



## The Corporation of the City of Peterborough

### By-Law Number 24-077

Being a by-law to establish fair transparent and accountable procurement practices and policies as required by Section 270 of the **Municipal Act, 2001** and to delegate authority related thereto:

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## Recitals

1. The Council of The Corporation of the City of Peterborough considers it appropriate for the effective and efficient administration of the City to establish fair, transparent and accountable procurement practices and to delegate authority related thereto.

**Now therefore**, The Corporation of the City of Peterborough by its Council hereby enacts as follows:

## Short Title

1. This By-Law may be referred to as the "Procurement By-law".

## Interpretation

2. Unless otherwise stated:
  - a) a reference to any statute or regulation refers to a statute or regulation of Ontario as it may be amended or replaced from time to time;
  - b) a reference to a by-law refers to a by-law of the City as it may be amended or replaced from time to time;
  - c) a reference to a section, paragraph or clause is a reference to this By-law's section, paragraph or clause; and
  - d) as the context requires, the singular includes the plural and vice-versa.
3. The table of contents and headings in this By-law are for convenience only and do not form part of this By-law.
4. If any part of this By-law is determined to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.

## Definitions

5. In this By-law:
  - a) "Administrative Staff Committee" or "ASC" means a committee comprised of the CAO, the Commissioners and other staff as determined by the CAO.
  - b) "Act" means the **Municipal Act, 2001**.
  - c) "Approval Authority" means the authority to (1) proceed with a Procurement; (2) sign a Contract or a Purchase Order; (3) sign a Contract Amendment or (4) sign a Contract Renewal Option.
  - d) "Approved Budget" means a budget approved by Council, a Strong Mayor, the Treasurer or the CAO, which may or may not have been supplemented by grants:
  - e) "Best Value" means the combination of the Total Cost of Ownership and, if applicable, Social Value Objectives.
  - f) "Bid" means a submission from a Bidder in response to a Bid Solicitation or to an Invitational Bid Solicitation.
  - g) "Bidder" means a Company which submits a Bid.
  - h) "Bid Solicitation" means a document issued by the City, including any addenda, which solicits Bids.
  - i) "Broader Public Sector Entity" means an organization which is either (1) a level of government or (2) an organization which receives government funding, such as a school board, college or university created by the Province of Ontario and situated within the City; a hospital; a public health entity; or a Company which delivers social services.
  - j) "By-law" means this By-law.
  - k) "City" means The Corporation of the City of Peterborough.
  - l) "CAO" means the City's Chief Administrative Officer.

- m) "Clerk" means the City Clerk or Deputy Clerk as appointed by Council.
- n) "Commissioner" means, as the context requires, the Commissioner of a Department.
- o) "Company" means a corporation, sole proprietorship, partnership, limited liability partnership or other legal person.
- p) "Contract" means a binding agreement for the provision of one or more Deliverable between the City and (1) one or more Company or (2) a First Nation.
- q) "Contract Amendment" means a change to existing Contract, excluding the exercise of a Contract Renewal Option.
- r) "Contract Renewal Option" means an option in a Contract to do one or more of (1) extend the term of a Contract and/or (2) Procure additional Deliverables under the Contract.
- s) "Contract Value" means the value of the Contract term, including any Contract Renewal Options, and exclusive of all taxes.
- t) "Co-operative Procurement" means the co-ordinating a Procurement with one or more Broader Public Sector Entity.
- u) "Council" means the City's Council.
- v) "Councillor" means a member of Council.
- w) "Deliverable" means any goods or services or combination thereof resulting from a Procurement.
- x) "Department" means, as the context requires, each of the following City Departments:
  - i) Community Services;
  - ii) Finance and Corporate Support Services;
  - iii) Infrastructure, Planning and Growth Management;
  - iv) Legislative Services; and
  - v) Municipal Operations.
- y) "Designate" means a person with the authority to act in the absence of their Director or Commissioner, as the case may be.
- z) "Director" means, as the context requires, a Director within a Department.
- aa) "Director, Materials Management" means the person holding that title within the Finance and Corporate Support Services Department and for the purposes of exercising any of the Director's authority under this by-law includes the Treasurer.
- bb) "Exempt Expenditure" means the expenditures listed in Appendix B.
- cc) "Immediate Family" means one's spouse, common law spouse, children, parents, siblings.
- dd) "Indebted" means owing the City money, except for unpaid municipal taxes for which the due date has not passed.
- ee) "Informal Quote" means a Procurement process which obtains a Best Value comparison from at least 3 Companies.

