



## Staff Report

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<b>Report To:</b>	<b>Audit and Accountability Committee</b>		
<b>Date of Meeting:</b>	June 29, 2021	<b>Report Number:</b>	FSD-036-21
<b>Submitted By:</b>	Trevor Pinn, Director of Financial Services/Treasurer		
<b>Reviewed By:</b>	Andrew C. Allison, CAO	<b>Resolution#:</b>	C-337-21
<b>File Number:</b>	[If applicable, enter File Number]	<b>By-law Number:</b>	2021-077
<b>Report Subject:</b>	Purchasing By-law Review 2021		

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### Recommendations:

1. That Report FSD-036-21 be received;
2. That the updated By-law attached to this Report (Attachment 1) be passed; and
3. That all interested parties listed in Report FSD-036-21 and any delegations be advised of Council's decision.

## Report Overview

To request authorization from Council to update the Purchasing By-law No. 2015-022.

### 1. Background

- 1.1 At its meeting held on, [March 9, 2015](#) General passed resolution #GPA-191-15 adopting the revised Purchasing By-law designed to meet departmental requirements and operational needs while ensuring effective controls. As a requirement of the Purchasing By-law, the Purchasing Manager is required to undertake a comprehensive review of the Purchasing By-law every five years. The proposed updated By-law (Attachment 1) repeals the existing [By-law 2015-022](#).
- 1.2 The Purchasing By-law outlines the authority for the procurement of goods and services, including the following:
  - The authority and duties of the Purchasing Manager
  - The process for bid solicitation and awarding of contracts
  - The conditions under which goods and services can be sourced without a competitive process
  - Purchasing limits and delegation of authority
  - Compliance
  - Pricing/cost

### 2. Review Process

- 2.1 The Director of Financial Services/Treasurer and Staff from the Purchasing Services Division established a working team to review and discuss revisions to the Purchasing By-law to address operational improvements. Several meetings were held to review and discuss the various sections of the Purchasing By-law. While some of the changes are substantive, many of the changes are administrative.
- 2.2 The changes being proposed will allow Purchasing Staff to focus on higher dollar value purchases, shorten the lead time for the procurement of goods and promote efficiencies.

A summary of proposed revisions to the new Purchasing By-law are shown below:

## By-law Provisions

### 1. Definition

- Include a definition for Single Source purchase
- Include a definition for Sole Source purchase

### 2. Bid Types and Limits

#### a) Informal Request for Quotation

- Increase the authority to make acquisitions from between \$5,000 - \$25,000 to between \$5,000 - \$50,000

#### b) Formal Request for Quotation

- Increase the authority to make acquisitions from between \$25,000 - \$100,000 to between \$50,000 - \$100,000

#### c) Bonds and Deposits

- Reword to delete any reference to cash and envelope and to include accepting e-Bond.

#### d) Bid Procedure

- Delete any reference to hard copy submission and replace with “electronic process”

#### e) Bid Opening

- Delete any reference to hard copy submission and public opening and replaced with “Unless otherwise stated, all Bids shall be opened by the Purchasing Manager and results posted publicly on the Municipality’s website”.

#### f) Approval Limits and Reporting

- Change CAO’s approval limit from \$250,000 to \$500,000
- Change the limit for award of contract for goods and services requiring Committee’s approval from \$250,000 to \$500,000

- Department Head may hire a consultant directly if the cost is below \$25,000, down from \$30,000, in line with the treatment for other purchases
- CAO will approve hiring of consultants between \$25,000 to \$50,000
- Change the limit for award of contract for consulting and professional services requiring Committee's approval from \$30,000 to \$50,000.

### **3. General Purchasing Policies**

#### **a) Fair Wage Policy**

- Deleted

#### **b) Lobbying**

- Included a new section on lobbying as follows:

All prospective bidders are prohibited from lobbying any member of Council, staff and consultants, appointed member and any staff of any Board during the period commencing at the time of issuing a bid solicitation and ending at the time of the award of the contract. The Municipality may reject any bid by a supplier that engages in such lobbying, without further consideration, and may terminate that supplier's right to continue in the bid solicitation process.

### **4. Schedule A**

- Delete Engineering Services and Engineering Consulting Services from Schedule from Schedule A.

### **5. Other Changes**

- Other changes made are administrative in nature.

### **6. Future changes**

- The Purchasing Services Division and the Energy and Climate Change Response Co-Ordinator are working together on a green procurement policy. A separate report will be sent to Council once the policy has been finalised.

### **3. Concurrence**

Departments Heads have been consulted during the review process and the report has been reviewed by the Director of Municipal Services/Municipal Solicitor who concurs with the recommendation.

