Municipality of Brockton
Municipal Modernization Funding
Procurement Policy and Procedures Review

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INTRODUCTION AND EXECUTIVE SUMMARY

LXM LAW LLP was engaged by the Municipality of Brockton in October 2020 to conduct a Municipal Modernization Funding Procurement Policy and Procedures Review that included a review of ebidding platforms. The goal of this review was to provide recommendations to modernize Brockton's procurement framework and practices to help reduce costs, ensure compliance with legislative and trade treaty requirements, streamline administrative processes and ensure a fair, transparent and competitive procurement process for stakeholders.

The review was performed in 2 parts:

- Part 1 reviewed the existing Brockton procurement policy, procedures and practices; and
- Part 2 reviewed potential ebidding platforms for adoption by Brockton.

EXECUTIVE SUMMARY

Brockton's procurement policy framework and practices have not been updated to include the introduction of the 2017 Canadian Free Trade Agreement and Canada EU Trade Agreement requirements and with evolutions in procurement governance standards. To modernize the procurement policy framework, ensure compliance with legislative and trade treaty requirements, reduce costs and streamline processes, it is recommended that Brockton:

1. adopt an updated procurement policy that implements the recommendations in this report;

2. establish procedures and templates to support Brockton's procurement activities;

3. provide council and staff training on the policy, and require staff involved in procurement on behalf of Brockton to undergo training on the new procedures and use of Brockton's new templates;

4. adopt the "bids&tenders" e-bidding platform as Brockton's tendering website; and

5. implement bids&tenders to support Brockton's transition to a fully electronic process for advertised procurements.

PART 1 POLICY AND PROCEDURES REVIEW

The focus of this Part of the review was Brocton's procurement policy and procedures.

Executive Summary

To modernize Brockton's policy framework, minimize risk of non-compliance, reduce costs and streamline processes, it is recommended that Brockton: (a) update its procurement policy to reflect modern day best practices, governance and legal standards detailed in this report; and (b) through the policy, authorize the CAO to establish procedures and templates to support Brockton's procurement activities.

Approach to Project

This part of the project was conducted in the following phases:

Phase 1 Information Gathering. This phase involved the collection and review of relevant documents and conducting interviews with Council members and management, including the Chief Administrative Officer, the Chief Financial Officer and Clerk.

Phase 2 Environmental Scan. In this phase, we reviewed governance best practices, reviewed the legal landscape for municipal procurement and compared Brockton's procurement policy to the policies of peer municipalities to help inform our recommendations.

Phase 3 Opportunities for Improvement. In this phase we assessed the strengths and weaknesses of Brockton's current framework based on the information gathered in Phases 1 and 2 and identified opportunities for improvement.

Phase 4 Recommendations. In this phase we summarize our recommendations to achieve the objectives of the report.

Phase 1: Information Gathering

The following summarizes the relevant information gathered in Phase 1.

A. Brockton Scope and Size

Brockton is a relatively small rural municipality in located in Bruce County with a reported population of close to 9,500 residents. The Municipality employs approximately 145 full and part-time staff and an annual budget of close to $10M, largely spent on capital projects.

While Brockton has a multi-million-dollar annual budget, we found most procurements performed by the Municipality are of relatively modest amounts, with only a handful exceeding $105,000, which is the approximate threshold at which the trade agreements apply. For example, looking at the 2020 Capital budget we find a total of 7/53 projects planned with a value exceeding $105,000.

B. Procurement Governance Framework (Policy, Procedures, etc.)

Brockton has a Council-approved Purchasing and Procurement Policy F17-0520-11 last revised in 2014 which indicates it was made pursuant to Council's authority under section 271 of the Ontario *Municipal Act,* 2001 - a section of the Act that was repealed in 2006.

The procurement policy contains Council's delegation of spending authority to department heads, a delegation that is achieved through the annual budgeting process. Once the budget is approved, department heads are authorized to procure goods and services, provided they comply with the requirements of Brockton's procurement policy.

Brockton initiated this review to ensure adherence with the applicable legal framework for all procedures, standard templates or contract terms to support its procurement function.

C. Summary of Interviews

Our review included 7 interview sessions with members of Council or staff. In each interview we asked about the individuals' understanding and experience with procurement, their level of satisfaction and pain points with the current framework.

(a) Council Interviews

- Council members expressed general satisfaction with Council's involvement in procurement and contracting while highlighting recent experiences that had raised questions.

- When asked about the $25,000 dollar threshold that triggers Council involvement, some cautioned that the threshold should not be so low as to represent too high an investment in staff time and that at some point, Council must trust the staff to follow the rules. On the other hand, Council has to show the public, so that the community is aware, that Council are trying to keep a handle on costs.

- Council reported differences of opinion around local preferences. Some expressed uncertainty around whether favouring a supplier because they were local was appropriate, asking whether it is possible to fairly delineate between suppliers from local municipalities. For example, while a supplier may have a business in Hanover, the owner and workers be residents of Brockton. There was also a concern that applying a local preference could impair the integrity of the procurement process and that it may come at a cost to the municipality through loss of trust, and loss of bidder interest in Brockton procurement opportunities who may not want to take a chance on the rules not being applied consistently.

(b) Staff Interviews

- Staff expressed mixed opinions on the current procurement framework.

- In terms of pain points, staff indicated there were opportunities to streamline the efficiency of procurement and to improve clarity in the process.

- When discussing the investment and impact of having to advertise tenders and escalate contracts to Council for approval, we learned that:

    - The lack of templates normally means preparing an RFP document is time consuming and may require several review cycles before the tender is advertised. This delay could sometimes compress the contract timelines and possibly lead to higher contract costs or result in a loss of supplier interest in bidding.

- The time and resource investment for preparing materials for Council approvals involved significant staff time. There are at least 4 staff members involved in the preparation of Council approval material, including one writing the report and 3 members reviewing it prior to inclusion in the Council package.

- Staff also felt it would be worthwhile to obtain recommendations on how to optimize supplier interest in bidding on Brockton opportunities.

Phase 2: Environmental Scan

In this Phase, we performed an environmental scan of procurement governance best practices and the legal landscape with a view to setting the context for the evaluation of strengths and weaknesses and recommendations. We also performed an in-depth benchmarking exercise to understand how other Ontario municipalities' policies compared to Brockton's policy.

A. 2020 Governance Best Practices in Municipal Procurement

There have been several municipal procurement scandals covered by the media in recent decades, a few of which have been the subject of public judicial inquiries. These public inquiry reports have helped define what good governance looks like in municipal procurement. The most notable of this past decade's judicial inquiries are the (a) 2005 City of Toronto's Computer Leasing and External Contracts Inquiry, which led to the release of the Bellamy Report and (b) the Collingwood Judicial Inquiry whose report was released in November 2020.

In both inquiries, the underlying fact pattern involved councillors interfering with procurements and supplier selections and awarding contracts to friends and family or ignoring public tendering rules. This led to the municipality paying higher prices for goods and services and compromising the integrity of the municipality's procurement which ultimately resulted in a significant loss of public trust.

