

# THE CORPORATION OF THE MUNICIPALITY OF THAMES CENTRE

## BY-LAW NO. 13-2026

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Being a By-law to Adopt a Policy for the Procurement of Goods, Services, and Construction.

### **(Procurement By-law)**

**WHEREAS** The Corporation of the Municipality of Thames Centre (the “Municipality”) is defined both as a lower-tier municipality and municipality by the *Municipal Act, 2001*, S.O. 2001, c. 25, (hereinafter, the “Act”) which acts through resolution and by-law of Council in accordance with subsection 5 of the *Act*, subject to delegated authority in accordance with subsection 23.1 of the *Act*;

**AND WHEREAS** Section 9 of the *Act* provides that municipalities have the capacity, rights, powers and privileges of natural persons, which includes the power to do things that natural persons can do, such as, *inter alia*, enter into agreements for goods, services and construction;

**AND WHEREAS** Subsection 270(1) of the *Act* provides that a municipality shall adopt a policy for its procurement of goods and services and Ministry of Municipal Affairs and Housing documentation confirms the appropriateness of confirming such policy in by-law;

**AND WHEREAS** Council is of the opinion that it is desirable to promote and maintain the integrity of the purchasing processes by providing clear direction and accountabilities to Council, suppliers and staff;

**AND WHEREAS** the objective of the procurement function is to ensure that the Municipality purchases goods, services and construction that provide the Municipality with best value and which are delivered in a timely and efficient manner;

**AND WHEREAS** this policy provides for fairness, accountability, openness and transparency in the Municipality’s Procurement Processes, encourages competition and efficiency, and ensures the Municipality purchases goods, services and construction contracts which provide for best value and are delivered in a timely and efficient manner;

**AND WHEREAS** this policy addresses the Canadian Free Trade Agreement between the Federal, Provincial and Territorial Governments and the Trade and Cooperation Agreement Between Ontario and Quebec, as required, and furthers the spirit of the Canada-European Union Comprehensive Economic and Trade Agreement, the Canada-UK Trade Continuity Agreement, 2021, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, and the United States-Mexico-Canada Agreement, as well as any other applicable trade agreements, as amended or replaced.

**NOW THEREFORE** the Council of The Corporation of the Municipality of Thames Centre **HEREBY ENACTS AS FOLLOWS:**

1. **THAT** the “Procurement of Goods and Services” policy attached hereto as Schedule “A” and forming part of this by-law be approved.
2. **THAT** By-law No. 46-2021, Policy No. CP-I-1.4 and any other policies related to procurement previously approved by the Council of the Corporation of the Municipality of Thames Centre are hereby repealed.
3. **THAT** this By-law shall come into force and effect on the 1st day of April, 2026.

**READ** a **FIRST** and **SECOND** time this 9<sup>th</sup> day of February, 2026.

**READ** a **THIRD** time and **FINALLY PASSED** this 9<sup>th</sup> day of February, 2026.

**For a signed Version of this By-law please contact the Clerks Office at**  
**clerk@thamescentre.on.ca**

**Schedule “A” to By-law 13-2026  
Council Policy CP-09**

**CORPORATION OF THE MUNICIPALITY OF THAMES CENTRE**

**PROCUREMENT OF GOODS AND SERVICES POLICY**

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## 1. OBJECTIVE AND SCOPE

- 1.1 The objective of this by-law is to adopt a policy with respect to the Procurement of goods, services and construction by the Municipality.
- 1.2 That the above recitals are true and hereby incorporated into this by-law by reference.
- 1.3 This policy shall address the following:
  - a) How procurement is administered by the Municipality;
  - b) The core Procurement Processes used;
  - c) The circumstances under which each form of the Procurement Processes shall be used;
  - d) The circumstances under which the Procurement Processes are not required;
  - e) How the integrity of Procurement Processes will be maintained; and
  - f) How the interests of the Municipality, the public and persons participating in Procurement Processes will be protected.
- 1.4 This policy applies to all departments and divisions of the Municipality, as defined by the *Act*, with necessary contextual adaptation to address Council and Board governance.

## 2. DEFINITIONS

- 2.1 **“Act”** means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or replaced;
- 2.2 **“Annual Budget”** means the annual budget approved by the Municipality of Thames Centre and any amendment thereto.
- 2.3 **“Approval Authority”** means the authority to approve, award, and execute Procurement Agreements, as well as any assignment or change requests related to such procurements, up to the Total Procurement Values for the respective body or person(s) set out in Appendix “C” – Procurement Approval Authorities.

- 2.4** “**Award Date**” means the date at which Suppliers are notified of the award of a Procurement through the Municipality’s Bidding System or written email.
- 2.5** “**Bid**” means a Supplier’s response to any form of a Procurement Process issued by the Municipality.
- 2.6** “**Bidding System**” means the system of which the Municipality executes Competitive Procurement Processes on the open market.
- 2.7** “**Buying Group**” means a group of two or more members that combine the purchasing requirements and activities of the members of the group into one joint Procurement venture. Buying groups include cooperative arrangements in which individual members administer the Procurement function for specific contracts for the group, and more formal corporate arrangements in which the buying group administers Procurement for a group of members. Buying groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations.
- 2.8** “**CAO**” means the Chief Administrative Officer of the Corporation of the Municipality of Thames Centre as appointed by by-law.
- 2.9** “**Competitive Procurement Process**” means an Invitational Competitive Process, Request for Tender or Request for Proposal.
- 2.10** “**Municipality**” means the Corporation of The Municipality of Thames Centre, being a municipal corporation and both a lower-tier municipality and municipality as defined by the Act.
- 2.11** “**Municipal Treasurer**” means the Treasurer of the Corporation of The Municipality of Thames Centre.
- 2.12** “**Council**” means the elected Municipal Council of the Corporation of The Municipality of Thames Centre.
- 2.13** “**Delegated Authority**” means the authority, delegated by Council to a Department Head, to execute Procurement Agreements pursuant to this policy.
- 2.14** “**Department Head**” means the highest-ranking individual in any department recognized by The Municipality.

**2.15** “**Emergency Purchase**” means an unbudgeted purchase made in a situation where immediate action is required to prevent the possible loss of life or property, a significant financial loss or a significant environment impact.

**2.16** “**Exemption**” means a Procurement to which this policy would ordinarily apply, but which has been exempted from this policy under section 8 of this policy.

**2.17** “**Final Performance Evaluation Report**” means the evaluation of a Supplier’s Performance that may be completed following the completion or termination of a contract with the Municipality as prescribed in section 2(a) of Appendix “A” – Supplier Performance Evaluation Procedure.

**2.18** “**Interim Performance Evaluation Report**” means the evaluation of a Supplier’s performance that may be completed during the course of a contract with the Municipality as prescribed in section 2(a) of Appendix “A” – Supplier Performance Evaluation Procedure.

**2.19** “**Invitational Competitive Process**” means a process where the Total Procurement Value is \$35,000.00-\$99,999.99 (excluding taxes).

**2.20** “**Low Value Purchase**” means a purchase with a Total Procurement Value not exceeding \$34,999.99 (excluding taxes).

**2.21** “**Municipal Decision Maker**” means Council or a Department Head with Delegated Authority.

**2.22** “**Performance Evaluation**” means an evaluation of a Supplier’s overall performance following the completion of a contract with the Municipality.

**2.23** “**Public Competitive Process**” means a process where the Total Procurement Value is equal to or greater than \$100,000.00 (excluding taxes).

**2.24** “**Piggybacking**” means a form of cooperative purchasing whereby a public entity takes advantage of a Procurement Process of another public entity. This allows a public entity that has not participated in a Request for Proposal to secure a commodity on the same terms and conditions as the public entity that conducted the RFP. A Department Head may authorize piggybacking when at their discretion, the prerequisites set out in section 6.2 are met;

**2.25** “**Procurement**” means the acquisition of goods, services or construction.

**2.26** “**Procurement Agreement**” means an agreement between The Municipality and a Supplier for the purchase of goods, services or construction.

