



City of  
**Peterborough**

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**To: Members of the General Committee**

**From: Patricia Lester  
Commissioner of Corporate and Legislative Services**

**Meeting Date: August 27, 2018**

**Subject: Report CLSFS18-037  
Purchasing Policy By-law Update**

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## **Purpose**

A report to recommend that an updated Purchasing Policy By-Law be passed and to provide a summary of bid solicitations awarded under By-Law 14-127.

## **Recommendations**

That Council approve the recommendations outlined in Report CLSFS18-037 dated August 27, 2018, of the Commissioner of Corporate and Legislative Services, as follows:

- a) That the Purchasing Policy By-Law 14-127 be repealed effective November 1, 2018.
- b) That the new Purchasing Policy By-law appended to Report CLSFS18-037 as Appendix B be approved and take effect November 1, 2018; and
- c) That the summary of Bids awarded under By-law 14-127 be received for information.

## **Budget and Financial Implications**

There are no budget and financial implications stemming from the recommendations.

## Background

The City's Purchasing Policy By-law 14-127 was passed by Council on September 30, 2014 based on recommendations outlined in Report CPFS14-028 dated September 22, 2014. Section 18.1 of the current By-law 14-127, requires that the Treasurer review and report to Council, prior to the end of its term, with any recommended amendments.

For this review, a more fulsome examination has taken place as a result of the Procurement Compliance Review project approved by Council through Report CPFS18-008 dated February 5, 2018 and as such, included the engagement of external legal counsel who specializes in procurement issues for municipalities.

The changes are reflected in the new Purchasing Policy By-Law appended to this report as Appendix B.

The fundamental purchasing principles remain unchanged:

- Council retains ultimate control over all procurement through the annual budget approval process and by establishing its Purchasing Policy through the By-law.
- The Chief Administrative Officer and the Treasurer are charged with the responsibility of ensuring Council's Purchasing Policy is followed.
- Procurement remains an open, fair, accessible and accountable process.
- Employees cannot have a pecuniary interest either directly or indirectly in any evaluation.
- All employees who are authorized to carry out procurement shall adhere to a Purchasing Code of Ethics as set out in Part 4.2 of the proposed by-law.

There are numerous amendments being proposed. The following highlights those that are considered significant in nature:

- 1) **Separating policy from procedure:** The Purchasing By-law has historically contained a combination of both policy and procedural statements. With the assistance of legal counsel, the new proposed By-law removes the procedural elements into a separate document, leaving a By-law that is policy in nature and more in alignment with what Council would typically approve.
- 2) **Compliance with Trade Agreements:** The new By-law is compliant with both the Comprehensive Economic and Trade Agreement (CETA – a free trade agreement between Canada, the European Union and its member states) and the Canadian Free Trade Agreement (CFTA – the intergovernmental trade agreement signed by Canadian Ministers).
- 3) **Restructured** – the By-law has been reorganized with certain clauses and sections being moved for greater clarification. For example, the Purchasing Code of Ethics Section 12.2 in By-law 14-127 has been moved to Part 4 of the new By-law and is included along with other general Purchasing Principles. A second

example is Accessibility, previously included in Purchasing Principles has now been moved to Part 12 Specifications.

- 4) **Definitions** – the definitions have been simplified and pared down to include only those terms used in the By-law that require defining in accordance with principles of statutory interpretation.
- 5) **Roles and Responsibilities - Part 6** – now contains a new Section 6.3 on the Separation of Roles and the Role of Council.
- 6) **Standard Procurement Methods** – the current By-law 14-127 refers to specific types of bid documents such as Request for Tenders and Request for Proposals (Part 6). The types of bid documents/templates are now being addressed through the procedural documents. The new By-law (Part 10) gives guidance on conducting an Invitational Competition, Open Competition, Open Framework Competition (to establish Qualified Supplier Roster) and a Roster Competition.  
The new approach provides more flexibility for staff to select the relevant bid template that is applicable in each procurement situation.
- 7) **Procurement Approval and Contracting Authority** – the new By-law proposes to increase the limits of Approval Authority as per Appendix A. The existing limits had remained unchanged throughout both the two previous iterations of the By-law: 10-132 and 14-127.

As per Section 7.4, Council approval is proposed to be required in any of the following circumstances:

- a) The City's Schedule of Approval Authority indicates Council is the approval authority.
  - b) Any of the applicable conditions of delegated authority are not met.
  - c) A senior government (i.e. Provincial, Federal) requires Council to approve the procurement.
  - d) The procurement value cannot be accommodated within an Approved Budget and therefore requires a budget transfer or a pre-commitment against a future years' budget.
  - e) The Chief Administrative Officer or Treasurer deems it in the City's best interest that Council approve the procurement.
  - f) Council has specifically directed that Council approve the procurement.
- 8) **Circumstances under which a Bid Solicitation Process is Not Required** – a revised version of the Non- Standard Procurement is now in Part 11 of the new By-law. The content has been updated to reflect the Trade Agreements.

- 9) **Authority to Transfer Budgets** – the delegated authority to approve budget transfers has remained unchanged (Part 9) with the Chief Administrative Officer or the Treasurer authorized to transfer approved budgets, including any uncommitted General Contingency, or Capital Levy Reserve up to \$50,000. The transfers will continue to be reported to Council in the next Quarterly Financial Update Report.
- 10) **Housekeeping** – numerous changes have been made that are of a housekeeping nature. Examples would include updated references from “Directors” to “Commissioners” and other minor wording changes.

**Related Topics:**

The work of the Procurement Office (external legal Counsel) is anticipated to provide exceptional value to the City’s procurement function helping to ensure that procurement risk is mitigated, that the policies and protocols being used are robust and reflect best practice and generally speaking, ensure that the City’s procurement interests are protected.

Along with the proposed By-law, the following documents are in the final stages of completion or in the process of being developed:

- Procurement Procedure, including the following protocols
  - Procurement Planning Protocol
  - Format Selection Protocol
  - Document Drafting Protocol
  - Negotiation Protocol
  - Bidder debriefing Protocol
  - Procurement Protest Protocol
  - Supplier Suspension Protocol
  - Contract Management Protocol
  - Supplier Performance Evaluation Protocol
- Various Bid Templates – Eg. Request for Quotation, Request for Tenders, No-Negotiation Request for Proposal (RFP), Consecutive Negotiation RFP
- Standard Term Contracts
- Revised Terms for a Standard Purchase Order

**Bids Awarded under By-law 14-127**

Also, as part of this review, staff have prepared a summary as set out in Appendix C, of all Bid Solicitations awarded under By-law 14-127. Approximately 286 Bid Solicitations have been awarded under this by-law. The analysis revealed that of the 286 Bid Solicitations, 20 required an increase in budget, signifying that 93% of the work resulting from Bid Solicitation is completed within budget.

## Summary

As required in the City Purchasing Policy By-Law 14-127, staff have reviewed the Purchasing Policy and recommend an updated Purchasing Policy be adopted.

Submitted by,

Prepared by,

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Attachments

Appendix A

Summary of the Approval Authority in the proposed Purchasing Policy By-law

Appendix B

New Purchasing Policy By-law

Appendix C

Summary of Bid Solicitations awarded under By-law 14-127

Appendix A

Standard Procurement				
Procurement Method <sup>1</sup>	14-127		Proposed	
	Procurement Value	Approval Authority	Procurement Value <sup>2</sup>	Approval Authority <sup>3,4</sup>
Low Value Purchase Process	At or below \$10,000	Manager or other “delegated” staff as specifically designated by the Director and approved by the Director of Corporate Services in writing	At or below \$10,000	Manager or other “delegated” staff as specifically designated by the Commissioner and approved by the Treasurer in writing
Informal Quote Process	\$10,000 - \$25,000	Director	At or below \$25,000	Designate as approved by Commissioner and Treasurer
			At or below \$50,000	Commissioner
Invitational Competition or Open Competition	\$25,000 - \$50,000	Chief Administrative Officer	Below \$100,000	Chief Administrative Officer
Open Competition, including Pre-Qualification	\$50,000 - \$100,000	Administrative Staff Committee	Any value	Administrative Staff Committee
RFT	\$100,000 – No Limit	Administrative Staff Committee	Any value	Administrative Staff Committee
RFP	\$100,000 – No Limit	Council	Any value	Administrative Staff Committee
Open Framework Competition to establish Qualified Supplier Roster	No value associated	Administrative Staff Committee	No value associated	Administrative Staff Committee
Roster Competition for Deliverables from existing Qualified Supplier Roster	\$10,000 - \$25,000	Director	At or below \$25,000	Designate as approved by Commissioner and Treasurer
			At or below \$50,000	Commissioner
	\$25,000 - \$50,000	Chief Administrative Officer	Below \$100,000	Chief Administrative Officer
	\$50,000 - \$100,000	Administrative Staff Committee	At or above \$100,000	Administrative Staff Committee