Each report contains hundreds of recommendations that touch on good governance as it applies to municipal procurement. Since the inquiries are thousands of pages long, a synopsis of the reports is outside the scope of this report, however attached as Annex A is the list of procurement recommendations from the recent 2020 Collingwood Judicial Inquiry which we recommend be incorporated into Brockton's updated procurement governance framework.

B. 2017 CFTA/CETA Trade Agreements

Prior to 2017, there were few legal rules governing municipal procurement in Ontario. Unlike the federal and provincial governments, and broader public sector organizations in Ontario caught by Ontario's Broader Public Sector Procurement Directive, Ontario municipalities had significant discretion when shaping their procurement policies.

A paradigm shift in municipal procurement occurred in 2017. This is the year municipalities became subject to the Canadian Free Trade Agreement (CFTA) and the Canada-EU Trade Agreement (CETA), trade agreements that contain detailed rules governing municipal procurement and provide bidders with easy-access remedies, including compensation, if Brockton breaches the rules. A sample of the trade agreement rules is provided in Annex B which has been included to illustrate the level of detail found in the trade agreements.

The trade agreement regime applies to contracts valued as of approximately $105,000 for the CFTA and as of approximately $365,000 for the CETA, where contract value is based on the total expenditure during the entire term of the contract, including potential extensions. It should be noted that below the $105,000 threshold, Brockton has the same discretion to shape its policy and practices as it did pre-2017. Above the threshold, however, the legal rules apply and so the legal/reputational risks associated with such procurements have changed substantially since 2017.

C. Benchmarking against Peer Municipalities

Brockton asked us to include a benchmarking analysis as part of this review. The table attached as Annex C compares procurement policies of 16 peer municipalities to Brockton's current policy.

Based on our review of the policies, we observed that many are still outdated despite having been updated after the implementation of the trade agreements. As such they may not reflect the requirements of the trade agreements or governance best practices discussed in this report. We would caution therefore against relying too heavily on these benchmarks as an authoritative reference when considering changes to Brockton's procurement policy.

It is notable that some municipalities have relatively low thresholds for advertising tenders and submitting contracts to Council for approvals. As we discuss further in our report, setting thresholds too low has operational implications from a procurement efficiency standpoint. It also may bring Council closer to an operational decision-making role and we suggest, the administrative investment in time and operational delays to process approvals for low dollar value contracts may not be proportional to the risks. Such spending-associated risks may be better managed by instituting a strong procedural/template framework within the municipality and requiring management to report on its activities at each Council meeting. In light of the foregoing, when considering whether the proposed thresholds in Brockton's updated policy are appropriate, we would suggest looking beyond the comparator municipalities as an authoritative source of guidance and instead consider such thresholds based on the objectives of this report.

Phase 3: Opportunities for Improvement

In this Phase, we evaluated the strengths and weaknesses of Brockton and its procurement framework against best practices and trade agreement rules with a view to identifying opportunities to better achieve the objectives of this review.

A. Brockton Strengths / Opportunities

- ***Small size –*** One of Brockton's key strengths and opportunities is its size and the fact that there are few people that engage in procurement at the municipality. This should allow Brockton to be agile in implementing changes to its procurement framework.

- ***Experienced and qualified staff –*** Procurement is carried out by experienced, qualified and conscientious staff who are mindful of the need, and based on our interviews, committed to ensuring integrity in procurement and compliance with rules.

- ***Few large dollar value procurements per year*** – There are relatively few large dollar value procurements in a given year which makes it easier to monitor and manage compliance and to minimize legal risks.

- ***Strong budget setting and approval process*** – The budget setting and approval process is well understood. Both Council and staff expressed comfort with the level of detail provided for budget approvals.

- ***High degree of openness and transparency*** – Brockton requires advertising procurements and submitting contracts to Council where a procurement has a value of greater than $25,000; and requires the public opening of all bids over $25,000. Transparency in public sector operations is important to promote trust and is always encouraged however this must be balanced against considerations such as supplier confidentiality and operational efficiencies. We see this degree of transparency as important but encourage Brockton to consider whether the right balance has been struck between transparency and other considerations.

B. Areas for Improvement

- ***Modernize the Procurement Policy*** – The current policy has been characterized as ambiguous in some areas, is in need of updating to align with changes in the law and good governance as articulated in the Bellamy and Collingwood judicial inquiry reports. Key provisions of the Brockton procurement policy and opportunities for improvement are summarized in the table below.

Topic	Opportunities for Improvement
Contracting Authority Approvals or processes are required for contracting as follows: • >$25,000 Department heads must obtain sealed tenders for the goods or services unless otherwise specifically authorized by Council.	• ***Council Approval Threshold may not represent an ideal balance between administrative costs/operational implications and dollar value***: • Operational efficiency/effectiveness gains: Given the operational delays and administrative costs associated with the development of RFP, running the RFP process and processing Council approvals, there are efficiency gains to be had by increasing the threshold from $25k to a higher threshold for submitting contracts to Council for approval. • Optimizes the Risk vs. Resource Investment. As indicated, there is a material increase in resource investment associated with matter that have to be brought to Council for an approval. It may be that in an environment where there were no procedures or templates, ensuring Council involvement at a low-dollar value was appropriate to help manage potential risks (legal/reputational), with a strong procedural framework guiding management and ensuring Council oversight through reporting should allow Council to comfortably raise the Council approval threshold. • Making CAO accountable. The current policy does not include the CAO in the approval chain. Raising the threshold for Council approval will create an opportunity to make the CAO accountable for lower-level approvals. • Annex D contains a list of contracts submitted for Council approval in 2019-2020 to illustrate the efficiency gains that could be generated by increasing the threshold from $25,000 to $75,000 as is being proposed in our recommendations.
Purchasing Mechanisms The policy recognizes the following types of purchasing mechanisms, namely: • informal quotation purchase which can be issued by fax or email • tender purchases • request for proposals (RFP) • blanket orders may be established by tender or RFP based on an annual expenditure • VORs (Invitational tender)	• ***Clarity could be improved*** – The description of purchasing mechanisms is not supported with details on when to select one process over the other. The use of blanket orders and VORs is not described in detail. Some of this should be clarified in the updated policy to ensure compliance with the trade agreements.

Sole and Single Sourcing • Non-competitive purchases are permitted where the Emergency Control Group is called into action – report to Council required • Permitted when goods are in short supply • Permitted where is only one source of supply • Not required for select categories of goods/services outlined in the policy • Council at anytime may by resolution allow sole/single sourcing	• ***Exemptions are Not aligned with Trade Agreements*** – This content will need to be revised to align with the trade agreements list of exemptions.
Advertisement • Any requirement > $25,000 must be advertised, unless by invitational tender.	• ***Low threshold for mandatory advertisement*** – Publication of RFx/tender notices carries operational delays and requires additional administrative time. . Legally, there is no obligation to advertise a tender until a threshold of approximately $105,000 is reached. There is an opportunity for efficiency gains if the threshold for mandatory advertisement is raised and an opportunity for a more deliberate engagement of local/Brockton suppliers at more meaningful contract values by doing so.
Public Opening • Bids > $25,000 must be opened in a public forum	• ***Public opening is not pertinent to an electronic environment*** – the construction industry accepts posting a summary of tender prices online promptly after opening is an acceptable substitute to a public opening process. • ***Public disclosure of RFP pricing may compromise integrity of the RFP procurement process***: Public opening and announcement of financials is not an appropriate practice for RFPs, as opposed to RFTs where lowest cost determines the successful bidder. In RFPs, the financial proposals should only be opened after the evaluation of technical proposals is completed. Furthermore, the financial bid price does not determine the successful bid and so it does not benefit suppliers or the public to have this information.
Local Preference • All things being equal, preference will be given, when appropriate, to local firms, Ontario firms and Canadian firms, in that order	• ***Applying an Ontario or Canada preference presents the following problems or risks:*** o ***It could violate the trade agreements.*** Discrimination between Ontario and out-of-province supplier or favouring Canadian over foreign suppliers could violate the CFTA or CETA. o ***May violate Ontario discriminatory business practices laws*** We see in the benchmarking table at Annex D that some municipalities have prohibited the local preference practice altogether, in some cases with reference to the Ontario *Discriminatory Business Practices Act*. The purpose and intent of the Act is *to prevent discrimination in Ontario on the ground of race, creed, colour, nationality, ancestry, place of*

