



## CORPORATION OF THE TOWN OF NEWMARKET

### BY-LAW NUMBER 2014-27

A BY-LAW TO DEFINE THE PROCUREMENT POLICIES FOR THE CORPORATION OF THE TOWN OF NEWMARKET

WHEREAS Section 270 of the *Municipal Act, 2001, as amended* provides that a municipality shall adopt and maintain policies with respect to its procurement of goods and services.

AND WHEREAS Council enacted By-law Number 2011-74 to define the Procurement policies and procedures for the Corporation of the Town of Newmarket, herein after, called "the Owner" and it is now deemed necessary to enact a new by-law and to repeal By-law Number 2011-74;

THEREFORE BE IT ENACTED by the Municipal Council of the Corporation of the Town of Newmarket as follows:

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## 1. PURPOSES, GOALS, AND OBJECTIVES OF THIS BY-LAW

The purposes, goals, and objectives of this by-law, and of each of the methods of procurement authorized, herein are:

- a) To encourage competition among Bidders;
- b) To make goods, service(s) and construction Contractors to be accountable to the Owner and the public;
- c) To provide the highest level of government service at the least possible cost;
- d) To ensure fairness and objectivity amongst Bidders during the procurement process;
- e) To ensure openness, accountability and transparency while protecting the financial best interests of the Owner;
- f) To obtain the Best Value for the Owner when procuring goods and service(s) and construction;
- g) To avoid conflicts between the interests of the Owner and those of the Owner's employees and elected officials;
- h) To ensure compliance with applicable International, national and Inter-Provincial Trade treaties or agreements, as amended;
- i) To promote Responsible Purchasing which encourages procurement practices which encompass social, ethical and environmental considerations when acquiring goods, services and construction.
- j) To contribute to the reduction of waste, toxic or harmful emissions and substances and to increase the development and awareness of environmentally responsible procurement, the Governments Incorporating Procurement Policies to Eliminate Refuse (GIPPER) Guide, as amended may be referenced in acquiring goods and services and/or other best green procurement practices available when developing the Bid Call Document for goods, services and construction. It is recognized that a product and cost analysis may be required;
- k) To promote, where applicable, the requirements of the *Ontarians with Disabilities Act* (ODA) and the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA), as amended in procurement activities of the Owner as well as any requirements contained in other legislation (either provincial or federal) which may impact the procurement activities of the Owner.

## 2. PROCUREMENT PRINCIPLES AND PRACTICES

Public Procurement affects and is affected by the public sector organization as a whole, and the community it serves, whether at the local, provincial, or national level. Therefore, the Corporation of the Town of Newmarket (the Owner) has adopted the Public Procurement Principles and Practices, as amended, as follows;

### **Accountability:**

Taking ownership and being responsible to stakeholders for our actions. This value is essential to preserve the public trust and protect the public interest.

### **Ethics:**

Acting in a manner true to these values. This value is essential to preserve the public's trust.

### **Impartiality:**

Unbiased decision-making and action. This value is essential to ensure fairness for the public good.

**Professionalism:**

Upholding high standards of job performance and ethical behavior. This value is essential to balance diverse public interests.

**Service:**

Obligation to assist stakeholders. This value is essential to support the public good.

**Transparency:**

Easily accessible and understandable policies and processes. This value is essential to demonstrate responsible use of public funds.

**3. DEFINITIONS OF THIS BY-LAW**

**“Advanced Contract Award Notice” (ACAN)** means a public notice, advertised in accordance with Schedule “D” Thresholds, and the estimated project cost (to be released, at the discretion of the Owner), indicating to Suppliers that the Owner intends to award a goods, services or construction Contract to a pre-identified Supplier, thereby allowing other Suppliers to signal their interest in bidding by submitting a statement of capabilities. If no other Supplier submits a statement of capabilities that meets the requirements set out in the ACAN, on or before the closing date stated in the ACAN, the Manager of Procurement may then proceed with the award of the contract. If other Supplier(s) do submit a statement of capabilities that meet the requirements set out in the ACAN, the Manager, Procurement Services may then proceed with a solicitation in accordance with Schedule “D” Thresholds.

**“Agreement on Internal Trade” (AIT)** means an intergovernmental trade agreement signed by Canadian First Ministers that came into force in 1995. Its purpose is to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investment within Canada and to establish an open, efficient, and stable domestic market.

**“Authority” or “Authorized”** means the legal right to conduct the tasks outlined in this by-law as directed by Council and delegated through the office of the C.A.O. to the Commissioners and subsequently to the Manager, Procurement Services. Authorized purchases are those that have prior approval of Council either through resolution or through the departmental budget.

**“Award or Acceptance”** The notification to a bidder of acceptance of a bid, which brings a contract into existence

**“Best Interest”** means the discretion the Owner has to take the most advantageous action on behalf of the Owner.

**“Best Value”** means the best combination of price, technical merit, and quality, as determined by the Owner. The best value might not be the lowest cost.

**“Bid”** means a Tender, Proposal or Quotation submitted in response to a solicitation from the Owner.

Solicitations for Bids may be in the form of an Informal Quick Bid (Request for Quotation (QB) or Quick Bid Request for Proposal (QBRFP)), Request for Tender (RFT), Request for Proposal (RFP) or Sale (S).

**“Bid Bond”** means a bond given to guarantee entry into a Contract. This bond is given to indemnify the Owner against increased costs if the Bidder does not carry out the specified undertaking to enter into a Contract. A bond given by a Bidder to guarantee entry into a Contract if the Contract is awarded to that Bidder

**“Bid Deposit”** means a deposit by the Bidder to the Owner of a sum of money, a cheque or other acceptable cash alternative such as an irrevocable letter of credit or a guarantee that the Bidder will enter into a Contract with the Owner if the Bid is accepted. The Bid Deposit may also be in the form of a Bid Bond issued by a Surety and deposited with a procurement activity

guaranteeing the Bidder will not withdraw for a specified period of time, will furnish Bonds or Letter of Credit as required, and will accept a Contract if awarded, or forfeit the Bid Deposit.

**“Bid Call Document”** means the Owner’s solicitation document which may be in the form of an Informal Quick Bid (Request for Quotation (QB) or Quick Bid Request for Proposal (QBRFP)), Request for Tender (RFT), Request for Proposal (RFP) or Sale (S).

**“Bid Dispute Resolution”** means a provision in the Procurement Policies and Procedures manual, which outlines procedures to ensure that a protest to a bid is handled in an ethical, fair, reasonable and timely fashion.

**“Bid Irregularity”** means any defect or non-compliance contained within a Bid or the Bidding process. Schedule “B” Bid Irregularities of this by-law establishes the action that shall be taken.

**“Bidder”** means any Person who submits a response to a Solicitation. For clarity, for this by-law only; the word “Bidder” shall also include “Proponent” and “Offeror”.

**“Bid Review Panel”** means two or more persons appointed pursuant to this by-law to review Bid Irregularities or other issues pertaining to a Bid including, a Bid Protest, in accordance with the Owner’s Procurement Policies and Procedures, or to review matters involving Contractor Performance, in accordance with the Contractor Performance Procedure, Schedule “F” of this By-Law.

**“Black-Out Period”** means the period of time from when the Bid Call Document is issued and when the agreement is signed by the Owner and the selected Proponent.

**“Bond”** means a form of financial protection against non-performance, a binding agreement executed by a Contractor and a 3<sup>rd</sup> party (Surety) to guarantee the performance of certain obligations or duties to the Owner. See Labour and Material and Performance Bond.

**“C.A.O.”** means the Chief Administrative Officer of the Corporation of the Town of Newmarket or designate.

**“Calendar Days”** means any day of the week, Monday through Friday, including Saturday and Sunday and any recognized statutory holidays.

**“Comprehensive Economic and Trade Agreement” (CETA)** is a proposed free trade agreement between Canada and the European Union

**“Commissioner”** means a person appointed by C.A.O. with administrative responsibilities for a group of departments or designate.

**“Conflict of Interest”** means a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.

**“Construction”** means the process of utilizing labour to build, alter, repair, improve or demolish any structure, building or public improvement and generally does not apply to routine maintenance, repair or operations of existing real property.

**“Consultant Services”** means services of an advisory nature required to support policy development, decision making, administration, or management of a business or public entity, generally provided by individuals or organizations who possess specific knowledge, technical skills or unique abilities not usually available in-house or from the entity.

**“Contract”** means a Purchase Order and/or the agreement in writing between the Owner and the Contractor in respect of the Goods and/or Services to be provided under a Bid Call Document.

**“Contractor”** means the selected Bidder that has a Contract with the Owner to perform the Work and/or Services described in a Bid Call Document. For clarity, for this by-law only, “Contractor” includes “Consultant” and “Supplier”.

**“Contractor Performance Procedure”** means the policy provided in Schedule “F” of this by-law, which provides a framework for the Owner to evaluate and improve the performance of all Contractors awarded Town Contracts by (i) pro-actively managing the performance of Contractors during the term of awarded Contracts, and (ii) creating a record of past performance for use as an evaluation tool in future Solicitations.

**“Co-operative Purchasing”** means; a) the action taken when two or more entities combine their requirements to obtain advantages of volume purchases including administrative savings and other benefits. b) a variety of arrangements whereby two or more public procurement entities purchase from the same Contractor(s) using a single Solicitation.

Cooperative purchasing efforts may result in a contract that other entities may Piggyback.

**“Council”** means the elected Council for the Corporation of the Town of Newmarket, or Local Boards.

**“Debriefing”** means a practice used primarily during the Request for Proposal process, whereby the Owner’s Procurement representative for a Solicitation will meet in person, but typically telephonically with those parties requesting a debriefing, whose proposals were not deemed appropriate for award. It is viewed as a learning process for Proponents who may gain a better understanding regarding perceived deficiencies contained within their submitted proposal.

**“Department”** means a department or commission of the Town.

**“Designate”** means a person authorized by the C.A.O., Commissioner, Director, Assistant Director or Manager to act on his/her behalf, for the purpose of this by-law.

**“Director”** means the title provided to a senior Town staff official responsible for the operational department.

**“Electronic Bidding (Facsimile, Email or Internet)”** means a method of issuing Solicitations and/or receiving written Bids where the process of issuing and/or receiving Bids by facsimile, email or internet is considered appropriate.

**“Emergency”** means an event or circumstance where the immediate purchase for goods or service(s) or the entering into of a construction contract is essential or necessary to prevent or alleviate serious delay, a threat to public health, safety or welfare, the disruption of essential services or damage to public property or any other expenditure that is necessary to respond to any emergency of the Owner.

**“Emergency (Municipally declared)”** means an event or circumstance where the Mayor or the Chief Administrative Officer of the Town declare that an emergency exists in the Town or in any part thereof and may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the Owner and to protect property and the health, safety and welfare of the inhabitants of the emergency area or as required under the *Emergency Management and Civil Protection Act* (as amended).

**“Emergency Management Purchasing Card”** - The Manager, Procurement Services, the Director, Finance or their designates may utilize this card to acquire goods, service(s) or construction, in response to a Municipally declared emergency.

**“Evaluation Committee”** means a component of the Request for Proposal process, whereby a committee is established to conduct proposal evaluations, interviews and negotiations during Proposal evaluation for goods, service(s) or construction. It is usually comprised of three or more persons from the functional area identified in the scope of work and chaired by a member of the Procurement Services Department.

**“Ghost Card”** means; a) a single Purchasing Card account number that is assigned to a Contractor for high volume purchases; b) a payment method for utility services and leases or for acquiring goods and/or services off an established contract; c) a single Purchasing Card account number for use during a declared Municipally Emergency.

No actual Purchase Card is produced. Responsibility for monitoring and reconciliation of the account usually rests with the user department. A ghost card account resembles a charge account.

“**Goods**” means anything purchased other than Services or Real Property.

“**Letter of Credit**” means a document issued by a bank authorizing the bearer to draw a specified amount from that bank or its agent; a letter or similar statement extending credit up to a given amount at a Canadian Chartered bank for a person who has paid or guaranteed that amount to the issuing bank, may be considered in lieu of a performance or labour and material bond.

“**Labour and Material Bond**” means a bond given to guarantee payment, as required to all persons supplying labour or material for the completion of work under the Contract. The Labour and Material Bond shall be from an Ontario based Surety

“**Litigation**” means any formal dispute between the Owner and any other party, including third party and cross claims, where a legal proceeding has been commenced for an injunction, a mandatory order, a declaration, or the recovery of money, or an arbitration proceeding.

“**Local Board**” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority.

“**Low Value Purchase**” (LVP) means a purchase for goods, service(s) or construction, which is not included as part of an existing contract and is not available out of the Owner’s inventory, and which authority has been delegated to Town staff up to the amount stated in Schedule “D” Thresholds of this by-law (excluding taxes), except for the position(s) stated in Schedule “E” Position Exceptions.

“**Manager**” means a Town staff member responsible for oversight of a business unit or functional cluster.

“**Manager, Procurement Services**” means the Manager of Procurement Services or designate who is responsible for the Town’s centralized procurement function and is hereby authorized to act as an agent in all such matters pertaining thereto.

“**May**” means the permissive in a contract clause or specification. Also see “Shall”.

“**Multi-Step Bid Call**” means a method of source selection involving two competitive steps. The first step may require the submission of technical and price Bids with only the technical Bid being evaluated and scored. The second step involves the opening of price Bid(s) of those Bidders which have achieved the highest or have met or exceeded the stated minimum technical score(s).

“**Municipal Solicitor**” means the Director, Legal Services of the Corporation of the Town of Newmarket or designate.

“**Offeror**” means a Person that makes an offer in response to a sale of Personal or Real Property. Also see the definition of “Bidder”.

“**Owner**” means the Corporation of the Town of Newmarket and its local boards.

“**P-Card**” means Purchase Card.

“**P-Card Policy**” means Schedule “G” of this by-law.

“**Performance Bond**” means a Bond given to guarantee the performance or completion of a contract in accordance with its terms and conditions.

The performance bond shall be from an Ontario based Surety



**“Performance Review Forms”** has the meaning given to such term in the Owner’s Contractor Performance Procedure (Schedule “F” of this by-law).

**“Person”** means and includes any natural person, corporation, company, limited liability company, trust, joint venture, association, incorporated organization, partnership, governmental authority or other entity, and shall be construed to include such Person’s successors and permitted assigns.

**“Personal Property”** means tangible or intangible property, other than real property. Movable property subject to ownership, with exchange value.

**“Piggyback”** means a form of intergovernmental cooperative purchasing in which the Owner will be extended the pricing and terms of a contract established by another entity. Generally a larger entity will competitively award a contract that will include language allowing for other entities to utilize the contract which may be to their advantage in terms of pricing, thereby gaining economies of scale that they normally would not receive if they competed on their own. The Owner may participate with other government agencies or public authorities in co-operative purchasing where it is in the best interests of the Owner to do so. The Owner will have a Piggyback clause in most Solicitations, which permits the Owner to extend the pricing, terms and conditions of a Contract to other government entities, upon approval of the Contractor.

**“Privilege Clause”** means a standard clause used in the Owner’s Bid Call Document and Bid advertisement. The privilege clause may include such language as “reserves the right to accept or reject all or part of any Bid and also reserves the right to accept other than the lowest Bid and to cancel this Bid at any time”. For a proposal, the privilege clause may include such languages as “The Owner reserves the right to: accept or reject any Proposal, to award in whole or in part, to award to the proposal that is in the Best Interest of the Owner and the right to cancel this Proposal call at any time without obligation”. For a sale, the privilege clause may include such language as “reserves the right to award to other than the highest offer or and to reject any or all offers.

**“Procurement”** means; a) purchasing, renting, leasing or otherwise acquiring any goods, service(s) or construction; includes all functions that pertain to the acquisition, including the description of requirements, preparation, solicitation, selection and award of contract and all phases of contract administration. b) The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage and disposal operations.

**“Professional Services”** means any professional or general service work performed which does not result in the delivery for goods or materials.

**“Project Evaluator(s)”** means one or more person(s) from the Town’s functional area identified in the Solicitation scope of work user department(s) that will be evaluating the Contractor’s performance by completing Performance Review Forms in accordance with Schedule “F” the Contractor Performance Procedure.

**“Proponent”** means one who submits a response to a Request for Proposal (RFP) or Quick Bid Request for Proposal (QBRFP). For clarity, for this by-law only, “Bidder” shall also include “Proponent”. Also see the definition of “Offeror”

**“Proposal”** means a document submitted by a Proponent in response to a Request for Proposal (RFP) or Quick Bid Request for Proposal (QBRFP) to be used as the basis for negotiation or for entering into a contract. For clarity, for this by-law only, Bid shall also include “Proposal”.

**“Proposal Irregularity”** means any defect or non-compliance contained within a Proposal or the Bidding process. Schedule “C” Proposal Irregularities of this by-law establishes the action that shall be taken.

**“Purchase”** means the act and function of responsibility for the procurement for goods, service(s) or construction.

**“Purchase Card”** (see also Ghost Card) means a payment method whereby employees of the Town authorized by C.A.O., Commissioner and/or Director are empowered to deal directly with Contractors for LVP purchases, subject to the exceptions stated in both Schedule “E” Position Exceptions, using a credit card issued by a bank or major credit card provider. Generally, a pre-established credit limit is established for each card issued. The cards enable e-Procurement and facilitate on-line ordering, frequently from pre-approved Contractors under contracts. The Purchase Card may be used for additional usage, in addition to Low Values Purchases, as described in the Purchase Card Program Policies and Procedures.

