

**THE CORPORATION OF THE CITY OF MISSISSAUGA
PROCUREMENT BY-LAW XX**

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**THE CORPORATION OF THE CITY OF MISSISSAUGA
PURCHASING BY-LAW NUMBER _____**

WHEREAS the *Municipal Act 2001*, S.O. 2001, c. 25, Part VI, Section 271 stipulates that municipalities and local boards shall adopt policies with respect to their procurement of goods and services;

AND WHEREAS The Corporation of the City of Mississauga has hereby 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 Mississauga deems it desirable to repeal, in its entirety, By-law 374-06, as amended, and pass a new by-law with respect to the procurement of goods and services;

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

SECTION 1 - DEFINITIONS

In this By-law, the following terms shall have the meanings indicated:

- (1) **“Applicable Law”** means any applicable federal, provincial or municipal law, statutes, by-laws, regulations, rules, lawful orders or lawful directives applicable in Ontario.
- (2) **“Award”** means the selection of the Bidder and the Bidder’s Goods and/or Services, as accepted by the City.
- (3) **“Best Value”** means the optimal balance of evaluated factors and cost to achieve the City’s objectives for the Procurement.
- (4) **“Bid”** means a proposal, offer or submission from a Bidder received in response to a Bid Request.
- (5) **“Bid Request”** means a solicitation from the City to potential Bidders to submit a Bid.
- (6) **“Bidder”** means any legal entity submitting a Bid.
- (7) **“Buyer”** means a Staff in Procurement Services with the title of Procurement Supervisor or Procurement Specialist who is assigned responsibility for a particular Procurement and who has delegated authority to approve Awards and execute Contracts in accordance with Schedule “B” attached hereto.
- (8) **“By-law” or “Procurement By-law”** means the City’s By-law X, as amended, which pertains to the Procurement of Goods and Services.
- (9) **“Chief Procurement Officer”** means a Staff with the title of Director of Corporate Business Services whose responsibility it is to supervise and carry out the Procurement function on behalf of the City. In the absence of the Director of Corporate Business Services, the responsibility shall be carried out by the Commissioner of Corporate Services and Chief Financial Officer.
- (10) **“City”** means The Corporation of the City of Mississauga.
- (11) **“City Manager”** means a Staff with the title of City Manager and any person to whom the authority of the City Manager is subsequently delegated by Council and includes any person who has been authorized, in writing, to temporarily act as City Manager during absence or vacancy in that office.
- (12) **“City-wide Contracts”** means contracts for Goods and/or Services that are used by several or all City departments and for which Procurement Services conducts the procurement processes and manages the contracts.
- (13) **“City Standard”** means specific HVA Goods established competitively or as approved by Council that best fill a long-term Departmental or City-wide requirement.

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- (14) **“Contract”** means an agreement between the City and a Supplier for the supply of Goods and/or Services.
- (15) **“Contract Manager”** means a City employee to whom the Departmental Director has delegated Procurement process responsibility and/or Contract management responsibility.
- (16) **“Co-operative Procurement”** means a Procurement process conducted jointly by the City and one or more Public Bodies.
- (17) **“Council”** means the elected members of council of the City, comprised of the Mayor and ward councillors or their designates.
- (18) **“Department” or “Departmental”** means an organizational unit of the City headed by a Department Head.
- (19) **“Department Head”** means the City Manager and any of the Commissioners appointed by Council with administrative responsibility for a Department and includes any person who has been authorized, in writing, to temporarily act during absence or vacancy in that office.
- (20) **“Departmental Director”** means a Divisional director in a Department and includes any person who has been authorized, in writing, to temporarily act during absence or vacancy in that office.
- (21) **“Departmental Manager”** means a sectional manager in a Department who has been delegated with cost centre approval up to \$50,000 by the Department Head and includes any person who has been authorized, in writing, to temporarily act during absence or vacancy in that office.
- (22) **“Division” or “Divisional”** means a division within a Department.
- (23) **“Emergency”** means a situation where it has been determined that a threat to public health, or life, or property or the environment exists such that the immediate Procurement of Goods and/or Services is essential to prevent serious delays, or damage to persons or property, or to restore or maintain essential City services.
- (24) **“Fixed Term”** means the specific term applied to a Contract for regularly required Goods and/or Services, such as maintenance services, office supplies and other commonly used Goods.
- (25) **“Goods”** means tangible and intangible goods of all kinds, including but not limited to supplies, materials, equipment, structures and fixtures to be delivered, installed and/ or constructed, and licences and subscriptions.
- (26) **“High Value Acquisition” (HVA)** means a Procurement of Goods and/or Services having a value of more than \$100,000, and that is not a Medium Value Acquisition as approved by the Chief Procurement Officer or Council in accordance with Schedule “B”.
- (27) **“Legal Services Division”** means the City’s Legal Services Division.
- (28) **“Low Value Acquisition” (LVA)** means a Procurement of Goods and/or Services having a value of \$25,000 or less and does not include Information Technology applications, software and software subscriptions which require Information Technology approval.
- (29) **“Manager”** means a Staff in Procurement Services with the title of Manager and includes any person who has been authorized, in writing, to temporarily act during absence or vacancy in that office.
- (30) **“Medium Value Acquisition” (MVA)** means a Procurement of Goods and/or Services that has a value of \$100,000 or less and that is not a Low Value Acquisition or that has a value of more than \$100,000 but is otherwise approved by the Chief Procurement Officer or Council in accordance with Schedule “B”.
- (31) **“Original Contract”** means the Contract issued following an Award, including contingency if contingency was approved on the original PAR Form, and does not include any amendments or interim extensions, or renewals made to the Contract.

