

By-law 80-2020 of the Corporation of the City of Oshawa

Being a by-law to establish purchasing regulations and policies for the operations of the City, and to repeal By-law Number 45-2016.

Whereas the purpose of this by-law is to provide authority and guidelines to conduct purchasing transactions to satisfy the needs of the City;

And Whereas fair and open completion is a basic tenet of public acquisition using a variety of source selection methods under varying market conditions;

And Whereas the complexity and volume of the activities of the City require professional skills to ensure that Goods and/or Services are acquired using the most cost-effective methods;

And Whereas the City has a centralized purchasing function in the Corporate and Finance Services Department, responsible for acquisition of Good and/or Services and disposal of surplus City assets;

Therefore It Is Hereby Enacted as a by-law of The Corporation of the City of Oshawa by the Council thereof as follows:

Article 1.00: Definitions and Interpretation

1.01 The definitions outlined in this article apply throughout this By-law whenever the term is used with its initial letters capitalized. Where the term appears in lower case letters, its ordinary meaning shall apply.

- a) “**Acquisition**” is the process of obtaining Goods and/or Services for use, whether on a permanent or a temporary basis.
- b) “**Approval**” is the specific authorization to proceed with the purchase or lease of a specific Goods and/or Services.
- c) “**Bid**” includes a Proposal, a Quotation or a Tender.
- d) “**Bidder**” is the person who responds to the Bid Solicitation and includes its heirs, successors and permitted assignees.
- e) “**Bidders’ List**” is a list maintained by the City containing the names of persons who have expressed an interest in receiving Bid Solicitations to supply Goods and/or Services to the City.
- f) “**Bid Solicitation**” includes Requests for Proposal, Quotations and Tenders.
- g) “**Board**” is recognized by City Council as an entity that may take advantage of the City’s purchasing power in accordance with the terms and conditions of this By-law. Without limiting the generality of the foregoing, the following entities are considered to be Boards for the purpose of this By-law: the Oshawa Public Library and the Oshawa Senior Citizens’ Centre.
- h) “**Buying Group**” means a group of two or more members that combines the purchasing requirements and activities of the members of the group into one joint procurement process. Buying groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the buying group administers procurement for group members. Buying groups may consist of a variety of entities, including any combination of procuring entities, private sector entities, or not-for-profit organizations;

- i) **“Centralized Purchasing”** refers to the activities in this regard conducted by the Finance Services Branch of the Corporate and Finance Services Department, which is responsible for the Purchase of all Goods and/or Services as provided in this By-law.
- j) **“City”** means The Corporation of the City of Oshawa.
- k) **“City Council”** means the Council of The Corporation of the City of Oshawa.
- l) **“Chief Administrative Officer”** means the Chief Administrative Officer (C.A.O.) appointed by Council pursuant to By-law 33-98 as amended from time to time or his or her delegate.
- m) **“Contract”** means a binding agreement between two or more parties.
- n) **“Department Head”** means the Commissioner of Economic and Development Services Department, the Commissioner of Community and Operations Services Department, the Commissioner of Safety and Facilities Services Department, Commissioner of Corporate and Finance Services or the Chief Administrative Officer.
- o) **“Designated Official,”** means either of the Manager, Procurement & Accounts Payable or the Commissioner, Corporate and Finance Services who under the direction of the C.A.O., is assigned the duties, powers and responsibilities relating to the City’s Centralized Purchasing program.
- p) **“Disposal”** is an act through which the City gives up title to Real or Personal Property, and includes a sale, a gift, or the discarding of an item.
- q) **“Donation”** is the transfer of ownership of an item from the City to a Person on a “no charge” basis. The item is transferred without any liability to the City and with no warranty provided on the item by the City.
- r) **“Emergency”** is a situation or threat of an impending situation where the immediate lease or purchase of Goods and/or Services is essential to prevent serious delays of damage or to restore basic service.
- s) **“Good and/or Services”** means any of the following, but is not limited to: supplies, Personal Property, construction materials, construction services, insurance, employee benefits, construction, maintenance and service contracts, but does not include Professional and Consulting Services.
- t) **“Instruction to Bidders”** means the instructions given to prospective bidders in a Bid Solicitation.
- u) **“In House Bidding”** is a process whereby an internal City work group competes with external entities for procurement opportunities.
- v) **“Open Market Procedure”** is a procedure whereby price quotations are obtained from more than one supplier, either verbally or in writing, through a Bid Solicitation.
- w) **“Person”** includes an individual, association, firm, partnership, corporation, trust, organization, trustee, or agent and their heirs, executors, or legal representative.
- x) **“Personal Property”** means tangible items which are readily movable. Without limiting the foregoing, such items include: equipment, vehicles, furnishings, and supplies.
- y) **“Personal Purchase”** means a purchase of Goods and/or Services, the requirement for which is not for the City of any of its purposes but is personal to the Person requesting the purchase.