**“Purchase Order”** means; a) the Owner’s written document to a Contractor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, delivery schedule, terms of payment and transportation. b) The Purchase Order (hard copy or verbal) issued by the Procurement Services Department or Low Value Purchase Orders issued by individuals authorized by the Commissioner and/or Director, to a Contractor as a written or verbal acceptance of an offer received in accordance with this by-law. A Purchase Card or Ghost Card may also be used in lieu of a Purchase Order to acquire goods, services or construction and/or a payment method.

**“Procurement Services”** means the department responsible for procurement for goods, service(s), and construction and the purchase and disposal of real and personal property for the Owner.

**“Quick Bid (QB)”** means a Solicitation document used to solicit bids for low dollar value requirements estimated to be up to the amount stated in Schedule “D” Thresholds of this by-law (excluding taxes), from one or more suppliers. It is a request to Bidders, which is evaluated with the objective of accepting the lowest-priced responsive quotation from a Responsible Bidder.

**“Quick Bid Request for Proposal (QBRFP)”** means a Solicitation document used to solicit proposals for low dollar value requirements estimated to be up to the amount stated in Schedule “D” Thresholds of this by-law (excluding taxes) from Proponents. Price is usually not the primary evaluation factor. A QBRFP may provide for negotiation of all terms, including price prior to contract award. A QBRFP may include the provision for the negotiation of best and final offers and may be a single step or multi-step process.

**“Real Property”** means Land and its permanently affixed buildings or structures. Any property which is not personal property.

**“Request for Information” (RFI)** means a non-binding method whereby the Owner states its need for input from interested parties for a possible upcoming Solicitation. A procurement practice used to obtain comments, feedback or reactions from potential Bidders prior to the issuing of a Solicitation. Generally price or cost is not required. Feedback may include best practices, industry standards, technology issues, etc.

**“Request for Pre-Qualification” (RFPQ)** means a document used to screen potential Bidders in which factors such as financial capability, reputation, and management are considered in order to develop a list of qualified Bidders who may then be allowed to submit Bids.

**“Request for Proposal” (RFP)** means the document used to solicit proposals for goods, service(s) or construction. Price is usually not the primary evaluation factor. An RFP may provide for negotiation of all terms, including price prior to contract award. An RFP may include the provision for the negotiation of best and final offers and may be a single step or multi-step process, as per the thresholds stated in Schedule “D” Thresholds of this by-law (excluding taxes).

**“Request for Tender” (RFT)** means a Solicitation document used to solicit for bids for the provision of goods, service(s) or construction to the Owner, with the objective of accepting the lowest-priced responsive bid from a Responsible Bidder, as per the thresholds stated in Schedule “D” Thresholds of this by-law (excluding taxes).

**“Respondent”** means the legal entity submitting a response to a Request for Pre-Qualification or Request for Information.

**“Responsible Bidder”** means a Bidder whose reputation, past performance, and business and financial capabilities are such that the Bidder would be judged by the Owner to be capable of satisfying the Owner’s needs for a specific Contract. A Bidder, as the context requires, that is fully capable to meet all the requirements of the Solicitation or other process and subsequent contract. Such Bidder shall possess the full capability, including financial and technical capability, satisfactory past performance, including a satisfactory Owner’s Contractor Performance Review Form (where applicable) to perform as contractually required and shall be able to fully document the ability to provide good faith performance.

**“Responsive Bidder”** means Bidder that has complied in all material respects with the requirements of the Bid Call Document.

**“Responsible Purchasing”** means utilizing procurement practices that encompass social, ethical and environmental considerations when acquiring goods, services and construction.

**“Reverse Auction”** means an online auction in which Bidders bid against each other to win the Owner’s business. Typically used to purchase commodities from multiple pre-qualified providers. Also referred to as eAuction.

**“Sale”** means the act of selling Owner property or Real Property that is no longer needed by the Owner and is designated for disposal outside of the government organization.

**“Service”** means a Solicitation for a contractor’s time and effort, and can include Professional Services. The furnishing of labour, time or effort by a contractor, which may involve to a lesser degree, the delivery or supply of products.

**“Shall”** means the mandatory requirements or specifications. Also see “May”.

**“Single Source”** means a procurement decision whereby purchases for goods, service(s) or construction are directed to one source because of standardization, warranty, or other factors, even though other competitive sources may be available.

**“Sole Source”** means a situation created due to the inability to obtain competition. May result because only one contractor possesses the unique ability or capability to meet the particular requirements of the solicitation.

**“Solicitation”** means the Owner’s Bid Call Document. Also see definition of “Bid”.

**“Spending Authority”** means the authority assigned to the Town staff by the C.A.O., or Commissioner or Director to incur expenditures, including advance and progress payments on behalf of the Owner.

**“Strategic Leadership Team”** means a senior leadership team consisting of the C.A.O. and Commissioners.

**“Supplier”** means a supplier of goods and services. Distinguished from a “Contractor”.

**“Surety”** means a pledge or guarantee by a (Surety) Insurance company or Canadian Chartered Bank, authorized by law to do business in the Province of Ontario and acceptable to the Owner on behalf of the Bidder which protects against default or failure of the Bidder/Contractor to satisfy the contractual obligations.

**“Suspension Period”** means a period of two years, during which a Supplier’s Bid will not be considered in accordance with the Owner’s Contractor Performance Procedure (Schedule “F” of this by-law).

**“Term Contract”** means a type of contract in which a source of supply is established for a specified period of time for specified services or supplies, usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.

**“Procurement Representative”** means the Procurement Representative of the Corporation of the Town of Newmarket (the Owner), specified in the Bid Call Document.

**“Procurement Value”** means the estimated total financial cost of the procurement including all forms of remuneration such as premiums, fees and commissions over the life of the commitment. (Excluding taxes).

**“Tie Bid”** means two or more Bids from Responsive and Responsible Bidders that are equal in all respects after evaluation, including price for goods, service(s), sale of real or personal property or construction.

**“Town”** means the Corporation of the Town of Newmarket and its local boards. Herein called “the Owner”.

**“Town Clerk”** means the Director, Legislative Services or designate.

**“Undertaking to provide a Bond or Letter of Credit”** means a pledge or guarantee by an insurance company, bank, individual or Owner on behalf of the Bidder which (the Surety) protects against default or failure of the principal to satisfy the obligations of a contract.

**“Unsolicited Offer / Proposal”** means an offer/proposal submitted by a contractor or consultant in the absence of a solicitation from the Owner, which may be submitted in response to a perceived need but not in response to a Solicitation.

**“Probation Letter”** has the meaning given to such term as stated in the Owner’s Contractor Performance Procedure (Schedule “F” of this by-law).

**“Working Day”** means Monday through Friday, excluding any recognized statutory holiday.

To establish the definition of any other procurement terms not herein included, reference may be made to the latest edition of the Institute for Public Procurement (NIGP) Public Procurement Dictionary of Terms and/or, the Government of Canada Supply Manual Glossary.

#### 4. INTERPRETATION

Unless otherwise expressly stated, any reference within this By-law to a statute, an agreement, an instrument or any other document, shall be construed in each case as referring to such statute, agreement, instrument or other document as from time to time amended, supplemented, replaced or otherwise modified.

#### 5. APPLICATION

This by-law shall apply to all departments of the Town and public agencies and local boards prescribed in this by-law;

No purchase for goods, service(s) or construction or disposal of Personal Property and Real Property shall be authorized unless it is in compliance with this procurement by-law.

This by-law does not apply to those items listed in Schedule “A” Exceptions to this by-law.

#### 6. RESPONSIBILITIES

##### 6.1 Commissioner and/or Directors shall be responsible for:

- a) The responsibility and authority for all department procurement activity within the prescribed limits of this by-law;
- b) Delegating spending authority limits to staff in compliance with this by-law and all applicable policies;
- c) That all of Section 1 Purposes, Goals, and Objectives of this by-law are complied with;
- d) That all procurement activities and decisions shall be authorized by this By-law and shall be carried out within the financial and other limits set out in Schedule “D” Thresholds of this by-law;

- e) That no procurement activity or decision shall be contrary to this by-law;
- f) That monitoring of all contract expenditures and financial limitations have been complied with;
- g) That all accounts are paid within the times set out in the contract (provided the contractor has met all conditions of the contract) this precludes any processes undertaken by the Accounts Payable department;
- h) That all goods, service(s) or construction contracted for have been received;
- i) That all authority to award a contract is subject to the identification and availability of sufficient funds in appropriate accounts within Council approved budgets or that the required funding can reasonably be expected to be made available in the current, or future years; and
- j) That contracts are monitored and documented in compliance with the Owner's Contractor Performance Procedure (Schedule "F" of this by-law) are followed for all publicly bid contracts. The Manager, Procurement Services shall be notified if action is to be taken to correct the performance of a contractor where it falls below the standard required by the contract.

**6.2 The Manager, Procurement Services shall be responsible for:**

- a) Providing procurement advice and services to each department, the C.A.O., Council, Local Boards and public agencies for the purposes of fulfilling the procurement needs of the Owner;
- b) All aspects for the Solicitation process and ensuring compliance to the terms and conditions of the Bid Call Document;
- c) Ensuring the Owner's staff compliance with this by-law and reporting non-compliance, in writing, to the appropriate Commissioner, Director, the Commissioner of Corporate Services and the C.A.O.;
- d) The standardization of all goods and service(s) where appropriate and possible, in collaboration with the user department(s);
- e) The disposal of Personal Property which has been declared surplus by a Commissioner and/or Director;
- f) The disposal of Real Property which has been declared surplus by Council;
- g) Participating in co-operative purchasing with other levels of government, municipalities, boards, agencies, commissions, or private sector entities where it is in the best interests of the Owner. The Owner will abide by the calling agency's terms and conditions;
- h) Compliance with Section 1 Purposes, Goals, and Objectives of this by-law;
- i) If a Bid has been approved by Council and awarded to the selected Bidder and the selected Bidder fails to enter into a contract, the Manager, Procurement Services shall be granted the authority to proceed to the next lowest responsive and responsible Bidder or the next highest evaluated responsive and responsible Proponent for a Proposal, for the award of the contract, without going back to Council for approval, providing the requirements remain unchanged and the new contract is within budget. The approval shall be obtained from the Director, Commissioner and C.A.O. The Director shall prepare a report to Council for information purposes; and the Bidder that refused to enter into a contract with the Owner may be placed on a two (2) year suspension, subject to the procedure set out in the Owner's Contractor Performance Procedures (Schedule "F" of the by-law).

- j) In cooperation with the user department ensuring the procedures set out in the Owner's Contractor Performance Procedures (Schedule "F" of the by-law), are followed for all publicly bid contracts.

### 6.3 The C.A.O. has the Authority to:

- a) Authorize the Manager, Procurement Services, to award and execute Contracts as a result of Solicitation without seeking Council authority, provided the award is within the scope and budget approved by Council.
- b) Instruct Commissioners and/or Directors not to award contracts, and to submit recommendations to Council for approval, and may provide additional restrictions concerning procurement where such action is considered necessary and in the Best Interest of the Owner.
- c) Award contracts during the time that regular Council meetings are suspended, during a period of recess, or for an emergency, the C.A.O. shall be authorized to award contracts as a result of a Solicitation that normally would require Council approval, provided that a report is submitted to Council, as soon as reasonably possible, setting out the details of any contract awarded pursuant to this authority.
- d) Delegating spending authority limits to staff in compliance with this by-law and all applicable policies.

Despite any other provision of this by-law, the following contracts require the approval of the C.A.O. and the Commissioner(s) responsible for the user department(s), prior to award.

- a) Where a Bid in response to a Solicitation contains an irregularity not resolved by the Bid Review Panel; and
- b) Where there has been a challenge submitted, in accordance the Owner's Bid Dispute Resolution procedures that has not been resolved by the Bid Review Panel.

## 7. RESTRICTIONS AND EXCEPTIONS

- a) The open and competitive procurement procedures set out in this by-law shall not apply to the purchase of those items listed in Schedule "A" Exceptions to this by-law or Low Value Purchases, or as otherwise listed in this by-law.
- b) No contract for goods, service(s) or construction may be divided into two or more parts to avoid the application of the provisions of this by-law.
- c) No personal purchases shall be made by the Owner for members of Council or any appointed member of a Local Board or for corporate employees or their families with the exception of corporate sponsored employee programs.
- d) No employee, member of Council or local board member of the Owner shall personally obtain any real or personal property that have been declared surplus unless it is obtained through a public process.
- e) No employee or member of Council shall purchase, on behalf of the Owner, any goods, service(s) or construction, except in accordance with this by-law.
- f) All procurement undertaken by the Owner shall be undertaken in accordance with the Owner's code of conduct, policies and procedures manual, as amended and in accordance with the *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50, as amended.
- g) Where an applicable national (i.e.: Agreement on Internal Trade (AIT)) or international (i.e. Comprehensive Economic and Trade Agreement (CETA) trade agreement is in conflict with this by-law, the trade agreement shall take precedence.
- h) The Owner may use the Privilege Clause contained in the Owner's Bid Call Documents for consideration of the acceptance or rejection of any Bid received by the Owner pursuant to this by-law; and



- i) The Owner may consider, amongst other items during the consideration of award of Owner contracts, previously completed Contractor Evaluations to determine if a Bidder is responsible.

## 8. PRESCRIBED COUNCIL APPROVAL

Despite any other provision of this by-law, save and except for the circumstances in Section 6.3 Authority, the following contracts require Council approval, prior to award:

- a) Any contract requiring approval from the Ontario Municipal Board;
- b) Any contract prescribed by statute to be made by Council;
- c) Any contract prescribed by a court order;
- d) Where the procurement by-law is being waived;
- e) Where the cost amount proposed for acceptance is higher than the Council approved budget and the necessary adjustments cannot be made;
- f) Where authority to approve has not been expressly delegated;
- g) Any contract having a Procurement Value, requiring Council approval in accordance with Schedule "D" Thresholds of this by-law;
- h) Any Single or Sole Source contract having a Procurement Value exceeding the threshold dollar limit, stated in Schedule "D" Thresholds of this by-law.

## 9. BID REVIEW PANEL (BRP)

- a) There shall be a Bid Review Panel hereinafter referred to as "BRP" composed of the following members of the Town's staff:
  - The Manager, Procurement Services or designate;
  - A Solicitor from Legal services;
  - (And if required) a representative from the Department requesting the procurement of the goods, service(s) or construction; and
  - Any other party deemed appropriate by the BRP.
- b) THE BRP's responsibilities include, but are not limited to reviewing and making decisions on;
  - Bid Irregularities or other issues pertaining to a Bid;
  - Bid challenges, and/or:
  - Matters involving Contractor Performance or appeals, in accordance with the Contractor Performance Procedure, Schedule "F" of this By-Law.
- c) The BRP shall use Schedule "B" Bid Irregularities to this by-law, to determine the action that shall be taken if a Bid Irregularity exists, except for Proposal Irregularities, which shall be determined in accordance with Schedule "C" Proposal Irregularities to this by-law.
- d) The BRP shall follow the procedure outlined in the Corporate Services – Procurement Services Department Procedures Manual and the Contractor Performance Procedure, Schedule "F" of this By-Law.

## 10. OPERATING AND CAPITAL BUDGET FINANCIAL CONTROLS

Operating and Capital Budget Financial Controls shall be in accordance with the Corporate Policy Operating and Capital Financial Policy, as amended.

## 11. PROCUREMENT PROCESS

Where applicable each of the procurement methods set out below shall be undertaken in compliance with the following process:

- a) The scope of the goods, service(s) or construction shall be clearly and extensively defined by the Bid Call Document;
- b) The Bid Call Document shall be, to the extent possible, standardized using common forms and processes;
- c) The Solicitation shall be advertised (except for Low Value Purchases (LVP) and Informal Quick Bid (Request for Quotation (QB) or Request for Proposal (QBRFP)) which may be advertised to ensure the best, most comprehensive and competitive response to the Solicitation, at the discretion of the Manager of Procurement in compliance with Schedule "D" Thresholds;
- d) Advertising of a Solicitation shall be in compliance with the Agreement on Internal Trade (AIT) or other Agreements having jurisdiction, as amended;
- e) All Bids received by the Owner shall be kept together in a secure place until the time for opening. Solicitations requiring the submission of proprietary information or information containing intellectual property protected by law shall contain provisions for protecting the confidentiality of same, in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection and Electronic Document Act* and the *Personal Health Information Protection Act* as amended;
- f) The Owner may elect to receive Bids electronically and the procurement process will be stated in the Bid Call Document.
- g) Bids shall be reviewed and/or evaluated using an open, fair and transparent process within the circumstances of the particular Solicitation;
- h) For Proposals, the evaluation criteria and weighting shall be identified in the Proposal document and shall be evaluated based on those criteria and weighting, subject to amendments to the same released by an Addendum
- i) All Bid Call Documents shall clearly set out the requirements for the price element of the Bid Call Document, specifying whether the bid price is submitted on a unit price or subtotal or total price basis and whether it is net of any taxes, or may include provision for early payment discounts, premiums, financing charges, administrative costs, cost of living or other escalations, contingencies or other deductions or additions and how any contract extras shall be dealt with;
- i) Bids shall be awarded based on the terms and conditions clearly specified in the Owner's Bid Call Documents;
- j) Bid records shall be filed and shall not be destroyed for seven (7) years or in accordance with the Owner's record retention procedures, as amended, following the completion of the procurement contract;
- k) All selected Bidders shall, where required by this by-law, be required to comply with the contract preparation and execution requirements of Section 15 Contract Execution; and
- l) Contracts shall be monitored and documented by the Commissioner and/or Director in accordance with Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule "F" of this by-law.