### **4. Conclusion**

- 4.1 Overall, the general consensus is that the By-law facilitates efficient procurement processes and effectively meets the operating requirements of the Municipality's operating Departments while ensuring appropriate controls and accountability measures.
- 4.2 It is respectfully recommended that the By-law attached to this report as attachment #1 be passed.

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Staff Contact: David Ferguson, Purchasing Manager, 905-623-3379 Ext 2209 or [dferguson@clarington.net](mailto:dferguson@clarington.net)

Attachment:

Attachment 1 – Proposed updated Purchasing By-law.

Interested Parties:

There are no interested parties to be notified of Council's decision.

## Purchasing By-Law 2021-xxx

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If this by-law is required in an alternate accessible format, please contact the Accessibility Coordinator at 905-623-3379 ext. 2131.

## THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

### BY-LAW NUMBER 2021-xxx

being a by-law to provide policies and procedures  
for the procurement of goods and services.

WHEREAS pursuant to section 270 of the *Municipal Act, 2001*, the Corporation is required to establish and maintain policies with respect to its procurement of goods and services; and

WHEREAS the Corporation wishes to procure goods and services in the most efficient and cost effective manner possible; and

WHEREAS the Corporation is committed to ensuring that its procurement policies and procedures are fair, open and transparent.

NOW THEREFORE the Corporation of the Municipality of Clarington hereby enacts as follows:

### **Part 1 – Interpretation**

#### **Definitions**

1. In this by-law,

“Acquisition” means the purchase of a Good and/or Service for use on a permanent or temporary basis;

“Bid” means a Proposal, Quotation or Tender;

“Bidder” is a Person who responds to a Bid Solicitation;

“Bid Solicitation” means a request by the Corporation for Bids for the provision of Goods and/or Services through an RFP, RFQ or RFT;

“CAO” means the Chief Administrative Officer of the Corporation or a designate;

“Clerk” means the Municipal Clerk of the Corporation or a designate;



“Committee” means the General Government Committee of Council;

“Consulting and Professional Services” means services provided by architects, engineers, designers, environmental consultants, surveyors, management and financial consultants, bankers, auditors, brokers, soil consultants, real estate appraisers, Ontario land surveyors, web designers or any other consultant or professional, but does not include any consulting and professional services referred to in Schedule “A”;

“Corporation” means The Corporation of the Municipality of Clarington;

“Cost” means the actual cost of an Acquisition excluding taxes;

“Contract” means an agreement between two or more Persons one of whom is the Corporation;

“Council” means the Council of the Corporation;

“Department” means a Department of the Corporation identified on the annual organization charts and reflected in the prevailing budget;

“Department Head” means the Director of one of the Departments or a designate;

“Disqualified Bidder” means a Bidder that has provided unsatisfactory Goods and/or Services to the Corporation and consequently had a Contract terminated or been notified by the Purchasing Manager that they are not eligible to submit a Bid;

“Expression of Interest” or “EOI” means general market research used prior to a Bid Solicitation to determine if there is an interest in a proposed Acquisition;

“Goods and/or Services” means any goods and/or services required by the Corporation other than goods and/or services listed in Schedule “A”;

“Local Board” means a local board (as that term is defined in the *Municipal Act, 2001*) of the Corporation;

“Person” includes an individual, association, firm, partnership, corporation, union, trust, organization, trustee or agent, and their heirs, executors, administrators, successors and assigns;

“Proposal” means an offer from a Bidder made in response to an RFP;

“Purchase Order” means a Contract or a written acceptance of a Proposal, issued on forms prescribed by the Purchasing Manager;

“Purchasing Manager” means the Purchasing Manager of the Corporation or a designate;

“Quotation” means an offer from a Bidder made in response to an RFQ;

“Request for Proposal” or “RFP” is a form of Bid Solicitation in which the Corporation invites one or more potential suppliers to submit proposals with respect to the supply of particular Goods and/or Services, which the Purchasing Manager in consultation with the Department Head, determines may be dependent upon non-price factors and may require negotiations between a Bidder and the Corporation before a Contract is made between them;

“Request for Quotation” or “RFQ” is a form of Bid Solicitation in which the Corporation requests either informal quotations or formal quotations;

“Request for Tender” or “RFT” is a form of Bid Solicitation in which the Corporation publishes the specifications, terms, conditions and details concerning a proposed Contract, and invites or advertises prospective Bidders to submit Tenders;

“Responsive and Responsible Bidder” is a Person responding to a Bid Solicitation who complies with its provisions and who can reasonably be expected to provide satisfactory performance of a proposed Contract based on reputation, references, performance on previous contracts, and proof of sufficient financial and other resources;

“Single Source Purchase” means a non-competitive purchase where there are other suppliers of the product or service available, however, for reasons such as emergency, proprietary, matching existing equipment, health and safety concerns, time constraints, etc., the purchase is sourced to a specific vendor.