**2.27** “**Procurement Documents**” means any document issued by the Municipality to potential Suppliers to a Procurement Process, including but not limited to: Procurement Notices, Request for Proposal Documents, Request for Quotation Documents, Request for Tender Documents, Pre-Qualification Documents, etc.

**2.28** “**Procurement Notice**” refers to the communication of an active Procurement Process by means of the Municipality’s Bidding System, email or other means.

**2.29** “**Procurement Process**” refers to any of the purchasing methods described in section 6, of this by-law “Procurement Processes”.

**2.30** “**Procurement Process Complaints**” refers the method of with a Supplier participating in a Procurement Process may file a complaint as prescribed in section 18.

**2.31** “**Procurement Review Panel**” a panel consisting of the Treasurer, Procurement Services and the applicable Department Head who tend to escalated Procurement related matters.

**2.32** “**Procurement Services**” refers to Middlesex County’s Procurement Services department responsible for overseeing the Procurement Process at the Municipality. Where Municipality chooses not to utilize the County’s Procurement Services, the Municipality’s Department Head making the Procurement shall be responsible for their duties within this by-law.

**2.33** “**Proposal**” means the written bid submitted in response to a Request for Proposals in which a Supplier proposes solutions to arrive at a specific end product.

**2.34** “**Purchasing Authority**” refers to the Municipality staff, usually the Department Head, with authority to initiate a Procurement or Procurement Process based on the terms of this by-law.

**2.35** “**Purchasing Designate**” means a person designated by a Department Head to exercise any or all responsibilities of that Department Head with respect to this by-law. The Department Head must notify the Municipality Treasurer in writing of the name(s) of the Purchasing Designate(s) within their Department.

**2.36** “**Quotation**” means the written bid submitted in response to a Request for Quotations in which a Supplier offers to supply goods, services or construction at stipulated price.

**2.37** “**Request for Proposals**” or “**RFP**” means a Procurement Process in which a solution to an issue has been identified, but the method to achieve that solution has not and there may be multiple different ways to achieve the required solution.

**2.38** “**Request for Tenders**” or “**RFT**” means a publicly advertised Procurement Process in which Suppliers are invited to submit Bids for specified goods, services or construction with a Total Procurement Value of \$100,000.00 or greater (excluding taxes). Price is the primary consideration in this process.

**2.39** “**Revenue Generating Contract**” means a legal agreement between the Municipality and a third party that yields a financial return for the Municipality.

**2.40** “**Supplier**” means any person or enterprise that provides or could provide goods, services or construction to the Municipality.

**2.41** “**Supplier Code of Conduct**” means the rules and responsibilities of Suppliers during and in relation to any Municipality Procurement detailed in section 12.

**2.42** “**Suspension Recommendation Report**” means the report to be completed by a Department Head following a Supplier Performance evaluation where it is to be recommended the suspend the Supplier from future Municipality Procurements as prescribed within section 4(a) of the Supplier Suspension Procedure (Appendix “B”).

**2.43** “**Tender**” means a bid submitted in response to a Request for Tenders in which a Supplier offers to supply goods, services or construction at a stipulated price.

**2.44** “**Total Procurement Value**” means the total estimated cost, exclusive of taxes, for the procurement of the particular goods, services or construction, as determined by the Department Head usually during the budget process.

**2.45** “**Trade Agreements**” means the *Canadian Free Trade Agreement* (CFTA), *Trade and Cooperation Agreement Between Ontario and Quebec* (OQTCA), Comprehensive Economic and Trade Agreement (CETA) and such further and other agreements that apply to municipal procurement.

**2.46** “**Vender Performance Incident Report**” means a report completed by a Department Head upon an incident for documentation purposes.

### **3. PURCHASING PRINCIPLES**

#### **3.1 Transparency**

- a) The Municipality will ensure that its by-laws, policies, regulations, and administrative procedures as they relate to this by-law and the Municipality’s purchasing functions are clear and made readily accessible to the public.
- b) The Municipality will ensure that its notice of awarded contracts are made readily accessible to the public, subject to legally recognized confidentiality principles recognized in law.

#### **3.2 Non-Discrimination**

- a) The Municipality shall accord to the goods, services or construction of non-local Suppliers treatment no less favourable than the best treatment it accords to the goods, services or construction of local Suppliers.

#### **3.3 Fairness**

- a) Unless specifically set out herein, the Municipality shall ensure that its needs for goods, services and construction are met through a Procurement Process that provides Suppliers with equal opportunity and equal treatment.
- b) The Municipality shall ensure that all Procurement Documents clearly identify the requirements of the Procurement, the criteria that will be used in the evaluation of Bids, and the methods of weighting the evaluation criteria.

#### **3.4 Best Value**

- a) The Municipality shall ensure that all goods, services and construction are purchased to achieve best value for the

Municipality and in a timely, efficient manner.

- b) To determine best value, the Municipality may take into account factors such as price, quality, quantity, delivery, servicing, the capacity of the Supplier to meet the requirements of the Procurement, past performance, including past Performance Evaluations, and any other criteria consistent with the purchasing principles set out in section 3.0 of this by-law, **“Purchasing Principles”**.

#### **4. AUTHORITY, ROLES, AND RESPONSIBILITIES**

##### **4.1 Council of the Corporation of The Municipality of Thames Centre**

- 4.1.1 Council has ultimate authority for the expenditures of each Department operating within the Municipality. Council delegates its purchasing authority to Department Heads through the authorization of the Annual Budget or by specific resolution.
- 4.1.2 Council may also by By-law or resolution provide a Department Head with the Delegated Authority to execute Procurement Agreements on behalf of Council in which case the Department Head is the Approval Authority for the purposes of this By-law. Where Council has not provided a Department Head with Delegated Authority, Council shall be the Municipal Decision Maker for the purposes of this By-law.

## 4.2 Department Head

- 4.2.1 The Department Head is responsible for the purchasing function of their department in accordance with this by-law, including:
  - a) The acquisition of goods, services, or construction; and
  - b) The disposal of surplus goods.
- 4.2.2 The Department Head may appoint a Purchasing Designate to exercise any or all responsibilities assigned to that Department Head in this by-law with the exception of executing Procurement Agreements. It is the Department Head's responsibility to notify and obtain approval from the Municipal Treasurer in writing regarding the Purchasing Designate.
- 4.2.3 The Department Head shall determine and implement the appropriate method of procurement as prescribed by section 6.0 of this by-law, **“Procurement Processes”**.
- 4.2.4 For a Procurement that equals or exceeds one hundred thousand dollars (\$100,000.00) the Department Head must engage Procurement Services to facilitate the acquisition. For a Procurement less than one hundred thousand dollars (\$100,000.00), the Department Head or designated staff shall engage Procurement Services where appropriate.
- 4.2.5 The Department Head shall use the Procurement Document templates approved and provided by Procurement Services.
- 4.2.6 The Department Head may request an Exemption from any or all of the purchasing methods outlined in this policy by submission of a request to Council.
- 4.2.7 The Department Head may refuse to enter into a Procurement Agreement with a Supplier who has breached laws if the Department Head believes it would not be in the best interest of the Municipality to enter into a Procurement Agreement with a Supplier.
- 4.2.8 The Department Head shall exercise judgement in situations of irregularity and is authorized to reject bids based on irregularities as per Appendix “D” Irregularities Contained in Bids.

