

# Corporate Policy

## Procurement Policy

**Department:** Corporate Services

**Approved:** by Council: July 10, 2023  
Resolution No. 2023-249  
By-law No. 2023-061

### 1. Policy Statement

The Town of Orangeville is committed to:

- (1) acquiring Goods and Services in an efficient and cost-effective manner having regard to the objectives of openness, fairness and transparency in procurement while ensuring the Town's operational requirements are satisfied;
- (2) actively encouraging effective procurement planning, monitoring and control, and the continuous review and utilization of new sources and methods of procurement;
- (3) procuring necessary Goods or Services with regard for the principles of best value, total cost of ownership and preservation of the natural environment; and
- (4) ensuring compliance with applicable laws and to ensure alignment, as appropriate, with applicable trade agreements.

### 2. Purpose

The purpose of this policy is to ensure Town staff are provided with the guidance required to ensure integrity and consistency in procurement and contracting activities and to delegate the authority to carry out these activities.

### 3. Definitions

Words and phrases used in this policy and related procedures have the following meanings, unless expressly stated otherwise:

**“Approval Authority”** means the authority to: (i) approve procurements; and (ii) approve contract awards and/or (iii) sign contracts, including any changes to such procurements or contracts.

**“Bid”** means a supplier's response to an RFx.

**“Bidder”** means a supplier that submits a response to an RFx.

**“Buying Group”** means a cooperative arrangement in which individual members administer the procurement function for specific contracts for the group, and more formal corporate

arrangements in which the buying group administers procurement for group members. Buying groups may consist of a variety of entities, including the federal government, provincial/territorial government, other municipalities, or any combination of procuring entities, private sector entities, or not-for-profit organizations.

**“Chief Administrative Officer”** or **“CAO”** means the Chief Administrative Officer for the Town.

**“Contract”** means a written agreement for the purchase of Goods or Services by any contractual means including lease or rental with, or without, an option to buy. For greater certainty, a Contract includes a Town purchase order and any purchase using a credit card.

**“Contract Value”** means the estimated total remuneration received by a supplier (or suppliers) over the entire period of the Contract, including optional extension periods but exclusive of taxes.

**“Contractor”** means a supplier that is a party to a Contract for the supply of Goods or Services to the Town.

**“Council”** means the council of the Town of Orangeville.

**“Department”** means the Town department initiating the acquisition of the Goods or Services.

**“Department Signing List”** has the meaning assigned in Part 2 (Procurement Approval Authority and Procurement Methods).

**“Direct Purchase”** means purchasing a Good or Service directly from a supplier without a competitive process such as in the case of (a) a low-dollar value procurement as set out in the Procurement Approval Matrix, (b) an Excluded Contract or (c) a Non-Competitive (Single/Sole Source) Procurement.

**“Emergency”** has the meaning assigned in Part 3 (Sole/Single Source Procurement).

**“Excluded Contract”** means a Contract that is not subject to the competitive procurement rules in this policy, a list of which is set out in Schedule A, as may be supplemented by the procedures.

**“Formal Contract”** means a written contract that includes approved terms and conditions and that is executed by duly authorized Town and supplier representatives.

**“General Manager”** and **“GM”** means a Town employee responsible for a Department and includes the General Manager, Corporate Services; the General Manager, Infrastructure Services; the General Manager, Community Services; or such other employee as may be appointed in such a role by the CAO from time to time.

**“Goods”** includes supplies, equipment, materials, products, software, furniture, structures and fixtures to be delivered, installed or constructed.

**“Informal Competitive Process”** mean a competitive procurement process that involves requesting verbal or written/emailed quotes from at least 2 qualified suppliers or comparing

published prices of at least 2 qualified suppliers prior to selecting the supplier from which to purchase Goods or Services.

**“Informal Contract”** means a document or written transaction that commits the Town to purchase specified Goods and Services and that may, or may not be, signed by the Town such as a credit card purchase or purchase order.

