

**Policy:** Purchasing and Procurement Policy

**Department:** Finance

**Effective Date:** September 7, 2021

**Revision Date:**

**Review Date:** September 7, 2025

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## 1. Policy Statement

This Policy has been developed to comply with Section 270. (1) of the Municipal Act S.O. 2001, Chapter 25, which provides that all municipalities and local boards shall adopt and maintain policies with respect to the procurement of goods and services.

## 2. Purpose and Principles

**2.1** The Municipal Act, 2001, S.O. 2001, c.25, Section 270(1)(3) states that a Municipality shall adopt and maintain policies with respect to its procurement of goods and services. The purpose, goals and objectives of this policy and of each of the methods of Purchasing authorized herein are:

- a) promote openness, honesty, fairness, integrity, accountability, and transparency in the procurement process;
- b) encourage competition in the procurement process;
- c) prevent conflicts of interest – real, apparent, and potential – between suppliers and elected officials and staff;
- d) ensure that goods and services are acquired at the best value for money;
- e) require that suppliers are treated equitably, consistently, and without discrimination throughout the entire procurement process;
- f) clearly identify the roles, responsibilities, and accountability of individuals involved in the procurement process;
- g) instill confidence in the public and in participants in the procurement process; and
- h) ensure compliance with the Trade Agreements and applicable laws, including without limitation the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31 and the Accessibility for Ontarians with Disabilities Act, 2005 and the Discriminatory Business Practices Act, R.S.O. 1990, c. D.12.

**2.2** The purchasing principles and key goals of this procurement policy are:

- a) **Effectiveness:** The extent to which the procurement process is achieving its intended results.

- b) **Accessibility:** Accessibility criteria and features shall be incorporated when procuring goods, services and/or facilities in accordance with the Accessibility for Ontarians with Disabilities Act, 2001 (AODA), where practicable and feasible. All competitive bids will incorporate measures to ensure that customer service is available to everyone, including persons with disabilities. Where it is deemed not practicable to incorporate accessibility an explanation shall be provided upon request.
- c) **Accountability:** The obligation to answer to the public, Council, and vendors for the procurement results and for the manner in which procurement responsibilities are discharged. No member of staff or Council may receive a personal benefit from any contract for supplies and/or services or benefit from the very nature of their employment with the Township of Tyendinaga or their being on Council, as the case may be.
- d) **Transparency:** Clarity and disclosure about the process for arriving at procurement decisions; encourage an open and competitive bidding process for the acquisition and disposal of goods and/or services; and the objective and equitable treatment of all vendors.
- e) **Quality Service Delivery:** Front-line services provided by the Municipality, including but not limited to road construction, winter maintenance and fleet acquisition will receive the right product, at the right time and in the right place.
- f) **Process Standardization:** Standardized processes remove inefficiencies and create a level playing field.
- g) **Co-operative Purchasing:** Endeavour to create opportunities for co-operative purchasing between other agencies to create economies of scale.
- h) **Sustainable Purchasing:** The Municipality recognizes that through its procurement function it has the power to bring about environmental and social improvements both locally and globally while maximizing economic benefits. The Municipality may make attempts to preserve the environment and reserves the right to encourage the procurement of supplies and services with due regard to the preservation of the natural environment; suppliers may be selected to supply goods made by methods resulting in the least damage to the environment, and/or to supply goods incorporating recycled materials where practicable. It is to be understood that total life cycle cost analysis may be required to ensure that these supplies and services are financially viable and available at competitive prices.
- i) **Value for Money:** Ensure that the best value of an acquisition is obtained. This may include, but not limited to, the determination of the total cost of performing the intended function over the lifetime of the task, acquisition cost, installation, disposal value, disposal cost, training costs, maintenance cost, quality of performance, and environmental impact.

### 3. Definitions

**3.1** Words and phrases used in this policy and related procedures have the following meanings, unless expressly stated otherwise:

**"Accessibility"** is a general term used to describe the degree of ease that something (e.g. device, service, and environment) can be used and enjoyed by persons with a disability. The term implies conscious planning, design and/or effort to ensure it is barrier-free to persons with a disability, and by extension, highly usable and practical for the general population as well;

**"Advertised Competitive Process"** means a RFX process where the Municipality publicly advertises an invitation to suppliers to submit a Bid on the Municipality's designated tendering website.

**"Approval Authority"** means the position at the Municipality that is authorized to approve expenditures, procurement strategies, procurement documents or contract awards.

**"Bid"** means a proposal, tender or other form of supplier submission responding to a RFX.

**"Bid Document" or "Bid Documents"** means any document issued by the Municipality pursuant to this policy and used in connection with a procurement process;

**"Bidder"** means a person, corporation or other entity that responds, or intends to respond to a Request for Bid.

**"Buying Group"** means a cooperative arrangement in which individual members administer the procurement function for specific Goods or Services for the group and includes a buying group entity where the entity administers procurement for its members and provincial/territorial and federal governments when establishing standing arrangements open to municipalities.

**"Chief Administrative Officer"** means the Chief Administrative Officer for the Corporation of the Township of Tyendinaga.

**"Clerk"** means the Clerk for the Corporation of the Township of Tyendinaga.

**"Compliant Bid"** means a Bid that meets the terms and conditions.

**"Conflict of Interest"** means a situation where a personal, business or other interest of an elected or appointed official, officer or employee of the Corporation is, or can be reasonably be perceived to be, in conflict with the interests of the Corporation, and includes, but is not limited to:

- i. The giving or receiving of a direct or indirect personal gain or benefit, or a direct or indirect advantage or privilege, by any person or business that offers goods and/or services to the Corporation;
- ii. a direct or indirect interest in any business that provides goods and/or services to the Corporation; and/or,
- iii. a conflict of interest as defined in the *Municipal Conflict of Interest Act*.

**"Contract"** means a written agreement between the Municipality and a supplier for the purchase of Goods or Services by any contractual means, including purchase, lease, and rental, with or without an option to buy (CFTA, CETA). For greater certainty, contract includes a PO that incorporates terms and conditions.

**"Contract Value"** means the estimated expenditures under a Contract over the entire period of the Contract, including options and renewal periods, exclusive of taxes (CFTA, CETA).

**"Contractor"** means a supplier that is a party to a contract for the supply of Goods or Services to the Municipality.

**"Department Head"** means the head of a department operating within the Municipality.

**"Disposal Methods"** means the following methods by which an Asset, which has been determined to be Obsolete, Scrap or Surplus, may be disposed of through:

- i. On-line public auction;
- ii. Public Auction;
- iii. Sealed Bid;
- iv. Trade-in on replacement Asset;
- v. Direct sale; or
- vi. Donation.

**"Excluded Contract"** means a contract for Goods, Services or Expenditures that are not subject to competitive procurement rules or the Trade Agreements, listed in Appendix "A" to this policy.

**"Goods"** includes supplies, equipment, materials, products, software, furniture, structures and fixtures to be delivered, installed or constructed.

**“Invitational Competitive Process”** means a RFX process where the Municipality invites preselected suppliers to submit a Bid without advertisement.

**“Lobbying”** means the advocacy of an interest that is affected, actually or potentially by the bid solicitation process or individuals involved in the Bid Solicitation process including seeking to influence the outcome of the Bid Solicitation process or subsequent Award.

**“Lowest Compliant Bid”** means the Compliant Bid that would provide the Corporation with the desired goods and/or services at the lowest cost.

**“Municipality”** means the Corporation of the Township of Tyendinaga.

**“Non-Competitive Purchase”** means a procurement strategy involving the purchase of a Good or Service directly from a supplier without a competitive process.

**“Pending Litigation”** occurs where a claim, application or other legal proceeding for money or other relief, and includes a threat of legal proceedings, or a demand for compensation, that has been made in writing by either a person or the Municipality against the other, but no formal proceedings have been commenced.

**“Petty Cash”** means an accessible store of money kept by the Municipality for expenditure on low dollar value items.

**“Policy”** refers to the Township of Tyendinaga Procurement of Goods and Services Policy.

**“Procurement”** means a goods, services or construction contract involving a purchasing, leasing, renting or exchange transaction, arrived at by a competitive or non-competitive process. Procurement also includes material(s) management, contract management, advisor services and implementation and adherence to best practices.

**“Procurement Card”** means a credit card or purchasing card provided by the Municipality’s Finance Department to staff for use in the procurement of low dollar value Goods and Services for the Municipality.

**“Procurement Strategy”** means the planned approach to a procurement, including whether to adopt an Invitational Competitive Process or Advertised Competitive Process, the procurement method to be used, and the Contract

structure such as length of the term and whether a blanket order approach will be used.