## 12. STANDARD PROCUREMENT METHODS

The method of procurement for goods, service(s) and construction shall be in accordance with the methods described in this section, (as recommended by the Manager, Procurement



Services) and shall be advertised, reported, approved and the contract executed in accordance with Schedule "D" Thresholds of this by-law.

### **12.1 REQUEST FOR INFORMATION (RFI)**

A request which will be used as a general market research tool to determine what goods and service(s) are available which will meet business or operational requirements and acquisition strategies and/or may occasionally request project estimate costs for the purpose of developing a Solicitation.

### **12.2 REQUEST FOR PRE-QUALIFICATION (RFPQ)**

A Request for Pre-Qualification (RFPQ) may be conducted for any goods, service(s) or construction to select the number of qualified Bidders that may bid on the subsequent procurement process by the Owner, under any of the following circumstances:

- i. The work is considered "high risk" with respect to regulations governed under the Occupational Health and Safety Act, as amended;
- ii. The work is such that contract administration costs (work inspection, follow-up, extra fee negotiations) could result in a substantial cost to the Owner if the work is not satisfactorily performed the first time;
- iii. The goods or equipment to be purchased shall meet national safety standards or demonstrate an acceptable level of performance;
- iv. The work involves complex, multi-disciplinary activities; or
- v. Wherever the Manager, Procurement Services deems appropriate.

When the Request for Pre-Qualification (RFPQ) is utilized, a Pre-Qualification Document shall be provided to the potential Respondents setting out the evaluation criteria and weighting for pre-qualification and may be advertised in accordance with the advertising procedure, set out in Schedule "D" Thresholds.

The selection of qualified Bidders following a pre-qualification process does not create any contractual obligation between the Owner and the pre-qualified Respondent(s). Pre-qualification may be made a specific pre-condition of any other procurement procedure utilized by the Owner.

Advertisement of the Pre-Qualification shall be based on the estimated contract value, in accordance with Schedule "D" Thresholds of this by-law.

### **12.3 LOW VALUE PURCHASE (LVP)**

A Low Value Purchase (LVP) shall be conducted for the procurement for goods or service(s), which is not covered by a term contract or cooperative contract, having an estimated contract value as stated in Schedule "D" Thresholds of this by-law, as amended. These purchases may be made utilizing a Purchase Order or a corporate Purchasing Card. The C.A.O., Commissioner and/or Director may appoint individuals and assign a limit of spending authority to make low value purchases. These purchases are within the discretion of the Commissioner and/or Director. The Commissioner and/or Director are responsible to ensure only purchases, which can be demonstrated to have been made at fair value, shall be made. This acquisition process can be performed by the Department, or if they so desire, by the Procurement Services Department. Advertising is not required.

The only exception to the threshold limits for low value purchases shall be for those position(s) or policy stated in Schedule "E" Position Exceptions of this by-law.

At the discretion of the Director, the selected Bidder may be subject to the requirements set out in Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule "F" of this by-law.

## **12.4 QUICK BID (REQUEST FOR QUOTATION (QB) or QUICK BID REQUEST FOR PROPOSAL (QBRFP))**

An informal Quick Bid shall be conducted for the procurement for goods, service(s) or construction having an estimated contract value as stated in Schedule "D" Thresholds of this by-law.

The Bid may be done on an invitational basis and/or advertised as stated in Schedule "D" Thresholds of this by-law.

Advertising of the Solicitation is not required.

Any irregularities in the Bid shall be dealt with in accordance with Schedule "B" Bid Irregularities or Schedule "C" Proposal Irregularities of this by-law, as amended and in compliance with the procedures stated in this by-law.

The selected Bidder shall be required to comply with the contract requirements set out in Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule "F" of this by-law.

## **12.5 REQUEST FOR TENDER (RFT)**

A Request for Tender (RFT) shall be conducted for the procurement for goods, service(s) or construction having an estimated contract value as stated in Schedule "D" Thresholds of this by-law, and where all the following criteria apply:

- i) Two or more sources are considered capable of supplying the goods, service(s) or construction;
- ii) The specifications for goods, service(s) or construction can be adequately defined; and
- iii) The market conditions are such that Bids can be submitted on a competitive pricing basis.
- iv) It is intended that the lowest cost Responsive Bid from a Responsible Bidder(s) shall be accepted.

The Bid shall be advertised. In the case of a pre-qualified Solicitation, only the selected pre-qualified Respondents shall be notified and shall be eligible to submit a Bid.

Any irregularities in the Bid shall be dealt with in accordance with Schedule "B" Bid Irregularities of this by-law, and in compliance with the procedures stated in this by-law.

The selected Bidder shall be required to comply with the contract requirements set out in Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule "F" of this by-law.

## **12.6 REQUEST FOR PROPOSAL (RFP)**

Price is usually not the primary evaluation factor. An RFP Bid Call Document may provide for negotiation of all terms, including price prior to contract award. An RFP may include the provision for the negotiation of best and final offers and may be a single step or multi-step process.

The goal of an RFP is to implement an effective, objective, fair, open, transparent, accountable and efficient 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. To select the Proposal that earns the highest score and meets the requirements specified in the competition, based on qualitative, technical and pricing considerations.

This method of acquisition for goods, service(s) or construction can be used for any dollar value, when the requirements cannot be definitely specified. An RFP may be conducted for the procurement for goods, service(s) or construction when; any of the following criteria apply:

- i) The selection of the Proponent depends more upon the effectiveness of the proposed solution, than the price alone;
- ii) It is expected that negotiation with one or more Proponents may be required with respect to any aspect of the Contract; and
- iii) The precise goods, service(s) or construction, or the specifications therefore are not known or are not definable and it is expected that the Proponent will further define them.

Advertising of the RFP shall be in accordance with Schedule "D" Thresholds of this by-law. In the case of a pre-qualified RFP, only the selected pre-qualified Proponents shall be notified.

Any irregularities in the Proposal submitted in response to an RFP shall be dealt with in accordance with Schedule "C" Proposal Irregularities of this by-law and in compliance with the procedures stated in this by-law.

The selected Proponent shall be required to comply with the contract requirements set out in Section 16 Contractor Performance and the Contractor Performance Procedure, Schedule "F" of this by-law.

## **13. ALTERNATIVE PROCUREMENT METHODS**

### **13.1 MULTI-STEP BID CALL**

A "Multi-Step Bid Call" is a bidding procedure consisting of two stages:

Step 1 consists of a request for technical Bid, evaluations and discussion without pricing requirements and the selection of responsive and responsible Bidder(s) whose requirements are considered most acceptable; and

Step 2 consists of reviewing sealed Bid prices from only those Bidder(s) whose technical requirements have been rated most acceptable in Step 1.

The Bid shall be advertised in accordance with Schedule "D" Thresholds. In the case of a pre-qualified Bid, only the selected pre-qualified Respondents shall be notified.

### **13.2 UNSOLICITED BIDS**

Unsolicited bids received by the Owner shall be reviewed by the Commissioner and/or Director and the Manager, Procurement Services.

Any procurement activity resulting from the receipt of an unsolicited bid shall comply with the provisions of this by-law pertinent thereto, including the Owner's Contractor Performance Procedure, Schedule "F" of this by-law.

Where a contract resulting from an unsolicited bid is awarded on a noncompetitive basis, the single or sole source purchase provisions of this by-law shall apply; or

Instead of the above process, the Manager, Procurement Services may utilize an Advanced Contract Award Notice (ACAN).

### **13.3 NEGOTIATION**

Negotiation may be used for the procurement for goods, service(s) or construction or for the sale of Personal or Real Property for any contract when any of the following criteria apply:

- i. The goods, service(s) or construction are deemed necessary by the C.A.O., Commissioner and/or Director as a result of an emergency purchase which would not reasonably permit the use of any other prescribed procurement process;
- ii. After the Request for Proposal (RFP) process has closed, it may be necessary for discussion to clarify;
- iii. Due to abnormal market conditions, the goods, service(s) or construction required are in short supply;

- iv. Where competition is precluded or severely restricted due to the existence of any patent right, copyright, technical secret or control of raw material;
- v. Where there is a single or sole source of the goods, service(s) or construction which would be acceptable and cost effective;
- vi. Where only one proposal/bid is received and it exceeds the amount budgeted for the procurement, negotiations may be conducted; provided the Bidder is responsive and responsible;
- vii. With the highest Offeror in response to Sale of Personal or Real property;
- viii. With the highest evaluated responsive and responsible Proponent to a Request for Proposal. If a negotiated settlement cannot be reached, the Owner may proceed to negotiate with the next highest evaluated responsive and responsible Proponent;
- ix. Where the extension or reinstatement of an existing contract with Council approval would be more cost effective or beneficial to the Owner;
- x. Where, for security or confidentiality reasons, it is in the best interest of the Owner; or
- xi. Where authorized by Council to do so.

The selected Proponent shall be required to comply with the contract requirements set out in Section 15 Contract Execution, Section 16 Contractor Performance, and the Owner's Contractor Performance Procedure, Schedule "F" of this by-law.

#### **13.4 EMERGENCY PURCHASES**

Notwithstanding the provisions of this by-law, an emergency purchase shall be made, when an event occurs that is determined by the Mayor, the C.A.O. or the Commissioner and/or Director to be a threat to any of the following:

- i. Public health;
- ii. The maintenance of essential corporate services or to prevent the disruption of essential corporate services;
- iii. The welfare of persons or of public property; or
- iv. The security of the Owner's interests and the occurrence requires the immediate delivery for goods, service(s) or construction and time does not permit for competitive Bids.

When any of the above criteria are applicable the following process shall be conducted:

- A. Where it is estimated that the expenditure is within the authority of the Commissioner and/or Director as stated in Schedule "D" Thresholds of this by-law; the Manager, Procurement Services, upon the recommendation of the Commissioner and/or Director, shall secure any goods, service(s) or construction required, in an efficient, expeditious manner that is in the best interest of the Owner:
  - i. A Purchase Order shall be issued or Purchasing Card or the Emergency Management Purchasing Card shall be used; and
  - ii. In case of an after hour emergency, a purchase order will be issued the next business day.
- B. Where it is estimated that the expenditure exceeds the authority of the Commissioner as stated in Schedule "D" Thresholds of this by-law, the prior approval of the C.A.O. shall be obtained; the Manager, Procurement Services, upon the recommendation of the C.A.O., the Commissioner and/or Director, shall secure any goods, service(s) or construction required; in an efficient, expeditious manner that is in the best interest of the Owner;
  - i. An information report shall be submitted by the Commissioner and/or Director to Council explaining the actions taken and the reason(s) therefore;

- ii. A Purchase Order shall be issued; or Purchasing Card or the Emergency Management Purchasing Card shall be used; or
- iii. In case of an after hour emergency, if a Purchasing Card or Emergency Management Purchasing Card is not available, a Purchase Order shall be issued the next business day.

### **13.5 SOLE SOURCE**

A Sole Source purchase may be conducted for the procurement for goods, service(s) or construction of any contract value without the competitive Bid process, when any of the following circumstances apply:

- i. May be based on proprietary technology.
- ii. Copyright; or
- iii. A Supplier's unique capability.
- iv. And other exceptions, expressly permitted under the Agreement on Internal Trade, as amended.

Where possible a Sole Source purchase shall be arranged by the Procurement Services Department and shall be in compliance with Schedule "D" Thresholds of this by-law.

Sole Source purchases shall be required to comply with the contract requirements of Section 15 Contract Execution and Section 16 Contractor Performance of this by-law.

A semi-annual report of all Sole Source Purchases will be given to the C.A.O and the Commissioner of Corporate Services by the Manager, Procurement Services.

### **13.6 SINGLE SOURCE**

Single Source purchasing may be conducted for the procurement for goods, service(s) or construction of any contract value without the competitive Bid process, when any of the following circumstances apply:

- i. For reasons of standardization, warranty, function or service, such as: technical qualifications;
- ii. To obtain the services from a public utility;
- iii. Where compatibility with an existing product, equipment, facility or service is a paramount consideration;
- iv. Where a good is purchased for testing or trial use;
- v. Where the contractor possesses the unique and singularly available capability to meet the requirements, such as, skills related to and/or existing knowledge of the nature of the service;
- vi. Ability to deliver at a particular time;
- vii. Where the Owner has a rental contract and an offer to buy out the equipment or extend the rental contract which may be beneficial to the Owner;
- viii. For matters involving security, police matters, or confidential issues, a purchase may be made in a manner that protects the confidentiality of the contractor or the Owner. Such purchases may be made as a Single Source purchase;
- ix. An Emergency purchase situation;
- x. Notwithstanding anything in this by-law, where a purchase is determined by Council to be fair and reasonable and is made from a non-profit corporation supported by the Owner, the Owner may make such a purchase as a single source purchase; and

- xi. Where goods are offered for sale to the Owner by auction or negotiation, such purchase will be deemed to be a Single Source purchase and the C.A.O. may authorize the submission of a bid or the conduct of negotiations where he/she determines the purchase to be clearly in the best interest of the Owner.
- xii. And other exceptions, expressly permitted under the Agreement on Internal Trade, as amended.

Where possible a Single Source purchase shall be arranged by the Procurement Services Department and shall be in compliance with Schedule "D" Thresholds of this by-law.

Single Source purchases shall be required to comply with the contract requirements of Section 15 Contract Execution and Section 16 Contractor Performance of this by-law.

A semi-annual report of all Single Source Purchases will be given to the C.A.O and the Commissioner of Corporate Services by the Manager, Procurement Services.

### **13.7 CONSULTING SERVICES**

Where it is estimated that the expenditure for Consulting Services is within the monetary value stated in Schedule "D" Thresholds of this by-law; the Director or Commissioner or C.A.O. as applicable, will select and recommend approval of the choice of Contractor to perform the work, in consultation with the Manager, Procurement Services.

This process shall not be used to retain Consulting Services, where a short list of pre-qualified Bidders is in place for the services requested. The process stated in the pre-qualification process or subsequent Request for Proposal (if applicable) for specific consulting services shall be used to retain Contractors.

The acquisition of Consulting Services, exceeding the values stated in Schedule "D" Bid Threshold of this by-law, shall be performed by one or both of the following methods:

- i. Pre-Qualification process.
- ii. Request for Proposal process.

The selected Contractor shall be required to comply with the contract requirements set out in Section 15 Contract Execution, Section 16 Contractor Performance, and the Owner's Contractor Performance Procedure, Schedule "F" of this by-law.

### **13.8 CO-OPERATIVE PURCHASING AND PIGGYBACK**

The Owner may participate in Co-operative Purchasing with other government agencies or public authorities where it is in the best interests of the Owner to do so.

The Owner may Piggyback on other government agencies or public authorities Contracts where it is in the best interests of the Owner to do so. The Owner may also allow other government agencies or public authorities to Piggyback contracts established by the Owner.

If the Owner decides to participate in a Co-operative Purchase or Piggyback contract, then the policies and procedures of the government agencies or public authorities calling the Bid on behalf of the participants are to be the accepted policies and procedures, even if they conflict with this By-law.

The terms of reference of the York Purchasing Co-operative and any other originating Co-operative shall form the basis of accepted policy and procedure when participating in, or calling, co-operative bids.

### **13.9 REVERSE AUCTIONS**

The Manager, Procurement Services may consider procuring goods, services and construction using Reverse Auction bidding strategies in situations where, in the opinion of the Manager,

Procurement Services, it is in the best interest of the Owner. The Reverse Auction may be conducted online, at the discretion of the Manager, Procurement Services.

Advertising of the bid opportunity shall be done in compliance with Schedule “D” of this by-law. This may include a pre-qualification of Bidders, and the selected short-listed Bidders would be invited to participate in the reverse auction.

The Bidder shall be required to comply with the contract requirements set out in Section 15 Contract Execution, Section 16 Contractor Performance, and the Owner’s Contractor Performance Procedure, Schedule “F” of this by-law.

### **13.10 NON-BINDING REQUEST FOR PROPOSAL**

The Manager, Procurement Services, may utilize a non-binding Request for Proposal (RFP), where in the opinion of the Manager, Procurement Services, it is in the best interest of the Owner.

Advertising of the bid opportunity shall be done in compliance with Schedule “D” of this by-law. This may include a pre-qualification of Proponents, and the selected short-listed Proponents would be invited to participate in the proposal process.

It is not the intent of the Owner, nor the effect of this non-binding RFP to initiate or form contractual relations by the submission of a Proposal by any Proponent in response to this RFP. The RFP is merely a call for proposals and not a bid call intending to place legally binding obligations on the Owner or any Proponent to enter into a definite agreement or to be bound by any of the terms of this RFP, unless and until, the Owner had completed the evaluation, negotiation and finalization of a proposal satisfactory to both the Owner and the selected Proponent.

### **14. MATHEMATICAL ERRORS**

In compliance with Schedule “B” Bid Irregularities, the Manager, Procurement Services or designate will check and correct errors in any extensions. The unit prices shall govern as provided for in Schedule “B” Bid Irregularities of this by-law. The responsibility for checking and correcting mathematical errors may be delegated to the requisitioning department and/or consultant.

### **15. CONTRACT EXECUTION**

Selected Bidder(s) may be required to submit additional documentation prior to execution of the Contract, including but not limited to: a Bond, Letter of Credit, Certified Cheque, Money Order, Insurance, a Certificate of Clearance from the Workplace Safety and Insurance Board (WSIB), the Contractor’s Health & Safety policy and/or project schedule.

