

The Corporation of the City of Burlington  
City of Burlington By-law 04-2022

A by-law to Adopt and Maintain a Procurement Policy for the City of Burlington  
File: 465-00 (F-13-22)

Whereas section 270(1)3 of the *Municipal Act*, 2001, S.O. 2001, c 25 provides that a municipality shall adopt and maintain a policy with respect to its procurement of goods and services; and

Whereas the Council of The Corporation of the City of Burlington passed By-law 19-2014 as a procurement policy; and

Whereas The Corporation of the City of Burlington has undertaken a comprehensive review of its procurement processes to identify accountability, transparency, and efficiency improvements; and

Whereas the Council of The Corporation of the City of Burlington deems it necessary to repeal and replace By-law 19-2014, as amended;

Now therefore the Council of The Corporation of the City of Burlington hereby enacts as follows:

1. Appendix "A", which is attached to and forms part of this By-law, is the City of Burlington procurement policy adopted and maintained in accordance with paragraph 270(1)3 of the *Municipal Act*, 2001, c 25.
2. By-law 19-2014 is hereby repealed.
3. This By-law may be referred to as the "Procurement Policy By-law".
4. This by-law comes into force on the day it is passed.

Enacted and passed this 18<sup>th</sup> day of January, 2022.

Mayor Marianne Meed Ward \_\_\_\_\_

City Clerk Kevin Arjoon \_\_\_\_\_

**APPENDIX A**  
Procurement Policy

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## PART 1 – GOALS, DEFINITIONS AND DIRECTIVES

### 1. Procurement Goals and Objectives

The purpose of this document is to establish a Policy for procuring Goods and/or Services that meet the City's needs in both quantity and quality. This Policy's principles and methods emphasize the need for Procurement practices to be ethical, professional and accountable, ensuring that the reputation of the City will be maintained in high regard.

The goals and objectives of this Policy are to:

- a. encourage an open, accountable, transparent, and competitive Procurement process that ensures fair, objective and equitable treatment of all Vendors, while protecting the financial interests of the City;
- b. encourage environmentally responsible and sustainable Procurement practices;
- c. obtain the Best Value when procuring Goods and/or Services for the City; and
- d. avoid conflicts between the interests of the City and those of the City's employees and members of Council.

### 2. Definitions

In this By-law:

**"Approval Authority"** means the authority to approve and Award Procurements, up to the procurement values set out in this Procurement Policy.

**"Authorized Delegate"** means the person who has been delegated by Council an Approval Authority and includes any other person further sub-delegated such Approval Authority in accordance with this Procurement Policy. An Authorized Delegate includes a person authorized to act on their behalf temporarily.

**"Award"** means the selection of the Bidder or Proponent as evidenced by Contract.

**"Best Value"** means achieving the optimal balance of performance and cost determined in accordance with criteria disclosed in a Bid or Proposal Solicitation for the purpose of making an award.

**"Bid"** means a submission received in response to an irrevocable Bid Solicitation.

**"Bidder"** means any legal entity or person that submits a Bid.

**"Bidding System"** means an online platform used by the City to invite and receive Bids, Proposals and responses electronically.

**“Bid Irregularity”** means a defect contained within a response to a Bid or Proposal Solicitation or a corresponding default on supplemental Bid or Proposal Solicitation requirements.

**“Bid Solicitation”** means a Request for Quotation, Request for Tender or a Request for Proposal issued by the City for Goods and/or Services.

**“Budget”** means funding approved by Council, including additional secured funding from external sources such as grants or recoveries from other government agencies or partners.

**“Burlington Leadership Team”** (BLT) means a group of senior City staff members who provide corporate leadership and decision making to support council and staff through due diligence, collaboration and partnership.

**“Blackout Period”** means the period of time that begins when the Bid or Proposal Solicitation is issued and ends at the time of Award or cancellation.

**“City”** means The Corporation of the City of Burlington.

**“City Entity”** includes Burlington Public Library Board, Burlington Museums Board, Burlington Theatre Board Inc., Tourism Burlington, The Burlington Performing Art Centre, Art Gallery of Burlington, and Burlington Economic Development.

**“City Manager”** means the individual appointed by Council as City Manager or designate.

**“Clerk”** means the Clerk of The Corporation of the City of Burlington or designate.

**“Cooperative Procurement”** means a Procurement process when two or more entities combine their requirements to procure from the same Vendor or multiple Vendors using a single Bid Solicitation.

**“Competitive Procurement”** means a Procurement process where more than one Bidder and/or Proponent is provided the opportunity to submit a Bid or Proposal.

**“Compliant Bid”** means a Bid received that conforms to all mandatory requirements contained in the Bid Solicitation.

**“Conflict of Interest”** means a situation or circumstance, real or perceived, which could give a Vendor, City staff or Council member, while acting in their official capacity, the opportunity through actions or decisions to direct or influence an outcome to the benefit of a particular party/parties.

**“Contract”** means a legal agreement between two or more parties, usually written, or a Purchase Order.

**“Corporate Contract”** means a Contract for Goods and/or Services required by more than one City Department and/or City Entity.

“**Council**” means the Council of The Corporation of the City of Burlington.

“**Department**” means any City department.

“**Delegation of Authority**” means authority delegated to an Authorized Delegate.

“**Delegated Authority Award Report**” or “**DA Award Report**” means a report that is signed by the respective Department Director, Manager of Procurement Services, Chief Financial Officer, and Executive Director of Environment, Infrastructure and Community Services or City Manager, that authorizes an Award, and which is filed with the City Clerk.

“**Designate**” means a person who has been appointed to act in some or all situations in the same capacity as another.

“**Director**” means any City Director, Executive Director, Chief Financial Officer, Chief Information Officer or Designate, as applicable.

“**Family Member**” means a spouse (including common law spouse), parent, grandparent, sibling, child, grandchild, niece, nephew, uncle, aunt or cousin.

“**Goods**” means raw materials, products, supplies, equipment, software, hardware and other physical objects of any kind, to be delivered, installed or constructed; does not include real property.

“**Halton Cooperative Purchasing Group**” or “**HCPG**” means the Cooperative Procurement group comprised of municipalities and other publicly funded agencies generally within the Region of Halton who participate in Cooperative Procurement.

“**Lease**” means an agreement whereby one party (lessee) leases from a second party (lessor) equipment or space for a specified period of time at a predetermined cost.

