

## CORPORATION OF THE COUNTY OF MIDDLESEX

### BY-LAW #7270

A BY-LAW to Adopt a Policy for the Procurement of Goods, Services, and Construction

#### WHEREAS:

- A. The Corporation of the County of Middlesex (the “**County**”) is defined both as an upper-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*;
- B. 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;
- C. 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 documentation confirms the appropriateness of confirming such policy in by-law;
- D. The objective of the procurement function is to ensure that the County purchases goods, services and construction that provide the County with best value and which are delivered in a timely and efficient manner;
- E. 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;
- F. This policy provides for fairness, accountability, openness and transparency in the County’s Procurement Processes, encourages competition and efficiency, and ensures the County purchases goods, services and construction contracts which provide for best value and are delivered in a timely and efficient manner; and
- G. This 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 County of Middlesex enacts as follows:

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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 County.
- 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 County;
  - 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 County, the public and persons participating in Procurement Processes will be protected.
- 1.4 This policy applies to all departments and divisions of the County, including its home for the aged (Strathmere Lodge), municipal service boards (i.e. Middlesex-London Paramedic Services), and local boards of the Corporation (i.e. Middlesex County Library), 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 County of Middlesex and any amendment thereto.
- 2.3 “**Approval Authority**” means the authority to approve and award Procurements, 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 Schedule “C” – Procurement Approval Authorities.

- 2.4 **“Award Date”** means the date at which Suppliers are notified of the award of a Procurement through the County’s Bidding System or written email.
- 2.5 **“Bid”** means a Supplier’s response to any form of a Procurement Process issued by the County.
- 2.6 **“Bidding System”** means the system of which the County 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 County of Middlesex as appointed by by-law.
- 2.9 **“Competitive Procurement Process”** means an Invitational Competitive Process, Request for Tender or Request for Proposal.
- 2.10 **“County”** means the Corporation of the County of Middlesex, being a municipal corporation and both an upper-tier municipality and municipality as defined by the *Act*.
- 2.11 **“County Barrister & Solicitor”** means the County Barrister & Solicitor/Director of Legal Services of the County and includes internal and external legal counsel acting under the direction of the County Barrister & Solicitor/Director of Legal Services;
- 2.12 **“County Treasurer”** means the Treasurer of the Corporation of the County of Middlesex.
- 2.13 **“Council”** means the elected Municipal Council of the Corporation of the County of Middlesex.
- 2.14 **“Delegated Authority”** means the authority, delegated by Council to a Department Head, to execute Procurement Agreements pursuant to this policy.
- 2.15 **“Department Head”** means the highest-ranking individual in any department recognized by the County.

- 2.16 **“Deputy CAO”** means the Deputy Chief Administrative Officer(s) of the Corporation of the County of Middlesex.
- 2.17 **“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.
- 2.18 **“Exemption”** means a Procurement to which this policy would ordinarily apply, but which has been exempted from this policy under section 9 of this policy.
- 2.19 **“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 County as prescribed in section 2(a) of Schedule “A” – Supplier Performance Evaluation Procedure.
- 2.20 **“Interim Performance Evaluation Report”** means the evaluation of a Supplier’s performance that may be completed during the course of a contract with the County as prescribed in section 2(a) of Schedule “A” – Supplier Performance Evaluation Procedure.
- 2.21 **“Invitational Competitive Process”** means a process where the Total Procurement Value is \$10,000.00-\$99,999.99 (excluding taxes).
- 2.22 **“Low Value Purchase”** means a purchase with a Total Procurement Value not exceeding \$9,999.99 (excluding taxes).
- 2.23 **“Municipal Decision Maker”** means Council or a Department Head with Delegated Authority.
- 2.24 **“Performance Evaluation”** means an evaluation of a Supplier’s overall performance following the completion of a contract with the County.
- 2.25 **“Public Competitive Process”** means a process where the Total Procurement Value is equal to or greater than \$100,000.00 (excluding taxes).
- 2.26 **“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 7.2 are met;
- 2.27 **“Procurement”** means the acquisition of goods, services or construction.