“Sole Source Purchase” means a non-competitive purchase where there is only one supplier of the product or services and as a result a competitive quotation process is not possible.

“Tender” means an offer received from a Bidder in response to an RFT;

“Treasurer” means the Director of Financial Services/Treasurer of the Corporation or a designate; and

“Weighted Evaluation Criteria” means criteria that are taken into account when evaluating Proposals including qualitative, technical and pricing considerations.

### **Word Usage**

2. This by-law shall be read with all changes in gender or number as the context may require.
3. A grammatical variation of a defined word or expression has a corresponding meaning.

**Severability**

4. Should any section or part of this by-law be held by a Court of competent jurisdiction to be invalid, the remainder of this by-law shall not be affected.

**References**

5. In this by-law, reference to any Act, By-law or Policy is reference to that Act, By-law or Policy as it is amended or re-enacted from time to time.
6. Schedule "A" (Exempt Good and/or Services) is attached to and forms part of this by-law.
7. All references to dollar figures are Canadian dollars.
8. Unless otherwise specified, reference in this by-law to a clause, section or Schedule is to a clause, section or Schedule in this by-law.

**Application**

9. This by-law shall not apply to the acquisition of any interests in real property. Such matters shall be governed by By-Law 2011-011 and subsequent by-law.
10. This by-law shall not apply to the Acquisition of any Goods and/or Services listed in Schedule "A".

**Part 2 – Authority****Purchasing Manager Authority**

11. The Purchasing Manager shall have the authority to act as agent of the Corporation for the purpose of acquiring all Goods and/or Services required by the Corporation.
12. The Purchasing Manager shall determine the method of Acquisition having regard to the nature, importance or urgency associated with the purchase requisition, subject to the general trade practice, market conditions and the provisions of this by-law.

**Approval Authority**

13. No employee of the Corporation shall have the authority to make or approve an Acquisition or award a Contract for any Good and/or Service unless funds for such Acquisition have been allocated in a budget approved by Council. If a recommended Bid is in excess of an approved budget limit but within the approval limits of this by-law, the Treasurer, after consultation with the Department Head, must approve the source of additional funding.

14. Contracts shall not be split so as to circumvent the established method of purchase or the approval limits imposed by this by-law unless, in the opinion of the Purchasing Manager, after consultation with the Department Head, if it is deemed advantageous to acquire components of a major project through separate Contracts.

### **Signing Authority**

15. Authority to make or approve an Acquisition or award a Contract for any Good and/or Service includes the power to sign all documents necessary to effect the Acquisition. Where a Department Head or the CAO has the authority to sign a Contract, the Purchasing Manager may sign on their behalf.

## **Part 3 – Bid Types and Limits**

### **Purchases up to \$5,000**

16. Goods and/or Services not exceeding a Cost of \$5,000, (excluding computers, software, computer accessories and cell phones) do not require the submission of a Purchase Order (unless one is required by the vendor) and may be purchased by individual Departments as required at the lowest available Cost. However, if a term order or another form of Contract is established, then the Department must purchase from the Contract vendor. Computers, software, computer accessories and cell phones must be ordered in coordination with the IT Division using a Purchase Order.

### **Informal Request for Quotation (\$5,001 - \$50,000)**

17. The Purchasing Manager shall have the authority to make Acquisitions for which the Cost is between \$5,001 up to a maximum of \$50,000 at the lowest available Cost, provided a minimum of three Quotations have been received where they are reasonably required and possible to obtain.

### **Formal Request for Quotation (\$50,001 - \$100,000)**

18. The Purchasing Manager shall have the authority to make Acquisitions for which the Cost is between \$50,001 up to a maximum of \$100,000 at the lowest available Cost, provided where they are reasonably required and possible to obtain, at least three formal Quotations have been received and the lowest Responsive and Responsible Bid received is acceptable.

### **Acquisitions over \$100,000**

19. Subject to sections 20, 21 and 23, Acquisitions that are anticipated to have a Cost in excess of \$100,000 shall be made through an RFT.

**Routine Purchases**

20. Where, in the opinion of the Purchasing Manager in consultation with the Department Head, a proposed Acquisition is of a routine and repetitive nature, the Purchasing Manager may obtain written Bids from suppliers and a Contract may be awarded.

