

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER 19-2014

A by-law to define Procurement policy and procedures for the Corporation of the City of Burlington and to repeal By-law 69-2005, amendment By-law 58-2009 and amendment By-law 93-2011
Files: 110-03 & 465 (F-1-14)

WHEREAS Section 270 of *the Municipal Act, 2001, as amended* provides that a municipality shall adopt and maintain policies with respect to its Procurement of Goods and Services

NOW THEREFORE the Council of The Corporation of the City of Burlington ENACTS as follows:

1.0 Goals & Objectives

To establish a sound policy for the purpose of procuring Goods and/or Services in a manner that is congruent with providing ethical, professional and accountable delivery of programs and Services to the residents of the City in a manner which protects the integrity of the City, the public and the participants in the Competitive Procurement process. Hence, the goals of this by-law are to:

- a) encourage competitive Bidding;
- b) ensure objectivity and integrity of the Competitive Procurement process;
- c) ensure fair and equitable treatment of all Bidders;
- d) ensure openness, accountability and transparency while protecting the financial best interests of the City;
- e) obtain the best value when procuring Goods and/or Services for the City;
- f) maintain timely and relevant policies and procedures by reviewing this by-law, at minimum, within five (5) years of the approval date to evaluate its effectiveness. This review shall be undertaken by an ad hoc committee of Directors or Designates, the final result of which shall be comprised of a report to Council by the Manager of Procurement Services. This provision is intended to set a target date for a future review of this by-law; the failure to conduct a review within the time period set out shall not have an effect on the validity of this by-law;
- g) avoid conflicts between the interests of the City and those of the City's employees and member of Council;
- h) ensure compliance with applicable International / Inter-Provincial Trade treaties or agreements, as amended.

2.0 Definitions

That in this By-law:

- a) Award is when the contract has been signed by both the vendor and the City or a PO has been issued.

- b) Bid is a Quote, Tender or Proposal submitted to the City in response to a Bid Solicitation.
- c) Bidder is a legal entity that submits a Bid.
- d) Bid Irregularity is a defect contained within a response to a Bid Solicitation.
- e) Bid Dispute is a written complaint provided to the Manager of Procurement Services by a Bidder giving specific reasons of the complaint against the methods employed or decisions made by the City in the process leading to the Award of a Contract.
- f) Bid Solicitation is an invitation for Bids from the City for the purpose of entering into a Contract.
- g) Black Out Period is the period of time that starts when the Bid Solicitation is issued, and ends at the Award.
- h) City is the Corporation of the City of Burlington.
- i) City Manager is the one who is appointed as the administrative manager of the City or designate.
- j) Client Department is the City Department who has budgeted for the Good and/or Service.
- k) Competitive is a Procurement process where more than one Bidder is Procurement Process provided the opportunity to submit a Bid.
- l) Compliant means the response to the Bid Solicitation conforms to the mandatory requirements contained in the Bid Solicitation.
- m) Conflict of Interest
 - a) is defined as a situation or circumstances, real or perceived that could give a Bidder or potential Bidder an unfair advantage during a Competitive Procurement Process or compromise the ability of a Contractor to perform its obligations under their Contract.
 - b) is a situation when City employee or a member of their family has a direct financial interest in a Contract or proposed Contract with the City, and where the City employee could directly influence the decision made in the course of performing their job duties, and also where they could indirectly influence the decision through exerting personal influence over the decision-makers.

- n) Consulting Services are Services of an advisory nature required to support policy development, decision-making, administration, or management of a business or public entity; generally provided by individuals or organizations who possess specific knowledge, technical skills or unique abilities not usually available in-house or from within the City.
- o) Contract is a binding agreement between two or more legal entities, Awarded under this Procurement Bylaw.
- p) Contractor is any legal entity to which a Contract is Awarded.
- q) Council is the City Council of the Corporation of the City of Burlington.
- r) Department is any Department in the City of Burlington.
- s) Delegation of Authority is when a person in authority appoints some or all of their authority to other City employees.
- t) Delegated Authority Report is a report that is signed by the Manager of Procurement Services, Director of Finance, and the respective General Manager or City Manager that approves the Competitive Procurement Process for contracts that have a value of \$100,000 up to but not including \$5,000,000.
- u) Designate is a person who has been appointed to act in some or all situations in the same capacity as another.
- v) Director is any Director / Executive Director or designate of a Department within the City of Burlington or designate.
- w) Family Member is a spouse (including common law spouse), parent, grandparent, sibling, child, grandchild, niece, nephew, uncle, aunt or cousin of the City employee.
- x) General Manager is a General Manager of the City or designate.
- y) Goods mean personal property, including raw materials, products, supplies, equipment and other physical objects of every kind and description but does not include real property.
- z) Lease an agreement by which one party (lessee) leases from a second party (lessor) equipment or space for a specified period of time at a predetermined cost.
- aa) Litigation (Pending) is whereby a potential claimant has demonstrated or manifested an intention to assert a possible claim.

- bb) Manager of Design & Construction is the Manager of Design and Construction for the City or designate.
- cc) Manager of Procurement Services is the Manager of Procurement Services of the City or designate.
- dd) Non compliant means the response to the Bid Solicitation does not conform to the mandatory requirements contained in the Bid Solicitation.
- ee) Other Entities means Burlington Public Library Board, Burlington Museums Board, Burlington Theatre Board Inc., Tourism Burlington, The Burlington Art Centre and the Burlington Economic Development Corporation.
- ff) Payment Card is a credit card used by authorized employees to pay for Goods and / or Services that are less than \$25,000.
- gg) Procurement means; a) purchasing, renting, leasing, or otherwise acquiring any Goods and/ or Services or construction; includes all functions that pertain to the acquisition, including the description of requirements, preparation, solicitation, selection and Award of the Contract and all phases of Contract administration.
b) the combined functions of purchasing, inventory control, transportation, receiving, inspection, storekeeping, salvage and disposal operations.
- hh) Procurement Services means the section of the Finance Department that is responsible for the Procurement of Goods and/ or Services for the City.
- ii) Professional Services services rendered by members of a recognized profession or possessing a special skill. Such Services are generally acquired to obtain information, advice, training, or direct assistance.
- jj) Proponent a legal entity that submits a Proposal.
- kk) Proposal is a submission received in response to a Request for Proposal, acceptance of which may be subject to further negotiations.
- ll) Purchase Order means; a) a written confirmation of the Procurement of Goods and / or Services at a specific cost and required for any Procurement of

Goods and / or Services greater than \$25,000;

- b) may be used as the City's Contract with the Vendor to formalize all the terms and conditions of a proposed transaction, such as a description of the requested items, delivery schedule, terms of payment, and transportation.