“**Litigation**” means any unresolved dispute where either a legal proceeding has been commenced or a threat of legal action has been made in writing.

“**Manager of Design and Construction**” means the Manager of Design and Construction for the City or Designate.

“**Manager of Procurement Services**” means the Manager of Procurement Services for the City or Designate.

“**Negotiable Request for Proposal**” (**NRFP**) means a Request for Proposal which allows for negotiations. May also be referred to as a non-binding RFP.

“**Non-Competitive Procurement**” means a Procurement process where only one Bidder and/or Proponent participates in the Procurement and includes Sole Source and Single Source Procurement.

**“Non-Compliant Bid”** means a Bid that does not conform to one or more mandatory requirements contained in the Bid Solicitation document.

**“Payment Card” (P-Card)** means a credit card issued and managed by the City to authorized City employees to pay for Goods and/or Services in compliance with the P-Card policy.

**“Policy”** means this Procurement Policy.

**“Procurement”** means:

- a. purchasing, renting, leasing, or otherwise acquiring any Goods and/or Services; includes all functions that pertain to the acquisition, including the oversight for the description of requirements, preparation and solicitation of Bids or Proposals, selection of the successful Bidder or Proponent and Award of the Contract.
- b. the combined functions of purchasing, inventory control, transportation, receiving, inspection, storekeeping, salvage and disposal operations.

**“Procurement Representative”** means a City employee as identified in the Bid or Proposal Solicitation document who shall be the single point of contact during the Procurement process.

**“Procurement Services”** means the division of the City’s Finance Department responsible for the Procurement of Goods and Services.

**“Professional Services”** means services rendered by members of a recognized profession or by those possessing special skill.

**“Proponent”** is a legal entity or person that submits a Proposal in response to a NRFP.

**“Proposal”** means a submission received in response to a NRFP, acceptance of which is subject to further negotiation.

**“Proposal Solicitation”** means a Negotiable Request for Proposals issued by the City for Goods and/or Services.

**“Purchase Order”** means a written confirmation or acceptance of offer, that forms an Award.

**“Quote”** means a written offer to provide Goods and/or Services at a specified price.

**“Request for Expression of Interest” (REI)** means a request for information from the market for the purpose of assessing the viability of certain ideas, and/or the market interest in providing the Goods and/or Services to the City. This process is not intended to lead to an Award and does not create any contractual obligations.

**“Request for Information” (RFI)** means a request for information from the market for the purpose of compiling market research on what Goods and/or Services are available. This process is not intended to lead to an Award and does not create any contractual obligations.

**“Request for Pre-Qualification” (RFPQ)** means a request for information from the market, listing their qualifications and experience in reference to specific projects or project types, used to identify and pre-select qualified Bidders (“short listing”). Typically, the short-listed Respondents are permitted to Bid on future Bid Solicitations for a pre-defined term or specific project.

**“Request for Proposal” (RFP)** means a request for Bids where submissions are assessed on a set of defined evaluation criteria. The highest scoring Compliant Bid is recommended for Award.

**“Request for Quotation” (RFQ)** means a request for Bids where the specifications are defined, and the lowest Compliant Bidder is recommended for an Award. The estimated value of the Procurement is up to and including \$50,000.

**“Request for Tender” (RFT)** means a request for Bids where the specifications are defined, and the lowest Compliant Bidder is recommended for an Award. The estimated value of the Procurement is greater than \$50,000.

**“Services”** means any professional or general service work performed, including, but not limited to, labour, construction, consulting, repairs, maintenance, training, and surveys.

**“Sole Sourcing”** means a Non-Competitive Procurement in which the Goods and/or Services are unique to a particular Vendor and cannot be obtained from another source or where only one Vendor is practicably available.

**“Single Sourcing”** means a Non-Competitive Procurement in which the Goods and/or Services are purchased from a particular Vendor rather than through a Competitive Procurement notwithstanding that there are other Vendors who can also provide the same Goods and/or Services.

**“Suspension”** means restricting any contractual relationships with a Vendor for a set period of time.

**“Unsolicited Offer”** means one or more submissions received by the City without Bid Solicitation.

**“Vendor”** means any legal entity or person who supplies or may supply Goods and/or Services to the City, and it includes, but is not limited to, suppliers, contractors, consultants, solution providers and service providers.

**“Vertical Assets”** means any facility, or part thereof, or structure that is new, renewed (i.e. like for like), or renovated (i.e. renewed with enhancement).

### **3. Scope and Application**

- 3.1 This By-law applies to the Procurement of Goods and/or Services by the City.
- 3.2 No expenditure, Procurement, or commitment shall be incurred or made except in accordance with this By-law or otherwise approved by Council.
- 3.3 The following schedules are attached to and form part of this Procurement Policy:
  - Schedule A – Procurement Method and Approval Authority
  - Schedule B – Bid Irregularities
  - Schedule C – Procurement Policy Exemptions
  - Schedule D - Non-Competitive Procurement

### **4. Ethics in Procurement**

All Procurement shall be conducted in accordance with the following ethical standards:

#### **a. Honest, open, fair and transparent behaviour**

Act in an honest, open, fair and transparent way in all Procurement transactions.

#### **b. Fair and impartial Award recommendations**

The City will not extend preferential treatment to any Bidder or Proponent, including local companies. Limiting fair and open competition between Bidders or Proponents shall be avoided, in order to obtain the best possible value for each tax dollar.

#### **c. An irreproachable standard of personal integrity**

The City shall not publicly endorse any Bidder or Proponent, nor shall they do anything that may give that organization an advantage over others. City employees or members of Council shall not accept gifts or favours in return for business or the consideration of business.

### **5. Cooperative Procurement**

- 5.1 The City may take advantage of any provincial or federal agreements, or other Competitive Procurement processes, where the Manager of Procurement Services deems these opportunities to be in the best interest of the City.
- 5.2 The Manager of Procurement Services may coordinate Cooperative Procurement with municipalities, boards, commissions, other levels of government or public-sector entities where such Procurement is deemed to be in the best interest of the City and in compliance with the Canadian Free Trade Agreement (“CFTA”) and The Canada-European Union Comprehensive Economic and Trade Agreement (“CETA”).
- 5.3 A list of agencies that the City participates with will be maintained on the City’s Procurement webpage.