- (32) **“Procurement”** means the acquisition of Goods and/or Services by purchase, lease, rental or exchange transaction.
- (33) **“Procurement Authorization Request Form” (PAR Form)** means an internal electronic form that is available through Procurement Services. A PAR Form is required to obtain authority to Award, amend or terminate a Contract.
- (34) **“Procurement Request Form” (PRF)** means an internal electronic requisition form used by Departments to initiate a Procurement process.
- (35) **“Procurement Services”** means an organizational unit of the Corporate Services Department responsible for the Procurement of Goods and Services for the City.
- (36) **“Public Body”** means the municipalities, academic, schools and hospitals sector and any local board, commission, non-profit corporation or government entity and shall include any corporation of which the City is a shareholder or any one of them alone or in any combination of them acting together.
- (37) **“Request for Expression of Interest” (RFEI)** means a request used to determine market interest to provide Goods and/or Services that the City is contemplating purchasing and may result in the determination of a short list of Bidders to respond to a Bid Request.
- (38) **“Request for Information” (RFI)** means a request used as a general market research tool to determine the availability of Goods and/or Services that will meet business or operational requirements and Procurement strategies and/or to estimate costs for the purpose of developing a Bid Request.
- (39) **“Request for Prequalification” (RFPQ)** means a request with specific qualification criteria used to identify and pre-select qualified Bidders and/or Goods for participation in multiple step HVA Procurement processes.
- (40) **“Request for Proposal” (RFP)** means a request used to obtain a Bid or Bids for Goods and or Services in cases where the City states the performance requirements and/or business objectives but Bidders recommend the optimal approach for consideration and evaluation by the City. Awards resulting from RFP processes are made to the highest scoring Bidder(s).
- (41) **“Request for Quotation” (RFQ)** means a request used to obtain a Bid or Bids in cases where the City has determined the quantity and quality of the Goods and/or Services for Low or Medium Value Acquisitions or Single Source Procurements of any value.
- (42) **“Request for Tender” (RFT)** means a request used for High Value Acquisitions to obtain irrevocable Bids in cases where the City has specified the quantity and quality of the Goods and/or Services. Awards resulting from RFT processes are to the lowest priced, compliant Bidder(s).
- (43) **“Services”** means services of all kinds, including labour, construction, maintenance and professional and consulting services.
- (44) **“Single Source”** means Procurement permitted under the specific circumstances set out in Schedule “A”.
- (45) **“Staff”** means an employee of the City or their designate, to whom Council has delegated authority to approve Awards and/or execute Contracts and Contract amendments on behalf of the City, in accordance with this By-law.
- (46) **“Supplier”** means a legal entity with whom the City has entered into a Contract.
- (47) **“Unforeseen Site Condition”** means a pre-existing condition of the site (in which construction or maintenance work is to take place or is taking place in accordance with a Contract) that was not anticipated despite reasonable efforts in planning for the Procurement and that would require additional work to be conducted on the site.

SECTION 2 - MONETARY REFERENCES

- (1) All references to dollar amounts in this By-law are to be in Canadian or US dollars and do not include applicable taxes.

- (2) For the purpose of Bid evaluation, where Bids are submitted in more than one currency, all Bids will be converted to the same currency and at the rate of exchange to convert the currency posted by the Bank of Canada on the day of Bid closing.
- (3) For the purposes of obtaining authority to Award a Contract to be paid in US dollars, the Award amount will be stated in Canadian dollars estimated at the rate of exchange or average of rates of exchange posted by the Bank of Canada at the time of Award.

SECTION 3 - APPLICABILITY

- (1) The provisions of this By-law shall apply to the Procurement of all Goods and/or Services undertaken by or on behalf of Departments, excluding:
 - (a) Real estate;
 - (b) Consulting or professional services that are delivered in a manner which constitutes an employer/employee relationship, in accordance with City policies and procedures;
 - (c) Purchases related to reimbursable expenses incurred by employees or Council in accordance with City policies and procedures;
 - (d) Professional and other services limited to:
 - (i) legal services and other professional services required for the provision of legal services, including the defence of insurance claims, as required by the City Solicitor or designate;
 - (ii) arbitrators;
 - (iii) realty appraisers;
 - (iv) court reporters and interpreters;
 - (v) honoraria;
 - (vi) committee fees;
 - (vii) performers for public events hosted and/or produced and/or sponsored by the City at its public event venues;
 - (viii) Procurement, installation, inventory, maintenance, de-accessioning and disposal of City acquired art, including interactive, artistic and/or place making installations;
 - (ix) Procurement of objects and items for the Museums of Mississauga collections;
 - (x) lodging and associated meals and services from hotels or similar providers of accommodations for members of the public who are participating in City hosted and/or sponsored sporting and/or tourism events, such as the Ontario Summer Games, as required under the terms and conditions of the agreement between the City and the event owner; and
 - (xi) services provided by representatives from Indigenous communities to attend on City project sites for observation purposes during invasive site testing or construction.
 - (e) General City expenses limited to:
 - (i) postal charges;
 - (ii) any payments made by the City under statutory authority (for example licences);
 - (iii) insurance premiums, and related program expenses, for insurance procured through the City's insurance broker;
 - (iv) legal and insurance settlements.
- (2) No Contract shall be entered into, no debt shall be incurred and no money shall be paid

for Goods and/or Services except in accordance with the provisions of this By-law.

- (3) City Procurement shall be conducted in accordance with this By-law and City policies.
- (4) Delegation of responsibility under this By-law shall only occur as specifically provided.

SECTION 4 - ETHICS IN PROCUREMENT

- (1) The Chief Procurement Officer and Procurement Services Staff shall comply with the codes of purchasing ethics established by the National Institute of Governmental Purchasing, Inc. and Supply Chain Canada for all Procurement activities and processes.

