vendor shall be deemed ineligible for an award for a minimum period of two (2) years from the date of the conviction, unless pre-approved by the Council.

### Interference Prohibited

No supplier/vendor may threaten, intimidate, harass, or otherwise interfere with any Town employee or public office holder in relation to their procurement duties. No supplier/vendor may likewise threaten, intimidate, harass, or otherwise interfere with an attempt by any other prospective supplier/vendor to bid for a Town contract or to perform any contract awarded by the Town.

### Gifts or Favours Prohibited

No supplier/vendor shall offer gifts, favours or inducements of any kind to Town employees or public office holders, or otherwise attempt to influence or interfere with their duties in relation to the procurement process or management of a contract.

### Misrepresentations Prohibited

Suppliers/vendors are prohibited from misrepresenting their relevant experience and qualifications in relation to any solicitation process and must acknowledge that the Town's process of evaluation may include information provided by the supplier's/vendor's references as well as records of past performance on previous contracts with the Town or other public bodies.

### Prohibited Communication during the Solicitation

No supplier/vendor, or affiliated person, may discuss or communicate either verbally, or in writing, with any employee, public office holder, or the media in relation to any solicitation between the time of the issuance of the solicitation to the award and execution of final form of contract. All supplier/vendor communications shall be with the Procurement Coordinator or the employee specifically designated for that purpose in the solicitation.

### Failure to Honour Bid

Suppliers/vendors shall honour their bid, except where they are permitted to withdraw their bid in accordance with the process disclosed in the solicitation. Suppliers/vendors shall not refuse to enter into a contract or refuse to fully perform the contract once their bid has been accepted by the Town.

### Supplier/Vendor Performance

- i. Suppliers/vendors shall fully perform their contracts with the Town and follow any reasonable direction from the Town to cure any default.
- ii. Suppliers/vendors shall maintain a satisfactory performance rating on their previous contracts with the Town and other public bodies to be qualified to be awarded similar contracts.

### Disqualification of Suppliers/Vendors for Non-compliance

- i. Suppliers/vendors shall be required to certify compliance with the Supplier/Vendor Code of Conduct as set out in Section 3.12 of this by-law with their bid and verify compliance prior to award. Any contravention of the Supplier/Vendor Code of Conduct by a supplier/vendor, including any failure to disclose potential conflicts of interest or unfair advantages, may be grounds for the Procurement Coordinator to disqualify a supplier/vendor from being awarded a contract.
- ii. The Procurement Coordinator, in consultation with the Town Solicitor, may also disqualify any supplier/vendor who may otherwise have an unfair advantage or conflict of interest that cannot be resolved in relation to any procurement.
- iii. A contravention of the Supplier/Vendor Code of Conduct may also be grounds for the department manager to terminate any contract awarded to that supplier/vendor and require the return of any advance payments.

### Suppliers/Vendors in Debt or in litigation with the Town

The Treasurer, in their absolute discretion, may disqualify suppliers/vendors, or their affiliated persons, who are indebted to the Town or engaged in ongoing litigation for damages related to a contract awarded by the Town.

In determining whether to disqualify a supplier/vendor or their affiliated persons under this Article, the Treasurer may in consultation with the Town Solicitor consider the following non-exclusive factors:

- a) The supplier's/vendor's history of making frivolous or vexatious claims, exaggerated damages claims, or other litigious conduct that has or may result in unnecessary additional administrative costs to the Town or other public bodies;
- b) The outcome of any prior or interim litigation, including whether legal costs have been awarded against the supplier/vendor or the Town;

- c) The prospect of setting off supplier/vendor debt against future contract payments;
- d) Where the supplier/vendor is the only qualified supplier/vendor or in cases of an emergency;
- e) The overall risk in relation to the total cost of the proposed contract; or;
- f) Subrogated insurance claims brought in the name of the supplier/vendor, but not initiated by the supplier/vendor.

This Section does not apply to bid disputes by suppliers/vendors or their right to seek other corrective measures against the Town under any administrative or judicial review procedure related to procurement.

#### Suspension of Suppliers/Vendors from Future Solicitations

- i. Without limiting or restricting any other right or privilege of the Town, Council may suspend a supplier's/vendor's eligibility to bid for a period between one (1) and four (4) years or the remainder of council's term due to a contravention of the Supplier/Vendor Code of Conduct.

### **3.13 Lobbying Restrictions**

- i. Suppliers/Vendors, their staff, or anyone involved in preparing a Bid shall not engage in any form of political or other lobbying whatsoever or seek to influence the outcome of the procurement process or subsequent Award. This restriction extends to all of the Town's elected officials, committee members and employees.
- ii. No Town's elected officials, committee members, or employees shall provide information regarding the Town's need for a specific Good, Service or Construction to prospective Suppliers/Vendors where the provision of the knowledge could provide an unfair advantage whether perceived or actual to that Supplier/Vendor.
- iii. The Town may reject any Bid by any Bidder/Proponent that engages in lobbying without further consideration, and may terminate that Bidder's/Proponent's right to continue in the procurement process.
- iv. During a formal Call for Bid process, all communications shall be made through the Procurement Department. No Supplier/Vendor or person acting on behalf of a Supplier/Vendor or group of Suppliers/Vendors shall contact any elected official, committee member or employee of the Town to attempt to seek information or to influence the Award. This restriction extends to all of the Town's elected officials, committee member and employees.

### **3.14 Access to Information**

The disclosure of information received in relation to a Call to Bid or the Award shall only be made by the appropriate employee in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56*, as amended.

### **3.15 Persons with Disabilities**

When procuring Goods, Services and Construction, the Town will incorporate accessibility criteria and features when applicable and practical as may be required from time to time by applicable legislation.

When applicable, Procurement documents will specify the desired accessibility criteria to be met and provide guidelines for the evaluation of proposals in respect of those criteria. When it is not practical for the town to incorporate accessibility criteria and features for Acquisitions, the Procurement Coordinator or service area Manager will provide a written explanation, upon request.

### **3.16 Green Procurement**

Through Acquisitions, the Town's employees are encouraged to seek ways of enhancing environmental sustainability by incorporating green Procurement requirements where possible, practical and feasible.

### **3.17 Legal Claims**

The Town reserves the right to neither accept nor Award to any Bidder/Proponent, inclusive of its sub-contractor(s), a Contract with who the Town is in litigation.

### **3.18 Collusion**

Collusion will not be tolerated and Bids may be rejected without further consideration if Collusion is suspected or present.

### **3.19 Elected Officials and Committee Members**

Elected officials and committee members shall completely separate themselves from the Procurement process. This includes but is no limited to obtaining information on any particular Procurement and participating as an evaluation member in any Procurement process.

### 3.20 Disposal of Surplus Goods or Assets

Procurement is responsible for the administration of the disposal of surplus goods or assets (excluding Town owned land and/or buildings) as outlined in the Procurement Procedures.