The award of a Contract may be made by way of an agreement and/or a Purchase Order in accordance with Schedule “D” Thresholds of this By-law. The Manager, Procurement Services shall have the sole discretion to decide whether the terms and conditions between the selected Bidder and the Owner are to be set out in a Purchase Order and/or in a written agreement.

### **16. CONTRACTOR PERFORMANCE**

The Director and/or Manager shall be responsible for monitoring the performance of all procurement Contracts in accordance with the Owner’s Contractor Performance Procedure, Schedule “F” of this by-law.

### **17. REPORTING TO COUNCIL**

Goods, service(s) or construction shall be awarded in accordance with Schedule “D” Threshold of this by-law.

The Manager, Procurement Services shall prepare a semi-annual Information Report to Council with the following information:

- i. All goods, service(s) or construction awarded in the amount of \$250,000.00 and over in accordance with Schedule “D” Threshold of this by-law.
- ii. All emergency purchases exceeding \$50,000.00 awarded in accordance with Schedule “D” Threshold of this by-law.
- iii. All Single and Sole Source purchases.

## 18. ACCESS TO INFORMATION

The disclosure of information received relevant to the issue of Bids or the award of contracts shall be made by the appropriate officers in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act*, as amended.

## 19. DISPOSAL OF PERSONAL PROPERTY

- 19.1 The Commissioner and/or Director shall submit to the Procurement Services Department reports of furniture, vehicles, equipment, stocks of all supplies, and other goods and material, which are no longer used or which have become obsolete, worn out, or incapable of being used.
- 19.2 The Procurement Services Department staff shall first offer the surplus Personal Property to other departments or local boards. Any surplus assets not required by departments or local boards shall be offered through the York Purchasing Cooperative consisting of Municipalities, the Region, School Boards, Libraries and Hydro Corporations in York Region. The Manager, Procurement Services Department will determine the value of the asset. Any Personal Property still available after the provisions of subsection 19.2 have been carried out shall be disposed of by one of the following methods:
  - a) Sale: If it is determined by the Manager, Procurement Services that the highest return for personal property is by a Sale Solicitation, a Sale Solicitation shall be issued and advertised on an electronic tender system or daily newspaper. Offers shall be submitted by facsimile, electronically or sealed bid, as determined by the Manager, Procurement Services; or
  - b) Public auction: If it is determined by the Manager, Procurement Services that the highest return for Personal Property is by public auction, the Manager, Procurement Services shall arrange for the Personal Property to be sold at auction. A minimum bid may or may not be set and shall be determined by the Manager, Procurement Services, the Commissioner and/or Director; or
  - c) Return to the original Supplier: If it is determined by the Manager, Procurement Services that a higher return net of disposal cost can be achieved by Sale or Trade-in of the Personal Property to the original Supplier or Suppliers in that line of business, the Manager, Procurement Services shall sell such Personal Property at the highest return.

No employee, member of Council or board member of the Owner shall personally obtain any Personal Property that has been declared surplus unless it is obtained through a public process.

Any Personal Property still available after the provisions of subsection 19.2 (a to c) have been carried out shall be disposed of by one of the following methods:



- a) The Manager, Procurement Services shall notify community interest and/or non-profit agencies for relevant items of the Owner's disposal intent. These agencies shall submit to the Manager, Procurement Services in writing a letter of interest.
- b) Where Personal Property has little or no value, the Manager, Procurement Services may dispose of the items in an alternative manner; for example; as scrap metal.

**20. DISPOSAL OF REAL PROPERTY**

See the Corporation of the Town of Newmarket By-law number 2013-06, as amended for the Sale of Real Property owned by the Owner.

No employee, member of Council or board member of the Owner shall personally obtain any Real Property that has been declared surplus unless it is obtained through a public process.

**21. TIE BIDS RECEIVED**

In the case of tie bid between two or more Responsive and Responsible Bidders and where multiple awards are not possible, the Owner shall determine the selected Bidder by the following method:

Where an Owner's Contractor Performance Evaluation rating is on file for each of the Bidders, the Bidder with the best evaluation rating shall be selected.

If the above procedure cannot determine the selected Bidder;

In the case of a tie bid between two Responsive and Responsible Bidders and multiple awards are not possible a coin toss as prescribed in the Procurement Services Department Procedures Manual, shall be conducted by the Manager, Procurement Services.

In the case of tied bids between three or more Responsive and Responsible Bidders and multiple awards are not possible, the Owner shall determine the selected Bidder by a lottery draw as prescribed in the Procurement Services Department Procedures Manual.

The complete Tie Bid procedure to be conducted is outlined in the Corporate Services – Procurement Services Department Procedures Manual.

**22. CONTRACTOR INTEGRITY**

The Owner may reject Bids and/or terminate existing Contracts for reasons including but not limited to circumstances where a Contractor:

- a) has been suspected or convicted of; corruption, collusion, bid-rigging any other anti-competitive activity or any other offence under the Criminal Code;
- b) the Owner is likely to incur increased staff legal costs in the administration of the Contract if it is awarded to the Bidder;
- c) has failed to satisfy an outstanding debt to the Owner or one of its local boards or corporations; or
- d) There are reasonable grounds to believe it would not be in the Best Interests of the Owner to enter into a contract with the Bidder.

Notwithstanding the foregoing, in cases where the basis for rejection or termination, as set out above is with respect to an individual who is currently an owner or member of the board of directors of the Contractor, and the individual resigns or is dismissed within a reasonable period of time, the Owner may continue or award the Contract or supply arrangement with heightened scrutiny.

The Owner may, within the limits of the law, have to contract with a Supplier who has been convicted of an offense, when required to do so by law or legal proceedings, or when the Owner

considers it necessary to the public interest for reasons which include, but are not limited to the exceptions, set out in Section 23 Litigation / Probation / Suspension.

### 23. LITIGATION/PROBATION/SUSPENSION

The Bid Review Panel shall reject a Bid from any Bidder or any other party (including any related or affiliated entities and any principal thereof) who is in unresolved litigation with the Owner or who is currently serving a Suspension Period, in accordance with Schedule "F" Contractor Performance Procedure. Furthermore, the Owner shall retain the right to reject Bids which may have been received and/or awarded by the Owner, notwithstanding efforts by the Owner to screen the acceptance of Bids from parties engaged in unresolved litigation with the Owner or serving a Suspension period, once the Owner becomes aware of such unresolved litigation or Suspension period.

Notwithstanding the foregoing, where it is the Owner's best interest, the Owner may award a Contract to a Bidder who is:

- i. In unresolved litigation with the Owner or
- ii. Currently serving a Suspension Period, or is on Probation, in accordance with the Owner's Contractor Procedures.

In the following circumstances:

- i) Where there is only one Bidder/Contractor and the C.A.O. has approved the award;
- ii) In the case of an Emergency Purchase as outlined in this by-law;
- iii) Where there is a legal obligation on the part of the Owner to enter into the contract; or
- iv) Where the proposed Contract is pursuant to an inter-municipal or cooperative agreement and where another public agency has approved the award.

## **24. BLACK-OUT PERIOD**

The Black-Out Period begins when the Bid Call Document is issued and ends when the agreement is signed by the Owner and the selected Bidder. During the Black-Out Period, Bidders must conduct all communication about the procurement only with the Procurement Representative stated on the first page of the Bid Call Document.

Any communication initiated by a Bidder to elected officials or staff of the Owner other than to the Procurement staff during the "Black-Out Period" may be grounds for disqualifying the offending Bidder from consideration for contract award.

During the competitive period (Black-Out Period) Bidders may submit an emailed written question to the Procurement representative. The Procurement representative may issue a written addendum to provide clarification or modification to the Bid Call Document. The addendum will be published on the Owner's Bid Opportunities website.

## **25. LOBBYING PROHIBITED**

If any director, officer, employee, agent or other representative of a Respondent or Bidder, including any other parties that may be involved in a joint venture, consortium or similar business relationship with the Respondent or Bidder, makes, from the time the Bid Call Document is released, any representation or solicitation to any elected representative or employee or agent of the Owner including project consultants, or to the media, with respect to the Bidder's Bid, the Owner will be entitled to reject the Bid. This requirement does not extend to any public deputations.

## **26. INCENTIVES AND LIQUIDATED DAMAGES**

The Manager, Procurement Services or designate, may utilize Incentive and Liquidated Damages clauses in any bid, with the approval of the Director or Commissioner or C.A.O., where it is in the best interest of the Owner.

The Incentive and liquidated damages clauses may be used where there will be a financial and/or operational benefit to the Owner if the project is substantially completed to the satisfaction of the Owner prior to a stated completion date and/or there will be a financial and/or operational liability to the Owner if the project is delayed past that stated date. Accordingly, the Contractor and the Owner agree that the Contractor should be rewarded for substantially completing the project expeditiously and the Contractor should be assessed damages if the project is delayed.

## **27. DEBRIEFING**

Upon request of a Proponent in accordance with the Instructions to Proponents, the Owner will provide such Proponent a debriefing of their Proposal submission. The debriefing shall not take place until after the Contract has been executed.

## **28. BID DISPUTE RESOLUTION**

Bidders shall advise the Procurement Representative, prior to the deadline of written questions, if a Bidder needs to address any discrepancies, errors, concerns and/or omissions in the Bid Call Document, or if they be in doubt as to any part thereof.

After the award of the Bid, Bid challenges pertaining to the above matters shall not be considered by the Owner.

The Owner may consider all bid challenges in accordance with the Procurement Services Department Policies and Procedures Manual.

## **29. BY-LAW REVIEW**

This Procurement By-law shall be reviewed to evaluate its effectiveness every five (5) years or earlier by the Manager, Procurement Services or if Council deems it appropriate.



30. AMENDMENTS

Schedules "A" through "G" to this by-law may be amended from time to time upon the approval of the C.A.O or the Strategic Leadership Team in order to add or delete or modify matters listed.

31. SEVERABILITY

If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in force.

32. SHORT TITLE

The short title of this shall be the "Procurement By-law".

33. REPEAL

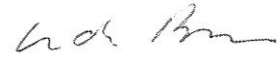
By-law 2011-74 and any amendments thereto are hereby repealed.

34. EFFECTIVE DATE

The provisions of this By-law shall come into force and be effective upon the final passage thereof.

ENACTED THIS 5TH DAY OF MAY, 2014.

  
\_\_\_\_\_  
Tony Van Bynen, Mayor

  
\_\_\_\_\_  
Andrew Brouwer, Town Clerk

## SCHEDULE "A" EXCEPTIONS TO BY-LAW 2014-27

The Procurement methods described in this by-law do not apply to the following items:

1. Training and Education
  - a. Conferences, conventions, courses and seminars.
  - b. Magazines, books and periodicals.
  - c. Memberships.
  - d. Facilitators and Program Hosts.
2. Refundable Employees Expenses
  - a. Advances.
  - b. Meal allowances.
  - c. Travel.
3. Employer's General Expenses
  - a. Payroll deductions remittances.
  - b. Medical.
  - c. Licenses (vehicle, firearms, elevators, etc.).
  - d. Debenture payments.
  - e. Grants to agencies.
  - f. Damage claims.
  - g. Petty cash replacement.
  - h. Tax remittances.
  - i. Charges to and from other government bodies, including Crown Corporations.
  - j. Sinking fund payments.
  - k. Payments for employment.
4. Professional and Special Services
  - a. Committee fees.
  - b. Medical, laboratory, and pharmacy services.
  - c. Legal fees for expert or professional legal services for all Corporation of the Town of Newmarket requirements and Insurance matters.
  - d. Fees for Professional Witnesses - appearing on the Owner's behalf at the administrative Court Hearings
  - e. Medical fees.
  - f. Appraisal fees.
  - g. Honorariums.
5. Postage.

## SCHEDULE "A" EXCEPTIONS TO BY-LAW 2014-27 CONT'D

6. Commodities such as Electricity, Natural Gas, Fuel, etc, under the regulation O. Reg 653/05, as amended or replaced, is defined as "whether in the original or processed state, an agricultural product, a forest product, a product of sea, a mineral, a metal, a hydro-carbon fuel, electricity, a precious stone or other gem and other physical goods but does not include chattel paper, a document of title, an instrument, money or securities". – see Owner's Commodity Hedging Policy- Policies and Goals, as amended, for the consideration of commodity price hedging by the Owner.
7. Utilities (monthly charges, maintenance, utility relocations, construction, acquisition or where proprietary).
  - a. Water and Sewer.
  - b. Telephone (excludes cellular).
  - c. Cable Television.
8. Events supporting local non-profit organizations.
9. The purchase of Real Property.
10. Employee Purchase Plans (Corporate sponsored employee programs).
11. Licenses, Certificates and other approvals required.
12. Entertainers for theatre or special events.
13. Cost sharing agreements approved by Council.
14. Investments, as recommended by the Treasurer and/or C.A.O.
15. Any additional Exceptions, expressly permitted in the Agreement on Internal Trade, as amended.

## SCHEDULE “B” BID IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY

For the purposes of this by-law, the following actions shall be taken regarding Bid Irregularities, as defined in this by-law, excluding Proposal Irregularities.

ITEM #	DESCRIPTION	ACTION
1.	Late Bid	Automatic rejection
2.	Bid submitted in other than the original Bid Form format.	Automatic rejection
3.	Bid completed in other than ink or a typed format;	Automatic rejection
4.	Bid not legible.	Automatic rejection, unless;  in the opinion of the Bid Review Panel, the illegibility is not pricing and is considered to be immaterial to the Owner which may upon request by the Owner, remedied by the Bidder, within five (5) Working Days or the Bid shall be rejected
5.	Bid Form not signed	Automatic rejection
6.	Incomplete Bid.	Automatic rejection, unless:  (i) it is stated in the Bid Call Document that partial Bids are acceptable, and the Bid is complete in respect of the portion of the scope of work or deliverable(s) bid upon; or  (ii) In the opinion of the Bid Review Panel, the omission is of a minor nature and is upon request by the Owner, remedied by the Bidder, within five (5) Working Days or the Bid shall be rejected. Incomplete pricing shall not be considered minor in nature and the Bid shall be rejected, with the exception of those irregularities stated in accordance with paragraphs 14 and 15 below. Failure to submit a Schedule of the List of Subcontractors (when required) shall not be considered minor in nature and the Bid shall be rejected.
7.	All Addendum(s) not acknowledged or enclosed in the Bidder's Bid.	Automatic rejection, unless the relevant addendum issued is solely for the purpose of revising a closing date and/or time and the Bid is received in accordance with the revised closing date and/or time.
8.	Bid submitted by a Bidder who is in unresolved litigation with the Owner.	Automatic rejection, unless it is subject to the exceptions stated in the Owner's Procurement by-law, Section 23 Litigation/Suspension/Probation.



**SCHEDULE "B" BID IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY cont'd**

ITEM #	DESCRIPTION	ACTION
9.	Alterations, additions, deletions or qualifying statements (referred to as a "variation") made to or provided with the Bid Form.	Automatic rejection, unless in the opinion of the Bid Review Panel, such variation is considered to be immaterial to the Owner.
10.	Strikeouts, erasures, whiteouts or overwrites made to the Bid Form, not initialed by an authorized person.	Automatic rejection, unless in the opinion of the Bid Review Panel, the failure to initial is minor in nature and is capable of being remedied. Upon request of the Owner, the Bidder shall be given five (5) Working Days to initial, or the Bid shall be rejected, or, alternatively, the failure to initial is otherwise immaterial to the Owner. Un-initialed alterations to pricing information shall be dealt with in accordance with paragraphs 11 to 13 below.
11.	Mathematical errors which are not consistent with the Unit Price; Mathematical errors such as tax calculation errors.	Upon request of the Owner, Bidder shall accept and initial corrections made by the Owner within five (5) Working Days or the Bid shall be rejected.
12.	Unit Price in the Schedule of Prices which has been changed but not initialed and the Unit Price extension is consistent with the Unit Price as amended.	Upon request of the Owner, Bidder shall initial within five (5) Working Days or the Bid shall be rejected.
13.	Unit Price in the Schedule of Prices which has been changed but not initialed and the Unit Price extension is not consistent with the Unit Price as amended.	Automatic rejection.
14.	If a unit price has been given but the corresponding extended total has been omitted,	The extended total will be calculated from the unit price and the estimated quantity by the Owner
15.	If an extended total has been given but the corresponding unit price has been omitted,	The unit price will be calculated from the extended total and the estimated quantity by the Owner.
16.	Where there is a calculation error in the addition of individual lump sum prices into a subtotal price.	The Owner may make the appropriate mathematical correction to the subtotal price and/or subtotal contract price, as the case may be, so that the calculation is correct. The Bidder shall be given five (5) Working Days to accept and initial corrections made by the Owner.