**Negotiations / Single / Sole Source Purchases**

21. In place of a Bid Solicitation, Goods and/or Services may be purchased through negotiation, Single or Sole source purchases where, in the opinion of the Purchasing Manager in consultation with the Department Head,
- (a) the sources of supply are restricted to the extent that there is no effective price competition;
  - (b) the purchase involves Goods and/or Services,
    - (i) that are in short supply due to market conditions;
    - (ii) for which there is no reasonable substitute or competitive product; or
    - (iii) for which compatibility with an existing product/services is the overriding consideration;
  - (c) the purchase involves specialized preassembled goods;
  - (d) the Bid from the lowest Responsive and Responsible Bidder substantially exceeds the estimated Cost;
  - (e) no Bid from a Responsive and Responsible Bidder is received and it is impractical to issue another Bid Solicitation;
  - (f) the extension or reinstatement of an existing Contract would prove most cost-effective or beneficial to the Corporation;
  - (g) the terms and conditions of a Proposal provide for negotiation with the selected Bidder; or
  - (h) Council has specifically authorized an Acquisition through negotiation.
22. In the case of a Contract for a construction project, negotiations shall be conducted in accordance with the Canadian Construction Documents Committee (C.C.D.C.) Document 23 published by the Canadian Construction Association where expressly required by the provisions of an RFT.

**Requests for Proposal**

23. Irrespective of the anticipated Cost, where the Purchasing Manager in consultation with the Department Head determines that a proposed Acquisition involves unique or complicated circumstances, the Acquisition may be made through the use of an RFP.

24. (1) In this section, "Two Envelope Method" means a procurement process in which,
  - (a) a Bid is submitted in two separate envelopes, the first of which contains technical and qualitative information and the second of which contains price information; and
  - (b) Weighted Evaluation Criteria are applied and the second envelope is opened only if the first envelope shows the Bidder to be qualified.
- (2) The Purchasing Manager, in consultation with the Department Head, may use an RFP process that utilizes a Two Envelope Method.
25. RFPs may be called by public advertisement or invitation to specific Bidders.
26. All RFPs shall be submitted in the prescribed manner and delivered to the Purchasing Manager.
27. It is the Corporation's general policy to select the Proposal that best meets the requirements of the RFP based on Weighted Evaluation Criteria.

### **Product Demonstrations and Information**

28. No requests for prices or demonstrations for approved projects or programs above \$5,000 shall be made without prior consultation with the Purchasing Manager.
29. Requests on behalf of the Corporation may be made by Department Heads for informal non-binding product and technical information, catalogues and price lists. Each Department Head shall provide the Purchasing Manager with such data, specification details and information relating to a proposed Acquisition, including the Corporation's approved budget prices. The Purchasing Manager shall obtain all binding or estimated prices provided by potential Bidders.

### **Bid Pre-Qualification**

30. (1) In this section, "Pre-qualification" means a procedure whereby a prospective Bidder satisfies the Corporation that it is capable of supplying a particular Good and/or Service as a condition of being allowed to submit a Bid.
- (2) If, in the opinion of the Purchasing Manager, Pre-qualification is required, the Contract, if awarded at all, must be awarded to the lowest Responsive and Responsible Bidder who has been pre-qualified.

### **Bonds and Deposits**

31. All Bid deposits required as part of any Bid Solicitation shall be provided by certified cheque, bank draft or money order made payable to "The Corporation of the Municipality of Clarington". Bid bonds, including electronic bond, shall be issued by a licensed surety company authorized to carry on business in Ontario, and shall be

in an amount and in a form satisfactory to the Corporation. Bid deposits shall be submitted in accordance with the following schedule, unless otherwise specified in the Bid Solicitation:

<u>Total Amount of Bid</u>	<u>Minimum Bid Deposit Required</u>
Up to \$20,000.00	\$1,000.00
Up to \$50,000.00	\$2,000.00
Up to \$100,000.00	\$5,000.00
Up to \$250,000.00	\$10,000.00
Up to \$500,000.00	\$25,000.00
Up to \$1,000,000.00	\$50,000.00
Up to \$2,000,000.00	\$100,000.00
Over \$2,000,000.0	\$200,000.00

32. When the deposit of a performance bond and/or labour and material payment bond is a requirement of a Bid Solicitation, such bonds shall be,
- in the amounts specified in the Bid documents;
  - issued by a licensed surety company authorized to carry on business in Ontario;
  - in a form approved by the Corporation; and
  - delivered by the Bidder to the Purchasing Manager prior to execution of the Contract.
33. Following the award of a Contract, all deposits that are in the form of certified cheques or money orders, except for the deposits supplied by the successful and next to successful Bidders in the case of a Contract award, shall be returned to the unsuccessful Bidders. Retained Bid deposits shall be held until the Contract is executed by the Corporation, unless otherwise determined by the Purchasing Manager.
34. Following the cancellation of a Bid Solicitation, all deposits shall be returned to the Bidders.
35. If a successful Bidder fails to enter into a Contract, the Bid deposit shall be forfeited to the Corporation. If a Bid bond is deposited, it may be called by the Treasurer and the amount of money thereby obtained shall be forfeited to the Corporation.

