

The Corporation of the City of Owen Sound

By-law No. 2020-002

A By-law to adopt a policy respecting the procurement of goods and services for the City of Owen Sound

WHEREAS section 270 (1) of the *Municipal Act, 2001* S.O. 2001, c. 25 (the "Municipal Act") provides that a municipality shall adopt and maintain policies respecting the procurement of goods and services; and

WHEREAS section 5 (3) of the Municipal Act provides that a municipal power shall be exercised by by-law unless it is specifically authorized to do otherwise; and

WHEREAS section 5 (3) of the Integrated Accessibility Standards, Ontario Regulation 191/11, provides that municipalities shall incorporate accessibility design, criteria and features when procuring or acquiring goods, services or facilities, except where it is not practicable to do so; and

WHEREAS on March 6, 2017, the Council of the Corporation of the City of Owen Sound (the "City") passed Purchasing By-law No. 2017-025; and

WHEREAS on December 16, 2019, City Council passed Resolution No. R-191216-009 directing staff to bring forward a by-law to adopt a revised policy respecting the procurement of goods and services for the City and to repeal By-law No. 2017-025;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

Part I. Short Title, Purpose and Scope

Short Title

1. This by-law shall be known and may be cited as the "Purchasing By-law".

Purpose

2. This by-law has been enacted to adopt a policy respecting the procurement of Goods, Services, Construction or Consulting to:
 - a. ensure an efficient, timely and cost effective approach while maintaining controls necessary for a public agency;
 - b. encourage objective and equitable treatment of all Suppliers while ensuring the principles of fairness, transparency and accountability;
 - c. ensure the Best Value of an Acquisition is obtained by determining the total cost. Factors to consider may include, but shall not be limited to, the determination of the total cost of performing the intended function over the lifetime of the task, Acquisition cost, installation, Disposal value, Disposal cost, quality of product, training cost, maintenance cost, quality of performance and environmental impact;
 - d. support effective business planning to ensure that Acquisitions occur after consideration of need, alternatives, timing and appropriate life cycle management;
 - e. adhere to the highest standards of ethical conduct and to avoid conflicts between the interests of the City and those of the City's employees, officers and elected officials;
 - f. ensure compliance with applicable trade agreements, laws and regulations; and
 - g. encourage due regard for the preservation of the natural environment.

Scope

3. This by-law applies to the Procurement of all Goods, Services, Construction or Consulting Services except those items set out below:

- a. Training and Education including:
 - i. staff training and professional development;
 - ii. memberships, and subscriptions, periodicals and books; and
 - iii. training and development including course development and delivery.
- b. Employer's General Expenses including:
 - i. employee expenses (professional dues / license renewals, meal allowances, travel, advances, misc.);
 - ii. petty cash replenishment and cash advances;
 - iii. workers safety insurance board payments;
 - iv. health benefits, medical notes and exams;
 - v. tax remittances;
 - vi. insurance premiums;
 - vii. damage claims;
 - viii. legal settlements;
 - ix. arbitration awards;
 - x. charges to, and from, other publicly funded agencies or administrative authorities mandated by the government;
 - xi. Council approved grants and / or donations;
 - xii. employee, Councillor, and Mayor's income (including sick leave gratuity, vacation leave, severance);
 - xiii. payroll deduction remittances;
 - xiv. honorariums;
 - xv. debentures, debt and sinking funds;
 - xvi. payments to Local Boards and Affiliates;
 - xvii. real property including land, building, leasehold interests, easements, encroachments, license and rentals;
 - xviii. investments;
 - xix. refunds (including building permit refunds, property tax refunds, and refunds for cancelled services, programs or events);
 - xx. license fees (regular maintenance fees for vehicles, elevators, communications, software etc);
 - xxi. utilities (including water, sewer, hydro, natural gas, telecommunications, postage and cable service);
 - xxii. temporary staffing agencies and services;
 - xxiii. election equipment, materials and supplies;
 - xxiv. media / advertising; and
 - xxv. software upgrades / maintenance costs;
- c. Special Services including:
 - i. legal counsel fees;
 - ii. financial services related to financial assets and liabilities, including banking services, ancillary advisory and information services as well as management of investments whether or not delivered by a financial institution;
 - iii. witness fees;
 - iv. committee fees;
 - v. arbitrator fees;