- z) **"Piggy Backing"** means a form of purchasing wherein a public body will competitively award a contract that permits other public bodies to make purchases under the contract.
- aa) **"Professional and Consulting Services"** includes the services provided by: architects, engineers, designers, real estate appraisers, management or financial consultants, brokers, and/or lawyers, and any other consulting and professional services rendered on behalf of the City.
- bb) **"Proposal"** means an offer from a supplier to provide Goods and/or Services, acceptance of which may be subject to further negotiation. It is the response submitted to a Request for Proposal.
- cc) **"Purchase Order"** means a written contract to purchase Goods and/or Services, or a written acceptance of a Proposal, completed on forms prescribed by the Designated Official.
- dd) **"Purchase"** includes Acquisitions, leases (whether the City is the Lessee or the Lessor) and/or Disposals.
- ee) **"Quotation"** means an offer from a supplier to sell Goods and/or Services to or buy them from the City at a specified rate or price. It is the response submitted to a Request for Quotation.
- ff) **"Real Property"** refers to either:
 - (a) Land, whether or not building, tenements or improvements are situated on it, or any interest, estates, rights or easements affecting same; or
 - (b) Buildings, tenements or improvements to same, which are situated on land.
- gg) **"Request for Proposal"** is a form of Bid Solicitation whereby the City invites certain individual and identifiable sources to submit proposals with respect to a particular project , or the supply of Goods and/or Services, without supplying detailed specifications, terms and /or conditions of the contract which might ultimately be entered into.
- hh) **"Request for Quotation"** is a form of Bid Solicitation whereby the City informally requests, verbally or in writing, price quotations with respect to a particular project or the supply of particular Goods and/or Services, which may or may not be required to be submitted on prescribed forms.
- ii) **"Request for Tender"** is a form of Bid Solicitation whereby the City publishes the specifications, terms, conditions and any and all details concerning the proposed contract, and advertises for, or invites Bidders to submit sealed Bids in accordance with detailed published procedures.
- jj) **"Responsive and Responsible Bidder"** is a Person responding to a Bid Solicitation who complies with its provisions, including specifications, and contractual terms and conditions, and who can reasonably be expected to provide satisfactory performance on the proposed contract based on reputation, references, performance on previous contracts, and sufficiency of financial and other resources.
- kk) **"Single Sourcing"** means the procurement of Goods and/or Services from a particular supplier rather than through a Bid Solicitation from multiple suppliers who can provide the same/similar goods and/or Services.
- ll) **"Sole Sourcing"** means the procurement of Goods and/or Services that are unique to a particular supplier and cannot be obtained from another supplier.

- mm) “**Standing Committee**” means the four committees established by City Council; Corporate and Finance Services Committee, Economic and Development Services Committee, Community and Operations Services Committee and Safety and Facilities Services Committee.
- nn) “**Surety**” means a specified dollar amount in the form of cash, certified cheque, bid bond, performance bond, labour and materials payment bond, letter of credit or any other form as deemed necessary and stated in the Instruction to Bidders.
- oo) “**Tender**” means an offer received from a supplier of Goods and/or Services in response to a formal Request for Tenders, the acceptance of which will result in the formation of a binding contract between the City and the Person submitting the Tender.

1.02 Number:

Words imparting the singular number include more Persons, parties or things of the same kind than one, and the reverse. A word interpreted in the singular number has a corresponding meaning when used in the plural.

1.03 Gender:

Words imparting the male or female gender include other genders, including the neutral gender, where the context so implies.

1.04 Severability:

Should any provisions, clauses, sections, phrases or part of the By-law, or the application thereof under certain circumstances, be held by a court or tribunal of competent jurisdiction to be invalid, the remainder of the By-law, or the application of such provision, clause or part under other circumstances, shall not be affected.

1.05 Legislation:

Reference to statutes, policies, and/or by-laws within the text of this By-law, includes those items “as amended”, including successor legislation or policies.

1.06 Headings:

Article, section, clause and/or paragraph headings are for reference purposes only and shall not in any way modify or limit the statements contained in any article, clause or paragraph.

1.07 Cost:

Reference to cost within the text of this By-law, includes actual price of Acquisition, all applicable taxes, term discounts and freight charges.

Article 2.00: City Purchasing Principles

2.01 This Article set out the purchasing principles of the City.

2.02 Efficiency/Effective Purchasing:

All purchasing shall be completed so as to procure the required quality and quantity of Goods and/or Services in the most efficient and cost-effective manner possible, as responsible stewards of public funds.

2.03 Open Market Purchasing:

All purchasing shall be completed in a manner which utilizes an Open Market Procedure for all Purchases of Goods and/or Services to maximize competition to the greatest extent practicable.

2.04 All Costs Considered:

All purchasing shall be completed in a manner which considers all costs, including Acquisition, operating and Disposal costs, in evaluating Bid submissions from Responsive and Responsible Bidders, rather than a manner which bases a decision solely on the lowest Bid price.

2.05 Integrity of the Purchasing Process and Protecting the Interest of the City

To maintain the integrity of the Bid Solicitation process and to protect the interests of the City, the public and persons participating in a procurement process, the following shall be adhered to for any purchasing which is subject to the requirements of this By-law:

- a) **Open Process:** Departmental needs are clearly communicated to Bidders. The method of evaluating the Bid and the evaluation criteria are provided to Bidders at the outset of the Bid Solicitation process. The terminology used in the competitive bidding documents are defined and interpreted within the document when issued. The method and format of submitting Bids is addressed in the Bid Solicitation.
- b) **Fairness:** Utilize standard documents: Instruction to Bidders, Terms and Conditions and bidding forms to ensure consistency of content and format within documents issued by the City. Specify clearly all details regarding the closing date, time and location of all Bid Solicitation processes and apply the rules of bid acceptance consistently. Treat all Bidders and all submission equally, impartially and without bias or favouritism using sound professional judgement within established legal frameworks at all times.
- c) **Accessibility:** Develop specifications and terms of reference that whenever possible are not restrictive and allow for open competition from the marketplace. Advertise all formal public Tenders and Requests for Proposals on the internet so that the competitive bidding opportunity be advertised and accessible for all interested firms. Advertise the competitive bidding opportunity in a specific trade newspaper or local newspaper where practicable to further promote competition.
- d) **Accountability:** Ensure that all Bids are kept secure prior to the closing date, during the evaluation period and following contract award. Handle all proprietary information and Bids submitted in confidence in accordance with the Municipal Freedom of Information and Protection of Privacy Act. Ensure that Request for Proposals are evaluated by representatives from more than one Department to allow for various perspectives and opinions when reviewing, evaluating proposals prior to contract award. Ensure that all Bids, rating results and related supporting documentation are kept on file in accordance with the City's Retention By-law for future reference, audit or examination. Adopt a code of ethics that sets out expected behavior of public officials. Ensure that procurement procedures are reviewed on a regular basis to ensure the procedures are clear, logical, and current and in accordance with accepted industry standards. Include conflict of interest guidelines in all competitive bidding documents to minimize the risk of potential suppliers trying to influence City staff and elected officials during the bid evaluation process.