**“Professional Services”** means those services requiring the skills of professionals for a defined service required including but not limited to:

- i. architects, engineers, economic development, designers, surveyors, geoscientists, project managers, consultants, auditors, accountants, medical professionals and legal counsel/advisors;
- ii. firms or individuals having specialized competence in environmental, planning or similar disciplines; and,
- iii. software, graphic design and web-design consultants and any other persons providing similar services.

**“Purchasing Designate”** means the employee or contracted agent responsible for a procurement initiative as appointed by a Department Head or Chief Administrative Officer of the organization.

**“Quotation”** means a binding offer to supply certain specified goods and services at a specific rate, price, terms of sale, and description of goods and/or services in response to the information contained in a call for quotations.

**“Request for Bids”** means a Request for Tender, Quote, Proposal, and information in the appropriate context.

**“Request for Expressions of Interest” or “REIS”** means a general market research to determine vendor interest in a proposed procurement, used prior to issuing a call for bids or proposals and not intended to result in the award of a contract. All REIS shall be approved in advance by the Chief Administrative Officer.

**“Request for Pre-Qualification” or “RFPQ”** is a procurement process used to prequalify potential suppliers in which factors such as financial capability, experience, and reputation are considered in order to develop a list of qualified suppliers for subsequent participation in an invitational bid opportunity.

**“Request for Proposal” or “RFP”** means a competitive procurement process for obtaining unique proposals designed to meet broad outcomes to a complex problem or need for which there is no clear or single solution.

**“Request for Quotation” or “RFQ”** means a competitive procurement process for obtaining quotations by the Municipality for the provision of goods and/or services made in accordance with the provisions of this by-law.

**“Request for Tender” or “RFT”** means a competitive procurement process for obtaining competitive bids based on precisely defined requirements for which a clear or single solution exists.

**“RFx”** means a competitive process inviting suppliers to submit Bids in connection with the potential purchase of Goods or Services by the Municipality and, for purposes of this policy, excludes requests for information.

**“Services”** means all services, including construction services, unless otherwise specified.

**“Single Sourcing”** means the non-competitive procurement process to acquire goods and/or services from a specific Supplier even though there may be more than one Supplier capable of delivery of the same goods and/or services.

**“Sole Source”** means there is only one source of the goods and/or services that meets the requirements of the Corporation.

**“Special Circumstance”** means:

- i. an event that is exceptional or could not be foreseen and is likely to pose a threat to the health, safety or welfare of the public;
- ii. an event that, unless immediately addressed, is likely to cause significant loss or damage to property;
- iii. an event that has disrupted any essential service that needs to be re-established without delay; or
- iv. an emergency as defined in the Emergency Management and Civil Protection Act, R.S.O. 1990, c.E.8, as amended, or any successor legislation thereto.

**“Trade Agreements”** means the Canadian Free Trade Agreement (CFTA), the Canadian and European Union Comprehensive Economic and Trade Agreement (CETA), and the Trade and Cooperation Agreement Between Ontario and Quebec (OQTCA), as applicable.

**“Treasurer”** means the Treasurer for the Corporation of the Township of Tyendinaga.

**“Vendor”** means any person supplying goods and/or services to the Municipality in accordance with the terms of a contract.

## **4. Application and Scope**

- 4.1** All persons who act on behalf of the Municipality in the issuance of a bid request; the conduct of a bid request; and the making of an award, are responsible to comply with this policy.
- 4.2** All acquisitions of goods and services by the Municipality and any local boards and corporations, and all purchasing inquiries of the Municipality regarding materials, prices, services, delivery, terms, conditions, and adjustments shall be conducted through the appropriate department, in accordance with the provisions of this policy, unless otherwise permitted herein.
- 4.3** Council has the ultimate authority for all expenditures. Council delegates this authority by the authorization of budgets or by specific resolution. Levels of contract approval authority are summarized in Appendix "B". Budget approvals by Council of capital works and operating expenditures shall constitute authorization for any purchases of goods and services necessary to carry out work within the approved cost of an approved project, provided such purchase(s) are made in accordance with this policy.
- 4.4** Any contracts necessary to complete the purchase of goods and/or services shall be signed by the appropriate personnel as outlined in Document Execution Authority as set out in Appendix "B", up to the prescribed limits provided that:
- i. the contract has been prepared in a form satisfactory to the Chief Administrative Officer;
  - ii. any financial securities and insurance required under the contract are satisfactory to the Chief Administrative Officer and/or Treasurer; and
  - iii. funding is available in the Budget.
- 4.5** In determining the lowest responsible bidder, the Department Head shall consider the following in addition to price;
- i. the ability, capacity and skill of the bidder to provide the quality of goods or services required;
  - ii. the ability of the bidder to fulfill the contract or provide the service promptly at the specified time;
  - iii. the character, reputation, integrity, experience and efficiency of the bidder;
  - iv. the quality and performance of previous contracts, goods or services undertaken by the bidder;
  - v. the sufficiency of the bidder's financial resources with respect to fulfilling the contract or providing the goods and services;
  - vi. the quality, availability and adaptability of the goods or services for the use required;
  - vii. the ability of the bidder to provide future maintenance and service; and

viii. the number and scope of conditions attached to the bid.

## **5. Accessibility Requirements**

**5.1** Accessibility criteria and features shall be incorporated when procuring goods, services and/or facilities in accordance with the Accessibility for Ontarians with Disabilities Act, 2001 (AODA), where practicable and feasible. All competitive bids will incorporate measures to ensure that customer service is available to everyone, including persons with disabilities. Where it is deemed not practicable to incorporate accessibility an explanation shall be provided upon request.

**5.2** Contracts for the acquisition of goods and services shall include the following elements:

- a) that the Vendor shall comply with the accessibility standards under the Accessibility for Ontarians with Disabilities Act, 2005 (AODA);
- b) that the Vendor shall ensure that its employees are trained on providing accessible customer services. Any training or training resources must conform to the legislated requirements under the Act; and
- c) that the Vendor shall maintain records of the training, including dates when training was provided, the number of employees who received training and individual training records. Where requested by the Municipality, the person, business, or organization shall provide written proof, as well as any documentation regarding training policies, practices, and procedures, to the Municipality.

## **6. Accountabilities and Responsibilities**

**6.1 General Responsibilities.** Any person authorized to purchase Goods and Services on behalf of the Municipality must comply with this policy and related procedures.

### **6.2 Council's Role and Authority**

- a) Council's role is to approve the budget and approve staff recommendations to award Contracts. Before accepting staff recommendations to award a Contract, Council must be satisfied that the procurement process was fair, honest, impartial, and equitable and otherwise meets the requirements of this policy.
- b) In the event of exceptional circumstances justifying a departure from policy, this purchasing policy may be overridden by Council in the event Council determines it to be appropriate and in the best interests of the Municipality.

- 6.3 Chief Administrative Officer Responsibilities and Authority.** The Chief Administrative Officer is accountable for the proper administration and compliance with this policy within the Municipality. The Chief Administrative Officer may either approve or sign documents in place of lower-level staff, or override the decisions made by lower-level Approval Authorities, if necessary.
- 6.4 Treasurer Responsibilities and Authority.** The Treasurer is responsible for the development of procedures consistent with this policy and shall assist Department Heads, as appropriate, in the interpretation of this policy and related procedures.
- 6.5 Clerk Responsibilities and Authority.** In the absence of the Chief Administrative Officer or Treasurer, or where the Chief Administrative Officer or Treasurer are unable to exercise their approval or signing authorities for any reason such as a conflict of interest, the Clerk is authorized to exercise the approval and signature authorities of the Chief Administrative Officer or Treasurer set out in this policy.
- 6.6 Department Head Responsibilities and Authority.** Department Heads shall:
- a) Subject to the requirements of this policy, be authorized to make expenditures on behalf of the Municipality;
  - b) Be accountable for, and oversee, all expenditures, procurement and contract management activities within their department service areas and ensure compliance with this policy and related procedures;
  - c) Make required reports to the Treasurer, Chief Administrative Officer, Council or any other party regarding their activities or compliance with this policy and related procedures;
  - d) Retain all background information, information submitted by suppliers and other relevant information involved in obtaining prices for Goods or Services as per the retention schedules in place at that time and for a period not less than three (3) years; and
  - e) The Department Head, with the written approval of the Treasurer and Chief Administrative Officer, may delegate to an employee or employees, all or part of the authority in Section 6.6 above, which authority may be limited to a particular type of goods and/or services.