**“Invitational Competitive Process”** is a competitive procurement process using a formal RFX document that invites Bids from 3 or more qualified suppliers and that is not publicly advertised on the Town’s designated website.

**“Legislation”** means all applicable laws, regulations, by-laws and policies.

**“Non-Competitive (Sole/Single Source) Procurement”** is a Direct Purchase that is justified based on one of the justifications listed in Part 3 (Sole/Single Source Procurement).

**“Procurement Approval Matrix”** means the table included in Part 2 (Procurement Approval Authority and Procurement Methods).

**“Procurement Specialist”** means the person reporting to the Treasurer that performs delegated responsibilities pursuant to this policy and related procedures.

**“Public Competitive Process”** means an RFX that is advertised on the Town’s designated tendering website.

**“Qualified Supplier List”** means a list of prequalified suppliers established as a result of a public prequalification process to be used for purposes of undertaking one or more future Invitational Competitive Processes for predetermined Goods or Services.

**“RFX”** means any competitive process inviting suppliers to submit Bids or information in connection with the potential purchase of Goods or Services.

**“Services”** means all types of services, including construction services, unless otherwise specified.

**“Standing Arrangement”** means an arrangement with one or more suppliers that does not commit the Town to purchase a Good or Services but allows for the future purchase, from time to time, of Goods and Services as the need arises.

**“Town”** means The Corporation of the Town of Orangeville.

**“Treasurer”** means the Town employee responsible for the administration and management of the financial assets and liabilities of the Town.

#### **4. Scope**

This policy applies to all purchases of Goods and Services by the Town of Orangeville except as otherwise expressly stated.

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## 5. Policy

### Part 1: Accountabilities

- (1) **General Responsibilities.** Any person purchasing Goods and Services on behalf of the Town must comply with this policy and related procedures.
- (2) **Council.** Council's role in procurement is, generally, to establish the policy, approve the budget and modifications to the budget and approve Contract awards as required by the policy. Council has the ultimate authority for this policy including the authority to approve exceptions and amendments to this policy.
- (3) **CAO Responsibilities and Authority.** The CAO is accountable to Council for the proper administration of, and staff compliance with, this policy and related procedures. Subject to the requirements of this policy, the CAO, as head of the Town administration, may exercise or override the authorities delegated to a subordinate under this policy as deemed appropriate.
- (4) **Treasurer Responsibilities.** The Treasurer is assigned administrative responsibility for the procurement function. The Treasurer is responsible for developing and maintaining procurement and contracting procedures that comply with the requirements of this policy and for approving the procurement and contracting templates to be used by the Town, including changes or alternatives to the templates. The Treasurer shall assist Town staff, as appropriate, in the interpretation, administration and compliance with this policy and related procedures.
- (5) **General Manager Responsibilities.** General Managers shall:
  - (a) Be accountable for, and shall oversee, all procurement and contract management activities within their service areas and ensure compliance with this policy and related procedures.
  - (b) Make required reports to the CAO or any other party regarding their Department's compliance with this policy and procedures.
  - (c) Where permitted by this policy and as necessary, delegate Approval Authority to appropriate staff or others working within the General Manager's area of responsibility while maintaining the accountability for their delegates' actions.
  - (d) Maintain procurement-related records in accordance with the Town's record retention policy and procurement procedures.
- (6) **Amendments to Position Titles.** Where a title to a position used in this policy no longer exists or is modified, the authorities assigned to the position may be exercised by a person deemed to have the responsibilities of the original position until such time as an amendment to this policy reflecting the applicable change in title is approved by Council.