- 2.28 **“Procurement Agreement”** means an agreement between the County and a Supplier for the purchase of goods, services or construction.
- 2.29 **“Procurement Documents”** means any document issued by the County 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.
- 2.30 **“Procurement Notice”** refers to the communication of an active Procurement Process by means of the County’s Bidding System, email or other means.
- 2.31 **“Procurement Process”** refers to any of the purchasing methods described in section 7, of this by-law “Procurement Processes”.
- 2.32 **“Procurement Process Complaints”** refers the method of with a Supplier participating in a Procurement Process may file a complaint as prescribed in section 19.
- 2.33 **“Procurement Review Panel”** a panel consisting of the Procurement Services Manager, Treasurer, the applicable Department Head and, where advisable, the County Barrister & Solicitor who tend to escalated Procurement related matters.
- 2.34 **“Procurement Services”** refers to the Procurement Services department responsible for overseeing the acquisition of goods and services at the County.
- 2.35 **“Procurement Services Manager”** the highest-ranking authority of the County’s Procurement Services department.
- 2.36 **“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.
- 2.37 **“Purchasing Authority”** refers to the County staff, usually the Department Head or Procurement Services, with authority to initiate a Procurement or Procurement Process based on the terms of this by-law.
- 2.38 **“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 County Treasurer in writing of the name(s) of the Purchasing Designate(s) within their Department.

- 2.39 **“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.
- 2.40 **“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.
- 2.41 **“Request for Tenders” or “RFT”** means a publically 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.
- 2.42 **“Revenue Generating Contract”** means a legal agreement between the County and a third party that yields a financial return for the County.
- 2.43 **“Supplier”** means any person or enterprise that provides or could provide goods, services or construction to the County.
- 2.44 **“Supplier Code of Conduct”** means the rules and responsibilities of Suppliers during and in relation to any County Procurement detailed in section 13.
- 2.45 **“Suspension Recommendation Report”** means the report to be completed by a Department Head and Procurement Services following a Supplier Performance evaluation where it is to be recommended the suspend the Supplier from future County Procurements as prescribed within section 4(a) of the Supplier Suspension Procedure (Schedule “B”).
- 2.46 **“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.
- 2.47 **“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.
- 2.48 **“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.



- 2.49 **“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 County will ensure that its by-laws, policies, regulations, and administrative procedures as they relate to this by-law and the County’s purchasing functions are clear and made readily accessible to the public.
- b) The County 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 County 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 County 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 County 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 County shall ensure that all goods, services and construction are purchased to achieve best value for the County and in a timely, efficient manner.
- b) To determine best value, the County 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 County of Middlesex**

4.1.1 Council has ultimate authority for the expenditures of each Department operating within the County. 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 Municipal Decision Maker 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 County 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 7.0 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, the Department Head or designated staff shall engage Procurement Services who may also involve the County Barrister & Solicitor 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 County 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 Schedule "D" Irregularities Contained in Bids.
- 4.2.9 Unless otherwise stated in this by-law or approved by the Procurement Services Manager, 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 County Barrister & Solicitor where the Department Head is satisfied that they are the Approval Authority as per Schedule "C" Procurement Approval Authorities in the circumstances of the Procurement.
- 4.2.11 The Department Head is authorized to make Emergency Purchases that exceed two hundred and fifty thousand dollars (\$250,000.00).
- 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 over two-hundred and fifty thousand dollars (\$250,000.00) 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 (value of one hundred thousand dollars (\$100,000.00) or greater) they shall obtain the approval of Procurement Services as well as the County Treasurer and is to engage the County Barrister & Solicitor where applicable.

4.2.15 The Department Head shall submit invoices or accounts for goods, services or construction to the County 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 County Treasurer

4.3.1 Oversees the Procurement Services unit providing support and guidance to the Procurement Services Manager, as required.