2.06 Centralized Purchasing:

All purchasing, except for the exceptions listed in this section, shall be completed in accordance with the By-law, and administered through the Finance Services Branch of the Corporate and Finance Services Department. The Acquisition of the excepted items need not follow the requirements of this By-law, but shall be the responsibility of the initiating Department Head. The Designated Official will be available to service as a resource if requested by the initiating Department Head. The excepted items are:

- a) Real Property as outlined in Article 7.00 of this By-law;

- b) Foods and pharmaceutical products as outlined in Article 8.00 of this By-law;
- c) Emergency Purchases as outlined in Article 9.00 of this By-law; and/or
- d) The items listed on Appendix "A" to this By-law.

2.07 Canadian Products:

Preference shall be given to the purchase of Canadian goods and/or Services wherever, all else being equal, it is reasonable in the circumstances to do so.

2.08 Designated Official's Role:

The Designated Official is authorized to act as an agent of the City in all matters pertaining to that function as set out in this by-law, and shall have the authority to approve administrative procedures, and standard practices and forms to implement this By-law. The Designated Official is authorized to issue Requests for Tenders, Proposals, and Quotation documents, Request for Pre-qualification of Bidders, Request for Information, Expression of Interest and sign purchase orders, contracts and agreements as necessary to acquire all Goods and/or Services in accordance with this By-law. The Designated Official, with the approval of the Department Head, may designate one or more persons within the Finance Services Branch to act as its designate(s) for the purpose of issuing Request for Tenders, Proposals, and Quotations, Requests for Pre-qualification, Requests for Information, Expressions of Interest documents and signing purchase orders, contracts and agreements.

2.09 Co-operative Purchasing:

Subject to the approval of the Designated Official or of City Council where the best interest of the City will be served, the City may participate with two or more entities in Co-operative Purchasing ventures or joint contracts.

2.10 External Approvals:

Where further approvals external to the City are required prior to contract signing, the report recommending award shall so indicate and such approvals shall be obtained prior to the Contract being executed and proceeding with the proposed works or Acquisition.

2.11 Purchase Orders:

The Designated Official shall prepare, sign and issue a Purchase Order for the Purchase of all Goods and/or Services except as outlined in Articles 4.02, 4.03 and Appendix "A". Where such Purchase Order does not form part of the Contract, it shall so state and may be used for internal control purposes only.

2.12 Document Retention:

Lists of all responses to Bid Solicitations received shall be retained for inspection by the City auditors and appropriate City officials in accordance with the City's Records Retention By-law, By-law 45-2002 as amended.

2.13 Confidentiality:

Where requested by Persons responding to Bid Solicitations, confidentiality concerning the Bid will be maintained. Once a contract award is made by the Designated Official, or by City Council, as applicable, the report recommending such award shall become a matter of public record unless otherwise determined by City Council.

2.14 Council Participation:

Members of Council and Boards shall not be involved in any way in the proposal of candidates or in the selection of stakeholders for working groups or direction for members of the City's evaluation team, including examining any documents submitted by persons as a result of any

Request for Tenders, Proposals, or Quotations unless otherwise indicated in the Bid Solicitation as provided to prospective Bidders.

In addition to the aforementioned, Elected Officials shall have no involvement in specific procurements, including reviewing non-public related documents from the time the contract has been advertised or solicited until the time of award, unless provided to Council in accordance with this by-law.

Article 3.00: Procurement Process Overview

3.01 Informal Low Value Procurement

Dollar Threshold: as detailed in article 4.04

Goal: To obtain competitive pricing for a one-time procurement in an expeditious and cost effective manner through phone, fax, e-mail, or other similar communication method, vendor advertisements or vendor catalogues.

Application: When a commodity is required on a one-time (non-repetitive basis). The end user of the commodity has identified a clear or single solution and precisely defines technical requirements for evaluating Bids or Proposals. Informal Bids are sought from known suppliers. When evaluating Bids from qualified bidders, price is the primary factor and is not negotiated.

Features:

- Informal pricing is acceptable (i.e. Fax, letter, e-mail, telephone)
- Known Bidders are contacted
- Form Contact is almost always a purchase order

3.02 Request for Proposal

Dollar Threshold: as detailed in article 4.04, 4.05 and 4.06

Goal: 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.

Generally, to select the proposal that earns the highest score and meets the requirements specified in the competition, based on qualitative, technical and pricing considerations.

Application: When a commodity is required where the end user of the commodity does not have a precisely defined technical requirement and where there is no clear or single solution. Proponents are invited to submit their unique solution to an often complex problem or need and all proposals are scored on the evaluation criteria included in the Request for Proposal where price is only one of the factors taken into consideration, and not the overriding consideration. The contract is awarded to the highest scoring proponent unless otherwise directed by City Council.

Features:

- Always a sealed bid process
- Bidder's names publically posted to advise names of firms submitting (Proposal details not released)
- May be preceded by a Request for Pre-qualification, Request for Information or Request for Expressions of Interest.
- Advertisement placed on City's internet website and relevant daily press as applicable

- Form of contract is a Purchase Order, Contract (standing agreement/offer) or legally executed contract.

3.03 Request for Tender

Dollar Threshold: as detailed in article 4.06

Goal: To implement an effective objective, fair, open, transparent, accountable and efficient process for obtaining competitive Bids based on precisely defined requirements for which a clear or single solution exists.