- (7) **Prohibitions.** In carrying out procurement and contracting activities, Town employees must not:
- (a) circumvent the requirements of this policy including, but not limited to, biasing specifications or scheduling events to prevent suppliers from meeting requirements or dividing purchases to avoid the requirements of the policy by any method;
  - (b) purchase any Goods and Services through Town Contracts for personal use by or on behalf of any member of Council, employees of the Town and their immediate families;
  - (c) provide information to one supplier to give that supplier an advantage over other suppliers;
  - (d) for procurements with a Contract Value of \$120,000 or more, the following are prohibited, unless otherwise approved by the CAO:
    - Imposing a condition that, in order for a supplier to participate in the procurement, the supplier must have previously been awarded one or more contracts by the Town;
    - Requiring prior experience where it is not essential to the procurement;
    - Favouring Goods or Services of a region;
    - Favouring suppliers of Goods or Services of a region.
- (8) **Failure to Abide by the Policy.** Any person who fails to act in accordance with the provisions of the policy may be subject to appropriate sanctions or disciplinary action up to and including, for employees, termination of employment.

## **Part 2: Procurement Approval Authority and Procurement Methods**

- (1) **Procurement Approval Matrix.** Table 1 below sets out procurement and contracting approval authorities and permitted procurement and contracting methods based on Contract Value:

**Table 1: Procurement Approval Matrix**

<b>Contract Value</b>	<b>Procurement Method</b>	<b>Approval Authority Procurement Strategy and RFx</b>	<b>Contracting Method</b>	<b>Approval Authority/ Contract Signature</b>
<b>Under \$25,000</b>	<b>Direct Purchase</b> (low dollar value)	GM or delegate	Informal Contract E.g., credit card, purchase order  <u>Optional but not recommended:</u> Formal Contract	GM (or delegate)
<b>\$25,000-\$40,000</b>	<b>Informal Competitive Process (min 2 suppliers)</b> <u>Optional:</u> Public Competitive Process	GM or delegate	Informal Contract E.g., credit card, purchase order  <u>Optional:</u> Formal Contract	GM (or delegate)
	<u>By Exception:</u> Direct Purchase must be justified based on an exception listed in Part 3 or as an Excluded Contract	GM or delegate	Informal Contract E.g., credit card, purchase order  <u>Optional:</u> Formal Contract	GM (or delegate)
<b>Over \$40,000-\$120,000</b>	<b>Invitational Competitive Process (min 3 suppliers)</b>  <u>Optional:</u> Public Competitive Process	GM or delegate	Informal Contract or Formal Contract	Formal Contract co-signed by GM (or delegate) and Procurement Specialist
	<u>By Exception:</u> Direct Purchase must be justified based on an exception listed in Part 3 or as an Excluded Contract	<u>Non-Competitive (Sole/Single Source) Procurement</u> must be approved by: CAO	Informal Contract or Formal Contract	<u>Direct Purchase:</u> Formal Contract co-signed by Treasurer and CAO
<b>Over \$120,000-\$600,000</b>	<b>Public Competitive Process</b>	GM	Formal Contract	Co-signed by GM and Treasurer
	<u>By Exception:</u> Direct Purchase must be justified based on an exception listed in Part 3 or as an Excluded Contract	<u>Non-Competitive (Sole/Single Source) Procurement:</u> CAO	Formal Contract	<u>Direct Purchase:</u> Co-signed by Treasurer and CAO
<b>Over \$600,000</b>	<b>Public Competitive Process</b>	GM	Formal Contract	Co-signed by: GM and CAO
	<u>By Exception:</u> Direct Purchase must be justified based on an exception listed in Part 3 or as an Excluded Contract	<u>Non-Competitive (Sole/Single Source) Procurement:</u> CAO	Formal Contract	<u>Direct Purchase:</u> Co-signed by Treasurer and CAO

