

The Corporation of the Municipality of Clarington Procurement By-law

By-law 2024-052

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## The Corporation of the Municipality of Clarington

### By-law 2024-052

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 Municipality is required to establish and maintain policies with respect to its procurement of goods and services;

**And Whereas** the Municipality wishes to procure goods and services in the most efficient and cost-effective manner possible; and

**And Whereas** the Municipality 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) For the purpose of this by-law,

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

“Bid” means a Quotation, Tender or Proposal;

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

“Bid Solicitation” means a request by the Municipality for Bids for the provision of Goods and/or Services through an RFP, RFQ, RFT or other request permitted by the terms of this by-law;

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

“Clerk” means the Municipal Clerk of the Municipality 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, web designers or any other consultant or professional, but does not include any consulting and professional services referred to in Schedule “A”;

“Contract” means any form of binding agreement between the Municipality and the Contractor;

“Contractor” means any legal entity to whom a Contract is awarded;

“Co-operative Purchasing” means the participation of the Municipality with one or more public agencies, school boards, vendors of record (Provincial), hospitals, not-for-profit agencies or group procurement organizations in a Bid Solicitation;

“Council” means the Council of the Municipality;

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

“Department Head” means the Deputy CAO of the Department or a designate;

“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 Municipality;

“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 Municipality other than goods and/or services listed in Schedule “A”;

“High Value Acquisition” or “HVA” means an Acquisition with a Total Cost of more than \$100,000;

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

“Low Value Acquisition” or “LVA” means an Acquisition with a Total Cost of \$10,000 or less without the need to issue a Bid Solicitation;

“Manager of Procurement” means the Manager of Procurement for the Municipality or a designate;

“Medium Value Acquisition” or “MVA” means an Acquisition with a Total Cost of more than \$10,000 and which does not exceed \$100,000;

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

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

“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 Municipality that is not required for the purposes of the Municipality or a Local Board;

“Pre-qualification” means a procedure whereby a prospective Bidder satisfies the Municipality that it is capable of supplying a particular Good and/or Service as a condition of being allowed to submit a Bid;

“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 Manager of Procurement;

“Purchasing Card” means a credit card issued by the Manager of Procurement in accordance with the Purchasing Card Policy;

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

“Regional Bid” means a Bid submitted by a Bidder who owns a business within the Regional Municipality of Durham;

“Request for Information” or “RFI” means a request used as general market research tool to determine the availability of Goods and/or Services that will meet business or operational requirements and Procurement strategies and/or to estimate costs for the purpose of developing a Bid solicitation;

“Request for Pre-qualification” or “RFPQ” means a request with specific qualification criteria used to identify and pre-select qualified Bidders for participation in multistep procurement processes;

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

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

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

“Responsive and Responsible Bidder” means 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;

“Roster” means a prequalified list of Persons that may respond to Bid Solicitations and/or may be invited to compete for discrete work assignments, as and when required;

“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, or other reasons, 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;

“Term Order” means a contract which states a fixed length of time during which the contract will be in effect;

“Total Cost” means the cost of acquisition for the full term of a contract excluding the Harmonized Sales Tax, and in the case of a contract containing renewal provisions, means the total cost to the Municipality for the initial term and potential renewal terms, including all applicable fees, charges, disbursements and any price escalations identified in the contract;

“Total Revenue” means, where revenue is payable to the Municipality under a contract, the total revenue payable during the full term of the contract, excluding the Harmonized Sales Tax, and, in the case of a contract containing renewal provisions, means the total revenue payable to the Municipality for the initial term and all potential renewal terms;

“Treasurer” means the Deputy CAO/Treasurer of the Municipality or a designate;

“Unsolicited Proposal” means proposals received by the Municipality from a Person who have approached the Municipality with a proposal that has not been requested through a Bid Solicitation.

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, a reference to any Act, By-law or Policy is a reference to that Act, By-law or Policy as it is amended or re-enacted from time to time.
- 6) Schedule “A” (Exempt Goods 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, a reference in this by-law to a clause, section or Schedule is a reference to a clause, section or Schedule in this by-law.