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

4.3.3 Participates in the Procurement Review Panel when necessary.

4.3.4 Reviews requests from Department Heads to appoint Purchasing Designates for approval.

4.3.5 Reviews requests for excess funds where applicable as per section 7.4 – Over Budget Bids.

4.3.6 Upon receipt of an invoice or account for goods, services or construction signed by a Department Head the County Treasurer shall issue payment.

4.3.7 The County 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.

4.3.8 Between the last regular meeting of Council in any year and the adoption of estimates for the next year, the Country 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

The County Treasurer shall operate a centralized Procurement Services unit on behalf of the Corporation of the County of Middlesex. Procurement Services will have the following responsibilities:

- 4.4.1 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.
- 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 with the assistance of the County Barrister & Solicitor when necessary.
- 4.4.8 Educate those with authority or delegated authority to make purchases on behalf of the County 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 Maintain records of Competitive Procurement Processes identified in section 7.1.2 within the County's electronic filing system.

#### 4.5 County Barrister and Solicitor

It is the role of the County Barrister and Solicitor or designated staff to provide legal advice and assistance in respect of the County's Procurement activities and its relationship with Suppliers. In fulfilling this role, County Barrister and Solicitor is responsible for:

- 4.5.1 Advising the Procurement Services Manager as required, in relation to legal issues arising from Procurement activities, and reviewing and approving specific Procurement documentation referred for legal review by the Procurement Services Manager.
- 4.5.2 Providing advice on the finalization for Procurement Agreements when required. Reviewing and advising on proposed changes to the County's standard terms and conditions, agreements, and Procurement Document templates as needed.
- 4.5.3 Providing opinions during the Procurement Process complaints, as requested.
- 4.5.4 Providing legal advice and counsel as required to the County in the event of a contract dispute or legal challenge following a Procurement Process.
- 4.6 Procurement Review Panel
  - 4.6.1 For escalated or complex issues the County shall form a Procurement Review Panel consisting of the Procurement Services Manager, County Treasurer, and the purchasing Department Head or their respective designates.
  - 4.6.2 Where reasonably required, the Procurement Review Panel shall engage the County Barrister & Solicitor to participate in the panel.
  - 4.6.3 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 (Schedule "D");
    - b) Escalated Procurement Process Complaints (section 19);
    - c) Matters involving Supplier performance and suspension (section 16).

## **5. PARTICIPATION OF ELECTED OFFICIALS IN PROCUREMENT PROCESSES**

- 5.1 Elected Officials may participate in the Procurement Process in particular circumstances.
- 5.2 In the event that a Department Head identifies a significant Procurement project that requires elected officials to participate, Department Heads will consider the following: The extent to which elected officials can provide input prior to the issuance of Procurement Documents but not function in a decision-making capacity;
  - 5.2.2 The selection of elected officials for participation who are reasonably unlikely to need to declare conflicts of interest in accordance with the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 as amended or replaced, due to circumstances that impact an elected official's ability to be impartial; and
  - 5.2.3 The number of elected officials to participate.

## **6. PROHIBITIONS**

### **6.1 Splitting**

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

### **6.2 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 7.9).

### **6.3 Personal Purposes**

THAT no purchase shall be made by the County which is personal to the individual requesting the purchase or their family member(s) and is not for the County or any of its purposes.

### **6.4 Surplus Goods**

THAT a Department Head, who declares goods surplus in accordance with section 12 shall not bid or personally obtain any goods that they have declared surplus.

## 6.5 Rewards

THAT every elected official and employee of the County 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 County;
- c) moderate hospitality during the normal course of business that would not normally exceed what the County would likely provide in return and would not be perceived by others as influencing the making of a business decision.

## 6.6 Conflict of Interest

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

# 7. PROCUREMENT PROCESSES

## 7.1 Required Procurement Processes

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

The standard Procurement Processes within this section and applicable Approval Authorities identified in "Schedule 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 provided by Procurement Services.

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



#### 7.1.1 Low Value Purchase Process (Up to \$9,999.99)

For Low Value Purchases with a Total Procurement Value amounting to \$9,999.99 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.