### **Initial Bid Procedures**

36. If required, Bid Solicitations shall be advertised in the method deemed most appropriate by the Purchasing Manager which may include, but shall not be limited to periodicals, newspapers and/or websites.

37. All closing times shall be established by the Purchasing Manager.
38. The Purchasing Manager shall make the bid document available to all prospective Bidders through an electronic process.
39. Where a fee is required for Bid documents, prospective bidders shall be required to pay for the bid document in the manner stipulated in the call document”

### **List of Registered Bidders**

40. Contact information of all prospective Bidders who have obtained or who have requested the material set out in Section 38 shall be recorded in order to facilitate distribution of addenda when necessary to change or cancel a Bid under call.

### **Changes to Bids under Call**

41. Interpretations of, or qualifications or changes to, a Bid Solicitation shall be made in the form of a written addendum. Addenda shall be necessary to revise, delete, substitute or add to a Bid under call. The Purchasing Manager shall approve the issuance of any addendum or the cancellation of a Bid Solicitation.
42. A copy of each addendum or a notice of posting of each addendum shall be forwarded to registered Bidders by electronic means and posted on the Corporation’s website.
43. Where an addendum is released after the receipt of one or more Bids which, in the opinion of the Purchasing Manager, may affect a Bid, all Bids received prior to the Bid closing may be withdrawn.
44. The Purchasing Manager in consultation with the Department Head may cancel a Bid Solicitation either before or after Bids are opened. The procedure for the notification to Bidders set out in section 42 shall apply to a notice of cancellation. If a Bid is cancelled prior to opening, all Bids received after cancellation shall be rejected.

### **Formal Bid Submissions**

45. The Purchasing Manager shall,
  - (a) record time and date of all Bids received, in an appropriate manner;
  - (b) refuse to accept any Bid from a Disqualified Bidder;
  - (c) record all accepted Bids;
  - (d) maintain safe control of all accepted bids until needed;



- (e) refuse to accept any Bid that is not received in accordance with the terms and conditions of the bid document, prior to the closing time established for that Bid. Reasons for nonacceptance shall be communicated to the Bidder.

### **Withdrawal of Bids**

- 46. A Bid can only be withdrawn prior to the close of Bids, as stipulated in the bid documents. Requests to withdraw received following the close of Bids shall not be accepted.

### **Bid Opening**

- 47. Unless otherwise stated, all Bids shall be opened by the Purchasing Manager and results posted publicly on the Municipality's website
- 48. All Bids shall be checked to determine that each Bidder has submitted one Bid only. Should more than one Bid be submitted, and no withdrawal notice has been received, the Bid with the latest time stamp shown shall be deemed to have superseded the earlier Bid and the Bidder shall be bound by the contents of the more recent Bid. If surety bonds are required to be submitted with the Bid at the time of closing, and the Bidder has included the required surety bonds with the first bid, the surety bonds may be deemed applicable to the Bid submitted with the second bid received.
- 49. Any Bid that does not appear on initial examination by the Purchasing Manager to satisfy the requirements of this by-law shall be deemed an "Improper Bid", but shall nonetheless be subject to further examination to determine whether it should be rejected pursuant to sections 51, 52 and 53.

### **Verification of Bids**

- 50. Every Bid submitted shall be checked by the Purchasing Manager who shall ensure that,
  - (a) it complies with the Bid Solicitation requirements;
  - (b) unit prices have been correctly extended;
  - (c) extensions have been correctly totalled; and
  - (d) applicable taxes have been calculated correctly.
- 51. Any extension errors, addition errors or incorrect tax calculations may be corrected provided that the Purchasing Manager is satisfied that it is a bona fide error, and not a price revision.