### **6. Procurement on Behalf of City Entities**

Where the Manager of Procurement Services administers a Bid or Proposal Solicitation for any City Entity, the Procurement shall be governed by this Procurement Policy.

## **7. Lobbying Restricted**

- 7.1 Vendors shall not contact any member of Council, any employee of the City, or Consultant of the City, to attempt to influence the Award of a Contract or pre-qualification decision. Any activity designed to influence the decision-making process, including, but not limited to, contacting any member of Council or registering as a delegate to a Committee of Council meeting or Council meeting prior to an Award of a Contract, or contacting an advisor or employee of the City other than the Procurement Representative for such purposes as meetings of introduction, social events, meals or meetings related to the selection process, may result in disqualification of the Bidder/Proponent for the project to which the influential activity is deemed to be directed.
- 7.2 The determination of what constitutes influential activity is at the sole discretion of the Manager of Procurement Services, acting reasonably, and is not subject to appeal.
- 7.3 At the discretion of the Manager of Procurement Services, any Vendor, who violates this section, may be prohibited from any further opportunity to provide Goods and/or Services to the City for a reasonable amount of time.

## **8. Procurement Prohibitions and Compliance**

- 8.1 Procurement of Goods and/or Services shall not be divided or split with the intent of avoiding the requirements of this Policy.
- 8.2 Goods and/or Services shall not be procured under this Policy by any person unless:
  - a. the Goods and/or Services are legitimately for the purposes of the City, or for any City Entity who the City is procuring on behalf of; and
  - b. the funds for the Procurement of the Goods and/or Services are available within the approved Budget, or the Procurement is expressly made subject to funding approval and, to the extent that they may be required, funds are available from any City Entity on whose behalf the Procurement of Goods and/or Services is also being made.
- 8.3 Members of Council and City employees shall not directly or indirectly influence the integrity and fairness of the Procurement process in order to obtain Goods and/or Services on behalf of the City from any of their Family Member.
- 8.4 Members of Council and City employees shall not cause or permit any action or communication which is likely to cause any potential Bidder or Proponent to have an unfair advantage in obtaining a Contract for the supply of Goods and/or Services to the City.
- 8.5 Members of Council shall separate themselves from the Procurement process and have no involvement whatsoever in specific Procurements. Members of Council who receive inquiries from Vendors related to any specific Procurement shall immediately direct those inquires to the Manager of Procurement Services.
- 8.6 Despite section 8.5, an exemption to that prohibition may be provided by the City

Manager, if the City Manager or Designate participates in the Procurement process to ensure fairness and integrity.

- 8.7 No person shall cause or permit any action which would jeopardize the legal validity or fairness of any Procurement of Goods and/or Services under this Policy or which is likely to subject the City to any claim, demand, action or proceeding as a result of such act or omission
- 8.8 The City shall not acquire Goods and/or Services from Members of Council, appointed or City employees.

## **9. Unauthorized Procurement and Consequences**

Any unauthorized Procurement and disregard for these policies by City employees is prohibited. Where an unauthorized or non-compliant Procurement has taken place, the responsibility for payment may become that of the individual who procured it, and they may also be subject to further discipline.

## **10. No Local Preference**

The City will endeavour to achieve Best Value in its Procurement of Goods and/or Services. Local presence, content or other criteria that are designed to favour the Goods and/or Services of a particular geographical area will not be considered unless specifically required to do so under the authority of an upper-tier government body.

## **11. Canadian Content**

The City will not procure Goods and/or Services based upon Canadian content unless specifically required to do so under the authority of applicable law.

## **12. Information Disclosure**

The following information will be disclosed by the City as part of the Procurement process:

- a. Request for Proposals and Negotiable Request for Proposals: the names of all the Bidders/Proponents and the total Bid amount and/or negotiated Award value of the recommended/awarded Bidder/Proponent will be disclosed publicly.
- b. Request for Tenders: the names of all Bidders and total Bid amount of all Compliant Bidders will be disclosed publicly.
- c. Request for Pre-qualifications: the City may disclose the names of all pre-qualified Proponents.

## **13. Monetary References**

All references to dollar amounts in this Procurement Policy are:

- a. in Canadian dollars;
- b. exclusive of applicable taxes;
- c. annual estimates, unless the need is ongoing and will result in a multi-year Contract, in which case the estimated value shall be the total value of the Procurement for the

term of the Contract, including renewal periods; and

- d. for the City's portion of expenditures in relation to Cooperative Procurements or other cost sharing Procurements.

**14. Annual Report to Council**

The Manager of Procurement Services will report annually to Council providing a summary of the Procurement activity for the previous year. The report may contain information regarding:

- a. Contracts;
- b. Contract extensions;
- c. Single and Sole Sourced Contracts;
- d. emergency Procurements; and
- e. Procurement related statistics.

**PART 2 – ROLES AND RESPONSIBILITIES**

**15. Manager of Procurement Services**

The Manager of Procurement Services, or Designate, shall be responsible for:

- a. the issuance and administration of Procurement for Goods and/or Services for Vertical Assets and all other items generally not identified as the responsibility of the Manager of Design and Construction;
- b. administration and interpretation of the Procurement Policy;
- c. ensuring compliance with this Procurement Policy and reporting non-compliance to the applicable Director, and/or City Manager;
- d. providing Procurement advice including preparing Bid and/or Proposal Solicitation documents;
- e. ensuring Bid compliance;
- f. reviewing the specifications, scope of work or terms of reference as prepared by the City Department to ensure that an equal and fair opportunity is presented to potential Bidders and/or Proponents;
- g. development and standardization of Procurement procedures;
- h. disposal of surplus and obsolete Goods that had an initial Procurement value greater than \$10,000;
- i. review of Delegated Authority Award Reports to ensure compliance with this Procurement Policy;
- j. administration of the Vendor performance evaluation program;
- k. committing to and coordinating the consolidation of similar Goods and/or Services for the City in order to achieve volume price discounts and administrative efficiencies;

- l. creation, amendment and deletion of policies, practices and procedures that support the objectives and application of this Policy;
- m. approving and executing procurement related non-disclosure and confidentiality agreements;
- n. approving and executing leases for Goods and/or Services contracted through Procurement Services; and
- o. maintaining timely and relevant policies and procedures, including reviewing this Procurement Policy within five years of its approval date to evaluate its effectiveness. This provision is intended to set a target date for a future review of this Procurement Policy; the failure to conduct a review within the time period set out shall not have an effect on the validity of this Procurement Policy.