- mm) Quotation is a submission received in response to a Request for Quotations.
- nn) Request for Expression of Interest (REI) is an information gathering exercise, where the City makes a request to the market for the purpose of compiling a list of potential Bidders who may be interested in providing Goods and/or Services to the City. This process does not create any Contractual obligations.
- oo) Request for Information (RFI) is an information gathering exercise, where the City makes a request to the market for the purpose of compiling market information on Goods and/or Services. This process does not create any Contractual obligations.
- pp) Request for Pre-Qualification (RPQ) is a request for the submission of information from potential Bidders, that may include, but not limited to, experience, education, financial strength, and capabilities. Typically a RPQ is a pre-cursor to a Tender and multiple Bidders are pre-qualified.
- qq) Request for Proposal (RFP) is a request for submissions where price is not the primary evaluation factor and other evaluation criteria such as experience of personnel / Bidder, methodology, and approach, among other things are considered. The successful Proponent of the RFP is the highest scoring Proposal.
- rr) Request for Quotation (RFQ) is a request for submissions where the specifications are defined and the successful Bidder of the RFQ is the lowest Compliant Bidder and the value of the Procurement is under \$100,000.
- ss) Request for Tender (RFT) is a request for submissions where the specifications are defined and the successful Bidder of the competition is the lowest Compliant Bidder and the value of the Procurement is \$100,000 and over.
- tt) Scope of Work is the work that has been described in a Bid Solicitation that must be done to deliver the Goods

and/or Services with the specified features and functions within the time, quality and price specified.

- uu) Services is any professional or general service work performed which does not result in the delivery of Goods, e.g. repairs, training, surveys, consulting, etc.
- vv) Sole Sourcing is any Procurement made where the Procurement of Goods and/or Services is unique to a particular Vendor and cannot be obtained from another source.
- ww) Single Sourcing is any Procurement made where the Procurement of Goods and/or Services is from a particular Vendor rather than through Bid Solicitation from other Vendors who can also provide the same Goods and/or Services.
- xx) Tender is a submission received in response to a Request for Tender.
- yy) Value for Money / Best Value A value-for-money approach aims to deliver Goods and / or Services with a lower total life-cycle cost while maintaining a high standard.
- zz) Vendor is a supplier / seller of Goods and/or Services.
- aaa) 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).

3.0 Application of By-law

- 3.1 This Procurement By-law shall apply to the Procurement of Goods and/or Services for the purposes of all City Departments.
- 3.2 No expenditure, Procurement or commitment shall be incurred or made, and no account shall be paid by the City for Goods and/or Services except as provided in this Procurement Bylaw or otherwise approved by Council.

4.0 Ethics

The Ontario Public Buyers Association's Code of Ethics is based on the following tenets and all City employees who are authorized to procure Goods and / or Services on behalf of the City are to adhere to the following:

- a) **Open and Honest Dealings with Everyone who is Involved in the Procurement Process.**
This includes all businesses with which the City of Burlington enters into contracts with or from which it procures Goods and/or Services, as well as all City employees and of the public who utilize the services of the Procurement Services section of the Finance department.

b) Fair and Impartial Award Recommendations for All Contracts and Tenders.

This means that the City does not extend preferential treatment to any Vendor, including local companies. It is not good business practice since it limits fair and open competition for all Vendors and is therefore a detriment to obtaining the best possible value for each tax dollar.

c) An Irreproachable Standard of Personal Integrity on the Part of All Those Designated as Procurement Agents for the City.

Absolutely no gifts or favours are accepted by the Procurement agents for the City of Burlington in return for business or the consideration of business. Also, the Procurement agents of the City of Burlington shall not publicly endorse one company in order to give that company an advantage over others.

d) Cooperation with Other Public Agencies in Order to Obtain the Best Possible Value for Every Tax Dollar.

The City of Burlington is a member of the Halton Co-operative Purchasing Group, which is made up of several public agencies. This group pools its expertise and resources in order to practise good value analysis and to procure Goods and/or Services in volume and save tax dollars.

e) Continuous Development of Procurement Skills and Knowledge.

All members of Procurement Services section of the Finance Department take advantage of the many opportunities provided by the various Purchasing associations to further their knowledge of good public Procurement principles and to maintain excellent skills.

5.0 Accountability and Responsibility

5.1 Manager of Procurement Services

The Manager of Procurement Services shall be responsible for:

- a) issuance and administration of the Procurement process for the Procurement of Goods and/or Services over \$25,000 including vertical assets and all other items not identified under the Manager of Design and Construction responsibilities listed below, such as, but not limited to Service Contracts, IT Procurement, winter control, fleet requirements, consulting requirements, food services, fuel, natural gas, electricity;
- b) administration and interpretation of this Procurement By-law;
- c) ensuring compliance to this By-law and reporting non-compliance, in writing to the Client Department Director, Director of Finance, respective General Manager and / or City Manager;
- d) providing Procurement advice including preparing Bid documentation;
- e) checking and ensuring procedural compliance of Bids;

- f) reviewing the specifications, Scope of Work or terms of references as prepared by the Client Department to ensure a level playing field among Bidders;
- g) committing and coordinating co-operative Procurement with other levels of government, municipalities, boards, agencies, commissions, or public sector entities where such Procurement are determined to be in the best interests of the City;
- h) development and standardization of all Procurement procedures;
- i) disposal of surplus and obsolete Goods that had an initial Procurement value over \$10,000;
- j) review of reports prepared by other City employees for Award of the Contracts for compliance with this Procurement By-law;
- k) administration of a Contractor performance program;
- l) committing and coordinating the consolidation of similar Goods and / or Services for the City in order to achieve volume discounts and administrative efficiencies;
- m) creation, amendment and deletion of policies, practices and procedures that support the objectives and application of this By-law.