**Rejection of Bids**

52. After Bid opening, the Purchasing Manager shall reject any Bid from a Bidder who did not attend a mandatory pre-Bid meeting.
53. After Bid opening, the Purchasing Manager may accept or waive a minor and inconsequential irregularity, or where reasonable to do so, the Purchasing Manager may, as a condition of Bid acceptance, request a Bidder to correct a minor and inconsequential irregularity with no change in Bid price. The determination of what is, or is not, a minor and inconsequential irregularity, the determination of whether to accept, waive, or require correction of an irregularity, and the final determination of the validity of a Bid, shall be at the Purchasing Manager's sole discretion. Without limiting the generality of the foregoing, the Purchasing Manager may reject a Bid if it,
  - (a) is not submitted on the correct Bid form;
  - (b) is not submitted in the manner specified in the bid document or is illegible or unclear;
  - (c) does not provide all entries for all unit prices referred to in the Bid Solicitation (unless otherwise specified in the Bid Solicitation) or is otherwise incomplete in any material respect;
  - (d) includes any restrictive or conditional statement that alters the form or intent of the Bid;
  - (e) is not signed by the Bidder with an authorized signature;
  - (f) does not contain or acknowledge addenda;
  - (g) is not accompanied by bonding documents or bid deposits or contains an improper or insufficient Bid deposit, where required;
  - (h) contains an error that cannot be corrected in accordance with section 51;
  - (i) is unbalanced, meaning it contains lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs;
  - (j) is from a Bidder or a subcontractor of a Bidder that has an outstanding legal action against the Corporation, or the Corporation has an outstanding legal action against the Bidder or a subcontractor of the Bidder including arbitration or any association or union issues;
  - (k) is from a Bidder that owes money to the Corporation including outstanding property taxes; or

- (l) is from a Bidder that is not in compliance with any of the Corporation's policies or regulatory by-laws including, but not limited to the Property Standards By-law.
54. Following the opening and recording of Bids, the record of Bids (including rejected Bids) shall be closed in the manner approved by the Purchasing Manager.

### **Bid Cancellation**

55. The Purchasing Manager, in consultation with the Municipal Solicitor and the applicable Department Head, shall have the authority to cancel a Bid Solicitation either before or after the call has closed if,
- (a) a substantial change in the scope of work or specifications is required;
  - (b) the Goods and/or Services requested no longer meet the Department's requirements;
  - (c) the integrity of the procurement process has been compromised; or
  - (d) the lowest Responsive and Responsible Bid exceeds the approved funding limit.

### **Absolute Right**

56. The Corporation shall have absolute discretion in the awarding of Contracts and retains the right to reject any or all Bids.

### **Local Preference**

57. (1) In this section,
- (a) "Local Bid" means a Bid submitted by a Bidder who operates a business within the Municipality of Clarington; and
  - (b) "Regional Bid" means a Bid submitted by a Bidder who operates a business within the Regional Municipality of Durham.
- (2) If, in the opinion of the Purchasing Manager, a competitive market exists and two or more Bids are received which are identical in Cost, provided quality, service and delivery terms are similar, then priority of acceptance shall be first to a Local Bid, if any, and second to a Regional Bid, if any.
- (3) Ontario's *Discriminatory Business Practices Act*, R.S.O. 1990, c.D.12 has been established to prevent discrimination in Ontario on the grounds of race, creed, colour, nationality, ancestry, place of origin, sex, or geographical location of persons employed in or engaging in business. Accordingly, other than as noted in subsection (2), preference to a Local Bid or a Regional Bid shall not be given.

**Approval Limits and Reporting (Excluding Consulting and Professional Services)**

58. The Purchasing Manager shall submit to the Department Head an analysis listing all Quotations and Proposals received with a recommendation for the Department Head's approval if the Cost of the Goods and/or Services does not exceed \$100,000.
59. After consulting with the Department Head, the Purchasing Manager shall prepare a report to the CAO for approval if the Cost of the Goods and/or Services does not exceed \$500,000.
60. The Purchasing Manager shall prepare a recommendation report to Committee if the Cost of the Goods and/or Services exceeds \$500,000.

**Council Recess Procedures**

61. (1) Notwithstanding section 60, where a matter which would have otherwise been submitted to Committee requires approval during any of Council's recesses, including elections, the CAO shall be authorized to award the Contract if the Treasurer is of the opinion that the price is reasonably reflective of the approved budget allocation and/or is part of the normal operating responsibility of the Department.
  - (2) The Purchasing Manager shall report all Contracts awarded under subsection (1) to Committee as soon as possible after the conclusion of the recess.
  - (3) Council shall not vary any action or decision of the Contract awards made in accordance with this section.

**Consulting and Professional Services (Excluding Schedule "A" Exemptions)**

62. Where it is estimated that the Cost of Consulting and Professional Services will be less than or equal to \$25,000, the Department may obtain the services directly without issuing a Bid Solicitation.
63. Where it is estimated that the Cost of Consulting and Professional Services will be more than \$25,000, the Purchasing Manager shall issue a Bid Solicitation in compliance with this By-Law and prepare a report to the CAO for approval.
64. Where it is estimated that the Cost of Consulting and Professional Services will be more than \$50,000, the Purchasing Manager shall issue a bid solicitation, in consultation with the Department Head and, shall submit a report to Committee providing a recommendation for award.
65. An external consultant who has entered into a Contract for consulting services for a particular phase of a project, may be deemed to have a conflict of interest and be disqualified from submitting a Bid on a later phase of consulting services for the same project. Any issue as to whether there is a conflict of interest shall be

determined by the Purchasing Manager in consultation with the Department Head. This section shall not apply where a consultant has been requested to provide a budget estimate or general review and estimate for a potential Acquisition.