### **Application and Restrictions**

- 9) The procurement procedures set out in this by-law shall apply to all Acquisitions made by or on behalf of the Municipality except as may be expressly exempted or restricted under this by-law.
- 10) This by-law shall not apply to the Acquisition of any Goods and/or Services listed in Schedule “A”.
- 11) Where a proposed contract provides for the Municipality to receive revenue from the supplier, or where the proposed contract includes both revenue and costs, the procedures and authority limits set out in this by-law which are applicable to the Total Cost of the Contract shall be construed as applicable, with necessary changes, to the total revenue payable or the combined total of revenue payable and Total Costs under the Contract.

- 12) This by-law shall be read and interpreted in conjunction with its Schedules, and all applicable written policies, management directives and procurement procedures.
- 13) In any case where another Municipality policy, directive or procedure is perceived to limit or contravene the requirements of this by-law, the language of this by-law shall govern. Where an applicable trade agreement conflicts with this by-law, the trade agreement shall prevail.

## **Part 2 – Responsibilities and Authorities**

### **Department Heads**

- 14) Each Department Head shall have responsibility for the Acquisition of Goods and/or Services for their Department(s) in accordance with the terms of this by-law.

### **Manager of Procurement**

- 15) The Manager of Procurement shall have the authority to act as an agent of the Municipality for the purpose of acquiring all Goods and/or Services required by the Municipality.
- 16) The Manager of Procurement is authorized to develop management directives and standard operating procedures to support this by-law.
- 17) The Manager of Procurement 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**

- 18) No employee of the Municipality shall have the authority to make or approve an Acquisition or award a Contract for any Goods 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.
- 19) 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 Manager of Procurement, after consultation with the Department Head, it is deemed advantageous to acquire components of a major project through separate Contracts.



**Signing Authority**

- 20) Authority to make or approve an Acquisition or award a Contract for any Goods and/or Service includes the power to sign all documents necessary to effect the Acquisition or any amendment, assignment or interim extension of the Contract. Where a Department Head or the CAO has the authority to sign a Contract, the Manager of Procurement may sign on their behalf.

**Part 3 – Bid Types and Limits****Low Value Acquisitions (LVA)**

- 21) Department Heads shall have authority to purchase Low Value Acquisitions as required at the lowest available Total Cost meeting specifications and do not require the submission of a Purchase Order (unless one is required by the vendor);
- 22) If a term order or another form of Contract is established for the Goods and/or Service to be acquired, then the Department must purchase from the Contract vendor.
- 23) Computers, software, computer accessories and cell phones must be ordered in coordination with IT Services, using a Purchase Order.
- 24) Office furniture must be ordered in consultation with Procurement Services, using a Purchase Order.

**Medium Value Acquisitions (MVA)**

- 25) The Manager of Procurement shall have the authority to purchase Medium Value Acquisitions at the lowest available Total Cost meeting specification, provided a minimum of three quotations have been received where they are reasonably required and possible to obtain.

**High Value Acquisitions (HVA)**

- 26) The CAO shall have the authority to purchase High Value Acquisitions. Subject to sections 27 to 42, High Value Acquisitions must be publicly advertised. The methods for requesting Bids include, but are not limited to:
- (a) Request for Expression of Interest (EOI);
  - (b) Request for Information;
  - (c) Request for Pre-qualification;
  - (d) Request for Proposal;
  - (e) Request for Tender;

(f) A multi-step process which may involve a combination of the above.

### **Request for Tender**

- 27) All Request for Tenders will be called, opened and awarded in accordance with this by-law and established management directives and standard operating procedures.
- 28) The Request for Tender shall be publicly advertised or issued to vendors on a prequalified list.
- 29) The Request for Tender will be issued by Procurement Services. Bids will be received electronically, opened and results posted publicly on the Municipality's bidding website.
- 30) Where the tender meeting specifications and offering the lowest Total Cost is acceptable, an award shall be made in accordance with section 65.