Appendix A

Non-Standard Procurement				
Procurement Method	14-127		Proposed	
	Procurement Value	Approval Authority	Procurement Value <sup>1</sup>	Approval Authority <sup>3,4</sup>
Non-Competitive or Limited Competition under the circumstances permitted in the Non-Standard Procurement Protocol and approved by the Treasurer	At or below \$10,000	Manager	At or below \$25,000	Designate as approved by Commissioner and Treasurer
	\$10,000 - \$25,000	Director		
	\$25,000 - \$50,000	Chief Administrative Officer	At or below \$50,000	Commissioner
	\$50,000 - \$100,000	Administrative Staff Committee	Below \$100,000	Chief Administrative Officer
	\$100,000 – No Limit	Council	At or above \$100,000	Council

Appendix A

Contract Amendment			
<ul style="list-style-type: none"><li>Council approval is required in all cases where the Total Cumulative Increase<sup>5</sup> is both more than \$100,000 <u>and</u> more than 10% of the original contract value.</li></ul> <p>If the Total Cumulative Increase<sup>5</sup> is either less than \$100,000 <u>or</u> less than 10% of the original contract value, Approval Authority is determined as follows:</p>			
14-127		Proposed	
Total Value of Original Plus Proposed	Approval Authority	Total Cumulative Increase <sup>5</sup> + Original Contract Value	Approval Authority <sup>3,4</sup>
At or below \$25,000	Director	At or below \$50,000	Commissioner
At or below \$50,000	Chief Administrative Officer		
At or below \$100,000	Administrative Staff Committee	Below \$100,000	Chief Administrative Officer
Below \$10,000 to No limit	Chief Administrative Officer		
Below 10% or \$100,000	Administrative Staff Committee	At or above \$100,000	Administrative Staff Committee
At or above 10% or \$100,000	Council		
Cannot be accommodated within Approved Budget	Council		
CAO or Director of Corporate Services determines Council should approve amendment	Council		

Notes:

- The procurement process must be conducted in accordance with this By-law and all applicable procedures and protocols.
- The authority to initiate a procurement process is based on the estimated procurement value. The authority to approve a contract award is based on the actual procurement value. Procurement Value includes the value of any Contract Renewal Options.
- All Approval Authorities are subject to all applicable conditions set out in Part 7 of this By-law, including the requirement that the Contract Value can be accommodated within the Approved Budget. Contract Value is the value of the initial term of the Contract and does not include the value of any Contract Renewal Options.
- The authority to approve the procurement or the contract amendment does not include the authority to sign the Agreement or the amending agreement and/or to issue the Purchase Order to the supplier, as applicable. The authority to sign Agreements and/or issue Purchase Orders on behalf of the City is set out in Section 7.4 of this By-law.
- Total Cumulative Increase is the total value of all increases to the original contract value, including the value of any previously approved increases and the value of the proposed increase that is to be approved.





**The Corporation of the City of Peterborough**

**By-Law Number [ # ]**

Being a By-law governing Procurement Policies

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**Whereas** the Council of the Corporation of the City of Peterborough deems it desirable to provide for fair, transparent and accountable procurement policies;

**And Whereas** Section 271 of **The Municipal Act, 2001**, as amended, states that a municipality and a local board shall adopt policies with respect to its procurement of goods and services;

**And Whereas** the City is updating its procurement policies and procedures to ensure alignment with current legal standards and trade treaty obligations;

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

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## **Part 1: Purposes, Goals and Objectives**

### **1.1 Purposes, Goals and Objectives of By-law**

The purposes, goals and objectives of this By-law are to:

- a. Ensure openness, accountability and transparency while protecting the financial best interests of the City of Peterborough;
- b. Maximize savings for taxpayers;
- c. Ensure service and product delivery, quality, efficiency and effectiveness;
- d. Encourage competitive bidding for the acquisition and disposal of Deliverables where practicable;
- e. Ensure fairness among Bidders;
- f. Encourage the procurement of Deliverables with due regard to the preservation of the natural environment;
- g. Provide City staff, which have purchasing responsibilities, clear direction on the policy principles, goals and objectives to be met through the City's purchasing activities; and
- h. Authorize the City's Treasurer to develop detailed procurement procedures and protocols that are consistent with this By-law and, to supplement, amend and implement those procedures and protocols, as and when approved by the Administrative Staff Committee, to uphold the procurement principles, goals and objectives set out in this By-law.

## Part 2: Definitions

### 2.1 Definitions

**Administrative Staff Committee** means a committee comprised of the Chief Administrative Officer, Commissioners of the City Departments, and other staff the Chief Administrative Office deems appropriate, which has Approval Authority as set out in this By-law.

**Agreement** means a binding Contract between the City and one or more other parties, which has been duly authorized and executed in accordance with this By-law.

**Approval Authority** means the authorization to proceed with procurement.

**Approved Budget** means a budget approved by Council in a budget document and/or by specific Council resolution to acquire a Deliverable, including pre-commitments and any subsequent change to the budget approved either by Council or by delegated authority as set out in this By-law, including expenditures to be approved in future budgets assuming the same level of service as that of the current year.

**Bid** means a submission in response to a Bid Solicitation, and includes proposals, quotations, or responses.

**Bidder** means a Supplier that submits a Bid.

**Bid Solicitation** means the document issued by the City to solicit Bids from Bidders.

**Broader Public Sector** means organizations that receive government funding, but are not part of the government itself, examples include school boards and publicly-funded academic, health and social service entities.

**Chief Administrative Officer** means the most senior staff position in the administrative structure and includes other employees that may be designated to act in this capacity.

**City** means The Corporation of the City of Peterborough.

**Clerk** means the City Clerk, or Deputy Clerk as appointed by City Council.

**Commissioner** means the head of a Department within the Corporation of the City of Peterborough, or Designate.

**Company** means a corporation, sole proprietorship or partnership.

**Competitive Process** means the solicitation of Bids from multiple Suppliers.

**Contract** means a commitment by the City for the procurement of Deliverables from a Supplier, which may be evidenced by an Agreement executed by the Supplier and the City, and/or a Purchase Order issued by the City to the Supplier.

**Contract Amendment** means a change to an existing Contract, including any extension, renewal or increase in the scope of the Contract that was not provided for in the original Contract.

**Contract Renewal Options** means options that are included in an existing Contract to permit the City to extend the initial term of the Contract and/or to purchase additional Deliverables under the Contract. Exercising Contract Renewal Options does not constitute a Contract Amendment.

**Contract Value** means the value of the initial term of the Contract, exclusive of sales taxes, and does not include the value of any Contract Renewal Options.

**Cooperative Purchasing** means coordinating City purchases with purchases from other government entities, Broader Public Sector entities or organizations dedicated to

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sourcing and/or providing municipal Deliverables and taking advantage of Public Sector Pricing available through the Federal or Provincial Government.

**Council** means the City of Peterborough's duly elected municipal council.

**Deliverables** means any goods, services or construction, or combination thereof.

**Designate** means the authorized designate of a person identified in this By-law who has specific approval or signing authority. Authorization to become a designate is effective only when made in writing by the person delegating the authority and must be approved by the Treasurer or the Chief Administrative Officer.

**Disposal** means an act through which the City gives up title to real or personal property, and includes a sale, a gift, or discarding an item.

**Emergency** means a situation, or the threat of an impending situation, which may affect the environment, the life, safety, health, welfare and/or property of the general public, and which requires actions to be taken to prevent serious damage, disruption of work, or to restore or maintain essential service to a minimum level. It includes, but is not limited to, a situation where, under the **Emergency Management Act**, as amended, and the City's Emergency Plan By-law 15-119, the Mayor has declared that a State of Emergency exists in the City or in any part thereof, and may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area.

**Immediate Family** means the spouse, common-law spouse, children, parents and brothers and sisters of an employee.

**Indebted** means owing the City money. Examples include but are not limited to unpaid overdue taxes, unpaid overdue fines, outstanding claims, judgments, executions, arrears of rent and interest and penalty thereon.

**In-House Bidding** means a process whereby a division or department competes with external entities for procurement opportunities in a Competitive Process.

**Invitational Competition** means a Competitive Process in which an invitation to submit Bids is issued to at least three Suppliers.