SECTION 5 - ETHICAL CONDUCT OF BIDDERS AND SUPPLIERS

- (1) Bidders shall certify that they prepared and submitted their Bids independently without any connection, knowledge, comparison of figures or arrangements with any other company, firm or person making a Bid for the same work and that the Bid is in all respects fair and without collusion, bid-rigging, price-fixing, bribery, fraud or other similar behaviours or practices prohibited under the Criminal Code, the Competition Act or other Applicable Law.
- (2) Bidders shall not misrepresent their qualifications and experience, or the qualifications and experience of their sub-contractors, where applicable, in relation to any Bid Request.
- (3) Bidders shall not misrepresent the quality, performance or technical attributes of their products or the products of the sub-contractors, where applicable, in relation to any Bid Request.
- (4) Bidders must declare and fully disclose with their Bid any actual or potential conflicts of interest or unfair advantage related to the preparation of their Bid or where the Bidder foresees an actual or potential conflict of interest in the performance of the Contract, should they be awarded the Contract.
- (5) Suppliers awarded a Contract must declare and fully disclose to the Contract Manager any actual or potential conflicts of interest or unfair advantage related to the performance of the Contract or where the Supplier foresees an actual or potential conflict of interest in the performance of the Contract.
- (6) Bidder and Suppliers shall disclose to the Chief Procurement Officer any affiliations or other relationships with other suppliers that might be seen to compromise the principle of fair competition, including any proposed or existing subcontracting relationships.
- (7) No Bidder or Supplier shall offer anything of any value, tangible or intangible including but not limited to rebates, gifts, meals, money or special privileges of any kind to City employees, or otherwise attempt to influence or interfere with the duties of City employees in relation to a Procurement process or management of a Contract.
- (8) No Bidder or Supplier shall offer anything of any value, tangible or intangible including but not limited to rebates, gifts, meals, money or special privileges of any kind to Council, or otherwise attempt to influence or interfere with a Procurement process or Contract.
- (9) Bidders and Suppliers shall at all times comply with City policies for ethical conduct, including the Supplier Code of Conduct and the Respectful Workplace Policy.
- (10) Bidders and Suppliers shall at all times maintain confidentiality of any confidential City information disclosed during a Procurement process or in the performance of any Contract.
- (11) Any Bidder or Supplier found to be in breach of this Section 5 is subject to disqualification from bidding and/or termination of any Contracts they may have with the City, in accordance with Section 25.

SECTION 6 - CONFLICTS OF INTEREST

- (1) Council shall comply with the *Municipal Conflict of Interest Act*.
- (2) Employees of the City shall comply with City policies on conflict of interest.

- (3) At no time during a Procurement process, beginning with the planning stage, through to the Award and Contract stage, shall any City employees accept, directly or indirectly, from any Bidder or Supplier to which any Contract is, or might be awarded, anything of any value, tangible or intangible including but not limited to rebates, gifts, meals, money or special privileges.
- (4) No preference will be given to Suppliers who provide unsolicited goods or samples to the City or who demonstrate the operation of such goods or samples.
- (5) City employees must immediately declare to their manager any real or perceived conflicts of interest they may have arising from interacting with, managing, supervising or overseeing the work of family members and/or former employees of the City and/or anyone with whom they have a close personal relationship or have a personal interest with who are working for Suppliers in any capacity.
- (6) City employees must immediately declare to their manager any financial interests they may have with any Bidder or Supplier.
- (7) City employees in the role of Contract Manager must be and be seen to be impartial in their treatment of all Bidders and Suppliers, and in managing Contracts and approving payments.

SECTION 7 - PROCUREMENT PRINCIPLES

- (1) The City's Procurement principles are:
 - (a) Procurement processes shall be efficient, effective, objective, and accountable;
 - (b) Transparency and fairness shall be ensured, and competitive value maximized, through full and open procurement processes;
 - (c) The Procurement of Goods and Services shall be conducted in an unbiased way not influenced by personal preferences, prejudices or interpretations;
 - (d) Efforts shall be made to achieve the Best Value for the City;
 - (e) Procurement processes and approvals of Awards shall not be conducted by the same employee and, at all times the Departmental Director shall ensure segregation of Procurement process and Award functions;
 - (f) The City's Sustainable Procurement Policy shall be considered for Procurement of Goods and/or Services;
 - (g) The total cost of ownership, including maintenance, ongoing support, repair, staff training, operation, disposal, and other related costs shall be considered, not only the lowest purchase price; and
 - (h) The Procurement of Goods and Services shall be conducted in a manner which will promote, and incorporate whenever possible, the requirements of the *Accessibility for Ontarians with Disabilities Act, 2005*.

SECTION 8 - FUNDING

- (1) No Contract for Goods and/or Services shall be entered into unless:
 - (a) Funding for the Procurement has been authorized by Council in the requisitioning Department's operating or capital budget; or
 - (b) Special funding for the Procurement has been approved by Council; or
 - (c) The Contract is made conditional upon funding approval by Council.
- (2) Where Procurements are contingent upon funding from external parties, the funding arrangement shall be verified, in writing, prior to any Award. Finance shall be consulted in accordance with Schedule "D"

SECTION 9 - AUTHORITIES, RESPONSIBILITIES AND DUTIES

- (1) The authorities of the Chief Procurement Officer and general responsibilities and duties for staff having a role in Procurement processes are set out in Schedule “D” to this By-law.