## (2) Exercise of Approval Authority

- (a) **Funds Must be Available.** Any person delegated Approval Authority shall ensure that, prior to approving a procurement strategy, sufficient funds are available in the approved budget to cover the Contract Value of the resulting Contract. In the case of multi-year Contracts involving operating funds, the funding for future years of the Contract can reasonably be expected to be made available if the funding is included in the current year's approved operating budget and is based on a multi-year forecast, subject to confirmation from the Treasurer.
- (b) **Delegation of Approval Authority.** Delegation of an approver's Approval Authority may be made as deemed appropriate by the person with Approval Authority provided that General Managers may only delegate approval authority to a manager up to a maximum of \$120,000, and to a supervisor up to a maximum of \$40,000. Approval Authority that has been delegated may not be further sub-delegated. All delegations must be made in writing and signed by the Approval Authority. All copies of delegations must be forwarded to the Finance Division.
- (c) **Treasurer's Department Signing List.** The Treasurer will maintain a list that controls signature authorization for all major financial transactions ("**Department Signing List**"). Only persons officially delegated in this policy or on the Department Signing List shall have the authority to approve a procurement of Goods or Services or related Contract.
- (d) **Impact of Increases in Contract Value.** The procurement and contracting Approval Authority is based on the Contract Value. If, after a procurement process is completed and actual prices are known, it is determined that the Contract Value of the Contract is elevated into a higher level of Approval Authority, then higher level Approval Authority shall be the Approval Authority for subsequent approvals and signatures.
- (e) **Council and CAO's Ultimate Authority.** Regardless of the Approval Authority set out in the Procurement Approval Matrix, the CAO and Council have ultimate Approval Authority and may either approve or sign documents in place of lower-level staff, or override the decisions made by lower-level Approval Authorities, as deemed appropriate.
- (f) **CAO May Seek Council Approval.** Regardless of the Approval Authority in the Procurement Approval Matrix, the CAO may at any time, as deemed appropriate, receive Council approval prior to releasing a procurement document or to award a Contract. Circumstances where Council approval may be sought include: (a) if there is an irregularity in the procurement; (b) the award of a Contract, the value of the Bid or the aggregate cost of the project is in excess of the Council approved budget; (c) there is a legislative requirement for Council approval; or (d) other circumstances the CAO deems appropriate.



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**Part 3: Sole/Single Source Procurement**

- (1) The Town may procure Goods and Services without a competitive process in the following circumstances:
- (a) **Contract Value under \$120,000 and In Town's Best Interest.** Where the policy requires a competitive procurement process and the Contract Value of the requirement is under \$120,000 provided it is determined that the Town or the public is not likely to benefit from undertaking a competitive procurement process in the circumstances.
  - (b) **No Compliant Bids Received:** If (i) no Bids were submitted or no suppliers requested participation; (ii) no Bids that conform to the essential requirements of the RFX documentation were submitted; (iii) no suppliers satisfied the conditions for participation; or (iv) the submitted tenders were collusive, provided that the requirements of the tender documentation are not substantially modified;
  - (c) **Only One supplier:** If the Goods or Services can be supplied only by a particular supplier and no reasonable alternative or substitute Goods or Services exist for any of the following reasons: (i) the requirement is for a work of art; (ii) the protection of patents, copyrights, or other exclusive rights; (iii) due to an absence of competition for technical reasons; (iv) the supply of Goods or Services is controlled by a supplier that is a statutory monopoly; (v) to ensure compatibility with existing Goods, or to maintain specialized Goods that must be maintained by the manufacturer of those Goods or its representative; (vi) work is to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work; (vii) work is to be performed on a leased building or related property, or portions thereof, that may be performed only by the lessor; or (viii) the procurement is for subscriptions to newspapers, magazines, or other periodicals;
  - (d) **Additional Deliveries:** For additional deliveries by the original supplier of Goods or Services that were not included in the initial procurement, if a change of supplier for such additional Goods or Services: (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 procuring entity;
  - (e) **Commodity Market Goods:** For Goods purchased on a commodity market such as electricity, postal services, postage, water, fuel, natural gas, furnace oil;
  - (f) **Prototypes:** If the Town procures a prototype or a first Good or Service that is developed in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first Good or Service may include limited production or supply in order to incorporate the

results of field testing and to demonstrate that the Good or Service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