	origin, sex or geographical location of persons employed in or engaging in business. ○ ***It could be characterized as allowing political considerations to influence the selection of supplies,*** which is not consistent with good governance as reflected in the various judicial inquiry reports. ○ ***It could create a lack of supplier confidence in Brockton's procurement processes,*** which in turn may decrease bidder interest in bidding. ○ ***It could give rise to reciprocal local action from neighbouring municipalities,*** harming Brockton's local suppliers. • ***If retained, the policy should clarify the definition of "local firms", given the confusion expressed during the interviews around whether this extends to residents who may operate businesses in neighbouring municipalities.***
Bid and Contract Security • Prescribes the amount of bid and contract security for construction contracts.	• ***Bid and contract security requirements – not a high-level policy matter***. This should be moved out of the policy and into procedures or a template.
Insurance • Prescribes insurance requirements to be included in contracts	• ***Insurance provisions are not normally a policy matter***. Insurance requirements in contracts are a function of the good or service required, and size and risks associated with a contract. This is not a policy-level matter and should be moved out of the policy and into procedures or a template.
WSIB • Requires contractors to produce proof of good standing with the WSIB.	• ***WSIB does not always apply – should not be a policy matter***. This should be moved out of the policy and into procedures or a template.
Accessibility Policies • Requires contractors to comply with the municipality's accessibility policies and procedures	• ***Not a policy matter – suppliers should comply with all laws – this should be in the RFx template and standard terms, and specific requirements outlines in the RFx Statement of Work as applicable.*** This should be moved out of the policy and into procedures or a template and contract terms.
Purchase Orders • Must be issued where RFPs or tenders have been obtained or will be issued at the department head's or supplier's request	• ***Use of POs at the municipality is under discussion and should be addressed in the procedures***. Currently PO's are not being used at all however management is considering adopting a simple capability to issue POs to ensure tracking of orders for goods and services.

- ***Align Policy with Trade Agreements, Benchmarks and Governance Best Practices***. The current policy is misaligned in several areas when compared to the requirements of the trade agreements, approval structures of peer procurement policies and governance best practices as outlined in the Collingwood Judicial Inquiry report. Examples of misalignment:
    - Contract dollar values, for trade agreement compliance purposes, are based on the total value of contract over the term including contract renewals. They are not based on approved budget authorities, which is what the current Brockton policy uses to calculate dollar values.
    - In the current policy, the CAO does not have a general responsibility or approval role in the current policy. Approvals move from department head directly to Council which is not consistent with good governance as reflected in the Collingwood Judicial Inquiry report.

- Procurement policies typically contain a delegation of authority matrix setting out tiered approvals which are set based on (a) contract dollar value and (b) whether the contract is competitively or non-competitively tendered. This should be added to the Brockton policy.

- ***Improve Clarity in Policy / Lack of Procedures.*** Improved clarity on the public procurement process will ensure consistency and lower administrative costs.

- ***Adopt Standard RFx Templates for the more commonly used RFx processes***. The use of procurement templates would improve the efficiency of the procurement process and lower administrative costs.

- ***Establish Standard Contract Terms*** – Formal and consistent contract terms for purchase contracts would help streamline procurement by limiting the need for negotiations, improve consistency and risk management and lower administrative costs.

- ***Reduce administrative and other costs associated with low dollar value ($25,000) procurements***. The aggregate time and cost spent on the preparation of the formal RFX, the delays imposed by publication of RFx opportunities carry a high a cost that may not be proportional to the contract value and risks. The formality of the process may also create operational delays that, as we indicate above, may produce negative outcomes for the municipality. Considering that there is no legal requirement to use formal RFx and no requirement to advertise tenders under $105,000, the $25,000 threshold, while ensuring an openness and high transparency of the process may be resulting in excess costs to the municipality that may not always be proportional to the contract value.

Phase 4: Recommendations

In this Phase, we summarize and detail our recommendations and list the benefits to be gained should the recommendations be adopted.

Recommendation	Objectives Achieved and Other Benefits
1. Modernize the Procurement Policy • Align the policy with the Collingwood Judicial Inquiry recommendations as noted in Annex A. • Ensure compliance with the trade agreements in all respects including when non-competitive procurement is permitted and what contracts are not subject to the policy. • Reflect an approach that minimizes the administrative overhead associated with procurements without unduly compromising the goals of transparency and accountability to the public. • Clarify Council and CAO's roles in procurement, including the requirement to ensure procurement is free of political considerations (per the Collingwood Judicial Inquiry). • Clarify the permitted procurement vehicles for procurement and at what threshold they should be used while preserving flexibility to select the most appropriate vehicle.	• Legal compliance • Streamlines administrative processes • Ensures consistency with best practices • Improves clarity of expectations for staff and public • Improves the integrity of procurement • Improves public trust

Recommendation	Objectives Achieved and Other Benefits
2. (Policy) Increase Mandatory Threshold for Advertising Procurements • Recommend that advertising to be encouraged but is optional under $75k. • Permit use of selective tendering (3 quotes) under $75k.	• Reduces costs of undertaking a procurement, achieving a better balance between contract value and administrative costs • Improves efficiencies in the process • Reduces delays in acquisition of goods and services • Increases supplier interest in bidding
3. (Policy) Increase Mandatory Threshold for use of RFT or RFP • Recommend making the use of formal RFx templates optional under $75k. • Permit use of a simple Request for Quotation vehicle for procurements up to $75k that includes terms and conditions.	• Reduces costs of undertaking a procurement, achieving a better balance between contract value and administrative costs • Improve efficiencies in the process • Reduces delays in acquisition of goods and services • Increases supplier interest in bidding • Including terms and conditions of a contract manages Brockton's risks.
4. (Policy) Replace Public Openings with Notice of unofficial results/Tender Prices on Tendering Website • Recommend replacing this practice with publishing a report of the tender prices. • Recommend not announcing prices in RFP financial proposals as this contravenes a best practice of keeping the financials sealed until the technical evaluation is completed. Pricing in RFPs is not determinative of a successful bid.	• Recognizes the digital environment the municipality is currently operating in • Consistent with industry expectations of practice to be applied when moving to an electronic platform • Enhances compliance with laws and best practices • Preserves integrity of the procurement process in the evaluation of RFP submissions
5. (Policy) Increase Threshold for Council Approval of <u>competitively tendered</u> contracts to 75k. For 25-75k, CAO to approve contracts prior to signing, and CFO to provide an information report to Council for contracts valued 25k-75k. • Recommend moving away from Council approvals of competitively tendered contracts over $25k – raise the contract dollar value to $75k. • For contracts valued at 25k-75k, substitute a requirement for the CFO to provide an <u>information report</u> at each Council meeting to ensure transparency of procurement activities. • Council approvals to be required for competitively contracts $75k and over (at approximately 105k these are subject to the legal rules of the trade agreements.)	• Improves efficiency of operations • With a compliance program in place, clear policy, procedures, templates and an accountable CAO, raising the threshold should not carry any additional risk for Council. Council is entitled to rely on the CAO's assurances that staff are complying with policies and procedures. • Furthermore, it is consistent with good governance practices for Council to rely on management and management assurances, rather than second-guess and/or alter procurement outcomes per the Collingwood inquiry report. • Increasing thresholds should allow for a better use of Council's time – time is invested in higher risk contracts. • Transparency is retained through CFO reports to Council • Streamlines procurement for staff at lower levels. • Reduces operational delays at lower levels.