- vi. appraisal fees;
 - vii. real estate fees;
 - viii. land transfer tax;
 - ix. registry office fees;
 - x. insurance claims;
 - xi. revenue collected on behalf of a third party; and
 - xii. collection agency fees;
- d. Acquisitions which will be reimbursed in full by a third party;
 - e. Acquisitions in which the supply is controlled by a statutory monopoly;
 - f. work to be performed under the provisions of a warranty or guarantee held in respect to the original work;
 - g. Acquisitions purchased on a commodity market;
 - h. Acquisitions related to cultural or artistic fields, including:
 - i. events supporting local non-profit organizations;
 - ii. entertainers for theatre or special events;
 - iii. original works of art; and
 - iv. antiques or artifacts;
 - i. sponsorships;
 - j. Construction costs of developer build parks when the City is reimbursing a developer for construction costs related to a park in the early stages of a subdivision development; and
 - k. additional deliveries by the original Supplier of the Goods, Services, Consulting or Construction that were not included in the initial procurement, if a change in Supplier:
 - 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 City.
- 4. This by-law applies to all divisions within the City.
 - 5. This by-law applies to the Disposal of assets owned by the City save and except the Disposal of artifacts and real property including land, building, leasehold interests, easements, encroachments, license and rentals;
 - 6. Where this by-law does not apply to the Acquisition or Disposal of Goods, Services, Construction or Consulting Services, this by-law may be used as a guide for the Acquisition or Disposal of Goods, Services, Construction or Consulting Services.

Part II. Interpretation

Headings

- 7. The division of this by-law into parts and the insertion of headings are for convenient reference only and shall not affect interpretation of the by-law.

References to Applicable Law

- 8. All references to applicable policies, by-law, statutes and regulations are ambulatory and apply as amended, revised or replaced from time to time.

Definitions

- 9. For the purposes of this by-law, unless a contrary intention appears;

“Acquisition” means to obtain Goods, Services, Construction or Consulting Services;

“Approval Authority” means the authority to approve and award Procurements, as well as any assignment or corporate change requests related to such Procurements, up to the Procurement Values for the respective body or person(s) set out in “Section VI Standard Procurement” and “Section VII Non-Standard Procurement”;

“Authorized Delegate” means the person who has been delegated by Council to have Approval Authority and includes any other person further sub-delegated to have such Approval Authority in accordance with the Procurement procedures. An Authorized Delegate includes a person authorized to act on their behalf temporarily;

“Best Value” means the optimal balance of performance and cost determined in accordance with pre-defined evaluation criteria;

“Bid” means an offer or submission in response to a Solicitation Document;

“Bidder” means a Supplier that submits a Bid;

“City Manager” means the chief administrative officer of the City or designate;

“City” means The Corporation of the City of Owen Sound;

“Competitive Process” means either an Open Competition or an Invitational Competition;

“Confidential Information” means information of commercial value, the disclosure of which is likely to have the effect of either impairing the City's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the Supplier or other organization from which the information was obtained, unless the City is required by law to disclose such information;

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

“Consulting Services” means the provision of expertise or strategic advice that is presented for consideration and decision-making, and are generally acquired to obtain information, advice, training or direct assistance;

“Contract” means a commitment by the City for the Procurement of Goods, Services, Construction or Consulting Services from a Supplier which may be evidenced by:

- i. a Solicitation Document;
- ii. an Agreement executed by the Supplier and the City; or
- iii. a Purchase Order

and issued to the Supplier by a duly authorized employee of the City;

“Cooperative Purchasing” means a variety of arrangements whereby two or more publicly funded entities combine their requirements in a single Procurement process to obtain advantages of volume purchases from the same Supplier(s);

“Corporate Leadership Team” consists of the City's City Manager, Fire Chief, Director of Corporate Services, Director of Community Services and Director of Public Works and Engineering;

“Council” means the Council of the City;

“Department” means any department within the City;

“Director” means the Director of a Department or an appointed designate thereof;

“Disposal” means an act through which the City gives up title to property or ownership of goods;

“Division” means any division within the City;

“Emergency” means a situation, or the threat of an impending situation, which, may in the opinion of the Purchasing Agent, affect the environment, life, safety, health or welfare of the general public, or the property of the residents of the City, or an action taken to prevent serious damage, disruption of work, or to restore or to maintain essential service to a minimum level;

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

“HST” means harmonized sales tax;