**Manager** means the Manager of a division within the City of Peterborough.

**Mayor** means the duly elected Mayor of the City of Peterborough or the person(s) appointed by Council to act in the Mayor's stead.

**Master Framework Agreement** means a master agreement entered into between the City and the prequalified Suppliers that have been included on a Qualified Supplier Roster.

**Municipal Councillor** means the individual elected as a Councillor or Mayor for the City.

**Non-Standard Procurement** means the acquisition of Deliverables through a process or method other than the process or method normally required for the type and value of the Deliverables. Non-standard procurement processes include:

- a. A **Non-Competitive Procurement**, where the Deliverables are acquired directly from a particular Supplier without conducting a Competitive Process when an Invitational Competition or an Open Competition would normally be required; or
- b. A **Limited Competition**, where Bids are solicited from a limited number of Suppliers when an Open Competition would normally be required.

**Open Competition** means a Competitive Process in which Bids are solicited through a publicly advertised Bid Solicitation.

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**Open Framework Competition** means a Competitive Process used to establish a Qualified Supplier Roster.

**Procurement** means the acquisition of Deliverables by purchase, rental or lease.

**Procurement Value** means the maximum total value of the procurement over the entire duration of the Contract, including the value of any Contract Renewal Options, and must include all costs to the City for all Deliverables, including, if applicable, acquisition, delivery, installation, training, operation, maintenance, replacement and disposal, less applicable rebates or discounts and exclusive of sales taxes.

**Public Body** means a government entity, a Broader Public Sector entity, or a corporation or entity owned or controlled by a government entity or Broader Public Sector entity.

**Purchase Order** means the City's written document issued by a duly authorized employee of the City to a Supplier for the purchase and supply of the Deliverables identified on the face of the Purchase Order.

**Purchase Requisition** means an internal written or online request for procuring Deliverables.

**Purchasing Card** means a procurement card provided by the City for use as a payment method to purchase directly from Suppliers where permitted under the By-law and in accordance with any cardholder agreement and applicable procedures.

**Purchasing Administrator** means the staff person responsible for the Purchasing Section.

**Purchasing Card Administrator** means the Treasurer, or Designate, responsible for the administration of the Purchasing Card program.

**Purchasing Section** means the administrative unit within the City's Financial Services Division that is responsible for administering the City's purchasing policies, including the Treasurer and other delegated staff.

**Qualified Supplier Roster** means a list of Suppliers that have participated in and successfully pre-qualified to perform discrete work assignments involving the delivery of a particular type of Deliverable.

**Roster Competition** means an expedited Competitive Process between Suppliers that have been included on a Qualified Supplier Roster for the selection of a Supplier to perform a discrete work assignment.

**Sub-contractor** means a person or company engaged by the principal or general contractor to provide or perform a portion of the Deliverables under a Contract between the City and the principal or general contractor.

**Supplier** means a person or Company carrying on the business of providing Deliverables.

**Treasurer** means the person charged with the responsibility of directing the financial affairs of the Corporation as set out in the **Municipal Act, 2001**, as amended, or Designate.

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## **Part 3: Application and Scope of By-law**

### **3.1 Application**

This By-law applies to the procurement of all Deliverables. Procurement includes the acquisition of Deliverables by purchase, rental or lease.

This By-law does not apply to:

- a. Contracts or agreements relating to hiring employees or employee compensation or reimbursement of employee expenses; or
- b. Contracts or agreements for the sale, purchase, lease or license of land or existing buildings.

### **3.2 Exempt Expenditures**

The expenditures set out in Appendix B of this By-law are exempt from the requirements set out in Parts 7 through 14 of this By-law.

Such expenditures may be approved and paid in accordance with the requirements set out in Appendix B of this By-law.

The Treasurer is authorized to add similar expenditures to the list of exempt expenditures in Appendix B.

### **3.3 Total Costs Considered**

The City will consider all costs, including, but not limited to, acquisition, operating, training, maintenance, quality, warranty, payment terms, disposal value and disposal costs in evaluating Bids. Where costs are submitted for more than one year, the net present value of the annual costs will be used to evaluate the costs.

### **3.4 Before Tax Amounts**

Procurement values and authority levels stated in this By-law do not include any applicable sales taxes.

### **3.5 Co-operative Purchasing**

- 3.5.1 Where the best interests of the City will be served, the City may participate in Co-operative Purchasing with the written prior approval of the Treasurer.
  - 3.5.2 If the City participates in cooperative purchasing initiatives, the City may adhere to the policies and procedures of the entity conducting the purchasing process, provided that the Treasurer is satisfied that such policies and procedures comply with the purchasing principles set out in Part 4. If the City is leading a cooperative purchasing initiative, this By-law and all applicable City procedures and protocols will be followed.
  - 3.5.3 Each entity participating in a cooperative purchase will obtain appropriate approval, prepare and execute an Agreement, where required, order, receive, inspect and pay for the Deliverables it uses.
  - 3.5.4 Approval authorities for cooperative purchases will be the same as the approval authorities for Standard Procurement, as set out in Appendix A of this By-law.
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## Part 4: Purchasing Principles

### 4.1 General Principles

In order to ensure that integrity is maintained in the procurement process, and to protect the interests of the City, the public and persons participating in a procurement process, the following general principles shall be adhered to for any 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 document.

#### b. Fairness

Standard documents such as Bid Solicitation templates and standard term contracts, are used, to ensure consistency of content and format within documents issued by the City. All details regarding the procurement process 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 allow for open competition from the marketplace. Where possible, Bid Solicitations are advertised on the City's website or through online portals that aid in connecting Suppliers with the City and where practical, the documents are available for downloading. At the discretion of the Treasurer, the competitive bidding opportunity may also be advertised in local newspapers, and national newspaper where deemed appropriate, to promote competition.

#### 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 submitted in confidence are handled in accordance with the **Municipal Freedom of Information and Protection of Privacy Act**, as amended ("MFIPPA") or applicable legislation. Where practicable, Requests for Proposals are evaluated by representatives from more than one Division or Department to allow for various perception and opinions when reviewing and evaluating proposals prior to the award of the Contract. All Bids rating results and related supporting documentation are kept on file in accordance with the City's Records Retention By-law for future reference, audit or examinations. Procurement procedures are reviewed on a regular basis to ensure the procedures are clear, logical, current, and in accordance with accepted industry standards.

#### e. Employee Conflict of Interest

Employees of the City shall not have a pecuniary interest, either directly or indirectly, in any Bid or Contract with the City or with any person acting for the City in any Contract for the supply of Deliverables for which the City pays or is liable, directly or indirectly to pay unless such interest has been declared. Employees of the City are required to declare any pecuniary interest, either direct or indirect, in writing, to their Department Commissioner with a copy to the Treasurer indicating the specific nature of the conflict. Any conflict of interest that cannot be isolated and resolved will be reported to the Chief Administrative Officer.

### 4.2 Purchasing Code of Ethics

In addition to the above general principles, all employees who are authorized to carry out procurement on behalf of the City shall adhere to the following Code of Ethics:

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- a. Open and honest dealings with everyone involved in the purchasing process. This includes all businesses with which the City contracts or from which it purchases Deliverables, as well as all members of staff and of the public who utilize the services of the Purchasing Section;
- b. Fair and impartial award recommendations for all Competitive Processes. City staff may not extend preferential treatment to any Supplier, including local Suppliers; and
- c. An irreproachable standard of personal integrity. No gifts or favours may be accepted as set out in Section 5.1(c). No public endorsement of any potential Supplier may be made, in order to give that Supplier an advantage over others.

#### **4.3 Supplier Conduct and Conflicts of Interest**

The City requires its Suppliers to act with integrity and conduct business in an ethical manner. All Suppliers participating in a procurement process or providing Deliverables to the City must declare any perceived, possible or actual conflicts of interest and must conduct themselves in accordance with the Supplier Code of Conduct in Appendix C of this By-law. The City may refuse to do business with any 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.

