

**THE TOWN OF EAST GWILLIMBURY**

**PROCUREMENT BY-LAW**

**BY-LAW NUMBER 2019-146**

## TABLE OF CONTENTS

1. PRIMARY OBJECTIVES .....	1
2. DEFINITIONS .....	1
3. APPLICATION AND RESTRICTIONS .....	6
4. EXEMPTIONS .....	7
5. RESPONSIBILITIES AND AUTHORITIES.....	7
6. PRE-QUALIFICATION .....	8
7. AUTHORIZATION OF PURCHASES.....	9
8. PRICE AGREEMENTS .....	11
9. EMERGENCY PURCHASES.....	11
10. DIRECT PURCHASES (SOLE SOURCING) .....	12
11. CONTINGENCIES .....	13
12. SCOPE CHANGE/ADDITIONAL DELIVERABLES .....	13
13. RENEWAL OF CONTRACTS .....	14
14. CO-OPERATIVE PURCHASING .....	14
15. UNSOLICITED BIDS/PROPOSALS.....	14
16. CONTRACTOR PERFORMANCE AND LITIGATION.....	15
17. BID REVIEW COMMITTEE .....	17
18. VENDOR PERFORMANCE REVIEW COMMITTEE .....	17
19. REQUIREMENT FOR COUNCIL APPROVAL.....	18
20. CONTRACT DOCUMENTS .....	18
21. BY-LAW REVIEW .....	18
22. REPEAL.....	19



Town of  
**East Gwillimbury**

## **THE CORPORATION OF THE TOWN OF EAST GWILLIMBURY BY-LAW NUMBER 2019-146**

### **Being a By-law to Adopt Policies with Respect to its Procurement of Goods and Services**

WHEREAS section 270 (1) of the *Municipal Act, 2001* provides that a municipality shall adopt policies with respect to its Procurement of Goods and Services;

NOW THEREFORE, the Council of The Town of East Gwillimbury hereby enacts as follows:

#### **1. PRIMARY OBJECTIVES**

1.1 The primary objectives of this By-law are:

- a) To encourage competition among Contractors;
- b) To obtain Best Value in the Procurement of Deliverables;
- c) To ensure fairness, objectivity, accountability and transparency in the Procurement process;
- d) To promote and implement Procurement practices that support the principles of the *Ontarians with Disabilities Act, 2001* and the *Accessibility for Ontarians with Disabilities Act, 2005*; and
- e) To comply with all applicable laws.

#### **2. DEFINITIONS**

2.1 In this By-law:

**“Award”** means the authorization to proceed with the Purchase of Deliverables;

**“Best Value”** means, in relation to a Purchase, that the Purchase provides the greatest overall benefit through the optimal balance of quality and financial terms;

“**Bid**” means a submission received in response to a Call for Bids, and includes a Quotation, a Tender and a Proposal;

“**Bid Review Committee**” means the committee established under Section 17.1 of this By-law;

“**Bidder**” means any legal entity that makes a submission in response to a Call for Bids;

“**Call for Bids**” means a formal request for Bids and includes a Request for Quotations, a Request for Tenders and a Request for Proposals;

“**Chief Administrative Officer**” means the Chief Administrative Officer (CAO) of the Town;

“**Compliant**” means that a Bid complies in all material respects with the requirements set out in the Call for Bids;

“**Construction**” means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, soil investigation, the supply of labour, products, materials and the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering design or architectural work;

“**Consulting and Professional Services**” means those services requiring the skills of a professional for a specialized service and includes, but is not limited to, the services of architects, engineers, designers, surveyors, planners, accountants, auditors, management professionals, marketing professionals, software and information technology experts, financial consultants, lawyers, law firms, real estate agents and brokers, environmental planners, hydro geologists, transportation planners and engineers, communications consultants and any other consulting services which may be required by the Town;

“**Contingency**” means an event or circumstance that gives rise to an increase in a Contract price and which could not have been reasonably anticipated at the time of Contract Award;

“**Contract**” means any form of binding agreement between the Town and a Contractor for the Purchase of Deliverables and may include a Purchase Order;

**“Contractor”** means any legal entity to whom a Contract is awarded and includes a vendor, supplier, service provider and consultant;

**“Council”** means the Council of the Town.;

**“Deliverables”** means Goods, Services and Construction;

**“Department Head”** means the most senior person, who reports to the CAO, holding a management position who is designated as the head of a Town department.