Recommendation	Objectives Achieved and Other Benefits
6. (Policy) Require CAO approval to pursue a <u>non-competitive</u> procurement $10,000 or over, and Council approvals requires for contracts $25,000 or over.	• Consistent with good governance practices as reflected in the Collingwood Judicial Inquiry report
7. (Policy) Local Preference – Eliminate Local Preferences when making contract award decisions. • Replace the local preference with encouragement to invite local suppliers to participate in invitational tenders wherever possible. • Disallow the application of a local preference for awards.	• If invitational bidding is permitted up to $75k, this offers greater opportunity for local suppliers to participate in meaningful business opportunities. • If RFQ can be used, this makes participation in Brockton procurement more attractive to suppliers (some of which have reportedly turned away from Brockton opportunities due to the complexity of the RFP requirements). • Avoids potential violations of applicable laws by the application of a local preference in procurement. • Avoids difficulties with interpreting what it means to "buy local". • Avoids potential backlash from neighbouring municipalities. • Avoids introducing political considerations into procurement decisions, which is not an encouraged practice per the Collingwood Judicial Inquiry report.
8. Implement a Procurement Procedures Manual • Recommend that procedures cover the entire procurement and contracting lifecycle, from procurement planning to closing out the contract. • Procedures should reflect all the prescribed requirements of the trade agreements.	• Streamlines the procurement and contracting process by putting all staff on the same page. • Cost reductions will be achieved through efficiency gains. • Compliance with laws, best practices and laws will be achieved through the procedural framework.
9. (Procedures) Brockton to adopt use of Purchase Orders • Recommend introducing the use of Purchase Orders where there is no underlying contract in order to confirm invoices can be tied to specific orders for goods and services.	• Important financial internal control measure • Ensures the clarity and parity of what was ordered vs. what was invoiced. • Minimizes risks of paying for goods and services that were not ordered.
10. Establish standard templates for PO, RFQ, RFP, RFT • Adopt templates for Brockton's most commonly used processes.	• Ensures consistency and clarity of rights and obligations of the municipality and contractors • Improves the efficiency of procurement activities • Reduces time for preparing and posting a RFx • Enhances the integrity in the procurement • Optimizes outcomes from procurement processes

Recommendation	Objectives Achieved and Other Benefits
11. Establish standard contract terms for the procurement of Goods and Services to be included in standard RFx documents or to accompany RFQs • Should provide consistency in legal terms that bind the municipality in it purchasing contracts. • Should ensure contract terms protect the municipality's interests and facilitates contract and contractor management. • Should ensure appropriate insurance and bonding for construction contracts.	• Efficiency gains through clarity of contract terms and conditions (minimizes need to negotiate contract terms) • Cost savings through clear rules and liability protection for the municipality • Consistency and clarity of legal terms is useful for suppliers • Helps manage legal and operational risks
12. Train Council and Staff • All current and future staff should be required to undertake training on municipal procurement principals, on the policy, and staff should receive training on the procedures before being authorized to procure on behalf of the municipality.	• Enhances compliance with the policy framework and applicable laws • Efficiencies are achieved as all are operating for the same rule book and understanding.

PART 2 REVIEW OF EBIDDING SOLUTIONS

Brockton asked us to review suitable ebidding platforms capable of supporting the municipality's near-term ebidding requirements. For purposes of this review, we considered the 4 ebidding platforms most commonly used by Canadian municipalities and the rest of Canada's MASH sector, namely:

1. Bids&tenders
2. Biddingo
3. Bonfire and
4. Merx.

We understand Brockton already has access to, and staff have already received training on, bids&tenders as this was included as part of Brockton's new website implementation of a few years ago.

Executive Summary

In light of Brockton's familiarity and access to bids&tenders, the free-of-charge access to the basic ebidding functionality, and widespread use of bids&tenders by Ontario municipalities, we recommend that Brockton adopt bids&tenders as its tendering website and use this platform support an electronic process for posting its RFx documents and receiving bids for its advertised procurements.

Project Approach

The approach used in preparing this report involved (a) discussions with Brockton staff on the current state processes and their ideal end-state, (b) reviewing the tendering websites currently recognized by the CFTA and CETA, (c) attending demos, gathering publicly available information and interacting with sales representatives for each platform and finally (d) interviewing users of each type of platform to gauge their level of satisfaction.

A. Current and Ideal End-State

Based on input from Brockton personnel, Brockton's projects and procurement contracts can range from small dollar values to $2M, with a good majority within the $25,000 to $200,000 range.

Currently procurements between $10,000 and $25,000 are addressed through the posting and receipt of bids via email and requirements over $25,000 are posted on Brockton's website or through muniSERV, an online platform that serves as a gateway to the bids&tenders e-bidding platform.

We understand the process for electronic posting is not carried out consistently which could create issues of non-compliance with the trade agreements and perhaps more importantly, result in inconsistent market reach for Brockton opportunities as suppliers will never be sure where to find the opportunities.

Brockton management identified the following as useful tools to have available in a single e-bidding platform chosen to help manage the end-to end electronic procurement process for Brockton, in no particular order of preference:

- ✓ On-Line posting and receipt of bidder submissions and proposals
- ✓ On-line evaluation of Request for Proposal (RFP) submissions
- ✓ Consistent posting of Tender and RFP results, both unofficial and final
- ✓ Recording of supplier details to help in the development of bidder lists and a vendor database
- ✓ Contract administration
- ✓ Supplier performance management
- ✓ Insurance and WSIB tracking during contract term

B. Tendering Websites (CFTA ONLY)

Since the platform will double as Brockton's tendering website under the trade agreements, we verified the list of tendering websites currently listed on the Canadian Free Trade Agreement secretariat website. We also verified the list of recognized Ontario municipal tendering websites for the Canada EU Trade Agreement (CETA) however this link is not working, leaving us to rely on the CFTA list as our definitive source of tendering website listings.