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## Part 5: Prohibitions

### 5.1 Prohibited Actions

The following actions are prohibited:

- a. Subdividing, splitting, separating or otherwise structuring procurement requirements or Contracts in any way that could circumvent the requirements or intent of this By-law;
  - b. Procurement by the City of any Deliverables for personal use by or on behalf of any member of Council, appointed officer, employee of the City or their immediate families, unless specifically approved by Council;
  - c. Acceptance of any gift, benefit, money, favour, hospitality or other assistance from any Supplier or potential Supplier;
  - d. Negotiating with a Supplier, or accepting an offer from a Supplier, to purchase Deliverables for personal use at the same price that is being offered by the Supplier to the City;
  - e. Asking a Supplier to alter the invoice date or shipping date from what would otherwise be shown to accommodate City accounting needs;
  - f. Other than the employee or other designated individual who is the official contact person identified in the Bid Solicitation document, discussing any aspect of the Bid Solicitation with a prospective Supplier from the time the Bid Solicitation document is first issued until such time as an award report has been prepared and submitted to the appropriate Approval Authority;
  - g. Accepting a Bid from a City employee, or the employee's immediate family, if any of the following are true:
    - i. The employee is at or above the level of Commissioner;
    - ii. The employee was involved in the development of the need for the work;
    - iii. The employee will be on the Evaluation Committee; or
    - iv. If the employee is the successful Bidder, they will be in a conflict with the City's Code of Conduct, with the Collective Agreement provisions for their position or any other terms and conditions of their employment with the City; and
  - h. Accepting a Bid from a City of Peterborough Municipal Councillor.
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## **Part 6: Roles and Responsibilities**

### **6.1 De-centralized Purchasing**

The City uses a de-centralized approach in its purchasing operations whereby Purchasing Section staff, under the direction of the Treasurer provide oversight to the procurement process, but with the exception of goods purchased and distributed through Central Stores, City departments are delegated the authority to procure Deliverables below a specified dollar threshold through informal procurement methods in accordance with this By-law.

### **6.2 General Responsibilities**

Procurement shall be subject to all applicable City policies and By-laws, any specific provisions of the **Municipal Act, 2001**, as amended, all other relevant Federal and Provincial legislation and applicable trade treaties.

### **6.3 Separation of Roles and the Role of Council**

- 6.3.1 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. 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 procurement of Deliverables in accordance with the rules and processes set out in this By-law.
- 6.3.2 To facilitate Council's oversight role in respect of significant projects, Council may require Commissioners to obtain Council's authority to initiate specific procurements by identifying projects of interest, such as those that are of a high value or involve significant risk, security concerns or significant community interest.
- 6.3.3 To avoid the potential appearance of bias or political influence in procurement decisions, members of Council will not be involved in Competitive Processes from the time the Competitive Process has been initiated through the advertisement or issuance of the Bid Solicitation, through the review and evaluation process, until a Contract has been entered into with the successful Bidder, except where Council is required to approve the award of the Contract in accordance with Section 7.4 of this By-law.

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

The Administrative Staff Committee shall have the following responsibilities:

- a. Approve procurement procedures and protocols;
- b. Approve procurements in accordance with the Approval Authority delegated to it under this By-law;
- c. Make determinations under the City's Procurement Protest Protocol and Supplier Suspension Protocol; and
- d. Consider and provide input on other procurement matters that may be referred to it by the Treasurer.

### **6.5 Responsibilities of Commissioners**

Commissioners shall have the following responsibilities relating to the procurement policies:

- a. Ensure procurement is carried out in accordance with this By-law and all applicable procedures and protocols;
  - b. Determine appropriate delegated signing authority of staff in their departments as authorized by this By-law;
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- c. Ensure sufficient Approved Budget exists for planned purchases before a procurement process commences;
- d. Prepare, in consultation with the Purchasing Section, specifications and scope of work to be included in all Bid Solicitations;
- e. Ensure that all Bid Solicitation documents originating from their departments have been prepared in conjunction with, reviewed by, issued by and administered by the Purchasing Section;
- f. Prepare award reports, where required, in accordance with formats satisfactory in content to the Treasurer; and
- g. Ensure that after award, and prior to the commencement of the work, all mandatory documentation has been obtained, including but not limited to a signed Agreement unless in the opinion of the City Solicitor and the Treasurer exceptional circumstances exist.

## **6.6 Responsibilities of the Treasurer**

6.6.1 The Treasurer shall coordinate a purchasing methodology, on behalf of the City in accordance with the provisions of this By-law. In carrying out this responsibility, the Treasurer may appoint designated persons to act on his/her behalf.

6.6.2 The Treasurer shall have the following specific responsibilities:

- a. Be responsible for the administration of this By-law, including the development and implementation of procedures and protocols;
  - b. Manage and oversee the City's procurement processes in accordance with this By-law and applicable procedures and protocols;
  - c. Advise on the suitability of specifications to ensure a maximum number of competitive Bids, and to ensure a Supplier's ability to supply;
  - d. Keep apprised of best purchasing practices for responsible environmental procurement and assist operating departments in incorporating environmental considerations in solicitations for Deliverables where feasible;
  - e. Review the corporate use of Deliverables to ensure the City is receiving the best quality, quantity, service and price;
  - f. Ensure that business transactions are conducted ethically and professionally;
  - g. Process Purchase Orders;
  - h. Be responsible for establishing and maintaining a Central Stores operation for the provision of items that must be readily available, and:
    - i. Require a long lead-time for ordering, or
    - ii. Are required for repair of vehicles or equipment on a 24-hour basis, or
    - iii. Are bulk items for which economies are realized by purchasing in large quantities;
  - i. Assist the originating department and the City Solicitor in the preparation of Agreements when requested;
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- j. Ensure City staff has access to current procurement procedures and protocols and provide procurement training to City staff, as required, to ensure a clear understanding of the purchasing procedures and protocols;
- k. Maintain accounting records as required;
- l. Process monthly Purchasing Card payments; and
- m. Provide written authorization of Designates as requested by Commissioners.

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## **Part 7: Procurement Approval and Contracting Authorities**

### **7.1 Procurement Approval Authority**

The City's Schedule of Approval Authority in Appendix A of this By-law sets out the Approval Authority for:

- a. Initiating a procurement;
- b. Awarding a Contract; and
- c. Amending an existing Contract.

### **7.2 Conditions of Approval Authorities**

Delegated Approval Authority is subject to all of the following conditions:

- a. No procurement may be initiated unless the Contract Value can be accommodated within the Approved Budget;
- b. No award of a Contract may be approved unless the Contract Value can be accommodated within the Approved Budget and the procurement process was conducted in accordance with this By-law and all applicable procedures and protocols;
- c. Where a Competitive Process was conducted, no award of a Contract may be approved unless the award is made to the top-ranked Bidder established in accordance with the evaluation and selection process set out in the Bid Solicitation; and
- d. No Contract Amendment may be approved unless the amendment is determined by the Treasurer in consultation with the City Solicitor to be in the City's best interest and the increased value of the Contract can be accommodated within the Approved Budget.

### **7.3 All Bids Exceed Approved Budget**

In the event that all Bids exceed the Approved Budget, and staff are not prepared to seek additional funding, the originating Commissioner must consult with both the Treasurer and the City Solicitor to determine the most appropriate approach for proceeding with the procurement.

### **7.4 Council Approval**

Council approval is required in any of the following circumstances:

- a. The City's Schedule of Approval Authority in Appendix A of this By-law indicates Council has the Approval Authority;
  - b. Any of the applicable conditions of delegated Approval Authority are not met;
  - c. A senior government (i.e. Provincial, Federal) requires Council to approve the procurement;
  - d. The Contract Value cannot be accommodated within an Approved Budget and therefore requires a budget transfer or a pre-commitment against a future years' budget;
  - e. The Chief Administrative Officer or Treasurer deems it in the City's best interest that Council approve the procurement; or
  - f. Council has specifically directed that Council approve the procurement.
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## **7.5 Contracting Authority**

- 7.5.1 Contracting authority is the authority to enter into a Contract with a Supplier on behalf of the City where the award of a Contract has been approved in accordance with the Schedule of Approval Authority.
- 7.5.2 A Contract may be entered into through signing an Agreement and/or the issuance of a Purchase Order evidencing the Contract.
- 7.5.3 An Agreement shall be required when the terms and conditions associated with the City's standard Purchase Order are not sufficient to outline the contractual obligations and protect the City's interests. The determination must be made in accordance with applicable procedures and protocols and in consultation with the City Solicitor, as required.
- 7.5.4 The Treasurer or Purchasing Administrator has the authority to issue Purchase Orders to Suppliers on behalf of the City.
- 7.5.5 Agreements with a Procurement Value of greater than \$50,000 shall be signed by the City Clerk and either the CAO or the Treasurer.
- 7.5.6 Agreements with a Procurement Value of \$50,000 or less may be signed by a Commissioner.
- 7.5.7 Contracting authority includes the authority to sign an amending Agreement and/or issue an amended Purchase Order, where a Contract Amendment has been approved in accordance with the Schedule of Delegated Approval Authority.