“Internal Business Partner” means the City Division initiating or requesting the Acquisition of the Goods, Services, Construction or Consulting Services;

“Invitational Competition” means a competitive process in which an invitation to submit Bids is issued to a minimum of three Suppliers;

“Limited Competition Procurement” means the Acquisition of Goods, Services, Construction or Consulting Services through a process whereby Bids are solicited from less than three Suppliers;

“Local Boards and Affiliates” means municipally or provincially established entities in which the City has a minority or majority share and where City Councillors may be members of the governing Board for that entity (eg. Owen Sound Police Services Board, Owen Sound & North Grey Union Public Library Board);

“Purchasing Agent” means the City’s Manager of Purchasing, Risk and Asset Management or designate;

“Non-Competitive Procurement” means using a process for Acquisition of Goods, Services, Construction or Consulting Services directly from a particular Supplier;

“Non-Standard Procurement” means the Acquisition of Goods, Services, Construction or Consulting Services through a process other than the process normally required for the type and Procurement Value of the Goods, Services, Construction or Consulting Service set out in “Section VI Non-Standard Procurement”;

“Open Competition” means the solicitation of Bids through a publicly posted Solicitation Document;

“Personal information” refers to personal information as defined within the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56;

“Procurement” or **“Purchasing”** means the Acquisition of Goods, Services, Construction or Consulting Services by purchasing, renting or leasing;

“Procurement Value” means the estimated amount (excluding taxes) for budget or planning purposes in acquiring particular Goods, Services, Construction or Consulting Services which amount may be higher, lower or equal to the actual cost of the Goods, Services, Construction or Consulting Services when ultimately acquired. For greater certainty, when multi-year Contracts are awarded for the Acquisition of Goods, Services, Construction or Consulting Services, the estimated value of the Goods, Services, Construction or Consulting Services for such multi-year Contracts is the estimated amount to be paid for the Goods, Services, Construction or Consulting Services over the entire Contract, and is not limited to the amount which may be payable in any particular budget year. The Procurement Value must include all anticipated costs to the City, including, as applicable, Acquisition, maintenance, replacement, Disposal, and training, delivery, installation and extension options, less applicable rebates or discounts and shall exclude HST or other taxes;

“Purchase Order” means the City’s written document issued by a duly authorized employee of the City to a Supplier formalizing all the terms and conditions of the purchase and supply of the Goods, Services, Construction or Consulting Services; identified on the face of the Purchase Order;

“Purchasing Card” means a corporate credit card provided by the City to a duly authorized employee of the City for use as a payment method to purchase directly from Suppliers where permitted under this by-law and in accordance with a written card holder agreement and applicable procedures;

“Services” means the furnishing of labour, time or effort by a Supplier, which may involve the delivery or supply of products incidental to the provision of the services, and includes professional, construction or maintenance services;

“Solicitation Document” means the document issued by the City to solicit Bids from Bidders or Suppliers;

“Standard Procurement” means the Acquisition of Goods, Services, Construction or Consulting Services set out in “Section V - Standard Procurement”;

“Supplier” means a person carrying on the business of providing Goods, Services, Construction or Consulting Services;

“Specifications” means the detailed description of and written requirements and standards for Goods, Services, Construction or Consulting Services and also includes any drawings, designs and models; and

“Standardization” is a management decision-making process that examines a specific common need or requirement and then selects Goods, Services, Construction or Consulting Services that best fills that need to become the standard.

Part III. Authority and Responsibility

General

10. Specific responsibilities pertaining to all stages of a Procurement process, from the initial identification of requirements through to the management of Contracts with Suppliers, are detailed in this by-law and the City’s Procurement procedures. In addition to those specific responsibilities, the general roles and responsibilities delegated to the City’s elected officials, officers and employees are set out below.

Council

11. In accordance with best practices in municipal Procurement, Council recognizes the need for a clear separation of political and administrative functions in relation to the City’s Procurement operations as follows:
 - a. It is the role of Council to establish policy and to approve expenditures through the City’s budget approval process. Through this by-law, Council delegates to the City’s officers and employees the authority to incur expenditures in accordance with approved budgets through the Acquisition of Goods, Services, Construction or Consulting Services in accordance with the rules and processes set out in this by-law.
 - b. To facilitate Council’s oversight role in respect of significant projects, Council may require Departments to obtain Council’s authority to initiate specific Procurements by identifying Procurement projects of interest, such as Procurements that are of a high Procurement Value or involve significant risk, security concerns or significant community interest.
 - c. To avoid the potential appearance of bias or political influence in Procurement Contract award decisions, members of Council will have no involvement in Competitive Procurement processes from the time those Procurement processes have been initiated through the advertisement or issuance of the Solicitation Document until a

Contract has been entered into with the successful Bidder, except where Council considers or approves the Contract award in accordance with this by-law.