Application: When a high dollar value commodity is required and it is possible to obtain competitive Bids based on precisely defined requirements for which a clear or single solution exists. An advertisement for this opportunity is placed on the City's Internet Website and relevant daily press as applicable. Contract is awarded to the lowest priced Bidder satisfying all specifications/requirements included in the Tender document unless otherwise directed by City Council.

Features:

- Always a sealed bid process
- May be preceded by a Request for Pre-Qualification, Request for information or Request for Expressions of Interest
- Advertisement placed on City's Internet website and relevant daily press as applicable
- Bidder's names publically posted to advise the names of the Bidders and the total price offered
- Form of contract is a Purchase Order, Contract (standing agreement/offer) or legally executed agreement.

3.04 Request for Quotation:

Dollar Threshold: as detailed in article 4.05

Goal: Same as for Request for Tender, except that bid solicitation is done primarily on an invitation basis from a pre-determined Bidders list but may be supplemented with public advertising of the procurement opportunity.

Application: Same as Request for Tender with the major difference being that Requests for Quotations are generally for commodities that are not high dollar value.

Features:

- Always a sealed bid process
- Rarely preceded by a Request for Pre-Qualification, Request for Information or Request for Expression of Interest
- Suppliers normally drawn from a list of known suppliers
- Bidder's names publically provided to advise names of the Bidders and the total prices
- Form of contract is a Purchase Order Contract (standing agreement/offers) or rarely a legally executed agreement

3.05 Non Competitive Procurement

In certain situations Goods and/or Services are required to be purchased without a competitive bidding process. Non-competitive procurement is permitted under his By-law in the following circumstances:

- When an unforeseeable condition of urgency exists, for emergency, protection and security concerns and the Goods and/or Services cannot be obtained in time through a competitive process.
- When the required item is covered by an exclusive right such as a patent, copyright or exclusive license.
- When the purchase is already covered by a lease-purchase agreement where payments are partially or tally credited to the purchase.
- When it is necessary to ensure compatibility with existing products or to avoid violating warranty/guarantee requirements when service is required.
- When no Bids were received in a competitive process.
- When the required item is in short supply due to market conditions.
- When competitive sourcing for low value procurement would be uneconomical or would not attract Bids.
- When competitive procurement may be found to be impractical for such items as meal expenses, incidental travel expenses (e.g. taxi service, phone calls), and training and education expenses.
- When construction or renovation work on a leased building may be performed only by the lessor of the building.

3.06 In House Bids

The City does not currently allow staff to compete with external entities for procurement opportunities.

3.08 Review/Evaluate Effectiveness of the Procurement Process

Purchasing Policies, Procedures, Information to Bidders and Terms and Conditions should be reviewed by the Designated Official on an ongoing basis. Any revisions that are identified are to be made immediately and the standard documents amended accordingly.

The Designated Official in consultation with the appropriate City staff is to conduct a detailed review of the Purchasing By-law on an as required basis in accordance with Municipal Act.

The review conducted by the Designated Official is to take into consideration current and future professional practices, industry standards, market conditions, Federal/Provincial Government directions/policies, technological developments and advancements and the impact that any recommended changes may have on potential suppliers to the City.

Article 4.00: Acquisition Process for Goods and/or Services

4.01 Application of Article:

This Article applies to the Purchase of Goods and/or Services, not including Professional and Consulting Services, unless expressly excluded by the By-law.

4.02 Goods and/or Services \$5,000 or less:

Where it is estimated that Goods and/or Services (including construction) will cost \$5,000 or less inclusive of all charges, but exclusive of taxes, the Person(s) with designated signing authority from the initiating department, and duly authorized may purchase Goods and/or Services and shall accept the responsibility to demonstrate, if called upon to do so, the necessity of the Goods and/or Services. At the discretion of the Designated Official, a Purchase Order the value of which is \$5,000 or less may be issued if required to meet inventory control requirements, contractual agreements or tax requirements.

4.03 Cheque Requisition:

When it is estimated that the Goods and/or Services (including construction) will cost \$5,000 or less, excluding taxes and it is not possible to make the purchase using the Pcard, the person with designated signing authority from the initiating department shall authorize payment of an invoice by authorizing a cheque requisition and shall accept the responsibility to demonstrate, if called upon to do so, the necessity of the Goods and/or Services.

4.04 Goods and/or Services Greater than \$5,000 and up to \$25,000:

Where it is estimated that Goods and/or Services (including construction) will cost greater than \$5,000 or more but up to \$25,000 the initiating department shall obtain, where practicable, at least three (3) Bids, which need to be written, for the provision of such Goods and/or Services following consultation with the Designated Official and shall issue a Purchase Order therefore in accordance with this By-law.

4.05 Goods and/or Services Greater than \$25,000 and up to \$100,000:

Where it is estimated that the Goods and/or Services (including construction) will cost greater than \$25,000 and up to \$100,000, the Designated Official, in order to carry out a Bid Solicitation process, shall complete a Formal Request for Quotations or a Request for Proposals, and, to maximize competition, shall advertise the requirement of the City's internet website, any other relevant government agencies' internet website and invite suppliers known to be qualified, capable and experienced to submit a written Bid, shall, following consultation with the appropriate Department Head obtain, where practicable, at least three (3) written Bids, and shall issue a Purchase Order to the lowest Responsive and Responsible Bidder or, in the case of a Request for Proposals, the highest scoring proponent. In the event that a Contract is to award and the Designated Official does not recommend awarding the Contract in the case of a Request for Quotations to the lowest Responsive and Responsible Bidder, or, in case of a Request for Proposal, to the highest scoring proponent, or the value of the contract exceeds the approved budget, the Designated Official shall submit a report to the appropriate Standing Committee and Council for approval prior to awarding the Contract.