## **7. Prohibitions**

- 7.1** In carrying out procurement and contracting activities, staff and other persons undertaking procurements on behalf of the Municipality must not:

- a) circumvent the requirements of this policy including, but not limited to, biasing specifications or scheduling events to prevent suppliers from meeting requirements; or
- b) divide purchases to avoid the requirements of the policy by any method; or
- c) purchase any Goods or Services through Contracts for personal use by or on behalf of any member of Council, employees of the Municipality and their immediate families; or
- d) provide information to one supplier to give that supplier an advantage over other suppliers (CFTA, CETA, OQTCA).
- e) Elected Official shall not approve nor acquire any goods and services.
- f) For procurements with a Dollar Value of \$100,000 or more, the following are strictly prohibited, unless otherwise approved by the Chief Administrative Officer (CFTA):
  - i. imposing a condition that, in order for a supplier to participate in the procurement, the supplier must have previously been awarded one or more contracts by the Municipality; or
  - ii. requiring prior experience where it is not essential to the procurement; or
  - iii. favouring Goods or Services of a province or region; or
  - iv. favouring suppliers of Goods or Services of a province or region.
- g) For procurements with a Dollar Value of \$365,000 or more, the following are strictly prohibited, unless otherwise approved by the Chief Administrative Officer (CETA):
  - i. favouring Goods or Services of Canada over those of the European Union; or
  - ii. favouring suppliers of Canada over those of the European Union.

## **8. Failure to Abide by the Policy**

- 8.1** Any goods and/or services that are obtained in contravention of this policy will be subject to investigation by the Municipality, following which the Municipality will take the necessary corrective action.
- 8.2** Any employee of the Municipality who knowingly contravenes this policy is committing a serious act of misconduct and may be held personally liable for the full value of the purchase as well as disciplinary action up to and including termination.

## **9. Requirement for Approved Funds**

- 9.1** Prior to the approval of the Approved Annual Budget, a department may incur normal operating expenditures up to the value of 50% of the previous years Approved Annual Budget.

**9.2** Council approved Departmental budget appropriations for expenditures shall be sufficient authorization for a Department to proceed with the purchase of supplies and materials (subject to those limitations as established herein).

**9.3** The Chief Administrative Officer may reject all purchase requests for which sufficient funds are not available and identified. If the Department Head advises the Chief Administrative Officer that the deficiency is minimal and alternative funding has been identified, the purchase request may proceed provided appropriate authorizations are met in accordance with this policy.

**9.4** Where goods and/or services are routinely purchased or leased on a multi-year basis, the exercise of authority to award a contract is subject to the following:

- i. the identification and availability of sufficient funds in appropriate accounts for the current year within the Budget;
- ii. the goods and/or services will continue to be required in subsequent years and, in the opinion of the Department Head, or designate, the required funding can reasonably be expected to be made available; and
- iii. the contract includes a provision that the supply of goods and/or services in subsequent years is subject to the approval by Council of the Budget estimates to meet the proposed expenditures.

## **10. Trade Agreements**

**10.1** Purchasing by the Municipality may be subject to the provisions of trade agreements, including but not limited to the Canadian Free Trade Agreement (CFTA), Comprehensive Economic and Trade Agreement (CETA) and Trade and Cooperation Agreement between Ontario and Quebec, Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP), United States-Mexico-Canada Agreement (USMCA).

**10.2** Where an applicable trade agreement supersedes and is in conflict with this Policy, the trade agreement shall take precedence.

## **11. Advertising and Bid Solicitations**

**11.1** Bids shall be posted on the Municipality's website and/or the Municipality's e-bidding electronic platform and 1) where considered appropriate in the opinion of the purchasing designate or Department Head, advertised in local newspapers, applicable publications or other media, or 2) where necessary to comply with applicable law, in the applicable publications or other media.

## **12. Bidding Documents, Receipts, Openings, and Agreements**

- 12.1** The use of Standard Bid documents shall be approved by the Chief Administrative Officer and Treasurer prior to being released.
- 12.2** Bid documents will be made available on the Municipality's e-bidding system, which will be linked to the Municipal website.
- 12.3** All competitive documents will be submitted in a sealed, hard-copy format or by submission electronically through the Municipality's e-bidding system as directed in the procurement document. No competitive documents will be received by the Municipality by any other means than what is specified in this policy and directed by the bid request.
- 12.4** No bids submitted after the closing time specified will be accepted.
- i. For hard copy submissions: If a bid is submitted through the mail system and is received after the closing time specified, the envelope shall not be opened, and it will be returned unopened to the sender. If the bid cannot be returned to the sender for any reason it will remain with the other bids, unopened, until it can be destroyed as per the Municipality's Record Retention By-law.
  - ii. For electronic submissions: The closing time and date shall be determined by the e-bidding system's web clock. The timing of their bid submission is based on when the bid is received by the bidding system, not when a bid is submitted, as bid transmission can be delayed due to file transfer size, transmission speed, etc.
  - iii. For electronic submissions: Bidders may edit or withdraw their bid submission prior to the closing time and date. However, the bidder is solely responsible to ensure the re-submitted bid is received by the bidding system prior the stated closing time and date.
- 12.5** The process for receiving bids submitted in a hard-copy form or submission electronically through the Municipality's e-bidding system will be as follows:
- i. For hard copy submissions: Staff will stamp each bid, as it arrives, with the date, time, company name and contact information.
  - ii. For electronic submission: The e-bidding system will track submission information. The e-bidding system will send a confirmation email to the bidder advising that their bid was submitted successfully. At all times, the onus is solely on the bidder to ensure they receive a confirmatory email.
- 12.6** All submissions received shall be final and binding for a period of 60 (sixty) days from the closing date and time of the request for procurement and not be altered by any subsequent offerings, discussions or commitments unless it is otherwise indicated in the request for procurement document. After the binding period, the submissions shall be deemed to be closed.

**12.7** Where a bid is received that includes an irregularity, the Municipality shall follow the protocol as appropriate for the particular irregularity, as outlined in Appendix "C".

### **13. General**

**13.1** The purchasing designate(s) or Department Head(s), wherever reasonably possible, shall seek to standardize the goods and services required by departments so as to provide the most cost effective and efficient purchasing system that meets the needs of the Municipality.

**13.2** The purchasing designate or Department Head shall ensure that all specifications in a bid request:

- a) are clear and concise;
- b) indicate the minimum acceptable levels of quality;
- c) are commercially practical;
- d) encourage competitive bidding; and
- e) follow all legislation, and trade agreements applicable to the procurement of goods and services under this policy.

**13.3** It is the responsibility of the user department to enforce any terms, conditions, and specifications from the award of any contract resulting from the purchasing process. Where terms, conditions and specifications are not being adhered to, the user department must contact the supplier and attempt to negotiate to have said deficiencies corrected.

**13.4** Except as otherwise stated, dollar amounts shown in this policy that set out the parameters for acquiring goods and services or disposing of goods shall be the total cost excluding applicable taxes and including freight.

**13.5** Any supplier who is retained by the Municipality shall perform all duties and exercise all responsibilities while complying with all policies, procedures, rules and regulations, both written and oral, as are announced by the Township of Tyendinaga from time to time and that are applicable to the services being provided by the supplier. The supplier shall carry out said duties and responsibilities in a diligent, faithful and honest manner. The Township of Tyendinaga expects all work, conversations and social media practices carried out by the supplier to be professional and courteous at all times. Anyone who fails to perform work or who have conversations with any Township of Tyendinaga staff and members of the public in an unprofessional and not courteous manner shall be warned verbally by the purchasing designate or Department Head that such

behaviour is not acceptable. A letter to the supplier will be issued immediately stating the consequences for any further unacceptable behaviour. Any continuation of abusive and unacceptable behaviour including verbal conversations following the issuance of the said letter by the Municipality shall result in the Municipality to take further actions it deems necessary to remedy and mitigate for all losses to the Municipality.

- 13.6** Where a bid request is solicited for physical submissions, all sealed bids shall be opened in the presence of the purchasing designate and at least one (1) Municipal representative.
- 13.7** Where a bid request is solicited for electronic submissions, every sealed bid received within the time specified in a bid request shall be unsealed and extracted utilizing an electronic bidding system. Each submission and its price will be posted within 48 hours to the electronic bidding system.
- 13.8** In the case where only one bid is received pursuant to subsection (14.7) of this section, only the bidder's name shall be posted.
- 13.9** Where a request for proposals has been utilized, only the name of the bidder shall be posted.
- 13.10** The purchasing designate or Department Head shall ensure that all contracts have clear payment terms that have been reviewed, as necessary, by the Treasurer.
- 13.11** The purchasing designate or Department Head shall ensure that the quality of all goods and services acquired by him or her is monitored and deemed acceptable.
- 13.12** Prior to Council approval of the current budget, a department may incur expenditures up to 50% of the previous year's budget. Department Heads will have the authority to instruct the solicitation of bids prior to Council approval of the current budget.
- 13.13** Where any purchase of goods and services have been authorized under this policy, the Chief Administrative Officer may authorize disbursement of additional funds provided that the additional funds:
- a) do not exceed the lesser of \$50,000 or 20% of the approved budgeted amount;
  - b) are available within the program budget; and
  - c) are required to complete works that are necessary as part of the original contract.

