

The Corporation of the Municipality of Brockton



By-Law 2021-005

Being a By-Law to Adopt a New Purchasing and Procurement Policy for the Municipality of Brockton.

Whereas The Council for The Corporation of the Municipality of Brockton deems it expedient to establish policies;

And Whereas the *Municipal Act 2001, S.O. 2001, c 25, Section 5(3)*, as amended provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9, shall be exercised by by-law;

And Whereas the Municipality of Brockton received Municipal Modernization Funding from the Province of Ontario, and retained a third party consultant, LXM Law LLP, to review and make recommendations regarding the Municipality's purchasing and procurement;

And Whereas LXM Law LLP has completed a new Purchasing and Procurement Policy for the Municipality of Brockton as part of their Procurement Policy and Procedures Review Final Report;

And Whereas the Municipality of Brockton wishes to adopt a new Purchasing and Procurement Policy to provide Municipality staff, Council, suppliers and the public with a clear understanding of accountabilities, responsibilities and the Municipality's rules governing its procurement and contracting activities;

Now Therefore the Council of The Corporation of the Municipality of Brockton enacts as follows:

- 1.0 That The Corporation of the Municipality of Brockton Council hereby adopts a new Purchasing and Procurement Policy as contained in the attached Schedule "A" to this By-Law.
- 2.0 That this By-Law shall apply to the Corporation of the Municipality of Brockton including any Boards and Committees operating under the authority and jurisdiction of the Municipality.
- 3.0 This By-Law shall come into full force and effect on April 1, 2021.
- 4.0 That By-Law 2014-047 and Policy F17-0520-11 be hereby rescinded effective April 1, 2021.
- 5.0 This By-Law may be cited as the "Adopt Purchasing and Procurement Policy By-Law".

Read, Enacted, Signed and Sealed this 12th day of January, 2021.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

Department:	All Departments	Policy Number:	F17-0500-21
Section:	All Departments	Effective Date:	April 1, 2021
Subject:	Purchasing / Procurement	Revised Date:	
Authority:	By-Law 2021-005		

1. Purpose

- 1.1. The purpose of this policy is to provide Municipality staff, Council, suppliers and the public with a clear understanding of accountabilities, responsibilities and the Municipality's rules governing its procurement and contracting activities.

2. Goals

- 2.1. The goals of the Purchasing and Procurement Policy are to:

- (a) promote openness, honesty, fairness, integrity, accountability, and transparency in the procurement process;
- (b) encourage competition in the procurement process;
- (c) prevent conflicts of interest – real, apparent, and potential – between suppliers and elected officials and staff;
- (d) ensure that goods and services are acquired at the best value for money;
- (e) require that suppliers are treated equitably, consistently, and without discrimination throughout the entire procurement process;
- (f) clearly identify the roles, responsibilities, and accountability of individuals involved in the procurement process;
- (g) instill confidence in the public and in participants in the procurement process; and
- (h) ensure compliance with the Trade Agreements and applicable laws, including without limitation the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 and the *Accessibility for Ontarians with Disabilities Act*, 2005 and the *Discriminatory Business Practices Act*, R.S.O. 1990, c. D.12.

3. **Legislative Authority**

- 3.1. The *Municipal Act*, 2001, S.O. 2001, c.25, Section 270(1)(3) states that a municipality shall adopt and maintain policies with respect to its procurement of goods and services.

4. **Definitions**

- 4.1. Words and phrases used in this policy and related procedures have the following meanings, unless expressly stated otherwise:

“Advertised Competitive Process” means a RFX process where the Municipality publicly advertises an invitation to suppliers to submit a Bid on the Municipality’s designated tendering website.

“Approval Authority” means the position at the Municipality that is authorized to approve expenditures, procurement strategies, procurement documents or contract awards.

“Bid” means a proposal, tender or other form of supplier submission responding to a RFX.

“Bidder” means a supplier that submits a Bid.

“Buying Group” means a cooperative arrangement in which individual members administer the procurement function for specific Goods or Services for the group and includes a buying group entity where the entity administers procurement for its members and provincial/territorial and federal governments when establishing standing arrangements open to municipalities.

“CAO” means the Chief Administrative Officer for the Municipality.

“CFO” means the Chief Financial Officer of the Municipality.

“Clerk” means the clerk of the Municipality.

“Contract” means a written agreement between the Municipality and a supplier for the purchase of Goods or Services by any contractual means, including purchase, lease, and rental, with or without an option to buy. (*CFTA, CETA*) For greater certainty, Contract includes a PO that incorporates terms and conditions.