**16. Manager of Design & Construction**

The Manager of Design and Construction, or designate, shall be responsible for:

- a. issuing and administering RFT processes for construction of park development, parking lots, highways, street lights, culverts, hard landscaping, creeks, roads, water mains, sewers, grade separations, storm water management, Vertical Assets and bridges;
- b. providing Procurement advice including the preparation, issuing and administration of RFT documents related to construction projects;
- c. administering the Procurement process under their responsibility and ensuring compliance with the terms and conditions of the RFT;
- d. reviewing the specifications, scope of work or terms of reference as prepared by the Department to ensure that an equal and fair opportunity is presented to potential Bidders; and
- e. administration of the Vendor performance evaluation program specific to the Procurement under their responsibility.

**17. Directors**

Directors shall be responsible for:

- a. approving the Procurement of Goods and/or Services for their respective Departments;
- b. approving and administering Request for Quotations with an estimated value up to and including \$50,000;
- c. overseeing the preparation of the business specifications/requirements for their Procurements;
- d. preparing and submitting Delegated Authority Award Reports;
- e. taking all necessary steps to ensure Vendor compliance with the terms of the Contract;
- f. informing the Manager of Procurement Services and/or Designate of any discrepancies with the receipt of Goods and/or Services or Contract non-compliance; and

g. review of Vendor performance.

## **18. Delegation of Authority by the Directors**

Directors may delegate their Procurement responsibilities to other employees utilizing the following process:

- a. the Director delegates Procurement responsibility to another City employee using the form prescribed by the Finance Department; and
- b. the Director ensures the employee to whom the Procurement responsibility is delegated has completed online Procurement training.

Procurement Services will maintain an active list of Authorized Delegates to document the Delegations of Authority.

## **19. Procurement Training**

An integral part of the City's Procurement process is the understanding and application of this Procurement Policy, ethical treatment of Vendors, and achievement of Best Value. Any City employee who procures Goods and/or Services or assists with the Procurement of Goods and/or Services, on behalf of the City shall complete Procurement training designated by the Manager of Procurement. Directors who delegate their Procurement authority, shall ensure all Authorized Delegates complete this training. Procurement training may be updated from time to time, and employees shall ensure they have completed the most current version of the training.

## **20. Procurement Process, Award and Signing Authority**

Responsibility for the Procurement process, Award and Contract signing authority shall be governed by Schedule A to this Procurement Policy.

## **21. Delegated Authority Award Process**

21.1 A Delegated Authority Award Report is written by the Department receiving the respective Goods and/or Services to Award a Competitive Bid process with an Award value between \$100,000 and \$5,000,000 (not including optional years). To proceed with the Award, the following criteria must be met:

- a. the recommended Bidder is the lowest compliant Bidder meeting specifications in the case of an RFT or the highest scoring Bidder in the case of an RFP or the Proponent with whom successful negotiations are concluded in case of the NRFP;
- b. the City's portion of the Award value is within the approved Budget amount or, where applicable, within the allowable variances as defined in item 28.0 Over Budget Bids;
- c. for RFT, RFP or NRFP requirements spread over multiple years, the funding (capital and operating) for future years can reasonably be expected to be made available; and
- d. the appropriate parties have signed the DA Award Report (see Schedule A).

21.2 If any of the criteria in section 21.1 is not met, a report to Council is required to proceed with the Award.

## **22. Council Reports**

22.1 A Council report is required to Award a Procurement process with an Award value greater than \$5,000,000 or to Award a Non-Competitive procurement with a value greater than \$100,000.

22.2 Report required under section 22.1 recommending Council approval for Award and Non-Competitive Procurement shall be prepared by:

- a. the Department receiving the Goods and/or Services; or
- b. in the case of multi-Department participation in a Bid or Proposal Solicitation process, either the Department receiving the Goods and/or Services or the Manager of Procurement Services, at their discretion.

22.3 Procurement related Council reports shall be reviewed by the Manager of Procurement Services prior to submission to Council.

22.4 At the discretion of the Manager of Procurement Services or the City Manager, Council approval may be requested irrespective of the value of the Contract, if deemed in the best interest of the City.

### **a. Awards during extended Council breaks**

Despite section 22.1 of this By-law, the Manager of Procurement Services may proceed with Contract Award where the value is greater than \$5,000,000 when a Council break occurs for greater than 25 days, excluding weekends and statutory holidays, provided the following conditions are met:

- i. a Competitive Procurement has been utilized;
- ii. recommended Award is to the lowest compliant Bidder meeting the specifications in the case of an RFT; or the highest scoring compliant Bidder in the case of an RFP or the Proponent with whom successful negotiations are concluded in case of the NRFP;
- iii. the City's portion of the Award value is within the approved Budget amount or, where applicable, within the allowable variances as defined in item 28.0 Over Budget Bids;
- iv. written approval is received from all appropriate parties along with the City Manager utilizing a Delegated Authority Award Report; and
- v. the Procurement is otherwise in accordance with this Procurement Policy.

## **PART 3 – PROCUREMENT PROCESS**

### **23. Advertising of Bid and Proposal Solicitations**

Bid and Proposal Solicitations with an estimated value greater than \$50,000 will be advertised on the Bidding System, unless an exemption is approved in writing by the

Manager of Procurement Services.

## **24. Response Time to Bid or Proposal Solicitations**

- 24.1 Subject to section 24.2, Bids and Proposal Solicitations will be posted on the Bidding System for a minimum of fifteen calendar days, unless a shorter time is approved by the Manager of Procurement Services.
- 24.2 Where applicable trade agreement(s) or federal or provincial law mandates longer response times, those shall be applicable.