SECTION 10 - PLANNING FOR PROCUREMENT

- (1) The requisitioning Department should, prior to initiating any Procurement process for Goods and/or Services:
 - (a) Ensure that the Goods and/or Services are legitimately required for City purposes;
 - (b) Consider short and long-term requirements with respect to quantities and supply duration, or total project cost considering the life span of the program or project;
 - (c) Consider the cost of ongoing maintenance, support, and licensing, etc.;
 - (d) Confirm availability of funding;
 - (e) Allow sufficient time to complete the Procurement process, in accordance with process timelines posted by Procurement Services; and
 - (f) Prepare detailed specifications, statements of work and quantity requirements with the underlying premise of encouraging full, open and fair competition;
 - (g) At the Department Head’s discretion and prior to Procurement, report to Council significant changes affecting existing service levels and/or service delivery approaches for High Value Acquisitions.
- (2) Where similar Goods and/or Services are required in connection with one project, all of those Goods and/or Services, including all contemplated phases of the project, shall be included in determining the estimated value of the Procurement.
- (3) Procurements shall not be divided to avoid the requirements of this By-law.
- (4) Legal advice from the Legal Services Division shall be sought for Procurements that are of the type as described in Schedule “C”.

SECTION 11 - PROCUREMENT FROM INTERNAL SOURCES

- (1) Goods and Services which are available internally from the City’s print shop, Tech Hub or stores, if applicable, shall not be obtained from other suppliers unless there is a compelling requirement for an alternate source Procurement.
- (2) Goods and Services which are available from existing City-Wide Contracts, such as office supplies, courier services, etc. shall not be obtained from other suppliers unless there is a compelling requirement for an alternate source Procurement.

SECTION 12 - COMPETITIVE PROCUREMENT ABOVE \$25,000

- (1) **Medium Value Acquisitions (more than \$25,000 and up to and including \$100,000):**
 - (a) A Procurement Request Form must be submitted by the Contract Manager;
 - (b) The Contract Manager is responsible for determining the requirements and specifications or statement of work on behalf of their Department;
 - (c) The Contract Manager may conduct Medium Value Acquisitions using the forms and instructions provided by the Buyer, and with assistance by the Buyer if required;
 - (d) A written Bid Request (Request for Quotation) should be issued unless otherwise approved by Procurement Services;
 - (e) A minimum of three compliant Bids should be obtained;

- (f) Following Bid evaluation and/or review and determination of the recommended Bidder(s), approval to Award the Contract(s) is required in accordance with Section 14.

(2) High Value Acquisitions (more than \$100,000):

- (a) A Procurement Request Form must be submitted by the Contract Manager;
- (b) All competitive High Value Acquisitions must be Publicly Advertised on the Internet. The methods for requesting Bids include, but are not limited to:
 - (i) Request for Expression of Interest;
 - (ii) Request for Information;
 - (iii) Request for Prequalification;
 - (iv) Request for Proposal;
 - (v) Request for Tender;
 - (vi) A multi-step process which may involve a combination of the above.
- (c) The Buyer is responsible for determining the Procurement method and conducting and managing the Procurement process for all High Value Acquisitions including the evaluation process and the maintenance of Bids, Bidder information and Bid results;
- (d) The Contract Manager is responsible for determining the requirements and preparing detailed specifications or statements of work and quantity requirements on behalf of their Department;
- (e) The Manager or Buyer is responsible for reviewing the specifications or statements of work and quantity requirements, developing an appropriate Bid Request and evaluation method and criteria ensuring that the principles outlined in Section 6 are followed;
- (f) Following Bid review and/or evaluation and determination of the recommended Bidder(s), approval to Award the Contract(s) is required in accordance with Section 14.

SECTION 13 - SINGLE SOURCE AND EMERGENCY PROCUREMENT

(1) Single Source Procurement

- (a) A Procurement Request Form must be completed by the Contract Manager;
- (b) A Single Source Procurement may be conducted only if it meets the specific criteria set out in Schedule “A”;
- (c) The Contract Manager must prepare a justification and shall obtain approval from the Manager or Senior Buyer that the proposed Procurement meets the Schedule “A” criteria;
- (d) The Chief Procurement Officer shall have the final right of determination as to whether the relevant Schedule “A” criteria are met;
- (e) Written proposals should be obtained from Single Source Suppliers, in response to a City issued request, where applicable. If it is not applicable to obtain a written proposal, justification is required;
- (f) This section applies to Medium Value Acquisitions and High Value Acquisitions only. Low Value Acquisitions are not required to meet the Schedule “A” criteria;
- (g) Approval to Award a Contract is required in accordance with Section 14.

(2) Emergency Procurement

- (a) In an Emergency, the Procurement of Goods and/or Services may be authorized

without a competitive process. The Contract Manager shall, if possible, contact the Manager or Buyer for direction on an appropriate Procurement process and possible sources of supply;

- (b) As promptly as possible, the Contract Manager shall prepare a Procurement Request Form to initiate the Award and Contract execution requirements;
- (c) Approval of an Emergency Procurement shall be in accordance with Schedule “B”. Contract execution, also in accordance with Schedule “B”, may occur after the Procurement has taken place.

SECTION 14 - AUTHORITY TO APPROVE AWARDS

- (1) Award approval shall be executed on a Procurement Authorization Form and in accordance with Schedule “B” and the following:
 - (a) Departmental approval of an Award shall provide confirmation that:
 - (i) Funds are available;
 - (ii) The available funds are for the purpose of the subject Procurement;
 - (iii) The Goods and/or Services are legitimately required for City purposes;
 - (iv) The specifications or scope of work and requirements meet the Department’s objectives for the Procurement;
 - (v) The recommended Award(s) is/are fully compliant with the specifications or statement of work and requirements as stated in the Bid Request;
 - (vi) The operational terms and conditions are satisfactory; and
 - (vii) The recommended Supplier(s) is/are satisfactory.
 - (b) Procurement Services approval of the Award shall provide confirmation that:
 - (i) Departmental and/or Council approval of the Award, as applicable under Schedule “B”, has been obtained;
 - (ii) There are no unresolved Bid protests;
 - (iii) The Procurement process was conducted in accordance with this By-law;
 - (iv) The recommended Award is for the Best Value Bid or the lowest priced compliant Bid from among the Bids received;
 - (v) The recommended Award is consistent with the Award methodology stated in the Bid Request;
 - (vi) An upset limit or total expenditure has been identified; and
 - (vii) In the case of Single Source Awards, verification that the Award is justified and appropriate in accordance with the criteria set out in Schedule “A”.
 - (c) Council approval of an Award is required in the event of one or more of the conditions listed below:
 - (i) Funds are not available;
 - (ii) The Bid is not the Best Value Bid from among the Bids received;
 - (iii) There are unresolved Bidder protests;
 - (iv) The Award is for a Special Relationship as described in Section 23;