4.06 Goods and/or Services Over \$100,000:

Where it is estimated that Goods and/or Services (including construction) will cost more than \$100,000, excluding taxes the Designated Official shall, in order to carry out a Bid Solicitation process, subject to this section, complete a Request for Tenders and, where necessary to encourage the Open Market Procedure, shall place an advertisement on the City's website and any other relevant government's internet website. Where Goods and/or Services are expected to cost \$100,000 or more, and where it is not practical in the opinion of the Designated Official to prepare precise specifications to allow for the issuing of a Request for Tenders, a Request for Proposals may be issued as an alternative the Request for Tenders. In the case of a Request for Tenders the contract shall be awarded to the lowest Responsive and Responsible Bidder. In the case of a Request for Proposals, the contract shall be awarded to the Responsive and Responsible Bidder obtaining the highest ranking score following the evaluation and scoring of the Proposal received in accordance with the evaluation criteria included in the Request for Proposals document. In the event that the Designate Official, for any reason, does not recommend awarding the contract to the lowest Responsive and Responsible Bidder in the case of Request for Tenders or the highest ranked score in the case of Request for Proposals, or the value of the contract exceeds the approved budget, the Designated Official shall submit a report to the appropriate Standing Committee and Council for approval prior to awarding the contract.

No contract for Goods and/or Services estimated to cost more than \$100,000 shall be awarded on any basis other than as outlined in this section unless authorized by City Council resolution or as authorized in Section 4.07 or 9.00.

4.07 Requests for Proposal and/or Tender:

In circumstances where Requests for Proposal or Tender are issued (see clause 4.06), in addition to the general requirements of this By-law, the following shall apply:

- a) All Requests for Tenders for Goods and/or Services for the City shall be issued by the City's Finance Services Branch in accordance with procedures detailed in Appendix "A",
- b) All Requests for Tender/Proposals shall contain the following clause: "The City may accept a tender in whole or in part, whether the price or prices be the lowest or not, and may reject any or all tenders for any or no reason, in the sole discretion of the City."
- c)
 - I. Where the recommendation is for a Tender meeting specifications, terms, and conditions of the Bid Solicitation and providing the lowest overall cost to the City, or for Proposal (excluding Professional and Consulting Services) where the recommended firm has obtained the highest ranked score in accordance with the evaluation criteria included in the Request for Proposal document, with a value in either case that does not exceed \$2,000,000, excluding taxes, the Designated Official, after consultation with the initiating Department Head, shall report to the Chief Administrative Officer for approval.
 - II. The Chief Administrative Officer may approve the awarding of the Contracts referred to in subsection (i) above, provided the expenditure is not in excess of the approved budgetary appropriation.
 - III. The Commissioner of Corporate and Finance Services/Treasurer will report to Corporate and Finance Committee and Council on a quarterly basis all contracts awarded that are greater than \$500,000, and all single/sole sourced contracts awarded greater than \$25,000 in accordance with Article 5.05 (a)
- d) In the event that:
 - I. The Tender from the lowest responsive and responsible bidder is not recommended; or
 - II. The Proposal which satisfies the requirements and is ranked as the overall highest score is not recommended; or
 - III. The lowest priced Tender or highest scoring Proposal is in excess of the budgetary appropriation

a report by the Designated Official, after consultation with the initiating Department Head, shall be submitted to the appropriate Standing Committee and City Council, for approval.

4.08 Summer, Declared Emergency and Election Recess Procedures:

Where a matter which would otherwise have been submitted to City Council pursuant to this By-law, or which requires approval during the summer months, or when the intervals between scheduled City Council meetings are greater than that normally scheduled, or during the recess required to conduct municipal elections, or a state of Emergency is declared where Council meetings are not occurring, or there is a failure to obtain a quorum at the City Council meeting where a Contract approval was on the agenda for such meeting, the Chief Administrative Officer is authorized to award Contracts which are the result of a Request for Tender, where the recommended Bid is that of the lowest responsive Bidder or a Request for Proposals where the recommended Proposal is that of the highest ranked scoring proponent providing in each case that the price does not exceed the approved budget. The Chief Administrative Officer will report all such awards following the specific recess period to the first possible meeting of the appropriate Standing Committee and then Council on the Contracts awarded during the specific

recess period. Council will not vary any action of the contract award made by the Chief Administrative Officer in such cases.

4.09 Ontarians with Disabilities Act, 2001 and the Accessibility for Ontarians with Disabilities Act, 2005

The Corporate of the City of Oshawa is committed to proactively addressing accessibility issues and to the development of strategic actions to remove, where possible, and prevent barriers to access for people with disabilities. On September 29, 2003 the City implemented a Corporate Accessibility Plan pursuant to the Ontarians with Disabilities Act, 2001 requiring, in part, that the City when deciding to purchase Goods and/or Services shall have regard to the accessibility for persons with disabilities to the Goods and/or Services. The City is committed to accessibility principles and to complying with all relevant provincial statutes and regulations enacted thereunder, with particular regard to, but not limited to, the Ontarians with Disabilities Act, 2005 and the Accessibility for Ontarians with Disabilities Act, 2005 as amended from time to time as well as all successor and other accessibility-related legislation.

Article 5.00: Exemptions from Article 4.00

5.01 Temporary Market Conditions:

Where market conditions are such that suppliers will not guarantee prices for a full year due to temporary market conditions, the Designated Official shall obtain competitive prices for short term commitments until such time as reasonable price protections and fair market pricing are restored.