“Contract Value” means the estimated expenditures under a Contract over the entire period of the Contract, including options and renewal periods, exclusive of taxes. (*CFTA, CETA*)

“Contractor” means a supplier that is a party to a contract for the supply of Goods

or Services to the Municipality.

“Council” means the Council of the Municipality of Brockton.

“Department Head” means the head of a department operating within the Municipality.

“Emergency” has the meaning assigned in Section 17.2(i).

“Excluded Contract” means a contract for Goods, Services or expenditures that are not subject to competitive procurement rules or the Trade Agreements, listed in Schedule A to this policy.

“Goods” includes supplies, equipment, materials, products, software, furniture, structures and fixtures to be delivered, installed or constructed.

“Invitational Competitive Process” means a RFX process where the Municipality invites preselected suppliers to submit a Bid without advertisement.

“Municipality” means the Corporation of the Municipality of Brockton.

“Non-Competitive Purchase” means a procurement strategy involving the purchase of a Good or Service directly from a supplier without a competitive process.

“Petty Cash” means an accessible store of money kept by the Municipality for expenditure on low dollar value items.

“Procurement Card” means a credit card or purchasing card provided by the Municipality’s Finance Division to staff for use in the procurement of low dollar value Goods and Services for the Municipality.

“Procurement Strategy” means the planned approach to a procurement, including whether to adopt an Invitational Competitive Process or Advertised Competitive Process, the procurement method to be used, and the Contract structure such as length of the term and whether a blanket order approach will be used.

“Purchase Order” or **“PO”** means a purchase order number, or a purchase order document, issued by the Municipality that confirms the Municipality’s commitment to procure a specific quantity of Goods or Services from a supplier or Contractor.

“RFX” means a competitive process inviting suppliers to submit Bids in connection with the potential purchase of Goods or Services by the Municipality and, for purposes of this policy, excludes requests for information.

“Services” means all services, including construction services, unless otherwise specified.

“Trade Agreements” means the Canadian Free Trade Agreement (CFTA), the

Canadian and European Union Comprehensive Economic and Trade Agreement (CETA), and the Trade and Cooperation Agreement Between Ontario and Quebec (OQTCA), as applicable.

- 4.2. Provisions denoted by a reference to one or more Trade Agreements (CFTA, CETA or OQTCA) reflect a requirement in the applicable Trade Agreement.

5. Accountabilities and Responsibilities

- 5.1. **General Responsibilities.** Any person authorized to purchase Goods and Services on behalf of the Municipality must comply with this policy and related procedures.

5.2. Council's Role and Authority.

- (a) Council's role is to approve the budget and approve staff recommendations to award Contracts. Before accepting staff recommendations to award a Contract, Council must be satisfied that the procurement process was fair, honest, impartial, and equitable and otherwise meets the requirements of this policy.
- (b) Council has the ultimate authority for this policy and shall approve amendments to this policy.

- 5.3. **CAO Responsibilities and Authority.** The CAO is accountable for the proper administration and compliance with this policy within the Municipality. The CAO may either approve or sign documents in place of lower-level staff, or override the decisions made by lower-level Approval Authorities, if necessary.

- 5.4. **CFO Responsibilities and Authority.** The CFO is responsible for the development of procedures consistent with this policy and shall assist Department Heads, as appropriate, in the interpretation of this policy and related procedures.

- 5.5. **Clerk Responsibilities and Authority.** In the absence of the CAO or CFO, or where the CAO or CFO are unable to exercise their approval or signing authorities for any reason such as a conflict of interest, the Clerk is authorized to exercise the approval and signature authorities of the CAO or CFO set out in this policy.

- 5.6. **Department Head Responsibilities and Authority.** Department Heads shall:

- (a) Subject to the requirements of this policy, be authorized to make expenditures on behalf of the Municipality;

- (b) Be accountable for, and oversee, all expenditures, procurement and contract management activities within their department service areas and ensure compliance with this policy and related procedures;
- (c) Make required reports to the CFO, CAO, Council or any other party regarding their activities or compliance with this policy and related procedures; and
- (d) Retain all background information, information submitted by suppliers, Purchase Orders and other relevant information involved in obtaining prices for Goods or Services exceeding \$25,000.00 as per the retention schedules in place at that time and for a period not less than three (3) years.