#### 7.1.2 Competitive Procurement Processes (\$10,000.00 or Greater)

Where the Total Procurement Value is equal to or greater than \$10,000.00 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 the Procurement Services Manager and/or County Barrister & Solicitor on the Procurement Process and shall follow the current Procurement Documents provided by Procurement Services for all Procurement Processes.

- c) **Invitational Competitive Process (\$10,000.00 - \$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 greater than \$10,000.00 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 Procurement Services Manager 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’s Bidding System. The Department Head or Procurement Services 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 or Procurement Services 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 7.1.2 a):

- i. A clear description of the scope of work and deliverables that the County 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.

## 7.2 Cooperative Purchasing

7.2.1 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 County 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 County;
- 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 County;
- e) The Department Head is convinced that the County 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 convicted it is in the best interest of the County to rely upon the process produced by the producing entity.

7.2.2 The Department Head shall seek the advice of Procurement Services, and where reasonably necessary the County Barrister & Solicitor, prior to the use of Buying Groups and Piggybacking;

7.2.3 The Department Head, at their own discretion, may seek to authorize a cooperative purchasing venture; The Department Head, in a County Produced Procurement Document, is authorized to allow other public entities to Piggyback onto the County 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 County's obligations under the Trade Agreements;
- d) Where, if advisable, legal advice of County Barrister & Solicitor has been obtained in advance of the release of the Procurement Document;
- e) 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 County;
- f) Appropriate release language is included in the Procurement Document, which confirms the County is not responsible for the use of the Procurement Document and County Procurement Process by another entity and;
- g) The potential Procurement Agreement is in a form satisfactory to the County Barrister & Solicitor.

### 7.3 Tied Bids

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

7.3.1 Where the competitive Procurement was evaluated solely on low compliant price such as an Invitational Competitive Process (section 7.1.2c) or Request for Tender (7.1.2d), the tied Suppliers will be asked to resubmit pricing through the original means of Bid submission or

otherwise if approved by the Procurement Services Manager 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.

- 7.3.2 Where the competitive Procurement has evaluation criteria in addition to price such as a Request for Proposal (section 7.1.2e) or a Pre-Qualification of Suppliers (section 7.11), 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 County shall request resubmission of pricing in the same manner prescribed in section 7.3.1. to determine the successful Supplier.

- 7.3.3 If neither of the methods described in 7.3.1 and 7.3.2 are successful in establishing an awarded Supplier the Department Head and Procurement Services Manager 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.

#### 7.4 Over Budget Bids

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

Preferred Bid's Amount Over Budget	Approval Authority
Up to and Including \$25,000.00	County Treasurer
Greater than \$25,000.00	County Council

#### 7.5 Emergency Purchases

- 7.5.1 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 County services, the welfare of persons or public property, the protection of the County's physical assets, or the security of the County'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.

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

#### 7.6 Non-use of Procurement Processes

A Department Head is not required to use the Procurement Process identified in section 7, where the following sections of this policy apply:

7.6.1 Section 7.9, "**Exceptions to the Procurement Processes**";

7.6.2 Section 8, "**Non-application**"; and Section 9, "**Exemptions.**"

#### 7.7 Procurement Agreements

The Department Head shall execute Procurement Agreements between the County and a Supplier in a form approved by the County Barrister and Solicitor.

#### 7.8 Negotiation

Procurement Services is hereby authorized to conduct negotiations with potential Suppliers following a Procurement Process where:

7.8.1 The intent to conduct negotiations is included in the Procurement Notice.

7.8.2 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.

7.8.3 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.

7.8.4 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.

## 7.9 Exceptions to Procurement Processes

7.9.1 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:

- 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 County.
- 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.

7.9.2 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 Schedule "C".