**“Direct Purchase”** means a Purchase with a total cost exceeding ten thousand dollars (\$10,000.00) excluding HST that is procured without a Call for Bids.

**“Disposal of Surplus Assets”** means Goods that are surplus to the Town’s requirements that have residual value;

**“Emergency”** means an event or circumstance where the immediate Purchase of Deliverables is necessary to prevent or alleviate: (a) a serious delay in service delivery; (b) a threat to the health, safety or welfare of any person; (c) the disruption of essential services; or (d) damage to public property. It includes, but is not limited to, an Emergency declared under the *Emergency Management and Civil Protection Act*;

**“Goods”** means property, including raw materials, products, supplies, and other physical objects of every kind and description but excludes Real Property;

**“Litigation”** means any unresolved dispute between the Town and any other party or related party adverse in interest, including third party and cross-claims, where a legal proceeding has been commenced for an injunction, a mandatory order, a declaration or for the recovery of money, or a demand for disputed compensation;

**“Lowest Cost Compliant Bid”** means the lowest Bid that meets all of the requirements of the Request for Tender;

**“Low Value Purchase” (LVP)** means a Purchase of Deliverables which does not exceed a value of ten thousand (\$10,000.00) that is procured without a Call for Bids.

**“Municipal Clerk”** means the Municipal Clerk of the Town;

**“Price Agreement”** means a Contract between the Town and a Contractor resulting from a Call for Bids, under which the Contractor agrees to provide Deliverables as and when needed by the Town, at a pre-determined price, for a pre-determined period of time, upon pre-determined terms and conditions;

**“Procurement”** means the activities and processes to acquire Deliverables and includes the activities involved in establishing fundamental requirements, sourcing activities such as market research and vendor evaluation and negotiation of Contracts;

**“Proposal”** means a submission received by the Town in response to a Request for Proposals;

**“Purchase”** means the process involved in the ordering of Deliverables such as the request for, creation or approval of a Purchase Order (P.O.) and the receipting of Deliverables, and is a subset of the wider Procurement process;

**“Purchase Order”** means a written order to a Contractor setting out the terms and conditions for the Purchase of Deliverables;

**“Quotation”** means a offer received in response to a Request for Quotations.

**“Real Property”** means land, or land and buildings, and includes fixtures attached to such land or buildings;

**“Request for Expressions of Interest”** means a request made by the Town for the purpose of compiling a list of potential Bidders who may be interested in providing Deliverables to the Town;

**“Request for Information”** means the process of collecting written information about the capabilities of various suppliers;

**“Request for Pre-qualification”** means a request made by the Town for the submission of information from potential Bidders, including qualifications, experience, financial capability, background and staffing of any entity who may qualify to supply Deliverables to the Town, but which does not create any contractual obligation between the Town and the respondent submitting the pre-qualification submission to the Town;

**“Request for Proposals”** means a request made by the Town that will be publicly and widely advertised for a proposed approach or solution to a requirement where the Deliverables are not clearly specified and it is anticipated that Bidders may propose a variety of alternatives to fulfill the Town’s requirements;

**“Request for Quotations”** means a written request for quotations where two or more entities are available to supply the Deliverables;

**“Request for Tenders”** means a request for tenders where a request made by the Town where two or more entities are available to supply the Deliverables, the Deliverables can be clearly specified, the market conditions are such that the Bids can be submitted on a competitive price basis, publicly and widely advertised and it is intended that the Lowest Cost Compliant Bid shall be accepted without negotiation;

**“Responsive”** means that a Bid has complied in all material respects with the requirements set out in the Call for Bids;

**“Scope”** means the full extent of the Deliverables to be provided by a Contractor, as set out in the Contract, including the term of the Contract;

**“Scope Change”** means any change to a Contract to accommodate a need identified by the Town which was not originally provided for in the Contract and which may include the Purchase of additional Deliverables or the extension of the term of the Contract and which may require an adjustment to the Total Cost of the Contract;

**“Services”** means the services to be provided to the Town under a Contract and includes Consulting and Professional Services;