6. Prohibitions.

6.1. In carrying out procurement and contracting activities, staff and other persons undertaking procurements on behalf of the Municipality must not:

- (a) circumvent the requirements of this policy including, but not limited to, biasing specifications or scheduling events to prevent suppliers from meeting requirements; or
- (b) divide purchases to avoid the requirements of the policy by any method; or
- (c) purchase any Goods or Services through Contracts for personal use by or on behalf of any member of Council, employees of the Municipality and their immediate families; or
- (d) Provide information to one supplier to give that supplier an advantage over other suppliers (*CFTA*, *CETA*, *OQTCA*).
- (e) For procurements with a Dollar Value of \$100,000 or more, the following are strictly prohibited, unless otherwise approved by the CAO (*CFTA*):
 - i. Imposing a condition that, in order for a supplier to participate in the procurement, the supplier must have previously been awarded one or more contracts by the Municipality; or
 - ii. Requiring prior experience where it is not essential to the procurement; or
 - iii. Favouring Goods or Services of a province or region; or
 - iv. Favouring suppliers of Goods or Services of a province or region.
- (f) For procurements with a Dollar Value of \$365,000 or more, the following are strictly prohibited, unless otherwise approved by the CAO (*CETA*):
 - i. Favouring Goods or Services of Canada over those of the European Union; or

- ii. Favours suppliers of Canada over those of the European Union.

7. Failure to Abide by the Policy.

- 7.1. Any person who fails to act in accordance with the provisions of the policy may be subject to disciplinary action up to and including, for employees, termination of employment.

8. Delegation of Authorities

8.1. Expenditure Authorization.

- (a) The CAO and each Department Head is delegated the authority to expend Municipal funds through Council's approval of budgets or by specific Council resolutions. Regardless of any such approval, all authorized expenditures must be made in accordance with the requirements of this policy, which may include the requirement for additional approvals.
- (b) No staff or other person is authorized to expend any funds for the purchase of Goods or Services until the applicable budget or specific expenditure is approved by Council, except for:
 - i. An Emergency, in which case the Department Head must report such purchase to Council as soon as possible; or
 - ii. Payment of invoices in connection with Goods or Services required to maintain the Municipality's services and day-to-day operations between budget approvals cycles, including the payment of accounts or previously approved capital items and projects.

8.2. Procurement and Contracting Authorization.

- (a) The inclusion of an item in a Department Head's approved operating or capital budget confers to the Department Head the authority to initiate procurements for the Goods and Services relating to such item.
- (b) Procurement and Contract approval thresholds are based on the Contract Value and not the approved budget. The "Contract Value" is the estimated total expenditures under a Contract over the entire period of the Contract, including options and renewal periods, exclusive of taxes. (*CFTA, CETA*)
- (c) Subject to obtaining procurement and Contract approvals as set out below, the Department Head may spend up to the Council-approved budget amounts in any given year on the items in their approved budget.

- (d) The following approvals must be obtained by Department Heads when conducting procurement process for Goods or Services:

COMPETITIVE PROCUREMENT APPROVALS

	Approval Authority			
Contract Value (incl. potential renewals)	Procurement Strategy Approval	Approval of RFx Document prior to release or publication (as applicable)	Approval to award Contract	Council Approval
Over \$10,000 up to \$25,000	Department Head	Department Head	CFO	No
Over \$25,000 up to \$50,000	CFO	Department Head and CFO, jointly	CFO	No (Information report to be provided at next Council meeting)
Over \$50,000 up to \$75,000	CFO	Department Head and CFO, jointly	CAO	No (Information report to be provided at next Council meeting)
Over \$75,000	CAO	Department Head and CAO, jointly	Council	Yes Council approval required

NON-COMPETITIVE PROCUREMENT APPROVALS (EXEMPTIONS)

Contract Value (incl. potential renewals)	Approval Authority (Approval to proceed with Non-Competitive Purchase)	Council Approval
Up to \$10,000	Department Head	No
Over \$10,000 up to 25,000	CAO subject to receipt of written justification from Department Head	No
Over \$25,000	Council subject to receipt of written justification and joint recommendation of CAO and Department Head	Yes Council approval required, except for an Emergency in which case an information report to be made as soon as possible.

- (e) **Information Report to Council for > \$25,000 Procurements.** At each regular Council meeting, for information purposes, the CFO shall submit a status report to Council on all procurements valued at \$25,000 or higher undertaken or awarded since the previous Council meeting, as noted on the above table.
- (f) **Special Council Approvals.** Regardless of the Contract Value, Council approvals are required where:
- i. the approved funding is insufficient for the Contract award;
 - ii. staff does not recommend awarding the contract to the lowest compliant or highest ranked Bid that has met the requirements of the RFx;
 - iii. Council approval is mandated by statute;
 - iv. the CAO recommends Council approval; or
 - v. the term of the Contract exceeds 5 years.