No employee, elected official or committee member shall personally obtain any real or personal property with a market value greater than \$500.00 that has been declared Surplus, unless it is obtained through a public process.

## 4. REQUIREMENTS FOR APPROVED FUNDS

**4.1** The beginning of the Procurement process commences with the approval by Council of the operating and capital budgets for the Town. Upon approval of these budgets, Managers and the Procurement Coordinator have the authority to purchase Goods, Services and Construction (excluding the leasing of greater than one year, which requires Council approval). Managers are authorized to spend up to thirty percent (30%) of the previous year's approved operating budget before receiving the current budget year's approval from Council.

**4.2** Sufficient funds must be allocated for each Acquisition in the appropriate accounts within the Council approved operating or capital budget prior to the Award and execution of the Contract.

### 4.3 Multi-Year Contracts:

Where certain Good and Services are routinely purchased on a multi-year basis, the exercise of authority to Award and execute such a Contract is subject to the following:

- i. the identification and availability of sufficient funds in appropriate accounts for the current year within Council approved estimates; and
- ii. in the opinion of the department Manager that the requirement for the Goods or Services will continue to exist in subsequent years and the concurrence of the Treasurer that the required funding can reasonably be expected to be made available.

### 4.4 Acquisitions Outside of the Approved Budget:

- i. Acquisitions that are deemed by a Manager to be necessary but **are not** in the approved capital budget must be approved by Council prior to the commencement of the solicitation process.

- ii. Acquisitions that are deemed by a Manager to be necessary but **are not** in the approved operating budget must be approved by Council prior to the commencement of the solicitation process if the Acquisition value is over \$10,000.

#### **4.5 Insufficient Budget at Time of Award of Solicitation:**

In the event that the Bid that is recommended for Award exceeds the approved funds available, the Town may pursue any of the following options:

- i. Council may add additional funds to the approved budget, provided that there are sufficient funds available to allow the Town to Award. Managers are required to submit a Staff Report to Council seeking approval of the additional funds, unless the following condition applies:
  - a) The total cost of the Goods, Services and/or Construction does not exceed the approved budget by \$50,000. In that case, the Manager shall submit a request for additional funding to the Treasurer. The Treasurer, shall identify the additional funding sources required for the unfavourable variance and the Department Manager and the Treasurer shall submit the request to the CAO for approval at his/her discretion; and
  - b) Where the additional funding between \$25,000 and \$50,000 has been approved a memorandum shall be prepared by the Department Manager and the Treasurer for Council's information.
- ii. Award part of the Call for Bid;
- iii. Negotiate if the Call for Bid permits it;
- iv. Cancel the Call for Bid; or,
- v. Revise the Call for Bid and issue the revised Call for Bid.

## 5. RESPONSIBILITIES AND AUTHORITIES

Town employees are accountable for the decisions and actions which they take pursuant to this By-law and in the administration/oversight of Contracts that have been Awarded.

### 5.1 Procurement

Procurement Staff shall:

- i. Monitor adherence to the provisions of this by-law and the Procurement Procedures and report any noncompliance to the Treasurer;
- ii. Provide Procurement advice and related services, including the necessary forms, Contracts and Call for Bid document templates (in consultation with the Town Solicitor) that may be required by departments for the purpose of fulfilling the Procurement needs of the Town;
- iii. Facilitate all aspects of the Call for Bid process including creating and issuing the Call for Bid documents, opening, verifying compliance with the terms and conditions of the Call for Bid as well as facilitating the Award and execution of all Agreements and Contracts. Additionally, where applicable, facilitate Contract extensions, Contract Change Orders, Supplier/Vendor performance, dispute resolution, additional funding request and Contract termination notice;
- iv. Facilitate the Disposal of physical materials and assets that have been deemed Surplus by Managers through one of the methods outlined in the Procurement Procedures;
- v. Act as the Town's representative with other public agencies including the GBAPPC, Broader Public Sector (BPS), Ontario Shared Services (OSS), Ontario Education Collaborative Marketplace (OECM), Ministry of Government Services (MGS), on initiatives and participate in cooperative contracts with these and related agencies where such involvement is in the best interest of the Town; and
- vi. Where applicable, participate in Negotiations.

Procurement Coordinator shall:

- i. Review and may authorize all Single, Sole and Emergency Purchase Acquisitions in conjunction with the CAO that meet or exceed the thresholds outlined in Schedule B ;



- ii. Review and provide feedback to Managers who are contemplating Acquisitions outside of the provisions of the Procurement By-law;
- iii. Prepare a monthly summary report for the Treasurer to present to Council for all Single, Sole and Emergency Purchase Acquisitions that meet or exceed the thresholds outline in Schedule B; and
- iv. Prepare a monthly summary report for the Treasurer to present to Council for all Acquisitions where provisions of the Procurement By-law were waived.

## 5.2 Managers

Managers shall:

- i. Be responsible for Procurement activities within their department and shall be accountable for determining and achieving specific objectives as outlined for each Procurement project;
- ii. Ensure that there are sufficient funds available and identified for all procurement request;
- iii. Have the authority to Award and execute Contracts and/or delegate the authority to their employees based on the requirements of this by-law up to the thresholds as per their/their employees signing authority;
- iv. Along with their employees, ensure that Town Solicitor reviews in advance Supplier/Vendor agreement templates;
- v. Along with their employees, be responsible for monitoring and documenting Supplier/Vendor performance and compliance with Contracts as outlined in the Supplier/Vendor Performance section of this by-law;
- vi. Along with their employees, ensure that Contract Change Order forms are properly completed with appropriate approvals and then issued to Procurement to process;
- vii. Along with their employees, ensure that additional funding forms are properly completed with appropriate approvals and then issued to Procurement to process. The required additional funding must be in place prior to the execution of the Contract or amendment thereto;

- viii. Ensure that Emergency Purchase, Single Source and Sole Source forms are completed and issued to the Procurement Coordinator for review prior to the Contract commitment consistent with the requirements outlined in Section 7;
- ix. Review in advance with the Procurement Coordinator when contemplating any Acquisition where the provisions of the Procurement By-law are being waived;
- x. Managers are responsible to notify Procurement once an item has been deemed as a Surplus asset (excluding Town land and/or buildings) over \$500 for sale or disposal as outlined in the Procurement Procedures; and
- xi. Managers are responsible for reviewing all contemplated Lease agreements with the Town Solicitor, Procurement Coordinator and the Treasurer. The Treasurer may recommend that a staff report be prepared for Council consideration as the Town's debt capacity may be impacted.