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- (v) The Contract term, including any renewals exceeds ten (10) years, except where an interim extension has been approved in accordance with policy;
 - (vi) The recommended Award is not provided for in this By-law but there are compelling reasons for making the Award;
 - (vii) At the discretion of the Chief Procurement Officer.
- (d) Where Council approval for an Award is required, the Department Head shall report to Council. The Chief Procurement Officer may specify the form and shall require the inclusion of appropriate Procurement content, including the recommendation(s), in any report.
- (e) Despite paragraph (1)(c), Council approval of the Award is not required and approval shall be by the Chief Procurement Officer if the Award is:
- (i) In the specific instance stipulated in Section (1) (j) of Schedule “A”; or
 - (ii) For construction services provided by utilities, railway companies, or adjacent property owners required by the City as a result of City road or building construction.
- (2) Upon approval to Award as required in this Section 14, Contract execution may take place in accordance with Section 15.

SECTION 15 - AUTHORITY TO EXECUTE CONTRACTS

- (1) Except in the case of an Emergency, no Goods and/or Services shall be ordered, requested, delivered or performed until after a Contract is executed in accordance with this By-law.
- (2) Contracts shall be executed in accordance with Schedule “B” and the following:
- (a) The Award has been approved in accordance with Schedule “B”;
 - (b) Satisfactory terms and conditions have been agreed to by the City and the Supplier;
 - (c) A Fixed Term has been applied to the Contract, where applicable;
 - (d) The pricing information has been identified;
 - (e) The basis for approving work or deliveries and releasing payment has been established;
 - (f) The form and content of the Contract, if required in accordance with Schedule “C” shall be drafted in concert with the Legal Services Division;
 - (g) The Contract shall clearly specify any and all consideration to be paid to the Supplier and a total Contract value for the project or upset limit for the Fixed Term; and
 - (h) The total value of any Contract shall not in any event exceed the total amount approved in accordance with this By-law.

SECTION 16 - CANCELLING AND REISSUING BID REQUESTS

- (1) Bid Requests may be cancelled and re-issued in accordance with applicable City policy and procedures.

SECTION 17 - BIDDER ENQUIRIES, COMPLAINTS AND PROTESTS

- (1) All Bidder enquiries and/or complaints and/or protests, whether addressed to Council, a Department Head or any other City staff shall be referred to Procurement Services and handled in accordance with the applicable City policies and procedures.

SECTION 18 - POINT OF CONTACT

- (1) Point of Contact refers to the Staff responsible for managing communications to and from Bidders, City employees and Council during a Procurement process.

- (2) For Medium Value Acquisitions, unless otherwise specified by the Buyer, the Contract Manager is the Point of Contact and shall respond to all communications, including issuing addenda as required, from the date a Bid Request is issued until an Award is announced. Bidder complaints or protests shall be forwarded to the Buyer.
- (3) For High Value Acquisitions, the Manager or the Buyer is the official Point of Contact and shall respond to all communications, working in consultation with the Contract Manager, and issuing addenda as required.
- (4) Any Bidder found to be in breach of this section is subject to disqualification from participating in the current Bid Request.

SECTION 19 - RECEIPT AND OPENING OF BIDS

- (1) Bids received in response to High Value Acquisition processes are received and opened in accordance with applicable City policy and procedures.

SECTION 20 - AMENDMENTS, INTERIM EXTENSIONS, RENEWALS & TERMINATIONS

- (1) Contracts may be amended, extended on an interim basis, renewed or terminated in accordance with applicable City policy and procedures.

SECTION 21 - UNSOLICITED PROPOSALS

- (1) If it is determined that there is a legitimate need for the Goods and/or Services offered by way of an unsolicited proposal, then a Procurement process shall be conducted in accordance with this By-law.

SECTION 22 - CO-OPERATIVE PROCUREMENT

- (1) The City may participate with a Public Body in Co-operative Procurement initiatives where it is in the best interest of the City to do so and where:
 - (a) Combining the volume of Goods and/or Services to be purchased by the City and a Public Body would result in a better value or lower cost, and
 - (b) The Procurement process and Contract are in substantial compliance with the provisions of this By-law;
 - (c) Where the City is initiating the Procurement, the Procurement process will be conducted in accordance with this By-law;
 - (d) The Legal Services Division shall be consulted to determine the appropriate agreements required to conduct such initiatives with other Public Bodies.
- (2) The Public Body initiating the Procurement may determine the Award. If the Award is not in the best interests of the City, the Manager may decline acceptance of the Award subject to any agreements with the participating Public Body/Bodies.

SECTION 23 - SPECIAL RELATIONSHIPS

- (1) In cases where the Procurement of Goods and/or Services is involved, the City may enter into agreements with the private sector for special purposes, including but not limited to joint ventures, co-marketing, public benefit planning, public private partnerships, shared-use, sponsorships, corporate and individual donations and advertising, subject to Council approval.
- (2) The Manager may conduct a Procurement process in accordance with this By-law. All requirements of this By-law must be met, except that the Award must be approved by Council.

SECTION 24 - SUPPLIER DISPUTES AND SUPPLIER PERFORMANCE

- (1) The Contract Manager shall be responsible for responding to Supplier issues and resolving Supplier disputes.