- ff) “Invitational Bid Solicitation”: means a means a Bid Solicitation issued to City-selected Bidders when the Contract Value does not exceed \$100,000 pretax.
- gg) “Low Value Procurement” means a Procurement when the Contract Value does not exceed \$10,000 pre-tax.
- hh) “Manager” means, as the context requires, a Manager within a Department.
- ii) “Master Framework Agreement” means a Contract between the City and a Prequalified Supplier.
- jj) “Mayor” means the City’s Mayor, or in their absence, a Deputy Mayor.
- kk) “Non-Standard Procurement” means the acquisition of Deliverables through a method or process other than the method or process normally required. (E.g. Single Source Procurement or Sole Source Procurement).
- ll) “Open Competition” means a Procurement process which publicly advertises Bid Solicitations from: (1) multiple Bidders or (2) from Prequalified Suppliers.
- mm) “Prequalified Supplier” means a Supplier which is included on a Qualified Supplier Roster.
- nn) “Procurement” means the acquisition of Deliverables.
- oo) “Procurement Review Committee” means the Administrative Staff Committee;
- pp) “Purchasing Card” means a City procurement card used as a payment method.
- qq) “Qualified Supplier Roster” means a list of Prequalified Suppliers maintained by the Director, Materials Management.
- rr) “Request for Information” or “RFI” a publicly posted request from the Director, Materials Management to a Company seeking information about the availability of Deliverables and the Company’s level of interest to supply the Deliverables.
- ss) “Roster Framework Competition” means a process to create a Qualified Supplier Roster.
- tt) “Signature” means a signature from a person with the authority to sign a Contract, whether made in person or by electronic means, provided the electronic signature complies with the requirements of the **Electronic Commerce Act**, the City’s information technology standards and any City requirements for electronic signatures.
- uu) “Signing Authority” means (1) the Approval Authority unless (2) the Approval Authority is Council, in which case “Signing Authority” means the Mayor and Clerk or unless the Approval Authority is ASC, in which case “Signing Authority” means the CAO and Clerk.
- vv) “Single Source Procurement” means a form of Procurement whereby the City obtains a Deliverable from one Supplier, without a using an Open Competition.
- ww) “Sole Source Procurement” means a form of Procurement whereby the City obtains a Deliverable from the only possible Supplier.
- xx) “Social Value Objective” means a measurable outcome assessed by the Director, Materials Management which determines whether the employment, skills, and training provided by a Supplier will help the City meet at least one of its Strategic Goals.
- yy) “Standing Offer” means a written offer from a Company or Prequalified Supplier to supply Deliverables to the City upon request and at a predetermined price.

- zz) “Strategic Goal” means a strategic goal contained in the City’s Strategic Plan.
- aaa) “Strong Mayor: means the Mayor, excluding a Deputy Mayor, who is exercising a power under Part VI.1 of the Act in relation to the City’s annual budget
- bbb) “Supplier” means a Company or legal person who has signed a Contract or who has been issued a purchase order.
- ccc) “Total Cost of Ownership” means an assessment of (1) the direct social, environmental and financial costs to the City of products, services, and construction during their acquisition, use and end of life phases and (2) quality, quantity, service, and price.
- ddd) “Total Cumulative Increase” means the value of all increases to the Contract Value.
- eee) “Treasurer” means the person appointed by Council under the Act.

**Permitted Types of Procurement**

- 6. The Director, Materials Management may consult with the appropriate Commissioner before determining which of the following will be used:
  - a) an Open Competition, including a Roster Framework Competition;
  - b) an Invitational Bid Solicitation;
  - c) a Co-operative Procurement;
  - d) a Low Value Procurement;
  - e) a Standing Offer;
  - f) an Informal Quote; or
  - g) an Exempt Procurement which does not exceed \$50,000.  
All of the above require an Approved Budget.

**Roles and Responsibilities of Director, Materials Management**

- 7. The Director, Materials Management has administrative oversight of the City’s centralized Procurement activities and may:
  - a) establish and maintain Procurement policies, including for when an Exempt Procurement may be made;
  - b) include Social Value Objectives in a Procurement;
  - c) develop and maintain Qualified Supplier Rosters
  - d) determine, after consultation with the appropriate Commissioner:
    - i. which Company may become a Prequalified Supplier;
    - ii. when staff may use a Request for Information;
    - iii. the Total Cumulative Increase and whether a Total Cumulative Increase is permitted;
    - iv. when a Contract or a Purchase Order is required;
  - e) determine, after consultation with the Treasurer, if a Bidder, Company or Supplier is Indebted to the City;

- f) consult and share information with a Commissioner and, if required, the City Solicitor and/or the Treasurer, respecting matters under consideration related to a Procurement or matters arising in relation to this by-law;
  - g) submit questions and documentation to the Procurement Review Committee;
  - h) the Treasurer shall act in the absence of the Director, Materials Management.
8. The Director, Materials Management shall:
- a) estimate the Contract Value in consultation with the Commissioner while preparing each Bid Solicitation;
  - b) develop Procurement strategies and continually analyze business requirements and spending patterns to identify opportunities for strategic sourcing;
  - c) review and approve Bid Solicitations to ensure suitability and protection of the City's interests;
  - d) keep apprised of best practices for responsible Sustainable Procurement and assist operating Departments in incorporating environmental considerations in Bid Solicitations where feasible;
  - e) review the City's use of Deliverables to ensure the City is receiving Best Value;
  - f) process Purchase Orders;
  - g) utilize appropriate software to establish and maintain a Central Stores operation for the provision of items that:
    - i. must be made readily available for the repair of vehicles or equipment on a 24-hour basis;
    - ii. carry a long lead-time to supply from the time of order; or
    - iii. for which economies are realized by purchasing in large quantities;
  - h) address any issues or concerns that arise in respect of a Procurement, and seek guidance, support, and advice from Legal Services and ASC, as necessary to protect the City's interests;
  - i) research, develop, maintain, update, and communicate the City's Procurement practices and supporting documentation; and
  - j) provide appropriate orientation, training, and tools to staff involved in Procurement.
9. If all Bids exceed the Approved Budget, and staff is not prepared to seek additional funding, the Director, Materials Management must consult with all of: the applicable Commissioner; the Treasurer; and the City Solicitor in order to determine the City's course of action.

### **Determining Contract Value**

10. As a precondition to preparing each Bid Solicitation, the Director, Materials Management will estimate the Contract Value, by calculating:
- a. the Total Cost of Ownership;
  - b. the estimated costs of, as applicable, installation, training, operation, maintenance, replacement and disposal
  - c. the value of all Contract Renewal Options.