**13.14**The conditions under subsections (14.13), (a), (b) and (c) above do not apply where the additional funds are provided to the Municipality by a developer, land owner or government body.

**13.15**The Treasurer and Chief Administrative Officer shall have the authority to terminate a contract for the acquisition of a good or service if the grounds for termination in the contract have been met.

**13.16**No local preference will be given to any bidder in the acquisition of goods and services as the Municipality shall comply with the Discriminatory Business Practices Act, R.S.O. 1990, c. D.12, as amended.

**13.17**Unsolicited bids will not be accepted by the Municipality unless it can be demonstrated that there is a significant benefit to the Municipality.

**13.18**No person submitting an unsolicited bid will be precluded from participating in future bid requests that resemble the unsolicited bid.

**13.19**Addenda are prepared in cases where the posted competitive procurement documents need to be modified (e.g., amending, adding or deleting information due to errors, conflicts or omissions). Any addenda shall be posted at least three (3) business days before the closing date. If an addendum is issued within two (2) business days of the closing date, the bid submission date shall be extended accordingly.

**13.20**An addendum allows for modification in the bids including but not limited to inserting new or omitted provisions or drawings; and/or revising or deleting provisions or drawings.

**13.21**All addenda must be available to all bidders and shall be posted in the same manner the original competitive procurement document was posted, for example on an electronic bidding system.

In the case of e-bidding systems:

- a) Bidders may be required to acknowledge receipt of any addenda.
- b) It is the responsibility of the bidder to have received all addendums that are issued. Bidders are responsible to check the e-bidding system prior to submitting their bid and up until bid closing time and date in the event additional addenda are issued. Bids may be automatically withdrawn from the e-bidding system if addenda are not acknowledged.

- c) The bidder is solely responsible to make any required adjustments to their bid in light of the addenda; acknowledge the addenda; and; ensure their re-submitted bid is received by the bidding system no later than the stated bid closing time and date.

**13.22**A value-added incentive is an offer by a supplier, over and above the primary goods and services being purchased, with the intent to increase the total value received by the customer.

(a) Value-added incentives will be considered where appropriate and where requested as part of the bid request.

(b) The following rules for the use of value-added incentives will be used by the Municipality:

- Value-added incentives should be relevant and connected to the bid request.
- The Municipality may in certain circumstances make recommendations with respect to the desired enhancements. The procurement document shall list the specific value-added incentives that would be considered beneficial to the organization.
- At no time will cash or bonus payments be accepted as a value-added incentive.
- Value-added incentives may be evaluated as a separate and final step after the application of all other related criteria.
- Sustainable products or service components may be considered a value-added incentive as a way of differentiating submissions.

## **14. Competitive Procurement**

### **14.1**Types of Competitive Procurement

**Open Competitive Procurement:** Open competitive procurement is the contractual acquisition (purchase or lease) by the Municipality of any goods and services that enables all suppliers to compete in a fair, transparent, and open environment. Open competitive procurement ensures the highest level of fairness, impartiality, and transparency; it maximizes suitability and the value for money of the obtained goods and services.

**Invitational Competitive Procurement:** Invitational competitive procurement is the contractual acquisition (purchase or lease) by the Municipality of any good or service that enables suppliers to compete in a fair and open environment. The

Municipality conducts invitational competitive procurement by inviting three or more qualified suppliers to submit written proposals to supply goods and services as specified by the Municipality through a bid request.

#### **14.2**Requests for Proposal (RFP)

The purpose of an RFP is to request suppliers to provide innovative solutions for the delivery of more complex goods and services, or, where explicitly required, to provide alternative options or solutions. Bidders are invited to submit sealed bids electronically in accordance with the bid request. This process uses multiple predetermined evaluation criteria, including price.

When the purchasing designate has determined that the requirements for goods and services cannot be sufficiently defined or specified, an RFP is required. Terms and conditions for the RFP will be established along with evaluation criteria that will be utilized in the bid request. To clarify, the Municipality, in its sole and absolute discretion may be used at any time for any dollar value.

- i. The purchasing designate will act as a facilitator.
- ii. A committee of no less than three (3) evaluators will be formed to evaluate proposals in accordance with the terms and conditions and established criteria as set out in the bid request.
- iii. Scores will be tabulated and awarded to the bid that best meets the requirements of the Municipality and the purpose and intent of this policy.
- iv. A Request for Information or a Request for Expression of Interest may be issued in advance of an RFP to assist in the development of a more definitive set of terms and conditions, scope of work/service and/or the selection of qualified suppliers.
- v. For the purposes of this policy, a proposal will be considered compliant upon opening the bid providing the terms and conditions of the bid request have been met.
- vi. If the compliant bid is over \$100,000 and exceeds the approved budget appropriation by the lessor of \$12,500 or 5% of the approved budgeted amount, the Department Head or designate shall submit a report to Council for direction.
- vii. If less than three (3) bids are received, the Department Head or designate shall submit a report to Council for direction.

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

Request for Quotation (RFQ): An RFQ is a document similar to an RFT. In an RFQ, the Municipality describes exactly the goods and services to be provided; the

proposal evaluation is based on the lowest compliant bid that meets all terms. Bidders are invited to submit sealed bids electronically in accordance with the bid request.

Where a request for quotation is required, employees may obtain quotes informally and/or formally. However, at all times employees shall endeavor to obtain formal quotes wherever possible. The Municipality shall:

- i. For goods and services with estimated cost exceeding \$5,000, the purchasing designate shall obtain a minimum of three (3) quotes where reasonably possible for the goods and services. In the event three (3) quotes are not received, and the value of the quote exceeds \$5,000, the Department Head may decide in his/her own discretion to formally issue a tender.
- ii. Copies of all the quotations are to be attached to the approved invoice when submitted for processing.
- iii. Notwithstanding subsection (a) above, any quote that exceeds \$5,000 but was issued by the Municipality formally shall be considered in accordance with this policy.
- iv. The purchasing designate shall be responsible to review the competitive bid and verify that all terms, conditions and specifications of the bid are met.
- v. The Municipality reserves the right in its sole discretion to accept or reject any bid.

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

The purpose of an RFT is to request suppliers to submit bids to provide goods and services based on stated delivery requirements, performance specifications, terms and conditions. Bidders are invited to submit sealed bids manual or electronic in accordance with the bid request. An RFT focuses the evaluation criteria predominantly on the price and delivery requirements, although not necessarily the lowest price. Once a bidder is selected, a contract shall be entered into without negotiation.

For goods and services for estimated expenditures greater than \$25,000, the purchasing designate shall be authorized to issue a RFT.

- i. The Municipality reserves the right in its sole discretion to accept or reject any bid.
- ii. If the compliant bid is over \$100,000 and exceeds the approved budget appropriation by the lessor of \$12,500 or 5% of the approved budgeted amount, the Department Head or designate shall submit a report to Council for direction.

- iii. If less than three (3) bids are received, the Department Head or designate shall submit a report to Council for direction.

#### **14.5**Competitive Procurement Key Process Steps

Procurement planning is an integral part of the procurement process. The Municipality shall undertake procurement planning for their annual procurement requirements as well as for individual procurement activities. Procurement planning allows the Municipality to determine:

- i. The goods and services necessary to meet business requirements;
- ii. Opportunities to engage in aggregate spending in order to create process efficiencies and maximize value for money;
- iii. Potential supply sources;
- iv. Procurement methods;
- v. The necessary approvals and timing of when these approvals will be needed; and
- vi. The overall time necessary to complete the procurement process.
- vii. When conducting procurement planning, the Municipality will target, among other objectives:
  - a) Early identification of needs;
  - b) Clear definition of requirements;
  - c) Justification of the acquisition; and
  - d) Compatibility of procurement needs with legal and business requirements as well as internal policies and processes.

#### **14.6**Communications during Competitive Process

- i. The competitive process begins when the issuance of the bid request (start date) and ends when the Municipality signs an agreement with a supplier (end date). Throughout the competitive procurement process, all communications with suppliers involved in the process must occur formally through the contact person identified in the competitive documents, in either of the two following methods:
  - a) Addenda
  - b) Question and Answer (Q&A)
- ii. Addenda and Q&A must be posted in the same manner as the bid request and made available to all proponents. Communications outside of this process will not be entertained or responded to by the Municipality.

## **14.7** Exceptions from Competitive Procurements

- i. Where there is provision under trade agreements that exempts the procurement from the requirement for a competitive procurement process, the Municipality may rely on such an exemption as the basis for conducting a non-competitive procurement.
- ii. An employee asserting that procurement is subject to an exception clause under a trade agreement must formally set out the clause being relied upon, rationale for relying on this clause, applicability of the particular clause and providing written supporting documentation to the Treasurer.

## **15. Alternative Procurement**

The Municipality shall endeavor to use competitive procurement processes to achieve the goals of this procurement of goods and services policy. However, the Municipality has recognized that from time to time there are special and/or unique circumstances may exist that require the Municipality to use a non-competitive procurement process. The Municipality may use an alternative procurement process under the circumstances as set out in this policy.