- (2) The Manager or the Buyer shall in consultation with the Legal Services Division and appropriate Departmental staff resolve Supplier disputes not otherwise resolved by the Contract Manager.
- (3) The Contract Manager and Buyer shall maintain records of poor Supplier performance on all Contracts which shall be used to ensure Contract compliance, to supplement a prequalification process review or to justify rejecting a Bid or disqualifying a Bidder.

SECTION 25 - DISQUALIFICATION OF BIDDERS

- (1) The Chief Procurement Officer may disqualify a Bidder from eligibility to submit Bids where there is documented evidence of poor performance or non-performance under a Contract, or there is documented evidence that the Bidder either violated a provision of this By-law or a Bid Request or submitted an improper Bid or has brought a frivolous and vexatious lawsuit against the City as determined by the Chief Procurement Officer. The disqualification period will be for up to five years from written notification to the Bidder.
- (2) The Chief Procurement Officer may disqualify a Bidder from the Bid Request process for which the Bidder is found to be in violation of Section 18 (Point of Contact).
- (3) Disqualified Bidders will be notified of their ineligibility and shall have the right to protest in accordance with applicable City policies and procedures.

SECTION 26 - DISPOSITION OF SURPLUS GOODS

- (1) Surplus Goods are to be disposed of in accordance with applicable City policy and procedures.

SECTION 27 - INFORMATION REPORTS

- (1) The Chief Procurement Officer shall provide information reports, on a monthly basis, to the Mayor and members of Council for all High Value Acquisition Contracts awarded or amended in the previous month. The information reports shall include the name of the Supplier(s) and the Contract amount or the amended Contract amount.
- (2) The Manager shall post information reports, on a monthly basis, on the City's external website for all High Value Acquisition Contracts awarded in the previous month, including the name of the Supplier(s) and the Contract amount.

SECTION 28 - RECORDS

- (1) The Manager shall be responsible for the care, custody and control of records for all Medium Value Acquisition and High Value Acquisition Procurement processes and Contracts.

SECTION 29 - REVIEW COMMITTEES

- (1) The Chief Procurement Officer, in consultation with Department Heads and the City Manager, shall undertake a comprehensive review of this By-law at least once every five years.

SECTION 30 - SEVERING

- (1) Should any provisions, clauses, sections, phrases or parts of this By-law, or the application thereof, be held by a court or tribunal of competent jurisdiction to be invalid, the remainder of this By-law, or the application of such provisions, clauses, sections, phrases or parts of this By-law shall not be affected.

SECTION 31 - INTERPRETATION

- (1) A reference to the singular number shall be deemed to refer to the plural, and vice versa, as the context may require.

SECTION 32 - GENERAL

- (1) This By-law comes into force on March 1, 2022.

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- (2) By-law 374-2006, as amended is repealed as of the date this By-law comes into force.
- (3) This By-law shall apply to active Procurement processes and Contracts issued pursuant to By-law 374-2006.
- (4) The short title of this By-law is the “Procurement By-Law”.

ENACTED AND PASSED this X day of, 2021.

SCHEDULE “A”

CRITERIA FOR SINGLE SOURCE AND EMERGENCY PROCUREMENT

- (1) Pursuant to Section 13 Single Source and Emergency Procurement (Medium Value Acquisitions and High Value Acquisitions), Procurements may be conducted using a Single Source Supplier only if one or more of the conditions listed below apply, the Chief Procurement Officer or Manager having the right of final determination, and a process is undertaken to obtain the Best Value under the circumstances:
 - (a) The Goods and/or Services are only available from one Supplier due to a statutory or market based monopoly;
 - (b) There is a scarcity of supply in the market;
 - (c) The Goods and/or Services are unique to one particular supplier and no reasonable alternative or substitute exists due to exclusive rights such as patent, copyright or licence;
 - (d) No Bids were submitted;
 - (e) No acceptable Bids were submitted;
 - (f) The Goods and/or Services are required as a result of an Emergency which would not reasonably permit the solicitation of competitive Bids;
 - (g) There is a need to limit the distribution of confidential or security related information;
 - (h) For additional Goods and/or Services from the original Supplier that were not included in the original Procurement, if the change of Supplier for such additional Goods and/or Services cannot be made for:
 - (i) Economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial Procurement; and
 - (ii) Would cause significant inconvenience or substantial duplication of costs for the City.
 - (i) The Goods and/or Services are purchased under circumstances which are exceptionally advantageous to the City, that arise in the short term such as in the case of a bankruptcy, liquidation or receivership but not for routine purchases from regular suppliers;
 - (j) It is advantageous to the City to acquire the Goods and/or Services from a supplier pursuant to the competitive Procurement process conducted by another Public Body;
 - (k) It is advantageous to the City to acquire the Goods and/or Services directly from another Public Body;
 - (l) The Goods and/or Services are a particular brand that is intended solely for resale and/or use by the public and no other brand is desirable and the brand is not available from any other source;
 - (m) A need exists for compatibility with, or for the maintenance and support of, a City Standard;
 - (n) A need exists to avoid violating warranties and guarantees where support or Service is required for a City Standard;
 - (o) Instructors, coaches, trainers and other specialized services for recreation programs for which Bids cannot readily be called.

SCHEDULE “B”

AWARD APPROVAL AND CONTRACT EXECUTION AUTHORITY

(Unless otherwise specified in the By-law)

This Schedule “B” is to be read in conjunction with the By-law and Policy # 00-00-00 Contract Amendments.