9. PO and Contract Signing Authorization.

- 9.1. All purchases shall require the issuance of a PO or signature of a Contract, unless otherwise approved by the CAO.

- 9.2. Department Heads are authorized to sign Contracts using Brockton's unamended standard terms and conditions or standard Purchase Orders, for the purchase of Goods and Services under \$25,000.
- 9.3. For all other Contracts, there shall be two (2) signatures of any of the positions listed in Section 9.4 on all Contracts and contract amendments.
- 9.4. The Mayor, Clerk, CAO, CFO are authorized to sign approved contracts and all related approved contract documents on behalf of the Municipality, including an amendment or renewal.

10. Contract Amendment / Early Termination Authorization.

- 10.1. Amendments to Add Goods or Services. Contracts may be amended to add Goods or Services, or to increase the Contract Value, without a further competitive process provided: (a) it is within the approved budget for the items and amount; and (b) the Contract includes an option to add the specific Goods or Services. If the Contract does not include an option to add the specific Goods or Services, the non-competitive amendment for additional Goods and Services must fall within an acceptable exemption from a competitive procurement as set out in Article 17 (Non-Competitive Procurement).
- 10.2. Amendments to Council-Approved Contracts. Regardless of the availability of approved budget funds, if the aggregate dollar value of amendments to a Council-approved Contract increases the Contract Value by the greater of \$10,000 or 15% of the last Council approved Contract Value, a new Council approval for such amendment must be sought prior to signing such Contract amendment.
- 10.3. Approval to Terminate Contracts Prior to Expiration. Contracts may only be terminated early with the CAO's approval. Council approval must be obtained prior to the early termination of a Council-approved Contract.

11. Invoice Payment Authorization.

- 11.1. All invoices from Contractors shall be verified and approved for payment by the applicable Department Head prior to payment.
- 11.2. By approving an invoice, the Department Head is confirming the Goods or Services have been received and conformed with the requirements of the Contract or PO.
- 11.3. Prior to releasing payment, the Finance Division shall review invoices for clerical accuracy, budgetary or specific resolution approval.

- 11.4. The CFO may only authorize payment of invoices which have been verified and approved in accordance with this policy.

12. Permitted Procurement Methods

- 12.1. The following are the procurement strategies and vehicles that may be used when procuring Goods or Services:

Contract Value (incl. potential renewals)	Procurement Strategy	Permitted Procurement Vehicle
Up to \$10,000	Non-Competitive Purchase Optional: Invitational Competitive Process (minimum 2 quotes)	Procurement Card Purchase Order Petty Cash RFQ-I Optional: RFQ-F
Over \$10,000 to \$25,000	Invitational Competitive Process (minimum 2 quotes)	RFQ-I (recommended) Optional: RFQ-F, RFP, RFT
Over \$25,000 to \$75,000	Invitational Competitive Process (minimum 3 quotes) Optional: Advertised Competitive Process	RFQ-F (recommended) Optional: RFP, RFT
Over \$75,000	Advertised Competitive Process	RFP, RFT

NON-COMPETITIVE PURCHASES		
Up to \$10,000	Negotiation	Petty Cash, Procurement Card, Purchase Order
Over \$10,000 to \$25,000	Negotiation	Purchase Order (with or without incorporated terms and conditions).
Over \$25,000	Negotiation	Contract (preferred), includes a Purchase Order that incorporates terms and conditions.

12.2. Up to \$10,000: Procurement Card/PO/Petty Cash

- (a) A Procurement Card, Purchase Order, or Petty Cash may be used for requirements with a Contract Value up to \$10,000.
- (b) A competitive process is optional for requirements with a Contract Value up to \$10,000. However, comparing prices for the Good or Services, and obtaining competitive price quotes from qualified suppliers is considered a good business practice and should be done before selecting a supplier, Good or Service, wherever possible.
- (c) Department Heads should be prepared to justify a Non-Competitive Purchase up to \$10,000.

12.3. Over \$10,000 up to \$25,000: Informal Request for Quotations (RFQ-I)

- (a) For procurements over \$10,000 up to \$25,000, the Department Head may use an informal Request for Quotations which consists of an informal verbal or written request for pricing from suppliers. Quotes should be obtained from a minimum of two (2) qualified suppliers.

12.4. Over \$25,000 up to \$75,000: Formal Request for Quotations (RFQ-F)

- (a) For procurements over \$25,000 up to \$75,000, the Department Head may use a formal Request for Quotations using the Municipality's approved RFQ-F template. The RFQ-F may be conducted by way of an Invitational Competitive Process or by Advertised Competitive Process at the discretion of the Department Head, with the CFO's approval.
- (b) The Invitational Competitive Process must invite a minimum three (3) qualified suppliers to submit Bids. Department Heads are encouraged to invite more than three (3) suppliers to ensure a more competitive process.