The Municipality may use procurement strategies that are not listed above, provided these strategies do not contradict the intentions and requirements of this policy. When adopting an alternative procurement strategy, the Municipality must consult with the Treasurer and if necessary, legal counsel to ensure compliance with the policy and the law.

### **15.1** Informal Quote Process

- i. The informal quote process shall apply to the acquisition of all goods and services by the Municipality unless otherwise permitted in this policy or any other policy of the Municipality. Procurement dollar value thresholds, approved authority, method of procurement and reporting requirements have been established and are set out in Appendix "B".
- ii. Acquisitions as presented in this section and Appendix "B" shall be considered to be the minimum standard and will become more formal and complex as the requirements and/or estimated value of the goods and services increase. At all times, the Department Head, in his/her sole and absolute discretion, may choose to use a more formal method of acquisition than the informal quote process set out in this policy.
- iii. Procurements up to \$25,000 shall be considered low dollar value procurements. For low value procurements, best efforts will be made by the purchasing designate and/or Department Head(s) to obtain quotes from

vendors without formal advertising or receipt of sealed bids. All low value procurement shall utilize Municipal contracts and shall otherwise be in accordance with this policy. It is the responsibility of the Department Head to ensure that the policy is followed.

## **15.2 Non-Binding Procurement**

All non-binding bid requests including but not limited to Requests for Pre-Qualification (RFPQ), Requests for Expressions of Interest (RFEI), Requests for Information or Requests for Qualifications, will be formally issued by the purchasing designate for the department.

## **15.3 Request for Pre-Qualification (RFPQ)**

A Request for Pre-Qualification (RFPQ) or a Request for Expressions of Interest (REIS) may be conducted for developing a roster of qualified Suppliers of Professional or Specialized Services for groups of projects requiring similar and particular expertise.

While the use of a roster is strictly optional, the associated RFPQ or REIS shall be conducted in accordance with the provisions of this by-law.

The Department Representative shall provide to Department Head the relevant information regarding the Professional Services and required expertise. Department Representative and Department Head will prepare the RFPQ or REIS, inviting interested Suppliers to submit Bids. These Bids shall outline, among other things, Suppliers' qualifications, availability, recent project experience, key personnel and roles and sufficient references satisfactory to the Department Head for work of a similar nature.

An evaluation team, consisting of members of the requesting Department and of any other Department deemed beneficial, shall analyze and evaluate the responses received using the criteria outlined in section 3 of this by-law and/or and shall include clear specifications, evaluation criteria and terms and conditions that can be applied in a fair, transparent, and consistent manner to select qualified Suppliers of Professional or Specialized Services to be placed on a roster.

On subsequent projects, Suppliers of Professional or Specialized Services may be selected from the roster to submit detailed proposals in response to a Bid Solicitation, in accordance with this By-law. The requesting Department shall invite Suppliers on the roster to provide Services, using best efforts to equally distribute opportunities amongst the Suppliers on the roster.

Alternatively, a Supplier may be selected from the roster to submit a Bid for Professional or Specialized Services in accordance with this By-law.

Rosters may be updated once every two (2) years.

#### **15.4 Request for Expression of Interest (RFEI)**

- i. A request for expression of interest may be issued for the purpose of determining the availability of suppliers and for the purpose of compiling a list of suppliers. A RFEI may be used as a pre-condition to an RFP.
- ii. The receipt of an expression of interest by the Municipality does not create any obligation between the potential supplier and the Municipality.

#### **15.5 Alternative Procurement Process**

- i. Purchase Need Identified: to determine core procurement process to initiate an approval to bypass competitive process (single or sole sourcing);
- ii. Planning: to define procurement scope;
- iii. Requirements: to define procurement specifications and receive sign-off;
- iv. Quote: to obtain a quote and corresponding documentation;
- v. Evaluation: to perform necessary evaluation; and
- vi. Agreement: to offer an agreement to the supplier and obtain signatures.
- vii. Any alternative procurement may involve negotiating the terms and conditions of any agreement for the goods and/or services.

### **16. Non-Competitive Procurement: Sole Source, Single Source, Negotiation**

**16.1 Sole Source Purchases:** The Municipality may conduct a sole source procurement process if the goods and/or services are available from only one supplier by reason of statutory or market-based monopoly. Competition is precluded due to the application of any Act or legislation; or because of the existence of patent rights, copyrights, license, technical secrets; or controls of raw material; or the complete item, service or system is unique to one supplier and no alternative or substitute exists.

**16.2 Single Source:** The Municipality may conduct a single source procurement process where there is more than one source of supply in the open market, but only one source is recommended due to predetermined and approved specifications. The procurement may be conducted using a single source process if the goods and/or services are available from more than one source, but there are valid and sufficient reasons for selecting one supplier in particular, as follows:

- i. an attempt to acquire the goods and/or services by soliciting competitive bids has been made in good faith, but has failed to identify more than one willing compliant supplier;
- ii. the confidential nature of the requirements is such that it would not be in the public interest to solicit competitive bids;
- iii. there is a need for compatibility with goods and/or services previously acquired or the required goods and/or services will be additional to similar goods and/or services being supplied under an existing contract (i.e., contract extension or renewal);
- iv. the product or service is unique and easily established as one of a kind;
- v. in the judgment of the Department Head and Chief Administrative Officer, the goods and services are in short supply due to market or other unforeseen conditions;
- vi. the extension of an existing or previous contract would prove more cost effective or beneficial for the Municipality;
- vii. the acquisition involves the ongoing maintenance and service requirements for Municipal property;
- viii. the acquisition involves the leasing, rental, disposal or purchase either by or for the Municipality of real property;
- ix. the acquisition is required or is beneficial in regard to the standardization of goods and services for the Municipality;
- x. an existing contract for a good or service has been terminated prematurely and there is an immediate need for the good or service while a new bid request is put out;
- xi. with regards to technological goods and services, there is an economic advantage and/or technical compatibility advantage to the Municipality – such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement;
- xii. additional deliveries by an original supplier of goods and services that were not included in the original procurement, but change cannot be made for economic or technical reasons without causing significant inconvenience or substantial duplication of costs for the Municipality;
- xiii. any and all other items not expressly listed here are prescribed under the exemptions of the Canada Free Trade Agreement, as amended;
- xiv. the goods and services are purchased under circumstances that are considered exceptionally advantageous to the Municipality, such as in the case of a bankruptcy or receivership;
- xv. it is advantageous to the Municipality to acquire the goods and services from another public body;
- xvi. the procurement of a particular brand of goods and services that are intended solely for resale to the public and no other brand meets the

- Municipality's program objectives nor is the brand available from any other source;
- xvii. such other non-competitive purchases exemptions authorized by Council; or
  - xviii. in the discretion of the Chief Administrative Officer it is not practical or beneficial to the Municipality to issue a bid.

Notwithstanding section (16.2), the purchasing designate shall submit any negotiated acquisition, with the exception of a negotiated acquisition to extend or renew an existing license or maintenance agreement that is included within the program budget, to Council for authorization and all Contracts shall be signed in accordance with the Document Execution Authorities set out in Appendix "B".

**16.3** Negotiation: Notwithstanding that Negotiation may be a component of another procurement process; Negotiation may be used for purchases of goods and/or services when any of the following criteria apply:

- i. a Sole Source is being recommended;
- ii. two (2) or more identical Bids are received;
- iii. the lowest compliant bid received meeting all mandatory specifications exceeds the Budget amount;
- iv. the extension of an existing Contract would be more effective;
- v. only one (1) Bid is received in response to a Bid Solicitation;
- vi. the Supplier is selected from a roster for Professional Services that has been developed in accordance with this by-law; and/or
- vii. there is Council authorization to do so.

**16.4** The Bid Approval Report shall be prepared in accordance with Section 21.

**16.5** All purchases shall be authorized in accordance with the Purchasing Authorities set out in Appendix "B" and all contracts shall be signed in accordance with the Document Execution Authorities set out in Appendix "B".

## **17. Unsolicited Proposals**

**17.1** If an unsolicited proposal or solicitation is received from a potential supplier, the unsolicited proposal should be forwarded to the appropriate Department Head. The Department Head shall first assess such proposals on the basis of whether they align with the Municipality's strategic goals and objectives, do not circumvent the Municipality's regular procurement processes, and the proposal's scale and scope align with the requirements and funding ability of the Municipality.

**17.2** Only Department Heads and higher-level officials may engage in discussions with

potential suppliers on opportunities that exist in the market as part of informing themselves of market changes and opportunities. Before engaging in any such discussions, however, the supplier must always be advised that any procurement or contract can only be initiated pursuant to the Municipality's policies.