## **Responsibilities of Commissioners**

11. For each Procurement, the Commissioner must:
  - a. Ensure their Department carries out each Procurement in accordance with this By-law and all applicable procedures and protocols;
  - b. Authorize appropriate delegated authority of staff in their Departments as permitted by this By-law;
  - c. Ensure sufficient Approved Budget exists for the planned procurement before a procurement process commences;
  - d. Prepare, in consultation with the Materials Management Division, specifications and scope of work to be included in all Bid Solicitations;
  - e. Prepare award reports, where required, in accordance with formats satisfactory in content to the Administrative Staff Committee;
  - f. Ensure that Risk Management has provided the required insurance particulars before a procurement process commences; and
  - g. Ensure that after award, and prior to receiving the Deliverables, all mandatory documentation, including a certificate of insurance, has been obtained, including but not limited to a signed Agreement.

## **Responsibility of the Administrative Staff Committee**

12. The Administrative Staff Committee shall have the following responsibilities:
  - a. Approving Procurement Procedures;
  - b. Approving Procurements, Contract Amendments and Contract Renewal Options in accordance with its delegated Approval Authority under this By-law;
  - c. Making determinations under the City's Procurement Protest Protocol and Supplier Suspension Protocol;
  - d. Sitting as the Procurement Review Committee and consider and provide input on any Procurement matter that may be referred to it by the Treasurer or by the Director, Materials Management; and
  - e. Executing Contracts as permitted under this by-law.

## **Delegated Authority to Approve Budget Transfers**

13. Other than when Section 14. applies, the CAO or the Treasurer are authorized to transfer an Approved Budget, including any uncommitted general contingency, or the capital levy reserve where the net required transfer is equal to or less than \$100,000. All such transfers will be reported in the quarterly financial report.

14. During the period of an election year, when the actions of the outgoing Council have become restricted under Section 275 of the Act or when there are no meetings of the outgoing Council until the first meeting of the new Council, during which budget transfers could have been authorized by Council, the CAO, in consultation with the Treasurer, is authorized to transfer an Approved Budget, including any uncommitted general contingency, or the capital levy reserve, and to pre-commit future year(s) budget(s) and that the ASC be delegated the authority to approve (1) an award of contract, or (2) a Contract Amendment, (3) exercise a Contract Renewal Option that would otherwise require Council's approval and all such acts of delegated authority will be reported in the next quarterly financial report.
15. The CAO or the Treasurer is authorized to create a budget and execute the funding agreement where 100% funding has become available, subsequent to the annual budget approval, for a specific Deliverable, and where no new full-time staff is required. All such budget creation will be reported in the quarterly financial report.

#### **When Council Must Approve Budget Transfers or Creation**

16. Other than when Section 14 applies, Council must approve budget transfers or the creation of a budget when:
  - a. a commitment against any future years' budget is required; or
  - b. a net transfer of an Approved Budget is greater than \$100,000
17. Council must approve budget transfers or the creation of a budget when a budget transfer or the creation of a budget requires additional full-time staff complement.

#### **No Contract Splitting**

18. No City staff member will subdivide, split, or otherwise structure a Procurement to reduce the Contract Value to circumvent this By-law.

#### **Open Competition**

19. An Open Competition must be used when the Contract Value is expected to exceed \$100,000 unless a Non-Standard Procurement has been approved by the Director, Materials Management.
20. Each Bid Solicitation must be posted on the City's prescribed electronic tendering site and/or other forms of media all to the satisfaction of the Director, Materials Management.
21. The Open Competition may be based solely on price or may be based on price and the other evaluation criteria included in the Bid Solicitation. The specific process to be followed will be set out in the Bid Solicitation.
22. Where provided for in the Bid Solicitation, the Open Competition may include negotiation with one or more top-ranked Bidder(s), if the rankings were determined using price and other selection criteria included in the Bid Solicitation.
23. If Social Value Objectives are included in the Bid Solicitation in an Open Competition, they will account for no less than 5% and no more than 25% of the Bid evaluation.
24. Open Competitions may contain two stages, the first of which is a prequalification stage conducted by soliciting and evaluating submissions from all interested Bidders in order to establish a short-list of Companies on a Qualified Supplier Roster. The second stage will be a Roster Framework Competition.



### **Roster Framework Competition**

25. A Roster Framework Competition is a form of Open Competition in which Suppliers are pre-screened by the Director of Materials Management based on the qualification criteria and evaluation process specified in the Bid Solicitation and the end result is a Qualified Supplier Roster.
26. Social Value Objectives may be evaluated in a Roster Framework Competition, and they will account for no less 5% and no more than 25% of the Bid evaluation.
27. Only a Pre-Qualified Supplier who signs a Master Framework Agreement is eligible to Bid on a Roster Framework Competition.
28. A Qualified Supplier Roster does not create any commitment from the City to purchase Deliverables from a Pre-qualified Supplier.
29. As the need for the Deliverables arises, the City will select one or more of the Pre-qualified Suppliers in accordance with the process contained in the Master Framework Agreement.

### **Low Value Procurement**

30. A Low Value Procurement is permitted when:
  - a. The Contract Value will not exceed \$10,000, exclusive of taxes; and
  - b. The Deliverables are required on a one-time basis;
31. The Director, Materials Management may elect to apply one or more of Social Procurement Best Value and/or Sustainable Procurement to the Low Value Procurement.
32. A Low Value Procurement may be completed by using a Purchasing Card or a purchase order.
33. Each Director may determine whether one or more informal quotes is required prior to a Low Value Procurement.