The list of CFTA tendering websites used by Ontario public sector organizations can be found here: https://www.cfta-alec.ca/doing-business/ontario/

As Brockton does not appear on the list of municipalities, we suggest it use the following as the guidance for posting of tender notices:

MUNICIPALITIES AND MUNICIPAL ORGANIZATIONS	www.merx.com www.biddingo.com www.bidsandtenders.ca
Construction	www.dcnonl.com www.oca.ca www.bidsandtenders.ca

It is notable that bids&tenders appears on both the general list and the list for construction.

C. Side-By-Side Comparison of E-Bidding Software Platforms

Our review compared the functionality available in each platform and found them to be functionally indistinguishable. All platforms offer the basic functionality and more sophisticated functionality required by Brockton as stated above, including online posting of documents, online receipt of bids, online posting of RFx results.

The following table compares pricing models and pricing. As shown in the table, there are 2 pricing models offered by 3 of the suppliers reviewed, namely the vendor-pay model and the owner-pay model which are distinguished by who is charged for access to the platform. Under the vendor-pay model, suppliers pay to access the platform and under an owner-pay model, the municipality buys a subscription and suppliers can, theoretically, access the bid documents at no charge – although we understand most serious suppliers already pay for an annual subscription to these sites.

Pricing Comparison Table

bids&tenders	
VENDOR-PAY MODEL Vendor annual subscription fee: $175.05 Vendors pay per bid fee: $52.38	OWNER PAYS: 3 bidding modules - Bid Management (hard Copy Submissions) module, e-Bidding Module and RFx Evaluations, approximate cost of $2,750 per user per year. Additional modules cost per year per user of $1,950-2100.

Bonfire	
NO VENDOR PAY MODEL	OWNER PAY MODEL Basic functionality ranges around $5,000 / year per license. Volume discounts are available. Additional functionality starts at an additional $3950/year.
Biddingo	
VENDOR-PAY MODEL Tier 1 at $100 allows access to all bid opportunities posted locally. Tier 2 at $150.00 allows access to all opportunities posted by all Agencies. Tier 3 at $250.00 covers access to all opportunities posted across Canada	OWNER PAY MODEL: Annual subscription fee: $12,000 per year-unlimited users.
Merx	
VENDOR-PAY MODEL Vendor subscriptions available on a pay per download at $50 or $25/month (325/year), with a national subscription costing up to $900/year.	OWNER-PAY MODEL Standard (Free) Allows for creating solicitation documents, physical document distribution, maintaining supplier database, questions & answers, electronic bid submissions, award & bid results, dashboards, customer support and a few other functionalities. Owners can also further add modules as they see fit. Beyond this, costs range from 5,000 for an enterprise license and 2,000-5,000 per year for various add-ons.

LXM Recommends: Vendor-Pay Model

We asked the sales representatives for data on Ontario municipalities' preferred price model and were informed that approximately 80% of the municipalities in Ontario select the vendor-pay model –the no-cost option for municipalities. This approach would make sense for Brockton given (a) most serious bidders have likely already subscribed to receive notices from a tendering website which, as we see, is available for a relatively modest fee; (b) Brockton's volume of tendering, which is relatively low, would not likely justify investing thousands in an owner-pay subscription unless Brockton wished to implement more complex functionality, which we are not recommending in the near term given the change management effort required, and unclear return for this investment.

D. Feedback from Ebidding Platform Users

We interviewed users of all the listed platforms. All users expressed general satisfaction with the platform they were using, whether it was bids&tenders, Bonfire, Biddingo or Merx. Summarized below are the notable points from our interviews.

Additional/Complex Functionality Largely Underutilized

Users report a tendency to underutilize the functionality available in any of these 4 e-bidding platforms, regardless which platform was being used. Typical use consisted of on-line posting and receipt of bid documents along with the posting of bidder final standings. This underuse was attributed to various factors including: 1) a lack of a defined procurement oversight authority within the organization responsible for monitoring and ensuring the compliance of

user departments; 2) lack of available staff; and 3) insufficiently established internal policies, processes, and systems in place to allow for effective use of some of the higher-end functions available.

Notwithstanding the above, those interviewed expressed a desire to eventually move to using future e-bidding platform functionality which includes formal bid evaluations, contract management and supplier performance management, more effective reporting ability, and formal development of supplier databases/bidding lists for use within the organization.

Market Reach is a Factor

We heard that, when selecting a platform over another, one critical factor to keep in mind is the degree of market reach a platform has over another. Certain platforms are more attractive to suppliers who gravitate to supplying to smaller or larger public organizations (lower-tier vs upper-tier municipal vs. provincial). Where a public sector entity is using a platform that does not have the appropriate market reach, the agency may then be required to publish tender notices on multiple platforms to increase their market reach.

Based on our review of the tender notices on each platform and other information gathered during our review, bids&tenders appears to be municipality-focused, while Bonfire appears to have a lower market reach and could necessitate publishing tender notices on a second platform to reach most suppliers.

Thus, bids&tenders would be the platform of choice under this analysis.

E. Recommendations

Based on the above, we recommend Brockton adopt bids&tenders on a vendor-pay model. This would make bids&tenders Brockton's designated tendering website and support the ebidding process. Our recommendation is based on the following factors:

- Brockton already has a subscription to bids&tenders and has been trained on its use;
- Bids&tenders' cost of basic functionality needed by Brockton is free of charge;
- Bids&tenders is listed in the CFTA as a recognized tendering website for general and construction procurements;
- Bids&tenders is already used widely by Ontario municipalities.

ANNEXES

ANNEX A – COLLINGWOOD INQUIRY – PROCUREMENT GOVERNANCE RECOMMENDATIONS

Collingwood Inquiry Recommendations	Recommended for Brockton (Section refers to the proposed policy)
145 Procurement at the Town of Collingwood should be open, fair, ethical, and transparent.	POLICY s.2
146 The goals and objectives of the procurement bylaw and related policies and codes of conduct at the Town of Collingwood should: 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 the Town's 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, including the purchasing officer, the treasurer, procurement staff, department heads, consultants, senior staff, and the Town solicitor; and g) instill confidence in the public and in participants in the procurement process.	POLICY s.2
Competitive Procurement Processes 147 There should be a strong presumption in favour of mandatory competitive tendering for all procurements at the Town of Collingwood. Criteria for exemption from competitive tendering should be strictly defined in the purchasing bylaw. A competitive procurement process should be used for procurements at the Town of Collingwood unless the conditions are met for a non-competitive procurement process.	POLICY, s.17
149 Exceptions to a competitive process, such as sole sourcing and single sourcing, should be delineated in the purchasing bylaw. Emergencies and monopolies are examples of situations in which a non-competitive procurement process may be appropriate. Other examples are lack of response to a competitive process, and a single supplier in the marketplace for the particular goods or services required by the Town.	POLICY, s.17
150 Lack of planning or insufficient time to conduct a competitive procurement, except in an emergency situation, should not be an allowable exception.	PROCEDURES
151 A high level of scrutiny is necessary for non-competitive procurements. The approval of the treasurer must be obtained to proceed with a non-competitive procurement.	POLICY, s.17 (Council approval to be obtained)
Unsolicited Proposals 152 The procurement bylaw should specify the conditions for unsolicited proposals.	POLICY, s.23
153 The procurement bylaw should state that there must be one point of contact within Town staff for unsolicited proposals.	POLICY, s.23
155 The treasurer should submit a report on the non-competitive and competitive procurement transactions annually to Council in an open session. This promotes openness, integrity, accountability, and transparency in the procurement process.	POLICY, s.8
Council 160 Council is responsible for requiring and enforcing a fair, transparent, honest, and objective procurement process.	POLICY, s.5
161 Council has a minimal role in procurements, and the separation between the role of Council and staff in procurements at the Town must be clear. Council's role is to set the budget and approve the overall procurement plan. In addition, Council must be satisfied	POLICY, s.5