### 5.3 Treasurer

- i. In the absence of the Procurement Coordinator, the Treasurer may act in their place;
- ii. The Treasurer shall address all instances of non-compliance of this by-law with the appropriate Manager(s) and shall be report any non-compliance to the CAO;
- iii. The Treasurer together with a Manager has the authority to Award Emergency Purchases as outlined in Section 7.1;
- iv. The Treasurer shall present to Council a monthly summary report prepared by the Procurement Coordinator for all Emergency, Single and Sole Source Purchase Acquisitions that meet or exceed the thresholds outlined in Schedule B and a summary report of acquisitions outside the provisions of this by-law; and
- v. The Treasurer may approve additional funding for capital Acquisitions that are over the value authorized by Council, but cumulatively per project shall not exceed \$50,000.

#### **5.4 Chief Administrative Officer (CAO)**

- i. The CAO shall ensure overall compliance to this by-law and Procurement Procedures, and shall address any non-compliance that the Treasurer has brought to their attention; and
- ii. The CAO may authorize the approval of any Contract Change Order that is in excess of the department's authority level, providing that the conditions outlined in the Contract Change Order section of this by-law have been satisfied.

### **6. STANDARD METHODS OF PROCUREMENT**

#### **6.1 General**

The Acquisition methods described below shall be utilized unless another section of this by-law applies as recommended by the Procurement Coordinator and shall be advertised, reported, approved and the Contract executed in accordance with the provisions of this by-law and in accordance with Schedule A.

#### **6.2 Low Cost Purchase (LCP)**

A Low Cost Purchase (LCP) shall be conducted for Acquisitions not covered under an existing Contract or otherwise requiring another Acquisition Method as describe in this by-law. Acquisitions within this category are not to be repetitive or ongoing and are instead intended to be "one-off" or small, multiple purchases with a cumulative value not exceeding the prescribed threshold.

Where practical and reasonable, three written quotes should be solicited to ensure that a fair and competitive process has been conducted.

The threshold, advertising, approval and purchase execution parameters for this Acquisition method are outlined in Schedule B.

#### **6.3 Informal Request for Quotation (RFQ)**

Use of an Informal Request for Quotation for Goods, Services and Construction shall follow the process outlined below and shall be used only when specifications can be clearly defined:

1. A Call for Bid document shall be issued to the service area by Procurement for the solicitation;
2. Solicitation should be issued to a minimum of three (3) Bidders;
3. Award of the Contract shall be to the lowest Compliant bidder;
4. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.

#### **6.4 Formal Request for Quotation (RFQ)**

Use of a Formal Request for Quotation for Goods, Services and Construction shall follow the process outlined below and shall be used only when specifications can be clearly defined:

1. A Call for Bid document shall be issued to the service area by Procurement for the solicitation;
2. Solicitation shall be advertised through an electronic tendering method;
3. Award of the Contract shall be to the lowest Compliant bidder;
4. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.

#### **6.5 Informal Request for Proposal (RFP)**

Use of an Informal Request for Proposal for Goods, Services and Construction shall follow the process outlined below and may be used when specifications cannot be clearly defined:

1. A Call for Bid document shall be issued to the service area by Procurement for the solicitation;
2. Solicitation should be issued to a minimum of three (3) Proponents;
3. Evaluation will be based on the criterion as outlined in the Call for Bid document of which price is only one criterion;
4. Award of the Contract shall be issued to the highest scoring Compliant Proponent;
5. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.

#### **6.6 Formal Request for Proposal (RFP)**

Use of a Formal Request for Proposal for Goods, Services and Construction shall follow the process outlined below and may be used when specifications cannot be clearly defined:

1. A Call for Bid document shall be issued to the service area by Procurement for the solicitation;
2. Solicitation shall be advertised through an electronic tendering method;
3. Evaluation will be based on the criterion as outlined in the Call for Bid document of which price is only one criterion;
4. Award of the Contract shall be issued to the highest scoring Compliant Proponent;
5. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.

#### **6.7 Request for Tender (RFT)**

Use of a Request for Tender for Goods, Services and Construction shall follow the process outlined below and shall be used only when specifications can be clearly defined:

1. A Call for Bid document shall be issued to the service area by Procurement for the solicitation;
2. Solicitation shall be advertised through an electronic tendering method;
3. Award of the Contract shall be to the lowest Compliant bidder;
4. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.

#### **6.8 Request for Standing Offer (RFSO)**

Use of a Request for Standing Offer for Goods, Services and Construction shall be used when:

- i. there is a need for a roster list of Suppliers/Vendors for their services that will be provided on an “as needed or required” basis.
- ii. specifications can be clearly defined; and,
- iii. there is a need for a roster list of Suppliers/Vendors for their services that will be provided on an “as needed or required” basis.

RFSO shall follow the process outlined below:

1. A Call for Bid document shall be issued to the service area by Procurement for the solicitation;
2. Solicitation shall be advertised through an electronic tendering method;

3. Evaluation will be based on the criterion as outlined in the Call for Bid document;
4. Selection methodology of the Proponent's will be as outlined in the Call for Bid document;
5. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.

#### **6.9 Request for Prequalification (RFPQ)**

Use of a Request for Prequalification for Goods, Services and Construction shall follow the process outlined below and shall be used when the work is considered complex, high risk or there is a need to develop a short list of qualified Proponents that have the capabilities to meet the Town's requirements of an initial phase of a two or more phase solicitation process:

1. A Call for Bid document shall be issued to the service area by Procurement for the solicitation;
2. A subsequent Call for Bid document will be issued as outlined in the RFPQ only to the prequalified Proponents;
3. An RFPQ submission shall not create any contractual obligation between the Town and the Proponent;
4. Solicitation shall be advertised through an electronic tendering method;
5. Evaluation will be based on the criterion as outlined in the Call for Bid document;
6. Selection methodology of the prequalified Proponent's will be as outlined in the Call for Bid document;
7. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.

#### **6.10 Request for Information (RFI)**

Use of a Request for Information for Goods, Services and Construction shall follow the process outlined below and shall be used when the service area is seeking information, clarification, comments, feedback and/or reactions from the marketplace that may assist in compiling a potential future Call for Bids:

1. A written, formal, non-binding document shall be issued to the service area by Procurement for the RFI;
2. If applicable, the RFI may request publicly available commodity cost details for the purpose of budget planning;
3. An RFI submission shall not create any contractual obligation between the Town and the respondent;

4. The RFI document shall be advertised through an electronic tendering method;
5. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.

### **6.11 Request for Expression of Interest (RFEOI)**

Use of a Request for Expression of Interest for Goods, Services and Construction shall follow the process outlined below and shall be used when there is uncertainty regarding the market availability and interest in providing the Goods, Services and/or Construction for which the Town is contemplating Acquisition to assist with a potential future Call for Bids:

1. A written, formal, non-binding document shall be issued to the service area by Procurement for the RFEOI;
2. An RFEOI submission shall not create any contractual obligation between the Town and the respondent;
3. The RFEOI document shall be advertised through an electronic tendering method;
4. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.