**17.3** If it is determined that there is a legitimate need for the Goods or Services offered by way of an unsolicited proposal, then the procurement process shall be conducted in accordance with this Policy.

## **18. Special Circumstances Purchases**

**18.1** Purchases that are required to respond to Special Circumstances as defined in Section 3 of this policy, shall be authorized in accordance with Appendix "B". All such purchases are exempt from the processes outlined under the Methods of Purchasing, but such processes may be followed where practical to do so, and in all instances must be reported to the Chief Administrative Officer.

**18.2** Contracts required to effect Special Circumstance purchases shall be signed in accordance with the Document Execution Authorities set out in Appendix "B".

**18.3** Purchases under special circumstances shall be reported to Council identifying the event or emergency which resulted in the purchase and the proposed source of funding.

## **19. Cooperative Purchasing (Buying Groups)**

**19.1** Notwithstanding anything else contained in this by-law, the Municipality may participate with other units of government, as named agency, including local boards, commissions and agencies in co-operative purchasing and bulk buying of Goods and/or Services, where it is in the best interest of the Municipality to do so.

**19.2** The Municipality may join one or more Buying Groups with Council's approval.

**19.3** Once Council has approved the Municipality's participation in a Buying Group, in the absence of an existing Municipal Contract for the specific Goods or Services, a Department Head may procure from a Buying Group contract or participate in a procurement process administered by the Buying Group without undergoing a competitive procurement process as required by this policy however approvals to award the Contract, based on Contract Value, must still be obtained prior to committing the Municipality to purchase any Goods or Services.

**19.4** When participating in a Buying Group procurement or when procuring from a Buying Group contract to the extent practicable, the Municipality shall ensure that

the procurement was carried out in a manner that is consistent with the requirements of this policy. (CFTA)

**19.5**The Municipality shall publish a notice of its participation with the Buying Group at least annually on the tendering website normally used by the Municipality. The notice shall direct potential suppliers to the Buying Group tendering website if it is different from the Municipality's tendering website (CFTA).

## **20. Leasing**

In certain circumstances, it may be economically advisable for the Municipality to enter into a financing lease to acquire the rights to use capital property and equipment rather than an outright purchase.

General policies governing purchase of the goods and services shall also apply to lease and rental agreements.

Following the completion of the Request for Tender process, the respective Department Head shall follow the steps as defined in the Lease Financing Policy, attached to this policy as Appendix "D".

## **21. Reporting Procedures**

**21.1**Prior to any Award, a Bid Approval Report shall be prepared by the Department Head signed and authorized in accordance with the Purchasing Authorities set out in Appendix "B". All non-compliant/irregular, single or sole source, and special circumstances procurement activity will be presented in a written report to Council.

## **22. Prescribed Council Approval**

**22.1**Notwithstanding any other provision of this Policy, the following Awards require Council approval:

- i. the recommended Award exceeds the amount budgeted for the purchase;
- ii. the Authority to Award has not been expressly delegated to staff of the Municipality
- iii. the recommended Award is not the Lowest Compliant Bid.

**22.2**Council may, by resolution, waive the provisions of this policy if it is in the best interest of the Corporation to do so.

## **23. Document Execution Authority**

Employees or officers of the Municipality identified in Appendix "B" (Document Execution Authority) shall have the authority to execute Contracts and all other

documents necessary to affect the Award of purchase of goods and/or services, up to the prescribed limits, provided that the documents have been prepared in a form satisfactory to the Chief Administrative Officer and that the award or purchase complies with this policy.

## **24. Insurance and Indemnity**

**24.1** The Supplier shall defend, indemnify and save harmless the Township of Tyendinaga, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Supplier, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Contract. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Supplier in accordance with this Contract and shall survive this Contract.

The Supplier agrees to defend, indemnify and save harmless the Township of Tyendinaga from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the Supplier's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the Supplier in accordance with this Contract, and shall survive this Contract.

**24.2** Any bid documents in response to a bid request shall disclose all necessary insurance information and requirements.

**24.3** All insurance must be in a form satisfactory to the Department Head and must be delivered prior to the commencement of work and shall remain in force for the duration of the contract inclusive of any maintenance period and shall include the following:

- a) Name the Municipality as an additional insured, as applicable;
- b) Be primary and non-contributing;
- c) Contains a "cross liability/separation of insureds" clause; and,
- d) Not be altered, cancelled or permitted to lapse without providing thirty (30) days' prior written notice to the Municipality by the insurer.

**24.4**In general the standard insurance minimums are as follows; however, from time to time, the Municipality reserves the right to increase or reduce the amounts as approved by the Chief Administrative Officer and/or the Municipality's insurance provider:

- a) \$5 million – commercial general liability policy
- b) \$5 million – owned and non-owned automotive liability policy
- c) \$1 million – homeowners (e.g. for rental of facilities)
- d) \$5 million – professional errors and omissions liability (as applicable)
- e) \$5 million – environmental impairment liability (as applicable)
- f) The amount of the project cost – Builders Risk (as applicable)

**24.5**Other Insurance Coverage – The Municipality reserves the right to request different limits of insurance or other types of policies appropriate to the agreement as the Municipality may reasonably require from time to time with review of the Municipality's insurance provider.

## **25. Legal Requirements**

**25.1**The Municipality will conduct any and all procurement activities in accordance with all applicable laws. Goods and services shall not be afforded preferential treatment under this policy or in any bid solicitation based on location or origin of the goods and services.

**25.2**Ontario Law: When conducting procurement, the Municipality should understand their obligations. Individuals engaged in supply chain activities on behalf of the Municipality must be aware of all applicable laws and the importance of professional conduct. Where necessary, the Municipality will seek legal advice on procurement.

**25.3**Privacy Legislation: The Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), 1990 makes public bodies accountable to the public and responsible to protect personal privacy. The privacy legislation stipulates a right of access to records held by public bodies and regulates how public bodies manage personal information collected. All correspondence, documentation, and information provided to the Township of Tyendinaga by any proponent in connection with the respective request for procurement will become the property of the Municipality. All documentation relating to a request for procurement not identified is subject to the provisions of MFIPPA and may be released, pursuant to the provisions of MFIPPA. At a minimum, the Proponent's name and total bid amount will be made publicly available upon request.

**25.4**Trade Agreements: The Municipality is subject to various trade agreements. Bid solicitations shall comply with all applicable trade agreements, and shall include clear specifications, evaluation criteria and terms and conditions that can be applied

in a fair, transparent, and consistent manner. The Municipality must follow provisions of applicable trade agreements. Where these trade agreements do not require the Municipality to conduct procurement through a competitive process, the Municipality is strongly encouraged to utilize a competitive approach to procurement.

**25.5** Occupational Health and Safety Act: The contractor is bound by regulations issued by the Ministry of Labour for the Province of Ontario under the Occupational Health and Safety Act. The contractor acknowledges that they comply with these regulations and that they are the contractor under the Occupational Health and Safety Act as it relates to the completion of the work and shall indemnify and hold harmless the Municipality in respect of same, including any, legal costs, fines or other penalties incurred by the Municipality resulting from the contractor's performance or failure to perform under the contract terms.

**25.6** Insurance and Workplace Safety and Insurance Board (WSIB): All vendors who supply services to the Township of Tyendinaga shall, before the start of work, provide proof of insurance and WSIB clearance certificate. General liability amounts shall have limits no less than \$5,000,000 and will be determined by the Department Head.

**25.7** Financial Security: The purchasing designate in consultation with the Treasurer will determine the need for and amount of financial security, subject to any applicable law that may apply to the procurement.

a) Various forms of financial security exist to ensure that the contractor's obligations under the contract are carried out, to protect the interests of subcontractors, sub-subcontractors and suppliers, and to protect the Municipality against loss should a successful proponent fail to enter into or fulfill a contract.

b) The principal traditional techniques are holdbacks, security deposits and surety bonds. When security is obtained, the Treasurer will apply the procedures for the handling of bonds and security deposits as set out in the procurement documents.

## **26. Bid Irregularities**

The process for administering irregularities contained in Bids pertaining to all Bid Solicitations shall be executed in accordance with Appendix "C".

## **27. Bidder Eligibility**

**27.1**The Municipality may, subject to Council's prior approval, exclude a supplier, refuse any Bid from a supplier on grounds such as: (CFTA, CETA)

- i. bankruptcy or insolvency;
- ii. false declarations;
- iii. significant or persistent deficiencies in performance of any substantive;
- iv. requirement or obligation under a prior contract;
- v. final judgments in respect of serious crimes or other serious offences;
- vi. professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier;
- vii. supplier conduct that has provided the Municipality with reasonable grounds to believe it would not be in the best interest of the Municipality, staff or the public to enter into a contract with the Bidder, including prior abusive, threatening, intimidating or harassing conduct;
- viii. being engaged in a dispute or litigation with the supplier; and
- ix. failure to pay taxes.