Contract Value ¹	Procurement Method	Departmental Approval	Award Process Approval	Contract Execution
Low Value Up to \$25,000	P-Card or Concur	Supervisor with Cost Centre authority	As per Departmental approval	In accordance with City policies and procedures
Low Value IT Applications, software and subscriptions Up to \$25,000	P-Card or Concur	Supervisor with Cost Centre authority	Departmental IT Manager	Departmental IT Manager
Medium Value More than \$25,000 up to \$50,000	Competitive	Departmental Manager	Procurement Supervisor	Procurement Specialist
	Single Source	Departmental Director	Manager	Procurement Supervisor
Medium Value More than \$50,000 up to \$100,000 ²	Competitive	Departmental Director	Manager	Procurement Supervisor
	Single Source	Department Head	Manager	Procurement Supervisor
High Value More than \$100,000 ³	Competitive	Departmental Director up to \$500,000 Department Head if over \$500,000	Manager up to \$500,000 Chief Procurement Officer ⁴ if over \$500,000	Manager up to \$500,000 Chief Procurement Officer ⁴ if over \$500,000
	Single Source	Council upon recommendation of Department Head	Chief Procurement Officer ⁴	
	Emergencies ⁵	City Manager	Chief Procurement Officer ⁴	
	City –Wide Contracts	Commissioner, Corporate Services and Chief Financial Officer	Chief Procurement Officer ⁴	

¹ The approval required is for the total Contract value, including any amendment(s) to the Original Contract, not just the value of the amendment(s).

² If despite best efforts to estimate the cost of the Medium Value Acquisition, the Lowest compliant Bid or Best Value Bid exceeds \$100,000, an Award without Council approval may be made only if the Manager is satisfied that all relevant considerations were taken into account such that:

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- (a) The planning process and the cost estimation made prior to conducting a Medium Value Acquisition process were appropriate; and
 - (b) The Procurement process was conducted properly; and
 - (c) The total amount of the Best Value Bid is \$120,000 or less, exclusive of taxes.
- ³ Legal Services must review and approve Original Contracts with a value of \$500,000 or more and may prepare amending agreements, if required.
- ⁴ The role of the Chief Procurement Officer can only be delegated to the Commissioner, Corporate Services and Chief Financial Officer.
- ⁵ Award approval and Contract execution related to Emergencies may occur after Procurement has taken place.

SCHEDULE “C”**LEGAL REVIEW REQUIREMENTS**

The following types of Procurements shall be conducted with legal advice provided by the Legal Services Division and the Contracts (including any amendments, if required) executed for these types of Procurements shall be prepared in concert with the Legal Services Division:

- (1) Any Procurement with a value of \$500,000.00 or more;
- (2) Co-operative Procurements;
- (3) Procurements for a Contract with a term of more than 5 years;
- (4) Procurements in relation to money handling and financial services;
- (5) High Value Procurements involving technology;
- (6) Special relationship arrangements under section 23 of the By-law;
- (7) Procurements where personal information will be collected, accessed or maintained by the City, or by a Supplier on behalf of the City;
- (8) Any other Procurements at the discretion of the Manager or designate, or the Departmental Director or designate;
- (9) Procurements involving Goods/Services acquired by Public Bodies through their own competitive process;
- (10) For work requested and paid for by property owners adjacent to construction or maintenance periods performed by Suppliers under Contract with the City.

SCHEDULE “D”

AUTHORITIES, RESPONSIBILITIES AND DUTIES OF STAFF

The following chart describes the authorities and general responsibilities and duties for staff having a role in Procurement processes. Additional and/or more detailed responsibilities may also be included in related corporate policies and procedures.

Chief Procurement Officer
<p>The Chief Procurement Officer, or designate, shall have the authority and be responsible for:</p> <ol style="list-style-type: none">1. Developing, implementing and maintaining all Procurement policies, procedures and practices;2. Overseeing and coordinating Procurement processes for Medium Value Acquisitions and High Value Acquisitions;3. Providing training for responsible Departmental staff and Procurement Services staff;4. Ensuring that responsible Departmental staff, Bidders, and Suppliers are aware of the ethical standards relating to purchasing and that adherence to those standards is maintained;5. Establishing and overseeing corporate-wide Contracts;6. Determining, in accordance with all related policies and procedures, the appropriate method for the Procurement of Goods and/or Services, including the form of any Contract, in consultation with the Legal Services Division, the circumstances and method for the pre-selection of Goods, and the pre-qualification of Bidders;7. Providing professional Procurement advice and guidance, including strategic advice, fairness monitoring and advice on Supplier performance and contract implementation issues to Departments;8. Reporting to Council as required, pursuant to the provisions of this By-law;9. Monitoring Departmental compliance with this By-law;10. Conducting periodic monitoring of Low Value Acquisitions for compliance with relevant City policies and procedures, and advising Departmental Directors of any issues;11. Managing bidding issues and bid disputes and protests in accordance with applicable City policy and procedures;12. The care, custody and control of records for all Medium Value Acquisition and High Value Acquisition Procurement processes and Contracts;13. Authorizing Contract Awards in accordance with Section 14 and Schedule “B”;14. Authorizing Contract amendments, renewals and interim extensions in accordance with Schedule “B” and applicable City policy and procedures; and15. Authorizing Contract terminations in accordance with applicable City policy and procedures.16. Executing Contract Awards and Contract amendments in accordance with Section 15 and Schedule “B”.
City Manager
<p>The City Manager shall have:</p>