**“Tender”** means a Bidder’s submission received in response to a Request for Tenders;

**“Total Cost”** means the Contract cost for the full term of a Contract, and, in the case of a Contract containing renewal provisions, the total Contract cost to the Town for the initial term and all potential renewal terms, not including the Harmonized Sales Tax, but including all other applicable fees, charges and disbursements;

**“Total Revenue”** means, where revenue is payable to the Town under a Contract, the total revenue payable during the full term of the Contract and, in the

case of a Contract containing renewal provisions, the total revenue payable during the initial term and all potential renewal terms; and

**“Town”** means the Town of East Gwillimbury;

**“Town Solicitor”** means the Town’s Solicitor;

**“Treasurer”** means the Treasurer of the Town;

**“User Department”** means a department within the Town requiring the purchase of Deliverables;

**“Vendor Performance Review Committee”** means the committee established under Section 18.1 of this By-law;

### **3. APPLICATION AND RESTRICTIONS**

3.1 The purchasing procedures set out in this By-law shall apply to the Procurement of all Deliverables made by or on behalf of the Town except as may be expressly exempted or restricted under this By-law or otherwise by Council.

3.2 No Procurement shall be made under this By-law unless Council has provided funds for such Procurement in the budget or otherwise agreed to the provision of such funds and no expenditure shall be authorized or incurred in excess of such funds.

3.3 Despite any other provision of this By-law, Council may authorize any Purchase or method of Procurement where to do so would be in the best interests of the Town.

3.4 No Procurement or Purchase shall be arranged or made to avoid the application of this By-law. Without limiting the generality of the foregoing, no Procurement of Deliverables shall be divided into two or more parts for the purpose or intent of, or with the effect of, avoiding or frustrating the application of this By-law.

3.5 No Purchases shall be made by the Town directly or indirectly for the personal use of any member of Council or any member of a local board or for any officer or employee of the Town.

3.6 All Procurement undertaken by the Town shall comply with the Town’s Code of Conduct and the *Municipal Conflict of Interest Act*.



3.7 Where a proposed Contract provides for the Town to receive revenue from a Contractor, the procedures and authority limits set out in this By-law which are applicable to the Total Cost of a Contract shall be construed as applicable, with necessary changes, to the Total Revenue payable under the Contract.

3.8 The provisions of any domestic or international treaty governing procurement shall prevail to the extent of any conflict with this By-law.

3.9 All dollar amounts stated in this By-law are exclusive of Harmonized Sales Tax (HST).

#### **4. EXEMPTIONS**

4.1 This By-law shall not apply to the acquisition of any Real Property or to any lease, right or permission relating to the use or occupation of Real Property.

4.2 Where the Procurement of Deliverables is required under any lease of Real Property and is provided for under the terms of such lease, including tenant improvements, equipment and fixtures, the terms of the lease shall govern to the extent of any conflict with this By-law.

4.3 This By-law shall not apply where the Procurement relates to:

- a) the relocation of non-Town utilities associated with a Town contract, including but not limited to: hydro-electrical, gas, cable, or telecommunications works, telecommunication service, utility, water & sewer, natural gas, utility relocations;
- b) training & education, conferences, conventions courses and seminars;
- c) magazines, books and periodicals;
- d) memberships;
- e) facilitators and program hosts;
- f) staff training, development and workshops;
- g) the purchase of services for educational or training purposes where the service provider is prescribed by an external agency;
- h) advertising for Town services or programs;
- i) catering for short term rental of venues for Town events and activities.

#### **5. RESPONSIBILITIES AND AUTHORITIES**

5.1 Each Department Head shall have responsibility for the Procurement of Deliverables for their department in accordance with the terms of this By-law.

5.2 The Treasurer or designate shall be responsible for:

- a) providing Procurement oversight and advice, in consultation with the Town Solicitor if required;
- b) administering Calls for Bids and ensuring compliance with the related terms and conditions;
- c) reviewing statements of work and specifications to ensure compliance with the terms of this By-law;
- d) the development of co-operative purchasing arrangements with other levels of government, municipalities, agencies, or public authorities, where feasible, and where such arrangements are determined to be in the best interests of the Town;
- e) the Standardization of all Procurement procedures; and
- f) the preparation of reports to Council where required under this By-law.

5.3 Where any authority has been granted to any person under this By-law, such authority may be exercised by that person's authorized designate. The appointment of a designate shall be subject to the approval of the Chief Administrative Officer.