- (g) **Exceptionally Advantageous Conditions:** For purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers;
- (h) **Winner of Design Contest:** If a Contract is awarded to a winner of a design contest provided that: (i) the contest has been organized in a manner that is consistent with this policy, in particular relating to the publication of a tender notice; and (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner;
- (i) **Confidential or Privileged Goods or Services:** If Goods or Services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest;
- (j) **Emergency:** If strictly necessary, and for reasons of urgency brought about by events unforeseeable by the Town, the Goods or Services could not be obtained in time using an open competitive process. An Emergency is an exceptional situation that could include:
  - (i) An imminent or actual danger to the life, health or safety of any person;
  - (ii) An imminent or actual danger of injury to or destruction of real or personal property;
  - (iii) An imminent or actual unexpected interruption of a public service essential to the community;
  - (iv) An emergency as defined by the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 and the emergency plan formulated thereunder by the Town; and
  - (v) An imminent or actual spill of a pollutant as contemplated by Part X (Spills) of the *Environmental Protection Act*.

- (2) **Written Justification Required.** All Non-Competitive (Sole/Single Source) Procurements must be justified in writing based on one of the above exemptions and approved by the Approval Authority specified in the Procurement Approval Matrix.

**Part 4: Preparing the Procurement Documents**

- (1) Where the Town has implemented standard templates, such templates must be used in Town procurement and contracting activities. The use of other forms of solicitation documents, agreements, templates, or documents is only permitted where approved in advance by the Treasurer.
- (2) When preparing specifications for a Good or Service, General Managers shall ensure the requirements of the Ontarians with Disabilities Act, 2001 and the Accessibility for Ontarians with Disabilities Act, 2005 are reflected, and that Contractor's are required to respect the Town's Accessibility Standards for Customer Service guidelines.
- (3) When preparing specifications for a Good or Service, General Managers shall ensure the environmental impacts of the Good or Service are considered and, as appropriate, shall afford a preference to environmentally sustainable Goods and Services.

**Part 5: Standing Arrangements**

- (1) Where the Town anticipates it will have a recurring need for specific Goods or Services but is unable to commit to specific quantities in advance, General Managers may establish a Standing Arrangement with one or more suppliers that can be used for future purchases.
- (2) To establish a Standing Arrangement, a public competitive process must be used regardless of the Contract Value.
- (3) A Standing Arrangement must include all terms and conditions applicable to subsequent procurements, including the price of the Goods or Services and delivery requirements.
- (4) If Standing Arrangements are established with multiple suppliers for the same Goods or Services, clear ranking methods and call-up procedures must be specified in the arrangement.

**Part 6: Prequalified Supplier Lists**

- (1) General Managers may establish Prequalified Supplier Lists by conducting a publicly advertised prequalification process depending on the Contract Value of anticipated purchases to be made from such list.

**Part 7: Cooperative Purchasing (Buying Groups)**

- (1) The Town may join one or more Buying Groups or purchase from an existing Buying Group Contract with the Treasurer's approval.
- (2) Once the Treasurer has approved the Town's participation in a Buying Group or Buying Group contract, a General Manager may purchase from an existing Buying Group

Contract or participate in a procurement process administered by the Buying Group without undergoing a separate competitive procurement process.

- (3) A Buying Group contract is deemed to be a competitively awarded Contract. Approvals to award the Contract or to purchase from a Buying Group Contract must be obtained as set out in this policy based on the Contract Value of the Contract prior to committing the Town to purchase any Goods or Services.

#### **Part 8: Unsolicited Proposals**

- (1) The Town may, from time to time, be approached by proactive suppliers seeking to engage the Town in a procurement or contract. For example, a proactive supplier may offer to allow the Town to test, or pilot, a Good or Service, or suggest that the Town consider an innovative approach, or solution to an existing Town problem.
- (2) Town staff may engage in discussions with potential suppliers on opportunities that exist in the market as part of informing themselves of market changes and opportunities. Before engaging in any such discussions, however, the supplier must always be advised that any procurement or contract can only be initiated pursuant to the Town's policies.
- (3) If an unsolicited proposal (document) is received from any potential supplier, the unsolicited proposal should be forwarded to the appropriate General Manager. The General Manager shall first assess such proposals on the basis of whether they align with the Town's strategic goals and objectives, do not circumvent the Town's regular procurement processes, and the proposal's scale and scope align with the requirements and funding ability of the Town.
- (4) If it is determined that there is a legitimate need for the Goods or Services offered by way of an unsolicited proposal, then the procurement process shall be conducted in accordance with the Policy.