## **25. Procurement Methods**

### **25.1 Request for Quotation (RFQ)**

- a. Directors are authorized to administer Request for Quotations provided the following criteria are followed:
- i. no existing Corporate Contracts exist for the Goods and/or Services being contemplated;
  - ii. the estimated Procurement value of the RFQ is up to and including \$50,000, including freight charges, if applicable;
  - iii. a minimum of three Bids are received, when possible;
  - iv. the RFQ template prescribed by Procurement Services should be used to issue a written request;
  - v. Bids are received in writing;
  - vi. Awarded to the lowest Compliant Bidder;
  - vii. the Goods and/or Services are intended for a one-time basis, not an on-going requirement (unless an exception is approved in writing by the Manager of Procurement Services); and
  - viii. all related records shall be kept on file by the Director in accordance with the City Corporate Records Retention By-law and policies.
- b. Directors can waive the requirement to conduct an RFQ otherwise required under section 25.1.a. for Procurement that meets criteria set out in Schedule D and proceed with a Sole Source or Single Source Procurement for Goods and/or Services where Award value is up to and including \$50,000. All supporting documents, including the completed Non-Competitive Procurement form and supporting rationale shall be kept on file by the Director in accordance with the City Corporate Records Retention By-law and policies.

### **25.2 Request for Tender (RFT)**

The Manager of Procurement Services and the Manager of Design and Construction are authorized to administer the RFT process provided the following criteria are followed:

- a. the estimated Procurement value is greater than \$50,000, which includes the total value of the Procurement over its entire duration, whether awarded to one or more Vendors, taking into account all forms of remuneration, including the total value of options/provisional items if applicable;
- b. the Bid Solicitation is advertised, unless an exception is approved by the Manager of Procurement Services;
- c. the Contract is Awarded to the lowest Compliant Bid; and
- d. all related records shall be kept on file by the Manager administering the Procurement process in accordance with the City Corporate Records Retention By-law and policies.

### **25.3 Request for Proposal (RFP)**

The Manager of Procurement Services is authorized to administer the RFP process provided the following criteria are followed:

- a. the estimated Procurement value is greater than \$10,000, which includes the total value of the procurement over its entire duration, whether awarded to one or more Vendors, taking into account all forms of remuneration, including the total value of options/provisional items if applicable;
- b. the Bid Solicitation is advertised, unless an exception is approved by the Manager of Procurement Services;
- c. the Contract is Awarded to the highest scoring Compliant Bidder; and
- d. all related records shall be kept on file by the Manager of Procurement Services in accordance with the City Corporate Records Retention By-law and policies.

### **25.4 Negotiable Request for Proposal (NRFP)**

The Manager of Procurement Services is authorized to administer the NRFP process, when deemed appropriate. This variation of the RFP process is non-binding (without the commitment obligations of a contract A Bid Solicitation), provided the following criteria is followed:

- a. the estimated Procurement value is greater than \$100,000, which includes the total value of the Procurement over its entire duration, whether Awarded to one or more Vendor, taking into account all forms of remuneration, including the total value of options/provisional items if applicable;
- b. the Negotiable Request for Proposal is advertised, unless an exception is approved by the Manager of Procurement Services;
- c. the Contract is Awarded to the Proponent whom the City has successfully negotiated an agreement with; and
- d. all related records shall be kept on file by the Manager of Procurement Services in accordance with the City Corporate Records Retention By-law and policies.

**25.5 Request for Pre-Qualification (RFPQ)**

The Manager of Procurement Services is authorized to conduct a RFPQ process.

The RFPQ process intends to create a list of prequalified potential Vendors who will be invited to respond to one or more subsequent competitive Procurement processes. This is a non-binding process and does not result in a Contract.

**25.6 Request for Expression of Interest (RFEI) / Request for Information (RFI)**

The Manager of Procurement Services is authorized to conduct RFEI or RFI processes. RFEI and RFI processes allow the City to explore unknown markets, or to conduct preliminary research. These are non-binding processes and therefore do not result in an Award or Contract.

An RFEI or RFI may be followed by a formal Competitive Procurement process.

**26. Point of Contact - Blackout Period**

26.1 During the Blackout Period, Bidders/Proponents shall communicate only with a Procurement Representative identified in the Bid or Proposal Solicitation Documents, and shall not communicate with any other City employee, member of Council or any other third party involved in the Procurement process.

26.2 Any Bidder or Proponent that contravenes section 26.1 may be disqualified from participating in the current Bid or Proposal Solicitation.

**27. Bid Irregularities**

Bid Irregularities and subsequent consequences are identified in Schedule B to this Policy.

**28. Over Budget Bids**

28.1 Operating Budget items may be considered when the lowest Compliant Bid is over Budget upon approval in writing from the Chief Financial Officer to proceed with re-allocation from within the operating Budget providing the reallocation can be made without impact to existing service delivery.

- 28.2 Capital Budget items may be considered when the lowest Compliant Bid is over Budget upon approvals by the Chief Financial Officer and Executive Director of EICS to proceed with additional capital funding up to 10% of the original Capital Budget or \$250,000, whichever amount is lesser. Additional capital funding to be provided from a capital reserve fund(s) or open capital order(s) identified by the Chief Financial Officer. The Manager of Procurement Services will report on any procurements which utilized this provision in their annual report to Council.

Approval Authority is as follows:

| Amount Over Capital Budget                              | Approval Authority                                     |
|---|--|
| Lesser of either 10% of the project budget or \$250,000 | Chief Financial Officer and Executive Director of EICS |

|   |              |
|---|--------------|
| Greater than 10% of the project budget or \$250,000 | City Council |
|---|--------------|

**29. Tie Bids**

In the event of a tie Bid, equal in all respects, the Award decision will be made based on a coin toss, administered by the Manager of Procurement Services, with Bidders invited to attend in order to witness and call their side of the coin.

**30. Negotiation**

Notwithstanding any other information contained within this Policy, the Manager of Procurement Services may enter negotiations with a Bidder/Proponent whenever it is deemed to be in the best interest of the City.

**31. Bid Debriefing**

Bidders or Proponents can contact the Procurement Representative within ten business days of Award to request a debriefing on their Bid or Proposal. Debriefing requests received outside of the specified timeline may not be considered by the City.

**32. Bid Dispute Resolution**

- a. Should a Bid debriefing fail to satisfy the Bidder or Proponent, a review request can be made in writing to the Manager of Procurement Services within ten calendar days of the debriefing.
- b. Bid debrief reviews shall be reviewed by a dispute committee formed by the Manager of Procurement Services. The review will be chaired by a Director or Manager not connected to the subject Procurement who will act as an independent reviewer after being briefed by the Manager of Procurement Services.
- c. The committee will make a final decision respecting the matter under review which decision can be made orally or in writing.
- d. The decision of the dispute committee is final and not subject to appeal.