Collingwood Inquiry Recommendations	Recommended for Brockton (Section refers to the proposed policy)
that the procurement process is fair, honest, impartial, and equitable before it accepts staff's recommendation of the supplier who is to be awarded the contract with the Town.	
162 Council should be asked to approve the award of contracts where: a) the purchase is over budget or the "approved funding is insufficient for the award"; b) "the contract is not being awarded to the lowest bid that has met the specifications and terms and conditions of the quotation, tender, or proposal"; c) "the award is for a single source contract" or other contract in a non-competitive procurement process in which the total value "of the contract exceeds $100,000"; d) the purchasing officer has recommended an award to a supplier whose response does not meet the specifications and qualification requirements set out in the solicitation or whose response may not represent the best value to the Town based on the evaluation criteria set out in the solicitation; e) "a major irregularity precludes the award of a tender to" a "supplier submitting the lowest responsive bid"; f) the chief administrative officer or treasurer recommends Council approval; g) the term of the contract exceeds five years; h) Council approval is mandated by statute.	POLICY, s.8
163 Council members must remain at arm's length from staff and suppliers in the procurement process. Elected officials should be prohibited from involvement in the selection of the procurement process, evaluation of the bids, or selection of the successful supplier.	POLICY, s.25
164 Council members should not receive or review any information or documents related to a particular procurement during the procurement process.	POLICY, s.25
166 Role of Staff The procurement bylaw should clearly define the roles, responsibilities, and accountability of staff involved in the procurement process.	POLICY, generally
167 Procurement staff are responsible for recommending the most appropriate procurement method, overseeing all stages of the procurement process, and interacting with department staff to assess the business needs of the Town.	POLICY, s.8
168 Procurement staff should identify additional resources, such as a fairness monitor, consultants, or professionals (for example, architects or engineers) to assist in the development or oversight of the procurement.	PROCEDURES
Fairness Monitor 170 The Town should retain a fairness monitor for procurements that are complex, high-risk, controversial, or of a substantial dollar value. The fairness monitor promotes the integrity of the procurement process and protects against bias or discriminatory practices.	PROCEDURES
171 A fairness monitor should be an independent third party who monitors the procurement process and provides feedback to Council on fairness issues. The fairness monitor should provide an objective, unbiased, and impartial opinion to Council as to whether the procurement process is conducted following the principles of openness, fairness, transparency, honesty, and consistency and in accordance with the procurement bylaw, codes of conduct, and other related policies at the Town. The fairness monitor can also provide guidance and advice on best practices in the procurement process to the Town.	PROCEDURES
172 The Town should be satisfied that the fairness monitor has the expertise and specialized knowledge necessary to provide an informed opinion on the particular procurement.	PROCEDURES
173 The decision to retain a fairness monitor is at the discretion of the chief administrative officer.	PROCEDURES
Conflict of Interest	RFX TEMPLATES

Collingwood Inquiry Recommendations	Recommended for Brockton (Section refers to the proposed policy)
193 Suppliers must ensure that all apparent, real, or potential conflicts of interest are appropriately addressed.	
194 "Suppliers must declare and fully disclose any" apparent, real, or potential conflicts of interest or unfair advantage concerning "the preparation of their bid" or "in the performance of" their contract. Examples of such conflicts include: a. engaging family members, friends, or "business associates of any public office holder" at the Town "which may have, or appear to have, any influence on the procurement process, or subsequent performance of the contract"; b. "communicating with any person" to obtain "preferred treatment in the procurement process"; c. engaging current staff or public office holders at the Town to take part "in the preparation of the bid or the performance of the contract, if awarded"; d. engaging former Town staff or former "public office holders to take any part in the" development "of the bid or the performance of the contract, if awarded, any time within" one year of such person "having left the employ or public office" at the Town; e. "prior involvement by the supplier or affiliated persons in developing the" "specifications or other evaluative criteria for the solicitation"; f. access to related confidential information "by the supplier, or affiliated persons" that is not readily available "to other prospective suppliers"; g. "conduct that compromises, or could be seen to compromise, the integrity of the procurement process."	RFX TEMPLATES
Collusion and Other Unethical Practices 195 No supplier shall communicate, "directly or indirectly, with any other supplier" or their affiliates, regarding the supplier's submission.	RFx TEMPLATE
196 A supplier must "disclose any previous convictions" "for collusion, bid-rigging, price-fixing, bribery, fraud, or other similar" conduct "prohibited under the Criminal Code, Competition Act, or other applicable law, for which they have not received a pardon."	RFX TEMPLATE
Intimidation 197 "No supplier may threaten, intimidate, harass, or otherwise interfere with any" Town staff or public office holders.	POLICY, s.24-25
198 No supplier may "threaten, intimidate, harass, or otherwise interfere with an attempt by any other prospective supplier to bid for a" "contract or to perform any contract awarded by the" Town.	POLICY, s.25
Gifts 199 No supplier or potential supplier "shall offer gifts, favours, inducements of any kind to" Town staff "or public office holders, or otherwise attempt to influence or interfere with their duties" and responsibilities concerning the procurement or management of the process.	POLICY, s.25
200 Town staff are prohibited from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from suppliers or potential suppliers in either the pre-procurement phase or during the procurement process.	POLICY, s.25
201 Council members are prohibited from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from suppliers or potential suppliers at any time during the pre-procurement phase or procurement phase of the process.	POLICY, s.25
Sanctions 202 The Code of Conduct should explicitly state that any material violation of the Code, "including any failure to disclose potential conflicts of interest or unfair advantages, may be grounds for" disqualifying the supplier or terminating the contract.	RFX TEMPLATE