## **7. ALTERNATIVE METHODS OF PROCUREMENT**

### **7.1 Emergency Purchase**

An Emergency Purchase may be authorized by a Manager in collaboration with the Treasurer when it is requires to:

1. Prevent or alleviate serious delay;
2. Maintain essential Town services;
3. Maintain security or order;
4. Protect public property;
5. Protect human, animal, plant life, health or prevent/alleviate a threat to the same;
6. Comply with official orders issued by a senior level of government or agency; or,
7. Comply with the Emergency Response Plan or respond to a State of Emergency.

## 7.2 Single Source

A Single Source may only be used when one of the following circumstances applies:

1. A Good or Service is compatible with an existing Town owned Good or Service where a substitute Good or Service is available, however the warranty, maintenance or service will be affected if the substitute is used and it is therefore not in the Town's best interest to use the substitute;
2. A Good or Service is in short supply due to market conditions;
3. When either no Bids or no Compliant Bids were received in a Call for Bid process;
4. Specific Standards are adopted by Council requiring certain Goods or Services;
5. A Good or Service is being purchased for a defined testing or trial use for a predetermined timeframe;
6. A Good or Service is of a confidential condition or matter where the disclosure of such in an open competition could compromise confidentiality of the Supplier/Vendor or the Town or be contrary to public interest; or,
7. When the Town has a lease with a purchase option and exercising the purchase option would benefit the Town;
8. The selected Supplier/Vendor is another public body, and it would be advantageous to the Town to acquire the Goods and/or Services from another public body;
9. The Goods and/or Services can be purchased under circumstances which are exceptionally advantageous to the Town, such as in the case of a bankruptcy or receivership;
10. An existing agreement for the purchase of Goods and/or Services has expired or is about to expire, and the Town would benefit from extending that agreement rather than commencing a new competitive bidding process, because:
  - i. The Town requires time to commence a comprehensive Call to Bid; or,
  - ii. The Town requires time to fulfill all of its obligations, such as making final payments under the existing agreement for the Goods and/or Services.

Negotiations may be used with a Single Source. The threshold, advertising, approval and purchase execution parameters are outlined in Schedule B.



### **7.3 Sole Source**

A Sole Source may only be used when one of the following circumstances applies:

1. A Good or Service is covered by an exclusive right such as a patent, copyright or exclusive licence;
2. A Good or Service is compatible with an existing Town owned Good or Service or is a replacement part for which there are no substitutes;
3. For the Procurement of Goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine Procurements; or
4. For the Procurement of a prototype of a first Good or Service to be developed in the course of and for a particular Contract for research, experiment, study or original development, but not for any subsequent Procurements.

### **7.4 Cooperative Purchase**

Cooperative Purchases are encouraged through any public sector agency where it is in the Town's best interest. Deviations from this by-law may be required and are permitted when engaging with Cooperative Purchases because agencies may have different procurement procedures and strict compliance with all policies may not be practical.

### **7.5 Unsolicited Proposal**

An Unsolicited Proposal received by the Town shall be reviewed by the relevant Manager(s) and the Procurement Coordinator. Any acquisitions resulting from the receipt of an Unsolicited Proposal shall comply with the provisions of this by-law.

### **7.6 Sponsorship**

Sponsorship opportunities will arise from; unsolicited proposals, direct solicitations or a competitive process. Sponsorship will not result in, or perceived to result in any competitive advantage, benefit or preferential treatment outside the sponsorship agreement. There shall be no actual or implied obligation to purchase product or services of any sponsor.

Sponsorship opportunities will be offered in an open, equitable and fair manner, however it is acknowledged that the majority of sponsorships shall be the result of direct solicitation by Town employees for such purposes without the process of competitive bidding.

The CAO will make the sole and final determination as to whether a sponsorship or advertising opportunity may be a competitive or non-competitive arrangement.

## **7.7 Negotiated Purchase**

Negotiations during Acquisitions may be used under any of the following circumstances:

1. When only one submission is received and it exceeds the amount allocated in the budget, Negotiations may be conducted provided that the selected Supplier's/Vendor's Bid submission is Compliant;
2. During an Emergency, Single or Sole source purchase;
3. When a competitive Bid process has been conducted and an extension of the Contract term is available as outlined in the original Call for Bid;
4. When a competitive Bid process has been conducted and the Contract has expired or will shortly expire and unforeseeable circumstances have caused a delay in issuing anew Call for Bid; in such cases, the Contract extension should not extend beyond a one (1) year term;
5. Where a competitive Bid process has been conducted and expanded works or coordinated works are appropriate in the circumstances.

## **8. COUNCIL REPORTING**

### **8.1 Memorandum to Council**

The Department Manager shall create a memorandum to Council to be included in the Council agenda for information purposes in the following circumstances:

1. The value of the Acquisition is greater than \$1,000,000, but is within the level authorized by Council;
2. An Emergency, Single or Sole source purchase is greater than \$50,000;

3. The Treasurer has approved additional funding to award a project that is over the level authorized by Council when the overage is between \$25,000 and \$50,000.

## **8.2 Council Approval**

The Department Manager shall create a staff report to be included in the Council agenda for consideration for approval in the following circumstances:

1. Where an Acquisition or Contract Change Order exceeds the level authorized by Council by more than \$50,000;
2. Where the lowest compliant Bid submission is not being recommended for Award;
3. Where the highest scoring Compliant Proponent proposal submission is not being recommended for Award;
4. Where provision(s) of this by-law are being waived;
5. Where the Acquisition of a tangible capital asset was not included in the approved capital budget;
6. Where Goods, Services or Construction were not identified and included in the approved operating budget and is over \$50,000;
7. Any Contract prescribed by statute to be authorized by Council;
8. Where Council has directed staff to provide a report for approval.

## **9. OTHER**

### **9.1 In-House Bids**

The acceptance and Award of in-house Bids shall require the prior approval of Council and only be permitted where private sector Suppliers/Vendors have also been given an opportunity to submit Bids.

### **9.2 Specifications**

- i. Service area staff are responsible for the preparation of the specifications for the applicable Acquisition Method and shall be approved by the appropriate person(s) within the service area;

- ii. Procurement may review and recommend amendments to the specifications. The service area and Procurement shall collaborate in the finalization of the specifications and associated Procurement documents;
- iii. Specifications should be clear and concise. They must not be structured to restrict or limit competition due to brand or other similar requirements. They shall allow for potential Suppliers/Vendors to provide alternatives in the event that an equivalent product or method is available. Biasing of specifications in favour of, or against a particular Good or Service is prohibited. Nothing in this section restricts the ability to design specifications in unique situations, e.g. standardization or compatibility with existing Goods or Services;
- iv. Suppliers/Vendors may be requested to expend time, money and effort on the content or in the development of a specification(s) or otherwise help define a requirement to be contained in the specifications that may be used in a Procurement document. A Supplier/Vendor who provided such assistance shall be deemed as a consultant of the Town and the specifications are deemed property of the Town. Such a Supplier/Vendor shall be prohibited from submitting a response to a Call for Bid for which those specifications apply.