**33. Vendor Performance Evaluation**

The City will incorporate a Vendor performance evaluation program into the Procurement process, with the following considerations:

- a. a Vendor performance evaluation process shall be instituted where the Department and/or the Procurement Representative determine that a performance evaluation would be appropriate for the size and/or complexity of the project;
- b. the Vendor performance evaluation shall rate the performance of the Vendor utilizing standard criteria developed, reviewed and revised from time to time by the Manager of Procurement Services and/or the Manager of Design and Construction;
- c. performance issues while carrying out the project shall be noted in writing by the project manager with a copy to the Vendor and a copy to the Procurement Representative.

Performance issues should also be noted in any site meeting or project meeting minutes;

- d. upon project completion, a final Vendor performance evaluation shall be completed by the project manager, in conjunction with the Procurement Representative. A copy of the completed evaluation must also be sent to the Vendor for their records and information;
- e. where a Vendor fails to satisfy the minimum performance requirements as set out in the performance evaluation form, the Vendor may be suspended or restricted from participation in City Procurements in accordance with section 34 of this Procurement Policy;
- f. the results of any performance evaluation may be disclosed to other municipalities or government bodies upon request, where it can be demonstrated that the Vendor has listed the City as reference; and
- g. all Vendor performance evaluation details and documentation will be kept electronically by the Procurement Representative.

#### **34. Vendor Suspension and Restriction**

- 34.1 At the discretion of the Manager of Procurement Services and/or the Manager of Design and Construction, a Vendor may be suspended from Bidding with the City for up to three years for reasons including, without limitation, poor performance as documented by vendor performance evaluation, default on Contract execution, default of delivery, safety concerns, lobbying and contravention of a Bid or Solicitation document. The suspension shall apply to Vendor's work as sub-contractor for other Bidders or Proponents.
- 34.2 At the discretion of the Manager of Procurement Services and/or the Manager of Design and Construction, a Vendor's participation in City Procurements may be restricted, which may limit the type of work the City will allow the Vendor to Bid on, and/or provide additional perimeters around work conditions, requirements and or corrective actions requirements, for up to three years.

#### **35. Litigation Against the City**

- 35.1 The City may reject Bids or Proposals received from a Bidder or Proponent that is in Litigation with the City, at the sole discretion of the Manager of Procurement Services and/or the Manager of Design and Construction.
- 35.2 Should Litigation be instituted during a Suspension; the Suspension timeline will pause and be reinstated upon the completion of the Litigation.

#### **36. Contract Extensions**

- 36.1 The City will conduct a Competitive Procurement process when a Contract is or will be expiring.

36.2 Despite section 36.1, Contracts may be extended without a Competitive Procurement process if an extension is deemed to be in the best interest of the City by the Manager of Procurement Services.

**37. Unsolicited Offers**

Unsolicited Offers may be assessed jointly by the Manager of Procurement Services and the Director. The Award of a Contract resulting from an Unsolicited Offer shall comply with the requirements of Non-Competitive Procurement.

**38. Administrative Efficiencies**

The Manager of Procurement Services will work with City staff to identify opportunities that may require a Corporate Contract to consolidate the Procurement of Goods and/or Services across the City, in an effort to obtain consistency, volume price discounting, and administrative efficiencies.

**39. Non-Competitive Procurement**

39.1 Competitive Procurement process is preferred for Procurement of Goods and/or Services with an estimated value greater than \$10,000.

39.2 Non-Competitive Procurement process may be conducted in accordance with the following criteria:

- a. approval authority for a Non-Competitive Procurement as set out in Schedule A to this Policy;
- b. the rationale and criteria for a Non-Competitive Procurement process as outlined in Schedule D to this Policy.

Non-Competitive Procurement includes:

- i. Sole Source
- ii. Single Source

39.3 All Non-Competitive Procurement activity shall be recorded on the prescribed Non-Competitive Procurement form, together with a description of how the proposed Procurement aligns with criteria outlined in Schedule D.

**40. Payment Requirements**

The City will not pay for Goods and/or Services prior to receiving them. Similarly, Procurement deposits and advance payments will not be employed in the City's business practices. This is not applicable to subscriptions, software licensing fees, and other exceptions, as determined and authorized by the Manager of Procurement Services.

**41. Payment Card**

Payment Cards (P-cards) should be used as a method of payment wherever possible, ensuring adherence to the Procurement Policy and Payment Card User Policy and Procedures.

## **42. Revenue Generating Contracts**

The Manager of Procurement Services will participate in the development of revenue generating Contracts. Schedule A shall apply in determining the appropriate Procurement method based on estimated value.

## **43. In-house Bids**

43.1 Unless specifically approved by City Council, the City does not permit in-house Bids for the Procurement of Goods and/or Services.

43.2 If an in-house Bid is approved by Council, the following clause will be incorporated into the Bid/Proposal Solicitation document:

“Bidders/Proponents should note that the City has the capacity to supply the need described herein. Consequently, a division of the City has been invited to submit a bid which will be included in our evaluation process.”

## **44. Green Procurement**

Subject to budgetary and operational requirements, the City will endeavour to acquire Goods and/or Services that minimize impacts on the environment and perform efficiently and effectively. While evaluating Goods and/or Services for Procurement (including all aspects related to the production, transportation, operational use, and replacement or disposal of Goods) the following environmental factors may be considered in addition to the specific requirements of the Good and/or Service:

- a. durable and reusable, as opposed to single use or disposable items;
- b. non-toxic or least toxic option, preferably compostable or biodegradable;
- c. reduce greenhouse gas and air pollutant emissions;
- d. ENERGY STAR® rated if available or most energy-efficient option;
- e. recyclable, safely disposable or taken back by the Vendor at its end of life;
- f. made from recycled materials;
- g. raw materials, if any, used in making the Goods be obtained and manufactured in an environmentally sound, sustainable manner;
- h. results in minimal or no environmental damage during normal use or maintenance;
- i. packaging and shipping material to be minimal (consistent with the care of the Goods) and preferably made of reusable, recycled or recyclable materials; and
- j. the lifecycle cost of the Good through the acquisition, operation, and end of life, including environmental impacts.

## **45. Accessibility**

In accordance the *Accessibility for Ontarians with Disabilities Act (AODA), 2005, as amended*, and Regulations made thereunder, and specifically the Integrated Accessibility Standards, Ontario Regulation 191/11, Part 1, sections 5 and 6, as amended, accessibility requirements will be incorporated into the specifications with respect to the Procurement

of Goods and/or Services, as applicable.