- 4.2.9 Unless otherwise stated in this by-law or approved by Procurement Services or the CAO, the Department Head shall ensure that all Procurement Documents for Public Competitive Processes are issued and received by electronic means using the County's Bidding System.
- 4.2.10 The Department Head is authorized to execute Procurement Agreements on behalf of Council in a form approved by the Municipal Treasurer where the Department Head is satisfied that they are the Approval Authority as per Appendix "C" Procurement Approval Authorities in the circumstances of the Procurement.
- 4.2.11 The Department Head is authorized to make Emergency Purchases in any amount with CAO approval.
- 4.2.12 If a Department Head has made an Emergency Purchase, the Department Head will present an information report to Council at the earliest possible opportunity.
- 4.2.13 The Department Head shall report all procurement activities for values of one hundred thousand dollars (\$100,000.00) or greater excluding taxes in a report to Council providing details of such procurements for approval prior to awarding a contract.
- 4.2.14 The Department Head shall ensure that prior to the use of exceptions to the Public Competitive Process with a value of one hundred thousand dollars (\$100,000.00) or greater they shall obtain the approval of Municipal Council.
- 4.2.15 The Department Head shall submit invoices or accounts for goods, services or construction to the Municipal Treasurer for payment. Prior to submission, the Department Head shall sign each invoice or account thereby denoting clerical accuracy and budgetary or specific resolution approval. The signature of the Department Head is deemed to authorize payment.

### **4.3 Municipal Treasurer**

- 4.3.1 Reviews Procurements for approval where applicable as per Appendix "C" of this Procurement by-law.

- 4.3.2 Participates in the Procurement Review Panel when necessary.
- 4.3.3 Reviews requests from Department Heads to appoint Purchasing Designates for approval.
- 4.3.4 Reviews requests for excess funds where applicable as per section 6.4 – Over Budget Bids.
- 4.3.5 Upon receipt of an invoice or account for goods, services or construction signed by a Department Head the Municipal Treasurer shall issue payment.
- 4.3.6 The Municipal Treasurer shall not issue payment for any goods, services or construction that have not been authorized by Council in the Annual Budget or by specific resolution.
- 4.3.7 Between the last regular meeting of Council in any year and the adoption of estimates for the next year, the Municipal Treasurer is authorized to pay invoices or accounts, which are, in their opinion, ordinary business transactions required by a department to maintain services. This shall include the payment of accounts or previously approved capital items and projects.

#### **4.4 Procurement Services**

Middlesex County Procurement services shall operate a centralized Procurement Services unit on behalf of the Municipality as requested. Procurement Services will have the following responsibilities:

- 4.4.1 Assist in the Overall administration of the Procurement Policy.
- 4.4.2 Advise Department Heads on the appropriate Procurement Process.
- 4.4.3 Facilitate all procurements that involve a Public Competitive Process.
- 4.4.4 Ensure requirements of applicable trade agreements, procurement best practices, and legal precedent for Canadian public Procurement matters are adhered to wherever necessary.
- 4.4.5 Prepares necessary Procurement Documents upon request.

- 4.4.6 Advise on the quality of specifications and requirements to ensure department needs are met and to maximize fairness and competition.
- 4.4.7 Advise and assist in the preparation of Procurement Agreements.
- 4.4.8 Educate those with authority or delegated authority to make purchases on behalf of the Municipality on policies and procedures as it pertains to the acquisition of goods and services.
- 4.4.9 Act as the primary point of contact during the Procurement Process, for Supplier performance reviews, debriefs, and complaints.
- 4.4.10 Assist the Municipality in maintaining records of Competitive Procurement Processes identified in section 6.1.2 within the Municipality's electronic filing system.
- 4.4.11 Where the Municipality chooses not to utilize the County's Procurement Services, the Municipality's Department Head making the Procurement shall be responsible for their duties within this by-law.

#### **4.5    Procurement Review Panel**

- 4.5.1 For escalated or complex issues the Municipality shall form a Procurement Review Panel consisting of the Municipal Treasurer, Procurement Services, and the purchasing Department Head or their respective designates.
- 4.5.2 The Procurement Review Panel's responsibilities may include but are not limited to the reviewing and making decisions on the following:
  - a) Bid irregularities or other issues pertaining to a Bid (Appendix "D");
  - b) Escalated Procurement Process Complaints (section 18);
  - c) Matters involving Supplier performance and suspension (section 15).

## **5. PROHIBITIONS**

## **5.1 Splitting**

**THAT** no purchase or contract for goods, services or construction shall be divided to avoid the requirements of this by-law.

## **5.2 Intentional Delay**

**THAT** no Department Head intentionally delays a purchase in order to avoid use of a Procurement Process by means of an exception (section 6.9).

## **5.3 Surplus Goods**

**THAT** a Department Head, who declares goods surplus in accordance with section 11 shall not bid or personally obtain any goods that they have declared surplus.

## **5.4 Rewards**

**THAT** every elected official and employee of the Municipality or member of their family is expressly prohibited from accepting, directly or indirectly from any Supplier or potential Supplier any rebate, gift or money, except:

- a) gifts of a very small intrinsic value;
- b) gifts given for the use and benefit of the Municipality;
- c) moderate hospitality during the normal course of business that would not normally exceed what the Municipality would likely provide in return and would not be perceived by others as influencing the making of a business decision.

## **5.5 Conflict of Interest**

**THAT** any elected official or employee shall declare to the Department Head a potential conflict of interest and refrain from participating in a Procurement Process where a conflict would be found or deemed to exist.

## **6. PROCUREMENT PROCESSES**

### **6.1 Required Procurement Processes**

Unless otherwise indicated within this by-law, for all Procurements the Department Head shall follow the **Procurement Processes** within this section.

The standard Procurement Processes within this section and applicable Approval Authorities identified in Appendix "C" are considered a minimum requirement and utilizing a process of a greater Total Procurement Value amount than the purchase being contemplated is advisable where it makes good business sense.

Where applicable, the Department Head shall utilize the most up to date Procurement Document.

Purchases and award of any Procurement must be contained within the Annual Budget approved by Municipal Council with approval being received by the applicable Approval Authority as prescribed in Appendix "C".

#### **6.1.1 Low Value Purchase Process (Up to \$34,999.99)**

For Low Value Purchases with a Total Procurement Value amounting to \$34,999.99 or less excluding taxes Department Heads shall be authorized to purchase directly from a Supplier without the requirement for multiple quotes upon such terms and conditions as the Department Head deems appropriate.

#### **6.1.2 Competitive Procurement Processes (\$35,000.00 or Greater)**

Where the Total Procurement Value is equal to or greater than \$35,000.00 excluding taxes the Department Head shall engage in a Competitive Procurement Process as described below:

##### **a) General Competitive Procurement Process Requirements**

Regardless of the form of Competitive Procurement Process utilized the Procurement Notice issued shall contain the following:

- i. A clear description of the required goods, services or construction being contemplated;

- ii. The timeframe for delivery of goods, services or construction, or the duration of the contract;
- iii. The place where a Supplier may obtain additional information required;
- iv. The place where inquiries and Bids are to be submitted;
- v. The deadline for questions and submitting bids;
- vi. A statement that the Procurement is subject to this by-law and the Trade Agreements defined herein.

b) **Advice and Consultation**

Department Heads shall receive advice as necessary from Procurement Services on the Procurement Process and shall follow the current Procurement Documents provided by Procurement Services for all Procurement Processes.

c) **Invitational Competitive Process (\$35,000.00 - \$99,999.99)**

For the Procurement of a readily identifiable goods, services or construction the Department Head shall issue Invitational Competitive Process where the Total Procurement Value is equal to or greater than \$35,000.00 up to and including \$99,999.99 excluding taxes.

As part of the Invitational Competitive Process the Department Head must receive a minimum of three Bids from potential Suppliers. The receipt of less than three different Suppliers may be approved by the Municipal Treasurer where reasonable.

d) **Request for Tender “RFT” (\$100,000.00 or Greater)**

For a Procurement of a readily identifiable goods, services or construction where the Total Procurement Value is equal to or greater than \$100,000.00 excluding taxes the Department Head shall engage Procurement Services to issue a Request Tender or “RFT”.

A Procurement Notice for the RFT and the receipt of Bid submissions must be orchestrated utilizing the County Bidding System. The Department Head may choose to advertise the RFT on any medium they deem appropriate.

With the greater Total Procurement Value, a form(s) of Bid and/or Contract Security shall be considered on a case-by-case basis.