### **Existing Supply Arrangements**

34. Each Director is responsible for determining whether there are established Standing Offers or Qualified Supplier Rosters available for the Procurement. When available, the Deliverables must be purchased in accordance with the terms of the Standing Offer or the Master Framework Agreement.
35. Where a requirement for Deliverables arises and a Standing Offer is available, the City will use a Purchase Order to Procure the Deliverables.
36. Where a requirement for Deliverables arises and a Qualified Supplier Roster is available, the City will use a Roster Competition to Procure the required Deliverables. Roster Competitions will be conducted by the Director, Materials Management using a Master Framework Agreement.

### **Informal Quote Process**

37. An Informal Quote Process may be used when the Director, Materials Management is satisfied that Contract Value is expected to exceed \$10,000 but not exceed \$50,000 and the Deliverables are required on a one-time basis.
38. The Director, Materials Management may obtain an informal quote from a local Company, social enterprise or diverse-owned Company.
39. If the Contract Value is between \$25,000 or less, then an informal quote can be obtained through advertisements, Company catalogues, direct solicitations to Companies, and other similar methods.

40. If the Contract Value is over \$25,000 but does not exceed \$50,000 then the Director, Materials Management will obtain written quotes.
41. To complete the Informal Quote Process, the person with Approval Authority shall file a Purchase Requisition with the Director, Materials Management for processing.

#### **Invitational Bid Solicitation**

42. An Invitational Bid Solicitation may be used when the Director, Materials Management is satisfied that Contract Value is expected to exceed \$50,000 and not exceed \$100,000 and that an Open Competition is not required.
43. The Bid Solicitation for an Invitational Bid Solicitation must be issued to at least three Companies. The Director, Materials Management may issue the Bid Solicitation to a local Company, a social enterprise or to a diverse-owned Company.
44. Social Value Objectives may be evaluated in an Invitational Bid Solicitation, and they will account for no less than 5% and no more that 25% of the Bid evaluation.
45. An Invitational Bid Solicitation which did not include Social Value Objectives will be determined on price and the other evaluation criteria included in the Bid Solicitation.
46. An Invitational Bid Solicitation which did not include Social Value Objectives will be determined on the basis of Best Value.
47. Where provided for in the Bid Solicitation, the Invitational Bid Solicitation may include negotiation with one or more top-ranked Bidder(s).

#### **Co-operative Procurement**

48. The Director, materials Management will determine when a Co-operative Procurement is permitted.
49. If the City participates in Cooperative Procurement initiatives, the City may rely on the Procurement policies and procedures of the Broader Public Sector Entity leading the Procurement provided that such Procurement policies are in general conformity with this By-law.
50. If the City is the lead Broader Public Sector Entity, then this By-law shall guide the Co-operative Procurement.

#### **Request for Information**

51. If the Director, Materials Management is satisfied that staff have insufficient information about the market, staff may use a Request for Information (RFI) to build Supplier interest and to obtain information about the availability of Deliverables and the level of interest from Suppliers able to supply the Deliverables. Each RFI will be publicly posted.
52. An RFI may not be used to pre-qualify suppliers.
53. During an RFI, direct contact with potential Bidders must be limited to seeking basic information in a manner that does not preclude them from submitting a Bid in response to a Bid Solicitation which may subsequently be issued.
54. To maintain the integrity of the subsequent Procurement, seeking information from Bidders during an RFI process is only permitted when the following conditions are satisfied:
  - a. contact with potential Bidders is explained as being exploratory and for information or budgetary purposes only;
  - b. no commitment can be made to any Bidder or Company;
  - c. no information can be given to a Bidder or Company that would give the Bidder or Company an advantage in a future Bid Solicitation;and

## **Non-Standard Procurement**

55. A Non-Standard Procurement is one of:
  - a. a Single Source Procurement
  - b. a Sole Source Procurement; or
  - c. an Invitational Bid Solicitation.
56. Each Non-Standard Procurement must be approved in accordance with the Schedule of Approval Authority in Appendix A, Chart 2.

## **Emergency Procurement**

57. For the purposes of this By-law, an emergency exists when an unforeseeable event occurs that is a threat to any of the following:
  - a. public health or public safety;
  - b. the maintenance or operation of an essential service;
  - d. the maintenance or operation of infrastructure;
  - e. the welfare of species at risk; or
  - f. the security of the City's property or its other interests.
58. During an emergency, the following actions are authorized:
  - a. The Chief Administrative Officer or a Commissioner, shall approve the purchase of Deliverables deemed necessary to remedy the emergency; and
  - b. Procurement shall take place by the most expedient and economical means given the relevant circumstances.
59. As soon as practicable after the emergency, if an emergency-related Procurement had a Contract Value greater than \$50,000, and where the Procurement was not conducted as if there was no emergency then the Director, Materials Management in conjunction with the Commissioner shall prepare a report, explaining the action taken and reasons therefore, to be submitted as follows:
  - a. For Contract Value amounts greater than \$50,000 but less than \$100,000, to the Chief Administrative Officer; or
  - b. For Contract Value amounts equal to or greater than \$100,000, to Council.

## **Procurement Cards**

60. No City staff member shall use a Procurement Card except in strict accordance with the requirements of this By-law, applicable City policies, and the cardholder agreement.

## **Role of Council – As Approval Authority**

61. Approval of the City's annual Budget constitutes financial approval to initiate Procurements under this By-law.
62. Council may determine whether any particular Procurement has any scheduling or priority considerations.
63. Council approval for a particular Procurement is only required if any of the following circumstances arise:
  - a. Appendix A states that Council is the Approval Authority;
  - b. the applicable conditions of delegated Approval Authority cannot be met;

- c. applicable legislation or requirements imposed by another level of government or by granting giving agency agencies requires Council approval;
- d. the Contract Value cannot be accommodated within an Approved Budget and therefore a budget transfer or a pre-commitment against a future years' annual budget is required;
- e. the CAO, the Treasurer, or ASC determines that it is in the City's best interest that Council approve the procurement; or
- f. Council has specifically directed that Council approve the Procurement.