5.4 Where any authority has been granted to any officer or employee of the Town under this By-law, such authority may be exercised by the Chief Administrative Officer.

## **6. PRE-QUALIFICATION**

### ***Request for Expressions of Interest/Request for Information***

6.1 The Town may issue a Request for Expressions of Interest or a Request for Information for the purpose of determining the availability of any Deliverable.

6.2 A Request for Expressions of Interest or a Request for Information may be conducted as a pre-condition to any Procurement procedure set out in this By-law.

6.3 The receipt of a submission in response to a Request for Expressions of Interest or a Request for Information shall not create any Contractual obligation on the part of the Town. The Town is not required to proceed with any further Procurement process following a Request for Expressions of Interest or a Request for Information.

***Request for Pre-qualification***

6.4 The Town may issue a Request for Pre-qualification for the purpose of selecting qualified Bidders to respond to a Call for Bids.

6.5 Where a Request for Pre-qualification is issued, a pre-qualification document shall be provided to potential Bidders setting out the criteria for pre-qualification, which may include:

- a) experience of similar work;
- b) references provided from other customers for similar work;
- c) verification of qualifications, licenses and permits, if applicable; and
- d) financial capability.

6.6 The selection of Bidders following a Request for Pre-qualification shall not create any Contractual obligation between the Town and a pre-qualified Bidder. The Town is not required to proceed with any further Procurement process following a Request for Pre-qualification.

**7. AUTHORIZATION OF PURCHASES**

***Purchases not exceeding \$10,000.00 - Low Value Purchase (LVP)***

7.1 The Department Head ,Treasurer or designate may authorize the Low Value Purchase without issuing a Call for Bids or a Request for Quotations, provided that,

- a) the Department Head, Treasurer or designate is satisfied that the Purchase of the Deliverable represents Best Value;
- b) the Procurement is not being split from a larger Procurement to avoid going out for a competitive Quotation or Bid.

***Purchases exceeding \$10,000.00 but not exceeding \$ 100,000.00***

7.2 A Request for Quotation shall, at a minimum, be issued

7.3 A minimum of three (3) written Quotations shall be solicited, if available.

7.4 The Department Head, Treasurer or designate may authorize the Procurement provided that the Award is made to the Bidder submitting a Compliant

Bid with the lowest Total Cost. The Award may be made notwithstanding that fewer than three (3) Quotations are received.

***Purchases exceeding \$100,000.00 (Formal Process)***

7.5 Either a Request for Tenders or a Request for Proposals shall be issued. The estimated value of the purchase shall include the cost associated with all option years to renew the contract.

***Request for Tenders***

7.6 A Request for Tenders shall be issued where the following criteria apply:

- a) two or more sources are available to supply the Deliverables;
- b) the Deliverables can be clearly specified;
- c) the market conditions are such that Bids can be submitted on a competitive pricing basis; and
- d) it is intended that the Lowest Cost Compliant Bid shall be accepted without negotiation.

7.7 The Department Head, Treasurer, or designate may Award the Contract, provided that the Award is made to the Bidder submitting the Lowest Cost Compliant Bid not exceeding one million dollars (\$1,000,000.00).

7.8 If the Department Head, Treasurer, or designate awards a bid exceeding one hundred thousand dollars (\$100,000.00), there will be a quarterly report to council for these awards.

7.9 If the Total Cost of the Contract exceeds one million dollars (\$1,000,000.00), the Award of the Contract shall be subject to Council approval.

***Request for Proposals***

7.10 A Request for Proposals shall be issued where the Deliverables are *not clearly specified* and it is anticipated that Bidders may propose a variety of alternatives to fulfill the Town's requirements.

7.11 The Request for Proposals shall be conducted using a two (2) file system: one (1) pdf file for the technical Proposal and one (1) Schedule of Prices file for the financial Proposal.

7.12 The Department Head, Treasurer, or designate may Award the Contract provided that: (i) the Total Cost of the Contract does not exceed one hundred thousand dollars (\$100,000.00); and (ii) the Award is made to the Bidder submitting the highest scoring Bid.

7.13 If the Total Cost of the Contract exceeds one hundred thousand dollars (\$100,000.00), the Award of the Contract shall be subject to Council approval.

7.14 The Award of the Contract shall be subject to Council approval if it is recommended by the Department Head that the Contract be Awarded to a party other than the Bidder submitting the highest scoring Bid.