#### **Part 9: Notification of Contract Award**

- (1) Where (a) a tender notice was published as part of the procurement process or (b) where a Non-Competitive (Sole/Single Source) Procurement Contract with a Contract Value exceeding \$120,000 was awarded, unless otherwise provided in the procedures, the Town shall publish a notice of award of the Contract on the tendering website used for the posting no later than 72 days after the award of each Contract.

#### **Part 10: Authority to Amend, Renew and Terminate Contracts**

- (1) Contract amendments or renewals that add Goods or Services are permitted without further approvals where: (a) the Contract includes an option to renew or contemplates, expressly or implicitly, the potential need to add the Goods or Services and (b) the cost of additional Goods and Services is within the approved budget.

- (2) If the Contract does not include an option to renew or to add the specific Goods or Services, the renewal or addition of additional Goods and Services must be justified as a Direct Purchase and approved by the appropriate Approval Authority based on the updated total Contract Value.
- (3) Except as otherwise stated, the Approval Authority that approved entering into the initial Contract has the authority to approve any amendment unless the resulting Contract Value changes the level of Approval Authority, in which case the higher-level Approval Authority is required to approve the Contract amendment or renewal.
- (4) The CAO must approve all decisions to terminate a Contract prior to its expiration date, regardless of value.

**Part 11: Bidder Debriefing**

- (1) The Town shall, on request, provide debriefing sessions to unsuccessful Bidders on RFX procurements with a Contract Value over \$120,000 with an explanation of the reasons why the procuring entity did not select its Bid.

**Part 12: Bidder Complaint Resolution**

- (1) Any supplier that wishes to challenge or is otherwise aggrieved by a procurement decision made by the Town under this policy is required to provide a written complaint to the Town clerk, within 5 business days of the earliest of (i) the date of the supplier first being notified of the Contract award or procurement decision it wishes to challenge or (ii) date of publication of award. Any complaint must be in writing and shall include the following details:
  - (a) A specific identification of the provision(s) or procedure that is alleged to have been breached;
  - (b) A specific description of each act alleged to have breached the process;
  - (c) A precise statement of the relevant facts;
  - (d) An identification of the issues to be resolved;
  - (e) The supplier's argument and supporting documentation; and
  - (f) The supplier's requested remedy.
- (2) The Town clerk will distribute accordingly to the appropriate staff to respond.

**Part 13: Bidder Eligibility**

- (1) Without limiting or restricting any other right or privilege of the Town and regardless of whether or not a Bid otherwise satisfies the requirements of an RFX, the Town may, subject to the CAO's prior approval, exclude a supplier, refuse any Bid from a supplier, or remove the supplier from a Qualified Supplier List where:

- (a) There is supporting evidence that the commercial integrity of the supplier has been impaired by the act(s) or omission(s) of such supplier or the public or the Town's interests are negatively impacted or are determined likely to be impaired by the supplier's participation in Town procurement processes. Circumstances justifying the exclusion of a supplier, include but are not limited to any one or more of the following having occurred within the 5-year period immediately preceding either the date on which the competitive procurement document is released or while the supplier is on the Qualified Supplier List:
- (i) the Town and the supplier are, or were, engaged in litigation or in any other type of contract or legal dispute;
  - (ii) supplier act(s) or omission(s) resulting in a claim by the Town under any security submitted by the supplier on a RFX, including but not limited to a Bid bond, a performance bond, or warranty bond;
  - (iii) the failure of the supplier to pay, in full, all outstanding payments (and, where applicable, interest and costs) owing to the Town by such supplier, after the Town has made demand for payment of same;
  - (iv) the supplier's refusal to follow reasonable directions of the Town or to cure a default under any Contract with the Town as and when required by the Town;
  - (v) the supplier's refusal to enter into a Contract with the Town after the supplier's Bid has been accepted by the Town;
  - (vi) poor performance of a supplier, including the supplier's refusal to perform or to complete performance of a Contract with the Town;
  - (vii) the supplier having unlawfully or unreasonably threatened, intimidated, harassed, or otherwise interfered with an attempt by any other prospective supplier to Bid for a Town Contract or to perform any Contract awarded by the Town to that supplier;
  - (viii) the supplier having discussed or communicated, directly or indirectly, with any other supplier or their agent or representative about the preparation of the supplier's Bid including, but not limited to, any connection, comparison of figures or arrangements with, or knowledge of any other supplier making a Bid for the same work except in the instance of a joint venture Bid where one is permitted;
  - (ix) the supplier having unlawfully or unreasonably threatened, intimidated, harassed, assaulted or committed battery against, or otherwise interfered with an official, employee, representative, agent or independent consultant