### **Role of Council - Separation of Roles**

- 64. In accordance with best practices in municipal procurement, Council recognizes the need for a clear separation of political and administrative functions in relation to Procurement. Council's role is 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 procurement of Deliverables in accordance with the rules and processes set out in this By-law.
- 65. To facilitate Council's oversight role in respect of significant projects, Council may require Commissioners to obtain Council's authority to initiate a specific Procurement for projects which Council has determined are of a high value, which involve significant risk or security concerns, or significant community interest.
- 66. To avoid bias or political influence in Procurement decisions, members of Council will not be involved from the time the Bid Solicitation has been issued until and unless Council is performing its duty as the Approval Authority.

### **Exempt Expenditures**

- 67. The expenditures contemplated in Appendix B of this By-law only need to meet the requirements set out therein. An expenditure which falls under Section 6(h) of this By-law needs to meet the applicable requirements of this By-law.
- 68. Appendix B Chart 3 sets out the approval Authority and Signing Authority for an Exempt Expenditure.
- 69. Council hereby delegates to the Treasurer the authority amend this by-law by adding to or subtracting from the list of Exempt Expenditures in Appendix B.

### **General Matters Related to the By-law**

- 70. In accordance with Section 270(2) of the Act, this By-law applies to local boards which have not adopted and maintained their own policies with respect to the procurement of goods and services
- 71. This By-law does not apply to:
  - a. a Procurement arising out of an inter-municipal service agreement;
  - b. an agreement for the sale, purchase, lease or licence of land or buildings;
  - c. an agreement relating to (i) hiring employees, (ii) employee compensation or (iii) reimbursing an employee for an expense; or
  - d. contracts for telecommunication services or data services.
- 72. If a Supplier amalgamates with another corporation, provided that the Supplier's solicitor satisfies City Solicitor that the amalgamation complied with applicable

law, then a Contract, Contract Amendment or Contract Renewal Option may be entered into with the amalgamated corporation.

73. The Director, Materials Management, in consultation with the appropriate City staff, will conduct a detailed review of this By-law on an as-required basis, but at a minimum, shall report to each Council, prior to the end of its term, with any recommended amendments.
74. The review conducted by the Director, Materials Management shall consider current and future professional practices, industry standards, market conditions, Federal/Provincial Government directions/policies, technological developments and advancements, and whether through application of this By-law, it has become apparent that clarification is needed.
75. No proceeding for damages or otherwise may be commenced against the City, a Member, or an officer, employee or agent of the City or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this By-law or for any alleged neglect or default in the performance in good faith of the duty or authority.
76. Any Contract entered into by the City shall be in a form acceptable to the City Solicitor.
77. This By-law shall come into effect on December 02, 2024, and By-law 22-070 is repealed coincidental therewith.
78. Notwithstanding the foregoing, to the extent that a Contract was entered into under By-law 22-070, that by-law continues to apply to the Contract until the Contract has been completed.

By-law passed this 28<sup>th</sup> day of October, 2024.

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Jeff Leal, Mayor

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John Kennedy, City Clerk

**Appendix A – Schedule of Approval Authority**

Except for a Non-Standard Procurement or an Exempt Expenditure, Appendix A sets out the Approval Authority and Signing Authority for each Procurement method the City uses, and for a Contract Amendment, a Change Order and for a Contract Renewal.

**Chart 1: Standard Procurement**

<b>Procurement Method</b>	<b>Procurement Value</b>	<b>Approval and Signing Authority</b>
Low Value Procurement	Not to Exceed \$10,000	Managers or Designates as approved by the Commissioner
Informal Quote Process, Roster Framework, or Open Competition	Not to Exceed \$25,000	Directors and Director of Materials Management
	Not to Exceed \$50,000	Commissioner
Invitational, Roster Framework, or Open Competition	Not to Exceed \$100,000	Chief Administrative Officer
		<b>Approval Authority</b>
Open Competitions (including pre-qualification stage, if applicable)	Exceeds \$100,000	Administrative Staff Committee
Roster Framework Competition to establish Qualified Supplier Roster	Any value	Director of Materials Management

Being the Approval Authority for each of the above listed Procurement methods including a Contract Amendment or for a Contract Renewal includes being the Signing Authority unless the Approval Authority is the Administrative Staff Committee, in which case the Signing Authority resides with the CAO and Clerk.

A term defined in this By-law and used in reference to a Non-Standard Procurement, has the meaning given to it in the By-law.

1. No person shall undertake a Non-Standard Procurement without (1) obtaining permission from the Director, Materials Management (2) satisfying their Commissioner that the cost of the Non-Standard Procurement is contained within an Approved Budget and (3) obtaining the Approval Authority’s permission.

**Chart 2 – Approval and Signing Authority – Non-Standard Procurement**

<b>Procurement Value</b>	<b>Approval and Signing Authority</b>
Not to Exceed \$25,000	Director and Director of Materials Management
Not to Exceed \$50,000	Commissioner
Not to Exceed \$100,000	Chief Administrative Officer
	<b>Approval Authority</b>
Exceeds \$100,000	Council

Being the Approval Authority for a Non-Standard Procurement includes being the Signing Authority unless the Approval Authority is the City Council, in which case the Signing Authority resides with the Mayor and Clerk or as delegated by City Council.

## Appendix B – Exempt Expenditures

The following Exempt Expenditures are exempt from the requirements of this By-law, except as set out in this Appendix B.