5.02 Negotiation Instead of Bid Solicitation:

Notwithstanding Article 4.00, Purchase by negotiation may be adopted when, in the judgement of the Designated Official, any of the following conditions apply:

- a) when, due to market conditions, Goods and/or Services are in short supply;
- b) where the sources of supply of Goods and/or Services are restricted to the extent that there is little price competition and consideration of substitutes is precluded due to any of the following:
 - i. the Purchase involves a type of Good and/or Services for which there is no reasonable substitute or competitive product;
 - ii. the Purchase involves a component or replacement part of which there is no substitute;
 - iii. the Purchase involves an item for which compatibility with an existing product is the overriding consideration;
 - iv. the Purchase involves Goods and/or Services in accordance with standards adopted by Council apart from this By-law; or
 - v. in other situations specifically authorized by Council.
- c) Where two or more identical Bids have been received;
- d) Where the City has been previously unsuccessful in breaking identical Bids and the same Goods and/or Services are again required;
- e) Where the lowest Responsive and Responsible Bid received through a Request for Tender, Request for Quotations or a Request for Proposals substantially exceeds the estimated cost of the Goods and/or Services; or
- f) When the extension or reinstatement of an existing contract would prove most cost-effective or beneficial.

5.03 Purchase by Negotiation:

When any of the conditions in section 5.02 apply, the Designated Official may, in consultation with the initiating Department Head, negotiate, extend or reinstate a contract for the supply of Goods and/or Services.

5.04 Except where it is to the City's advantage to obtain competitive prices, Bids shall not be required for Goods and/or Services to be provided by any of the following:

- a) The Regional Municipality of Durham or other towns, cities and municipalities located within the Regional Municipality of Durham;
- b) The Oshawa Power and Utilities Corporation;
- c) The Canadian National and Canadian Pacific Railways; and;
- d) The Provincial and/or Federal Government, Agencies or Crown Corporations.

5.05 Single/Sole Sourcing:

Where the initiating Department Head in consultation with the Designated Official considers it necessary to in the best interest of the City to acquire goods or services from a particular supplier rather than seeking competitive bids:

1. where the estimated contract costs are \$100,000 or less, excluding taxes, the Designated Official may issue a Purchase Order; and
2. where the estimated contract costs are \$100,000 or greater, excluding taxes, the Commissioner, Corporate and Finance Services shall prepare a report to the Corporate and Finance Committee and Council for approval in advance of acquiring the Goods and/or Services.

5.06 Piggy Backing:

If, in the opinion of the Designated Official, it is in the City's best interests to Piggy Back, the Designated Official may execute any necessary documentation including issuing a purchase order.

5.07 Buying Groups:

If, in the opinion of the Designated Official, it is in the City's best interests to use a Buying Group, the Designated Official may execute any necessary documentation including issuing a purchase order.

Article 6.00: Professional and Consulting Services

6.01 Application:

This Article applies to the Purchase of Professional and Consulting Services unless the Purchase has been exempted from the By-law. The Acquisition process described in this Article is restricted to Acquisitions which are predominantly or exclusively for Professional and Consulting Services. Acquisitions, which also include, or are expected to include, significant additional Goods and/or Services shall follow the Acquisition process detailed in Article 4.00 of this By-law.

6.02 Council Approval of Professional and Consulting Services Valued at over \$25,000, excluding taxes

Council must approval all requests for Professional and Consulting Services valued at over \$25,000 prior to the solicitation of Bids with the exception of the following:

1. Professional and Consulting Services pre-approved by Council in the Budget

2. Professional and Consulting Services required as part of a total project that was pre-approved by Council.
3. Professional and Consulting Services funded by developers as part of project implementation that was pre-approved by Council.

All contracts for Professional and Consulting Services value at over \$25,000, as outlined above, will be awarded in accordance with the terms and conditions of the By-law.

6.03 Between \$5,000 and \$50,000:

Where it is estimated that Professional and Consulting Services will cost between \$5,000 and less than \$50,000 the initiating Branch Head and Department Head may obtain, where practicable, at least three (3) bids for provision of the required Services and may, when required, obtain the Services directly without issuing a Bid Solicitation.

6.05 Between \$50,000 and \$100,000:

Where it is estimated that Professional and Consulting Services will cost between \$50,000 and \$100,000, the initiating Department Head, in consultation with the Designated Official, shall:

- a) Issue a Request for Proposals and, to maximize competition, advertise the requirement on the City's internet website and any other relevant government agencies' internet website and, where practicable, obtain at least three (3) written Proposals;
- b) Provide a formal analysis of the proposals in a report for file, and make a recommendation; and
- c) May directly requisition a Purchase Order for the Purchase of the Services in accordance with the recommendation where the recommended Proposal is the highest ranked.

In the event the Designated Official does not recommend awarding the Contract to the highest ranked proponent or the value of the Contract exceeds the budget available, the Designated Official shall submit a report to the appropriate Standing Committee and City Council for approval prior to Contract award.

6.06 More than \$100,000:

Where it is estimated that Professional and Consulting Services will cost \$100,000 or more, the initiating Department Head, in consultation with the Designate Official, shall:

- a) issue a Request for Proposals and, to maximize competition, advertise the requirement on the City's internal website and any other relevant government agencies' internet website and, where practicable, obtain at least three (3) Proposals;
- b) ensure that the Request for Proposals is issued and received by Finance Services and that Proposals are opened in public at the time appointed in the Proposal documents, following the procedures outlined in Article 4.06 of this By-law;
- c) ensure that Proposals are tabulated and analyzed, and requisition a Purchase Order for the Purchase of the Professional and Consulting Services in accordance with the recommendation; and
- d) prepare a report and recommendation to the appropriate Standing Committee for approval.

6.07 Sole/Single Sourcing:

Where the events referred to in sections 6.05 and 6.06 apply, and where the initiating Department Head, in consultation with the Designate Official, deems it necessary or in the best interest of the City to acquire Professional and Consulting Services from a particular supplier, the Department Head may submit a report for approval of City Council to acquire the Professional and Consulting Services from that supplier rather than seek Proposals.