7.15 Despite any other provision of this By-law, during any period that regular Council meetings are suspended, either during a summer recess or for any other reason, or during the period that the acts of Council are restricted by Section 275 of the *Municipal Act, 2001* the Chief Administrative Officer is authorized to Award any Contract.

7.16 A report shall be submitted to Council as soon as reasonably possible setting out the details of any Contract Awarded under section 7.14 of this By-law.

## **8. PRICE AGREEMENTS**

8.1 A Call for Bids may be issued in accordance with this By-law in order to establish Price Agreements for the Purchase of Deliverables.

8.2 The Town shall have no obligation to any Contractor to Purchase any Deliverable under a Price Agreement, unless otherwise agreed upon, in writing, pursuant to a Contract.

## **9. EMERGENCY PURCHASES**

9.1 In the case of an Emergency, the Purchase of Deliverables may be authorized without issuing a Call for Bids.

9.2 The Department Head, Treasurer or designate shall endeavor to obtain the Best Value for any Deliverables Purchased during an Emergency, using as fair and transparent a process as is possible having regard to the particular Emergency. The Department Head, Treasurer or designate may authorize the Purchase provided the Total Cost of the Deliverables does not exceed one hundred thousand dollars (\$100,000.00).

9.3 The Chief Administrative Officer and Treasurer or their designates may authorize the Purchase where the Total Cost of the Deliverables exceeds one hundred thousand dollars (\$100,000.00).

9.4 As soon as practicable upon the conclusion of the Emergency, the Department Head shall submit a report to Council describing any Purchases made under Section 9.2 or 9.3 of this By-law.

## **10. DIRECT PURCHASES (SOLE SOURCING)**

10.1 Despite Sections 7.2 ,7.3 and 7.4 of this By-law, where the Total Cost of any Deliverable exceeds ten thousand dollars (\$10,000.00), but does not exceed one hundred thousand dollars (\$100,000.00) the Deliverable may be procured without issuing a Call for Bids provided that, in the opinion of the Department Head, Treasurer or designate:

- a) The compatibility of a Deliverable with existing equipment, facilities or service is the paramount consideration; or
- b) There is only one entity reasonably capable of providing the Deliverable.

10.2 The Department Head, Treasurer or Designate may Award any Contract under Section 10.1 of this By-law.

10.3 Despite Section 7.5 of this By-law, where the Total Cost of any Deliverable exceeds one hundred thousand dollars (\$100,000.00), the Deliverable may be procured without issuing a Call for Bids provided that, in the opinion of the Department Head, Treasurer or designate:

- a) The compatibility of a Deliverable with existing equipment, facilities or service is the paramount consideration; or
- b) There is only one entity reasonably capable of providing the Deliverable.

10.4 The award of any Contract under Section 10.3 of this By-law is subject to Council approval.

10.5 A report shall be submitted by the Department Head to Council to advise of the award of any contract under Section 10 of this By-law.

## **11. CONTINGENCIES**

11.1 Where any Purchase of Deliverables has been authorized under this By-law, the Department Head, Treasurer or designate may, upon being satisfied that a Contingency has arisen, authorize expenditures that exceed the original approved Contract amount, provided that all additional expenditures shall not exceed fifteen percent (15%) of the Total Cost of the Contract at the time of Award and further provided that the additional expenditures are required to obtain the Deliverables specified in the original Contract.

11.2 The Department Head, Treasurer or designate may authorize any expenditure under Section 11 of this By-law, provided that the Total Cost of the Contract remains within the approved budget, irrespective of the amount of the expenditure. Otherwise, the Purchase of the additional expenditures shall be subject to Council approval.

## **12. SCOPE CHANGE/ADDITIONAL DELIVERABLES**

12.1 Where Deliverables have been procured, no similar or additional Deliverables shall be procured from the same Contractor, whether by way of Contract extension, renewal, or separate Purchase, unless specifically permitted under this By-law.

12.2 The Department Head, Treasurer or designate may authorize the Purchase of additional Deliverables under a Contract, provided that the Department Head, Treasurer or designate is satisfied that a Scope Change necessitates the purchase of additional Deliverables and:

- a) the Total Cost of the additional Deliverables does not exceed 15 percent (15%) of the Total Cost of the Contract and the Total Cost of the Contract as amended, remains within the approved budget; or
- b) the Total Cost of the additional Deliverables is required to be paid in full by a third party and payment has been received or security to ensure payment has been provided to the Town, to the satisfaction of the Treasurer.