12.5. Over \$75,000: Request for Tenders (RFT) or Request for Proposals (RFP)

- (a) For procurements over \$75,000, the Department Head may use a formal Request for Tenders (RFT) or Request for Proposals (RFP) method using the Municipality's approved template.
- (b) An RFT is appropriate when the Municipality is seeking the lowest cost Bid and the specifications for Goods or Services is sufficiently detailed so as to allow a Bidder to compete for the Contract based on price alone.
- (c) The RFP is the preferred method of procurement where: (a) the Municipality is looking for the best value proposal and the decision on which preferred supplier, Goods or Services to select is not based solely on the lowest price;

(b) the specifications are not so detailed as to allow for an evaluation of the Goods or Services on price alone.

12.6. Blanket Orders

- (a) Department Heads may use an RFP or RFT process to establish blanket orders with one or more Contractors using the Municipality's approved template. A blanket order is the preferred method of procurement where the Municipality anticipates it will have a recurring need for specific Goods or Services but is unable to commit to specific quantities in advance.
- (b) Department Heads may issue individual Purchase Orders against the blanket order for amounts not exceeding \$25,000 without requiring additional procurement approvals. Individual purchases over \$25,000 against standing arrangements must be approved by the CFO.

12.7. Vendors of Record (VOR) Lists

- (a) Department Heads may establish lists of prequalified suppliers, also called a VOR list, for purposes of future purchases of specific Goods or Services by publishing, on the Municipality's designated tendering website, a request for prequalification (RFPQ) using the Municipality's approved template.
- (b) Once a VOR list is established, purchases may be made by Invitational Competitive Process from the prequalified suppliers on such lists without undertaking an Advertised Competitive Process unless the Contract Value is estimated to exceed \$365,000. (*CETA*)
- (c) Unless the VOR always remains open to new suppliers, a VOR must be refreshed every 3 years (*CFTA*, *CETA*).

13. Local Considerations

- 13.1. Department Heads are encouraged, where possible, to include one or more qualified suppliers that are residents of, or operate out of, the Municipality when selecting suppliers to submit Bids as part of an Invitational Competitive Process.
- 13.2. This effort is not intended to give preference in making an award but is to provide Municipality suppliers a chance to participate in the Municipality's procurement opportunities.

14. Advertisement

- 14.1. All Advertised Competitive Processes shall be advertised by way of tender notice published on the tendering website designated by the Municipality for this purpose. (*CETA*, *CFTA*)

- 14.2. Tender notices may also be published on the Municipality's website and, where deemed appropriate by the Department Head, in newspapers circulated in the Municipality.

15. Publication of Tender Amounts and Confidentiality of Bidder Information

- 15.1. Promptly following the opening of Bids, the Municipality shall publish, on the Municipality's tendering website, a summary of Bid amounts submitted in response to RFT's.
- 15.2. Bid amounts submitted in responses to RFPs shall not be published in order to preserve the integrity of the Bid evaluation process.
- 15.3. Except as required by this policy, no person shall make public the prices paid by, or quoted to, the Municipality for Goods or Services unless permitted by law or unless Council otherwise directs or approves.

16. Exceptional Circumstances in Bidding Process

- 16.1. **No Compliant Bids Received.** When no compliant Bids are received in response to a RFx, Bidders shall be notified, and the RFx shall be declared terminated. Where time permits, in the opinion of the Department Head, the RFx shall be re-issued with the appropriate revisions. Where time does not permit, the Department Head may communicate to each Bidder who previously submitted a Bid, identify the deficiencies that resulted in their Bid being deemed non-compliant and provide Bidders that previously submitted Bids the opportunity to submit a new Bid.
- 16.2. **Two or More Bids Are Equal.** If two or more Bids are tied for the best score, the Bid with the lowest price shall be selected as the successful Bid. Where everything is equal, including price, and the RFx document permits asking for best and final offers, best and final offers will be solicited from each of these suppliers in order to break the tie. If the RFx does not allow for best and final offers or this effort is unsuccessful, then a draw will be held to determine the successful supplier.
- 16.3. **One Compliant Bid Received.** Where only one Bid has been received, the Department Head may, if permitted by the terms of the RFx, notify the Bidder that the process is terminated and, after termination of the process, proceed to negotiate with the Bidder, provided that negotiated changes must not alter the general nature of the Goods or Services specifications.
- 16.4. **Successful Bid Over Budget.** Where the successful Bid is in excess of budgeted funds, the Department Head may seek Council's approval to increase the budget or may terminate and issue a new RFx with a modified specification.