**27.2**The Chief Administrative Officer/Clerk/Treasurer in consultation with the Department Head of the requisitioning department may remove a vendor's name from the list of bidders for a period of up to two years on the basis documented poor performance, non-performance, or conflict of interest. The Chief Administrative Officer/Clerk/Treasurer will provide a written notice of decision to the vendor.

## **28. Bidder Complaint Resolution**

**28.1**Any supplier that wishes to challenge or is otherwise aggrieved by a procurement decision made by the Municipality, its staff or Council under this policy is required to provide a written complaint in accordance with the Municipality's Complaints Handling Policy within five (5) business days of the earliest of (i) the date of the supplier first became aware of the basis for a procurement complaint or (ii) date of publication of award.

**28.2**Any complaint must be in writing and shall include the following details:

- a) A specific identification of the provision(s) or procedure that is alleged to have been breached;
- b) A specific description of each act alleged to have breached the process;
- c) A precise statement of the relevant facts;
- d) An identification of the issues to be resolved;
- e) The supplier's argument and supporting documentation; and
- f) The supplier's requested remedy.

**28.3**All complaints shall be handled as described in the Municipality's Complaints Handling Policy.

## **29. Lobbying Restrictions**

- 29.1** Suppliers, their staff members, or anyone involved in preparing a bid, shall not engage in any form of political or other lobbying whatsoever or seek to influence the outcome of the Bid Solicitation process or subsequent award. This restriction extends to all of the Municipality's staff, and anyone involved in preparing a Bid Solicitation or participating in a bid evaluation process, and members of Council.
- 29.2** The Municipality may reject any bid by a supplier that engages in such lobbying, without further consideration, and may terminate that supplier's right to continue in the Bid Solicitation process.
- 29.3** During a Bid Solicitation process, all communications shall be made through the individual identified on the RFX, as the main contact for that particular purchase. No supplier or person acting on behalf of a supplier or group of suppliers, shall contact any elected official, consultant, or any employee of the Municipality to attempt to seek information or to influence the award.
- 29.4** Elected officials shall refer any inquiries about a Bid Solicitation process to the Chief Administrative Officer.

## **30. Access to Information**

- 30.1** The disclosure of information received relevant to the issue of bid solicitations or the award of contracts emanating from bid solicitations shall be made by the appropriate officers in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, as amended.
- 30.2** All records and information pertaining to tenders, proposals, and other sealed bids, which reveal a trade secret or scientific, technical, commercial, financial or other labour relations information, supplied in confidence implicitly or explicitly, shall remain confidential if the disclosure could reasonably be expected to:
- i. prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organizations;
  - ii. result in similar information no longer being supplied to the Municipality where it is in the public interest that similar information continues to be so supplied;
  - iii. result in undue loss or gain to any person, group, committee or financial institution or agency; or
  - iv. result in information whose disclosure could reasonably be expected to be injurious to the financial interests of the Municipality.

## **31. Disposal of Surplus Goods**

**31.1** Where any goods or equipment are considered to be obsolete or un-repairable, the Department Head shall issue a report to Council to declare the item(s) to be surplus, except where the replacement of goods has already been approved as a trade in as part of the procurement process.

**31.2** Surplus assets shall first be offered to other Departments within the Municipality.

**31.3** Surplus items may be disposed of through formal auction, internet offering, tender, quotation, or trade-in, whichever is in the best interest of the Municipality at the discretion of the Department Head, as approved by the Treasurer to ensure all transaction meet pecuniary interest legislation.

**31.4** Where the item has limited market value, the Department Head may, to the benefit of the Municipality, dispose of the item in a manner other than the ones listed above.

**31.5** Any revenue from the sale of scrap material or other items shall be credited to the appropriate account by department.

## **32. Conflict of Interest**

**32.1** Personal purchases shall not be made for any elected or appointed officials, members of a board or committee, or for any municipal employee or their families.

**32.2** Every elected official, appointed officer, employee of the Municipality or a member of their family is expressly prohibited from accepting, directly or indirectly, from any person, company, firm, or corporation to which any purchase order, contract is, or might be awarded, any rebate, gift or money, except:

- i. gifts of a very small intrinsic value; or
- ii. moderate hospitality during the normal course of business that would not significantly exceed what the Municipality, through the employee's expenses account, would likely provide in return and would not be perceived by others as influencing the making of a business decision.

**32.3** All elected officials, officers or employees of the Municipality shall declare any Conflicts of Interest to the Chief Administrative Officer and shall have no involvement in a Bid Solicitation process where a real or perceived Conflict of Interest has been found or deemed to exist, including, but not limited to:

- i. requesting the goods and/or services, setting the parameters of the purchase, evaluating bids or recommending, deciding or making awards;

- ii. direct contact with those making the purchasing decisions and the user department.

**32.4** Suppliers shall not be allowed to submit a bid for any Bid Solicitation in which the supplier has participated in the preparation of the Bid Solicitation, and any such bid submitted shall be disqualified.

### **33. Severability**

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

### **34. Policy Review**

The Chief Administrative Officer, in consultation with the Treasurer and Department Heads, shall conduct a detailed review of this by-law on an as-required basis, but no longer than five (5) years following its passage and report to Council as necessary. The Treasurer shall undertake periodic reviews of this Policy and is authorized to make administrative amendments to the policy and to make additions, deletions, and amendments to Appendix "A" provided they are similar in nature to the listed documents and in accordance with the principles of this Policy. Any administrative amendments authorized by the Treasurer shall be clearly identified and added as Appendix "E" to this policy.

### **35. Appendices**

Appendix A – Exemptions

Appendix B – Execution Policy

Appendix C – Irregularities contained in Bids

Appendix D – Lease Financing Policy

Appendix E – Administrative Amendments

## **Appendix "A"**

### **Exemptions**

Competitive bids shall not be required for the following goods and services:

- a. Petty cash items
- b. Advertising services and public notices
- c. Public auctions or purchases from other government agencies/municipalities
- d. Conferences, conventions, workshops, or seminars and their associated costs
- e. Meals, travel and accommodation
- f. Outside legal counsel or other legal services
- g. Memberships in associations
- h. Magazines, books, periodicals
- i. Ongoing maintenance and support for existing computer hardware and software
- j. Financial services such as bank charges and investments
- k. Permits, certificates, licenses and other approvals acquired through a government or regulatory body
- l. Postage
- m. Health or social services including laboratory services
- n. Goods or services with artistic, cultural or historic significance
- o. Any and all other items not expressly listed here, but documented within the Canada Free Trade Agreement
- p. Payroll and payroll deductions including tax, WSIB and OMERS remittances
- q. Utilities and telecommunications
- r. Insurance claim settlements and adjuster services
- s. Legal services and labour relation services as deemed appropriate by the Chief Administrative Officer
- t. Election materials: The Municipal Clerk has the authority to purchase goods, services and equipment considered necessary or advisable to carry out the requirements of the *Municipal Elections Act, 1996*, S.O. 1996, Ch. 32, as amended. The Clerk shall wherever possible be guided by the provisions of this policy.
- u. Police services
- v. Development charges
- w. Professional and special services up to \$100,000, including but not limited to:
  - Additional non-recurring accounting and auditing services;
  - Realty services for lease, acquisition, demolition, sale and appraisal of land and property, including appraisal and consulting services related to matters of expropriation;
  - Consultants for peer review and development review
  - Construction administration
  - Property tax bill printing and mailing services; and/or
  - Integrity commissioner services.

## Appendix "B" Execution Policy

In the case of multi-year supply and/or service contracts, the pre-authorized expenditure limit shall refer to the estimated total annual expenditure under the contract.

| Purchasing Method                                      | Dollar Range                                | Purchasing Authority   | Procurement Process   | Source of Bid   | Report to Council Required | Document Execution Authority |
|--|---|--|---|---|----------------------------|------------------------------|
| Low Value Purchase                                     | \$5,000 or less                             | Department Head or Purchasing Designate  | Informal quotations   | Purchases made from the competitive marketplace   | No                         | Department Head              |
| Informal Requests for Quotations                       | Greater than \$5,000 and less than \$25,000 | Department Head or Purchasing Designate if the budget not exceeded; CAO if budget exceeded | Informal quotation, Formal Quotations (Request for Quotation), Request for Proposal, Request for Tender | Invitational Competitive Procurement, Minimum of three (3) quotes where reasonably possible by invitation or open competition               | No                         | CAO or Reeve                 |
| Request for Tender (RFT) or Request for Proposal (RFP) | Greater than \$25,000 up to \$50,000        | CAO  | Formal Quotations (Request for Quotation), Request for Proposal, Request for Tender                     | Open competitive Procurement, RFT or RFP advertised on Electronic Bidding system and advertised for a minimum of fifteen (15) calendar days | Yes                        | CAO and Reeve                |

| Purchasing Method   | Dollar Range                         | Purchasing Authority | Procurement Process   | Source of Bid  | Report to Council Required          | Document Execution Authority |
|---|--------------------------------------|----------------------|---|--|-------------------------------------|------------------------------|
| Request for Tender (RFT) or Request for Proposal (RFP)              | Greater than \$50,000                | Council              | Formal Quotations (Request for Quotation), Request for Proposal, Request for Tender | Open competitive Procurement, RFT or RFP advertised on Electronic Bidding system and advertised for a minimum of fifteen (15) calendar days. | Yes                                 | CAO and Reeve                |
| Non-Competitive Purchases (Negotiation, Sole Source, Single Source) | Greater than \$25,000 up to \$50,000 | CAO                  |   |  | Yes                                 | CAO                          |
|   | Greater than \$50,000                | Council              |   |  | Yes                                 | CAO and Reeve                |
| Special Circumstance  | Less than \$10,000                   | CAO                  |   |  | Inform Council as soon as possible. | CAO                          |

As outlined in the policy (Part I – General), in specific instances the Chief Administrative Officer may authorize disbursement of additional funds provided that they do not exceed the lessor of \$12,500 or 5% of the approved budgeted amount.