5.2 Manager of Design & Construction

The Manager of Design and Construction shall be responsible for:

- a) issuance and administration of the Procurement process for quotes and tenders over \$25,000 that pertains to construction of park development, parking lots, street lights, culverts, hard landscaping, creeks, roads, water mains, sewers, grade separations, storm water management, vertical assets and bridges;
- b) providing Procurement advise including preparing Bid documentation;
- c) administering the Bid and ensuring compliance with the terms and conditions of the Bid Solicitation;
- d) reviewing the specifications, Scope of Work or terms of references as prepared by the Client Department for compliance with this Procurement By-law.

5.3 Directors

Each Director shall be responsible for:

- a) the Procurement of Goods and/or Services for their department;
- b) the issuance and administration of the Request for Quotes Procurement process less than \$25,000;
- c) the preparation and submission of reports for Award of the Contracts in accordance with this Procurement By-law;
- d) preparation of market ready specifications, Scope of Work or terms of reference;
- e) Contract review and inspection to ensure that the scope of work, Goods and/or Services is being delivered in accordance with the Contract;

- f) informing Procurement Services of any discrepancies with the receipt of Goods and / or Services, if required;
- g) authorizing the payment of bills;
- h) review of Contractor performance.

6.0 Delegation of Authority

The Client Department Director has the ability to delegate their Procurement responsibility and the following process will be followed:

- a) The Client Department Director shall prepare a Delegation of Authority for the Procurement of Goods and / or Services;
- b) The list shall provide evidence that the City employees listed have been delegated authority for the Procurement of Goods and/ or Services;
- c) The list at minimum shall include the City employee's name, title and approval limit;
- d) The list will include any acting roles;
- e) The list shall be updated immediately upon any change in City employees or position;
- f) A copy of the list shall be sent to the Manager of Procurement Services each time there is a revision;
- g) The Manager of Procurement Services will ensure the delegation of approval authority lists are available to all Procurement Services employees;
- h) Procurement Services employees will review the list prior to completing tasks that require approval.

Once a responsibility has been delegated by the Director, City employees that have been provided delegated authority shall **not** have the authority to delegate this authority to any other person.

7.0 Report Writing Responsibility

Report writing responsibilities recommending Council approval for award will typically belong to the Client Department receiving the respective Goods and/or Services. Generally, the Client Department is best equipped and qualified for this. In the case of multi-Department participation in a Bid Solicitation process, the Manager of Procurement Services may choose to co-ordinate and write the report.

8.0 Annual Report to Council

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

- o Contracts;
- o Contract Extensions;
- o Single Sourced Contracts;
- o Sole Sourced Contracts;

- Emergency Procurement;
- Procurement By-law non-compliance;
- Non-Compliant Bid results;
- Performance of Procurement Services section.

9.0 Disposal of Surplus and Obsolete Goods

- a) Procurement Services will be involved in advance to assist and coordinate the disposal of all surplus and obsolete Goods that had an initial Procurement value over \$10,000. Client Departments are authorized to dispose of Goods under the value of \$10, 000 in an environmentally friendly fashion.
- b) 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.

10.0 Revenue Generating Contracts

The Manager of Procurement Services will participate in the development of revenue generating Contracts. The same approval limits and requirements in relation to the Procurement of Goods and / or Services shall apply to revenue generating Contracts, (see Process Approval, section 24).

11.0 Advertising of Bid Opportunities

Unless Bidders have been pre-qualified, all Bids for Goods and/or Services over \$100,000 in value will be advertised on the City's website and other sources such as the local paper, industry newspaper and other websites as required.

12.0 Response Time for Bids

A minimum response time for Bidders to submit a Bid will be 15 calendar days for Bid Solicitations that are budgeted for \$100,000 and over.

For more complex Bid Solicitations, more than 15 calendar days should be considered.

13.0 Monetary References

- 13.1 All references to dollar amounts in this by-law are in Canadian dollars.
- 13.2 For Bid evaluation purposes, all Bids submitted in currencies other than Canadian dollars shall be converted to Canadian dollars, at the exchange rate established by the Finance Department.
- 13.3 All references to dollar amounts in this by-law do not include applicable taxes.

14.0 Procurement Methods

14.1 Request for Quotation (\$5,000 up to but not including \$25,000) / Bid

Each Director is authorized to administer a Request for Quotation within the above mentioned dollar range and the criteria below must be followed:

- The Request for Quotation does not exceed \$25,000, including freight;
- When possible, a minimum of three Bidders are requested to submit a Bid,
- A written request and a written response is required.
- The Bid is Awarded to the lowest Compliant Bidder;
- The Good and/ or Service is for a one-time need not an on-going need;
- Records retention for the Bids and any Contract that may result is kept on file in accordance with the Corporate Records Retention By-law by the Director for audit purposes and to substantiate the decision and process to procure.

14.1.1 A Director can waive the requirement to conduct a Request for Quotation and Single Source or Sole Source under \$25,000, including freight. Supporting rationale should be kept in accordance with the Corporate Records Retention By-law by the Director for audit purposes and to substantiate the decision and process to procure.

14.1.2 The Manager of Procurement Services will work with the Director to identify corporate opportunities to consolidate the Procurement of Goods and / or Services to obtain such benefits such as volume discounting and administrative efficiencies.