## **7.6 Conditions of Contracting Authority**

Delegated contracting authority is subject to all of the following conditions:

- a. No Contract may be entered into, through the issuance of a Purchase Order and/or the execution of an Agreement, unless the Contract Value can be accommodated within the Approved Budget and the award of the Contract has been approved in accordance with this By-law; and
- b. No Agreement may be executed unless the Agreement and any ancillary documents have been prepared in a form satisfactory to the City Solicitor.

## **7.7 Exercise of Contract Renewal Options**

Contract Renewal Options may be exercised with the approval of the Treasurer under the following circumstances:

- a. The Supplier's performance in supplying the Deliverables is satisfactory in the opinion of the Commissioner and the Treasurer;
  - b. The Commissioner and the Treasurer agree that the exercise of the option is in the best interest of the City; and
  - c. Funds are available in appropriate accounts within the Approved Budget.
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## **Part 8: Authority for Emergency Procurement**

### **8.1 Authorized Actions Related to an Emergency**

As the result of an Emergency, the following actions are authorized:

- a. During the emergency:
  - i. The Chief Administrative Officer or the requesting Commissioner, shall approve the purchase of Deliverables deemed necessary to remedy the emergency;
  - ii. Procurement shall take place by the most expedient and economical means given the relevant circumstances; and
  - iii. The Purchasing Section will provide cooperative assistance when requested to expedite any purchasing documents necessary to deal with the emergency.
- b. As soon as possible after the Emergency, if an Emergency purchase greater than \$50,000 has been made pursuant to this Part, and where the expenditure would normally have been subject to a Competitive Process, a report shall be prepared by the requesting Commissioner, explaining the action taken and reasons therefore, and submitted as follows:
  - i. For amounts greater than \$50,000 but less than \$100,000, to the Chief Administrative Officer; or
  - ii. For amounts equal to or greater than \$100,000, to Council.

## **Part 9: Authority to Transfer Approved Budgets or Commit Future Years' Budget**

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

- 9.1.1 Other than when Section 9.1.2. applies, the Chief Administrative Officer or the Treasurer are authorized to transfer Approved Budgets, including any uncommitted General Contingency, or the Capital Levy Reserve where the net required transfer is equal to or less than \$50,000. All such transfers will be reported in the Quarterly Financial Report.
- 9.1.2 During the period of an election year, when the actions of the outgoing Council have become restricted in accordance with Section 275 of the **Municipal Act 2001**, as amended, or when there are no meetings of the outgoing Council held after nomination day during which budget transfers can be authorized by Council, the Chief Administrative Officer, in consultation with the Treasurer, is authorized to transfer Approved Budgets, including any uncommitted General Contingency, or the Capital Levy Reserve, and to pre-commit future year(s)' budget(s). All such budget transfers or budget pre-commitments will be reported in the December 31 Quarterly Financial Report.
- 9.1.3 The Chief Administrative Officer or the Treasurer are authorized to create a budget where 100% funding has become available, subsequent to the annual budget approval, for a specific Deliverable, and where no new full-time staff are required. All such budget creation will be reported in the Quarterly Financial Report.

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

- 9.2.1 Other than when Section 9.1.2 applies, Council must approve budget transfers or creation when any of the following applies:
- a. Commitments against future years' budget(s) is required; or
  - b. Net transfers of Approved Budgets are greater than \$50,000
- 9.2.2 Council must approve budget transfers or creation when a budget transfer or creation requires additional full-time staff complement.
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## **Part 10: Standard Procurement Methods**

### **10.1 Low Value Procurement – (Up to \$10,000)**

- 10.1.1 The Low Value Procurement Process is used when the Procurement Value is expected to be \$10,000 or less, the Deliverables are required on a one-time (non-repetitive) basis, and the end-user of the Deliverables has identified a clear or single solution.
- 10.1.2 The process may, but does not necessarily, include informal price comparison from known Suppliers through phone, Supplier advertisements, Supplier catalogues or other similar communication methods. Price is the primary factor and is usually not negotiated.
- 10.1.3 Low Value Procurement may be made by the Purchasing Card or Direct Acquisition method.

a. Purchasing Card

Based on the approval of the Department Commissioner or Manager and the Purchasing Card Administrator, certain City employees are provided with City Purchasing Cards to be used solely for the purchase of Deliverables for the City. The employee's immediate supervisor shall review and sign each employee's monthly Purchasing Card transaction listing and the Purchasing Card Administrator or designate shall review all monthly transactions for compliance.

b. Direct Acquisition

Although the encouraged method of payment for all low value procurement is the Purchasing Card, it is recognized that certain Suppliers are not equipped with such functionality. Employees with appropriate authority, as set out in this By-law, may approve an invoice indicating that the Deliverables have been received and the Supplier may be paid.

### **10.2 Informal Quote Process – (\$10,000 to \$50,000)**

- 10.2.1 The Informal Quote Process is used when the Procurement Value is expected to be more than \$10,000 but less than or equal to \$50,000, the Deliverables are required on a one-time (non-repetitive) basis, and the end-user of the Deliverable has identified a clear or single solution. Price comparison shall be sought, where practicable, from a minimum of three (3) Suppliers. Price is the primary factor and may be negotiated.
- 10.2.2 The requesting Department shall obtain three informal quotes, where practicable. For Deliverables with a value up to \$25,000, quotes can be obtained through advertisements, Supplier catalogues, direct solicitations to Suppliers, and other similar methods. If the value is between \$25,000 and \$50,000, written quotes which may be obtained by email or fax or other electronic means.
- a. A Purchase Requisition shall be prepared and authorized by the Commissioner (less than or equal to \$50,000) or Manager (less than or equal to \$10,000) with the results of price comparison attached and forwarded to the Purchasing Section for processing;
- b. When permitted by the Supplier, the payment transaction may be processed on the Purchasing Administrator's Purchasing Card.

### **10.3 Invitational Competition (Over \$50,000 and less than \$100,000)**

- 10.3.1 An Open Competition must be used when the Procurement Value is expected to be \$100,000 or more, unless a Non-Standard Procurement is justified in accordance with Part 11 of this By-law and applicable procedures and protocols.
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- 10.3.2 Invitational Competition may be used when the Procurement Value is expected to exceed \$50,000 and be less than \$100,000 and it is possible to obtain competitive Bids based on precisely defined requirements for which a clear or single solution exists.
- 10.3.3 There may be instances when the Procurement Value is expected to be less than \$100,000 where, at the discretion of the Treasurer and the respective Commissioner, it will be more appropriate to solicit Bids using an Open Competition.
- 10.3.4 The Bid Solicitation is issued to at least three Suppliers. The Invitational Competition may be based solely on price or may consider other evaluation criteria included in the Bid Solicitation.
- 10.3.5 Invitational Competitions will be managed by the Purchasing Section, with the cooperation and involvement of the Department, unless the Treasurer has delegated the authority to conduct an Invitational Competition to a Commissioner, on either a standing basis or a case-by-case basis.
- 10.3.6 Where a Commissioner has been delegated authority to conduct an Invitational Competition, the Commissioner is responsible and accountable for ensuring that the process is conducted in accordance with applicable procedures and protocols, and must provide an approved Purchase Requisition, with the results of the Invitational Competition attached, to the Purchasing Section for processing.

#### **10.4 Open Competition (\$100,000 or more)**

- 10.4.1 An Open Competition must be used when the Procurement Value is expected to be \$100,000 or more, unless a Non-Standard Procurement is justified in accordance with Part 11 of this By-law and applicable procedures and protocols.
  - 10.4.2 A notice of procurement and the Bid Solicitation document must be publicly posted on the City's prescribed electronic tendering site and/or other forms of media deemed appropriate by the Purchasing Section.
  - 10.4.3 The Open Competition may be based solely on price or may consider other evaluation criteria included in the Bid Solicitation. The specific process to be followed will be determined by the form of Bid Solicitation document selected for the procurement in accordance with the City's procedures and protocols. Where provided for in the Bid Solicitation, the Open Competition may include negotiation with one or more top-ranked Bidder(s).
  - 10.4.4 Open Competitions will be managed by the Purchasing Section, with the cooperation and involvement of the Department, in accordance with all applicable procedures and protocols.
  - 10.4.5 Open Competitions may include two-stage procurement processes in which a prequalification process is conducted by soliciting and evaluating submissions from all interested Suppliers in order to establish a short-list of prequalified Suppliers that will be eligible to submit a Bid in response to a second-stage Bid Solicitation. A pre-qualification process may be used whenever determined appropriate by the Treasurer, in consultation with the Department Commissioner.
  - 10.4.6 When a pre-qualification process is used, the Administrative Staff Committee shall approve a short list of acceptable Suppliers who will be invited to participate in the subsequent procurement process.
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**10.5 Open Framework Competition (to establish Qualified Supplier Roster)**

- 10.5.1 An Open Framework Competition may be used when the Treasurer, in consultation with the originating Commissioner, has determined it is appropriate to establish a Qualified Supplier Roster for Deliverables that are needed on a recurring basis.
- 10.5.2 An Open Framework Competition is a form of Open Competition in which Suppliers are pre-screened based on the qualification criteria and evaluation process specified in the Bid Solicitation.
- 10.5.3 Selected Suppliers will be invited to enter into a Master Framework Agreement that will include the terms of the Qualified Supplier Roster and the general terms and conditions that will govern any future work assignments.
- 10.5.4 The Qualified Supplier Roster will be managed in accordance with the Master Framework Agreement and applicable procedure or protocols.
- 10.5.5 A Qualified Supplier Roster does not result in any commitment by the City to purchase Deliverables from the Suppliers.
- 10.5.6 As the need for the Deliverables arises, the City will select one or more of the Suppliers on the Qualified Supplier Roster in accordance with the process established in the Master Framework Agreement.