Purchasing Agent

14. It is the role of the Purchasing Agent to lead the City's Procurement. In fulfilling this role, the Purchasing Agent, or designate, is responsible for:
- a. researching developments in Canadian public Procurement requirements and best practices and, through collaboration with the Internal Business Partners, recommending updates to this by-law and developing the City's Procurement procedures to reflect such developments and support the City's Procurement goals and objectives;
 - b. providing Procurement advice and related services, including developing and maintaining the necessary forms and Solicitation Document templates, for the purposes of fulfilling the Procurement needs of the City;
 - c. developing Procurement strategies and continually analyzing the City's business requirements and spending patterns to identify opportunities for more strategic sourcing, including:
 - i. the Standardization of Goods and Services in conjunction with Internal Business Partners, where appropriate and feasible; and
 - ii. the consolidation of all similar Goods and Services where appropriate and possible;
 - d. ensuring the consistent application of Procurement procedures and providing Procurement services in an efficient and diligent manner;
 - e. addressing and, where possible, resolving issues or concerns that arise in respect of a Procurement process or the application and interpretation of this by-law and the City's Procurement procedures and seeking guidance and advice from the Corporate Leadership Team, as required;
 - f. ensuring compliance with this by-law and reporting non-compliance, in writing, to the appropriate Director and/or the City Manager where warranted;
 - g. providing appropriate orientation, training and tools to City employees involved in Procurement activities; and
 - h. serving as the City's representative as a member of Cooperative Purchasing groups and organizations, where such membership is determined to be in the best interests of the City.

Directors

15. It is the role of the Internal Business Partners to ensure that their requirements for Goods, Services, Construction or Consulting Services are met in accordance with the goals and objectives of this by-law. In fulfilling this role, the Directors, or their designates, are responsible for:
- a. exercising their Approval Authority for all Procurement activity within the prescribed limits of this by-law;
 - b. delegating Authority Approval limits to staff in compliance with this by-law and all applicable procedures;
 - c. ensuring that all Procurement activities and decisions are authorized by this by-law and are carried out in accordance with the City's Procurement procedures;
 - d. monitoring all Contract expenditures to ensure compliance with financial limits;
 - e. identifying and addressing non-compliance with this by-law and applicable procedures within their Departments; and

- f. upon discovery of instances of non-compliance, notifying and consulting with the Purchasing Agent to obtain advice with respect to mitigating potential risks to the City arising from the non-compliance.

Internal Business Partners

16. Employees of all Divisions are responsible for complying with this by-law. Internal Business Partners involved in Procurement activities must clearly understand their obligations and responsibilities under this by-law and all applicable procedures, and should consult with the Purchasing Agent in respect of any questions regarding the application or interpretation of this by-law or the Procurement procedures.

Restricted Acts after Nomination Day

17. Certain staff are delegated authority in the City's Delegation of Powers and Duties By-law to approve Contract awards, that would not be permitted for approval by Council under Sections 275 (1) to (4.1) of the *Municipal Act*, 2001 (otherwise known as "Restricted Acts After Nomination Day").

Part IV. Conduct and Conflicts of Interest

Council and City Employees

18. The City's Procurement activities must be conducted with integrity so as to maintain the public's trust. All Procurement activities undertaken by the City must be conducted in accordance with the following policies and statutes:
 - a. the City's Code of Conduct for Members of Council, Local Boards, & Advisory Committees (Policy#CrS-C42), as applicable;
 - b. the City's Code of Ethics for Municipal Employees (Policy#CMA64) for employees, as applicable;
 - c. the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as applicable.
19. All participants in a Procurement process, including any Suppliers acting on the City's behalf, must declare any perceived, possible or actual conflicts of interest.
20. The following activity is prohibited, unless specifically approved by Council:
 - a. Any attempt to evade or circumvent the requirements of the this by-law including, but not limited to, the division of purchases to avoid the requirements of the Procurement Policy by any method, which includes purchases made using Procurement cards.