Bid pricing is posted publicly by the County's Bidding System immediately upon the deadline for submitting Bids.

e) **Request for Proposal “RFP” (Any Value)**

For a Procurement in which comprehensive technical requirements and specifications cannot be developed, the method or best method to achieve solution has not been identified, and where there may be multiple ways to achieve the required solution the Department Head shall engage Procurement Services to issue a Request Proposal or “RFP”.

A Procurement Notice for the RFP and the receipt of Bid submissions must be orchestrated utilizing the County's Bidding System if the Total Procurement Value is equal to \$100,000.00 or greater. The Department Head may choose to advertise the RFP on any medium they deem appropriate.

Evaluation of an RFP can be a combination various metrics including but not limited to capability, quality, and price. Procurement Services shall use industry best practices to guide the Department Head to determine the ultimate evaluation weightings and process.

The Procurement Notice shall include the following in addition to the general requirements in section 6.1.2 a):

- i. A clear description of the scope of work and deliverables that the Municipality is trying to achieve through the RFP;
- ii. The various evaluation stages such as an interview and demonstration if applicable;
- iii. Transparent submission requirements and evaluation criteria;
- iv. Anticipated timelines for the RFP evaluation process, award, and contract deliverables.

## **6.2 Cooperative Purchasing**

6.2.1 A Department Head is authorized to enter into arrangements with other government bodies, ministries, agencies, boards, corporations, authorities, entities or groups for the purchase of goods, services or construction using Buying Groups and/or Piggybacking ventures where:

- a) the Procurement Documents created by the producing entity provide permission for the Municipality to participate;
- b) the proposed use of the Procurement Documents of another entity is within a timeframe authorized as set out in the Procurement Documents created by the producing entity;
- c) The Department Head in their discretion, is convinced that the Procurement Process used to obtain the entity's Procurement opportunities provided for a fair and competitive process with equal opportunity, equal treatment, and a fair process to all proponents, sufficient to be relied upon by the Municipality;
- d) The Department Head, in their discretion, is convinced that use of the Procurement Process of the producing entity will provide for best value for the Municipality;
- e) The Department Head is convinced that the Municipality will meet its obligations under the Trade Agreements should it use the Buying Group or Piggybacking process; and:
- f) The Department Head, in their discretion, is convinced it is in the best interest of the Municipality to rely upon the process produced by the producing entity.

6.2.2 The Department Head shall seek the advice of Procurement Services prior to the use of Buying Groups and Piggybacking;

6.2.3 The Department Head, at their own discretion, may seek to authorize a cooperative purchasing venture; The Department Head, in a Municipality produced Procurement Document, is authorized to allow other public entities to Piggyback onto the Municipality produced Document, as a form of Cooperative Purchasing, where:

- a) the Procurement Document created provides for permission for other entities to participate;
- b) the Procurement Document created provides for a clear timeline to be used by another entity which in the opinion of the Department Head, at their discretion, provides for a fair Procurement Process;
- c) The Procurement Document meets the Municipality's obligations under the Trade Agreements;
- d) The Department Head, in their discretion, is convinced that use of the Buying Group or Piggyback process of the producing will assist in providing for best value for the Municipality and;
- e) Appropriate release language is included in the Procurement Document, which confirms the Municipality is not responsible for the use of the Procurement Document and Municipal Procurement Process by another entity.

### **6.3 Tied Bids**

Where multiple Bids receive the exact same evaluation the following tie-breaking process will occur to determine the successful Supplier:

- 6.3.1 Where the competitive Procurement was evaluated solely on low compliant price such as an Invitational Competitive Process (section 6.1.2c) or Request for Tender (6.1.2d), the tied Suppliers will be asked to resubmit pricing through the original means of Bid submission within forty-eight (48) hours of notification. Resubmitted pricing shall be equal to or less than the original submitted price. If no resubmission or a higher priced than the original submitted is received as part of this process by a Supplier, they will be removed from consideration when the competing Supplier(s) submit a compliant resubmission. The lowest resubmission received shall be deemed successful.
- 6.3.2 Where the competitive Procurement has evaluation criteria in addition to price such as a Request for Proposal (section 6.1.2e) or a Pre-Qualification of Suppliers (section 6.11), the Supplier with the higher evaluation score when price is removed from the evaluation criteria shall be deemed successful under the condition that the submission cost is below the Annual Budget.

If the Bids in question are have identical evaluation scores with priced removed from the evaluation criteria the Municipality shall request resubmission of pricing in the same manner prescribed in section 6.3.1. to determine the successful Supplier.

6.3.3 If neither of the methods described in 6.3.1 and 6.3.2 are successful in establishing an awarded Supplier the Department Head shall determine whether to establish a successful Supplier by means of a coin flip where the tied Suppliers are invited to attend in-person or virtually, or to re-issue the applicable Procurement Process.

#### **6.4 Over Budget Bids**

For Procurements that result in the preferred Bid being above the budget approved by Municipality Council additional funds may be granted at the discretion of the applicable Approval Authority per the table below:

<b>Preferred Bid's Amount Over Budget</b>	<b>Approval Authority</b>
Up to and including \$25,000.00	Municipality Treasurer
Greater than \$25,000.00	Municipality Council

#### **6.5 Emergency Purchases**

6.5.1 When an event occurs that is determined by a Department Head or CAO to be an imminent threat to the environment, life, or a threat to safety, public health, the maintenance of essential Municipality services, the welfare of persons or public property, the protection of the Municipality's physical assets, or the security of the Municipality's interests and the occurrence requires the immediate delivery of goods and/or services and time does not permit conducting a Procurement Process to acquire such goods and/or services the Department Head or CAO may make such a Procurement without the involvement of Procurement Services or a Competitive Procurement Process and is authorized to do so in the most expedient and economical means possible. The Department Head or CAO will present a report to Council at the following meeting regarding the Emergency Purchase.

6.5.2 In case of a declared emergency the Municipality's Emergency Response Plan will supersede this policy.

## **6.6 Non-use of Procurement Processes**

A Department Head is not required to use the Procurement Process identified in section 6, where the following sections of this policy apply:

- 6.6.1 Section 6.9, “**Exceptions to the Procurement Processes**”;
- 6.6.2 Section 7, “**Non-application**”; and Section 8, “**Exemptions**.”

## **6.7 Procurement Agreements**

The applicable Approval Authority as per Appendix “C” Procurement Approval Authorities shall execute Procurement Agreements between the Municipality and a Supplier in a form approved by the Municipality Treasurer.

## **6.8 Negotiation**

Procurement Services and/or Department Heads are hereby authorized to conduct negotiations with potential Suppliers following a Procurement Process where:

- 6.8.1 The intent to conduct negotiations is included in the Procurement Notice.
- 6.8.2 It appears from the evaluation that no Bid is clearly the most advantageous in satisfying the specific evaluation criteria set out in the Procurement Notice or Procurement Documents.
- 6.8.3 The Purchasing Authority shall ensure that any elimination of potential Suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the Procurement Notice or Procurement Documents.
- 6.8.4 The Purchasing Authority shall ensure that where negotiations are concluded a common deadline for the remaining participating Suppliers to submit any new or revised Bids is provided.

## **6.9 Exceptions to Procurement Processes**

- 6.9.1 In the following circumstances, a Department Head may make purchases, of any dollar amount, upon such terms and conditions, as the Department Head deems appropriate, subject to receiving approval from the appropriate Approval Authority identified in Appendix “C”:

- a) Where a Procurement Process has been conducted and:
  - i. No Bids were submitted;

- ii. No Bids that conform to the essential requirements of the Procurement Documents were submitted;
  - iii. No Suppliers satisfied the conditions for participation; or
  - iv. The submitted Bids were collusive.
- b) Where a particular Supplier can only supply the goods or services and no reasonable alternative or substitute goods or services exist for any of the following reasons:
  - i. The requirement is for a work of art;
  - ii. The protection of patents, copyrights, or other exclusive rights; or
  - iii. Due to an absence of competition for technical reasons.
- c) Where additional deliveries by the original Supplier of goods or services that were not included in the initial procurement are required, if a change of Supplier of such additional goods or services:
  - i. Cannot be made for economic or technical reasons; and
  - ii. Would cause significant inconvenience or substantial duplication of costs for the Municipality.
- d) When the extensions of an existing contract would prove more-cost effective or beneficial if the change of Supplier would cause significant inconvenience or duplication of costs.
- e) If strictly necessary, and for reasons of urgency brought about by events unforeseeable to the Department Head, the goods or services cannot be obtained in time using a Value Based Procurement Process.
- f) If the procurement is for a prototype or a first good or service that is developed in the course of, and for, a particular contract for research, experiment, study, or original development.
- g) For purchases made under exceptionally advantageous conditions that only, arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy.
- h) If a contract is awarded to a winner of a design contest provided that:

- i. The contest has been organized in a manner that is consistent with the principles of this by-law, in particular relating to the publication of a Procurement Notice; and
- ii. The participants are judged by an independent jury with a view to a design contract being awarded to a winner.

i) If goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest.