#### 7.10 On-going Services and Contracts

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

- 7.10.1 Audit Services
- 7.10.2 Banking Services
- 7.10.3 Food Management Services
- 7.10.4 Provision of Property and Liability
- 7.10.5 Employee Benefits
- 7.10.6 Existing Software Licensing
- 7.10.7 Maintenance and Cleaning Contracts
- 7.10.8 Traffic Signal Maintenance
- 7.10.9 Counseling and Employment Assistance Services
- 7.10.10 Legal Services
- 7.10.11 Municipal Property Liability
- 7.10.12 Cyber Insurance
- 7.10.13 Other services as approved by Council.



## 7.11 Pre-Qualification of Suppliers

7.11.1 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.

7.11.2 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.

7.11.3 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.

7.11.4 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.

7.11.5 A request for Supplier Qualifications must be conducted in the same manner as section 7.1.2.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 7.1.2 "Competitive Procurement Processes."

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

7.11.7 Submission details are to be maintained in accordance with the County's Retention by-law.

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

## 7.12 Revenue Generating Contracts

7.12.1 The issuance of a Procurement and approval of award of a Revenue Generating Contract of any value requires the approval of the/a Deputy CAO.

7.12.2 Award of a Revenue Generating Contract greater than \$250,000.00 shall require Council approval.

7.12.3 Unlike Competitive Procurement Processes greater than \$100,000.00, the Department Head may choose to receive physical Bid submissions with the approval of the Procurement Services Manager.

## 8. NON-APPLICATION

8.1 This policy does not apply to the following:

8.1.1 County employment contracts;

8.1.2 The acquisition of real property rights, excluding services related to obtaining the property rights;

8.1.3 Any form of assistance, such as grants, loans, equity infusions, legal services, surveys required for real estate matters, guarantees, and fiscal incentives;

8.1.4 The acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;

8.1.5 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 County and another government body or enterprise;
- i) Procurement from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities

## **9. EXEMPTIONS**

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

- 9.1.1 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;
- 9.1.2 Purchases for the supply and placement of road material throughout the County of Middlesex not to exceed \$250,000.00 (excluding tax) when clearly identified in the budget;
- 9.1.3 For goods purchased on a commodity market.
- 9.1.4 Purchases for on-going contracts;
- 9.1.5 Purchases requiring special payments (i.e. refundable expenses, general employer expenses, tax payments);
- 9.1.6 Purchases relating to training and education (i.e. catering, conferences, literature, offsite training, honorariums);
- 9.1.7 Purchases relating to real property (i.e. Licenses, easements, leasehold improvements);

- 9.1.8 Fees for expert, specialized, professional services where the subject matter is deemed to be either time sensitive and/or confidential by the CAO.
- 9.1.9 When, due to market conditions and in the judgement of Department Heads, goods are in short supply;
- 9.1.10 Purchases of replacement parts, where the original equipment manufacturer is the sole provider of that equipment; and
- 9.1.11 Any other Procurement deemed exempt by Council.

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

- 10.1 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.
- 10.2 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 Council Approval.

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

- 11.1 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.
- 11.2 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.

## **12. DISPOSAL OF SURPLUS GOODS**

- 12.1 The Department Head is hereby authorized to declare goods as surplus and/or obsolete.
- 12.2 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 is in the best interest of the County.

12.3 “Goods” does not include real property interests.

### **13. SUPPLIER CODE OF CONDUCT**

#### **13.1 Supplier Responsibilities**

a) Suppliers participating in a Procurement Process shall:

- i. Respond to the County’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 County 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 County;
- ii. Threaten, intimidate, harass or otherwise interfere with any County employee or public office holder in relation to their procurement duties; or
- iii. Offer gifts, favours or inducements of any kind to County 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 County and follow any reasonable direction from the County to cure any default.

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

14.1 Any contravention of the Supplier Code of Conduct as prescribed in section 13 by a Supplier may be grounds for the County to:

- 14.1.1 Disqualify a Supplier from the Procurement Process; and/or
- 14.1.2 Suspend a Supplier's eligibility to participate in any Procurement Process as per the Supplier Suspension Procedure (Schedule "B").