Suppliers

20. The City expects its Suppliers to act with integrity and conduct business in an ethical manner. The City may refuse to do business with any Supplier that:
 - a. has engaged in illegal or unethical Bidding practices;
 - b. has an actual or potential conflict of interest;
 - c. has an unfair advantage in the Procurement process; or
 - d. fails to adhere to ethical business practices.
21. Where a Supplier is retained to participate in the development of a Solicitation Document or the Specifications for inclusion in a Solicitation Document, that Supplier will not be allowed to respond, directly or indirectly, to that Solicitation Document unless the Purchasing Agent is satisfied that there is not a reasonable alternative or that there is not a competitive advantage to be gained.
21. Illegal or unethical bidding practices include:
 - a. bid-rigging, price-fixing, bribery or collusion or other behaviours or practices prohibited by federal or provincial statutes;

- b. attempting to gain favour or advantage by offering gifts or incentives to City officers and employees, members of Council or any other representative of the City;
 - c. lobbying members of Council or City officers and employees or engaging in any prohibited communications during a Procurement process;
 - d. submitting inaccurate or misleading information in response to a Procurement opportunity; and,
 - e. engaging in any other activity that compromises the City's ability to run a fair Procurement process.
22. The City will report any suspected cases of collusion or other bid-rigging offences under the *Competition Act*, R.S.C., 1985, c. C-34 to the Competition Bureau or to other relevant authorities.
23. In providing Goods, Services, Construction or Consulting Services to the City, Suppliers are expected to adhere to ethical business practices, including:
- a. performing all City Contracts in a professional and competent manner and in accordance with the terms and conditions of the Contract; and
 - b. complying with all applicable laws, including safety and labour codes (both domestic and international as may be applicable).

Part V. Standard Procurement

24. Standard Procurement depends on the type and Procurement Value of the Goods, Services, Construction or Consulting Services required. Standard Procurement processes include:
- a. conducting an Invitational Competition by soliciting Bids from a minimum of three Suppliers; or
 - b. conducting an Open Competition by publicly advertising and posting the Solicitation Document.
25. The following table sets out the requirements for Standard Procurement:

Standard Procurement Process and Approval Authority

Requirement	Procurement Value Excluding Taxes	Procurement Process	Approval Authority
Goods, Services, Construction, Consulting Services	Up to \$9,999	Non-Competitive	Director
	\$10,000- \$24,999	Invitational Competition facilitated by the Department requiring Acquisition	Purchasing Agent
	\$25,000- \$49,999	Invitational Competition facilitated by Purchasing Agent	Purchasing Agent
	\$50,000-\$249,999	Open Competition	Director, Corporate Services
	Greater than \$250,000	Open Competition	Council

26. Where the City is facilitating an Acquisition for Local Boards and Affiliates, the Local Boards and Affiliates may elect to have the purchase approved by their Board instead of the Approval Authority outlined above.
27. Regardless of Procurement Value, the Purchasing Agent shall submit a report to Council recommending award of a purchase greater than \$100,000 if any one or more of the following conditions apply:
 - a. the value of the Bid being recommended for award including any contingency allowance is in excess of the Council approved budget by \$25,000;
 - b. the project is not specifically identified within the Council approved budget; or
 - c. there are other orders of government or granting agencies which require Council approval.
28. The City's Purchasing Agent shall prepare (twice per year) an information report for Council on Solicitations awarded where the Procurement Value is between \$50,000 and \$250,000 and the Director of Corporate Services approved the award.
29. Where any purchase of Goods, Services, Construction or Consulting Services has been authorized under this by-law, the Purchasing Agent may authorize disbursement of additional funds provided that the additional funds:
 - a. shall not exceed the greater of \$100,000 or ten percent (10%) of the original Contract price;
 - b. are available within the relevant budget; and
 - c. are required to complete works that are necessary as part of the original Contract.
30. The conditions above do not apply where the additional funds required are provided to the City.
31. The Standard Procurement processes shown in the table in section 25 are minimum standards. Although the table indicates that the Procurement process shall become progressively more formal as the estimated Procurement Value increases, the Internal Business Partner or the Purchasing Agent may always choose to use a more formal Procurement process than the process indicated in the table.