14.2 Request for Quotation (\$25,000 up to but not including \$100,000) / Bid

The Manager of Procurement Services and the Manager of Design & Construction are authorized to administer the Procurement process within this range and the criteria below must be followed:

- The Request for Quotation does not exceed \$100,000, including freight;
- The Bid is typically advertised;
- The Bid is Awarded to the lowest Compliant Bidder;
- The copies of the Bids and any Contract(s) that may result shall be kept on file in accordance with the Corporate Records Retention By-law and for audit purposes and to substantiate the decision and process to procure by the Manager administering the Request for Quotation.

14.3 Request for Tender (\$100,000 and over) / Bid

The Manager of Procurement Services and the Manager of Design & Construction are authorized to administer the Procurement process within this range and the criteria below must be followed:

- The Request for Tender is \$100,000 and over, including freight;
- The Bid is advertised;
- There is a public Bid opening;
- The Bid is Awarded to the lowest Compliant Bidder;
- The copies of the Bids and any Contract(s) that may result shall be kept on file in accordance with the Corporate Records Retention By-law and for audit purposes and to substantiate the decision and process to procure by the Manager administering the Request for Tender.

14.4 Request for Proposal

The Manager of Procurement Services is authorized to administer the Procurement process and the criteria below must be followed:

- The Bid is typically advertised;
- The Bid is awarded to the highest scoring proponent;
- The copies of the Bids and any Contract(s) that may result shall be kept on file in accordance with the Corporate Records Retention By-law and for audit purposes and to substantiate the decision and process to procure by the Manager of Procurement Services.

14.5 Request for Pre-Qualification

The Manager of Procurement Services is authorized to conduct a Request for Pre-Qualification process.

This is typically used for larger projects or projects where there is significant risks.

14.6 Request for Expression of Interest / Request for Information

The Manager of Procurement Services is authorized to conduct a Request for Expression of Interest or a Request for Information.

A Request for Expression of Interest or Request for Information may be conducted as a preliminary step before a Request for Tender, Request for Quote, Request for Proposal or a Pre-Qualification process.

14.7 Negotiation

Notwithstanding any other sections within this Procurement By-law, the Manager of Procurement Services will have the option of entering into negotiations with a Vendor when it is in the best interest of the City.

14.8 Non-competitive Procurement

The City should employ a Competitive Procurement Process for Goods and / or Services, but in special circumstances, a Competitive Bid Process may not be possible or preferred. This is known as “non-competitive Procurement”.

Criteria for non competitive processes are outlined in schedule D.

Non-competitive Procurement includes:

- Sole Sourcing
- Single Sourcing
- Unsolicited Bid (s)

Non competitive approval authority:

Dollar value	Authority
< \$5,000	City Employees that have been provided Procurement authority by their Director
\$5,000 up to but not including \$25,000	Client Department Director only
\$25,000 up to and not including \$100, 000	Approval jointly from the Manager of Procurement Services and the Client Department Director
≥ \$100, 000	Council

14.8.1 Unsolicited Bids

Unsolicited Bids present needs defined by the Vendor, rather than the City. As such, the fairness, objectivity and fulfillment of the City need may not be achieved and put the City at greater risk.

Unsolicited Bids will be considered jointly by the Manager of Procurement Services and the Director of the Department and only when it is judged to be in the City’s best interests. If the Bid exceeds \$100,000 written rationale must be kept on file and a written approval obtained from the City Manager.

15.0 In-House Bids

Unless specifically approved by City Council, the City does not permit in-house bids for the Procurement of Goods and / or Services. If approved by Council, the following clause will be incorporated into the request document:

“Vendors 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.”

16.0 Canadian Content

The City will endeavour to achieve Best Value in its Procurement of Goods and/or Services. With this in mind, the City will not be bound to procure Goods and/or Services based upon Canadian content.

17.0 Local Preference

The City will endeavour to achieve Best Value in its Procurement of Goods and/or Services.

As a consequence the City will not practice local preference in Awarding Contracts.

18.0 Green Procurement

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, use of operation, and replacement or disposal of Goods) the following environmental factors will be considered in the addition to the specific requirements of the Good and/or Service:

- Durable and reusable, as opposed to single use or disposable items;
- Non-toxic or least toxic option, preferably compostable or biodegradable;
- Reduce greenhouse gas and air pollutant emissions;
- ENERGY STAR® rated if available or most energy-efficient option;
- Recyclable, but if not recyclable, may be disposed of safely, or, Vendor will take back Good at its end of life;
- Made from recycled materials;
- If made from raw materials, they have been obtained and manufactured in an environmentally sound, sustainable manner;
- Results in minimal or no environmental damage during normal use or maintenance;
- Minimum packaging (consistent with the care of the Good), preferably made of reusable, recycled or recyclable materials;
- The lifecycle cost of the Good through the acquisition, operation, and end of Good life, including environmental impacts (a cradle to grave approach);
- Reusable shipping packaging.

19.0 Accessibility when acquiring Goods and/or Services

In accordance with the Human Rights Code, Ontarians with Disabilities Act, 2001 and the Accessibility for Ontarians with Disabilities Act, 2005 and its regulations, and specifically the Integrated Accessibility Standards, Ontario

Regulation 191/11, Part 1, sections 5 and 6, accessibility requirements will be incorporated into the specifications with respect to the Procurement of Goods and/or Services. Where possible, when a RFP competition is conducted, accessibility will be one of the evaluation criteria that will be considered in the decision making process.

20.0 Information - Publicly Disclosed

20.1 Request for Proposals:

If a Council report is required, the names of all the Proponents and the **total** Bid amount of the *recommended* Bidder will be disclosed publicly.

If no Council report is required, the names of all the Proponents and the **total** bid amount of the *awarded* Bidder will be disclosed publicly.

20.2 Request for Quotations:

The names of all the Bidders and the **total** Bid amount for all Bidders will be disclosed publicly for Request for Quotes that are \$25,000 and over including freight.

20.3 Request for Tenders:

Only Tenders will be opened publicly and the names of all the Bidders and the total Bid amount for all Bidders will be disclosed publicly.