6.9.2 Prior to the purchase or award under the circumstances in the section above the Department Head shall obtain approval from the applicable Approval Authority identified in Appendix "C".

## **6.10 On-going Services and Contracts**

The Municipality has on-going services and in force contracts with various Suppliers where overly frequent Procurement is detrimental to the Municipality. The following services are exempt from this by-law but will be procured at the discretion of Council:

- 6.10.1 Audit Services
- 6.10.2 Banking Services
- 6.10.3 Provision of Property and Liability
- 6.10.4 Employee Benefits
- 6.10.5 Existing Software Licensing
- 6.10.6 Maintenance and Cleaning Contracts
- 6.10.7 Counseling and Employment Assistance Services
- 6.10.8 Municipal Property Liability
- 6.10.9 Cyber Insurance
- 6.10.10 Other services as approved by Council.

## **6.11 Pre-Qualification of Suppliers**

6.11.1 In situations where a Department or multiple Departments require the same type of good, service or construction, or otherwise wishes for a procurement to be Pre-Qualified, the Department Head may issue a Pre-Qualification Notice to establish a list of Pre-Qualified Suppliers prior to initiating a Procurement Process for said goods, services, or construction, on a regular or recurring basis.

6.11.2 Where a Department Head determines that a List of Pre-Qualified Suppliers is desirable for a particular category of goods, services or construction, they may issue a Request for Supplier Qualifications to gather information on Supplier capabilities and qualifications.

6.11.3 Whereby means of a Public Procurement Process, a Request for Supplier Qualifications for a particular category of goods, services or construction, and has established a List of Prequalified Suppliers, the Department Head may limit future Procurement Processes for goods, services or construction in that category to the Suppliers included on the list.

6.11.4 A List of Pre-Qualified Suppliers is valid for a period of no longer than three (3) years, upon expiry of which the Department Head may issue a Request of Pre-Qualification to establish a new List of Pre-Qualified Suppliers for that particular category of goods, services or construction.

6.11.5 A request for Supplier Qualifications must be conducted in the same manner as section 6.1.2.e “Request for Proposal” in addition to the following:

- a) A statement notifying Suppliers that by making a submission they are agreeing to be included on a List of Pre-Qualified Suppliers for the purposes of future Procurements of the aforementioned goods, services or construction;
- b) A statement notifying Suppliers of the time frame for which the List of Pre-Qualified Suppliers will be valid and that during said period further requests will not be published;
- c) A statement notifying Suppliers that during the period of validity only those Suppliers on the List of Pre-Qualified Suppliers will receive notice of Procurement of the category of goods, services or construction for which the Request for Supplier Pre-Qualification was issued;

- d) A statement clearly identifying how engagement of the successful Pre-Qualified Suppliers is to be conducted if different than the process laid out in section 6.1.2 “Competitive Procurement Processes.”

6.11.6 All submissions shall be evaluated using the criteria and methodology set out in the Procurement Documents

6.11.7 Submission details are to be maintained in accordance with the Municipality’s Retention by-law.

6.11.8 Department Heads shall submit a report to Municipality Council for approval to award all Pre-Qualification of Suppliers.

## **6.12 Revenue Generating Contracts**

- 6.12.1 The issuance of a Procurement and approval of award of a Revenue Generating Contract of any value requires the approval of the CAO.
- 6.12.2 Award of a Revenue Generating Contract greater than \$50,000.00 shall require Municipality Council approval.

## **7. NON-APPLICATION**

- 7.1 This policy does not apply to the following:
  - 7.1.1 Municipality employment contracts;
  - 7.1.2 The acquisition of real property rights, excluding services related to obtaining the property rights;
  - 7.1.3 Any form of assistance, such as grants, loans, equity infusions, surveys required for real estate matters, guarantees, and fiscal incentives;
  - 7.1.4 The acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;
  - 7.1.5 The Procurement or acquisition of:
    - a) Fiscal agency or depository services;

- b) Liquidation and management services for regulated financial institutions; or
- c) Services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes, and other securities.
- d) Financial services respecting the management of government financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
- e) Health services or social services;
- f) Services that may, under applicable law, only be provided by licensed notaries;
- g) The procurement of goods, services or construction financed primarily from donations that require the procurement to be conducted in a manner inconsistent with this by-law;
- h) Procurement between the Municipality and another government body or enterprise;
- i) Procurement from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities.

## **8. EXEMPTIONS**

8.1 The following Procurements are exempt from this by-law:

- 8.1.1 Purchases for consulting services for a program where services (i.e. Bridge inspection/evaluation) have been awarded to a consulting firm on an on-going basis, where clearly identified in the budget;
- 8.1.2 Purchases for the supply and placement of road material throughout the Municipality of Thames Centre not to exceed \$100,000.00 (excluding tax) when clearly identified in the budget;
- 8.1.3 For goods purchased on a commodity market.
- 8.1.4 Purchases for on-going contracts;
- 8.1.5 Purchases requiring special payments (i.e. refundable expenses, general employer expenses, tax payments);

- 8.1.6 Purchases relating to training and education (i.e. catering, conferences, literature, offsite training, honorariums);
- 8.1.7 Purchases relating to real property (i.e. Licenses, easements, leasehold improvements);
- 8.1.8 Fees for expert, specialized, professional services where the subject matter is deemed to be either time sensitive and/or confidential by the CAO.
- 8.1.9 When, due to market conditions and in the judgement of Department Heads, goods are in short supply;
- 8.1.10 Purchases of replacement parts, where the original equipment manufacturer is the sole provider of that equipment; and
- 8.1.11 Any other Procurement deemed exempt by Council.

## **9. PROCUREMENT CONTRACT AMENDMENTS TO ADD GOODS OR SERVICES**

- 9.1 Department Heads are authorized to amend Procurement Agreements to add goods or services and increase the procurement value without a further competitive process, provided:
  - a) sufficient funds are available in the Annual Budget; and
  - b) the Procurement Agreement includes an option to add the specific goods or services.
- 9.2 A Procurement Agreement that does not include an option to add the required goods or services may only be amended to add the goods or services if an Exception or Exemption applies or with Municipality Council approval.

## **10. RENEWAL OR EXTENSION OF PROCUREMENT CONTRACTS**

- 10.1 Department Heads are authorized to renew or extend Procurement Agreements, without a further competitive process, provided: (a) sufficient funds are available in the Annual Budget; and (b) the Procurement Agreement includes an option to renew or extend.

10.2 A Procurement Agreement that does not include an option to renew or extend may only be renewed or extended if an Exception or Exemption applies.

## **11. DISPOSAL OF SURPLUS GOODS**

11.1 The Department Head is hereby authorized to declare goods as surplus and/or obsolete.

11.2 When no other use can be found for surplus or obsolete goods in other Departments, they shall be added to the surplus list and at the discretion of the Department Head, disposed of through public auction or in whatever manner the Department Head deems to be in the best interest of the Municipality.

11.3 “Goods” does not include real property interests.