14.2 The County may also disqualify any Supplier where:

- 14.1.1 There is a conflict of interest that cannot be resolved in relation to any Procurement;
- 14.1.2 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 16 of this by-law;
- 14.1.3 The Supplier is indebted to the County; or
- 14.1.4 The Supplier has a current dispute with the County;
- 14.1.5 The Supplier has received a poor vendor performance review or has been suspended as per the Supplier Suspension Procedure (Schedule "B");
- 14.1.6 The Supplier has exhibited behavior that is no longer be in the best interest of the County.

## **15. LEGAL CLAIMS**

- 15.1 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 county or against whom the county has a claim or instituted a legal proceeding with respect to any previous contract, without prior approval by Council.
- 15.2 Section 15.1 above is grounded on the basis that it is unreasonable for the County, 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.

## **16. SUPPLIER PERFORMANCE EVALUATION**

- 16.1 In accordance with the Supplier Performance Evaluation Procedure (Schedule "A"), a Department Head may institute a Performance Evaluation or Vendor Performance Incident Report for any Procurement Agreement or engagement.
- 16.2 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.

- 16.3 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 “Schedule B”.
- 16.4 Where an evaluation of Supplier performance is completed and the results are unsatisfactory, the Department Head shall follow the Supplier Suspension Procedure prescribed in “Schedule B”.
- 16.5 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 County as a work reference.
- 16.6 Any Performance Evaluation may be shared with the County’s lower tier municipalities if the applicable Procurement Documents state such at the time of the Procurement Process.

## **17. COUNTY CODE OF CONDUCT AND CONFLICT OF INTEREST**

- 17.1 No Council member or employee of the County shall purchase or offer to purchase on behalf of the County any goods, services or construction except in accordance with this policy.
- 17.2 No Council member or employee of the County may purchase goods, services or construction for personal use through the Corporation unless authorized by Council or the Department Head and the CAO.
- 17.3 All Procurements of goods, services and construction described in this by-law are subject to the requirements of the following policies of the County and to Ontario legislation, as may be applicable, including but not limited to the following:
  - 17.3.1 The Employee Code of Conduct
  - 17.3.2 The Employee Conflict of Interest Policy
  - 17.3.3 The Code of Conduct for Members of Council of the County of Middlesex
  - 17.3.4 The Municipal Conflict of Interest Act and
  - 17.3.5 The Municipal Act, 2001.

## **18. LOBBYING RESTRICTIONS**

- 18.1 The County may reject any bid by a Supplier that engages in lobbying and may terminate the Supplier’s right to continue in the Procurement Process.

- 18.2 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 County and members of Council.
- 18.3 Suppliers engaged in any lobbying may be suspended from participating in County Procurement Processes as per the Supplier Suspension Procedure "Schedule A".

## **19. PROCUREMENT PROCESS COMPLAINTS**

- 19.1 Purchasing Authorities shall ensure that there is a dispute resolution clause in the Procurement Document:
  - 19.1.1 Suppliers shall have the ability to submit a complaint to Procurement Services in writing or email within thirty (30) days following the Award Date of the applicable Procurement Process
  - 19.1.2 The Procurement Services Manager 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.
- 19.2 Suppliers from other Provinces shall be provided with the same rights and privileges to challenge Procurement decisions as Suppliers in Ontario.

## **20. 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.

## **21. GREEN PROCUREMENT**

- 21.1 Subject to budgetary and operational requirements, the County 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.

## **22. ACCESSIBILITY**

### **22.1 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 County 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 County'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.

## **23. SEVERABILITY**

- 23.1 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:
- 23.2 The legality, validity or enforceability of the remaining sections of this by-law, in whole or in part; or
- 23.3 The legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

**24. EFFECTIVE DATE**

24.1 This purchasing policy replaces in its entirety, policy FIN 2.01.

24.2 Policy number FIN 2.01 is repealed effective on March 26, 2024, at 4:00:00PM.

24.3 This Procurement Policy shall come into force and take effect on March 26, 2024, at 4:00:00PM.

PASSED IN COUNCIL this 26<sup>th</sup> day of March, 2024.