21.0 Information - Confidential

The Manager of Procurement Services will not disclose commercial information, such as unit pricing and detailed information provided on potential solutions. Nonetheless, it should be noted that all information collected by the City is subject to the Municipal Freedom of Information and Protection of Privacy Act.

22.0 Tie Bids

In the event of a tie Bid, equal in all respects, the Award decision will be decided by a coin toss. This will be in the presence of the respective Bidders and the coin will be tossed by the Manager of Procurement Services.

23.0 Bid Irregularities

Bid irregularities will be dealt with according to Schedule B. This schedule will be included in all Procurement documents where the Procurement is greater than \$25,000.

24.0 Process Approval

24.1 Procurement under \$5,000 (Low value Procurement)

Each Director is authorized to Award a Procurement of Goods and/or Services without a competitive process.

24.2 Procurement from \$5,000 up to but not including \$25,000

Each Director or designate is authorized to approve the Competitive Procurement Process and Award.

24.3 Procurement from \$25,000 up to but not including \$100,000

The Manager of Procurement Services or the Manager of Design & Construction is authorized to approve the Competitive Procurement Process.

24.4 Procurement from \$100,000 up to but not including \$5,000,000

A delegated authority report is required and must meet the following criteria:

- A competitive Bid process has been utilized
- Recommended Bidder is the lowest Compliant Bidder (s) meeting specifications in the case of a Tender or the highest scoring Proponent(s) in the case of a Proposal
- ***Budget approval exists for the Procurement**
- Manager of Procurement Services, Director of Finance, and the respective General Manager or City Manager has provided written approval

24.4.1 * For capital contracts, the total project cost is within the approved capital budget amount. For multi-year operating contracts, the funding for future years can reasonably be expected to be made available if the funding is included in the current year's approved budget.

24.4.2 If one or more of the criteria in 24.4 is not met, a report to Council will need to be written to seek process approval.

24.4.3 In order to keep Council informed of transactions under Delegated Authority (i.e. those Contracts not requiring Council approval), a monthly Tender/ Contract Award summary sheet will be provided by the City Manager's Office with the weekly Council information packages for Delegated Authority Awards valued at more than \$500,000.

24.5 Procurement of \$5,000,000 and over

Council approval is required.

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

25.0 Signing Authority

- a) Written Contracts will be signed according to schedule A.

- b) Leases will be signed by the Manager of Procurement Services except for leases for land whereby City employees have the delegated authority to approve leases as outlined in the Delegated Authority By-law or whereby Council has approved leases by resolution.

26.0 Contract Extensions

- a) The standard practice when a Contract is or will be expiring is to conduct a new competitive process.
- b) Once all Contract Extensions within the contract have been exhausted, Contracts may be extended at the discretion of the Manager of Procurement Services if the situation warrants it.
- c) If a Contract extension is being sought from Council, the Manager of Procurement Services will be provided an opportunity to review and provide comment on the report.

27.0 Payment Following Receipt of Goods and/or Services

27.1 Typically, the City shall not pay for Goods and/or Services prior to receiving them. Similarly, Procurement deposits and advance payments will not generally be employed in the City's business practices. Subscriptions and the Procurement of Goods and / or Services less than \$5,000 which are procured via the internet represent two types of accepted exceptions.

27.2 Exceptions may be authorized by the Manager of Procurement Services.

28.0 Payment Card

The City's Payment Card should be used as a payment tool for low dollar Procurement and City employees are still required to adhere to the Procurement Bylaw.

29.0 Executive Override

The City Manager may override the Procurement By-law if circumstances justify an exception.

30.0 Emergency Procurement

- a) When an event occurs that is determined by the City Manager or General Manager, or Director to be a threat to 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 the issuance of competitive Bids to acquire such Goods and/or Services the City Manager or General Manager or Director may make such Procurement without the involvement

of the Manager of Procurement Services or a competitive Bid process and is authorized to do so in the most expedient and economical means possible.

b) Approval Authorities for Emergencies

In emergency situations, this approval authority overrides other provisions of the Procurement By-law

Total Procurement Amount	Delegated Procurement Authority Level
< \$100,000	Director
\$100,000 up to but not including \$250,000	General Manager
≥\$250,000	City Manager

c) In the case of a declared emergency the City’s Emergency Response Plan will supersede this By-law.

d) After the declared emergency is over, the following reporting requirement will be followed.

Total Procurement Amount	Type of Report	Who’s responsible
< \$100,000	SMT report	Director
\$100,000 up to but not including \$250,000	Council report	General Manager
≥ \$250,000	Council report	City Manager

31.0 Other Entities

If the Manager of Procurement Services administers a Procurement process for any Other Entities, then the Other Entities will be governed by this Procurement By-law for the particular Goods and/or Services that is procured.

32.0 Record Retention

The City of Burlington shall keep records of Procurement, 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.

Some examples of records that should be retained include:

- the approvals obtained
- copies of Procurement documents used to qualify and select vendors
- copies of award letters, notices and posted announcements
- copies of agreements
- changes to the terms and conditions of the agreement, especially changes in the agreement price

- Contractor performance, such as performance monitoring and management and knowledge transfer
- receipt of deliverables
- any other documentation related to Procurement

Whoever is responsible for the administration of the Procurement process shall be responsible for the record retention of that particular Procurement.

33.0 City Employee Benefits

Generally, City Employees will not be able to benefit by procuring Goods from the City at the City's net cost. Exceptions may be initiated with the City Manager's approval.

34.0 Unauthorized Procurement and Consequences

Unauthorized Procurement by City employees and flagrant disregard for the Procurement By-law or Procurement policies and procedures is not acceptable. With an aim to inspire Procurement By-law adherence and minimize the possibility of City embarrassment and potential liability, the responsibility for payment may become that of the individual who procured it.

35.0 Prohibitions and Compliance

35.1 All persons involved in the Procurement of Goods and/or Services provided for in this By-law, shall act in a manner consistent with the requirements and objectives of this by-law.

35.2 No City employee shall divide the Procurement of Goods and/or Services with the intent of avoiding the requirements of this By-law.