**SCHEDULE “B” BID IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY cont’d**

ITEM #	DESCRIPTION	ACTION
17.	Bid received by a Bidder serving a Suspension Period, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
18.	Bid received by a Bidder who has served the Suspension Period and the Bidder cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
19.	Bid received by a Bidder that has been issued an active Probation letter or has received a Cautionary performance rating by the Owner and the Bidder cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
20.	Failure to provide Bid Deposit and/or Undertaking to provide a Bond or Letter of Credit	Automatic rejection, unless; A copy of the Undertaking to provide a Bond or Letter of Credit is submitted with the Bid and the signature(s) shall be visible. Upon request by the Owner, five (5) Working Days shall be given to the Bidder to submit the original Undertaking to provide a Bond or Letter of Credit Form to the Owner or the Bid shall be rejected.
21.	Insufficient Bid Deposit	Automatic Rejection, unless in the opinion of Bid Review Panel, the insufficiency in the Bid Deposit is trivial or insignificant. Upon request by the Owner, five (5) Working Days shall be given to the Bidder to remedy.
22.	Bidder did not attend a mandatory site meeting.	Automatic rejection
23.	Other Bid Irregularities.	Referred to the Bid Review Panel for review, consideration, and determination. Upon Request of the Owner, the Bidder may be given five (5) Working Days to correct such Bid Irregularity

## **SCHEDULE "B" BID IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY cont'd**

All Bid Irregularities (except late bids that were automatically rejected) shall be forwarded to the Bid Review Panel for review, consideration, and determination in accordance with Section 9 – Bid Review Panel of this by-law.

Where, at the request of the Owner, a Bidder has been given five (5) Working Days to correct an irregularity, should the Bidder fail to make the correction within that time period, then the Bidder shall be deemed to be in default and;

- the Bid shall be rejected and the Bidder's Bid Deposit (where applicable) shall be forfeited, retained and applied for use by the Owner and
- At the discretion of the Bid Review Panel, the Bidder may be suspended for a period of two years.

**SCHEDULE “B” BID IRREGULARITIES - APPLICABLE TO ELECTRONIC BIDDING ONLY**

For the purposes of this by-law, the following actions shall be taken regarding Bid Irregularities (as defined in this by-law, excluding Proposal Irregularities).

ITEM	DESCRIPTION	ACTION
1.	Late Bid	Automatic rejection. Electronic Bidding system shall not accept late Bid submissions.
2.	Bid submitted in other than the original Bid Form format.	Automatic rejection
3.	Bid Form not signed	Automatic rejection. The Electronic Bidding system shall not accept bids unless the Bidder has checked a box confirming authority to submit a bid on behalf of the Bidder.
4.	All Addendum(s) not acknowledged (if issued).	Automatic rejection.
5.	Bid received by a Bidder who is in unresolved litigation with the Owner.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
6.	Bid received by a Bidder serving a Suspension Period, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law Section 23 Litigation/Suspension/Probation,
7.	Bid received by a Bidder who has served the Suspension Period and the Bidder cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law Section 23 Litigation/Suspension/Probation, .

**SCHEDULE “B” BID IRREGULARITIES - APPLICABLE TO ELECTRONIC BIDDING ONLY cont’d**

ITEM	DESCRIPTION	ACTION
8.	Bid received by a Bidder that has been issued an active Probation letter or has received a Cautionary performance rating by the Owner and the Bidder cannot provide, in the Owner's sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
9.	Failure to provide Bid Deposit and/or Undertaking to provide a Bond or Letter of Credit	Automatic rejection.
10.	Insufficient Bid Deposit	Automatic Rejection, unless in the opinion of Bid Review Panel, the insufficiency in the Bid Deposit is trivial or insignificant. Upon request by the Owner, five (5) Working Days shall be given to the Bidder to remedy.
11.	The Owner is unable to verify Digital Bond(s).	Upon request by the Owner, the Bidder shall be given five (5) Working Days to either; remedy the verification to the Owner’s satisfaction or to submit the original Bid Deposit and/or Undertaking to provide a Bond or Letter of Credit form to the Owner or the Bid shall be rejected.
12.	Bidder did not attend the mandatory site meeting.	Automatic rejection
13.	Other Bid Irregularities.	Referred to the Bid Review Panel for review, consideration, and determination. Upon Request of the Owner, the Bidder may be given five (5) Working Days to correct such Bid Irregularity

All Bid Irregularities (except late Bids that were automatically rejected) shall be forwarded to the Bid Review Panel for review, consideration, and determination in accordance with Section 9 – Bid Review Panel of this by-law.

Where, at the request of the Owner, a Bidder has been given five (5) Working Days to correct an irregularity, should the Bidder fail to make the correction within that time period, then the Bidder shall be deemed to be in default and;

- the Bid shall be rejected and the Bidder’s Bid Deposit (where applicable) shall be forfeited, retained and applied for use by the Owner and
- At the discretion of the Bid Review Panel, the Bidder may be suspended for a period of two years.

**SCHEDULE “C” PROPOSAL IRREGULARITIES - APPLICABLE TO HARD COPY BIDDING ONLY**

For the purposes of this by-law, the following actions shall be taken regarding Proposal Irregularities (as defined in this by-law, excluding Bid Irregularities).

ITEM	DESCRIPTION	ACTION
1.	Late proposal.	Automatic rejection.
2.	Proposal completed in other than ink or a typed format.	Automatic rejection.
3.	Proposal not legible.	Automatic rejection, unless; In the opinion of the Bid Review Panel, the illegibility is not pricing and is considered to be immaterial to the Owner which may upon request by the Owner, remedied by the Proponent, within five (5) Working Days or the Proposal shall be rejected.
4.	Proposal not signed	Automatic rejection.
5.	All Addendum(s) not acknowledged or enclosed in the Proponent’s Proposal (if issued).	Upon request of the Owner, the Proponent shall be given five (5) Working Days to acknowledge acceptance of the Addendum(s), provided such acknowledgement does not alter the Proponent’s Proposal in any manner, apart from the acknowledgement of the Addendum /Addenda, otherwise the Proposal shall be rejected
6.	Proposal received by a Proponent who is in unresolved litigation with the Owner.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
7.	Proposal received by a Proponent serving a Suspension Period, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
8.	Proposal received by a Proponent who has served the Suspension Period and the Proponent cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law Section 23 Litigation/Suspension/Probation,

**SCHEDULE “C” PROPOSAL IRREGULARITIES- APPLICABLE TO HARD COPY BIDDING ONLY**  
**cont’d**

ITEM	DESCRIPTION	ACTION
9.	Proposal received by a Proponent that has been issued an active Probation letter or has received a Cautionary performance rating by the Owner and the Proponent cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
10.	Failure to provide Proposal Deposit and/or Undertaking to provide a Bond or Letter of Credit	Automatic rejection, unless; A copy of the Undertaking to provide a Bond or Letter of Credit is submitted with the Proposal and the signature(s) shall be visible. Upon request by the Owner, five (5) Working Days shall be given to the Proponent to submit the original Undertaking to provide a Bond or Letter of Credit Form to the Owner or the Proposal shall be rejected.
11.	Insufficient Proposal Deposit	Automatic Rejection, unless in the opinion of Bid Review Panel, the insufficiency in the Proposal Deposit is trivial or insignificant. Upon request by the Owner, five (5) Working Days shall be given to the Proponent to remedy.
12.	Proponent did not attend a mandatory site meeting.	Automatic rejection
13.	Other Proposal Irregularities, including deviations in terms.	Referred to the Bid Review Panel for review, consideration, and determination. Upon Request of the Owner, the Bidder may be given five (5) Working Days to correct such Bid Irregularity

All Proposal Irregularities (except late proposals that were automatically rejected) shall be forwarded to the Bid Review Panel for review, consideration, and determination in accordance with Section 9 – Bid Review Panel of this by-law.

Where, at the request of the Owner, a Proponent has been given five (5) Working Days to correct an irregularity, should the Proponent fail to make the correction within that time period, then the Proponent shall be deemed to be in default and;

- the Proposal shall be rejected and the Proponent’s Proposal Deposit (where applicable) shall be forfeited, retained and applied for use by the Owner and
- At the discretion of the Bid Review Panel, the Proponent may be suspended for a period of two years.

**SCHEDULE “C” PROPOSAL IRREGULARITIES -APPLICABLE FOR ELECTRONIC BIDDING ONLY**

For the purposes of this by-law, the following actions shall be taken regarding Proposal Irregularities (as defined in this by-law, excluding Bid Irregularities).

ITEM	DESCRIPTION	ACTION
1.	Late Proposal	Automatic rejection. Electronic Bidding system shall not accept late Proposal submissions.
2.	Bid Form not signed	Automatic rejection. The Electronic Bidding system shall not accept proposals unless the Proponent has checked a box confirming authority to submit a proposal on behalf of the Proponent.
3.	All Addendum(s) not acknowledged (if issued).	Automatic rejection.
4.	Proposal received by a Proponent who is in unresolved litigation with the Owner.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.
5.	Proposal received by a Proponent serving a Suspension Period, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law Section 23 Litigation/Suspension/Probation, .
6.	Proposal received by a Proponent who has served the Suspension Period and the Proponent cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law, Section 23 Litigation/Suspension/Probation.



**SCHEDULE “C” PROPOSAL IRREGULARITIES - APPLICABLE FOR ELECTRONIC BIDDING ONLY cont’d**

7.	Proposal received by a Proponent that has been issued an active Probation letter or has received a Cautionary performance rating by the Owner and the Proponent cannot provide, in the Owner’s sole opinion, satisfactory evidence of improvement in area(s) of concern as documented on the applicable Final Performance Evaluation, in accordance with the Contractor Performance Procedure Schedule “F” of this by-law.	Automatic rejection unless, at the Owner’s sole discretion, it is subject to the exceptions stated in the Owner’s Procurement by-law Section 23 Litigation/Suspension/Probation, .
8.	Failure to provide Proposal Deposit and/or Undertaking to provide a Bond or Letter of Credit	Automatic rejection.
9.	Insufficient Proposal Deposit	Automatic Rejection, unless in the opinion of Bid Review Panel, the insufficiency in the Proposal Deposit is trivial or insignificant. Upon request by the Owner, five (5) Working Days shall be given to the Proponent to remedy.
10.	The Owner is unable to verify Digital Bond(s).	Upon request by the Owner, the Proponent shall be given five (5) Working Days to either; remedy the verification to the Owner’s satisfaction or to submit the original Proposal Deposit and/or Contract Security to the Owner or the Proposal shall be rejected.
11.	Proponent did not attend the mandatory site meeting.	Automatic rejection
12.	Other Proposal Irregularities, including deviations in terms.	Referred to the Bid Review Panel for review, consideration, and determination. Upon Request of the Owner, the Proponent may be given five (5) Working Days to correct such Proposal Irregularity

All Proposal Irregularities (except late proposals that were automatically rejected) shall be forwarded to the Bid Review Panel for review, consideration, and determination in accordance with Section 9 – Bid Review Panel of this by-law.

Where, at the request of the Owner, a Proponent has been given five (5) Working Days to correct an irregularity, should the Proponent fail to make the correction within that time period, then the Proponent shall be deemed to be in default and;

- the Proposal shall be rejected and the Proponent’s Proposal Deposit (where applicable) shall be forfeited, retained and applied for use by the Owner and
- At the discretion of the Bid Review Panel, the Proponent may be suspended for a period of two years.

**SCHEDULE "D" THRESHOLDS**

The award amounts shall be within the scope and budget approved by Council

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra *see note	METHOD OF PROCUREMENT	ADVERTISING	Reporting	Authority	Contract Agreement Requirements  And Parties responsible for Contract Execution
<b>TABLE 1. DELEGATED AUTHORITY FOR LOW VALUE PURCHASES</b>					
Up to \$10,000.00	Low Value Purchase (LVP) By Department Staff or through Procurement Services.	Purchases made from the competitive marketplace where possible and practicable. Advertising not required.	Not Applicable	P-Card, or through a LVP Purchase Order by staff delegated by the Director or Commissioner or C.A.O.	No Agreement

SCHEDULE "D" THRESHOLDS – cont'd

The award amounts shall be within the scope and budget approved by Council

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra *see note	METHOD OF PROCUREMENT	ADVERTISING	Reporting	Authority	Contract Agreement Requirements  And Parties responsible for Contract Execution
<b>TABLE 2. AUTHORITY FOR BID CALL PROCESS</b>					
\$10,000.01 to \$ 50,000.00	QUICK BID (QB) or QUICK BID REQUEST FOR PROPOSAL (QBRFP) through Procurement Services.	Advertising is at the discretion of the Manager, Procurement Services.	<p style="text-align: center;">Manager</p> <p>A copy of the signed report shall be provided to the applicable Director, all Commissioners and C.A.O.</p>	<p>Staff delegated by the Director, or Commissioner or C.A.O. Purchase Order or P-Card to \$ 50,000.00 including taxes.</p>	No Agreement
\$50,000.01 to \$ 99,999.99	QUICK BID (QB) or QUICK BID REQUEST FOR PROPOSAL (QBRFP) through Procurement Services.	Advertising is at the discretion of the Manager, Procurement Services but will be done in accordance with Trade Agreements.	<p style="text-align: center;">Director</p> <p>A copy of the signed report shall be provided to all Commissioners and C.A.O.</p>	<p style="text-align: center;">Director</p> <p>Purchase Order or P-Card to \$ 99,999.99 including taxes.</p>	<p style="text-align: center;">Agreement optional</p> <p>Manager, User Department &amp; Manager, Procurement Services</p>
\$100,000.00 to \$249,999.99	FORMAL BID: REQUEST FOR TENDER (RFT) OR REQUEST FOR PROPOSAL (RFP) through Procurement Services.	Advertising is required.	<p style="text-align: center;">Commissioner</p> <p>A copy of the signed report shall be provided to all Commissioners and C.A.O.</p>	<p style="text-align: center;">Commissioner</p> <p>Purchase Order or P-Card to \$ 99,999.99 including taxes.</p>	<p style="text-align: center;">Agreement</p> <p>Director &amp; Manager, Procurement Services</p>
\$250,000.00 AND OVER	FORMAL BID: REQUEST FOR TENDER (RFT) OR REQUEST FOR PROPOSAL (RFP) through Procurement Services.	Advertising is required.	<p style="text-align: center;">Council</p> <p style="text-align: center;">OR</p> <p>C.A.O. subject to Section to 6.3 of this by-law</p> <p>A copy of the signed report shall be provided to all Commissioners and C.A.O.</p>	<p style="text-align: center;">Council</p> <p style="text-align: center;">OR</p> <p>C.A.O. subject to Section 6.3 of this by-law A Purchase Order is required.</p>	<p style="text-align: center;">Agreement</p> <p>Director &amp; Manager, Procurement Services</p>

\*For the Agreement on Internal Trade (AIT) - the "Procurement Value" definition differs in that the valuation includes taxes. Advertising of bids shall be done in accordance with AIT.

**SCHEDULE "D" THRESHOLDS cont'd**

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra	METHOD OF PROCUREMENT	ADVERTISING	Report to	Authority	Contract Agreement Requirements  And Parties responsible for Contract Execution
<b>TABLE 3. EMERGENCY PURCHASES</b>					
Up to \$50,000.00	Not Applicable	Advertising not required	Not Applicable	Directors or Commissioner or C.A.O. Or Managers with the prior written approval of their Director or Commissioner.  A JD Edwards Emergency Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required
\$50,000.01 to \$99,999.99	Not applicable	Advertising not required	Not applicable	Commissioner or C.A.O.  A JD Edwards Emergency Purchase Order is generated by Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required
\$100,000.00 and over	Not applicable	Advertising not required	Information report shall be submitted by the Director and /or Commissioner to Council explaining the actions taken and the reason(s) therefore	C.A.O.  A JD Edwards Emergency Purchase Order is generated by the Procurement Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required

**TABLE 4. MUNICIPAL DECLARED EMERGENCIES under the Emergency Management and Civil Protection Act, as amended**

The C.A.O. or Commissioner or Director may authorize the Manager, Procurement Services to increase staff Delegated Authority limits for low value purchases and/or Authority limits upon the declaration of a Municipal Emergency by the Mayor and/or C.A.O.

SCHEDULE "D" THRESHOLDS cont'd

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra	METHOD OF PROCUREMENT	ADVERTISING	Reporting	Authority	Contract Agreement Requirements  And Parties responsible for Contract Execution
<b>TABLE 5. SOLE OR SINGLE SOURCE PURCHASES</b>					
Up to \$10,000.00	Not applicable	Advertising not required	Director	Director and in consultation with the Manager, Procurement Services.  A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required
\$10,000.01 to \$25,000.00	Not applicable	Advertising not required	Commissioner	Commissioner in consultation with the Manager, Procurement Services.  A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	No Agreement Required
\$25,000.01 to \$49,999.99	Not applicable	Advertising not required	C.A.O.	C.A.O. in consultation with the Manager, Procurement Services.  A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	Agreement optional  Director and Manager, Procurement Services.
\$ 50,000.00 and over	Not applicable	Advertising not required	Council	Council  A JD Edwards Single /Sole Source Purchase Order is generated by the Procurement Services Department or P-Card to \$ 99,999.99 including taxes.	Agreement optional  Director and Manager, Procurement Services.