**10.6 Roster Competition**

- 10.6.1 A Roster Competition may be used to solicit quotes from Suppliers for Deliverables available through an established Qualified Supplier Roster.
  - 10.6.2 Suppliers on the Qualified Supplier Roster are invited to compete for a particular assignment or scope of Deliverables in accordance with applicable procedures and protocols and the terms of the Qualified Supplier Roster.
  - 10.6.3 Roster Competitions will be managed by the Purchasing Section, with the cooperation and involvement of the Department, unless the Treasurer has delegated the authority to conduct a Roster Competition to a Commissioner, on either a standing basis or a case-by-case basis.
  - 10.6.4 Where a Commissioner has been delegated authority to conduct a Roster Competition, the Commissioner is responsible and accountable for ensuring that the process is conducted in accordance with applicable procedures and protocols, and must provide an approved Purchase Requisition, with the results of the Roster Competition attached, to the Purchasing Section for processing.
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## **Part 11: Non-Standard Procurement**

### **11.1 Non-Standard Procurement Methods**

Non-Standard Procurement means the acquisition of Deliverables through a method or process other than the method or process normally required for the type and value of the Deliverables. Non-standard procurement methods include:

- a. Non-Competitive Procurement, where the Deliverables are acquired directly from a particular Supplier without conducting a Competitive Process when an Invitational Competition or an Open Competition would normally be required; or
- b. Limited Competition, where Bids are solicited from a limited number of Suppliers without conducting an open prequalification process when an Open Competition would normally be required.

Where a Limited Competition is approved, it will be conducted in the same manner as an Invitational Competition.

### **11.2 Approval of Non-Standard Procurement**

Non-Standard Procurements must be approved in accordance with the Schedule of Approval Authority in Appendix A. Prior to seeking the approval of the Approval Authority and prior to any discussion with the Supplier, the Department must obtain the Treasurer's approval to initiate a Non-Standard Procurement in accordance with all applicable procedures and protocols.

### **11.3 Circumstances for Non-Standard Procurement**

#### **11.3.1 Non-Standard Procurement of \$100,000 or more**

Non-Standard Procurements with a Procurement Value of \$100,000 or more may only be approved in the following circumstances:

- a. Where a standard procurement process conducted in accordance with this By-law and applicable procedures and protocols 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 Deliverables can only be supplied by one particular Supplier and no alternative or substitute exists;
  - d. The procurement is for additional deliveries by the original Supplier of Deliverables that were not included in the initial procurement if a change of 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;
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- e. For the procurement of Deliverables relating to matters of a confidential 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;
- f. When the Deliverables can be provided by any of the subsidiaries of the City of Peterborough Holdings Inc., and City staff elect to use their services;
- g. For the procurement of Deliverables from a Public Body;
- h. For the procurement of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- i. For the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- j. For the procurement of Deliverables 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 and protocols; or
- k. The procurement is otherwise exempt from the requirements to conduct an Open Competition under all applicable trade agreements and it is in the best interests of the City to proceed with a Non-Standard Procurement.

Under no circumstances will a Non-Standard Procurement be used for the purpose of avoiding competition among Suppliers or in a manner that discriminates against or advantages Suppliers based on geographic location.

#### **11.3.2 Non-Standard Procurement of less than \$100,000**

If the Procurement Value is less than \$100,000, and provided that the total cumulative cost of all recurring Contracts for the same Deliverables is less than \$100,000 in a twelve-month period, a Non-Standard Procurement may be approved in any of the following circumstances:

- a. Under any of the circumstances set out above in Section 11.3.1;
  - b. For the procurement of consulting services from persons who have worked for the City or other municipalities in related fields and are interested in undertaking short-term assignments for the City on an as-required basis; or
  - c. Where there is a need for continuity or compatibility with existing Deliverables, and it is in the best interests of the City to proceed with a Non-Standard Procurement.
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## **Part 12: Specifications**

### **12.1 Commissioner Responsible for Preparing Specifications and Scope**

The Commissioner whose budget provides for the procurement of Deliverables shall be responsible for the preparation of all specifications and/ or the scope of work to be used for the procurement of such Deliverables.

### **12.2 Specifications Not to be Brand Specific**

Where practical, specifications or the scope of work or terms of reference shall be detailed but not brand specific, so that potential Suppliers may provide alternatives in the event an equal or better-proven product or method is available.

### **12.3 Seeking Information from Suppliers**

12.3.1 Preparation of the operating or capital budget or specifications for procurement may require information from potential Bidders to determine what is available. When seeking information in connection with a specific procurement, a publicly posted Request for Information (RFI) should be used whenever possible to ensure transparency and provide all potential Suppliers and opportunity to provide information.

12.3.2 A Request for Information can be used to build Supplier interest and to obtain information about the availability of Deliverables in the marketplace and the level of interest from Suppliers able to provide the Deliverables to the City. The Request for Information may request detailed information including, but not limited to, company background, who the interested parties are, what they can offer and what they can do for the City.

12.3.3 Direct contact with Suppliers should be limited to seeking basic information in a manner that does not preclude them from submitting a Bid Solicitation that may be subsequently issued. To maintain the integrity of the Competitive Process, seeking information from Suppliers outside of an RFI process is only permitted on the following conditions:

- a. Staff may contact potential Suppliers or meet with potential Suppliers informally to gather information. Meetings could be in the form of office sales calls, demonstrations, trade shows, site visits, etc.;
- b. When discussing, requesting, or receiving information from Suppliers, staff must inform the Suppliers that the nature of the undertaking is exploratory and for information or budgetary purposes only, and that any subsequent request to purchase will be conducted according to the City's Purchasing By-law;
- c. No commitment can be made to any Supplier; and
- d. No information can be given to a Supplier that would give the Supplier an advantage in a future Bid Solicitation.

### **12.4 Supplier Who Assists in Developing Specifications**

12.4.1 Where a Request for Information is not used, and it is necessary to do more than seek basic information from a Supplier, as described in Section 12.3, it may be desirable to ask a potential Supplier to help City staff design or develop specifications, or to be used at a preliminary stage in a project, or otherwise help define a requirement for the purposes of a procurement process. When such services are utilized:

- a. The Supplier shall not be eligible to bid, directly or indirectly, or to assist any Bidder in bidding, whether or not a fee is paid to the Supplier unless in the opinion of the Treasurer exceptional circumstances exist; and
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- b. The detailed specifications shall be approved by the Commissioner of the originating Department and shall become the property of the City for use in obtaining competitive Bids.

## **12.5 Accessibility**

When preparing the specifications, the originating Department 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 those requirements with respect to procuring Deliverables and in the development of the Specifications.

## **12.6 Sustainable Procurement**

The City is committed to purchasing environmentally friendly Deliverables with due regard to the protection of the environment and public health, conservation of natural resources, reduction of toxicity, and the minimization of waste. All departments, in conjunction with the Purchasing Section, are encouraged to seek additional ways of achieving the goal of being environmentally friendly and responsible by thorough review of each procurement process to ensure that wherever possible and economically feasible, specifications/terms of reference provide for:

- a. Expanded use of Deliverables that contain post-consumer recyclable content to the maximum level allowable, without significantly affecting the intended use or performance of the Deliverables;
  - b. Consideration of products, certified by an independently accredited organization, that prevent the over consumption of energy and other resource and reduce the production of waste, and the release of substances harmful to the environment and/or public health;
  - c. Consideration of products certified by an independently accredited organization, which favour environmentally-benign, post-consumer, bio-degradable, and non-toxic ingredients;
  - d. Consideration for the process by which products are manufactured, operated, transported, stored, packaged and the method of disposal. It is also recognized that a cost analysis may be required to ensure that the products are made available at competitive prices;
  - e. Consideration of energy efficiency and water conservation where applicable; and
  - f. Consideration of Leadership in Energy and Environmental Design (LEED) for new buildings and renovations.
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## **Part 13: In-House Bids**

### **13.1 Circumstances for In-House Bids**

In-House Bids may be used for the procurement of Deliverables in the following circumstances:

- a. Where an external Supplier has historically provided Deliverables, and Council determines that it is in the City's best interest to allow City departments to compete for the provision of Deliverables;
- b. Where a department has historically provided Deliverables, and Council determines that it is in the City's best interest to allow the department to compete for the provision of the Deliverables; and
- c. In any other circumstances that Council determines may be appropriate.