66. Any consultant authorized to issue a Bid Solicitation on behalf of the Corporation shall comply with this by-law.

### **Co-Operative Purchasing**

67. (1) In this section, "Co-operative Purchasing" means the participation of the Corporation with one or more public agencies, school boards, vendors of record (Provincial), hospitals or other public agencies in a Bid Solicitation.
- (2) Co-operative Purchasing shall be utilized when advantageous and practical. In the event of any conflict, the purchasing by-law and procurement practices of the municipality, school board, hospital or other public agency issuing the co-operative Bid shall take precedence over the provisions of this by-law.

### **Emergency Purchases**

68. (1) In this section, "Emergency" means a situation or the threat of an impending situation which, in the opinion of the CAO or a Department Head, requires an immediate Acquisition to prevent serious delays, damage to a basic service, risk to health and safety, financial loss or to maintain or restore a basic service provided by the Corporation.
- (2) Emergency Acquisitions shall be made by the Purchasing Manager. In the absence of the Purchasing Manager, Emergency Acquisitions may be made by a Department Head.
- (3) All Emergency Acquisitions shall be confirmed through a Purchase Order and shall be reported to Committee through a report prepared jointly by the Department Head and the Purchasing Manager if the Cost exceeds \$500,000 or an approved budget limit.

## **Part 4 – General Purchasing Policies**

### **Default By Successful Bidder**

69. If a successful Bidder fails to execute the Contract or fails to meet any of the requirements of the Contract within the prescribed time, the Contract may be awarded to the next lowest Bidder or cancelled.
70. If a successful Bidder defaults on an awarded Contract, the Purchasing Manager is authorized to take remedial action including termination of the Contract and all necessary steps to ensure completion of the project or continued service/supply. The Purchasing Manager, after consultation with the Department Head, may

declare that any Bidder who has defaulted on a Contract is ineligible to submit a Bid on any future Contract even if the awarded Contract is not terminated.

71. Should the Purchasing Manager determine that termination of the awarded Contract is the appropriate action in accordance with section 70, whoever awarded the Contract (Council, CAO or Department Head) shall be advised of the termination in writing.

### **Conflict of Interest**

72. The participation of members of Council and employees of the Corporation in the procurement process shall be governed by, in the case of members of Council, the Council Code of Conduct and the *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50 as amended and, in the case of employees, by the Code of Ethics Policy E-1.
73. No employee or Council member shall benefit directly or indirectly from affiliation with the Municipality or show any favouritism to any Person in the procurement of any Goods and/or Services.
74. No Person shall offer incentives to any employee of the Corporation or member of Council.
75. (1) In this section, "Personal Purchase" means a purchase of Goods and/or Services requested by an elected official, an appointed official or by any other employee of the Corporation that is not required for the purposes of the Corporation or a Local Board.  
  
(2) No Personal Purchases shall be made by the Corporation for any Member of Council, member of a Local Board, or employees of the Corporation.,

### **Access and Disclosure**

76. No Corporation employee or any member of Council shall have access to or disclose any details regarding Bids except as permitted by this by-law and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56 as amended.
77. In the case of a Bid submitted in response to an RFP, only the total Bid amount for the successful responsive and responsible Bid shall be provided and only upon written request of any Person after completion of negotiations and award of the Contract.

### **Records Retention and Destruction**

78. Bid documents and related material shall be retained in accordance with the Municipality's Records Retention Schedule, as amended.

### **Complaints and Inquiries**

79. All Bidder or potential Bidder complaints or inquiries, whether addressed to an elected official, the CAO, a Department Head or any member of staff shall be referred to Purchasing Services.

### **Lobbying**

80. All prospective bidders are prohibited from lobbying any member of Council, Municipal staff and consultants, appointed member and any staff of any Board during the period commencing at the time of issuing a bid solicitation and ending at the time of the award of the contract. The Municipality may reject any bid by a Supplier that engages in such lobbying, without further consideration, and may terminate that Supplier's right to continue in the bid solicitation process

### **Insurance**

81. The Treasurer and the Municipal Solicitor shall review, as necessary, Contracts that include provisions relating to liability and insurance.

### **Purchasing Cards**

82. (1) In this section, "Purchasing Card" means a credit card issued by the Purchasing Manager in accordance with the Purchasing Card Policy.
- (2) Purchasing Cards may be used for all purchases as defined in the Purchasing Card Policy where the Goods and/or Services do not fall under the requirements of this by-law. Purchasing Cards are issued on an as needed basis upon approval of the Purchasing Manager and at the request of the Department Head. The Purchasing Manager shall be responsible for the program outlined in the Corporation's Purchasing Card Policy.