Collingwood Inquiry Recommendations	Recommended for Brockton (Section refers to the proposed policy)
203 Suppliers who have violated the Code of Conduct may be prohibited from bidding on future contracts at the Town for a designated period.	POLICY, s.24
Planning 204 A procurement plan for the Town should be prepared annually and published. Procurement planning helps insulate the procurement process from political influence.	PROCEDURES
205 Before initiating any procurement process for goods or services, the purchasing department shall, (a) prepare detailed specifications and quantity requirements for the particular goods or services, and (b) certify that the goods or services are required for the Town of Collingwood.	PROCEDURES
206 "A standard checklist should be prepared" and published "indicating all the elements that should be in place before the" Town issues a tender.	PROCEDURES
207 Procurement staff and senior staff should take measures to ensure that lobbying in the Town does not have any impact on the design of the tender so as to unfairly favour a bidder.	PROCEDURES
Designated Contact Person 208 The tender document should specify the name and contact information of the person whom prospective bidders can contact with questions. The tender document should make it clear that for the duration of the procurement process, only the Town staff member can be contacted by bidders regarding the tender.	RFX TEMPLATE
209 If a bidder requests information, the designated contact person should notify the bidder that the information requested and conveyed may be disclosed to other bidders.	PROCEDURES
Blackout Period 211 Every tender document should define the "blackout period" when communication between bidders and the Town is prohibited.	PROCEDURES
212 During the blackout period, suppliers must refrain from contacting anyone but the designated person at the Town of Collingwood.	PROCEDURES
Evaluation of Bids 214 No person "involved in evaluating the bids" at the Town "should have a pre-existing relationship with any of the bidders or be influenced" "by anyone else's pre-existing relationship with a bidder."	PROCEDURES
215 No person "involved in the pre-procurement phase or the bidding process should be involved in evaluating the proposals."	PROCEDURES
216 The Town "should have clear practices" for reading the bids.	PROCEDURES
217 Each member of the evaluation team "should sign a conflict of interest declaration disclosing any entertainment, gifts," meals, favours, or benefits of any kind "received from any of the proponents or their representatives."	PROCEDURES
218 Each member of the evaluation team should sign a declaration "that they will conduct the evaluation" fairly and objectively, "free from any conflict of interest or undue influence."	PROCEDURES
219 "The weight to be assigned to price in determining the winning bid should be carefully considered" and determined "in advance."	PROCEDURES
220 The Town "should maintain a record of when" and who tells a bidder that they have been successful.	PROCEDURES
Debriefings 221 Following a "decision to award a contract, unsuccessful bidders are entitled to a debriefing" that explains "the evaluation process that led to the" Town's "selection of the successful bidder."	POLICY, s.20
Supplier Complaint Process 222 The Town should establish a comprehensive complaints process for suppliers and potential suppliers.	COMPLAINTS POLICY

Collingwood Inquiry Recommendations	Recommended for Brockton (Section refers to the proposed policy)
223 A complaint process is essential to promote and maintain transparency and integrity in the procurement process and to ensure the objective and equitable treatment of all suppliers.	COMPLAINTS POLICY
224 All supplier disputes or complaints, whether sent to Council members or staff, shall be referred to the treasurer	COMPLAINTS POLICY
225 In no circumstances, should Council members or staff act as advocates for aggrieved or successful suppliers.	COMPLAINTS POLICY
226 Suppliers should try to resolve any pre-award disputes by communicating in writing directly to the treasurer as quickly as possible after the basis for the dispute becomes known to them. The treasurer should have the authority: (a) to dismiss the dispute; or (b) to accept the dispute and direct the Town's purchasing officer to take appropriate remedial action, including, but not limited to, rescinding the award and any executed contract, as well as cancelling the solicitation.200 The treasurer may decline to delay the award or any interim step of a procurement if the complaint appears to the treasurer to have no merit or if the supplier has failed to notify the treasurer immediately after the disputed conduct came to the supplier's attention.	COMPLAINTS POLICY
227 Any dispute of an award decision must be submitted in writing to the treasurer as soon as possible after the disputed conduct comes to the attention of the complainant	COMPLAINTS POLICY

ANNEX B – SAMPLE PROVISIONS FROM TRADE AGREEMENTS (ILLUSTRATION)

Topic	CFTA / CETA (similar but not exactly the same)
Geographical non-discrimination	Each Party shall provide open, transparent, and non-discriminatory access to covered procurement by its procuring entities.
Establishing the Dollar Value of a Procurement	In estimating the value of a procurement for the purpose of determining whether it is a covered procurement, a procuring entity shall: (a) estimate what the value would be as of the date the tender notice will be published; and (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including: (i) premiums, fees, commissions, and interest; and (ii) the total value of options if the procurement provides for the possibility options.
Posting of Tender Notices on tendering website (new since 2017)	A procuring entity shall publish a tender notice for each covered procurement on one of the tendering websites or systems designated by its Party.
Tender Notice content	Each tender notice shall include: (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any (b) a brief description of the procurement; (c) the nature and the quantity, or estimated quantity, of the goods or services to be procured unless those requirements are included in tender documentation; (d) the address and final date for the submission of tenders; (e) the date, time, and place for any public opening of tenders; (f) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers, unless those requirements are included in tender documentation that is made available to all interested suppliers at the same time as the tender notice; (g) a statement that the procurement is subject to this Chapter; (h) the time-frame for delivery of goods or services, or the duration of the contract; (i) a description of any options, unless those requirements are included in tender documentation; (j) the procurement method that will be used, and whether it will involve negotiation or electronic auction; (k) if, pursuant to Article 508, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender, unless the criteria and any limitations are included in tender documentation; and (l) the language or languages in which tenders or responses to requests for prequalification may be submitted, if they may be submitted in a language other than that of the tender notice.
Do's and Don'ts of Drafting Solicitation Documents (reflects what was previously understood to be best practice or a Common Law requirement)	Technical Specifications 1. A procuring entity shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade. 2. In prescribing technical specifications for the goods or services being procured, a procuring entity shall, if appropriate: (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

	(b) base the technical specification on standards, if they exist. 3. A procuring entity should avoid the use of technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier. If the technical specifications are used in that manner, a procuring entity shall indicate that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirement of the procurement by including words such as "or equivalent" in the tender documentation. 4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person who has a commercial interest in the procurement. 5. For greater certainty, a Party, including its procuring entities may, in accordance with this Article, prepare, adopt, or apply technical specifications to promote the conservation of natural resources or protect the environment. Tender Documentation 7. A procuring entity shall make available to suppliers' tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Tender documentation shall include all pertinent details concerning: (a) the evaluation criteria that will be used in the evaluation of tenders, including the methods of weighting and evaluation, unless price is the sole criterion; an (b) the requirements to be fulfilled by the supplier, and the terms or conditions applicable to the tender, including, if applicable: (i) technical specifications; (ii) requirements for servicing or warranty; (iii) transition costs; (iv) applicable conformity assessment certification, plans, drawings, or instructional materials; and (v) requirements related to the submission of the tender. 8. In establishing the date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account factors such as the complexity of the procurement, the extent of subcontracting anticipated, and the realistic time required for production, de-stocking, and transport of goods from the point of supply or the realistic time.
Exemptions from competitive process (Sole/Single Sourcing)	Subject to paragraphs 2 and 3, and provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of any other Party or protects its own suppliers, a procuring entity may use limited tendering in the following circumstances: (a) if: (i) no tenders were submitted or no suppliers requested participation; (ii) no tenders that conform to the essential requirements of the tender 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; (b) 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;

	(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; or (viii) the procurement is for subscriptions to newspapers, magazines, or other periodicals; (c) 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 procuring entity; (d) if strictly necessary, and for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering; (e) for goods purchased on a commodity market; (f) if a procuring entity 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; (g) 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; (h) 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 the principles of this Chapter, 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; or (i) if goods or consulting 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.
Bidder barring rules	If there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as: (a) bankruptcy or insolvency; (b) false declarations; (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

	(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; or (f) failure to pay taxes.
Supplier access to remedies for violations (New rights and remedies)	Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a Canadian supplier may challenge: (a) a breach of the Chapter…

ANNEX C – BENCHMARKING AGAINST OTHER MUNICIPAL POLICIES

The list below extracts, for ease of comparison, key elements of various Ontario municipal policies. As noted in the body of the report, there is little commonality among the policies. We would suggest that Council involvement in the approval of procurements should occur at a material amount as risks increase. Requiring Council involvement at non-material amounts (as we see for Huron East for example), in addition to impeding operations, may not reflect a good governance practice.