SCHEDULE "D" THRESHOLDS cont'd

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra	METHOD OF PROCUREMENT	ADVERTISING	Reporting	Authority	Contract Agreement Requirements  And Parties responsible for Contract Execution
<b>TABLE 6. CONSULTING SERVICES</b>					
Up to \$ 20,000.00	Not applicable	Advertising not required	Not Applicable	Director or Commissioner Or C.A.O. in consultation with the Manager, Procurement Services. A JD Edwards Consulting Purchase Order is generated by the Procurement Services Department	Agreement Optional Manager, User Department Manager, Procurement Services

SCHEDULE "D" THRESHOLDS cont'd

Estimated Procurement Value (Dollar) Threshold Applicable taxes are extra	METHOD OF PROCUREMENT	SOURCE OF BIDS/ ADVERTISING	Report to	Authority	Contract Agreement Requirements  And Parties responsible for Contract Execution
<b>TABLE 7. REQUEST FOR INFORMATION</b>					
N/A	RFI	Advertising not required.	Director and/or Commissioner and/or C.A.O. (where appropriate).	Not Applicable	Not Applicable

<b>TABLE 8. REQUEST FOR PRE-QUALIFICATION</b>					
N/A	PRE-QUAL	Advertisement of the Pre-Qualification shall be based on the estimated contract value, in accordance Schedule "D" Thresholds	Not Applicable	Pre-qualified Contractors approved by Evaluation Committee	Not Applicable

## SCHEDULE "E" POSITION EXCEPTIONS

Position exemptions to the dollar value limit for Low Value Purchases

1. Fire Chief
2. Deputy Fire Chiefs
3. Manager, Facility Services
4. Manager, Parks and Property Services
5. Manager, Operations
6. Manager, Water and Waste Water
7. Fleet Supervisor
8. Mechanics
9. Procurement Systems Officer
10. For Financial Services staff to make a payment for a public bid up to \$99,999.99 (inclusive of taxes), where it is in the best interest of the Owner and approved by the Treasurer or
11. When a Emergency (Municipally declared) is declared by the Mayor and/or CAO, the limits for any or all Staff P-Cards will increase, as per the Procurement By-law Schedule "D", or
12. Emergency Municipal P-Cards may be used by Procurement staff up to an unlimited value during an Emergency (Municipally declared), when pre-approved in writing, as per the Procurement By-law Schedule "D", or
13. The Manager, Procurement Services may at the direction of a Director, Commissioner or C.A.O., add additional positions or permit temporary transaction increases to other positions, that are exemptions to the transaction dollar value of Low Value Purchases, where it is in the best interest of the Owner.



## SCHEDULE "F" CONTRACTOR PERFORMANCE

### CONTRACTOR PERFORMANCE SYSTEM PROCEDURAL DOCUMENT

Revision date: May 25, 2015

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## 1. DEFINITIONS

**“Performance Evaluation Form”** has the meaning set out in Section 4.1 of this procedure document, as amended.

**“Probation”** means the action that results when a Contractor receives a rating of **“NOT SATISFACTORY”** in any category, on a Final Performance Evaluation form, subject to the terms and conditions of this document

**“Project Evaluator(s)”** means one or more person(s) from the Owner’s user department(s) and/or a consultant to the Owner, that will be evaluating the Contractor’s performance by completing Performance Evaluation Forms in accordance with this procedural document, as amended.

**“Suspension”** means the action that results when a Contractor receives a rating of **“UNACCEPTABLE”** in any category, on a Final Performance Evaluation form, subject to the terms and conditions of this document

All other initially capitalized terms not defined above shall have the meanings given to such terms in the Owner’s Procurement Bylaw #2014-27, as amended.

## 2. PURPOSE

This procedure provides a framework for the Owner to evaluate and improve the performance of all Contractors awarded publicly bid Contracts by;

- (i) pro-actively managing the performance of Contractors during the term of awarded Contracts, and
- (ii) creating a record of past performance for use by the Manager, Procurement Services, in determining the award for future Solicitations.

Project Evaluator(s) may utilize this Contractor Performance Procedure for all other contracts including but not limited to; invitational bids, Single or Sole Source purchases, Emergency Purchases and wherever it is in the Best Interest of the Owner.

## 3. PROJECT EVALUATORS

Each Project Evaluator and Procurement shall confirm by signing off on the evaluation that he or she does not have a Conflict of Interest.

Project Evaluators and Procurement staff shall at all times abide by the Owner’s Employee Code of Conduct, as amended.

## 4. PROJECT EVALUATION FORMS

Project Evaluators are to use one of the following Project Evaluation Forms, as provided in Schedule “A” of this procedural document:

- i. Infrastructure Consultant Project Evaluation Form (includes Construction Admin)
- ii. Consultant Performance Evaluation Form (no construction admin.)
- iii. Equipment/Vehicle Supplier Project Evaluation Form
- iv. Supplier of Goods/Services Project Evaluation Form
- v. Contractor Project Evaluation Form

## 5. FREQUENCY OF PERFORMANCE EVALUATIONS

- 5.1 The Procurement Services Department strongly recommends that Project Evaluators perform an **Interim Performance Evaluation** using the applicable form in Schedule “A” (the “Performance Evaluation Forms”) of this procedural document, at least every twelve (12) months for all Contracts with a term longer than one (1) year. Additional Performance Evaluation Forms may be completed and discussed with the Contractor at any time throughout the term of the Contract, as needed, based on the Contractor’s performance.
- 5.2 It is good practice to keep the Procurement Representative assigned to the Solicitation informed throughout the course of a Contract of any performance concerns with the Contractor. Departmental project managers should not hesitate to contact the Procurement representative for advice or assistance regardless of the significance of the problem or to attend a meeting with the Contractor.
- 5.3 Project Evaluators shall ensure that each completed Performance Evaluation Form is clearly marked as either “**Interim**” or “**Final**”.
- 5.4 Project Evaluators should complete a **Final Performance Evaluation Form** for all Contracts using the **applicable form** in Schedule “A” ( the “Performance Evaluation Forms”) of this procedural document, as amended, in a timely manner, preferably **within two (2) weeks** of the following occurrences, depending on the type of good, service or construction:
- (i) For Construction contracts; upon the issuance of a Certificate of Final Completion or
  - (ii) For Consulting contracts; upon completion of the Contract or
  - (iii) For Goods; upon delivery and inspection of goods and/or after the expiry of any applicable deficiency or
  - (iv) for Services, upon completion of services and/or after the completion of deficiencies or
  - (v) for Vehicles and Equipment; upon deliver and inspection and/or after the expiration of the warranty period or
  - (vi) upon termination of a Contract for any reason prior to the Contract end date.
- 5.5 **Contractor’s receiving an Interim** Performance Evaluation Form with a rating(s) of **CAUTIONARY OR BELOW**, in any category, should be requested in writing, to provide, a written response and appropriate corrective action within an acceptable timeframe, in accordance with the Terms and Conditions of the Solicitation and failure of the Contractor to do so, in the sole opinion of the Owner, may lead to termination of the Contract.
- 5.6 Project Evaluators are not obliged to complete Performance Evaluation Forms for Contracts obtained through a non-competitive procurement process, but may do so at their discretion.
- 5.7 Project Evaluators shall complete all Performance Evaluation Forms, for approval, by their immediate Supervisor and the Manager, Procurement Services. The approved Evaluation form will be sent to the Contractor by Procurement Services. The Bid Review Panel, as defined in the Procurement Bylaw 2014-27, as amended, shall review Final Performance Evaluations, where, the Contractor has received a rating of “**NOT SATISFACTORY OR UNACCEPTABLE**” in any category(s) on a **Final** Performance Evaluation Form and to consider its options stated in this procedural document.

## 6. RECOMMENDED STEPS TO RESOLVING CONTRACTOR PERFORMANCE

- 6.1 It is important to have open communication with the Contractor throughout the project and to inform the Contractor in writing when their performance is a concern and to request appropriate corrective action within an acceptable timeframe, in accordance with the Solicitation’s terms and conditions. It is equally important to keep a written record of all correspondence with the Contractor.
- 6.2 If the Contractor’s response or corrective action is still a concern, departmental staff should involve the Procurement Representative. Where it is deemed appropriate an Interim Performance Evaluation should be performed by the Project Evaluator(s) and provided to the Contractor by the Procurement department. The Contractor will be held responsible for the performance of its sub-contractors.

# Contractor Performance Evaluation

6.3 If the Contractor’s response or corrective action continues to be a concern, the terms and conditions of the contract regarding non-performance may be enforced by the Manager, Procurement Services.

## 7. RECORD RETENTION

Project Evaluators shall maintain the following documents and Bid records for seven (7) years or in accordance with the Owner’s record retention procedures, as amended, following the completion of the Project warranty or maintenance period as supporting rationale to augment the Performance Evaluation Form:

- i. internal and external correspondence (e.g. emails, letters, telephone logs describing the issues discussed, copies of faxes);
- ii. meeting minutes describing all issues discussed, decisions made, issues unresolved, and action items assigned;
- iii. progress reports;
- iv. project diaries which record significant daily events;
- v. inspection and laboratory reports;
- vi. photographs and video tapes; and
- vii. rejected project deliverables.

## 8. PERFORMANCE EVALUATION SYSTEM

Project Evaluators shall assign Contractors one of the following ratings to each category set out on the Performance Evaluation Form. A critical aspect of the assessment rating system described below is the **second sentence** of each rating that recognizes the Contractor's resourcefulness in overcoming challenges that arise in the context of Contract performance.

Rating		Description of Rating
A	Exceptional	Performance <i>significantly exceeds</i> Contract requirements to the Owner's benefit, for example, the Contractor implemented innovative or business process reengineering techniques, which resulted in added value to the Owner. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the Contractor were highly effective.
B	Good	Performance meets contractual requirements and <i>exceeds in some area(s)</i> to the Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the Contractor were effective
C	Satisfactory	Performance <i>meets</i> contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which proposed corrective actions taken by the Contractor appear satisfactory, or completed corrective actions were satisfactory.
D	Cautionary	Performance did not quite <i>meet</i> contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which proposed corrective actions taken by the Contractor appear to be a continued minor concern, or completed corrective actions were slightly below satisfactory.
E	Not Satisfactory	Performance <i>does not meet some</i> contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the Contractor has submitted minimal corrective actions, if any. The Contractor’s proposed actions appear only marginally effective or were not fully implemented.
F	Unacceptable	Performance <i>does not meet</i> contractual requirements and/or <i>recovery is not likely</i> in a timely or cost effective manner. The contractual performance of the element or sub-element contains serious problem(s) for which the Contractor's corrective actions appear or were ineffective.

## 9. IMPACT OF FINAL PERFORMANCE EVALUATIONS

- 9.1 In addition to the provisions set out in Item 9 Impact of Final Performance Evaluation, the Owner, at its sole discretion, may;
- terminate a Contract prior to completion of a project or prior to the expiration of a Contract period term due to Contractor performance issues or
  - Or take other action, in the Owner's best interest.
- 9.2 Final Performance Evaluation Forms shall be used by the Owner for consideration of award of Solicitations, (if a Final has not been performed at time a Solicitation award is under review, an Interim evaluation, if available, may be used by the Owner to:
- i. determine if a Bidder submitting a Bid is a Responsible Bidder, and/or
  - ii. To evaluate past performance in Proposal Solicitations.
- 9.3 A Contractor that has received an "EXCEPTIONAL" rating in the majority (50% or more) of the categories and at least a "GOOD" rating in all other categories (except for costs which may be at the "Satisfactory" rating); on the Contract's Final Performance Evaluation Form:
- a) The Contractor may be considered a Responsible Bidder for future similar Bid submissions to the Owner,
  - b) For a multi-year term Contract, the Contract may be extended up to an additional two (2) year term, at the discretion of both the Owner and Contractor. Costs for the extension shall be based on either:
    - i. any inflationary contract annual increase stated in the Bid Call Document or any inflationary contract annual increase stated by the Contractor in their original Bid submission or
    - ii. The same costs as stated in a firm fixed price multi-year Contract.

Where a Bid Call Document did not state or request any inflationary annual Contract increase or where the Contractor is not willing to hold pricing for a firm fixed price multi-year Contract, the Contract shall be re-bid by Procurement Services.

- 9.4 A Contractor that has received a "GOOD" rating or above in the majority (50% or more) of the categories and at least a "SATISFACTORY" rating in all other categories on the Final Performance Evaluation Form;
- a) The Contractor may be considered a Responsible Bidder for future similar Bid submissions to the Owner, and
  - b) For a multi-year term Contract, the Contract may be extended for an additional one (1) year term, at the discretion of both the Owner and Contractor. Costs for the extension shall be based on either:
    - i. any inflationary contract annual increase stated in the Bid Call Document or any inflationary contract annual increase stated by the Contractor in their original Bid submission or
    - ii. The same costs as stated in a firm fixed price multi-year Contract.

Where a Bid Call Document did not state or request any inflationary annual Contract increase or where the Contractor is not willing to hold pricing for a firm fixed price multi-year Contract, the Contract shall be re-bid by Procurement Services.

- 9.5 A Contractor that has received at least a "SATISFACTORY" rating or above in all categories of the Performance Evaluation Form;



## Contractor Performance Evaluation

- a) The Contractor may be considered a Responsible Bidder for future similar Bid submissions to the Owner, and
- b) For multi-year Contracts, is not eligible for an extension term to the current Contract.
- 9.6 A Contractor that has received at least a “CAUTIONARY” rating in any category of the Final Performance Evaluation Form;
- a) May or may **not** be considered a Responsible Bidder for future similar Bid submissions to the Owner, and
- b) For multi-year Contracts, is not eligible for an extension term to the current Contract.
- c) Prior to awarding the Contractor any future Contracts, the Owner may request the Bidder to demonstrate in writing or by other acceptable means to the Manager, Procurement Services that the Contractor has corrected all previously documented areas of “**CAUTIONARY**” performance concerns to a standard satisfactory to the Owner. In addition, a list of new references may be required by the Owner in respect of work completed by the Contractor since the date of the Performance Evaluation Form where a rating of “**CAUTIONARY**” in any category was given. The Owner reserves the right, at its sole discretion not to award a Contract to any Contractor, for an indefinite period that fails to provide satisfactory evidence of correcting any documented past performance concerns by the Owner.
- 9.7 A Contractor that has received a “NOT SATISFACTORY” rating in any one category on the Final Performance Evaluation Form;
- a) The Contractor may or may **not** be considered a Responsible Bidder for future similar Bid submissions to the Owner;
- b) The Contractor will receive an active “**Probation Letter**” advising the Contractor that if a second “**NOT SATISFACTORY OR WORSE**” rating in any category is received on the next Final Performance Evaluation Form the Contractor may be subject to a suspension period, as stated in 9.8 of this procedural document.
- c) For a multi-year Contract, a Contractor receiving a “**NOT SATISFACTORY**” rating in any one (1) category on a Final Performance Evaluation, is **not** eligible for an extension term to the current Contract and
- d) The Owner may terminate the current Contract due to poor performance.
- e) Prior to awarding the Contractor any future Contracts, the Owner may request the Bidder to demonstrate in writing or by other acceptable means to the Manager, Procurement Services that the Contractor has corrected all previously documented areas of “**NOT SATISFACTORY**” performance concerns to a standard satisfactory to the Owner. In addition, a list of new references may be required by the Owner in respect of work completed by the Contractor since the date of the applicable Final Performance Evaluation Form where a rating of “**NOT SATISFACTORY**” in any category was given. The Owner reserves the right, at its sole discretion not to award a Contract, for an indefinite period, to any Contractor that fails to provide satisfactory evidence of correcting any documented past performance concerns by the Owner.
- 9.8 A Contractor that has received (i) an “UNACCEPTABLE” rating in any one category or (ii) a “NOT SATISFACTORY” rating in two or more categories, on a Final Performance Evaluation Form, or (iii) a “NOT SATISFACTORY” rating in at least one category on two consecutive Final Performance Evaluations;
- a) The Contractor shall not be considered a Responsible Bidder and shall be Suspended for at least a two (2) year period
- b) For a multi-year Contract, a Contractor receiving an “**UNACCEPTABLE**” rating in any one (1) category on a Final Performance Evaluation, is **not** eligible for an extension term to the current Contract and
- c) The Owner may terminate the current Contract due to poor performance and
- d) The Owner will issue a letter to the Contractor confirming the Suspension Period setting out the requirements for reinstatement, which shall include at a minimum;

- i. Expiration date of the Suspension Period, and
- ii. Prior to awarding the Contractor any future Contracts after the above expiration date, the Owner may request demonstration by the Bidder in writing or by other acceptable means to the Manager, Procurement Services that the Contractor has corrected all previously documented areas of “**NOT SATISFACTORY**” or “**UNACCEPTABLE**” performance concerns to a standard satisfactory to the Owner. In addition, a list of new references may be required by the Owner in respect of work completed by the Contractor since the date of the Performance Evaluation Form which resulted in the Suspension. The Owner reserves the right, at its sole discretion not to award a Contract, for an indefinite period, to any Bidder that fails to provide satisfactory evidence of correcting any documented past performance concerns by the Owner.

- 9.9 Any Bidder that refuses or fails to execute a Contract awarded to that Bidder by the Owner may be subject to a Suspension Period, at the discretion of the Owner based on the recommendation of the Bid Review Panel.
- 9.10 The Owner may apply the Suspension or Probation period, where it is in the best interest of the Owner, based either on:
- i. **Commodity Basis:** this will be specific to the commodity of good(s) and/or service or construction evaluated on the applicable Final Performance Evaluation or on a
  - ii. **Blanket Basis:** this will cover all contracts regardless of the type of good, service or construction evaluated on the applicable Final Performance Evaluation.
- 9.11 If a Bidder has multiple Performance Evaluation Forms on record with the Owner, the Owner will consider the most recent Final Performance Evaluation completed for similar contracted goods, services or construction. Where a Bidder has a Performance Evaluation for an unrelated good/service/construction, the Owner reserves the right to consider this Evaluation amongst other sources in determining if a Bidder is Responsible.

Furthermore the Owner reserves the right to consider Interim Performance Evaluation(s), in determining if a Bidder is Responsible, if a Final Performance Evaluation has not been completed, or in addition to a completed Final Performance Evaluation.

Where a Contract has multiple departments or facilities completing an Evaluation (either Interim or Final), the Contractor’s overall performance rating for either an Interim Evaluation or Final Evaluation shall be based on the lowest evaluation rating received by a department or facility.