17. Non-Competitive Procurement (Exemptions)

- 17.1. A competitive procurement process should be used for procurements unless the conditions are met for a Non-Competitive Purchase.
- 17.2. All Non-Competitive Contracts exceeding \$10,000 must be approved by Council prior to award, unless resulting from an Emergency.
- 17.3. **Exemptions.** The Municipality may procure Goods or Services by way of Non-Competitive Purchase based on one of the following exemptions (each an "Exemption"):
 - (a) **No Compliant Bids Received:** If (i) no Bids were submitted or no suppliers requested participation; (ii) no Bids that conform to the essential requirements of the RFx documentation were submitted; (iii) no suppliers satisfied the conditions for participation; or (iv) the submitted tenders were collusive, provided that the requirements of the tender documentation are not substantially modified; (*OQTCA, CFTA, CETA*)
 - (b) **Only One Supplier:** if the Goods or Services can be supplied only by a particular supplier and no reasonable alternative or substitute Goods or Services exist for any of the following reasons: (i) the requirement is for a work of art; (ii) the protection of patents, copyrights, or other exclusive rights; (iii) due to an absence of competition for technical reasons; (*OQTCA, CFTA, CETA*) (iv) the supply of Goods or Services is controlled by a supplier that is a statutory monopoly; (v) to ensure compatibility with existing Goods, or to maintain specialized Goods that must be maintained by the manufacturer of those Goods or its representative; (vi) work is to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work; (vii) work is to be performed on a leased building or related property, or portions thereof, that may be performed only by the lessor; (*CFTA*)
 - (c) **Additional Deliveries:** for additional deliveries by the original supplier of Goods or Services that were not included in the initial procurement, if a change of supplier for such additional Goods or Services: (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, Services, or installations procured under the initial procurement; and (ii) would cause significant inconvenience or substantial duplication of costs for the Municipality; (*CFTA, CETA*)
 - (d) **Commodity Market Goods:** for Goods purchased on a commodity market such as electricity, postal services, postage, water, fuel, natural gas, furnace oil; (*OQTCA, CFTA, CETA*)

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- (e) **Prototypes:** if the Municipality procures a prototype or a first Good or Service that is developed in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first Good or Service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the Good or Service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs; (*OQTCA, CFTA, CETA*)
- (f) **Exceptionally Advantageous Conditions – Unusual Disposals:** for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers; (*OQTCA, CFTA, CETA*)
- (g) **Winner of Design Contest:** if a contract is awarded to a winner of a design contest provided that: (i) the contest has been organized in a manner that is consistent with this policy, in particular relating to the publication of a tender notice; and (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner; (*OQTCA, CFTA, CETA*)
- (h) **Confidential or Privileged Goods or Services:** if Goods or Services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest; (*CFTA*)
- (i) **Emergency:** if strictly necessary, and for reasons of urgency brought about by events unforeseeable by the Municipality, the Goods or Services could not be obtained in time using an open competitive process. An “Emergency” is an exceptional situation that could include:
- i. An imminent or actual danger to the life, health, or safety of any person;
 - ii. An imminent or actual danger of injury to or destruction of real or personal property;
 - iii. An imminent or actual unexpected interruption of a public service essential to the community;

- iv. An emergency as defined by the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 and the emergency plan formulated thereunder by the Municipality; and
- v. An imminent or actual spill of a pollutant as contemplated by Part X (Spills) of the *Environmental Protection Act*.

18. Contract Award Notice

- 18.1. Where (a) an Advertised Competitive Process was undertaken on the Municipality's designated tendering website; or (b) where a Contract with a Contract Value above \$100,000 was awarded on the basis of an Exemption, the Municipality shall publish a Contract award notice on the tendering website no later than seventy-two (72) days after the Contract award. (*CFTA, CETA*)
- 18.2. The Municipality may elect not to publish the award of Contract where the Non-Competitive Purchase was based on the Confidential or Privileged Goods or Services Exemption. (*CFTA, CETA*)

19. Contract Management

- 19.1. Department Heads are responsible for ensuring all Contract requirements are satisfied by the Contractor throughout the term, including ensuring bonds and insurance certificates, WSIB, or any specified license requirements, are received by the Municipality, as required by the Contract.