### **Disposal of Goods**

83. The disposal of surplus or obsolete goods of the Corporation shall be the responsibility of the Purchasing Manager. At least once each calendar year, Department Heads shall provide the Purchasing Manager with a list of such goods. The Purchasing Manager may periodically circulate a list of surplus or obsolete goods to all Departments and Local Boards.
84. The Purchasing Manager, in consultation with the appropriate Department Head, shall determine the appropriate method of disposal including sale, RFT, RFP, auction, or gratuitous transfer.
85. The priority of the disposal shall be in this order: another department within the municipality, trade in on a replacement purchase, local board, other municipality, school board, charity or not for profit organization, public at large.

**Over Expenditures**

86. Subsequent to a Contract award, the approval of any over expenditure shall be in accordance with the Corporation's Capital Project Over Expenditure Policy (G5) or subsequently adopted policy for financial controls.

**Sustainability**

87. In order to contribute to waste reduction and to increase the development and awareness of environmentally sound purchasing, Acquisitions shall ensure that, wherever reasonably possible, specifications shall provide for expanded use of durable products, reusable products and products (including those used in services) that contain the maximum level of post-consumer waste and/or recyclable content, without significantly affecting the intended use of the product or service. It is recognized that analysis of Cost is required in order to ensure that the products are made available at competitive prices.

**Accessibility for Ontarians with Disabilities Act, 2005 (AODA)**

88. When procuring Goods and/or Services, the Corporation shall incorporate accessibility design criteria and features, except where it is not practicable to do so. Where applicable, procurement documents shall specify the desired accessibility criteria to be met and provide guidelines for the evaluation of the proposals respecting those criteria.

**Part 5 – General Provisions****By-Law Review**

89. The Purchasing Manager in consultation with appropriate staff shall conduct a detailed review of this by-law no less frequently than every five years.

**Repeal**

90. By-Law #2015-022 is hereby repealed.

**Effective Date**

91. This By-law shall take effect on the date that it is passed by Council.

By-law passed on the day of June 2021.

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON



PER: \_\_\_\_\_

Adrian Foster, Mayor

PER: \_\_\_\_\_

June Gallagher, Municipal Clerk

**Schedule “A”****EXEMPT GOOD AND SERVICES**

1. Petty Cash Items
2. Training and Education
  - a. Conferences
  - b. Courses
  - c. Conventions
  - d. Magazines
  - e. Memberships
  - f. Periodicals
  - g. Seminars
  - h. Staff Development
  - i. Staff Workshops
  - j. Staff Reports
  - k. Subscriptions
  - l. Trainers (includes workshop & seminars)
3. Refundable Employee Expenses
  - a. Advances
  - b. Meal Allowances
  - c. Miscellaneous – Non – Travel
  - d. Travel Expenses
  - e. Entertainment Expenses
4. Employer’s General Expenses
  - a. Payroll Deduction Remittances
  - b. Medicals
  - c. Licenses (Vehicles, Software, Communications, etc.)
  - d. Debenture Payments
  - e. Insurance
  - f. Grants and Agencies
  - g. Damage Claims
  - h. Petty Cash Replenishment
  - i. Land & Building Lease Payments made by Municipality
  - j. Tax Remittances
  - k. Sinking Fund Payments
  - l. Newspaper Advertising and Public Notices
  - m. Day Camp or other similar Admission Fees
  - n. Software or equipment maintenance agreements
5. Certain Professional and other Services
  - a. Committee Fees
  - b. Counselling Services

- c. Laboratory Services
  - d. Nursing Services
  - e. Physician Fees
  - f. Temporary Help
  - g. Banking Services
  - h. Legal Services
  - i. Newspaper, radio, TV advertising
  - j. Policing
  - k. Red Cross Supplies
  - l. Web Design Usage Fee & penalties
  - m. Payroll fees
  - n. Employee Assistance programs
6. Utilities (including hedging agreements in accordance with the Hedging Policy as may be amended from time to time)
    - a. Postage
    - b. Water
    - c. Hydro
    - d. Gas (including hedging agreements)
    - e. Telephones – excluding cellular
    - f. Telecommunications infrastructure
  7. Canadian National and Canadian Pacific Railways
  8. Provincial and/or Federal Government Agencies or Crown Corporations
  9. Regional Municipality of Durham or other municipalities located within the Regional Municipality of Durham Goods and/or Services
  10. Election related technology and equipment, and any consulting and support services directly related to such technology and equipment.