### **Requests for Proposal**

- 31) Irrespective of the anticipated Total Cost, where the Manager of Procurement 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.
- 32) All RFPs will be called, opened and awarded in accordance with this by-law and established procedures.
- 33) The Request for Proposal may be publicly advertised or issued to vendors on a prequalified list.
- 34) The Request for Proposal will be issued by Procurement Services. Bids will be received electronically, opened and results posted publicly on the Municipality's bidding website.
- 35) The RFP submission process consists of an electronic two-envelope system: one digital file contains the technical proposal, and the second contains the financial proposal.
- 36) In an RFP evaluation, the technical proposal is assessed against weighted criteria. The financial proposal is reviewed only if the bidder qualifies based on the technical evaluation.
- 37) RFPs may be called by public advertisement or invitation to specific Bidders for Low Value Acquisitions and Medium Value Acquisitions. All High Value Acquisitions shall be publicly advertised.

- 38) All RFPs shall be submitted in the prescribed manner and delivered to the Manager of Procurement in accordance with the bid documents.

### **Routine Purchases**

- 39) Where, in the opinion of the Manager of Procurement in consultation with the Department Head, a proposed Acquisition is of a routine and repetitive nature, the Manager of Procurement may combine similar purchases and follow the process outlined in this by-law for an Acquisition with a Total Cost of the sum of the Total Costs of the Acquisitions so combined.

### **Unsolicited Proposals**

- 40) Unsolicited Proposals received by the Municipality shall be reviewed by the Department Head and Manager of Procurement. Any procurement resulting from the receipt of an Unsolicited Proposal shall comply with the provisions of this by-law.

### **Non-Competitive Process (Sole and Single Source Purchases) and Negotiations**

- 41) All Non-Competitive purchases exceeding the Low Value Acquisition threshold must be assessed by the Manager of Procurement prior to any negotiations or discussions with the Person;
- 42) In place of a Bid Solicitation, Goods and/or Services may be purchased through negotiation as Single Source or Sole Source purchases where, in the opinion of the Manager of Procurement in consultation with the Department Head that one or more of the following conditions apply and a process of negotiation is undertaken to obtain the best value in the circumstances for the Municipality:
- (a) Sole Source:
- (1) Scarcity of supply in the market;
  - (2) A statutory or market-based monopoly; or
  - (3) Existence of exclusive rights (patents, copyright or licenses).
- (b) Single Source:
- (1) The sources of supply are restricted to the extent that there is no effective price competition:
    - (i) for which there is no reasonable substitute or competitive product;  
or
    - (ii) for which compatibility with an existing product/service is the overriding consideration.

- (2) The purchase involves specialized preassembled goods;
  - (3) The Bid from the lowest Responsive and Responsible Bidder substantially exceeds the estimated Cost;
  - (4) No Bid from a Responsive and Responsible Bidder is received, and it is impractical to issue another Bid Solicitation;
  - (5) The extension or reinstatement of an existing Contract would prove most cost-effective or beneficial to the Corporation;
  - (6) The terms and conditions of a Proposal provide for negotiation with the selected Bidder; or
  - (7) Council has specifically authorized an Acquisition through negotiation.
- 43) In the case of a Contract for a construction project, negotiations shall be conducted in accordance with the Canadian Construction Documents Committee (CCDC) Document 23 published by the Canadian Construction Association where expressly required by the provisions of an RFT.
- 44) All Single Source and Sole Source Acquisitions shall be confirmed through a Purchase Order and shall be reported to Council through a report prepared jointly by the Department Head and the Manager of Procurement if the Total Cost exceeds \$500,000 or an approved budget limit.

### **Emergency Purchases**

- 45) In the case of an Emergency, an Acquisition may be authorized without issuing a Bid Solicitation.
- 46) Emergency Acquisitions shall be made by the Manager of Procurement in consultation with the Department Head. In the absence of the Manager of Procurement, Emergency Acquisitions may be made by a Department Head.
- 47) All Emergency Acquisitions with a Total Cost over the Low Value Acquisition limit shall be confirmed through a Purchase Order and shall be reported to Council through a report prepared jointly by the Department Head and the Manager of Procurement if the Total Cost exceeds \$500,000 or an approved budget limit.