### **13.2 Solicitation of In-House Bids**

In-House Bids shall only be used where external Suppliers have also been requested to submit Bids.

If any Bid Solicitation permits In-House Bids, all Bidders shall be made aware of this fact in the Bid Solicitation documents.

### **13.3 Authorization for In-House Bids**

Council shall authorize all In-House Bids, in advance. In determining whether an In-House Bid is in the City's best interest, Council shall consider the following criteria:

- a. Whether the In House-Bid will result in a significant increase or decrease in capital equipment and infrastructure expenditures by the City;
- b. The extent to which the In-House Bid will affect the future ability of the City to deliver essential health, emergency or other vital services to the public, in a cost effective and efficient manner;
- c. The extent to which the In-House Bid will affect the personnel complement of the City; and
- d. The extent to which the In-House Bid will affect service levels provided to the public.

After an In-House Bid has been authorized, the procurement method will be determined in accordance with Part 10, and the approval and contracting authorities will be in accordance with Part 7.

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## **Part 14: Supplier Relations**

### **14.1 Debriefings**

Unsuccessful Bidders may request a debriefing. If a debriefing is requested, it should be scheduled and conducted in accordance with applicable procedures and protocols. Bidders are entitled to an explanation of the reasons why its Bid was not selected and the relative advantages of the successful Bidder's Bid; however, Bidders will not be provided with information that might prejudice fair competition between Suppliers.

### **14.2 Procurement Protests**

Suppliers may formally protest the outcome of a procurement process. Procurement protests must be managed and responded to in accordance with the City's Procurement Protest Protocol.

### **14.3 Contract Management**

All Contracts for Deliverables must be managed by the Department and performance of the Supplier must be monitored and tracked in accordance with applicable procedures and protocols.

### **14.4 Supplier Suspension**

Suppliers may be suspended from participating in future procurement processes for a specified period of time in accordance with the City's Supplier Suspension Protocol.

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

14.5.1 The City may reject a Bid from a Supplier where in the opinion of the Treasurer in consultation with the City Solicitor, the commercial relationship between the City and the Supplier, including any sub-contractor the Supplier intends to use, 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.

14.5.2 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 proceeding;
  - b. Being a Supplier against whom the City is pursuing litigation;
  - 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; and
  - 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
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other legislation, including but not limited to legislation in respect of taxation, financial securities; environmental protection, and health and safety.

14.5.3 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. In accordance with applicable law. In accordance with applicable laws, the Treasurer 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.

#### **14.6 Document Retention**

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.

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

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 the MFIPPA and any other applicable legislation.

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.

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## **Part 15: Disposal of Surplus and Obsolete Goods**

### **15.1 Authority for Disposal of Surplus and Obsolete Goods**

The disposal of surplus and obsolete goods shall be evaluated on a case-by-case basis. The Commissioner, in conjunction with the Treasurer, have the authority to sell, exchange, or otherwise dispose of goods declared as surplus to the needs of the City, where it is cost effective and in the best interest of the City to do so.

### **15.2 Means of Disposal of Surplus and Obsolete Goods:**

#### **15.2.1 Surplus and obsolete goods may:**

- a. Be offered to other departments or Public Bodies;
- b. Be sold by external advertisement, formal request, auction or public sale (where it is deemed appropriate, a reserve price may be established);
- c. Be sold or traded to the original Supplier or others in that line of business where it is determined that a higher net return will be obtained than by following other procedures;
- d. Be donated to a registered charity;
- e. Be recycled; or
- f. Be scrapped, in the event that all efforts to dispose of goods are unsuccessful.

#### **15.2.2 If a good is sold through a formal competitive process, the approval limits for the sale shall be in accordance with the Approval Authority as set out in Part 7.**

#### **15.2.3 The sale or offer of such goods to employees, Municipal Councillors, or their family members, is prohibited.**

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## **Part 16: Review of By-law**

### **16.1 Review to be Undertaken Prior to the End of Each Council Term**

The Treasurer, 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.

### **16.2 Factors to be Considered During Review**

The review conducted by the Treasurer shall take into consideration current and future professional practices, industry standards, market conditions, Federal/Provincial Government directions/policies, technological developments and advancements, policies in the By-law where, through application, it becomes apparent that clarification is needed, and the impact that any recommended changes may have on potential Suppliers to the City.

### **16.3 By-Law Repealed**

By-law 14-127 is repealed.

### **16.4 Effective Date**

This By-law becomes effective November 1, 2018

### **16.5 Short Title**

This By-law may be referred to as the “Procurement By-law”.

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**Appendix A – Schedule of Approval Authority**

STANDARD PROCUREMENT		
Procurement Method <sup>1</sup>	Procurement Value <sup>2</sup>	Approval Authority <sup>3,4</sup>
Low Value Purchase Process	At or below \$10,000	Manager or other “delegated” staff as specifically designated by the Commissioner and approved by the Treasurer in writing
Informal Quote Process	At or below \$25,000	Designate as approved by Commissioner and Treasurer
	At or below \$50,000	Commissioner
Invitational Competition or Open Competition	Below \$100,000	Chief Administrative Officer
Open Competition (including pre-qualification stage, if applicable)	\$100,000 or more	Administrative Staff Committee
Open Framework Competition to establish Qualified Supplier Roster	Any value	Administrative Staff Committee
Roster Competition for Deliverables from existing Qualified Supplier Roster	At or below \$25,000	Designate as approved by Commissioner and Treasurer
	At or below \$50,000	Commissioner
	Below \$100,000	Chief Administrative Officer
	At or above \$100,000	Administrative Staff Committee

NON-STANDARD PROCUREMENT		
Procurement Method	Procurement Value <sup>1</sup>	Approval Authority <sup>3,4</sup>
Non-Competitive or Limited Competition under the circumstances permitted in the Non-Standard Procurement Protocol and approved by the Treasurer.	At or below \$25,000	Designate as approved by Commissioner and Treasurer
	At or below \$50,000	Commissioner
	Below \$100,000	Chief Administrative Officer
	At or above \$100,000	Council

<b>CONTRACT AMENDMENT</b>	
<b>Council approval is required in all cases where the Total Cumulative Increase<sup>5</sup> is both more than \$100,000 <u>and</u> more than 10% of the original Contract Value.</b>	
If the Total Cumulative Increase <sup>5</sup> is either less than \$100,000 <u>or</u> less than 10% of the original Contract Value, Approval Authority is determined as follows:	
<b>Total Cumulative Increase<sup>5</sup> + Original Contract Value</b>	<b>Approval Authority<sup>3,4</sup></b>
At or below \$50,000	Commissioner
Below \$100,000	Chief Administrative Officer
At or above \$100,000	Administrative Staff Committee

**NOTES:**

1. The procurement process must be conducted in accordance with this By-law and all applicable procedures and protocols.
2. The authority to initiate a procurement process is based on the estimated Procurement Value. The authority to approve the award of a Contract for the procurement is based on the actual Procurement Value. Procurement Value includes the value of any Contract Renewal Options.
3. All Approval Authorities are subject to all applicable conditions set out in Part 7 of this By-law, including the requirement that the Contract Value can be accommodated within the Approved Budget. Contract Value is the value of the initial term of the Contract and does not include the value of any Contract Renewal Options.
4. The authority to approve the award of the Contract or the Contract Amendment does not include the authority to sign the Agreement or the amending agreement and/or to issue the Purchase Order to the Supplier, as applicable. The authority to sign Agreements and/or issue Purchase Orders on behalf of the City is set out in Section 7.5 of this By-law.
5. Total Cumulative Increase is the total value of all increases to the original Contract Value, including the value of any previously approved increases and the value of the proposed increase that is to be approved.