**46. Emergency Procurement**

- a. When an event occurs that is determined by the City Manager or Director to be an imminent threat to the environment, life, or a threat to safety, public health, the maintenance of essential City services, the welfare of persons or of public property, the protection of the City's physical assets, or the security of the City's interests and the occurrence requires the immediate delivery of Goods and/or Services and time does not permit conducting a Competitive Procurement process to acquire such Goods and/or Services the City Manager or Director may make such Procurement without the involvement of the Manager of Procurement Services or a Competitive Procurement process and is authorized to do so in the most expedient and economical means possible.
- b. In the case of a declared emergency the City's Emergency Response Plan will supersede this Policy.
- c. After the declared emergency is over, a report will be written in accordance with Schedule A.

**47. Record Retention**

The City shall keep Procurement records, as well as any other pertinent information, for reporting and audit purposes. The length of time for this record retention will be in accordance with the Corporate Records Retention By-law.

**48. Disposal of Surplus and Obsolete Goods**

- 48.1 Departments are authorized to dispose of Goods with an initial Procurement value up to and including \$10,000.
- 48.2 Procurement Services will assist and co-ordinate the disposal of all surplus and obsolete Goods that had an initial Procurement value greater than \$10,000 or more.
- 48.3 At the discretion of the Manager of Procurement Services, disposal of Goods may be done by Procurement Services irrespective of the value, if deemed to be in the City's best interests.

**Schedule A - Procurement Method and Approval Authority**

| <b>PROCUREMENT METHOD, AWARD AND SIGNING AUTHORITY</b> |                                   |  |  |   |   |
|--|-----------------------------------|--|--|---|---|
| <b>Value</b>   | <b>Procurement Method</b>         | <b>Authority to Administer Procurement Process</b>   | <b>Authority to Approve Award within Budget*</b>   | <b>Authority to Sign Contracts</b>  | <b>Payment Method</b>                   |
| Up to and including \$10,000                           | No Method Required – Direct Award | Authorized Delegate  | Department Director  | Department Director   | Payment Card or Invoice                 |
| Greater than \$10,000 up to and including \$50,000     | Request for Quotation (RFQ)       | Department Director or Authorized Delegate   | Department Director  | Department Director   | Payment Card, Invoice or Purchase Order |
| Greater than \$50,000 up to and including \$5,000,000  | Competitive Bid Process           | Manager of Procurement Services (RFT, RFP, NRFP) or Manager of Design and Construction (RFT) | Department Director and Manager of Procurement Services or Manager of Design and Construction for under \$100,000<br>or<br>Delegated Authority Award Report for \$100,000 and over | Manager of Procurement Services<br>or<br>Mayor and City Clerk (for Procurements administered by the Manager of Design and Construction over \$100,000 only) | Purchase Order                          |
| Greater than \$5,000,000                               | Competitive Bid Process           | Manager of Procurement Services (RFT, RFP, NRFP) or Manager of Design and Construction (RFT) | City Council   | Mayor and City Clerk  | Purchase Order                          |

\*Where the City intends to award an over Budget Bid this schedule shall be adhered to, with the additional approval requirements defined in section 28.0 of the Procurement Policy.

| <b>EMERGENCY PROCUREMENT</b>                        |   |  |   |   |                                |
|---|---|--|---|---|--------------------------------|
| <b>Value</b>  | <b>Procurement Method</b>   | <b>Authority to Administer Process</b> | <b>Authority to Approve Award within Budget</b>                         | <b>Authority to Sign Contracts</b>                    | <b>Payment Method</b>          |
| Greater than \$10,000 up to and including \$100,000 | No Method Required – Direct Award (Report to BLT after Procurement)     | Department Director                    | Department Director   | Department Director                                   | Purchase Order                 |
| Greater than \$100,000                              | No Method Required – Direct Award (Report to Council after Procurement) | City Manager                           | City Manager  | City Manager  | Purchase Order                 |
| <b>NON-COMPETITIVE PROCUREMENT</b>                  |   |  |   |   |                                |
| <b>Value</b>  | <b>Procurement Method</b>   | <b>Authority to Administer Process</b> | <b>Authority to Approve Award</b>                                       | <b>Authority to Sign Contracts</b>                    | <b>Payment Method</b>          |
| Greater than \$10,000 up to and including \$50,000  | Written Quote   | Department Director                    | Department Director   | Department Director                                   | Payment Card or Purchase Order |
| Greater than \$50,000 up to and including \$100,000 | Written Quote   | Department Director                    | Jointly between Department Director and Manager of Procurement Services | Manager of Procurement Services                       | Purchase Order                 |
| Greater than \$100,000                              | Written Quote   | City Council                           | City Council  | Manager of Procurement Services with Council Approval | Purchase Order                 |

## Schedule B - Bid Irregularities

The Manager of Procurement Services and the Manager of Design and Construction, in consultation with the client Department, will review Bid Irregularities and apply the consequences as required. Only irregularity item 1 will apply to NRRFP processes.

Bid Irregularities will be dealt with in accordance with the following table:

| Item | Irregularity  | Consequence  |
|------|---|--|
| 1.   | Late Bids / Proposals   | Rejection  |
| 2.   | Bid security not provided or not in the form or amount that is specified  | Rejection  |
| 3.   | Qualified/conditional Bids (Bids qualified, restricted or accompanied by conditional language or attachment that is contrary to the specifications, requirements or terms and conditions) | Rejection, unless allowed for in the Bid Solicitation  |
| 4.   | Bids received in any format or by any method other than those specified in the Bid Solicitation document  | Rejection, unless allowed for in the Bid Solicitation document   |
| 5.   | Part Bid (all items not Bid)  | Rejection, unless allowed for in the Bid Solicitation document   |
| 6.   | Failure to attend a mandatory meeting or meet any other mandatory requirements specified in the Bid Solicitation document   | Rejection  |
| 7.   | Bids containing errors in extensions, additions, or computations  | The City has the right to correct mathematical errors  |
| 8.   | Bids which suggest that the Bidder has made a major error in the Bid, including Bids that appear to contain materially unbalanced pricing information                                     | Bids will be assessed on a case by case basis with consultation from the Manager of Procurement Services and, where required, Legal Services   |
| 9.   | Bidder fails to execute the contract or supply the required supplemental documents (WSIB, Insurance, Bonding, etc.) requested.  | The Manager of Procurement Services may declare the Bid as a Non-Compliant Bid. This may further result in the calling of a bond, or the Bidder may be suspended or restricted from bidding for a specific period. |

## Schedule C - Procurement Policy Exemptions

The Procurement of the following Goods and/or Services is exempt from the requirements of this Procurement Policy.