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or contractor of the Town in the performance of his or her duties or in any way attempted to influence such persons;

- (x) the supplier has on one or more occasions, in the performance of a Contract with the Town, deliberately, with wilful blindness or negligence, save and except an inadvertent error corrected to the satisfaction of the Town within a reasonable time, as determined by the Town:
    - 1. over-billed, double-billed and/or retained a known over-payment, or has failed to notify the Town of an over-payment or duplicate payment;
    - 2. billed for items not supplied;
    - 3. billed for items of one grade, while supplying items of an inferior grade;
    - 4. made a misrepresentation as to the quality or origin of Goods, their functionality or suitability for a purpose, or their performance characteristics;
    - 5. submitted false or misleading information to the Town;
    - 6. acted in conflict with the Town's interests;
    - 7. misappropriated any property or right of the Town, in any form; or
    - 8. committed any other form of sharp or deceptive practice,
  - (xi) any other act or omission by the supplier that the Town deems to impair the commercial relationship between the Town and the supplier or that would otherwise not be in the Town's or its residents' best interest.
- (b) There is supporting evidence that it would not be in the best interests of the Town to enter into a Contract with the supplier, including but not limited to:
- (i) the conviction of that supplier or any person with whom that supplier is not at arm's length within the meaning of the *Income Tax Act* (Canada) of an offence under any taxation statute in Canada;
  - (ii) the conviction or finding of liability of that supplier under the *Criminal Code* or other Legislation or law, whether in Canada or elsewhere and whether of a civil, quasi-criminal or criminal nature, of moral turpitude including but not limited to fraud, theft, extortion, threatening, influence peddling and fraudulent misrepresentation;

- (iii) the conviction or finding of liability of that supplier under any environmental Legislation, whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that supplier for the environmental well-being of the communities in which it carries on business;
  - (iv) the conviction or finding of liability of that supplier relating to product liability or occupational health or safety, whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that supplier for the health and safety of its workers or customers;
  - (v) the conviction or finding of liability of that supplier under the financial securities Legislation whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that supplier for its stakeholders.
- (c) There is supporting evidence that the supplier has been declared bankrupt or is insolvent.
- (2) For the purposes of this Part, a reference to a supplier shall also include: an officer, a director, a majority or controlling shareholder, or a member of the supplier, if a corporation; a partner of the supplier, if a partnership; any corporation to which the supplier is an affiliate of or successor to, or an officer, a director or a majority or controlling shareholder of such corporation; and any person with whom that the supplier is not at arm's length within the meaning of the *Income Tax Act* (Canada).

#### **Part 14: Statement of Ethics for Public Procurement**

- (1) Every Town employee and any other person assisting with procurement activities shall:
- (a) promptly declare any apparent, potential, or actual conflict of interest arising in the context of their activities to their immediate supervisor or the Treasurer or their delegate;
  - (b) abide by the highest ideals of honour and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served;
  - (c) follow the lawful instructions, by-law, policies, and procedures of the Town;
  - (d) understand the limits of the authority granted by the Town;
  - (e) avoid activities which would compromise or give the perception of compromising the best interest of the Town and the public;