35.3 No Goods and/or Services shall be procured under this by-law by any person unless:

- a) The Goods and/or Services are legitimately for the purposes of the City, or for any Other Entities on whose behalf the Procurement is being undertaken; and
- b) To the best of that person's knowledge and belief, the funds for the Procurement of the Goods and/or Services are available with 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 Other Entities on whose behalf the Procurement of Goods and/or Services is also being made.

35.4 No City employee shall directly or indirectly influence the Bidding process to obtain Goods and/or Services on behalf of the City from their Family Member.

- 35.5** No City employee will directly or indirectly influence the sale of City assets to any Family Member.
- 35.6** Member of Council, appointed officers and City employees shall not knowingly cause or permit anything to be done or communicated to anyone which is likely to cause any potential Vendor or Contractor to have an unfair advantage in obtaining a Contract for the supply of Goods and/or Services to the City, or Other Entities involved in the Procurement of Goods and/or Services either jointly or in co-operation with the City.
- 35.7** Member of Council shall separate themselves from the Procurement process and have no involvement whatsoever in specific Procurements. Members of Council should not see any documents or receive any information related to a particular Procurement while the Procurement process is ongoing. Members of Council who receive inquiries from Bidders related to any specific Procurement shall immediately direct those inquires to the Manager of Procurement Services.
- 35.8** The only exception to 35.7 will be at the discretion of the City Manager and the City Manager or delegate will be actively involved in the Procurement process to ensure fairness and integrity of the process.
- 35.9** No City employee shall knowingly cause or permit anything to be done which will jeopardize the legal validity or fairness of any Procurement of Goods and/or Services under this By-law or which is likely to subject the City to any claim, demand, action or proceeding as a result of such act or omission.
- 35.10** The City shall not acquire Goods and / or Services from a member of Council.

36.0 Conflict of Interest

- a) All Bidders shall disclose to the City prior to submitting a Bid and/or accepting a Contract, any actual or potential conflict of interest. If the Manager of Procurement Services determines a conflict of interest exists, the City may at its discretion not consider the Bid submitted or not Award the contract or consider other Bids or terminate the contract.
- b) If a potential conflict exists because of City employee's personal or family interest in a business dealing with the City, or similar circumstance, City employees must advise their supervisor of the situation, in writing, and the supervisor will then make appropriate alternative arrangements to handle the matter. The Director should notify the Manager of Procurement Services of any serious matters. The Director may in his or her discretion decide that the potential for conflict is not substantial enough to prevent a City employee's continued involvement in the matter.

37.0 Blackout Period

During the Blackout Period communication between Bidders and City employees and between Bidders and City Council is restricted. Bidders shall only contact the central point of contact identified in the Bid document.

38.0 No Lobbying

- a) No Bidder or potential Bidder shall contact any member of Council or any City employee to attempt to influence the Award of a Bid. Any activity designed to influence the decision making process of a Bid Solicitation, 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 City employees for such purposes as meetings of introduction, social events, meals or meetings related to a Bid Solicitation may result in disqualification of the Bidder for the Bid Solicitation to which the influential activity is deemed to be directed.
- b) Notwithstanding the above, this prohibition does not apply to meetings specifically scheduled by the City for presentations or negotiations, or to questions which employees of Procurement Services may pose from time to time for clarification of the City's requirements.
- c) The Manager of Procurement Services' sole discretion will determine what constitutes influential activity acting reasonably, and not subject to appeal.
- d) At the discretion of the Manager of Procurement Services, any Bidder who violates any provisions of this Procurement By-law may be prohibited from further Bid Solicitation opportunities for up to 3 years as determined by the Manager of Procurement Services.

39.0 Bid Dispute Resolution

- a) To maintain the integrity of the Procurement process, Bidders who feel that they have been treated unfairly shall contact the City's contact listed on the Bid document to request a debriefing in which the issues of concern may be discussed.
- b) Should the debriefing meeting fail to satisfy the Bidder, an appeal of the award decision may be requested in writing to the Manager of Procurement Services within ten (10) days of the debriefing meeting.
- c) The appeal shall be reviewed by a Dispute Committee. The Dispute Committee shall be comprised of the original city team members that participated in the Procurement process and the Manager of Procurement Services.
- d) The matter will be considered closed after the Dispute Committee's decision.

40.0 Litigation and Bidders

- a) The City shall not consider any Bids submitted by a Bidder that is in Active or Pending Litigation against the City.
- b) Potential Bidders who are involved with the City in Litigation matters can represent a compromised effort and a higher likelihood of future problems and liability. For these reasons such Vendors will be disqualified.

41.0 Suspension of Bidders

At the discretion of the Manager of Procurement Services, any Bidder may be suspended from consideration of their Bids for up to 3 years for default of delivery, unsatisfactory performance, safety concerns, lobbying and contravention of a Bid Solicitation document.

42.0 Severability

If any Section or Sections of this Procurement By-law or parts thereof are found by an adjudicator of competent jurisdiction to be invalid or beyond the power of Council to enact, such Section or Sections or parts thereof shall be deemed to be severable and all other Sections or parts of the Procurement By-law shall be deemed to be separate and independent there from and shall continue in full force and effect unless and until similarly found invalid or beyond the power of Council to enact.

43.0 Repeal

- 43.1** By-law number 69-2005 with amendment By-law 58-2009, and amendment By-law 93-2011, shall be repealed effective on the date that this Procurement By-law comes into force
- 43.2** Notwithstanding Subsection 43.1, Bylaw number 69-2005 with amendment By-law 58-2009, and By-law 93-2011 shall continue to apply to all Bid Solicitations commenced before its repeal.
- 43.3** Notwithstanding Subsection 43.1 and Subsection 43.2, Tenders from \$100,000 up to but not including \$5,000,000 which were commenced before the repeal of By-law number 69-2005 with amendment By-law 58-2009 and By-law 93-2011 shall be conducted in accordance with Subsection 24.4 of this Procurement By-law upon the effective date that this Procurement By-law comes into force. For greater certainty, all other aspects of By-law number 69-2005 with amendment By-law 58-2009 and By-law 93-2011 shall continue to apply to such Tenders until the completion of the Competitive Procurement Process for that Tender.