### **9.3 Corporate Purchasing Card (P-Card)**

- i. Acquisitions made with the corporate purchasing card must comply with this by-law and the Town's purchasing card program and applicable policies;
- ii. No personal purchases may be made with the corporate purchasing card that is not authorized by Town policy. Town employees shall not use corporate purchases to gain personal points or other similar benefits in any Supplier/Vendor reward program.

### **9.4 Bid Review Committee**

- i. The Bid Review Committee shall initially review the submissions for compliance to the Procurement document requirements;
- ii. When a bid Irregularity is present, collaboration with the Town's Solicitor as required, and the appropriate action shall be taken in accordance with the attached Bid Irregularity Schedule.

## 9.5 Evaluation Committee

- i. Evaluation Committees are used with some Acquisition Methods to allocate points according to the criteria and submission requirements in the Call for Bid. The highest scoring submission will be the successful Proponent subject to the terms and conditions of the Call for Bid and this by-law.

## 9.6 Tie Bids

- i. In the event of a tie score between two or more Compliant Bidders/Proponents, and where multiple Awards are not possible, best and final offers will be solicited from each of these suppliers/vendors in order to break the tie. If this effort is unsuccessful, then the Town shall determine the successful supplier/vendor by draw as outlined in the Procurement Procedures.

## 9.7 Supplier/Vendor Performance

- i. Managers are responsible for monitoring and documenting Supplier/Vendor performance and ensuring compliance with Contracts. Managers shall address performance issues directly with the Supplier/Vendor to resolve and document all performance issues and acknowledgements related to same;
- ii. Procurement shall be advised of Supplier/Vendor performance issues in writing from the Manager. The Procurement Coordinator will consult with the Manager and Town Solicitor, where appropriate, to resolve any ongoing and/or escalating or unsatisfactory performance issues. If performance issues cannot be resolved, the Procurement Coordinator may, in consultation with the Towns solicitor terminate the Contract. If the contract has been terminated the Treasurer shall provide written notice to Council informing them of the termination and the next steps;
- iii. Any Supplier/Vendor (or its subcontractors) that is involved in unprofessional conduct (the nature of which the Town will be the sole judge), a health and safety violation, criminally charged or in dispute of any kind with the Town, the Town may terminate the Contract with that Supplier/Vendor. The Supplier/Vendor may also be excluded from bidding at the discretion of the Procurement Coordinator in consultation with the relevant Manager and the Towns solicitor. The exclusion from bid participation shall not last longer than two years. If the Supplier/Vendor has been excluded from bidding the Treasurer shall provide written notice to Council informing them of the exclusion and the timeframe.

### **9.8 Alternative Dispute Resolution – Competitive Bid Protest Protocol**

- i. All Suppliers/Vendors dealing with the Town or bidding on potential Contracts shall resolve any and all disputes they have specific to the competitive Bid process through the Alternative Dispute Resolution (ADR) process described in the Call for Bid and shall agree to such process as part of any response to the competitive Bid process;
- ii. The Award of any Contract shall not be rescinded or the progress of any project delayed by a request for the use of the ADR unless recommended by the Procurement Coordinator, Town's Solicitor, Manager of the respective department and the CAO;
- iii. Any Supplier/Vendor that has asked to participate in the ADR process will be provided with information by Procurement to assist them to understand the Bid process and to assist them to improve their future Bid submissions for the Town.

### **9.9 Alternative Dispute Resolution – Contract Disputes**

Any Contract disputes that arise between the successful Bidder/Proponent and the Town during the term of the Contract shall be handled through the Contract dispute process as outlined within the Call for Bid or Contract.

### **9.10 Contract Change Order**

- i. A Contract Change Order may be executed by the Department Manager with appropriate signing authority provided that the total project cost has not exceeded the level authorized by Council;
- ii. Where a Contract Change Order exceeds the Department Manager's signing authority level, the CAO may approve the execution of the Contract Change Order provided that the total project cost does not exceed the level authorized by Council;
- iii. Where a Contract Change Order or the cumulative value of the Contract Change Orders plus the original Contract price exceeds the level authorized by Council by less than \$50,000, the Department Manager shall obtain the appropriate Additional Funding authorization from the Treasurer prior to executing the Contract Change Order;

- iv. Where a Contract Change Order or the cumulative value of the Contract Change Orders plus the original Contract price exceeds the overall level authorized by Council by more than \$50,000, then Council approval for additional funds is required;
  
- v. Where a Contract Change Order is to be paid by a third party and the security to ensure payment is in place to the satisfaction of the Treasurer, the Department Manager may execute the Contract Change Order. Where a portion of the Contract Change Order is to be paid by the Town, the provisions of the by-law shall be followed.

**SCHEDULE A**  
**Goods & Services Exempt From Provisions of the Procurement By-law**

**1. Training and Education**

- a) Books
- b) Conferences
- c) Courses
- d) Conventions
- e) Memberships
- f) Seminars
- g) Periodicals
- h) Magazines
- i) Staff training
- j) Staff development
- k) Staff workshops
- l) Subscriptions

**2. Refundable Employee Expenses**

- a) Advances
- b) Meal allowances
- c) Travel & Hotel accommodation
- d) Entertainment
- e) Mileage
- f) Miscellaneous – Non-Travel

**3. Employer's General Expenses**

- a) Payroll deduction remittances
- b) Licences (vehicles, elevators, radios, etc.)
- c) Debenture payments
- d) Grants to agencies/donations
- e) Payments of damage
- f) Tax remittances
- g) Charges to/from other Government or Crown Corporations
- h) Employee wages
- i) Freight charges

**4. Professional and Special Services**

- a) Committee fees
- b) Witness fees
- c) Court reporters' fees



**SCHEDULE A**  
**Goods & Services Exempt From Provisions of the Procurement By-law**  
**(Continued)**

- d) Honoraria
- e) Arbitrators
- f) Legal settlements
- g) Temporary help
- h) Recreation Instructor fees
- i) Courier charges
- j) Legal fees

**5. Utilities/Other**

- a) Postage
- b) Water and sewer charges
- c) Hydro
- d) Cable television charges
- e) Telephone, connectivity (excluding cellular services)
- f) Natural gas/propane
- g) Refunds and rebates to ratepayers
- h) Utility relocates by a public utility Supplier/Vendor
- i) Collection Agencies (ex. Tax Sale Services)
- j) Land and Building Acquisitions and Disposal – Exempt unless otherwise directed in the Sale of Land By-law 2018-78