1. A term defined in this By-law and used in reference to an Exempt Expenditure has the meaning given to it in the By-law.
2. No person shall undertake an Exempt Expenditure without (1) obtaining permission from the Director, Materials Management (2) satisfying their Commissioner that the cost of the Exempt Expenditure is contained within an Approved Budget and (3) obtaining the Approval Authority's permission.
3. Payments for an Exempt Expenditures may be made on the basis of an invoice, or based on an internal payment request, with the appropriate account number(s) indicated and which has been signed by the employee(s) with applicable Approval Authority, as set out in Appendix B, Chart 3 below. In some cases, the Director may approve a Purchase Order rather than a Contract.

**Chart 3 – Approval and Signing Authority – Exempt Expenditures**

Value of Exempt Expenditure	Approval and Signing Authority
Not to exceed \$10,000	a Manager
Not to exceed \$10,000 and if being charged to a Council or civic functions account	the Mayor
Not to Exceed \$50,000	Commissioner
Exceeds \$50,000	Originating Department's Commissioner and by either the Chief Administrative Officer, Treasurer or Deputy Treasurer.

Being the Approval Authority for an Exempt Expenditure includes being the Signing Authority.

4. The following are Exempt Expenditures:

### 4.1 General Expenses

- a. Workers Safety Insurance Board payments
- b. Payroll Deduction Remittances such as Income Tax, Unemployment Insurance Premiums, Employer Health Tax
- c. Debt principal and interest payments
- d. Loan and mortgage payments
- e. HST remittances
- f. Licenses (e.g., vehicles, elevators, radios, and computer hardware and software)
- g. Insurance claims, legal agreements or settlements and arbitration awards
- h. Employee/Council travel expenses
- i. Paying the costs associated with organizing training seminars, workshops, conferences or courses, including obtaining professional services necessary for same
- j. memberships in professional organizations,
- k. staff attendance at seminars, workshops, conferences or courses
- l. purchasing subscriptions for professional or trade publications

### 4.2 Payments to Other Organizations/Individuals

- a. Other Municipalities, for example; the County of Peterborough for EMS, payments in lieu of property taxes
- b. Fire hydrant maintenance costs
- c. Street light maintenance costs



- d. Annual requisitions approved as part of the budget process to a local board or agency such as Otonabee Region Conservation Authority, Peterborough Humane Society, Peterborough Public Health, Little Lake Musicfest, Showplace, Canadian Canoe Museum, Race Relations Committee; Peterborough Green-Up, Downtown Business Improvement Area and Village Business Improvement Area.
- e. Sewer surcharge collection fees payable to Peterborough Utility Services Inc.
- f. After Contract approval from ASC, payments to social services agencies, including a social or affordable housing provider
- g. A Company or person using a City arena or facility
- h. Municipal Property Assessment Corporation fees for property assessment services and support costs
- i. Organizations on whose behalf the City has received donations and issued income tax receipts
- j. Grants to other organizations, in accordance with an Approved Budget
- k. Upon the recommendation of the Director, Peterborough Technology Services, purchasing annual maintenance, support or equipment parts/supplies for software or hardware that is only available through a Sole Source
- l. Upon the recommendation of the Director, Peterborough Technology Services, purchasing a software licence agreement
- m. Refurbishing components of equipment by the authorized manufacturer of the equipment
- n. Payments to Circular Materials Ontario, a conservation authority or with the Municipal Property Assessment Corporation;
- o. Payments to the Government of Canada, the Province of Ontario, or any of their ministries, or a Crown Corporation or an agent of the foregoing;
- p. Payments under to a First Nation which will permit the City to fulfill its obligations to the Government of Canada, the Province of Ontario, or any of their ministries or a Crown Corporation or an agent of the foregoing so that the City can obtain a permit, an approval or funding from any of aforementioned.
- q. Transportation, recycling and disposal of municipal Household Hazardous Waste and recyclables

#### **4.3 Obtaining Professional Services**

- a. Services from a person who, or Company which, will provide employee training, upon the recommendation of the applicable Commissioner
- b. Medical Professional Services, including first aid training
- c. Expert Witnesses, upon the recommendation of the applicable Commissioner
- d. Legal Counsel, upon the recommendation of the City Solicitor
- e. Municipal Tax Equity, if in an Approved Budget
- f. Fees related to real estate transactions.
- g. Workplace investigation services, upon the recommendation of the Director, People and Culture
- h. Property assessment and real estate services, upon the recommendation of the Manager, Realty Services
- i. upon the recommendation of the Treasurer, professional accounting or auditing services, other than for the services provided by the Council-appointed auditor

- j. upon the recommendation of the Administrative Staff Committee, professional services in relation to social and affordable housing projects or childcare services.

#### **4.4 Special Services**

- a. Upon the recommendation of the Administrative Staff Committee, Contracts:
  - i. with Social Housing providers for their provision of affordable housing, social housing, or rent geared to income housing; or
  - ii. with Companies providing services or benefits to recipients of Ontario Works or Ontario Disability Support Payments.
  - iii. for Professional services in relation to social and affordable housing issues
- b. Various transfers to Social Services' clients
- c. Postal services
- d. Payments to developers as stipulated in Subdivision or other Development Agreement
- e. Investments
- f. Bank charges
- g. After approval from the Treasurer expenses related to an event which will be fully recovered from a third-party
- h. Relocation of utilities within City-owned land
- i. Payments for rail crossing maintenance and required fees

## Appendix C – Procurement Principles for Each Procurement

1. The City will conduct each Procurement with integrity and transparency in order to protect the interests of the City, the public, and of each participating Company. The general principles 1(a) to 1(g) will be applied to each Procurement and general principles 1(h) and 1(i) may be applied to each Procurement:

- a. **Open Process**

Requirements are clearly communicated to Bidders. The method of evaluating the Bid and the evaluation criteria used to evaluate the Bid, and the method and format of submitting Bids are clearly addressed in the Bid Solicitation.