## 10. CONTRACTOR RESPONSE PROCESS

The Contractor shall have ten (10) calendar days to:

- i. Submit a written response to an Interim or Final Performance Evaluation, utilizing the Owner’s response form and /or
- ii. Submit a written request to appeal a **Final** Performance Evaluation rating, utilizing the Owner’s response form.

If no response is received within that timeframe the Evaluation rating shall be final.

## 11. APPEAL PROCESS

- 11.1 Within two (2) weeks of receiving an appeal response form in respect of a Final Performance Evaluation Form where the Contractor received a rating of “**SATISFACTORY**” or **better** in any category(s), the Manager, Procurement Services and the head(s) of the functional area(s) which worked directly with the Contractor shall have sole discretion to decide if any rating should be adjusted in any or all categories, based on information received in the appeal response form. The Owner may render a final decision based on the appeal information or



## Contractor Performance Evaluation

request additional information of the Contractor. The Owner's decision shall be final and binding on all parties.

- 11.2 Within two (2) weeks of receiving an appeal response form in respect of a Final Performance Evaluation where the Contractor received a rating of **“CAUTIONARY”** or **below** in any category(s), the Manager, Procurement Services will arrange a meeting with the Bid Review Panel as defined in the Procurement Bylaw 2014-27, to review the appeal response form. The Owner may render a final decision based on the appeal information or request additional information of the Contractor. The Probation or the Suspension Period shall be upheld during any appeal under review by the Owner. The Owner's decision shall be final and binding on all parties.

### 12. OTHER INCENTIVES FOR CONTRACTORS

The Owner may consider other incentives in future Bid projects to ensure satisfactory and above Contractor performance and/or to provide a financial bonus for completing a project on time. These types of incentives are to be used at the discretion of the Manager, Procurement Services upon approval of the Director or Commissioner or C.A.O., depending on the value of the incentive, in accordance with the Staff authority limits stated in the Procurement Bylaw # 2014-27.

### 13. AWARD OF EXTENSION YEAR(S)

The Manager, Procurement Services or designate with the approval of the authority position(s) that originally approved the Contract shall have authority to award up to two (2) extension year(s) (as per Item 9.3 or 9.4 of this procedural document) to a multi-year Contract in compliance with this Contractor Performance System Procedural Document, as amended.

## SCHEDULE "G" P-CARD PROCEDURES

## SCHEDULE "G" P-CARD PROCEDURES

### The Corporation of the Town of Newmarket P-Card Policy

Revision Date: August 19, 2015

Procurement Services P-Card Staff and US Bank Contact Information:

Lead P-Card Coordinator	Lisa Gold, CPPB	Procurement Systems Officer Procurement Services 905-953-5300, press 2, ext. 2353 <a href="mailto:lgold@newmarket.ca">lgold@newmarket.ca</a>
Primary Backup	Anne Sugar	Procurement Officer Procurement Services 905-953-5300, press 2, ext 2352 <a href="mailto:asugar@newmarket.ca">asugar@newmarket.ca</a>
Secondary Backup	Katie Paribok	Procurement Clerk Procurement Services 905-953-5300, press 2, ext 2355 <a href="mailto:kparibok@newmarket.ca">kparibok@newmarket.ca</a>
Lost or Stolen Card	US Bank	1-800-588-8065, then notify the Corporation's Lead P-Card Coordinator

## SCHEDULE "G" P-CARD PROCEDURES

### 1. THE CORPORATION'S P- CARD PROVIDER:

Royal Bank of Canada (RBC) has established a joint marketing agreement with U.S. Bank Canada to provide commercial cards to our Cardholders.

### 2. INTRODUCTION:

The purpose of this Policy is to communicate procedures for use of the Corporation's Procurement Card, hereafter called P-Card, to enable P-Card Cardholders to efficiently purchase goods, service(s) and construction, in compliance with this policy, as amended and the Procurement Bylaw, as amended:

- a) Valued up to \$ 10,000.00, or
- b) Where the Cardholder, Treasurer, Department Head or Commissioner have approved a temporary increase, where it is in the best interest of the Town.
- c) As per Schedule "E" Position Exceptions of the Procurement bylaw, as amended or
- d) For Financial Services staff to make a payment for a public bid up to \$99,999.99 (inclusive of taxes), where it is in the best interest of the Town and approved by the Treasurer or
- e) When a municipal emergency is declared by the Mayor and/or CAO and the limits for any or all P-Cards will increase, as per the Procurement By-law Schedule "D", as amended or
- f) Emergency Municipal P-Cards may be used by Procurement staff up to an unlimited value during a municipal emergency, when pre-approved in writing, by the Commissioner or CAO.

H.S.T. is additional to all transaction limits (except for item d above).

The Manager, Procurement Services may at the direction of a Department Head, Commissioner or C.A.O., add additional positions exceptions (Schedule "E" of the Procurement bylaw, as amended) that have higher transaction and monthly limits, where it is in the best interest of the Town.

In addition all corporate P-Cards have been blocked for the Standard Merchant Category Codes (MCC) and some P-Cards may be blocked from the Optional Merchant Category Codes (MCC) based on Cardholder application approved by the Department Head. See Appendices Form -07 for MCC categories.

All purchases made with the P-Card shall be on behalf of the Corporation. Purchasing on behalf of the Corporation requires special sensitivity on the part of the Cardholder to obtain fair and reasonable prices in accordance with this policy and adhering to ethical behavior.

Individual user profiles are established for each employee, hereinafter referred to as "Cardholder" for the P-Card program. Dollar limits are established for each Cardholder based on the nature of the work performed and as stipulated by their Commissioner and/or Director. There are two dollar limits established for all P-Cards:

## SCHEDULE "G" P-CARD PROCEDURES

- Total Cycle Dollar Limit per month.
- Maximum Dollar Amount per Transaction (not to exceed \$10,000.00 per transaction), except for the exemptions stated above.

Cardholders may use a P-Card for travel expenditures (with the permission of their Department Head or Commissioner).

### 3. OBTAINING A P-CARD:

A P-Card request form (see Appendices P-Card Form 01) shall be completed and authorized by the Department Head or Commissioner or C.A.O., (a request for a Department Head's P-Card shall be approved by their Commissioner, and a request for a Commissioner's P-Card shall be approved by the C.A.O.).

Before a Cardholder can receive a P-Card and be authorized to make purchases on behalf of the Corporation, the Cardholder shall attend a P-Card training class, read and understand this P-Card policy and sign a Cardholder Agreement. Signing of the Cardholder Agreement indicates that the employee understands and agrees to abide by the P-Card Policy.

### 4. P-CARD PROGRAM ROLES:

To ensure compliance when using the P-Card, the following roles were created:

1. **Cardholder:** The individual whose name appears on the P-Card and who is accountable for all charges made with the card. Cardholders are required to complete P-Card training when applying for their first P-Card, comply with the terms of the P-Card policy and sign the Cardholder Agreement Form (appendices Form-02). The Cardholder's name and the Corporate Logo will be embossed on their Corporate P-Card that is designed to prevent confusion with personal credit cards. It is suggested that P-Cardholders keep their P-Card in a separate section of their wallet to differentiate the corporate card from personal cards.
2. **Approver:** This is typically the person the Cardholder reports to, it is this person's responsibility to complete the administrative review of the Cardholder's statement and receipts. It is the responsibility of the Approver to address Cardholders about questionable transactions. After the review is completed and any questions have been answered, the Approver is required to sign the statement indicating approval of the reported transactions. Approvers are required to comply with the terms of the P-Card policy and sign the Approver Agreement Form (appendices Form-03).
3. **Reconciler:** The Cardholder or a staff person designated by the Cardholder's Department Head shall perform the monthly P-Card reconciliation. Reconcilers are required to comply with the terms of the P-Card policy and sign the Reconciler Agreement Form (appendices Form-04).

## SCHEDULE "G" P-CARD PROCEDURES

### 5. P-CARD OWNERSHIP- KEEPING THE CARD SECURE:

- The P-Card should be treated with the same security as a personal credit card:
- Keep it with you—do not lock it in a desk or file cabinet.
- Do not write any portion of the P-Card number down or share the number with others.
- Do not give the P-Card number to a merchant to "keep on file" or share your card and/or number with another staff member. This practice opens a greater window of opportunity for fraudulent activity to be placed on the card. A staff member that does not have a P-Card but their job function requires that person to make corporate purchases shall request a P-Card through their Department Head using Form-01 (see appendices)

### 6. CARDHOLDER TO OBTAIN DETAILED RECEIPTS

A proper detailed receipt shows the itemized description of the items purchased, the date of purchase, the amount paid, taxes paid and the method of payment. It is the Cardholder's responsibility to obtain detailed receipts and other documentation (i.e. warranty information) from the merchant(s) each time the Cardholder uses the P-Card.

It is vital that the detailed receipt be submitted, as it is required by the Financial Services Department to claim for the H.S.T. rebate (if applicable) for the purchase, otherwise the Cardholder's department will not receive these rebate funds. **IN OTHER WORDS, THE DEPARTMENT HAS LOST MONEY.**

The detailed receipt is also a good audit trail to prove that the purchase was made and what it was for.

If a receipt is lost, it is the Cardholder's responsibility to contact US Bank and request a Vendor copy of the receipt. It will take 4 to 6 weeks for the receipt to be sent and it is your responsibility to ensure the P-Card Coordinator is provided this replacement receipt immediately upon receipt.

P-cards transactions should not be used in conjunction with personal air mile cards or similar reward programs.

### 7. ALCOHOL PURCHASES

Alcohol shall **not** be purchased on the P-Card, with the sole exception being, where the purchase has been pre-authorized in writing by the Manager, Procurement Services, or designate for purchase of alcohol for a corporate event The following positions are exempt from this restriction:

1. The Economic Development Officer, or designate
2. The Executive Assistant to the Mayor, or designate, with the authorization of the Mayor.
3. The Executive Assistant to the C.A.O., or designate, with the authorization of the C.A.O.
4. The C.A.O.
5. The Mayor.

## SCHEDULE "G" P-CARD PROCEDURES

### 8. P-CARD MEAL EXPENSES

#### **Town Staff: Expensing Meals during or through normal meal periods**

- obtain all appropriate approvals before incurring expenses;
- submit **both** the original, itemized receipt (which shows taxes paid) and the summary receipt showing total paid;
- identify on the receipt, the purpose of the meeting
- identify on the receipt, all parties that are partaking in the meal
- ensure it is expensed to the new GL object code (4269) for each department which is to be setup by the Finance Department which all food expenses would be charged

#### **Town Staff (Approvers)**

- Approvers are prohibited from approving their own food expenses.
- Meal expenses for a group shall be expensed by the most **senior** staff person present that has a P-Card.

(e.g., a Supervisor and their Manager attend the same business luncheon for their area. The Manager is the senior staff member present and shall be responsible for payment of the meal on his/her P-Card. This expense would then be approved by the Manager's Director when approving the monthly P-Card statement. Otherwise, if the Supervisor pays for the luncheon, it results in that the Manager approving his/her own expenses).

Approvers must be required to:

- provide approval only for expenses that were necessarily incurred in the performance of organization business;
- provide approval only for claims that include all appropriate documentation

#### **Working During or Through Normal Meal Periods**

Wherever possible, staff should seek the prior approval of their direct report and either the Director or Commissioner.

Staff may use their P-Card to pay for expenses that are incurred while working during or through normal meal periods, provided the expenses are reasonable and appropriate in the circumstances. Reasonable and appropriate expenses are expenses that:

- a. Are incurred during performance of staff's position duties.
- b. Are modest, representing a prudent use of public funds.
- c. Do not involve alcoholic beverages.
- d. In general, working meals are to be delivered in-house.

**Note:** Staff will be personally responsible for any expenses incurred that are **not** subsequently approved by your Approver.

## SCHEDULE "G" P-CARD PROCEDURES

### 9. RECONCILER RESPONSIBILITIES

Each Cardholder **either** does their own reconciliation or the responsibility is assigned to a Reconciler by the Department Head. For the monthly P-Card reconciliation, the Reconciler:

- Checks receipts against transactions on statement to ensure the charges are correct.
- Verifies the dollar value for each transaction.
- Enters the following information:
  - General Ledger Account number(s)
  - Description of Purchase
  - For charges to conferences general ledger (4478), the employee vendor type and number
  - The National Tax if it is not stated (this is the H.S.T. amount shown on the Cardholder's detailed receipt). The following list provides some examples (not an exclusive list) of purchases, where the National Tax (H.S.T) should be corrected:  
  
Grocery Store purchases  
  
Restaurants  
  
Any out of province purchases
  - If the National Tax amount stated is **not correct** for this purchase (**DO NOT** change it if the difference is **five cents or less**)
- Prints the P-Cardholder Activity Report after reconciling all transactions
- Assembles the P-Card statement and supporting documentation and forwards all to the Cardholder and/or Approver for review and signatures.

**Note:** The time constraints for submitting the reconciled statement to the Procurement Services Department, prior to the deadline makes it challenging to have the Cardholder sign off on the reconciled statement. It is permissible for the Reconciler, at the end of the billing cycle, to print the statement of purchases for that cycle for each Cardholder and have the Cardholder review all purchases to ensure accuracy, sign the statement and return it to their Reconciler promptly to include with the statement to be signed by the Approver.

If a Cardholder is on vacation or off due to illness – the Statement should be signed upon their return to work and submitted to Procurement Services.

## SCHEDULE "G" P-CARD PROCEDURES

### 10. STAFF RESPONSIBILITIES FOR ORDERING LOW VALUE GOODS AND/OR SERVICES:

Staff that are purchasing low value goods and services on behalf of the Town should at the time of ordering, provide the Vendor either:

1. A P-Card or P-Card information if ordering by phone/web.

Note: All existing processes for payment of term contracts paid by P-Card will remain status quo and are to be paid by the user department using their own P-Card or Ghost Card.

2. A Low Value Purchase Order generated by the user in JD Edwards. Staff shall instruct the Vendor to send the invoice directly to Financial Services – Accounts Payable and that the Low Value Purchase Order is referenced on the invoice.

Staff should obtain three quotations where ever possible.

Staff are to obtain both WSIB and Insurance from the Vendor when acquiring a service, failure to do so, may subject the Town to risk including but not limited to:

WSIB Act s.141 (6) If the person is not deemed to be the employer, the person shall ensure that the contractor or subcontractor complies with his, her or its obligations to make payments under the insurance plan. The person is liable to the extent that the contractor or subcontractor does not meet those obligations

3. The Procurement Department staff, when bidding goods, services, construction up to \$ 99,999.00, will be asking bidders if they would accept visa for payment. These bids will be paid by Financial Services – Accounts Payable staff using their P-Card, after the user department has approved the invoice for payment.
4. Financial Services will be returning all invoices for the purchase of goods and services that do not reference a low value purchase order to the user department to enter a low value purchase order.

### 11. USING THE P-CARD

The P-Card may be used to make transactions over-the-counter, by mail, via telephone, or over the Internet. The Cardholder has the responsibility to account for all transactions made using the P-Card. This includes maintaining detailed printed receipts including confirmations of Internet transactions.

Do not use the P-card as a method of payment if the vendor is going to charge a surcharge or fee to use the card as payment.

### 12. CHOOSE THE APPROPRIATE BUYING METHODS

Before making a purchase with the P-Card, Cardholders should consider the following steps, which are presented in the order in which you should consider using them:



## SCHEDULE "G" P-CARD PROCEDURES

- a. **Internal Service Providers:** If a good or service is available through another department. For example:
- Does another department have the tool or equipment that can be used, rather than renting or buying?
  - Can Town staff paint the office, instead of hiring an outside painter?
- b. **Formal Term Contracts:** Employees should utilize formal Term contracts with suppliers established by Procurement Services that support the procurement needs of the entire Corporation for specific goods or services. Cardholders are not responsible for obtaining Insurance and WSIB certificates for purchases made from Term contracts, as these forms are already on file with the Corporation. For example:
- Office supplies
  - HVAC
  - Overhead Door repair

A complete list of Town Term contracts can be viewed on the Public drive in the Procurement folder.

**Corporate Term Contracts should be considered the primary sources for any purchase of goods or services.** If the required good or service is available through a Corporate Contract it should be purchased from that contract.

- c. **All other Purchases** for goods and/or services:
- After consideration of the first two buying options, Cardholders may purchase goods and/or services up to their transaction limit.
  - If you are obtaining **a service** which is not available through the first two buying options, you are required to obtain the following documentation **prior** to the Contractor performing any service for you:
    - i. A faxed or emailed copy of the Contractor's current WSIB Certificate of Clearance
    - ii. The Contractor shall have their Insurance Company complete the Town Insurance Certificate form for the minimum following coverage. –link to

<T:\Public\Procurement Services\Low Value Purchases>

(a) Comprehensive general liability insurance on an occurrence basis for an amount of not less than Two Million Dollars (\$2,000,000) and shall include the Owner, The Corporation of the Town of Newmarket, as an Additional Insured with respect to the Contractor's operations, acts and omissions relating to its obligations under this Agreement, such policy to include, but not be limited to, non-owned automobile liability;

## SCHEDULE "G" P-CARD PROCEDURES

personal injury; broad form property damage; blanket contractual liability; owners and contractors protective liability; products and completed operations liability; contingent employers' liability; and, cross liability and severability of interest clauses.

(b) Automobile liability insurance for an amount not less than Two Million Dollars (\$2,000,000) on forms meeting statutory requirements covering all licensed vehicles used in any manner in connection with the performance of the terms of this Agreement.