Signing authority for Contracts shall be in accordance with Schedule A.

|    |  |
|----|--|
| 1. | Petty Cash Items   |
| 2. | <p>Training and Education</p> <ul style="list-style-type: none"> <li>a. Conferences</li> <li>b. Courses</li> <li>c. Conventions</li> <li>d. Magazines</li> <li>e. Memberships</li> <li>f. Periodicals</li> <li>g. Seminars</li> <li>h. City Employee development and training including all related, equipment, resources and supplies</li> <li>i. City Employee workshops including all related equipment, resources and supplies</li> <li>j. Subscriptions</li> </ul>  |
| 3. | <p>Refundable Employee Expenses – reimbursed through Accounts Payable</p> <ul style="list-style-type: none"> <li>a. Meal allowances</li> <li>b. Travel expenses</li> <li>c. Miscellaneous – non-travel</li> <li>d. Entertainment expenses</li> </ul>   |
| 4. | <p>Corporate General Expenses</p> <ul style="list-style-type: none"> <li>a. Medicals (employee)</li> <li>b. On-going maintenance, support, and renewal of existing critical Information Technology infrastructure, applications and services that must be sustained, where the current solution and/or service provider continues to provide Best Value, and for which initiating a new Competitive Procurement would incur undue risk or cost to the City, as determined by the Chief Information Officer and approved by the Manager of Procurement Services.</li> <li>c. Charges to or from other government agencies with approval from Finance, including: <ul style="list-style-type: none"> <li>i. Regional Permits</li> <li>ii. Cross Boundary Agreements</li> <li>iii. Fire Dispatch Agreements</li> <li>iv. Radio Trunking Licence</li> </ul> </li> <li>d. Vehicle licences</li> <li>e. Banking, related fees and card programs</li> </ul> |
| 5. | <p>Professional and Special Services</p> <ul style="list-style-type: none"> <li>a. Legal Services, including realty services such as appraisal, land survey,</li> </ul>  |

|    |   |
|----|---|
|    | <p>negotiations, and expert services in disciplines such as planning, landscaping, hydrogeology, economic forecasting, as may be needed to deliver legal and realty services, as determined by the Executive Director of Legal Services &amp; Corporation Counsel or designate</p> <ul style="list-style-type: none"> <li>b. The acquisition, disposition and leasing of land as outlined in the Delegated Authority By-law</li> <li>c. Legal services related to HR matters determined by the Executive Director of Human Resources or designate</li> <li>d. Professional services related to hiring staff, including recruitment, talent search, advertising, etc.</li> <li>e. Performance / artist's fee / special events</li> <li>f. Providers of artistic and recreational services, such as instructors, dance / yoga / gymnastic teachers, historical experts, artistic designers</li> </ul> |
| 6. | <p>Utilities (to include servicing and requested plant modifications / relocations related to construction):</p> <ul style="list-style-type: none"> <li>a. Postage and Courier Services</li> <li>b. Water and Wastewater</li> <li>c. Hydro</li> <li>d. Natural Gas</li> <li>e. Telephone (basic services), Cellular and Wireless Devices</li> <li>f. Cable Television Charges</li> <li>g. Other regulated authorities operating within and across municipal right of ways (e.g. CN Rail, GO Transit, Bell Canada)</li> </ul>  |
| 7. | <p>Fund raising programs, lease of space, donation programs, naming rights and sponsorship of any kind.</p>   |
| 8. | <p>Where deemed in the best interest of the City by the Manager of Procurement, Goods and/or Services procured from Burlington Hydro Inc., other municipalities, boards, commissions, other levels of government or public-sector entities.</p>   |

## Schedule D - Non-Competitive Procurement

A Non-Competitive Procurement may be conducted using a Sole Source or Single Source only when one or more of the conditions listed below apply.

Signing authority for Non-Competitive Procurement shall be in accordance with Schedule A.

**1. Sole Source** - The Goods and/or Services are available from only one Vendor due to one of the following reasons:

- a. a statutory or market-based monopoly; or
- b. scarcity of supply in the market; or
- c. the existence of exclusive rights such as patent, copyright or licence; or
- d. the complete item, service, or system is unique to one Vendor and no alternative or substitute exists.

**2. Single Source** - The Goods and/or Services are available from more than one source, however there is sufficient rationale for awarding to one particular Vendor due to one of the following reasons:

- a. an attempt to acquire the Goods and/or Services through a competitive Procurement process has been made in good faith, yet has failed to identify a willing, capable and compliant Vendor; or
- b. the confidential nature of the requirement is such that it would not be in the best interest of the City or public to solicit competitive Bids; or
- c. the solicitation of competitive Bids would not be economical to the City; or
- d. Construction/renovations/repairs/maintenance etc. is for a building leased by the City and may only be done by the lessor of the building, in accordance with a lease agreement; or
- e. the Goods are purchased under circumstances which are exceptionally advantageous to the City, such as in the case of a bankruptcy or receivership; or
- f. it is advantageous to the City to acquire the Goods and/or Services directly from another Public Body or public service body; or
- g. another organization is funding or substantially funding the Procurement and has determined the Vendor, and the terms and conditions of the Commitment into which the City will enter are acceptable to the City; or
- h. the Procurement is for a specific brand of Goods and/or Services that are intended solely for resale to the public and no other brand is desirable, and the brand is not available from any other source; or
- i. a need exists for compatibility with, or for the maintenance and support of a City Standard and there are no reasonable alternatives, substitutes, or accommodations; or

|  |  |
|--|--|
|  | <ul style="list-style-type: none"><li>j. a need exists to avoid violating warranties and guarantees where support or Service is required for a City Standard; or</li><li>k. instructors, coaches, trainers and other specialized services for which Bids cannot readily be obtained; or</li><li>l. special circumstances as approved by the Manager of Procurement Services.</li></ul> |
|--|--|