## **12. SUPPLIER CODE OF CONDUCT**

12.1 Supplier Responsibilities

a) Suppliers participating in a Procurement Process shall:

- i. Respond to the Municipality's requests for participation in an honest, fair and comprehensive manner that accurately reflects their capacity to satisfy the requirements of the procurement;
- ii. Submit a Bid only if they know they can satisfactorily perform all obligations of the contract in good faith;
- iii. Maintain confidentiality of any confidential Municipality information disclosed to the Supplier as part of the Procurement Process;
- iv. Declare and fully disclose any actual or potential conflict of interest in the performance of the contract; and
- v. Honour their Bid, except where they are permitted to withdraw their Bid in accordance with the Procurement Documents.

b) Suppliers participating in a Procurement Process shall not:

- i. Refuse to enter into a contract or refuse to fully perform the contract once their bid has been accepted by the Municipality;
- ii. Threaten, intimidate, harass or otherwise interfere with any Municipal employee or public office holder in relation to their procurement duties; or
- iii. Offer gifts, favours or inducements of any kind to Municipal employees or public office holders, or otherwise attempt to influence or interfere with their duties in relation to the Procurement Process.
- iv. Suppliers shall fully perform their contracts with the Municipality and follow any reasonable direction from the Municipality to cure any default.

### **13. DISQUALIFICATION OF SUPPLIERS FOR NON-COMPLIANCE**

- 13.1 Any contravention of the Supplier Code of Conduct as prescribed in section 12 by a Supplier may be grounds for the Municipality to:
  - 13.1.1 Disqualify a Supplier from the Procurement Process; and/or
  - 13.1.2 Suspend a Supplier's eligibility to participate in any Procurement Process as per the Supplier Suspension Procedure (Appendix "B").
- 13.2 The Municipality may also disqualify any Supplier where:
  - 13.1.1 There is a conflict of interest that cannot be resolved in relation to any Procurement;
  - 13.1.2 There have been significant or persistent deficiencies in the Supplier's performance of any substantive requirement or obligation under a prior Procurement Agreement, whether or not the prior Procurement Agreement included a Performance Evaluation process as contemplated by section 15 of this by-law;
  - 13.1.3 The Supplier is indebted to the Municipality; or
  - 13.1.4 The Supplier has a current dispute with the Municipality;
  - 13.1.5 The Supplier has received a poor vendor performance review or has been suspended as per the Supplier Suspension Procedure (Appendix "B");

13.1.6 The Supplier has exhibited behavior that is no longer be in the best interest of the Municipality.

## **14. LEGAL CLAIMS**

- 14.1 Notwithstanding any other provision of this policy, no tender, proposal, or quotation will be accepted from any company which has a claim or instituted a legal proceeding against the Municipality or against whom the municipality has a claim or instituted a legal proceeding with respect to any previous contract, without prior approval by Council.
- 14.2 Section 14.1 above is grounded on the basis that it is unreasonable for the Municipality, as a municipality with the capacity, rights, powers and privileges of a natural person, to be compelled to enter into a Procurement Agreement with a Supplier with whom it has a dispute.

## **15. SUPPLIER PERFORMANCE EVALUATION**

- 15.1 In accordance with the Supplier Performance Evaluation Procedure (Appendix "A"), a Department Head may institute a Performance Evaluation or Vendor Performance Incident Report for any Procurement Agreement or engagement.
- 15.2 In the event that a Performance Evaluation or Vendor Performance Incident Report is conducted, the Department Head shall use the templates provided by Procurement Services.
- 15.3 Where an evaluation of Supplier performance is completed, the Supplier shall be notified and given the opportunity to respond as per the Supplier Suspension Procedure prescribed in Appendix "B".
- 15.4 Where an evaluation of Supplier performance is completed and the results are unsatisfactory, the Department Head shall follow the Supplier Suspension Procedure prescribed in Appendix "B".
- 15.5 The results of any Performance Evaluation may be disclosed to other municipalities or government bodies upon request, where it can be demonstrated that the Supplier has listed the Municipality as a work reference.
- 15.6 Any Performance Evaluation may be shared with the Corporation of the County of Middlesex and the County's other lower tier municipalities if the

applicable Procurement Documents state such at the time of the Procurement Process.

## **16. MUNICIPALITY CODE OF CONDUCT AND CONFLICT OF INTEREST**

- 16.1 No Council member or employee of the Municipality shall purchase or offer to purchase on behalf of the Municipality any goods, services or construction except in accordance with this policy.
- 16.2 No Council member or employee of the Municipality may purchase goods, services or construction for personal use through the Corporation unless authorized by Council or the Department Head and the CAO.
- 16.3 All Procurements of goods, services and construction described in this by-law are subject to the requirements of the following policies of the Municipality and to Ontario legislation, as may be applicable, including but not limited to the following:
  - 16.3.1 The Employee Code of Conduct
  - 16.3.2 The Code of Conduct for Members of Council of the Municipality of Thames Centre
  - 16.3.3 *The Municipal Conflict of Interest Act* and
  - 16.3.4 *The Municipal Act, 2001*.

## **17. LOBBYING RESTRICTIONS**

- 17.1 The Municipality may reject any bid by a Supplier that engages in lobbying and may terminate the Supplier's right to continue in the Procurement Process.
- 17.2 Suppliers, their staff members, and anyone involved in the Procurement Process shall not engage in any form of lobbying or attempt to influence the outcome of the Procurement Process. This restriction extends to all of the employees or appointed officers of the Municipality and members of Council.
- 17.3 Suppliers engaged in any lobbying may be suspended from participating in Municipality Procurement Processes as per the Supplier Suspension Procedure Appendix "A".

## **18. PROCUREMENT PROCESS COMPLAINTS**

18.1 Purchasing Authorities shall ensure that there is a dispute resolution clause in the Procurement Document:

18.1.1 Suppliers shall have the ability to submit a complaint to Procurement Services or designate in writing or email within thirty (30) days following the Award Date of the applicable Procurement Process

18.1.2 Procurement Services or designate will provide a response in writing or email. If the Supplier is not satisfied with the response, within seven (7) days of the response, they have the ability to request that the matter be escalated to the Procurement Review Panel for response.

18.2 Suppliers from other Provinces shall be provided with the same rights and privileges to challenge Procurement decisions as Suppliers in Ontario.

## **19. DEBRIEFS**

A Supplier with an unsuccessful submission for a Request for Proposal may request a debrief from Procurement Services within fourteen (14) days of the Award Date. Bid debriefs will strictly cover the evaluation scores received for only that particular Supplier and any notes the evaluators may have provided during the evaluation process.

## **20. GREEN PROCUREMENT**

20.1 Subject to budgetary and operational requirements, the Municipality 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 a Procurement (including all aspects related to the production, transportation, operational use, and replacement or disposal of goods) the following environmental factors may be considered in addition to the specific requirements of the goods and/or service:

- a) durable and reusable, as opposed to single use or disposable items.
- b) non-toxic or least toxic option, preferably compostable or biodegradable.
- c) reduce greenhouse gas and air pollutant emissions.
- d) ENERGY STAR® rated if available or most energy-efficient option.
- e) recyclable, safely disposable or taken back by the Vendor at its end of life.

- f) made from recycled materials.
- g) raw materials, if any, used in making the good be obtained and manufactured in an environmentally sound, sustainable manner.
- h) results in minimal or no environmental damage during normal use or maintenance.
- i) packaging and shipping material to be minimal (consistent with the care of the goods) and preferably made of reusable, recycled or recyclable materials; and
- j) the lifecycle cost of the good through the acquisition, operation, and end of life, including environmental impacts.

## **21. ACCESSIBILITY**

### **21.1 Procurement of Goods, Services and Facilities**

As required by the *Accessibility for Ontarians with Disabilities Act (AODA), 2005, as amended*, when acquiring or procuring goods, services, and facilities, the Municipality must incorporate accessibility criteria and features, and will do so as early as possible in the procurement process. Where it is not practicable to do so, an explanation must be provided upon request, in accordance with the Municipality's Procurement Policy. Ensuring accessibility is incorporated into all procurement activities is the primary responsibility of the departments/divisions who manage these activities and contracts.