We would also suggest that, with an improved governance framework that includes procedures, templates and trained staff, there is less need for Council to directly involve itself in the approval lower-level procurements.

#	**Municipality**	**Last Policy Update**	**Non-Competitive Threshold** (Low Dollar Value)	**RFx Publication Threshold** (When advertisement req'd)	**Council Involvement Threshold** (for contract award)	**Local Preference Allowed? If yes, in what circumstances**
1	Brockton (old)	2014	$10,000	$25,000	$25,000	- All things being equal, preference will be given, when appropriate, to local firms, Ontario firms and Canadian firms, in that order.
2	Meaford	2019	$2,499.99	$25,000	$25,000	- A local preference may be shown when the intrinsic nature of the acquisition necessitates a local preference, such as the solicitation by the Municipality for municipal office space or where construction materials are to be purchased at the source
3	Central Huron	2014	$10,000	$50,000	$25,000	- Must follow accordance with Discriminatory Business Practices, unless o Two responses appear equal in all respects, a local preference may be shown for the sole purpose of breaking the tie; or o Intrinsic nature of acquisition a local preference, such as solicitation by the Municipality for Municipal Office Space
4	Hanover	2004	$10,000	Greater than $50,000	$50,000	- Not allowed
5	Adelaide Metcalfe	2020	$10,000	Greater than $50,000	$50,000	- Not allowed
6	Frontenac County	2013	Up to $5,000	$10,000	$50,000	- Subject to the provisions of the MASH Annex, the AOPPOQ and all other applicable law, and all else being equal, local Bidders may be given preference in the selection of a Supplier.
7	Grey	2020	Up to $5,000	$75,000	$500,000	- Not allowed
8	Bruce	2018	Up to $25,000	$75,000	Required when exceeds budget	- Not allowed
9	Oxford	2017	$25,000	$50,000	$1,000,000	- Not allowed
10	Minto	2017	Up to $10,000	$50,000	$50,000	- Not addressed in Policy

#	**Municipality**	**Last Policy Update**	**Non-Competitive Threshold** (Low Dollar Value)	**RFx Publication Threshold** (When advertisement req'd)	**Council Involvement Threshold** (for contract award)	**Local Preference Allowed? If yes, in what circumstances**
11	Huron East	2005	$1500	$5,000	$5,000	- All else being equal, preference will be given to purchase goods/services firstly from Huron East based businesses, secondly from businesses located in the south west region of Ontario, and thirdly from Canadian owned businesses.
12	West Grey	2017	$2,000	$2,000	$30,000	- All other things being equal; consideration where practical should be given to local suppliers;
13	Arran-Elderslie	2009	$500	$20,000	$20,000	- When equivalent products or services are available at similar costs, preference shall be given to purchasing from a local supplier.
14	Kincardine	2013	$5,000	$40,000	$40,000	- All things being equal, preference will be given, when appropriate, to local firms, Ontario firms and Canadian firms, in that order.
15	Saugeen Shores	2012	$5,000	$15,000	$25,001	- All things being equal, preference will be given, when appropriate, to local firms, Ontario firms and Canadian firms, in that order.
16	Orangeville	2018	$5,000	$100,000	$100,000	- Not addressed
17	Wellington	2020	$5,000	$100,000	$500,000	- Not allowed

ANNEX D – COUNCIL BYLAWS RELATING TO CONTRACT APPROVALS 2019-2020

To better understand the aggregate implications of requiring the preparation of formal RFPs, posting of RFPs and Council approvals for over $25,000 contracts, we looked at the number of contracts over $25,000 submitted to Council over the last 2 years which are listed in the tables below. Brockton's Council has passed by-laws for 15 contracts in 2019 and only 6 by-laws relating to procurement contracts in 2020, as shown in the following summary tables.

If the new policy is adopted, in 2019, management would have had flexibility to adopt a simplified process for 7/15 of the procurements and for 4/6 procurements in 2020, which would have streamlined procurement activities and resulted in operational efficiencies. Under the proposed new policy framework, Council would have received reports of the procurements and awarded contracts at the next Council meeting.

	2019		
	Name of Contract	Name of Organisation	Contract Value Total Costs (before tax)
1	Purchase of a Custom Designed Heavy Equpment Trailor	JW Customs Fab	$ 11,295.00
2	Purchase of One Pick up Truck	Hallman Motors	$ 39,532.00
3	Supply and Installation of a 100kw Standby Diesel Generator	Weber's Electrical Service Ltd.	$ 58,915.00
4	Completion of a Sanitary Sewer Inspection in Town of Walkerton	Infratech Services	$ 59,370.00
5	Construction of the Van Nes Municipal Drain	Robinson Farm Drainage Limited	$ 62,703.00
6	Supply and Installation of a 150kw Standby Diesel Generator	Weber's Electrical Service Ltd.	$ 67,715.00
7	Drainage of a Portion of the Fields at Brockton's Bruce Power Regi	Turf Drainage Systems Ltd.	$ 72,731.50
8	Replacement of the Walkerton Community Centre Ice Compressor	Black and McDonald	$ 74,832.00
9	Resurfacing of the Walkerton Optimist Park	ABC Recreation Ltd.	$ 97,874.94
10	Supply and Delivery of One Sidewalk Plow with Attachments	Work Equipment Ltd.	$ 145,000.00
11	Rehabilitation of the Corner of Durham Street Sidewalk	Owen King Limited	$ 191,781.88
12	Removal of Greenock Bridge Structure No. 0011	Owen King Limited	$ 209,049.95
13	Construction of the Lang Municipal Drain 2018	Robinson Farm Drainage Limited	$ 283,298.00
14	Cold Recycling or Asphalt Base	Lavis Contracting Co. Limited	$ 337,785.00
15	Removal of the Traux Dam	Moorefield Excavating LTD	$ 565,000.00

	2020		
	Name of Contract	Name of Organisation	Contract Value Total Costs (Before Tax)
1	Purchasing Two 2020 Handy Hitch Profile Packers	Brandt Tractors	$ 33,979.50
2	Land Use Development Process Management Review	Stantec Consulting Ltd	$ 44,284.00
3	Construction of the Russell Municipal Drain	Van Gorp Farm Drainage Ltd	$ 56,504.00
4	Drainage of Fields 3 and 4 at Brockton's Bruce Power Regi	Turf Drainage Systems Ltd.	$ 74,515.00
5	Restoration of Walkerton Centennial Park Pool	Ontario Pool Coatings Incorporate	$ 133,480.00
6	Walkerton Pollution Control Plant UV Disinfection System	Trojan Technologies Group ULC	$ 239,829.00