**6. Advertising**

- a) Classified/Employment advertising such as help wanted, for sale, etc.
- b) Display advertising such as event notices
- c) Public Tender advertising

**SCHEDULE B  
Procurement Thresholds**

**Goods, Non-Consulting Services and Construction**

<b>Requirement</b>	<b>Procurement Threshold</b>	<b>Procurement Method</b>	<b>Approval Authority</b>	<b>Execution</b>
Low Cost Purchase (LCP)	\$0 - \$10,000	<ul style="list-style-type: none"> <li>•Corporate Purchasing Card (P-Card) or;</li> <li>•Purchase Order</li> </ul>	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Corporate Purchasing Card (P-Card) or;</li> <li>•Purchase Order</li> </ul>
Informal Request for Quotation (RFQ)	\$10,001 - \$50,000	<ul style="list-style-type: none"> <li>•Call for Bid issued to a minimum of three (3) Vendors by electronic invitation</li> </ul>	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Contract Agreement and/or;</li> <li>•Purchase Order</li> </ul>
Formal Request for Quotation (RFQ)	\$50,001 - \$100,000	<ul style="list-style-type: none"> <li>•Call for Bid issued and electronically posted</li> </ul>	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Contract Agreement and;</li> <li>•Purchase Order</li> </ul>
Informal Request for Proposal (RFP)	\$10,001 - \$50,000	<ul style="list-style-type: none"> <li>•Call for Bid issued to a minimum of three (3) Vendors by electronic invitation</li> </ul>	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Contract Agreement and/or;</li> <li>•Purchase Order</li> </ul>
Formal Request for Proposal (RFP)	\$50,001 +	<ul style="list-style-type: none"> <li>•Call for Bid issued and electronically posted</li> </ul>	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Contract Agreement and;</li> <li>•Purchase Order</li> </ul>
Request for Tender (RFT)	\$100,001 +	<ul style="list-style-type: none"> <li>•Call for Bid issued and electronically posted</li> </ul>	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Contract Agreement and;</li> <li>•Purchase Order</li> </ul>
Request for Standing Offer (RFSO)		<ul style="list-style-type: none"> <li>•Call for Bid issued and electronically posted</li> </ul>	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Contract Agreement</li> <li>•Purchase Order and;</li> <li>•Vendor Invoice</li> </ul>
Request for Supplier Qualification (RFSQ)	Not Applicable	<ul style="list-style-type: none"> <li>•Call for Bid issued and electronically posted</li> </ul>	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Not applicable</li> </ul>
Request for Information (RFI)	Not Applicable	<ul style="list-style-type: none"> <li>•RFI document issued</li> </ul>		<ul style="list-style-type: none"> <li>•Not applicable</li> </ul>
Emergency Purchases	\$10,000 +	<ul style="list-style-type: none"> <li>•Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>•Manager and Treasurer</li> <li>•Memo to Council is required \$150,000 + or at the discretion of the Manager and Treasurer</li> </ul>	<ul style="list-style-type: none"> <li>•Contract Agreement and where possible given the circumstances and;</li> <li>•Purchase Order</li> </ul>
Single Source	\$10,000+	<ul style="list-style-type: none"> <li>•Not Applicable</li> </ul>	<ul style="list-style-type: none"> <li>•Single Source Form submitted from the Manager or appropriate signing authority to Procurement for approval before the commitment of Acquisition is made;</li> <li>•Vendor quotation is required;</li> <li>•Memo to Council is</li> </ul>	<ul style="list-style-type: none"> <li>•Contract Agreement and;</li> <li>•Purchase Order</li> </ul>

			required \$150,000 +	
Sole Source	\$10,000 +	•Not applicable	<ul style="list-style-type: none"> <li>•Sole Source Form submitted from the Manager or appropriate signing authority to Procurement for approval before the commitment of Acquisition is made;</li> <li>•Vendor quotation is required;</li> <li>•Memo to Council is required \$150,000 +</li> </ul>	<ul style="list-style-type: none"> <li>•Contract Agreement and;</li> <li>•Purchase Order</li> </ul>
Purchase where the provisions of the by-law are being waived	Any Amount	•Not applicable	<ul style="list-style-type: none"> <li>•Manager shall review with Procurement prior to pursuing</li> <li>•Council approval is required</li> </ul>	<ul style="list-style-type: none"> <li>•Where appropriate, Contract Agreement and/or;</li> <li>•Purchase Order</li> <li>•Notice provided to Procurement</li> </ul>

### Consulting Services

Requirement	Procurement Threshold	Advertising	Approval Authority	Execution
Informal Request for Proposal (RFP)	\$0 - \$50,000	•Call for Bid issued by electronic invitation	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Contract Agreement and;</li> <li>•Purchase Order</li> </ul>
Formal Request for Proposal	\$50,001 +	•Call for Bid issued and electronically posted	In accordance with spending authority	<ul style="list-style-type: none"> <li>•Contract Agreement and;</li> <li>•Purchase Order</li> </ul>

### **SCHEDULE C** **Bid Irregularities**

A bid irregularity is a deviation between the requirements (terms, conditions, specifications, special instructions) of a bid request and the information provided in a bid response.

#### **ACTION TAKEN:**

1. The Bid Review Committee shall be responsible for all action taken in dealing with bid irregularities, and acts in accordance with the nature of the irregularity.
2. The list of irregularities in this schedule should not be considered all-inclusive. The Bid Review Committee will review minor irregularities not listed and acting in consensus shall have authority to waive other irregularities or grant two (2) business days to initial such irregularities.
3. Where a submitter has been given notice of a specified time period to correct an irregularity, the submitter shall be deemed to be in default of the process and, where applicable, the bid deposit shall be forfeited if the correction is not made. The submission will be given no further consideration for award.
4. This Bid Irregularity List shall apply where the irregularity is with respect to a stated requirement of a Formal Call for Bid (RFQ, RFP and RFT) or Information Gathering Bid (RFEOI, RFI, RFSQ) and where the submission must be received on/before a specified date and time.