## **22. SEVERABILITY**

- 22.1 Each section of this by-law is distinct and severable. If any section of this by-law, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:
- 22.2 The legality, validity or enforceability of the remaining sections of this by-law, in whole or in part; or
- 22.3 The legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

## **APPENDIX “A”: SUPPLIER PERFORMANCE EVALUATION PROCEDURE**

### **1. Purpose and Interpretation**

The purpose of this procedure is to establish a Performance Evaluation process in order to evaluate Supplier performance in a transparent and consistent manner. Supplier performance is critical to the success of procurement projects. Poor workmanship, unnecessary contract delays and unsafe work practices will not be tolerated.

Defined terms used in this procedure have the meaning assigned in the Definitions within section 2 of the Municipality’s Procurement by-law.

### **2. Performance Evaluation**

Where a Department Head or designate wishes to conduct any form of Performance Evaluation, they shall inform Procurement Services of such and utilize the evaluation template provided upon notification.

#### **(a) Interim Evaluation**

The Department Head may choose to formally evaluate the Supplier’s performance and complete the applicable Interim Performance Evaluation Report prior to the renewal or extension of the contract, if applicable, and may formally evaluate the Supplier’s performance and complete an Interim Performance Evaluation Report at any time during the term of the contract, as determined by the Department Head taking into account the nature, complexity, value and length of the contract.

#### **(b) Final Evaluation**

The Department Head may choose to formally evaluate the Supplier’s performance and complete the Final Performance Evaluation Report upon completion, expiration or termination of the contract.

### **3. Incident Reports**

Specific incidents of poor performance, in particular any incidents related to the health and safety matters, should be recorded at the time of occurrence or discovery. The Incident Report form provided by Procurement Services may be used for this purpose. Email correspondence and/or notes to file (whether in physical or digital format), may also be used to record details of performance issues and incidents. A copy of the incident report should be provided to Procurement Services and the Supplier and, where possible, the Supplier’s acknowledgement of the incident should be obtained.

## **4. Interim Performance Evaluation Report**

### **(a) Notification of Supplier**

If completed, Procurement Services on behalf of the Department Head will notify the Supplier of its overall performance rating and provide the Supplier with a copy of the completed and signed Interim Performance Evaluation Report.

### **(b) Performance Issues**

If the Supplier receives a “Unsatisfactory” rating on any of the rated criteria in the Interim Performance Evaluation Report, Procurement Services, as well as any other Municipality Staff or hired professional service (i.e.. Consultant, Engineer) will correspond with the Supplier to clearly identify and discuss the performance issues, determine the corrective action that will be taken to rectify and avoid recurrence of the performance issues, and obtain the Supplier’s agreement to take the corrective action within a specified time period.

Following the above noted correspondence, Procurement Services will confirm the details and outcome of the discussion in writing to the Supplier and will attach a copy of the written record to the Interim Performance Evaluation Report.

If the performance issues are not rectified or if there is a recurrence of the performance issues Procurement Services and the Department Head shall determine next steps.

## **5. Final Performance Evaluation Report**

### **(a) Performance Issues**

If the Supplier receives a “unsatisfactory” rating on any of the rated criteria in the Final Performance Evaluation Report, Procurement Services shall communication such with the Supplier and will consider any comments or explanations provided by the Supplier in the finalization of the Final Performance Evaluation Report.

### **(b) Recommendation Based on Performance**

Based on the final rating of the criteria in the Final Performance Evaluation Report, the Department Head in conjunction with Procurement Services will make a recommendation to either:

- allow the Supplier to continue participating in future Procurement Processes; or
- suspend the Supplier from participating in future procurement processes for a period of up to ten (10) years in accordance with the Supplier Suspension Procedure (Appendix “B”).

### **(c) Recommendation for Continued Participation**

If the evaluation results in a recommendation to allow the Supplier to continue participating in procurement processes, Procurement Services will notify the Supplier of its final rating and the resulting recommendation and provide the Supplier with a copy of the completed and signed Final Performance Evaluation Report.

### **(d) Recommendation to Suspend**

If the evaluation results in a recommendation to suspend the Supplier from participating in future Procurement Processes in accordance with the Supplier Suspension Procedure (Appendix "B"), the following steps must be taken:

#### **(i) Review by Procurement Services**

The Department Head will submit the Final Performance Evaluation Report to Procurement Services for review. Procurement Services will ensure that the Final Performance Evaluation Report is complete, will discuss the ratings with the Department Head, and will ask the Department Head to confirm that the Final Performance Evaluation Report accurately reflects the Supplier's performance.

#### **(ii) Preparation of Suspension Recommendation Report**

The Department Head and Procurement Services will prepare the Suspension Recommendation Report in accordance with the Municipality's Supplier Suspension Procedure (Appendix "B").

#### **(iii) Notification of Supplier**

Upon approval to proceed from the CAO or Deputy CAO, in accordance with the Supplier Suspension Procedure (Appendix "B"), Procurement Services will notify the Supplier of the decision to recommend suspension and will provide the Supplier with a copy of the Suspension Recommendation Report, attaching the completed and signed Final Performance Evaluation Report. The notice will advise the Supplier of the Supplier Suspension Procedure and the opportunity to respond to the decision to recommend suspension.

## **6. Decision to Suspend**

The decision with respect to suspension of the Supplier will be made in accordance with the Supplier Suspension Procedure (Appendix "B"). The completed Final Performance Evaluation Report will be attached to the Suspension Recommendation Report. A decision under the Supplier Suspension Procedure is final.

## **7. Retention of Evaluation Reports**

The Department Head will retain all original Interim and Final Performance Evaluation Reports and will provide Procurement Services with a copy of each Performance Evaluation Report. Procurement Services will retain copies of all Interim and Final Performance Evaluation Reports.

## **8. Disclosure of Results to Others**

The results of any Performance Evaluation Processes are intended to be disclosed internally across Municipality departments and may be disclosed to other government bodies upon request and to any entity for which it can be demonstrated that the Supplier has listed the Municipality as a reference or to any of the Municipality's lower tier municipalities if the related procurement in regards to the contract stipulates such.

## **9. Consideration of Performance in Evaluation of Bids**

The Municipality may consider documented past performance evaluation results in the evaluation of future bids from the Supplier, whether or not the past performance resulted in suspension in accordance with the Supplier Suspension Procedure and, may exclude a Supplier based on significant or persistent deficiencies in past performance.

## APPENDIX “B”: SUPPLIER SUSPENSION PROCEDURE

### 1. Purpose and Interpretation

The purpose of this procedure is to set out the process for suspending Suppliers from participation in the Municipality’s Procurement Processes. Defined terms used in this procedure have the meaning assigned in the Definitions within section 2 of the Municipality’s Procurement by-law.

### 2. Application

In order to ensure that the Municipality is receiving quality deliverables and value for public money and is dealing with Suppliers that conduct business in a professional and ethical manner, the Municipality may suspend Suppliers from participating in its Procurement Processes for prescribed periods of time.

A decision to suspend a Supplier must be made in accordance with this procedure, must be supported by evidence and must be based on the reasons and factors set out below.

Suppliers are responsible for any employees, representatives, agents or subcontractors that are acting on their behalf and all references to the actions or conduct of the Supplier under this procedure include the actions of any individual or entity acting on behalf of the Supplier.

### 3. Reasons for Suspension

#### (a) Crimes or Offences

If a Supplier is convicted of serious crimes or other serious offences, including bid-rigging, price-fixing or collusion, fraud or other statutory offenses, the Municipality will suspend that Supplier from participating in future Procurement Processes.

#### (b) False Declarations

If a Supplier includes false or misleading information in its Bid the Municipality may suspend that Supplier from participating in future Procurement Processes.

If a Supplier fails to disclose a conflict of interest in connection with a Procurement Process or during the performance of a contract with the Municipality, and the Municipality subsequently discovers that such a conflict of interest exists, the Municipality may suspend that Supplier from participating in future Procurement Processes.