### **Product Demonstrations and Information**

- 48) No requests for prices or demonstrations for approved projects or programs above the Low Value Acquisition limit shall be made without prior consultation with the Manager of Procurement.
- 49) Requests on behalf of the Municipality may be made by Department Heads for informal non-binding product and technical information, catalogues and price lists for Low Value Acquisition and Medium Value Acquisition. Each Department Head shall provide the Manager of Procurement with such data, specification details and

information relating to a proposed Medium Value Acquisition, including the Municipality's approved budget prices.

### **Pre-qualification**

- 50) The Manager of Procurement may issue a request for Pre-qualification for the purpose of selecting qualified Persons to respond to a Bid Solicitation
- 51) The Manager of Procurement may also issue a request for Pre-qualification for the purpose of establishing a roster of qualified Persons that may respond to a Bid Solicitation and/or may be invited to compete for discrete work assignments, as and when required;
- 52) Requests for Pre-qualification must be publicly posted to solicit responses from all interested Persons;
- 53) The Pre-qualification of Persons shall not create any contractual obligation between the Municipality and the pre-qualified Persons. The Municipality is not required to proceed with any further procurement process following a Request for Pre-qualification;
- 54) If, in the opinion of the Manager of Procurement, Pre-qualification is required, the Contract, if awarded at all, must be awarded to the lowest Responsive and Responsible Bidder for RFTs, and to the highest scoring Responsive and Responsible Bidder for RFPs, who has been pre-qualified for a competitive roster, and in accordance with the Bid Solicitation for rotational rosters.

### **Bonds and Deposits**

- 55) All Bid deposits shall be submitted in accordance with the Bid Solicitation;
- 56) 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,
  - (a) in the amounts specified in the Bid Solicitation;
  - (b) issued by a licensed surety company authorized to carry on business in Ontario;
  - (c) in a form approved by the Municipality; and
  - (d) delivered by the Bidder to the Manager of Procurement prior to execution of the Contract.
- 57) Following the Award of a Contract, all deposits shall be returned to the unsuccessful Bidders in accordance with the Bid Solicitation. Retained Bid

deposits shall be held until the Contract is executed by the Municipality, unless otherwise determined by the Manager of Procurement.

- 58) Following the cancellation of a Bid Solicitation, all deposits shall be returned to the Bidders in accordance with the Bid Solicitation.
- 59) If a successful Bidder fails to enter into a Contract, the Bid deposit may be forfeited to the Municipality at the sole discretion of the Municipality. 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 Municipality.

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

- 60) 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 Manager of Procurement shall approve the issuance of any addendum or the cancellation of a Bid Solicitation.
- 61) 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 Municipality's website.
- 62) The Manager of Procurement in consultation with the Department Head and Municipal Solicitor shall have the authority to cancel a Bid Solicitation either before or after Bids are opened in accordance with the Bid opening procedures.

### **Withdrawal of Bids**

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

### **Absolute Right**

- 64) The Municipality shall have absolute discretion in the Award of Contracts and retains the right to reject any or all Bids, or to Award to a Bid other than the lowest Bid or highest ranking Bid if in the best interest of the Municipality.

### **Approval Limits and Reporting**

- 65) For Acquisitions of Goods and/or Services excluding Consulting and Professional Services:
  - (a) For Medium Value Acquisitions, the Manager of Procurement shall submit to the Department Head a recommendation for the Department Head's approval.

- (b) For High Value Acquisitions, after consulting with the Department Head, the Manager of Procurement shall prepare a report to the CAO for approval if the Total Cost of the Goods and/or Services:
  - (1) Was obtained through a competitive procurement process in accordance with this by-law;
  - (2) Does not exceed 10% of the approved budget amount up to \$250,000;
  - (3) Recommendation to award to the lowest Responsible and Responsive Bidder meeting specifications for quotations and tenders;
  - (4) Is awarded to the Person submitting a proposal with the highest overall score.
- 66) A summary report to Committee for information relating to awards made for acquisitions with a total cost exceeding \$500,000 and awarded under section 65 shall be prepared and submitted to the Committee on a semi-annual basis.
- 67) Council approval is required if:
  - (a) Competitive procurements do not meet the requirements of section 65;
  - (b) Council approval is required by statute or by a third party such as a funding agency;
  - (c) The CAO recommends that Council approval be sought;
  - (d) Any recommended award for High Value Acquisitions is not to the lowest Responsive and Responsible Bidder or highest scoring Bidder meeting specifications; or
  - (e) Where otherwise specifically required by this by-law.