20. Bidder Debriefing

- 20.1. The Municipality shall, on request by an unsuccessful Bidder, provide a debriefing during which the Bidder will be provided the reasons why the Municipality did not select their Bid. (*CFTA, CETA, OQTCA*)

21. Bidder Complaint Resolution

- 21.1. Any supplier that wishes to challenge or is otherwise aggrieved by a procurement decision made by the Municipality, its staff or Council under this policy is required to provide a written complaint in accordance with the Municipality's *Complaints Handling Policy* within five (5) business days of the earliest of (i) the date of the supplier first became aware of the basis for a procurement complaint or (ii) date of publication of award.
- 21.2. Any complaint must be in writing and shall include the following details:
 - (a) A specific identification of the provision(s) or procedure that is alleged to have been breached;
 - (b) A specific description of each act alleged to have breached the process;
 - (c) A precise statement of the relevant facts;

- (d) An identification of the issues to be resolved;
- (e) The supplier's argument and supporting documentation; and
- (f) The supplier's requested remedy.

21.3. All complaints shall be handled as described in the Municipality's *Complaints Handling Policy*.

22. Cooperative Purchasing

22.1. The Municipality may join one or more Buying Groups with Council's approval.

22.2. Once Council has approved the Municipality's participation in a Buying Group, in the absence of an existing Municipality Contract for the specific Goods or Services, a Department Head may procure from a Buying Group contract or participate in a procurement process administered by the Buying Group without undergoing a competitive procurement process as required by this policy however approvals to award the Contract, based on Contract Value, must still be obtained prior to committing the Municipality to purchase any Goods or Services.

22.3. When participating in a Buying Group procurement or when procuring from a Buying Group contract, to the extent practicable, the Municipality shall ensure that the procurement was carried out in a manner that is consistent with the requirements of this policy. (CFTA)

22.4. The Municipality shall publish a notice of its participation with the Buying Group at least annually on the tendering website normally used by the Municipality. The notice shall direct potential suppliers to the Buying Group tendering website if it is different from the Municipality's tendering website. (CFTA)

23. Unsolicited Proposals

23.1. If an unsolicited proposal or solicitation is received from a potential supplier, the unsolicited proposal should be forwarded to the appropriate Department Head. The Department Head shall first assess such proposals on the basis of whether they align with the Municipality's strategic goals and objectives, do not circumvent the Municipality's regular procurement processes, and the proposal's scale and scope align with the requirements and funding ability of the Municipality.

23.2. Only Department Heads and higher-level officials may engage in discussions with potential suppliers on opportunities that exist in the market as part of informing themselves of market changes and opportunities. Before engaging in any such discussions, however, the supplier must always be advised that any procurement or contract can only be initiated pursuant to the Municipality's policies.

- 23.3. If it is determined that there is a legitimate need for the Goods or Services offered by way of an unsolicited proposal, then the procurement process shall be conducted in accordance with this Policy.

24. Bidder Eligibility

- 24.1. The Municipality may, subject to Council's prior approval, exclude a supplier, refuse any Bid from a supplier on grounds such as: (*CFTA, CETA*)

- (a) bankruptcy or insolvency;
- (b) false declarations;
- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract;
- (d) final judgments in respect of serious crimes or other serious offences;
- (e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier;
- (f) supplier conduct that has provided the Municipality with reasonable grounds to believe it would not be in the best interest of the Municipality, staff or the public to enter into a contract with the Bidder, including prior abusive, threatening, intimidating or harassing conduct;
- (g) being engaged in a dispute or litigation with the supplier; and
- (h) failure to pay taxes.

- 24.2. For the purposes of this Part, a reference to a supplier shall also include: an officer, a director, a majority or controlling shareholder, or a member of the supplier, if a corporation; a partner of the supplier, if a partnership; any corporation to which the supplier is an affiliate of or successor to, or an officer, a director or a majority or controlling shareholder of such corporation; and any person with whom the supplier is not at arm's length within the meaning of the *Income Tax Act* (Canada).

25. Ethics and Conflicts of Interest

Employees and others procuring on behalf of Municipality

- 25.1. Employees shall not bid on Municipality RFx processes, act as a supplier to the Municipality, or otherwise have a direct or indirect pecuniary or other interest in any Contract unless the interest has been disclosed in advance to Department

Head or higher-level official, and the execution of the applicable Contract has been approved jointly by the CAO and Clerk.