Part VI. Non-Standard Procurement

32. Non-Standard Procurement processes for Goods, Services, Construction or Consulting Services includes, without limitation:
 - a. Non-Competitive Procurement; or
 - b. Limited Competition Procurement.
33. The use of a Non-Standard Procurement processes are only permitted under the following circumstances:
 - a. where a Standard Procurement process was conducted in accordance with this by-law and applicable procedures and has not resulted in the receipt of any Bids;
 - b. where only one Supplier is able to meet the requirements of a Procurement in order to:
 - i. ensure compatibility with existing products;
 - ii. recognize exclusive rights, such as exclusive licenses, copyright and patent rights; or
 - iii. maintain specialized products that must be maintained by the manufacturer or its representative;

- c. where there is an absence of competition for technical reasons and the Goods, Services, Construction or Consulting Services can only be supplied by one particular Supplier and no alternative or substitute exists;
- d. for the Procurement of Goods, Services, Construction or Consulting Services relating to matters with Confidential Information or privileged nature where the disclosure of those matters through an open competition could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
- e. for the Procurement of Goods, Services, Construction or Consulting Services from a publicly funded agency or a non-profit organization;
- f. for the Procurement of Goods, Services, Construction or Consulting Services through a Vendor of Record (VOR) Program, where analysis supports Best Value;
- g. for the Procurement of Goods, Services, Construction or Consulting Services under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- h. for the Procurement of a prototype of Goods, Services, Construction or Consulting Services to be developed in the course of, and for a particular Contract for research, experiment, study or original development, but not for any subsequent purchases; or,
- i. for the Procurement of Goods, Services, Construction or Consulting Services that is financed primarily from donations that are subject to conditions that are inconsistent with a standard Procurement process conducted in accordance with this by-law and applicable procedures.

34. The following table sets out the requirements for Non-Standard Procurement:

Non-Standard Procurement Process and Approval Authority

Requirement	Procurement Value Excluding Taxes	Procurement Process	Approval Authority
Goods, Services, Construction, Consulting Services	Up to \$99,999	Non-Competitive or Limited Competition	Purchasing Agent
	Greater than \$100,000	Non-Competitive or Limited Competition	Council

Part VII. Emergency Procurement

35. Notwithstanding any other provisions of this by-law and provided time does not permit the use of a Standard Procurement process, Goods, Services, Construction or Consulting Services may be purchased on an Emergency basis where they are required as a result of an unforeseen situation or an event occurs that is a threat to any of the following:
- a. public health or safety;

- b. the maintenance of essential City services or to prevent the disruption of essential City services;
 - c. the welfare of persons or of public property; or
 - d. the security of the City's interests.
36. Where an Emergency purchase is required as described above, the Purchasing Agent has the Approval Authority to issue a Purchase Order for the requirements. When the Procurement Value of the Emergency Acquisition exceeds \$100,000, the Purchasing Agent shall provide a report to Council as soon as practicable.
37. Where there is a declared municipal emergency in accordance with the City's emergency response plan, the Purchasing Agent or a member of the Corporate Leadership Team shall authorize any required purchases. This authority shall continue until the declared municipal emergency is terminated in accordance with the City's emergency response plan. When the Procurement Value of the Acquisition exceeds \$100,000, the Purchasing Agent shall issue an information report to Council as soon as practicable.

Part VIII. Bidder Debriefings

38. Where the City has conducted a Standard Procurement process, unsuccessful Bidders may request a debriefing from the Purchasing Agent. Unsuccessful Bidders shall have 60 calendar days following the date of the Contract award notification to request a debriefing.

Part IX. Contract Management and Supplier Performance

39. All Contracts must be managed by the respective Internal Business Partner acting as the project lead in accordance with this by-law and all applicable procedures to ensure that both the City and the Supplier fulfil the requirements of the Contract. Internal Business Partners must involve the Purchasing Agent in the management of Contract disputes, as required by applicable procedures.
40. No Invitational Competition or Open Competition will be awarded to any Supplier which has a claim, or has instituted a legal proceeding against the City or against which the City has a claim, or has instituted a legal proceeding with respect to any previous Contract, without prior approval of Council.

Part X. Unsolicited Proposals

41. All unsolicited proposals, including any offers for presentations or product/service trials submitted to the City with the expectation on the part of the submitter of obtaining consideration for an ensuing Contract or Purchase by the City, must be directed to the Purchasing Agent for review and approval for acceptance.
42. Any Procurement resulting from the receipt of an unsolicited proposal must comply with the provisions of this by-law.
43. If it is determined that there is a legitimate need for the Goods, Services, Construction or Consulting Services offered by way of an unsolicited proposal, then an Acquisition process shall be conducted in accordance with this by-law and all applicable procedures.