Otherwise, the Purchase of the additional Deliverables shall be subject to Council approval.

12.3 If a Scope Change requires the extension or renewal of a Contract, any extension or renewal of a Contract that would result in a total Contract term in excess of five (5) years shall be subject to Council approval.

### **13. RENEWAL OF CONTRACTS**

13.1 Where a Contract provides for a renewal term, the Department Head, Treasurer or Designate may exercise the option to renew, provided that:

- a) the Contract is being renewed in accordance with the approved terms and related options contained within the Contract; and
- b) the Contractor has performed the Contract to the satisfaction of the Department Head, Treasurer or designate.

### **14. CO-OPERATIVE PURCHASING**

14.1 The Town may participate with other levels of government, municipalities, agencies or public authorities in co-operative purchasing where the Department Head, Treasurer, or designate determines it is in the best interests of the Town to do so, either by including other entities in a Call for Bids issued by the Town or by requesting that the Town be included in a Call for Bids issued by another entity.

14.2 Where another level of government, municipality, agency or public authority has completed a competitive Procurement and offers to extend to the Town the same terms and pricing offered by the successful bidder, the Town may enter a Contract with the successful bidder as a co-operative Purchase without issuing a further Call for Bids, whether or not the Town was named in the Call for Bids, if the original contract states this option, and it does not violate any applicable law. The Town may be required to negotiate some terms or pricing, if required.

14.3 Where any Contract proposed to be entered into by the Town where the Call for Bids was issued by another entity, the Procurement shall be authorized in accordance with the authority limits set out in Section 7 of this By-law.

### **15. UNSOLICITED BIDS/PROPOSALS**

15.1 Where an unsolicited bid/proposal is received by the Town, and is under consideration, the evaluation and award shall be in accordance with this By-law.



## **16. CONTRACTOR PERFORMANCE AND LITIGATION**

16.1 No Bid shall be accepted from, nor shall any Contract be Awarded to or an extension or renewal of a Contract be granted to any Bidder or Contractor or related party, as determined in the discretion of the Town Solicitor, with whom the Town is engaged in litigation, except under the following circumstances:

- a) where there is only one qualified Contractor and the Chief Administrative Officer has approved the Award;
- b) in the case of an Emergency;
- c) where there is a legal obligation on the part of the Town to enter into the Contract;
- d) where the proposed Contract is pursuant to the co-operative purchasing provisions of this By-law or where another public agency will be party to the Contract and has approved the Award;
- e) where the Town has been named as plaintiff or as a defendant in any claim pursuant to the exercise of third party subrogated rights and where an agreement or arrangement has been entered into which indemnifies or otherwise adequately protects the Town's interests, to the satisfaction of the Town Solicitor, pending resolution of the litigation;
- f) where the Town and any party adverse in interest have agreed to refer the litigation to alternative dispute resolution in a form or format approved by the Town Solicitor or where an agreement or arrangement has been entered into which indemnifies or otherwise adequately protects the Town's interests while resolution is pursued, as may be determined in the sole discretion of the Town Solicitor;
- g) where the Town has been named in an action by a sub-contractor pursuant to the Construction Act, or any successor legislation, and the Town's Contractor has been bonded off or otherwise disposed of the construction lien or protected the Town's interests in accordance with the Contractor's Contract with the Town; or
- h) where the Contractor or related party is exercising rights pursuant to the Expropriations Act.

16.2. In any such instance referred to in Section 16.2 (g), where a Contractor fails to dispose of the construction lien pursuant to its contractual obligations, the Contractor shall be prohibited from bidding in accordance with Section 16.1 until such time as the contractor has complied with its contractual obligations;

16.3 Despite section 16.2, where the amount in dispute in any litigation does not exceed one hundred thousand dollars (\$100,000.00), the Department Head, Treasurer or Designate in consultation with the Town Solicitor may accept the Bid or Award the Contract, or approve the extension of the Contract, provided that he or she is satisfied that it would be in the best interest of the Town to do so, based on the consideration of factors including but not limited to the following:

- a) the Bidder's or Contractor's performance under previous contracts with the Town;
- b) the Town's claims history with the Bidder or Contractor; or existing Contract with the Contractor, and;
- c) an assessment of the overall risk and Total Cost to the Town in entering into a Contract with the Bidder or Contractor.