44.0 Effective Procurement By-law Date

This Procurement By-law comes into force on April 9th, 2014.

ENACTED AND PASSED THIS 7th day of April, 2014

_____MAYOR
Rick Goldring

_____CITY CLERK
Angela Morgan

PROCUREMENT BY-LAW

THE CORPORATION OF THE CITY OF BURLINGTON

INDEX

1.0	Goals & Objectives	1
2.0	Definitions	1
3.0	Application of By-law	6
4.0	Ethics	6
5.0	Accountability and Responsibility	7
5.1	Manager of Procurement Services	7
5.2	Manager of Design & Construction	8
5.3	Directors	8
6.0	Delegation of Authority	9
7.0	Report Writing Responsibility	9
8.0	Annual Report to Council	9
9.0	Disposal of Surplus and Obsolete Goods	10
10.0	Revenue Generating Contracts	10
11.0	Advertising of Bid Opportunities	10
12.0	Response Time for Bids	10
13.0	Monetary References	10
14.0	Procurement Methods	11
14.1	Request for Quotation (\$5,000 up to but not including \$25,000) / Bid	11
14.2	Request for Quotation (\$25,000 up to but not including \$100,000) / Bid	11
14.3	Request for Tender (\$100,000 and over) / Bid	12
14.4	Request for Proposal	12
14.5	Request for Pre-Qualification	12
14.6	Request for Expression of Interest / Request for Information	12
14.7	Negotiation	12
14.8	Non-competitive Procurement	13
14.8.1	Unsolicited Bids	13
15.0	In-House Bids	13
16.0	Canadian Content	14
17.0	Local Preference	14
18.0	Green Procurement	14

19.0	Accessibility when acquiring Goods and/or Services	14
20.0	Information - Publicly Disclosed	15
20.1	Request for Proposals:	15
20.2	Request for Quotations:	15
20.3	Request for Tenders:	15
21.0	Information - Confidential	15
22.0	Tie Bids	15
23.0	Bid Irregularities	15
24.0	Process Approval	15
25.0	Signing Authority	16
26.0	Contract Extensions	17
27.0	Payment Following Receipt of Goods and/or Services	17
28.0	Payment Card	17
29.0	Executive Override	17
30.0	Emergency Procurement	17
31.0	Other Entities	18
32.0	Record Retention	18
33.0	City Employee Benefits	19
34.0	Unauthorized Procurement and Consequences	19
35.0	Prohibitions and Compliance	19
36.0	Conflict of Interest	20
37.0	Blackout Period	21
38.0	No Lobbying	21
39.0	Bid Dispute Resolution	21
40.0	Litigation and Bidders	22
41.0	Suspension of Bidders	22
42.0	Severability	22
43.0	Repeal	22
44.0	Effective Procurement By-law Date	23

Schedule A

Procurement Method / Process Approval / Signing Authority & Method of Payment Table

Dollar Value	Procurement Method	Process Approval	Authority to Sign Contracts	Method of Payment
< \$5,000	No method required		Not required.	Payment card
\$5,000 up to but not including \$25,000	3 written Quotes	Director or as delegated by Director	Designated departmental employees as assigned by the client department Director	Payment card or invoice
\$25,000 up to but not including \$100,000	Quote	Manager of Procurement Services or Manager of Design and Construction	Manager of Procurement Services	Purchase Order
\$25,000 up to but not including \$100,000	RFP	Manager of Procurement Services	Manager of Procurement Services	Purchase Order
\$100,000 up to but not including \$5,000,000	Tender / RFP	DA report jointly signed by all of the following: Manager of Procurement Services, Director of Finance, General Manager or City Manager	Manager of Procurement Services if the Bid was administered by Procurement Services Mayor and Clerk if the Bid was administered by the Manager of Design & Construction	Purchase Order
Over \$5,000,000	Tender / RFP	Council Report	Jointly by the Mayor and the City Clerk	Purchase Order
Executive Over-ride / direct negotiation / contract extensions ONLY				
Up to but not including \$1M	No Method required	City Manager or Manager of Procurement Services	Manager of Procurement Services	Purchase Order

Schedule A

Dollar Value	Procurement Method	Process Approval	Authority to Sign Contracts	Method of Payment
Emergency ONLY				
Up to but not including \$100,000	No Method required	Director	Director	Purchase Order
Up to but not including \$250,000	No Method required	GM	GM	Purchase Order
Unlimited	No Method required	City Manager	City Manager	Purchase Order
Single or Sole source scenarios ONLY				
Up to but not including \$100,000	No Method required	Jointly by the Manager of Procurement Services & the Client Department Director	Manager of Procurement Services	Purchase Order

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

Schedule B – Bid Irregularities

The Manager of Procurement Services and the Manager of Design and Construction have the authority to apply this table to the procurement processes that they are administering.