<div>1. The responsibilities of a Department Head, described below, for Procurements for the City Manager’s Department;</div> <div>2. Authority to approve Contract amendments due to Unforeseen Site Conditions; and</div> <div>3. Authority to approve Contract Awards for Emergency Procurements in accordance with Schedule “B”.</div>
<div>Department Heads</div>
<div>Each Department Head is responsible for:</div> <div>1. Authorizing Contract Awards in accordance with Section 14 and Schedule “B”;</div> <div>2. Authorizing Contract amendments, renewals and interim extensions in accordance with Schedule “B” and applicable City policy and procedures;</div> <div>3. Authorizing Contract Awards for Emergency Procurements in accordance with Schedule “B”;</div> <div>4. Authorizing Contract terminations in accordance with applicable City policy and procedures; and</div> <div>5. Preparing and presenting reports to Council as required in Section 14 or at the direction of the Chief Procurement Officer.</div>
<div>Departmental Directors</div>
<div>Each Departmental Director is responsible for:</div> <div>1. Directing and overseeing all Departmental Procurement processes and preparing all planning documentation stipulated by the Manager for all competitive Procurements over \$50,000 and all High Value and Single Source Procurements whether planned or on an Emergency basis;</div> <div>2. Allowing sufficient time to complete the Procurement process, in accordance with process timelines posted by Procurement Services;</div> <div>3. Delegating appropriate authority to employees within their Department;</div> <div>4. Delegating specific authority to Contract Managers for Procurement process responsibility and/or contract management responsibility;</div> <div>5. Except for an Emergency, ensuring that no Goods or Services are ordered, requested, delivered or performed until after a Contract is executed in accordance with this By-law;</div> <div>6. Ensuring that the Procurement process and approval functions for Low Value Acquisitions and Medium Value Acquisitions are carried out by separate Departmental staff;</div> <div>7. Overseeing the management of all Contracts led by or coordinated by their Department;</div> <div>8. Advising Procurement Services of any issues with respect to Procurement processes;</div> <div>9. Authorizing Contract Awards in accordance with Section 14 and Schedule “B”;</div> <div>10. Authorizing Contract amendments, renewals and interim extensions in accordance with Schedule “B” and applicable City policy and procedures; and</div> <div>11. Ensuring staff compliance with this By-law and all related policies.</div>

Departmental Managers
<p>Each Departmental Manager is responsible for:</p> <ol style="list-style-type: none">1. Preparing all planning documentation stipulated by the Manager for Procurements with a value of \$25,000 and up to \$50,000;2. Delegating appropriate authority to employees within their section;3. Except for an Emergency, ensuring that no Goods or Services are ordered, requested, delivered or performed until after a Contract is executed in accordance with this By-law;4. Ensuring that the Procurement process and approval functions are carried out by separate Departmental staff;5. Advising Procurement Services of any issues with respect to Procurement processes;6. Conducting Low Value Acquisitions, with the assistance of a Buyer, as needed;7. Authorizing Contract Awards in accordance with Section 14 and Schedule “B”;8. Authorizing Contract amendments, renewals and interim extensions in accordance with Schedule “B” and applicable City policy and procedures; and9. Ensuring staff compliance with this By-law and all related policies.
Manager, Procurement Services
<p>Each Manager in Procurement Services is responsible for:</p> <ol style="list-style-type: none">1. Carrying out responsibilities as delegated by the Chief Procurement Officer;2. Ensuring that Procurement processes are carried out in accordance with this By-law and related policies and procedures;3. Authorizing Contract Awards in accordance with Section 14 and Schedule “B”;4. Authorizing Contract amendments, renewals and interim extensions in accordance with Schedule “B” and applicable City policy and procedure; and5. Executing Contract Awards and Contract amendments in accordance with Section 15 and Schedule “B”.6. Posting Contract Award information reports on a quarterly basis to the City’s external website.
Buyers
<p>Each Buyer is responsible for:</p> <ol style="list-style-type: none">1. Conducting all Procurement processes in accordance with this By-law and applicable City policies and procedures;2. Providing professional Procurement advice to Contract Managers;3. Conducting a review of all High Value Acquisition Bids for compliance from a Procurement perspective;4. Managing communications with Bidders for High Value Acquisitions and for Medium

<p>Value Acquisitions as required;</p> <ol style="list-style-type: none">5. Providing advice and support to Contract Managers on Contract issues and Supplier performance management;6. Authorizing Contract Awards in accordance with Section 14 and Schedule “B”;7. Authorizing Contract amendments, renewals and interim extensions in accordance with Schedule “B” and applicable City policy and procedures; and8. Executing Contract Awards and Contract amendments in accordance with Section 15 and Schedule “B”.
<p>Contract Managers</p>
<p>Each Contract Manager is responsible for:</p> <ol style="list-style-type: none">1. Ensuring that they are acting in compliance with this By-law and applicable City policies and procedures;2. Developing Bid Request requirements including specifications, statements of work, quantities and evaluation criteria;3. Verifying that the Goods and/or Services meet the requirements of the Department;4. Conducting a detailed review of all Bids received and confirming that the recommended Award(s) is/are fully compliant with the specifications or statement of work and requirements as stated in the Bid Request;5. Except for an Emergency, ensuring that no Goods and/or Services are ordered, requested, delivered or performed until after a Contract is executed in accordance with this By-law;6. Managing Supplier performance and consulting with Buyer as needed;7. Ensuring certificate(s) of insurance, WSIB and other applicable documents are current at all times; and8. Approving payments in accordance with the Contract.
<p>Legal Services</p>
<p>Legal Services is responsible for:</p> <ol style="list-style-type: none">1. Developing contract terms and conditions;2. Providing legal advice for Procurements described in Schedule “C”;3. Providing legal advice to the Chief Procurement Officer in the event of bidding issues and Bid protests;4. Providing legal advice in the event of non-performance by a Supplier;5. Advising on Contract terminations; and6. Signing off on internal Contract termination recommendations.
<p>Finance</p>
<p>Finance is responsible for:</p> <ol style="list-style-type: none">1. Confirming the availability of funding, or plan for obtaining funding, for procurement planning purposes;

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2. Reviewing and signing off on PAR Forms verifying the budget amount and account number for the recommended Award(s); and
3. Reviewing and signing off on PAR Forms verifying the budget amount and account number for Contract amendments.