- b. **Fairness**

Standard documents such as Bid Solicitation templates and standard term Contracts are used, to help ensure consistency of content and format within documents issued by the City. All details regarding the Procurement are clearly specified in the Bid Solicitation, and the rules of bid acceptance are applied consistently. All Bidders and all Bids are treated equally and without bias or favouritism.

- c. **Accessibility**

Specifications and terms of reference, whenever possible, are not restrictive and are not brand specific. Bid Solicitations are advertised and available on the City's website and through online portals. At the Treasurer's discretion, the Bid Solicitation may also be advertised in local newspapers, and national newspapers.

When preparing product or service specifications, the Director, Materials Management shall consider the requirements of the **Ontarians with Disabilities Act 2001**, as amended, and the **Accessibility for Ontarians with Disabilities Act 2005**, as amended, and apply any applicable requirements.

- d. **Accountability**

All Bids are kept secure prior to the closing date, during the evaluation period, and following the award of the Contract. All proprietary information and Bids which have been clearly marked as being submitted in confidence are subject to **the Municipal Freedom of Information and Protection of Privacy Act**, as amended, ("MFIPPA") or applicable legislation.

All Bid evaluation results and supporting documentation are kept on file in accordance with the City's Records Retention By-law.

- e. **Ethical Conduct and Conflict of Interest**

**"Conflict of Interest"** means a conflict between one's private interests and one's fiduciary duties.

Each Procurement will be conducted with integrity in conformity with this By-law and, as applicable, with the City's Employee Code of Conduct and the Code of Conduct for Council and Committee Members. A duty of integrity applies to all individuals involved in the City's Procurement activities, including any outside consultants or other service providers participating on behalf of the City.

All participants in a Procurement, including any outside consultants or other service providers, shall declare in writing any perceived, possible or actual Conflicts of Interest to the Director, Materials Management who will take appropriate action.

The City will not Procure personal items or Deliverables which directly benefit any City employee, the Mayor or a Councillor.

The City will not Procure Deliverables from an employee Mayor or Councillor, or any Immediate Family thereof, unless the extent of the City employee's, Mayor or the Councillor's interest, as the case may be, has been fully disclosed to and approved by the Director, Materials Management.

**f. Code of Ethics**

In addition to the above general principles, all employees who are involved in a Procurement shall adhere to the following Code of Ethics:

Only have open and honest dealings with persons involved in the Procurement;

Only provide fair and impartial feedback on Bid evaluations. City staff may not extend preferential treatment to any Supplier, including Local Suppliers; and

Always maintain an irreproachable standard of integrity by never:

- ii. Seeking or accepting gifts or favours from any Bidder, Company or Supplier;
- iii. making any public endorsement or public comment about of any Bidder, Company or Supplier that might give a Bidder, Company or Supplier an advantage over others.

**g. Conduct and Conflicts of Interest**

The City requires its Bidders, Companies and Suppliers to act with integrity and conduct business in an ethical manner. All Bidders participating in a Procurement and all Companies and Suppliers providing Deliverables to the City must declare any perceived, possible, or actual conflicts of interest and must conduct themselves in accordance with the applicable sections of the Code of Conduct in Appendix C of this By-law.

The City, after a determination has been made by the Director, Materials Management, in consultation with the Treasurer and the City Solicitor, may refuse to do business with any Bidder, Supplier or Company that has:

- i. engaged in illegal or unethical practices, whether in relation to its Bid or to its provision of Deliverables; or
- ii. an actual or potential conflict of interest or an unfair advantage, or which has failed to adhere to the Supplier Code of Conduct.

**h. Social Procurement**

The Director, Materials Management may use Social Procurement where doing so will assist the City to achieve its Strategic Goals. The following is the link to the Social Procurement Policy:

<https://www.peterborough.ca/en/doing-business/social-procurement.aspx#:~:text=The%20City%20uses%20different%20methods,to%20the%20Social%20Value%20Objectives.>

i. **Sustainable Procurement**

All Departments, in conjunction with the Materials Management Division, will seek to achieve the City's Strategic Goals through each Procurement and wherever possible and economically feasible include specifications which will assist the City to meet its Strategic Goals.

## **Appendix D – Supplier Relations and Contract Management**

### **Debriefings**

1. Where the City has conducted an Open Competition, an unsuccessful Bidder may request a debriefing from the City within 30 calendar days.
2. The purpose of a debriefing is to assist the said Bidder to understand how it may improve future Bids.
3. The City will not discuss or disclose information about other Bids or other Bidders during a debriefing.

### **Protests**

4. An unsuccessful Bidder may formally protest the outcome of a Procurement. Procurement protests can only be filed after a Debriefing and within 10 calendar days thereof. A Procurement Protest must specify which requirements of this By-law the City breached and will be responded to in accordance with the City's Procurement Protest Protocol.

### **Contract Management and Supplier Performance**

5. All Contracts must be managed by the Commissioner's Department and the Supplier's performance must be monitored and tracked.
6. The City may use outcomes-based Social Procurement contract reporting, to determine whether Social Value objectives were attained.

### **Supplier Suspension**

7. Suppliers may be suspended from participating in future Procurements in accordance with the City's Supplier Suspension Protocol.