6.08 Pending Litigation:

In the case of pending litigation, or in other situations where it is deemed necessary by the appropriate Standing Committee, the Standing Committee may authorize a private Request for Proposals and Proposal opening, and an “in camera” report on the results.

6.09 Conflict of Interest:

An external consultant who has entered into a Contract with the City for the provision of Professional and Consulting Services for a particular phase of a project may be deemed to have a conflict of interest and be disqualified from submitting a Bid on a later phase of consulting services for the same project. Any issue as to whether there is a conflict of interest will be determined by the Designated Official, in conjunction with the initiating Department Head.

Article 7.00: Real Property

7.01 Procedures:

This By-law shall not apply to Purchases of Real Property, which are covered by By-law Number 97-2000 as amended. For greater clarity, the Purchase of parcels of land, including appurtenant fixtures, is not governed by this By-law. The Purchase of construction materials and/or services used to build, renovate, remove, repair, or improve Real Property shall be governed by the By-law.

Article 8.00: Foods and Pharmaceutical Products

8.01 Procedures:

This By-law shall not apply to purchases of foods or pharmaceutical products except where foods or pharmaceutical products are included in a service required by the City such as catering or vending/concession type services.

Article 9.00: Emergency Purchases

9.01 Application of Article:

This Article shall apply in case of an Emergency and, where there is a conflict between the provision of this Article and those in the balance of this By-law, the provisions of this Article shall govern.

9.02 Policy:

Wherever feasible, even in circumstances of Emergency, the Designated Official, upon the recommendation of the initiating Department Head, shall secure any Goods and/or Services required up to \$50,000 at the lowest responsible obtainable price while satisfying the requirements of the initiating Department Head.

9.03 Emergency:

In the event that responding to an emergency requires an expenditure of \$50,000 or more, the initiating Department Head shall obtain the prior approval of the Chief Administrative Officer before ordering the Goods and/or Services. Where the Chief Administrative Officer is unavailable, the approval of the Designated Official shall be sufficient for the purposes of this Article. The Designated Official shall secure any Goods and/or Services required at the lowest possible obtainable price while satisfying the requirements of the initiating Department Head.

9.04 Emergency in the Absence of the Chief Administrative Officer and Designated Official:

In an Emergency, and in the absence of both the Designated Official and the Chief Administrative Officer, the initiating Department Head may purchase directly, without a competitive process, Goods and/or Services whose immediate acquisition is essential.

9.05 Report to Council:

When an Emergency Purchase has been made pursuant to this Article, and the amount of the purchase is \$50,000 or more, the City Treasurer shall be advised forthwith and a report of all Purchases made pursuant to this Article shall be prepared by the initiating Department Head and submitted to the next Standing Committee meeting, explaining the action taken and the reasons for those actions.

9.06 Purchase Order to Issue:

All Emergency Purchases made pursuant to this Article shall be confirmed by the issuance of a Purchase Order as requisitioned by the initiating Department Head immediately or as soon as practicable following the commitment.

Article 10.00 Disposal of Property other than Real Property

10.01 Auction or Bids:

Unless otherwise provided for in this Article, any Personal Property belonging to the City which has been declared surplus by the initiating Department Head shall be disposed of only by means of auction, trade-in, donation or Bid Solicitation, provided that any usable equipment or material has first been offered to other City Departments or Boards.

10.02 Bid Solicitation:

If it is determined by the Designated Official that the highest return on obsolete or surplus Personal Property shall be achieved by Bid Solicitation, a Request for Quotation may be issued, and advertised on the City's internet website. All Bids will be submitted in a sealed envelope and the authority to purchase the Personal Property will be issued to the highest responsible Bidder.

10.03 Return to Original Vendor:

If it is determined that a higher return net of disposal costs can be achieved by sale of obsolete or surplus Personal Property to the original vendor or vendors in that line of business, the Designated Official shall sell such Personal Property at the highest return.

10.04 Reserve Prices:

Where it is deemed appropriate by the Designated Official and/or the initiating Department Head, a reserve price may be established and,

- a) in the case of disposal by Tender, published and disclosed; or
- b) in the case of auction or quotation, shall be used as an internal estimate and not disclosed.

10.05 Exception:

Where Personal Property has been declared surplus by the initiating Department Head, has been offered to other City Department or Boards and has been determined by the Designated Official to have little or no value, the Designated Official shall request the approval of the Chief Administrative Officer to dispose of such items in an alternative manner.

10.06 Donations:

Where Personal Property has been declared surplus by the initiating Department Head, and has been offered to other user department or Boards without acceptance, and the Department Head wishes to donate the item to a Person, the initiating Department Head shall prepare a report to the appropriate Standing Committee and City Council seeking approval to make such a donation.

Article 11.00: Prohibitions

11.01 Disclosure of Prices:

Subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56 no employee or appointed or elected official shall divulge the prices paid by the City for Goods and/or Services unless City Council otherwise directs, with the following exceptions:

- a) the total price, in the case of public Tenders/Quotations, or details of non-confidential reports recommending contract awards, may be revealed;
- b) the unit prices paid by the City for Goods and/or Services may be revealed to other public agencies for benchmarking purposes provided confidentiality is maintained in keeping with the intent of Article 11.01.

11.02 Employee Purchases on Behalf of the City:

No employee or appointed or elected official shall Purchase or offer to Purchase, on behalf of the City, any Goods and/or Services except in accordance with this By-law.

11.03 Division of Contracts:

Two or more Purchase Orders shall not be issued for individual portions of any item which comprise, in essence, a single transaction, if the total aggregate amount of the Purchase Order exceeds the upper limit for the Acquisition process which would be used to acquire those items separately unless authorized by the appropriate Standing Committee and City Council.