### Bid Irregularities

ITEM	IRREGULARITY	ACTION Paper Bid	ACTION Electronic Bid
1	Late submissions	Automatic rejection	Automatic rejection
2	Failure to attend mandatory site visit	Automatic rejection	Automatic rejection
3	Partial Submissions (all items not in bid)	Acceptable only if Bid document allows for partial items to be bid on, otherwise it is an automatic rejection	Acceptable only if Bid document allows for partial items to be bid on, otherwise it is an automatic rejection
4	Multiple bids from the same Bidder, not identified as alternative or optional Bids and not subsequently the subject of withdrawal notices	Bid bearing the most recent date/time stamp considered the intended submission, and older Bids considered withdrawn and to be returned to Bidder	N/A
5	Conditional submissions (e.g. Submissions qualified based on a Bidder's Proponents condition or restricted by an appended statement)	Rejection unless, in the opinion of the Bid Review Committee, the qualification or restriction is minor and would not adversely affect an award decision and/or total price	Rejection unless, in the opinion of the Bid Review Committee, the qualification or restriction is minor and would not adversely affect an award decision and/or total price
6	Submissions containing minor obvious clerical errors that do not result in any ambiguity with respect to the overall submission and/or award decision	Two (2) business days to correct and initial errors	Two (2) business days to correct and initial errors
7	Submitter has not been previously qualified under a related pre-qualification process, where applicable	Automatic rejection	Automatic rejection
8	Bid submitted in non-original format	Automatic rejection	Automatic rejection
9	All mandatory sections of the document are not completed	Automatic rejection	Automatic rejection
10	Bid completed in pencil or any other erasable/modifiable medium	Automatic rejection	Automatic rejection
11	Bid Form not signed, electronic signature missing or authority to bind missing	Automatic rejection	Automatic rejection
12	Failure to acknowledge addendum(s)	Automatic rejection	Automatic rejection
13	Incomplete, illegible or obscure submissions or submissions which contain additions not called for, erasures, alterations, strike-out errors or irregularities of any kind that are immaterial	Two (2) business days to rectify if deemed immaterial by the Bid Review Committee	Two (2) business days to rectify if deemed immaterial by the Bid Review Committee
14	Submissions not in English	Automatic rejection	Automatic rejection
15	Submissions received on Call for Bid documents	Automatic rejection	Automatic rejection

	other than those provided by the Town		
16	Alternate items provided in whole or in part	Automatic rejection unless Bid solicitation document permits alternative Bid	N/A
17	Pages requiring completion of information by Bidder/Proponent are missing and/or uploaded incorrectly	Automatic rejection	Automatic rejection
18	Bid Deposit (Bid Bond) not submitted/uploaded accurately with submission	Automatic rejection	Automatic rejection
19	Bid Deposit (Bid Bond) not in the acceptable form	Automatic rejection	Automatic rejection
20	Town is unable to verify authenticity of Bid Deposit (Bid Bond/Digital Bond)	Automatic rejection	Automatic rejection
21	Amount of Bid Deposit (Bid Bond) is incorrect and/or insufficient	Two (2) business days to rectify	Two (2) business days to rectify
22	Surety provided and/or Bidder's/Proponent's authorized signature missing for the Bid Bond	Two (2) business days to rectify	Two (2) business days to rectify
23	Effective period of Bid Bond is less than the irrevocable period stipulated in the Call for Bid document	Two (2) business days to rectify	Two (2) business days to rectify
24	Agreement to bond with the Town not submitted with submission or uploaded incorrectly	Automatic rejection	Automatic rejection
25	Agreement to bond amount is incorrect and/or insufficient	Two (2) business days to rectify	Two (2) business days to rectify
26	Surety provider and/or Bidder's/Proponent's authorized signature missing from Agreement to Bond	Two (2) business days to rectify	Two (2) business days to rectify
27	Failure to include the Schedule (s) of Items & Prices, Price Form, Unit Pricing, Lump Sum Pricing or Price Details, as may be applicable, for inclusion with the submission	Automatic rejection	Automatic rejection
28	Conditions placed by the Bidder/Proponent on the Total Contract Price	Automatic rejection	Automatic rejection
29	Pricing appears to be unbalanced to the extent that it would have a significant adverse effect to the Town if awarded	Automatic rejection	Automatic rejection
30	Failure to execute required bonding or financial security within the prescribed time period	Automatic rejection and Bid Deposit forfeited	Automatic rejection and Bid Deposit forfeited
31	Failure to execute a Contract Agreement within the prescribed time period	Rejection and Bid Deposit forfeited	Rejection and Bid Deposit forfeited
32	Failure to provide supporting documents, as specified within the bid document and within the prescribed time period	Automatic rejection and Bid Deposit forfeited	Automatic rejection and Bid Deposit forfeited

## SCHEDULE D Procurement Approval Authority

Sufficient Funding has been Approved		
Goods, Non-Consulting Services & Construction:	Threshold *	Approval Authority
• Non-Competitive	\$0 - \$10,000	Department Manager
• Invitational (Informal)	\$10,001 – \$50,000	Department Director or Designate
• Open Competition – Request for Proposal/Tender	\$50,001 - \$100,000	Treasurer or Designate
• Open Competition – Request for Proposal/Tender	\$100,001 +	CAO

Consulting Services:		
• Invitational (Informal)	\$0 - \$50,000	Department Director or Designate
• Invitational (Informal)	\$50,001 - \$75,000	Treasurer or Designate
• Open Competition	\$75,001 +	CAO

Exempt and Non-Standard Procurement (Emergency, Single or Sole Source):		
• Non-Competitive	\$0 - \$10,000	Department Manager, Director and Treasurer
• Non-Competitive or Invitational (3 written quotes)	\$10,001 - \$50,000	Department Director and Treasurer
• Non-Competitive or Invitational (3 written quotes)	\$50,001 +	Treasurer

Change Orders:		
• Does not exceed approved budget	\$0 - \$10,000	Department Manager, or Director
• Does not exceed approved budget	\$10,001 - \$50,000	Department Director or Designate
• Exceeds approved budget	\$0 - \$50,000	Treasurer
• Exceeds approved budget	\$50,001 +	Council

Council Approval Required		
Goods, Services or Construction for Which:	Threshold*	Approval Authority
• Statue prescribes Council approval	all	Council
• Exemption from any or all procurement methods	All	Council
• Budget has not been approved	All	Council
• Increased Funding from a Reserve Fund is required	all	Council
• Change Orders exceed specified threshold limits	\$50,001 +	Council

\*Threshold limits:

- Include the unrecoverable portion of the HST and represent the value of the annual contract or entire multi-year contract.

## SCHEDULE E

### Alternative Dispute Resolution – Procurement Protest Protocol

#### 1. Purpose

The purpose of this protocol is to set out a process for the suppliers to formally challenge the Town's procurement process. This protocol should be read in conjunction with the Town's By-law and the Procurement Procedures.

#### 2. Scope of the Procurement Protest Process

A supplier may follow the procurement protest process to challenge either a Competitive Process or a Non Standard Procurement. Where the supplier is a bidder that is challenging a Competitive Process, the supplier must request and attend a debriefing prior to engaging in the procurement protest process.

The procurement protest process set out in this protocol is meant to provide an opportunity for suppliers to voice complaints and to assist the Town in identifying any gaps or opportunities for improvements in its procurement policies and practices. The procurement protest process is not intended to resolve fundamental disputes over facts or legal rights and obligations or to establish a mechanism to adjudicate such disputes. However, it is intended to help resolve issues that involve no significant factual or interpretive disagreement between the parties.