### **Rejection of Bid when City/Bidder Relationship Impaired**

8. The City may reject a Bid from a Supplier or any person or Company that is affiliated with, associated with or controlled by a suspended Supplier. The terms "affiliate" and "associate" are defined in the **Business Corporations Act**, (Ontario) R.S.O., 1990 c. B.16. A Supplier may be suspended, where in the opinion of the Director, Materials Management after consultation with the City Solicitor, it is been determined that the commercial relationship between the City and the Supplier, including any sub-contractor the Supplier intends to use or has used, has been impaired by the act(s) or omission(s) of the Supplier or sub-contractor, within the five-year period immediately preceding the date on which the Bid is to be awarded.
9. The act(s) or omission(s) that are deemed to have impaired the commercial relationship include, but are not limited to:
  - a. Threatening litigation, or pursuing litigation against the City, in relation to any previous Contract awarded to the Supplier by the City, threatening litigation means transmitting a written threat to commence an arbitration action, application or other judicial or adjudicative proceeding;
  - b. Being a Supplier engaged in litigation, an arbitration or other judicial or adjudicative proceeding with the City;
  - c. A claim has been made against the City by the Supplier under a surety bond or security deposit submitted by the Supplier, such as a Bid Deposit, Performance Bond or Materials and Labour Bond;

- d. The Supplier has not performed satisfactorily under prior or current Contracts or has refused to follow reasonable directions of the City or to cure a default under any Contract with the City;
  - e. The Supplier has communicated, directly or indirectly, with any other Supplier about the preparation of the Supplier's Bid for the same work;
  - f. The Supplier or any person or Company that is affiliated, associated or controlled, as defined in the **Canadian Business Corporations Act**, R.S.C., 1985, c.C-44, as amended, by the Supplier, has been convicted of an offence under the Criminal Code, as amended, or other legislation, including but not limited to legislation in respect of taxation, financial securities; environmental protection, and health and safety; or
  - g. Breaching the Supplier's duty of honest performance to the City.
10. The City reserves the right to reject a Bid from a Supplier, or from any person or Company that is affiliated, associated or controlled, as defined in the **Canadian Business Corporations Act**, R.S.C., 1985, c.C-44, as amended, by the Supplier that is Indebted to the City, except in relation to property taxes that are not in default.
11. In accordance with applicable laws, the Director of Materials Management in consultation with the City Solicitor may choose to accept a Bid and exercise the City's legal or equitable right to deduct the indebted amount from amounts owing to the Supplier.

#### **Document Retention**

12. Responses to Bid Solicitations received shall be retained for inspection by the City's auditors and appropriate City officials, in accordance with the City's Document Retention By-law # 12-156 or successor By-law.

#### **Confidentiality and Access to Information**

13. The disclosure of information contained in a Bid or Agreement shall be made by the appropriate officers of the City in accordance with the provisions of MFIPPA and any other applicable legislation.
14. If a Bidder considers any part of their Bid proprietary, the Bidder shall clearly mark such page or section of the Bid as confidential. This procedure will not automatically protect the information from release but will assist the City in making a determination on release if a request is made under MFIPPA.

## Appendix E – Supplier Code of Conduct

1. The City requires Bidders, Companies and Suppliers to act with integrity and conduct business in an ethical manner. The City may refuse to do business with any Bidder, Company or Supplier that has engaged in illegal or unethical bidding practices, has an actual or potential conflict of interest or an unfair advantage, or fails to adhere to ethical business practices.
2. Bidders, Companies and Suppliers are responsible for ensuring that their employees, representatives, agents or sub-contractors conduct themselves in accordance with this Code of Conduct.
3. The City may require the immediate removal and replacement of any person or entity who conducts themselves in a manner inconsistent with this Code of Conduct. The City will consider its legal option if any Bidder, Company or Supplier is unwilling or unable to comply with this requirement.

### Illegal or Unethical Bidding Practices

4. No Bidder, Company or Supplier will engage in the following illegal or unethical practices, including:
  - a. Bid-rigging, price-fixing, bribery or collusion or other behaviours or practices prohibited by this By-law, or by federal or provincial statutes;
  - b. offering gifts or favours to the City's officers, employees, the Mayor or a Councillor or any other City representative or agent;
  - c. engaging in any prohibited communications during a Procurement;
  - d. submitting inaccurate or misleading information in a procurement process;
  - e. engaging in any other activity that compromises the City's ability to run a fair Procurement; or
  - f. for contracts covered by the **Construction Act**, by submitting anything other than a Proper Invoice supported by the required documentation.
5. The City will report any suspected cases of collusion, bid-rigging or other offenses under the **Competition Act**, R.S.C., 1985, c C-37, as amended, to the Competition Bureau or to other relevant authorities.

### Conflicts of Interest

6. All Suppliers participating in a Procurement must declare any perceived, possible or actual conflicts of interest.
7. The term "Conflict of Interest," when applied to a Bidder, Company or Supplier, includes any situation or circumstance where:
  - a. Prior to or during a Procurement, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:
    - i. having, or having access to, confidential information of the City that is not available to other Bidders;
    - ii. having been involved in the development of the Bid Solicitation, including having provided advice or assistance in the development of the Bid Solicitation;
    - iii. communicating with any person with a view to obtaining preferred treatment during a Procurement (including but not limited to (1) lobbying decision makers involved in the Procurement or (2) lobbying the Mayor or a Councillor); or



- iv. engaging in conduct that compromises, or could be seen to compromise, the integrity of a Procurement or render that Procurement non-competitive or unfair; or
- b. When under Contract, the Company's or Supplier's other commitments, relationships or financial interests:
  - i. Could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or
  - ii. Could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

Where a Company has participated in developing a Bid Solicitation or the specifications for inclusion in a Bid Solicitation, that Company will not be allowed to become a Bidder.