16.4 The Department Head shall be responsible for monitoring the performance of Contractors and documenting evidence of such performance and shall advise the Treasurer or Designate and Town Solicitor in writing where the performance of a Contractor has failed to comply with the terms of the Contract or other Town requirements.

16.5 Further to section 16.4, the Treasurer, Town Solicitor or designate may refer Contractor performance issues to the Vendor Performance Review Committee per section 18. The Committee may prohibit a Contractor from submitting a Bid in response to a call for Bids where the Committee is satisfied that the Contractor has demonstrated unsatisfactory performance under a Contract with the Town.

16.6 For the purpose of this Section 16, unsatisfactory performance means past performance by a Contractor under a Contract with the Town that is inconsistent with the expected standard of service delivery applicable in a commercial context, including, but not limited to any of the following:

- a) consistent or significant failure to adhere to specified schedules or delivery requirements;
- b) consistent or significant failure to follow specified Contract requirements or authorized directions;

- c) consistent or significant failure to perform the Contract in accordance with generally accepted standards of good workmanship;
- d) consistent or significant failure to adhere to legislative requirements, including but not limited to applicable statutes, regulations and By-laws; or
- e) dishonesty or criminal actions on the part of the Contractor.

16.7 A report shall be submitted to Council by the Department Head or Solicitor to advise of the disposition of any matter under this Section 16.

## **17. BID REVIEW COMMITTEE**

17.1 The Treasurer or designate shall establish a Bid Review Committee composed of, at a minimum, the following members of Town staff:

- a) the Treasurer or designate;
- b) a management representative of the Town department requesting the Procurement of the Deliverables; and
- c) the Town Solicitor or designate.

17.2 If a Bid contains an irregularity, or if there is a challenge to the Call for Bids process, the issue shall be referred to the Bid Review Committee to determine whether the Bid complies with the submission requirements set out in the Call for Bids or to determine the validity of the challenge.

## **18. VENDOR PERFORMANCE REVIEW COMMITTEE**

18.1 The Treasurer or designate shall establish a Vendor Performance Review Committee composed of, at a minimum, the following members of Town staff:

- a) the Treasurer or designate
- b) a management representative of the Town department requesting Procurement of the Deliverables: and
- c) the Town Solicitor or designate.

18.2 If a Contractor performance issue has been referred to the Vendor Performance Review Committee under section 16.5, a decision on action to be taken by the Town will be made by the Vendor Performance Review Committee on a case by case basis.:

## **19. REQUIREMENT FOR COUNCIL APPROVAL**

19.1 A report shall be submitted to Council prior to authorizing an Award in each of the following circumstances:

- a) where the term of a proposed Contract is for a period greater than five (5) years, or where the extension or renewal of a Contract or a direct purchase would result in an aggregate term of greater than five (5) years;
- b) where a Request for Tenders has been issued under this By-law and the Award is not proposed to be made to the Bidder submitting the Lowest Cost Compliant Bid or where there is an informality, irregularity or challenge that cannot be resolved by the Bid Review Committee;
- c) where a Request for Proposals has been issued under this By-law and the Total Cost of the Contract exceeds One Hundred thousand dollars (\$100,000.00);
- d) where a Request for Proposal has been issued under this By-law and it is not recommended that the Award be made to the Bidder who submitted the highest overall scoring Bid;
- e) where a statute requires that the Purchase be authorized by Council;
- f) where the Purchase of any Deliverables is not authorized by this By-law; and
- g) where otherwise specifically required by this By-law.

## **20. CONTRACT DOCUMENTS**

20.1 Where the Purchase of Deliverables has been authorized under this By-law, the Contract may be executed by the person who authorized the Award, and shall be in a form approved by the Town Solicitor.

## **21. BY-LAW REVIEW**

21.1 This By-law shall be reviewed and evaluated for effectiveness every five years or when required.

**22. REPEAL**

22.1 By-law No. 2004-121 is hereby repealed.

ENACTED AND PASSED this 3<sup>rd</sup> day of December, 2019.

---

Virginia Hackson, Mayor

---

Fernando Lamanna, Municipal Clerk