- 25.2. Anyone involved in any aspect of a procurement process for the Municipality must declare any actual, potential or apparent conflict of interest in a procurement or potential Contract promptly upon discovery of such conflict. Declarations must be made in writing to the Department Head or higher-level official and must indicate the specific nature of the conflict. In the event the Municipality agrees there is a conflict of interest that cannot be avoided or managed, the person shall be excluded from any involvement with the procurement.
- 25.3. Each person involved in any aspect of procurement and contracting on behalf of the Municipality must:
- (a) declare and avoid actual, potential or apparent conflicts of interest in carrying out their duties;
 - (b) obtain the maximum benefit for funds spent as agents for the Municipality;
 - (c) maintain and practice, to the highest degree possible, business ethics, professional courtesy and competence in all transactions;
 - (d) undertake all purchasing activities without positive or negative bias;
 - (e) strive to obtain the maximum value for each dollar of expenditure;
 - (f) reject any offer of favours, gifts, entertainment, meals, trips, gratuities, loans or benefits of any kind, in either the pre-procurement phase or during the procurement process regardless of the value; and
 - (g) protect suppliers' business and legal rights to confidentiality over pricing information, trade secrets, and other proprietary information, subject to applicable laws.

Individual Council Members

- 25.4. To preserve the integrity of the procurement process, individual Council members must:
- (a) remain at arm's length from staff and suppliers in the procurement process;
 - (b) should not receive or review any information or documents related to a particular procurement during the procurement process and refrain from either intervening or interfering in the procurement process, the evaluation of Bids, selection of suppliers, or staff recommendations; and

- (c) Consistently reject any offer of favours, gifts, entertainment, meals, trips, gratuities, loans or benefits of any kind from suppliers or potential suppliers in either the pre-procurement phase or during the procurement process, regardless of the value.

Suppliers

- 25.5 No supplier may threaten, intimidate, harass or otherwise interfere with any staff or public office holders or with an attempt by any other prospective supplier to bid for a contract or to perform any contract awarded by the Municipality.
- 25.6 No supplier or potential supplier shall offer gifts, favours, inducements of any kind to Municipal staff or Council members, or otherwise attempt to influence or interfere with staff and Council members' duties and responsibilities concerning the procurement or management of the procurement process.
- 25.7 Prospective suppliers are prohibited from lobbying any member of Council, staff and consultants during the period commencing at the time of issuing a RFx and ending at the time of the award of the Contract.
- 25.8 A violation of the above prohibitions may result in the Bidder being declared ineligible to participate in any ongoing or future Municipal procurements.

26. Procurement Policy Amendments and Reviews

- 26.1. All changes to this policy and procedures require the approval of Council except for changes of an administrative nature, such as the change in title of a position.
- 26.2. A formal policy review shall be undertaken by the CAO at least once every five (5) years.

SCHEDULE A – EXCLUDED CONTRACTS

Contracts for, or payment of, the expenses, Goods or Services listed below are not subject to the competitive procurement or public contract award notice requirements in this policy.

1. **General Exclusions:** The following are excluded procurements: *(CFTA and aligned with CETA)*
 - (a) Goods or Services financed primarily from donations that require the procurement to be conducted in a manner inconsistent with this policy.
 - (b) Procurements by the Municipality on behalf of an entity not covered by this policy.
 - (c) Procurements under a commercial agreement between the Municipality which operates sporting or convention facilities and an entity not covered by this policy that contains provisions inconsistent with this policy.
 - (d) Acquisition of Goods for the purpose of commercial sale or re-sale by the Municipality.
2. **Excluded Professional Services** The following are excluded professional services procurements: *(CFTA and aligned with CETA)*
 - (a) Health or social services;
 - (b) Services that may, under applicable law, only be provided by licensed lawyers or notaries;
 - (c) Services of expert witnesses or factual witnesses used in court or legal proceedings; and
 - (d) Financial services respecting the management of government financial assets and liabilities (*i.e.* treasury operations), including ancillary advisory and information Services, whether or not delivered by a financial institution.
3. **Non-Procurement Transactions** The following contracts and payments are excluded:
 - (a) Insurance premiums however the purchase of insurance advisory services is not excluded;
 - (b) Payments of debts; *(CFTA, CETA)*

- (c) Procurement or acquisition of fiscal agency or depository services (banking services); (*CFTA, CETA*)
- (d) Any form of financial assistance, such as grants, loans, equity infusions, guarantees, and fiscal incentives; (*CFTA, CETA*)
- (e) Agreements with a governmental authority or agent of government;
- (f) Acquisition or rental of land, real property payments including land, buildings, leasehold interests, easements, encroachments and licenses, or the like; (*CFTA, CETA*)
- (g) Insurance claims, legal settlements and grievance settlements;
- (h) Binding orders, judgments or decisions of an arbitrator, tribunal or court;
- (i) Refundable travel expenses;
- (j) Other Municipality and employee related expenses, such as: memberships in professional organizations (professional dues), staff attendance at seminars, testing or examination fees, workshops, courses, training, trade shows or conferences.