- (f) obtain the maximum benefit for funds spent as agents for the Town;
  - (g) maintain and practice, to the highest degree possible, business ethics, professional courtesy and competence in all transactions;
  - (h) undertake all purchasing activities without positive or negative bias;
  - (i) strive to obtain the maximum value for each dollar of expenditure;
  - (j) consistently reject any offer of favours, gifts, gratuities, loans regardless of the value;
  - (k) adhere to and protect suppliers' business and legal rights to confidentiality over pricing information, trade secrets, and other proprietary information.
- (2) Where the Town determines that a conflict of interest exists and that the conflict cannot be managed, such person shall be excluded from involvement with the procurement activities.

**Part 15: Contract Management**

- (1) General Managers are responsible for ensuring all Contract requirements are satisfied by the Contractor throughout the term, including ensuring bonds and insurance certificates, WSIB certificate, or any specified license requirements, are provided as required by the Contract.

## **SCHEDULE A - EXCLUSIONS FROM POLICY PROCUREMENT RULES**

Contracts for Goods and Services and payment of the expenses listed below are excluded from the competitive procurement requirements in this policy, however the approval and signing authorities set out in the Procurement Approval Matrix and the ethical obligations set out in Part 14 (Statement of Ethics for Public Procurement) continue to apply.

For greater certainty, if a Contract awarded by the Town is excluded from the competitive procurement requirements of the policy, the competitive procurement requirements shall not be construed to cover any Good or Service component of that contract.

The Treasurer may identify additional types of contracts, Goods or Services as excluded from the competitive procurement requirements of the policy in the procurement procedures provided that any addition to the list remains consistent with the policy statement and objectives.

- (1) **General Exclusions:** The following are excluded procurements:
  - (a) Goods or Services financed primarily from donations that require the procurement to be conducted in a manner inconsistent with this policy.
  - (b) Procurements by the Town on behalf of an entity not covered by this policy.
  - (c) Procurements under a commercial agreement between the Town which operates sporting or convention facilities and an entity not covered by this policy that contains provisions inconsistent with this policy.
  - (d) Acquisition of Goods or Services for the purpose of commercial sale or re-sale by the Town.
  - (e) Procurement of Goods or Services from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities.
  - (f) Procurement of Goods or Services for the specific purpose of providing international assistance, including development aid, provided that the procuring entity does not discriminate on the basis of origin or location within Canada of goods, services, or supplier.
- (2) **Excluded Professional Services**
  - (a) Health or social services.
  - (b) Services that may, under applicable law, only be provided by licensed lawyers or notaries.

- (c) Services of expert witnesses or factual witnesses used in court or legal proceedings.
- (d) Financial services respecting the management of government financial assets and liabilities (*i.e.* treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution.

(3) **Non-Procurement Transactions**

- (a) Employment contracts.
- (b) Non-legally binding agreements.
- (c) Measures necessary to protect intellectual property, provided that the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or are a disguised restriction on trade.
- (d) Insurance premiums.
- (e) Payments of debts.
- (f) Procurement or acquisition of fiscal agency or depository services (banking services).
- (g) Any form of financial assistance, such as grants, loans, equity infusions, guarantees, and fiscal incentives.
- (h) Agreements with a governmental authority or agent of government (for example, vehicle, elevators, radios).
- (i) Agreements between enterprises that are controlled by or affiliated with the same enterprise, or between one government body or enterprise and another government body or enterprise.
- (j) Acquisition or rental of land, real property payments including land, buildings, leasehold interests, easements, encroachments and licenses, or the like.
- (k) Insurance claims, legal settlements and grievance settlements.
- (l) Binding orders, judgments or decisions of an arbitrator, tribunal or court. Given that these payments are mandatory, approval from the General Manager which is funding the payment is required instead of the approvals set out in Part 2 (Delegation of Approval Authority).
- (m) Refundable travel expenses.

- (n) Other Town and employee related expenses, such as: memberships in professional organizations (professional dues), staff attendance at seminars, testing or examination fees, workshops, courses, training, trade shows or conferences.