Part XI. Cooperative Purchasing

44. The City may participate with other publicly funded agencies in Cooperative Purchasing for Goods, Services, Construction or Consulting Services when it is in the best interests of the City to do so, as determined by the Purchasing Agent.

45. In the event that the Cooperative Purchasing Contract was led by a publicly funded agency other than the City, the Procurement process must be consistent with the requirements of this by-law and the resulting Contract must permit the City to purchase from that Supplier under the same terms and conditions.

Part XII. Green Procurement

46. The City is committed to the purchase of goods and services with due regard to the preservation of the natural environment and to encourage the use of environmentally friendly products and services, except where it is not practicable to do so.
47. All Internal Business Partners, in conjunction with the Purchasing Agent, are encouraged to seek additional ways of achieving the goal of being environmentally safe and responsible by thorough review of each Procurement process to ensure that, wherever possible and economically feasible, the City's Solicitation Document includes Specifications that reflect environmentally friendly attributes of the goods and services, except where it is not practicable to do so.

Part XIII. Protection of Confidential/Personal Information

48. In situations where a Supplier may receive the City's Confidential Information as part of the provision of the Goods, Services, Construction or Consulting Services, the City will ensure that the Solicitation Document and/or terms and conditions include requirements that the Supplier safeguards the Confidential Information.

Part XIV. Disposal of Surplus Assets

49. The Director, or delegate, shall submit to the Purchasing Agent, a written report of all City assets from their department, including but not limited to, furniture, vehicles, equipment, supplies, and other goods and material, which are deemed surplus or which have become obsolete, worn out, or otherwise incapable of use.
50. The Purchasing Agent, shall have the Approval Authority to sell, exchange, or otherwise dispose of City assets declared as surplus or obsolete to the needs of the City. The Purchasing Agent may first offer the surplus assets to other Departments. Any surplus assets not required by other Departments and that are deemed by the Purchasing Agent as having a residual value may be disposed of by any of the following Disposal methods:
- a. by auction or solicitation; or
 - b. by donation to a non-profit agency; or
 - c. by recycling; or
 - d. in the event that all efforts to dispose of the goods by sale are unsuccessful, by scrapping or destroying if recycling is unavailable.

Part XV. Incorporation of Accessibility Design, Criteria and Features

51. The City will promote, and incorporate, whenever possible, the requirements of the *Ontarians with Disabilities Act, 2001 (ODA)*, the *Accessibility for Ontarians with Disabilities Act, 2005 (AODA)*, and specifically, Ontario Regulation 429-07 and Ontario Regulation 191-11 made under the AODA in Procurement activities of the City, except where it is not practicable to do so.

Part XVI. By-Law Administration

52. In the event the provisions of this by-law are inconsistent with the provisions of the Municipal Act, its Regulations or any other Act, the provisions of the Act or Regulation shall prevail.
53. Under this by-law and associated procedures, the Purchasing Agent is authorized to make all decisions, save and except where Council is specifically identified in this by-law as the Approval Authority. Any Supplier shall have the right to appeal that decision to Council
54. Council may, by having two-thirds (2/3) vote of Members present at the meeting, waive any provisions or requirements of this by-law.
55. This by-law will be reviewed every five (5) years, or such earlier date as the Purchasing Agent, or Director of Corporate Services or Council may deem it appropriate to evaluate its effectiveness.
56. It is hereby declared that each and every of the foregoing sections of this by-law is severable and that, if any provisions of this by-law should for any reason be declared invalid by any court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.
57. Notwithstanding its repeal, any purchases begun but not yet completed by the effective date of this by-law shall be completed in accordance with the terms of the previous Purchasing By-law No. 2017-025 as if it were still in effect.

Part XVII. Enactment and Repeal

58. This by-law shall come into full force and effect on the date that it is passed, at which time By-law No. 2017-025 is repealed and all by-laws, policies and resolutions that are inconsistent with the provisions of this by-law are hereby amended or repealed insofar as it is necessary to give effect to the provisions of this by-law.

FINALLY PASSED AND ENACTED this 13th day of January, 2020.

Signature on file

Mayor Ian C. Boddy

Signature on file

Briana M. Bloomfield, City Clerk