\_\_\_\_\_  
Aina DeViet, Warden

\_\_\_\_\_  
Paul Shipway, County Clerk

## **SCHEDULE “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 County’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 County Staff or hired professional service (ie. 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 (Schedule “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 (Schedule “B”), the following steps must be taken:

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

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 County’s Supplier Suspension Procedure (Schedule “B”).

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

Upon approval to proceed from the CAO or Deputy CAO, in accordance with the Supplier Suspension Procedure (Schedule “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 (Schedule “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 County 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 County as a reference or to any of the County's lower tier municipalities if the related procurement in regards to the contract stipulates such.

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

The County 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.

## **SCHEDULE “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 County’s Procurement Processes. Defined terms used in this procedure have the meaning assigned in the Definitions within section 2 of the County’s Procurement by-law.

### **2. Application**

In order to ensure that the County is receiving quality deliverables and value for public money and is dealing with Suppliers that conduct business in a professional and ethical manner, the County 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 County 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 County 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 County, and the County subsequently discovers that such a conflict of interest exists, the County 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 County's Procurement Process.

**(c) Poor Performance**

If a Supplier performs inadequately under a contract with the County, the County 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 (Schedule "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 County.
- (d) The deliverables provided were defective or deficient, and either were not replaced or repaired, or required multiple repairs.
- (e) The County 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 County's Supplier Performance Evaluation Procedure (Sc A).

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

County 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 County'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 County'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 13 of the County’s Procurement by-law.

(e) Violation of section 18 “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**

The Procurement Services Manager 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 the Procurement Services Manager 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 County's Procurement Review Panel ("PRP"). The PRP is established in accordance with the County'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 the County's Procurement Services Manager, including supporting documentation, if necessary, that provides reasons why the original reason for the suspension would no longer prove a risk for the County.

- (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 County's Procurement Processes would no longer expose the County 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 must check the suspended Suppliers list to ensure that bids are not accepted from suspended Suppliers.

## SCHEDULE “C”: PROCUREMENT APPROVAL AUTHORITIES

Procurement Approval Authorities				
Procurement Process	Total Procurement Value	By-Law Section	Council Report Required?	Approval Authority
Low Value Purchase	\$0.00 to \$9,999.99	7.1.1	No	Department Head
Invitational Competitive, Request For Proposals, Cooperative Purchasing	\$10,000.00 to \$99,999.99	7.1.2 c) 7.1.2 e) 7.2	No	Department Head
Request For Tenders, Request For Proposals, Cooperative Purchasing	\$100,000.00 to \$250,000.00	7.1.2 d) 7.1.2 e) 7.2	No	Department Head
	Greater than \$250,000.00		Yes	Council
Pre-Qualification of Suppliers	Any Value	7.11	Yes	Council
Exceptions to the Procurement Process	\$0.00 to \$49,999.99	7.9	No	Department Head
	\$50,000.00 to \$100,000.00		No	Procurement Services Manager or Treasurer
	Greater than \$100,000.00		Yes	Council
Emergency Purchase	Any Value	7.5	Yes	Council (Following Purchase)
Revenue Generating Contracts	\$0.00 to \$250,000.00	7.12	No	Deputy CAO
	Greater than \$250,000.00		Yes	Council

## SCHEDULE “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 <b>mandatory</b> site visit.	Automatic Rejection.
Conditions placed by the Supplier on the submitted contract price that were not granted by the County previously.	Automatic Rejection.
Bids containing minor mathematical errors.	The County has the right to correct or request clarification on minor mathematical errors.
Part bids (all required items not in bid).	Automatic Rejection unless allowed for by the County prior to submission.
Performance Security  a) Insufficient Performance Security (no or insufficient bonds or agreement to bond) b) 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 the Department Head and Treasurer, shall have the authority to waive irregularities, which they jointly consider to be minor.