### **Council Recess Procedures**

- 68) Notwithstanding section 67, 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.
- 69) The Manager of Procurement shall report all Contracts awarded under section 68 to Committee as soon as possible after the conclusion of the recess.
- 70) Council shall not vary any action or decision of the Contract awards made in accordance with section 68.

**Consulting and Professional Services (Excluding Schedule “A” Exemptions)**

- 71) Where it is estimated that the Cost of Consulting and Professional Services will be less than or equal to \$25,000, the Department must notify the Manager of Procurement and may obtain the services directly without issuing a Bid Solicitation.
- 72) Where it is estimated that the Total Cost of Consulting and Professional Services will be more than \$25,000, the Manager of Procurement shall issue a Bid Solicitation in compliance with this by-law and prepare a report to the CAO for approval.
- 73) Where it is estimated that the Total Cost of Consulting and Professional Services will be more than \$100,000, the Manager of Procurement shall issue a Bid Solicitation, in consultation with the Department Head and shall submit a report to Council providing a recommendation for award.
- 74) Where a roster has been established for Consulting and Professional Services, in compliance with this by-law, Council approval to award a contract under the roster shall only be required for awards in excess of the threshold set out by the Canada Free Trade Agreement (CFTA).
- 75) An external consultant who has entered into a Contract for Consulting and Professional 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 Manager of Procurement 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.
- 76) Any consultant authorized to issue a Bid Solicitation on behalf of the Municipality shall comply with this by-law.

**Co-operative Purchasing**

- 77) Co-operative Purchasing shall be utilized when advantageous and practical, where it is in the best interest of the Municipality to do so.
- 78) The decision to participate in Co-operative Purchasing agreements will be made jointly by the Manager of Procurement and the responsible operating Department.
- 79) In the event of any conflict, the procurement by-law and procurement practices of the Municipality, school board, hospital, non-profit agency or group procurement organization issuing the co-operative Bid shall take precedence over the provisions of this by-law.



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

### **Default by Successful Bidder**

- 80) 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 highest ranked Bidder or cancelled.
- 81) If a successful Bidder defaults on an awarded Contract, the Manager of Procurement 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 which includes but not limited to, amending and approving assignments, and extending on an interim basis.
- 82) Should the Manager of Procurement determine that termination of the awarded Contract is the appropriate action in accordance with 81, the Department Head shall be advised of the termination in writing.

### **Disqualification of Bidders**

- 83) The Manager of Procurement in consultation with the Department Head and Municipal Solicitor shall have the authority to not accept a Bid from any Bidder and/or award a Contract to any Bidder where one of the following circumstances has occurred within the last five years:
  - (a) The Bidder is or has been involved in litigation with the Municipality, its elected officials or employees;
  - (b) The Bidder has failed to pay an amount owed to the Municipality when due and owing;
  - (c) There is documented evidence of poor performance, non-performance or default by the Bidder in respect to any Contract issued by the Municipality, and the Bidder has been made aware of such performance issues;
  - (d) The Bidder has withdrawn its Bid on a previous Bid Solicitation after Bids have been opened by the Municipality;
  - (e) The Bidder has demonstrated abusive or threatening conduct towards the Municipality's elected officials or employees, their agents and representatives;
  - (f) The Bidder has been convicted of any criminal offence pursuant to applicable legislation or regulations including the Occupational Health and Safety Act, as amended, where circumstances of that conviction demonstrated a disregard for the safety of its workers, the Municipality's employees or the general public; or

- (g) The Bidder has been criminally charged or committed dishonest conduct, and in the opinion of the Manager of Procurement and the Municipal Solicitor, the Award of the Contract is likely to expose the Municipality to legal, financial or reputational risk.