11.04 Demonstrations:

No request for prices, pilot projects or demonstrations for approved projects or programs shall be made without prior consultation with the Designated Official.

11.05 Personal Purchases:

No Personal Purchases shall be made by the City for employees, appointed or elected officials, or members of Boards except through programs which may, from time to time, be expressly and specifically approved by City Council.

11.06 Employees Restricted from Bidding to Sell:

No employee or appointed or elected official of the City, or any of their spouses, siblings, parents or children, shall Bid to supply the City with Goods and/or Services.

11.07 Employees Restricted from Bidding to Purchase:

No employee or appointed or elected official of the City, or any of their spouses, siblings, parents or children, shall Bid on the sale of Good and/or Services except those disposed of by public auction.

11.08 Preference for Local Suppliers:

The Discriminatory Business Practices Act, R.S.O. 1990, c. D.12 has been established to prevent discrimination in Ontario on the ground of race, creed, colour, nationality, ancestry, place of origin, gender, or geographical location of persons employed engaging in business. Therefore, granting preference to local suppliers for supply Goods and/or Services to the City cannot be undertaken.

11.09 Lobbying:

All prospective bidders are prohibited from lobbying any member of City Council, City staff and consultants, appointed member and any staff of any Board during the period commencing at the time of issuing a bid solicitation and ending at the time of the award of the contract.

Article 12.00: Purchases by Boards

12.01 Purchasing Decisions Ordinarily made by Boards:

Where the authority to enter into a Contract for the Purchase of Goods and/or Services is a decision which is solely within the jurisdiction of a Board, the Board may choose to avail itself of the services of the City's Finance Services Branch. In those circumstances, the terms and conditions of this By-law apply with the exception that the Designated Official shall submit reports, as required, to the Board.

Article 13.00: Bidder Performance

13.01 The City may, at its sole discretion, reject a bid from a Bidder if:

- a) The Bidder has not performed works for previous Contracts in compliance with the Contract documents; or
- b) The Bidder has previously provided Goods and/or Services in an unsatisfactory manner; or
- c) The Bidder failed to satisfy an outstanding debt/obligation to the City; or
- d) The City determines that the Bidder does not have sufficient experience in the supply of the Goods and/or Services; or
- e) Active or pending litigation against the City by a Bidder.

Article 14.00: Unsolicited Proposals

14.01 Unsolicited proposals received by the City will be considered by the Designated Official only when it is determined to be in the City's best interest. Any procurement activity resulting from the receipt of an unsolicited proposal shall comply with the provisions of this By-Law.

15.00: Revenue Generating Contracts

15.01 Where in the opinion of the Designated Official it is in the City's best interest to competitively bid revenue generated or no-cost contracts, the Designated Official shall, in consultation with the initiating Department Head:

- a) Carryout a bid solicitation
- b) Award a contract to the highest ranked proposal or the highest bid price in the case of a Tender of Quotation.

15.02 The Commissioner, Corporate and Finance Services will report to the Corporate and Finance Committee and Council on a quarterly basis all revenue generating contracts that are greater than \$50,000.

15.03 Article 15 shall not apply to the City's Corporate Partnership Program, including sponsorship and advertising.

Article 16.00: Effective Date/Repeals

16.01 By-Law Number 45-2016 is repealed.

16.02 This By-law is in effect on the date of its passing.

By-law passed this twenty-eighth day of September, 2020.

Original signed by Mayor and City Clerk

Appendix "A"

The items listed in this Appendix A are those for which a Purchase Order is not required unless specifically requested by the initiating Department Head or the vendor/supplier, and for which other purchasing procedure of this By-law may be waived where application is impractical in the option of the Designated Official.

1. Petty Cash Items
2. Training and Education, including:
 - a) Conferences
 - b) Courses
 - c) Conventions
 - d) Magazine
 - e) Memberships
 - f) Periodicals
 - g) Seminars
 - h) Staff Development
 - i) Staff Workshops
 - j) Staff Reports
 - k) Subscriptions
3. Refundable Employee Expenses, including:
 - a) Advances
 - b) Meal Allowances
 - c) Miscellaneous – Non-Travel
 - d) Travel Expenses
 - e) Entertainment Expenses
4. Employer's General Expenses, including:
 - a) Payroll Deduction Remittances
 - b) Medicals
 - c) Licenses (Vehicles, Firearms, etc.)
 - d) Debenture Payments
 - e) Insurance
 - f) Grants to Agencies
 - g) Damage Claims
 - h) Petty Cash Replenishment
 - i) Building Lease Payments
 - j) Tax Remittances
 - k) Sinking Fund Payments
 - l) Newspaper Advertising and Public Notices

m) Catering (staff related functions) i.e. Dinners, receptions

5. Certain Professional and Special Services, including:

a) Committee Fees

b) Counselling Services

c) Laboratory Services

d) Nursing Services

e) Physician Fees

f) Temporary Help

g) Banking and Underwriting Services, where covered by Agreements

h) Catering of staff related functions, e.g., dinners, receptions, etc. (excluding corporate wide concession and vending)

i) Public Relations: trade show registrations, event sponsorship, souvenirs

j) Providers of artistic or specialized services such as, but not limited to Instructors for leisure programs, entertainers or entertainment products, providing the total cost is less than \$25,000. The aforementioned exemption does not include Fireworks, which is subject to the provisions of this By-Law.

k) Recruiting Services

l) External Legal Counsel

m) Software maintenance and licenses where applicable. When a competitive market exists, Article 4.00 of this By-law shall govern.

6. Utilities, including:

a) Postage

b) Water

c) Hydro

d) Gas

e) Telephone – excluding cellular

f) Cable T.V.