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

<u>Irregularity</u>	<u>Consequence</u>
<ul style="list-style-type: none"> • Late Bids 	<ul style="list-style-type: none"> • Rejection
<ul style="list-style-type: none"> • Bid security not provided or not in the form or amount that is specified 	<ul style="list-style-type: none"> • Rejection
<ul style="list-style-type: none"> • Bid security not signed by the Bidder or the bonding company 	<ul style="list-style-type: none"> • Rejection
<ul style="list-style-type: none"> • Bids not completed in ink 	<ul style="list-style-type: none"> • Rejection
<ul style="list-style-type: none"> • Signature missing from signature page 	<ul style="list-style-type: none"> • Rejection
<ul style="list-style-type: none"> • Qualified Bids (Bids qualified or restricted by an attached or added statement) 	<ul style="list-style-type: none"> • Rejection, unless allowed for in the Bid Solicitation
<ul style="list-style-type: none"> • Bids received on documents other than those provided in the request 	<ul style="list-style-type: none"> • Rejection, unless allowed for in the Bid
<ul style="list-style-type: none"> • Part Bid (all items not Bid) 	<ul style="list-style-type: none"> • Rejection, unless allowed for in the Bid
<ul style="list-style-type: none"> • Failure to attend a mandatory meeting 	<ul style="list-style-type: none"> • Rejection
<ul style="list-style-type: none"> • Bids containing errors in extensions, additions, or computations 	<ul style="list-style-type: none"> • The City has the right to correct mathematical errors
<ul style="list-style-type: none"> • The City of Burlington will not accept Bids containing changes, erasures, overwriting, whiteouts, cross outs, or strikeouts, which are not initialed by the Bidder 	<ul style="list-style-type: none"> • The Bidder has 48 hours after the close of the Bid to initial these pages, but will not be allowed to make any changes.
<ul style="list-style-type: none"> • Bids which suggest that the Bidder has made a major mistake in calculations or the Bid 	<ul style="list-style-type: none"> • Decision will be made on a case by case basis and in consultation with the Manager of Procurement Services and the Legal Department
<ul style="list-style-type: none"> • Addenda not acknowledged 	<ul style="list-style-type: none"> • The Bidder has 48 hours to acknowledge Addenda, but is not allowed to make any changes to their Bids

Schedule C

EXCEPTIONS FROM REQUIREMENTS FOR A PROCUREMENT PROCESS

- 1) A procurement process is not required for the following items and Schedule A dollar values will determine the signing authority if a contract is to be signed.
 - a) Petty Cash Items
 - b) Training and Education
 - i. Conferences
 - ii. Courses
 - iii. Conventions
 - iv. Magazines
 - v. Memberships
 - vi. Periodicals
 - vii. Seminars
 - viii. City Employee development and training including all related, equipment, resources and supplies
 - ix. City Employee workshops including all related equipment, resources and supplies
 - x. Subscriptions
 - c) Refundable Employee Expenses – reimbursed through payroll
 - i. Meal allowances
 - ii. Miscellaneous – non-travel
 - iii. Entertainment expenses
 - d) Corporate General Expenses
 - i. Medicals
 - ii. On-going / renewal of existing I.T. related hardware & software licences & maintenance contracts, specifically the following: Oracle, SqlServer, ESRI (GIS), Business Objects, SAP, AMANDA, Avantis, Banner, Active Networks (Class/POS), ImageSite, Trapeze, RIVA, FDM (CAD/RMS), Introtel Communications Inc., Dell Server Maintenance, Microsoft Premiere Support, EMC Maintenance.
 - iii. Charges to or from other government agencies with approval from Finance, including:
 - 1) Regional Permits
 - 2) Cross Boundary Agreements
 - 3) Fire Dispatch Agreements
 - 4) Radio Trunking Licence

Schedule C

- e) Professional and Special Services
 - i. Legal Services, including realty services such as appraisal, land survey, 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 City Solicitor or designate.
 - ii. The acquisition, disposition and leasing of land as outlined in the Delegated Authority By-law
 - iii. Legal services related to HR matters determined by the Executive Director of Human Resources or designate
 - iv. Performance / artist's fee / special events
 - v. Providers of artistic and recreational services, such as instructors, dance / yoga / gymnastic teachers, historical experts, artistic designers

- f) Utilities (to include servicing and requested plant modifications / relocations related to construction)
 - i. Postage & Courier Services
 - ii. Water and Sewage
 - iii. Hydro
 - iv. Gas
 - v. Telephone (basic services), Cellular and Wireless Devices
 - vi. Cable Television Charges
 - vii. Other regulated authorities operating within and across municipal right of ways (e.g. CN Rail, GO Transit, Bell Canada)

- g) Fund raising, naming rights and sponsorship of any kind

Schedule D

CRITERIA FOR NON-COMPETITIVE PROCUREMENT (SINGLE/SOLE SOURCE)

1. Pursuant to Section 14.8, a Non-Competitive Procurement may be conducted using a Single or Sole Source Vendor only if one or more of the conditions listed in either (a) or (b) below apply. The conditions listed in (a) apply to sole source and the conditions listed in (b) apply to single source. The Manager of Procurement Services will have the right of final determination, and a process may be undertaken to obtain the Best Value under the circumstances for the City:
 - (a) The Goods and/or Services are only available from one Vendor by reason of:
 - (i) a statutory or market based monopoly; or
 - (ii) scarcity of supply in the market; or
 - (iii) the existence of exclusive rights such as patent, copyright or licence; or
 - (iv) the complete item, service, or system is unique to one vendor and no alternative or substitute exists within Canada.
 - (b) The Goods and/or Services are available from more than one source, but there are good and sufficient reasons for selecting one supplier in particular, as follows:
 - (i) An attempt to acquire the required Goods and/or Services by soliciting competitive Bids has been made in good faith, but has failed to identify a willing, capable and compliant supplier; or
 - (ii) The confidential nature of the requirement is such that it would not be in the public interest to solicit competitive Bids; or
 - (iii) The solicitation of competitive Bids would not be economical to the City; or
 - (iv) Construction, renovations, repairs, maintenance etc. in respect of a building leased by the City may only be done by the lessor of the building, in accordance with a lease agreement; or
 - (v) The Goods are purchased under circumstances which are exceptionally advantageous to the City, such as in the case of a bankruptcy or receivership; or
 - (vi) It is advantageous to the City to acquire the Goods and/or Services directly from another Public Body or public service body; or
 - (vii) Another organization is funding or substantially funding the Procurement and has determined the supplier, and the terms and

Schedule D

conditions of the Commitment into which the City will enter are acceptable to the City; or

- (viii) The Procurement is for a particular 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
- (ix) 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
- (x) A need exists to avoid violating warranties and guarantees where support or Service is required for a City Standard; or
- (xi) Instructors, coaches, trainers and other specialized services for recreation programs for which Bids cannot readily be called.