The procurement protest process set out in this protocol shall not be used to challenge a procurement process in respect of which the supplier has commenced legal proceedings against the Town.

#### 3. Procurement Protest Process

- i. A supplier that wishes to challenge a procurement process must do so by submitting a request for review in writing within sixty (60) days from notification of the outcome of the procurement process. Requests for review will not be addressed under this protocol until after the Town has publicly posted or otherwise provided formal notification of the outcome of the procurement process
- ii. A request for review of a procurement process must be directed to the Finance Department to the attention of the Procurement Coordinator and must contain the following:
  - A clear statement as to which procurement the supplier wishes to challenge;
  - A clear explanation of the supplier's concerns with the procurement, including specifics as to why they disagree with the procurement process or its outcome; and
  - The supplier's contact detail, including name, telephone number and email address.



- iii. Once a supplier's request for a review has been received by the Procurement Coordinator, it shall be initially reviewed by the Department responsible for initiating the procurement.
- iv. The Procurement Coordinator must coordinate with the Department to send an acknowledgement of receipt of the supplier's concerns within five (5) business days of receipt of the supplier's request for review. This correspondence must also set out a date by which the Town anticipates contacting the supplier with a response to its procurement protest. This date must be within twenty (20) business days of receipt of the supplier's concerns.
- v. The Department shall prepare an internal memo outlining the background and history of the procurement at issue.
- vi. Once finalized, the memorandum, together with the supplier's correspondence, must be submitted to the Bid Review Committee (the "BRC"). The BRC is established in accordance with the Town's Procurement Bylaw.
- vii. The BRC must convene a meeting and, as a group, review the correspondence outlining the supplier's concerns, together with the internal memorandum setting out details of the procurement. The Town solicitor should serve as an adviser to the BRC.
- viii. Upon review of the materials and, if applicable, the supplier's presentation, the BRC has two options:
  - If the BRC is satisfied that the supplier's rationale for requesting a review of a Procurement Project does not have merit and that the Town proceeded in accordance with its Procurement Bylaw and Procurement Procedures and acted in an open, fair and transparent manner that reflects its values as a public institution, then the BRC will instruct the Treasurer to write to the supplier and indicate that the BRC has reviewed its concerns and that the BRC is of the opinion that the procurement process was conducted properly; or
  - If the BRC finds that the supplier's concerns in respect of the procurement process have merit, then they will instruct the Treasurer to write to the supplier setting out the BRC's response including any changes that will be made to the Town's policies and practices to help prevent similar issues arising in future procurement processes. In this case, Town solicitor should be consulted in the preparation of the response and the response should be provided on a "without prejudice" basis.
- ix. If the supplier is not satisfied with the response of the BRC, the supplier may, at that point, consider its other options, including pursuit of any other existing avenues under the applicable trade agreements and/or governing laws.

## **SCHEDULE F**

### **Alternative Dispute Resolution – Contract Dispute Protocol**

#### **1. Purpose**

The purpose of this protocol is to set out a process for the Town and its Suppliers/Vendors to follow when there is a contract dispute.

#### **2. Scope of the Contract Dispute Process**

The contract dispute protocol process provides an opportunity for the Town and its Suppliers/Vendors to remedy any contract dispute in an expedient manner. The process is intended to help resolve issues that involve no significant factual or interpretive disagreement between the parties. It is not intended to resolve fundamental disputes over facts or legal rights and obligations or to establish a mechanism to adjudicate such disputes. The process provided for in this protocol is separate and distinct from any dispute resolution processes that may be provided for under applicable trade agreements. If a proponent wishes to dispute a matter or bring a complaint under an applicable trade agreement, the proponent must follow the process set out in the trade agreement, which may differ from the process set out in this protocol.

#### **3. Restrictions**

The progress of any project shall not be delayed by a request for use of the ADR Bid Dispute Process, unless recommended by the Procurement Coordinator, Town's Solicitor, Manager of the respective department and the CAO.

#### **4. Contract Dispute Review Committee**

The Town will establish a Contract Dispute Review Committee (the "CDRC") for the purpose of making determinations under this protocol. The CDRC will consist of the Procurement Coordinator, Town's solicitor, Manger of the respective department (or designate) and the Chief Administrative Officer (CAO).

#### **5. Contract Dispute Protocol Process**

5.1 The department manager and/or contract administrator shall contact and verbally attempt to resolve the dispute by working directly with the Supplier's/Vendor's lead contract administrator or if applicable, on-site supervisor.

5.2 The department manager and/or contract administrator shall issue a Town prescribed performance report to the Supplier/Vendor outlining the contract dispute issue(s) not resolved in the previous step and the Supplier/Vendor shall fill out the Supplier/Vendor section of the report and supply it back to the department manager and/or contract administrator outlining their response to the dispute issue(s) and proposed corrective action plan within ten (10) days of the report being sent. The department manager and/or contract administrator will review, approve (if acceptable) or work to agree on an

appropriate corrective action plan within ten (10) days of the report being provided back to from the Supplier/Vendor and monitor the compliance of the Supplier/Vendor to the agreed upon corrective action plan. A copy of the completed report shall be issued to Procurement for record.

5.3 Should the previous step not be successful, the department manager and/or contract administrator shall in writing within ten (10) days of the failed previous step, request a written explanation from the Supplier/Vendor for the non-compliance to the approved corrective action plan with a deadline to supply such back within ten (10) days of the written communication being sent.

5.4 Should the previous step not result in receipt of an excusable explanation of which shall be determined at the sole discretion of the department manager and/or contract administrator, or a failure to receive a written explanation, then a formal meeting may be requested from the Town within ten (10) days of the deadline to submit such written explanation. At the point that the request for the meeting is made, the Town's department manager and/or contract administrator and Supplier/Vendor shall both provide a written summary of their position for the CDRC to review. Within fourteen (14) days of the request, or such later date as may be mutually agreed upon, the meeting will take place between the Supplier/Vendor and the CDRC.

5.5 Following the meeting between the Supplier/Vendor and the CDRC, the CDRC will make a determination in respect of the contract dispute and issue a response to the Supplier/Vendor as follows:

- (a) If the CDRC finds that the Supplier's/Vendor's position in respect of the dispute does not have merit, then it will issue a response to the Supplier/Vendor indicating that the CDRC has reviewed its position and provide reasons for its determination; or
- (b) If the CDRC finds that the Supplier's/Vendor's concerns in respect of the contract dispute have merit, then it will further determine the appropriate resolution to the matter. In making its determination, the CDRC may consider any factors it considers relevant.

5.6 The determination of the CDRC is the final determination under the Contract Dispute Protocol process. If the Supplier/Vendor is not satisfied with the response of the CDRC, the Supplier/Vendor may consider its other options, including pursuit of any other existing avenues under applicable trade agreements and/or governing laws.