## **Appendix B – Exempt Expenditures**

The expenditures set out in this Appendix B are exempt from the requirements set out in Parts 7 through 14 of this By-law.

### **B.1 List of Exempt Expenditures**

#### **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. Real Property payments including purchases, leases, easements, encroachments and licenses, or the like
- h. Insurance claims, legal agreements or settlements and arbitration awards
- i. Employee/Council travel expenses
- j. Other training related expenses such as memberships in professional organizations, staff attendance at seminars, workshops, conferences or courses, subscriptions, periodicals or magazines

#### **2. Professional Services**

- a. Employee training, facilitators, or speakers
- b. Medical Professional Services
- c. Expert Witnesses
- d. Outside Legal Counsel
- e. Municipal Tax Equity (MTE) as approved in annual budgets
- f. Fees related to real estate transactions such as commissions and professional fees
- g. Otonabee Region Conservation Authority fees for services rendered

#### **3. Payments to other Organizations/Individuals**

- a. Other Municipalities, for example; the County of Peterborough for EMS, property taxes
  - b. Fire hydrant costs to Peterborough Utilities Commission
  - c. Street light maintenance costs payable to the Peterborough Utilities Group of Companies
  - 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 and Greater Peterborough Area Economic Development Corporation (GPAEDC)
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- e. Sewer surcharge collection fees payable to Peterborough Utility Services Inc.
- f. Social Services agencies that provide service to the City through Service Agreements such as Daycare and Hostel Operators
- g. Tenants and promoters using the City arenas
- h. Social Housing providers and other related support organizations such as the Housing Resource Centre and Access Peterborough
- i. Municipal Property Assessment Corporation fees for property assessment services and support costs
- j. Organizations on whose behalf the City has received donations and issued income tax receipts
- k. Capital grants to other organizations, as approved in budgets
- l. Annual maintenance, support or equipment parts/supplies for software or hardware that is only available through a sole source
- m. Refurbishing components of equipment by the authorized manufacturer of the equipment
- n. Transportation, recycling and disposal of municipal Household Hazardous Waste and recyclables as per Agreement with Stewardship Ontario
- o. Services that can be provided directly by the City's Cooperative Purchasing Group members (such as printing the City's budget documents by the Trent University Print Shop)

#### **4. Special Services**

- a. Various transfers to Social Services clients
- b. Postal services
- c. Payments to developers as stipulated in Subdivision or other Development Agreements
- d. Investments
- e. Bank charges
- f. Expenses related to an event which will be recovered in full from a third party
- g. Relocation of utilities within the right-of-way
- h. Rail crossing maintenance and required fees

#### **5. Utilities**

- a. Electricity
- b. Water
- c. Natural gas
- d. Cable

#### **6. Refunds**

- a. Property tax refunds
  - b. Building permit refunds
-

- c. Cancelled services, program, events, tickets

## **7. Transfer of Funds Collected on behalf of a third-party**

Such as:

- a. Go Transit Revenue
- b. Ticket Revenue – Peterborough Memorial Centre Events
- c. School Board taxes

## **B.2 Payment of Exempt Expenditures**

Payments for the exempt expenditures may be made on the basis of an invoice, or based on an internal cheque request, with the appropriate account number(s) indicated and which has been signed by an employee with applicable Approval Authority, as set out in B.3. In some cases, a Purchase Order or an Agreement may be required.

## **B.3 Approval Authority for Exempt Expenditures**

The following approval limits apply to exempt expenditures, where sufficient Approved Budget exists:

- a. Less than or equal to \$10,000 may be approved by a Manager;
  - b. Less than or equal to \$10,000, and which is to be charged to a Council or Civic Functions account, may be approved by the Mayor;
  - c. Greater than \$10,000 and less than or equal to \$50,000 may be approved by the Commissioner; and
  - d. Greater than \$50,000 may be approved by the originating Department Commissioner and by either the Chief Administrative Officer or Treasurer.
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## Appendix C – Supplier Code of Conduct

The City requires its Suppliers to act with integrity and conduct business in an ethical manner. The City may refuse to do business with any 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.

Suppliers are responsible for ensuring that any employees, representatives, agents or sub-contractors acting on their behalf conduct themselves in accordance with this Code of Conduct. The City may require the immediate removal and replacement of any individual or entity acting on behalf of a Supplier that conducts themselves in a manner inconsistent with this Code of Conduct. The City may refuse to do business with any Supplier that is unwilling or unable to comply with such requirement.

### C.1 Illegal or Unethical Bidding Practices

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. Offering gifts or favours to the City's officers, employees, appointed or elected officials or any other representative of the City;
- c. Engaging in any prohibited communications during a procurement process;
- d. Submitting inaccurate or misleading information in a procurement process; and
- e. Engaging in any other activity that compromises the City's ability to run a fair procurement process.

The City will report any suspected cases of collusion, bid-rigging or other offenses under the **Competition Act**, as amended to the Competition Bureau or to other relevant authorities.

### C.2 Conflicts of Interest

All Suppliers participating in a procurement process must declare any perceived, possible or actual conflicts of interest.

The term "Conflict of Interest," when applied to Suppliers, includes any situation or circumstance where:

- a. In the context of a procurement process, the Supplier 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 Suppliers;
    - ii. Communicating with any person with a view to influencing preferred treatment in the procurement process (including but not limited to lobbying decision makers involved in the procurement process); or
    - iii. Engaging in conduct that compromises, or could be seen to compromise, the integrity of an open and competitive procurement process or render that process non-competitive or unfair; or
  - b. In the context of performance under a potential Contract, the 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
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- ii. Could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

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

### **C.3 Ethical Business Practices**

In providing Deliverables to the City, Suppliers are expected to adhere to ethical business practices, including:

- a. Performing all Contracts in a professional and competent manner and in accordance with the terms and conditions of the Contract and the duty of honest performance;
- b. Complying with all applicable laws, including safety and labour codes (both domestic and international as may be applicable); and
- c. Providing workplaces that are free from harassment and discrimination.

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## Appendix C

### Bid Solicitations Issued under Purchasing By-Law 14-127

Ref	Description	Awarded by or To Be Awarded (TBA)							Of total Awarded this Many were "Local"  (Note 3)	% of Local to Total Awarded
		Council	ASC	CAO	Director	Manager	Total  Awarded	Total Bids  (Note 2)		
Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8	Col 9	Col 10	Col 11
	<b>Number of bids awarded or TBA by type</b>									
1	Tender	17	124	18	8	-	167	167	62	37%
2	Proposal	51	29	6	5	-	91	91	19	21%
3	Quote	-	2	19	6	1	28	28	13	46%
4	<b>Total</b>	<b>68</b>	<b>155</b>	<b>43</b>	<b>19</b>	<b>1</b>	<b>286</b>	<b>286</b>	<b>94</b>	<b>33%</b>
5	<b>Number of tenders awarded by ASC &gt; \$100,000</b>									
	Number of tenders awarded by ASC > \$100,000		94							
	<b>Number of bids awarded by year of award</b>									
6	Awarded during 2014						6			
7	Awarded during 2015						84			
8	Awarded during 2016						68			
9	Awarded during 2017						91			
10	Awarded during 2018						37			
							-			
11	<b>Total Awarded</b>						286			
12	<b>\$ Value of Award</b>									
	Value awarded (Note 1)	73,020,370	84,774,711	5,298,515	267,339	9,720	163,370,655		-	0%
13	<b>Average days from closing date to final award</b>									
	Average days to award after closing	54	18							
14	<b>\$ Difference between award amount and second lowest bidder</b>									
	Sum of difference (where known) between amount awarded and next lowest bidder						13,498,000			
15	<b># of Valid bids Received</b>									
	Tender (Average # of Valid Bids received)						3			
16	Proposal (Average # of Valid Bids received)						4			
17	Quote (Average # of Valid Bids received)						2			
18	Number of solicitations where only one bid received						34			
19	Number of bids requiring increase in budget						20			
20	Percentage of work resulting from bids completed within budget						93			
	<b>Notes</b> 1 This value excludes any bid submissions shown on Appendix C that were based on unit price and not easily converted to estimated total value 2 Bid solicitation listed on Appendix C, include only those actually awarded or are expected to be awarded and where award data was available as of print date 3 "Local" means Bidders with Peterborough, Bridgenorth, Ennismore, Lakefield, Norwood, Cavan or Bowmanville Postal Code. In cases where Bid Solicitation awarded to multiple bidders only one bidder's Postal Code used in calculation of "Local" Bids awarded to non local bidders can still have a significant local impact through the use of sub contractors. 4 Appendix C listing does not include Pre-Qualification Documents									