## Appendix "C" Irregularities contained in Bids

The following list of bid irregularities should not be considered exhaustive.

This chart below shall apply only where an irregularity exists with respect to a stated requirement of a relevant competitive bid document issued by the Municipality.

### General

| <b>Irregularity</b>   | <b>Action</b>   |
|---|---|
| Failure to submit bid through municipality's electronic bidding system  | Automatic rejection, unless the Municipality has instructed otherwise by published Addendum |
| Late Bids   | Automatic rejection.  |
| Failure to attend mandatory site visit (if required)  | Automatic rejection.  |
| Any Company, or principal of a Company, who has an outstanding claim or commenced legal action against the Municipality | Automatic rejection.  |

### Bid Document – Execution

| <b>Irregularity</b>  | <b>Action</b>   |
|--|---|
| Bids completed in erasable medium  | Automatic rejection.  |
| Electronic signature of representative authorized to bind the supplier missing or incomplete or absence of corporate seal authorized to bind the supplier on the prescribed form which is to be submitted in response to a Bid Solicitation. (Scanned version of physical signature is acceptable) | Automatic rejection.  |
| Form of Proposal, Quotation or Tender missing or incomplete.   | Automatic rejection.  |
| Electronic signature of witness, if required, missing or incomplete. (Scanned version of physical signature is acceptable)   | Automatic rejection.  |
| Date of Bid missing or incomplete  | Automatic rejection, unless in the opinion of the Department Head, the incomplete nature is trivial or insignificant. |

### Insufficient Financial Security

|  |  |
|--|--|
| Irregularity   | Action   |
| No electronic copy of Bid Deposit, or financial security included in bid document.   | Automatic rejection.   |
| Irregularity   | Action   |
| Failure to provide the original hardcopy of the bid deposit (if applicable) within five (5) working days* of the bid closing date. | Automatic rejection.   |
| Amount of financial security is insufficient.  | Automatic rejection.   |
| Amount of security is expressed as a percentage of the total bid sum.  | Automatic rejection, unless in the opinion of the Department Head the insufficiency in the financial security is trivial or insignificant. |
| Amount of security is expressed only as a dollar figure.   | Automatic rejection.   |
| Name of signature of supplier is missing or incomplete.  | Automatic rejection.   |
| Seal of supplier is missing or incomplete.   | Automatic rejection, unless in the opinion of the Department Head, the incomplete nature is trivial or insignificant.                      |
| Name, signature, or seal of bonding company is missing or incomplete.  | Automatic rejection.   |
| Failure to provide a letter of agreement to bond (if required).  | Automatic rejection.   |

### Other

|   |   |
|---|---|
| Irregularity  | Action  |
| Incomplete, illegible or obscure Bids or Bids which contain information not called for, erasures, overwriting or strike outs (not initialed). | Two (2) working days <sup>1</sup> to correct to the satisfaction of the Department Head, otherwise automatic rejection. |

<sup>1</sup> Where "working day" is specified, this is from the hour the Bidder is notified by Corporations staff of the irregularity.

|  |  |
|--|--|
| Document, in which all necessary Addenda have not been acknowledged.                             | Two (2) working days <sup>2</sup> to confirm Bid to the satisfaction of the Department Head, if stated in the Bid Solicitation, automatic rejection. |
| Bid received on documents other than those provided in the Bid Solicitation.                     | Automatic rejection, unless allowed for in the Bid Solicitation.   |
| Failure to insert the bidder's business name in the space provided in the Bid Solicitation form. | Automatic rejection, unless in the opinion of the Department Head, the incomplete nature is trivial or insignificant.                                |

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<sup>2</sup> See footnote 1.

## **Appendix "D"** **Lease Financing Policy**

### **Introduction**

In certain circumstances, it may be economically advisable for the Municipality to enter into a financing lease to acquire the rights to use capital property and equipment rather than an outright purchase. This policy establishes the procedures regarding the evaluation of potential financing lease agreements and the requirements for reporting the results of those procedures to Municipal Council as required under the Municipal Act, 2001, as amended, and Ontario Regulation 653/05, as amended.

### **Statement of Policy and Goals**

In accordance with the Municipality's procurement policy, a procurement decision must always ensure that the prices paid for goods and services make optimum use of Municipality resources. When staff considers the option of a financing lease agreement, their evaluation of the option must ensure that this goal is achieved.

Adherence to the policies and procedures herein will result in a report presented to Municipal Council which clearly gives an opinion as follows;

- a) whether or not the costs of the financing lease agreement are lower than other methods of financing available to the Municipality and
- b) whether the risks associated with the financing lease are reasonable.

### **Definitions**

**Financing lease** means a lease allowing for the provision of municipal capital facilities if the lease may or will require payment by the municipality beyond the term for which the municipal council was elected. Financing leases include both material leases and non-material leases.

**Material lease** means a financing lease which would result in a material impact for the municipality, which is hereinafter defined as an individual financing lease with annual payments in excess of \$10,000.

**Non-material lease** means a financing lease which would not result in a material impact or a combined impact for the municipality.

**Material impact** means costs or risks that significantly affect or would reasonably be expected to have a significant effect on, the debt and financial obligation limit prescribed under regulations.

**Combined material impact** means the costs or risks of a proposed non-material lease which, when combined with all other non-material leases entered into or proposed to be entered into in a particular year by the municipality, would result in a material impact.

**Municipal Capital facilities** include land, works, equipment, machinery and related systems and infrastructures.

### **Payment Schedule**

A financing lease agreement must include a schedule of all fixed amount of payment, if any, required under the lease and that may be required under any possible extensions or renewals of the lease.

### **Treasurer's Report**

Before entering into a material lease, the Treasurer shall prepare a report to Council with recommendations, assessing, in the opinion of the Treasurer, the costs and financial and other risks associated with the proposed financing lease, including;

- a comparison between the fixed and estimated costs and the risks associated with the proposed lease and those associated with other methods of financing;
- a statement summarizing, as may be applicable, the effective rate or rates of financing for the lease, the ability for the lease payment amounts to vary, and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the lease;
- a statement summarizing any contingent payment obligations under the lease that in the opinion of the Treasurer would result in a material impact for the municipality, including lease termination provisions, equipment loss, equipment replacement options and guarantees and indemnities;
- a summary of the assumptions applicable to any possible variations in the lease payment and contingent payment obligations; and
- any other matters the Treasurer or Council considers advisable including whether the scope of the financing lease warrants obtaining independent financial advice.

## **Legal Advice**

The report may include legal advice on the provisions of the proposed financing lease agreement.

## **Change in Circumstances**

At any time after a report regarding a potential financing lease agreement has been made, but before the agreement is entered into, if the Treasurer becomes of the opinion that a changed circumstance with respect to the proposed lease may result in a material impact for the Municipality, the Treasurer shall as soon as is reasonably possible update the report and present the updated report to Council.

## **Annual Reporting**

In accordance with Ontario Regulation 266/02, as amended, the Treasurer shall prepare an annual report and present to Council if the Municipality has any financing leases subsisting in the fiscal year.

## **Exemptions – Non-material leases**

A financing lease may be entered into without complying with this policy if the financing lease is deemed by the Treasurer not to materially impact the Municipality's debt and financial obligation repayment limit. The definition of material impact to be considered by the Treasurer in making this determination is included in the definitions section of this policy.

**Appendix "E"**  
**Administrative Amendments**

| <b>Date of Amendment<br/>(YYY-MM-DD)</b> | <b>Section of Policy</b> | <b>Details</b> | <b>Approvals</b> |
|--|--------------------------|----------------|------------------|
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