Note: If it is a service that will be used more than once - contact the Procurement Services Department, as it may be more appropriate for the Procurement Services Department to bid the service and establish a formal term contract.

Once the service is completed, follow the steps stated on the Procedures for Receiving and Inspecting Goods Services Poster displayed at all Town facilities. If you obtained a service, the Contractor's WSIB Certificate and Insurance form shall be included in the Cardholder's P-Card Statement along with the detailed receipt/invoice.

### 13. DUPLICATION OF PAYMENT

**Invoices that are received by the Town should either indicate the Purchase Order Number or if paid by P-Card the Invoice should state:**

- Paid by P-Card and
- the Cardholders name

**Invoices that come into the Town without reference to either a Purchase Order or P-Card may be paid twice by the corporation.**

### 14. P-CARD STATEMENT OR SUPPORTING DOCUMENTATION

If Cardholder's P-Card Statement is incomplete (e.g., the Cardholder has not signed the statement, or you have not provided all required receipts), the Approver will return the statement to you for correction. Once corrected, you must return the statement and supporting documents to the Approver to complete the review process. The completed and signed statements are then forwarded to Procurement Services Department (P-Card Coordinator) for review prior to payment. The P-Card Coordinator will advise both the Cardholder and Approver, to provide any missing information or to provide further clarification, prior to the closing date for statements. Failure to do so may result in progressive discipline, as detailed in this policy.

### 15. RETURNS, CREDITS AND DISPUTED ITEMS

If you have a problem with a purchased item or with billing resulting from the use of the Corporate P-Card, you should first try to resolve the issue with the supplier that provided the item. In most cases, disputes can be resolved directly between the Cardholder and the supplier. The Cardholder must use the following guidelines when returning an item:

## SCHEDULE "G" P-CARD PROCEDURES

- The Cardholder must send the item back to the supplier in a manner agreed upon by the Cardholder and the supplier.
- Record the return on Cardholder P-Card Statement. The supplier should issue a credit to the Cardholder's P-Card for any item that has been agreed to for return. This credit will appear on a subsequent monthly statement.
- Documentation of the return (such as a credit receipt) should be issued by the supplier and kept on file by the Cardholder for reconciliation to the monthly statement. Cardholders must specifically request a credit to the P-Card for any return that was originally charged to the P-Card.
- If a supplier refuses to credit the Corporate P-Card, the Cardholder shall report this information to Corporate P-Card Coordinator at 905-953-5335.
- If you are unable to resolve a dispute with the supplier, contact the Corporate P-Card Coordinator at 905-953-5335. The card provider will investigate and assist in resolving the dispute on the Cardholder's behalf.

## 16. BILLING CYCLE

The P-card cycle runs from the 16th of one month to the 15th of the following month. P-card transactions posted on-line can be reconciled on-line at any time throughout the month. Following the cycle close, an email is issued to all cardholders as a reminder to complete their reconciliations and submit their signed cardholder activity statement to their Approver within 7 calendar days, but no later than the 22nd of the month. Once reviewed and approved by the Approver, the submission envelope will be forwarded immediately to the Procurement Services Department. The P-Card Coordinator will review all transaction summaries for accuracy and completeness. The accounts will lock in Access On-line at the end of the day on the 28th of the month and no further account coding can be done on-line. The Supplier of the Card Program will then send a file to be uploaded into the general ledger in JD Edwards on the 29th of the month. Any further adjustments to the account coding can only be done through a journal entry by the Financial Services Department staff.

## 17. INTERNAL AUDIT

On a monthly basis, approximately twenty (20) Town of Newmarket Cardholders will be audited and on a quarterly basis, approximately three (3) Newmarket Public Library Cardholders will be audited by Town staff to ensure compliance with this policy. Those Cardholders found to be non-compliant and if it is a 1<sup>st</sup> offense, a notice of the non-compliance will be issued by the Manager, Procurement Services to the following staff and the Cardholder's monthly statement will be audited for an additional consecutive three (3) month period.

NOTIFICATION TO BE SENT TO:
Cardholder
Cardholder Approver

## SCHEDULE "G" P-CARD PROCEDURES

2<sup>nd</sup> Offenses will be escalated to the following staff and the Cardholder's monthly statement will be audited for an additional consecutive three (3) month period.

NOTIFICATION TO BE SENT TO:
Cardholder
Cardholder Approver
Department Head
Commissioner

3<sup>rd</sup> Offenses will be escalated to the following staff and the Cardholder's monthly statement will be audited for an additional consecutive three (3) month period.

NOTIFICATION TO BE SENT TO:
Cardholder
Cardholder Approver
Department Head
Commissioner
C.A.O.
Director, Human Resources
Treasurer

In addition to the 3<sup>rd</sup> notification or at any time, depending of the severity of the non-compliance, the Manager, Procurement Services may suspend the Cardholder's card for a period of at least thirty (30) days and the Cardholder must attend a re-orientation session before the card is re-activated.

SCHEDULE "G" P-CARD APPENDICES

# P-CARD APPLICATION FORM

P-Card Form-01

Return this completed form to the P-Card Coordinator  
Procurement Services Department

## EMPLOYEE INFORMATION

First Name	Initial	Last Name
Employee Number	Commission	Department
Town Facility Office Location	Default Business Unit (i.e. 13-221)	

The information provided herein is for the sole purpose of the financial institution security. This information is private and confidential and will not be released to other parties without prior written consent of the applicant.

## CARD TYPE REQUESTED AND AMOUNTS

Type	Description	Single Transaction Limit (STL) \$ Amount – H.S.T. is additional		Monthly Transaction Limit (MTL) \$ Amount – H.S.T. is additional	
Type 1	Basic Cardholder	Maximum:	\$	Maximum:	\$
Type 2	Ghost Card	Maximum:	\$	Maximum:	\$

All Corporate P-Cards will not be eligible to purchase from commodities/services listed in Standard Town Merchant Category Code (MCC) Restrictions, such as; (Services for Ambulance, Veterinary, Medical, Financial, Insurance, Legal, Taxes, and Counselling), for a detailed list see the P-card Policy Appendices Form-07.

Check if this Card should not be eligible to purchase from the **Additional MCC Exclusions such as:** (Airlines, Rail, Hotels, Entertainment, Amusement Recreation, Bars, Taverns, Vehicle Dealers, Barber/Beauty, Furriers)

NOT ELIGIBLE

<b>Employee Signature</b>		Date:	
<b>Department Head or Commissioner Signature</b>		Date:	
<b>P-Card Coordinator</b>		Date:	
<b>Manager, Procurement Services Signature</b>		Date:	

1. The P-Card should arrive in approximately five (5) business days of the submitted request to US Bank.
2. The Cardholder will be notified by Procurement Services, when the P-Card has arrived and shall be required to attend a training session with a member of Procurement Services P-Card staff.

**SCHEDULE “G” P-CARD APPENDICES**

**Town of Newmarket P-Card Cardholder Agreement Form-02**

You are being entrusted with a US BANK Purchase Visa Card (“the Card”). The Card is provided to you based on your need to purchase supplies and/or services for the Town of Newmarket. The Card is the property of the Town of Newmarket and use of the Card may be terminated at any time. Your signature below indicates you have read this Cardholder Agreement and will comply with the terms herein.

- I understand that I shall be making financial commitments on behalf of the Town of Newmarket and shall strive to obtain the best value for Town of Newmarket in any purchase I make.
- I shall obtain **detailed receipts** for all Card transactions (especially at Restaurants get the detailed receipt which shows the taxes paid). In order for the Town to receive a tax rebate, the Cardholder shall obtain a detailed receipt, indicating items purchased and the HST paid (where applicable).
- I or a department designate shall review my monthly P-Card statements and reconcile with my receipts.
- I shall follow the procedures and policies outlined for me in the use of the Card. Failure to follow these procedures and policies could be considered as misappropriation of Town of Newmarket funds. Failure to comply with this Cardholder Agreement may result in either revocation of my privileges or other corrective action, up to and including termination of my employment.
- I understand that **under no circumstances will I use the Card to make personal purchases**, either for myself or for others. Using the Card for personal charges could be considered misappropriation of Town of Newmarket funds and could result in corrective action up to and including termination of my employment.
- I agree that should I violate the terms of this Cardholder Agreement and use the Card for personal use or gain, I will immediately reimburse the Town of Newmarket for all incurred charges and any fees related to the collection of those charges.
- The Card is issued in my name and the name of the Town of Newmarket. **I shall not allow any other person or staff member to use the Card or its number**. I am considered responsible for any and all charges against the Card.
- **I shall not split a transaction** to remain under my transaction threshold.
- I shall not use the Card to purchase alcohol. When travelling on corporate business, I shall advise the P-Card Coordinator of my plans at 905-953-5335.
- I shall not purchase computer equipment or software, without the prior approval of the IT department.
- I shall not purchase office furniture, office equipment or corporate stationery (business cards, letterhead or envelopes), without the prior approval of the Procurement department.
- The Card is the property of the Town of Newmarket. I understand that I may be periodically required to comply with internal control procedures and audits designed to protect the funds of the Town of Newmarket.
- If the Card is lost or stolen, I shall immediately notify the US BANK Visa Business Card Group or US BANK Visa Customer Service at 1.800.588.8065 and the Town of Newmarket P-Card Coordinator at 905-953-5335 during business hours.
- I or my Reconciler will reconcile the statement and I will resolve any discrepancies with the supplier. I will submit all receipts and the transaction statement signed by me to my Department Head for authorization, who will then forward it to the Procurement Services Department.
- I agree to surrender the US BANK P-Card immediately at the request of the Manager, Procurement Services or upon termination of my employment.
- I have been provided a copy of the P-Card Policy and have received appropriate training.

<b>Cardholder Name</b>		<b>Cardholder Signature</b>	
<b>Date of P-Card Training Session</b>			

## **Town of Newmarket P-Card Approver Agreement Form-03**

The Town’s P-Card program delegates both authority and responsibility for the purchase of low value goods and services to staff, up to the limits approved by the applicable Department Head and/or Commissioner. As the Approver of your staff(s) P-Card monthly statements, it is your responsibility to review and approve these purchases to ensure compliance with the P- Card Policy, as amended. This Agreement lists your primary responsibilities in the P-Card Program:

- I shall promptly obtain and review the monthly P-Card Statements and associated transaction records in my area. If all transactions are appropriate I will indicate my review and approval by signing the monthly statement and forward to the Procurement Services Department.
- I shall promptly report to the Town’s P-Card Coordinator at 905-953-5335, any suspected misuse of the P-Card.
- I shall review transactions to ensure that:
  - All receipts are provided for all transactions.
  - In my opinion, the purchases represent the best value for the Town.
  - Transactions are not split.
  - Alcohol is not purchased, except where provided by this policy.
  - The g/l account assigned is accurate and complete.
- To reduce the chance of fraud, I shall endeavour that P-Card numbers are not written down and/or shared amongst staff.
- I shall ensure that Cardholders promptly report any lost or stolen P-Cards.
- I shall ensure that Cardholders who are leaving employment at the Town return their P-Card to the P-Card Coordinator for cancellation.
- I shall notify the P-Card Coordinator of any changes or deletions to the authorities delegated.
- I have been provided a copy of the P-Card Policy and have received appropriate training.

<b>Approver Name</b>		<b>Approver Signature</b>	
<b>Date of P-Card Training Session</b>			



**Town of Newmarket P-Card  
Reconciler Agreement Form-04**

I, the undersigned, hereby acknowledge that I will be responsible for the following:

1. Reviewing transactions in a timely manner and reallocating the purchases to appropriate G/L accounts with assistance from either the Cardholder or the Card Approver.
2. Verifying that receipts and other appropriate supporting documentation are attached for all purchases.
3. Notifying the Approver and P-Card Coordinator of any suspected inappropriate or fraudulent card use.
4. I have been provided a copy of the P-Card Policy and have received appropriate training.
5. As an authorized Reconciler I agree to comply with the terms and conditions of this Agreement and with the P-Card Policy.

Reconciler Name		Reconciler Signature	
Date of P-Card Training Session			

**SCHEDULE "G" P-CARD APPENDICES**

**P-CARD MAINTENANCE FORM**

(Changes required in card status, employee information, etc.) P-Card Form-05

**TEMPORARY CHANGE**

<b>Effective Date</b>		<b>End Date</b>	
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**PERMANENT CHANGE**

**NAME CHANGE IN CARD INFORMATION**

CURRENT NAME INFORMATION		
First Name	Initial	Last Name

REQUESTED NAME CHANGE INFORMATION		
First Name	Initial	Last Name

**CHANGES TO EMPLOYEE WORK AREA AND /OR REPORTING**

Previous Commission	Previous Department
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New Commission	New Department
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New Cardholder Approver (who will be responsible for approving the Cardholder's P-Card Statement)	Effective Date:
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**CHANGES IN TRANSACTION LIMIT AND/OR MONTHLY LIMIT**

Current Transaction Limit		Current Monthly Limit	
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Requested Transaction Limit		Requested Monthly Limit	
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**APPROVED BY**

<b>Cardholder Signature</b>		<b>Date</b>	
<b>Department Head or Commissioner Signature</b>		<b>Date</b>	
<b>Treasurer Signature (required for limit increases)</b>		<b>Date</b>	
<b>P-Card Coordinator Signature</b>		<b>Date</b>	
<b>Manager, Procurement Services Signature</b>		<b>Date</b>	

**SCHEDULE "G" P-CARD APPENDICES**

**SCHEDULE "G" P-CARD APPENDICES**

**P-CARD - NOTICE OF NON COMPLIANCE**

**NEWMARKET FORM-06**

**NOTICE OF NON-COMPLIANCE**

This Notice of Non-Compliance will be used by the Manager, Procurement Services to report non-compliance with P-Card policy.

P-Card activity and purchases will be monitored and each Cardholder will be audited at least once annually to ensure that the use of the P-Card and procedures are in compliance with P-Card Policy, as amended. Cardholders found to be non-compliant will be audited for an additional three month period to ensure compliance with P-Card Policy.

Detected non-compliance will be escalated and reported to higher senior management on each occurrence of non-compliance by P-Card User over a one (1) year period, or at the discretion of the Manager, Procurement Services, where it is in the best interest of the Town. Non-compliance may lead to:

- a. immediate and irrevocable forfeiture of the card and/or
- b. progressive discipline, up to and including termination of employment

**NON-COMPLIANCE ACTIVITY**

Transaction Date	State description of non-compliance

**NOTIFICATION**

1 <sup>st</sup> Offense	NOTIFICATION TO BE SENT TO:	DATE OF NOTIFICATION
	Cardholder	
	Cardholder Approver	
	Internal Auditor	

2nd Offense	NOTIFICATION TO BE SENT TO:	DATE OF NOTIFICATION
	Cardholder	
	Cardholder Approver	
	Department Head	
	Commissioner	
Internal Auditor		

## SCHEDULE "G" P-CARD APPENDICES

3rd Offense card is re-activated	NOTIFICATION TO BE SENT TO:	DATE OF NOTIFICATION
	Cardholder	
	Cardholder Approver	
	Department Head	
	Commissioner	
	C.A.O.	
	Director, Human Resources	
	Treasurer	
	Internal Auditor	

In addition to the 3<sup>rd</sup> notification or at any time, depending of the severity of the non-compliance, the Manager, Procurement Services may suspend the Cardholder's card for a period of at least thirty days and the Cardholder must attend a re-orientation session before the card is re-activated.

## SCHEDULE "G" P-CARD APPENDICES

<b>MCC CODE RESTRICTIONS – FORM 07</b>	
<b>MCC RESTRICTIONS – ALL CARDHOLDERS ARE RESTRICTED FROM PURCHASING</b>	
742	VETERINARY SERVICES
4119	AMBULANCE
4829	WIRE TRANSFER MONEY
5975	HEARING AIDS
5976	ORTHOPEDIC
6010	FINANCIAL - MANUAL CASH
6011	FINANCIAL - AUTO CASH
6012	FINANCIAL - INSTITUTIONS
6051	FINANCIAL - FOREIGN
6300	INSURANCE SALES
6381	INSURANCE PREMIUMS
6399	INSURANCE DEFAULT
7261	FUNERAL SERVICES
7273	DATING SERVICES
7276	TAX PREPARATION SERV
7277	COUNSELLING SERVICES
7297	MASSAGE PARLORS
7995	BETTING & CASINOS
8011	DOCTORS
8021	DENTISTS
8031	OSTEOATHS
8041	CHIROPRACTORS
8042	OPTOMETRISTS
8043	OPTICIANS
8044	OPTICAL GOODS
8049	CHIROPDISTS
8050	NURSING / PERSONAL CARD
8062	HOSPITALS
8071	MEDICAL / DENTAL LABS
8011	LEGAL SERVICES
8351	CHILD CARE SERVICES
9211	COURT COST/ALIMONY
9222	FINES
9223	BAIL & BOND PAYMENTS
9311	TAX PAYMENTS
<b>ADDITIONAL MCC RESTRICTIONS - OPTIONAL</b>	
ARIL	AIRLINES
7011	HOTELS/MOTELS/RESORTS
4011	RAILROADS
5681	FURRIERS
5698	WIGS
5921	BEER/WINE
7230	BARBER/BEAUTY
441	STEAMSHIPS
4457	BOAT RENTALS
4468	MARINAS
5271	MOBILE HOMES
5551	BOAT DEALERS
5561	TRAILER CAMPER DEALERS
5592	MOTOR HOME DEALERS
5598	SNOWMOBILE DEALERS