### **Conflict of Interest**

- 84) The participation of members of Council and employees of the Municipality 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 E1.
- 85) 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.
- 86) No Person shall offer incentives to any employee of the Municipality or member of Council.
- 87) No Personal Purchases shall be made by the Municipality for any member of Council, member of a Local Board, or employees of the Municipality.

### **Access and Disclosure**

- 88) No employee of the Municipality 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.
- 89) In the case of a Bid submitted in response to an RFP, only the total Bid amount for the successful 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**

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

### **Complaints and Inquiries**

- 91) Bidders and potential Bidders shall only communicate with Procurement Services about Bid Solicitations, including making any inquiries or complaints. Bidders and potential Bidders shall not communicate with an elected official, the CAO, a Department Head or any member of staff about Bid Solicitations without the consent of Procurement Services.

- 92) All Bidder or potential Bidder complaints or inquiries addressed to an elected official, the CAO, a Department Head or any member of staff shall be referred to Procurement Services.

### **Lobbying**

- 93) All prospective Bidders are prohibited from lobbying any member of Council, Municipal staff and consultants, appointed members 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 Bidder that engages in such lobbying, without further consideration, and may terminate that Bidder's right to continue in the Bid Solicitation process, and may be grounds for disqualification from future Bid Solicitations.

### **Purchasing Cards**

- 94) Purchasing Cards may be used for all purchases as defined by the Treasurer, 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 Manager of Procurement and at the request of the Department Head. The Manager of Procurement shall be responsible for the program as defined by the Treasurer.

### **Disposal of Goods**

- 95) The disposal of surplus or obsolete goods of the Municipality shall be the responsibility of the Manager of Procurement. At least once each calendar year, Department Heads shall provide the Manager of Procurement with a list of such goods. The Manager of Procurement may periodically circulate a list of surplus or obsolete goods to all Departments and Local Boards.
- 96) Surplus or obsolete goods must be offered to the Departments first.
- 97) The Manager of Procurement, in consultation with the appropriate Department Head, shall determine the appropriate method of disposal including sale, RFT, RFP, auction, or gratuitous transfer to a Local Board, other municipality, school board, charity or not for profit organization.
- 98) No Municipal employee, officer or elected official will personally obtain any surplus or obsolete goods unless it is obtained through a public process.

### **Over Expenditures**

- 99) Subsequent to a Contract Award, the approval of any over expenditure shall be in accordance with the Municipality's Financial Control Policy (CP-014) or subsequently adopted policy for financial controls.

**Sustainable Procurements**

- 100) In keeping with the Municipality’s strategic priority of sustainability and climate change, acquisitions shall ensure that, wherever reasonably possible, specifications shall provide for expanded use of durable products, reusable and/or recyclable products and products (including those used in services) that minimize negative impacts on the environment without significantly affecting the intended use of the product or service. It is recognized that analysis of total lifecycle cost is required in order to ensure that the products are made available at competitive prices.

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

- 101) When procuring Goods and/or Services, the Municipality 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**

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

**Repeal**

- 103) By-law #2021-077 is hereby repealed.

**Effective Date**

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

Passed in Open Council this 18<sup>th</sup> day November, 2024.



Adrian Foster, Mayor



June Gallagher, Municipal Clerk

Written approval of this by-law was given by Mayoral Decision MDE-2024-009 dated November 18, 2024.

**Schedule “A”****EXEMPT GOODS 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
  - 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. The acquisition or disposition of all interests in real property, including personal rights in real property, and all consulting and professional services relating to personal rights or interests in real property.
  8. Contracts with Canadian National and Canadian Pacific Railways for Goods and/or Services
  9. Contracts with Provincial and/or Federal Government Agencies or Crown Corporations for Goods and/or Services
  10. Contracts with the Regional Municipality of Durham or other municipalities located within the Regional Municipality of Durham for Goods and/or Services
  11. Election related technology and equipment, and any consulting and support services directly related to such technology and equipment.