The following non-exclusive factors should weigh in favour of suspension:

- The Supplier knowingly made misrepresentations or failed to disclose a conflict of interest.
- The misrepresentation or undisclosed conflict of interest resulted in the Supplier having an unfair advantage or otherwise compromised the integrity of the Municipality’s Procurement Process.

#### (c) Poor Performance

If a Supplier performs inadequately under a contract with the Municipality, the Municipality may consider suspending that Supplier in any of the following circumstances, providing adequate and supporting documentation is available as per the Supplier Performance Evaluation Procedure (Appendix “A”):

- (a) The deficiencies in performance were significant or persistent.

- (b) The contract was terminated for performance issues prior to expiry.
- (c) There were unrectified performance issues on a contract that resulted in extra costs to the Municipality.
- (d) The deliverables provided were defective or deficient, and either were not replaced or repaired, or required multiple repairs.
- (e) The Municipality brought a litigation proceeding against the Supplier in connection with performance or non-performance of the Supplier's contractual obligations.
- (f) The suspension of the Supplier has been recommended in accordance with the Municipality's Supplier Performance Evaluation Procedure (Sc A).

**(d) Professional Misconduct or Lack of Commercial Integrity**

The Municipality may suspend a Supplier for professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Supplier. Such conduct includes, but is not limited to:

- (a) unethical bidding practices, such as inappropriate offers of gifts to the Municipality's officials, officers, employees or agents and inappropriate in-process lobbying or prohibited communications during a Procurement Process.
- (b) failing to perform contracts in a professional and competent manner in accordance with the duty of honest performance and all applicable laws, including safety and labour codes; and
- (c) engaging in litigious conduct or bringing frivolous or vexatious claims in connection with the Municipality's Procurement Processes or contracts, including but not limited to, unreasonable cost or expense claims or unsubstantiated allegations impugning the integrity of the purchasing institution or its staff in relation to a Procurement Process.
- (d) Violation of the "Supplier Code of Conduct" as prescribed in section 12 of the Municipality's Procurement by-law.
- (e) Violation of section 17 "Lobbying Restrictions".

**4. Process for Suspension**

**(a) Suspension Recommendation Report**

Any decision to suspend a Supplier must be supported by a written Suspension Recommendation Report that contains all details connected with the analysis of factors set out above.

The Suspension Recommendation Report will be provided by Procurement Services and prepared by the applicable Department Head.

**(b) Length and Scope Suspension**

The Suspension Recommendation Report must include the recommended length and scope of the suspension.

The length of the suspension period should be proportional to the reasons for the suspension and, in most cases, should not exceed a maximum of five (5) years. In the most serious of cases involving convictions criminal or quasi-criminal offences, a suspension period of up to ten (10) years may be considered.

The scope of the suspension can be either a blanket suspension for all Procurement Processes or a suspension limited to Procurement Processes for specific deliverables.

The scope of the suspension can apply to both corporate entities as well as individuals.

**(c) Supplier Notification and Opportunity to Respond**

Procurement Services will notify the Supplier of the decision to recommend suspension and will provide the Supplier with a copy of the Suspension Recommendation Report setting out the reasons for the suspension. The notice will advise the Supplier of its opportunity to respond to the recommendation for suspension by sending written submissions to Procurement Services within 10 business days of the date of the notice.

**(d) Decision of Procurement Review Panel**

All decisions to suspend a Supplier must be approved by the Municipality's Procurement Review Panel ("PRP"). The PRP is established in accordance with the Municipality's Procurement by-law.

In making its decision, the PRP will consider the Suspension Recommendation Report and any response submitted by the Supplier.

The PRP may seek any additional information it requires and may consult with other staff, legal counsel or other advisors, as necessary.

**(e) Notice of Decision**

The Supplier must be notified, in writing by mail and/or email, of the final suspension decision made by the PRP.

If the recommendation for suspension is approved, the notification letter must contain:

- (a) the length of the suspension period and the scope of the suspension;
- (b) full details as to the reasons for the suspension, including copies of any documents or correspondence to support such a suspension; and
- (c) notice of the Supplier's right to apply for reinstatement within the prescribed time period and the process for requesting such a reinstatement.

**5. Application for Reinstatement**

A suspended Supplier may apply for reinstatement upon the completion of half of the original suspension period. For example, if the original suspension period was two years, the Supplier may apply for reinstatement after one year.

In order to apply for reinstatement, the Supplier must submit a written case for reinstatement to Procurement Services, including supporting documentation, if necessary, that provides reasons why the original reason for the suspension would no longer prove a risk for the Municipality.

- (a) Applications for reinstatement are to be reviewed by the PRP. If the PRP determines that allowing the Supplier the opportunity to participate in the Municipality's Procurement Processes would no longer expose the Municipality to risk, then the application for reinstatement may be approved.

(b) The Supplier must be notified, in writing by mail and/or email, of the final reinstatement decision made by the PRP.

## **6. Suspended Suppliers List**

Procurement Services must maintain an up-to-date and current list of all suspended Suppliers. Any Supplier that is owned or controlled by the same individual(s) that owned or controlled a suspended Supplier at the time it was suspended is also considered suspended.

The list should contain, at a minimum:

- (a) the full name of the Supplier or individual, where an individual is suspended;
- (b) the names of the directors and officers of the Supplier, if applicable;
- (c) the reasons for the suspension;
- (d) the scope of the suspension (i.e. blanket suspension or specific deliverables);  
and
- (e) the length of the suspension period and the date of the expiry of the suspension period.

For any competitive Procurement Process, Procurement Services and/or must check the suspended Suppliers list to ensure that bids are not accepted from suspended Suppliers.

## APPENDIX “C”: PROCUREMENT APPROVAL AUTHORITIES

Procurement Approval Authorities				
Procurement Process	Total Procurement Value	By-Law Section	Council Approval Required?	Approval Authority
<b>Low Value Purchase</b>	\$0.00 to \$34,999.99	6.1.1	No	CAO, Department Head
<b>Invitational Competative, Request For Proposal, Cooperative Purchasing</b>	\$35,000.00 to \$99,999.99	6.1.2 c) 6.1.2 e) 6.2	No	CAO, Department Head
<b>Request For Tenders, Request For Proposals, Cooperative Purchasing</b>	\$100,000.00 or Greater	6.1.2 d) 6.1.2 e) 6.2	Yes	Council
<b>Pre-Qualification of Suppliers</b>	Any Value	6.11	Yes	Council
<b>Exceptions to the Procurement Process</b>	Greater than \$35,000.00	6.9	Yes	Council
<b>Emergency Purchase</b>	Any Value	6.5	Yes	CAO (Prior to Purchase) Council (Following Purchase)
<b>Revenue Generating Contracts</b>	\$0.00 to \$50,000.00	6.12	No	CAO
	Greater than \$50,000.00		Yes	Council

## APPENDIX “D”: IRREGULARITIES CONTAINED IN BIDS

IRREGULARITIES	RESULT
Bids received after the submission deadline	Automatic Rejection. Bidding system will not receive late Bids.
Incomplete, illegible, or obscure bids	Automatic Rejection
Submissions in which all necessary addenda have not been acknowledged.	Bidding System does not accept bids that have not acknowledged all addenda
Failure to attend a mandatory site visit.	Automatic Rejection
Conditions placed by the supplier on the submitted contract price that were not granted by the Municipality previously.	Automatic Rejection
Bids containing minor mathematical errors.	The Municipality has the right to correct or request clarification on minor mathematical errors.
Part bids (all required items not in bids)	Automatic Rejection unless allowed for by the Municipality prior to submission
Performance Security: Insufficient Performance Security (no or insufficient bonds or agreement to bond) Signature of bidder and/or bonding company missing when bond or agreement to bond requested.	Automatic Rejection
Withdrawal of Bids	Withdrawal of bids received after the closing time will not be allowed.
Other minor irregularities	Procurement Services, in conjunction with Department Head and Treasurer, shall have the authority to waive irregularities, which they jointly consider to be minor.