



# **CITY OF BRANTFORD PURCHASING POLICY**

BY-LAW 63-2016

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# **CHAPTER 1**

## **INTERPRETATION**

### 1.01 Statement of Principle

The Ontario Municipal Act requires of every municipality that it have a policy with respect to its procurement of goods and services. This Policy is intended to fulfill that requirement.

In acquiring goods and services for the municipality, the City requires processes to ensure that operating departments will receive the goods and services they require in sufficient quality and quantity for their needs, acquired with integrity, fairness, equality, and transparency through efficient means that produce the lowest overall cost for the taxpayer.

The Corporation has determined as a matter of policy that the lowest overall cost for the taxpayer is most often received when competitive acquisition processes are used. For that reason, competitive acquisition will be the general rule and will be departed from only in accordance with specific exceptions set forth in this policy.

### 1.02 Goals of the Policy

The goals of the Purchasing Policy are as follows:

- (a) To ensure openness, accountability and transparency while protecting the financial best interest of the City of Brantford;
- (b) To encourage competitive bidding for the acquisition and disposal of goods and services where practicable;
- (c) To ensure fair treatment and respectful business practice to all bidders;
- (d) To obtain efficiencies where possible by maximizing buying power through economies of scale and participating in cooperative buying groups.

### 1.03 Application of Policy

- (a) All City departments and City officials shall acquire goods and services in accordance with this Policy and not otherwise. No member of Council or City employee shall have the right to acquire goods and services or to otherwise bind the City in respect of the acquisition of goods and services, except in accordance with this Policy.
- (b) If the City's purchasing officials provide assistance to any local Board or any subsidiary of the City to purchase goods and services, such assistance shall only be provided if such local Board or subsidiary acquires the goods and services in accordance with the following requirements of this Policy:
  - (i) The rules respecting local preference in accordance with Section 2.01;
  - (ii) The rules respecting the use of supplier qualification processes set forth in Section 3.07;
  - (iii) The rules respecting prohibited classes of vendors set forth in Section 3.10; and
  - (iv) The rules respecting competitive procurement set forth in Chapter 4.

Except for the foregoing, it shall not be necessary for the local Board or subsidiary to follow any other requirements of this Policy in order for such assistance to be provided by the City's purchasing officials.

- (c) When the City is asked to supply funds, to approve borrowing or to provide other financial assistance to any local Board or any subsidiary of the City in any project, compliance with the following requirements of this Policy in acquiring goods and services for the project shall be a condition of such supply of funds, approval of borrowing or other financial assistance:
  - (i) The rules respecting local preference in accordance with Section 2.01;
  - (ii) The rules respecting the use of supplier qualification processes set forth in Section 3.07;
  - (iii) The rules respecting prohibited classes of vendors set forth in Section 3.10; and
  - (iv) The rules respecting competitive procurement set forth in Chapter 4.

Except for the foregoing, it shall not be necessary for the local Board or subsidiary to follow any other requirements of this Policy in order for such financial assistance to be provided by the City.

- (d) This Policy shall apply to the acquisition of all goods and services by the Corporation of the City of Brantford, except for the exemptions set forth in Schedule 1. The acquisition of the goods and services listed and described in Schedule 1 shall not be subject to the requirements of this Policy, but may be subject to other policies or requirements enacted from time to time by the municipal Council of the City.
- (e) The rules in (c) above shall not apply where the supply of funds, approval of borrowing or the provision of other financial assistance is mandated by statute.
- (f) The rules in (b) and (c) are not intended to limit the independence of any local Board or subsidiary of the City.

#### 1.04 Incorporation of Policy into Solicitations

The requirements of this Policy shall be incorporated by reference into all solicitations for goods and services acquired by the Purchasing Division of the City of Brantford.

#### 1.05 Delegation

Where authority is given to the City Manager, any General Manager, or any other position, pursuant to this policy, such authority may be delegated to subordinate staff on such terms as the City Manager, applicable General Manager or other position, as the case may be, shall consider reasonable in the circumstances.

## 1.06 Definitions

In this Policy,

“Affiliates” means affiliates within the meaning of the Business Corporations Act (Ontario).

“Acquisition,” “Procurement,” “Buy,” and “Purchase” also include obtaining the use of goods and/or services by lease, rental, and other temporary methods.

“Award” means authorization to proceed with the purchase of goods and/or services from a chosen vendor.

“Department Staff” or “Operating Department Staff” means staff of the City department for which goods and services are being acquired.

“Electronic Bidding System” means the online system by which the City issues solicitations and written bids are received.

“Emergency” means an urgent situation that could result in serious harm to persons, substantial damage to property, or substantial interference with municipal operations. An emergency shall only be deemed to exist if:

- (a) Council determines that an emergency exists; or,
- (b) The applicable General Manager determines that an emergency exists; or
- (c) The City Manager determines that an emergency exists.

“Engineering Works” means agreements with contractors under which the contractor shall perform construction or reconstruction of roads, sewers, water works, flood control works, and bridges.

“Estimated Value of Goods and Services” means the estimated amount (excluding taxes) for budget or planning purposes in acquiring particular goods and services, which amount may be higher, lower or equal to the actual cost of the goods and services when ultimately acquired. For greater certainty, when multi-year contracts are awarded for the acquisition of goods and services, the estimated value of the goods and services for such multi-year contracts is the estimated amount to be paid for the goods and services over the entire contract, and is not limited to the amount which may be payable in any particular budget year.

“Goods” means all manner of personal property, goods, equipment, things, and rights.

“High Value” means high value within the meaning of Table One.

“In-House Bid” means a process that allows for internal staff or affiliates to compete with external entities for procurement opportunities by formally providing a submission in response to a solicitation. It does not include the situation where a management decision has been taken to perform work or to provide services using internal forces or the forces of affiliates without or instead of proceeding through a solicitation.

“Informal Procurement” means procurement in which there are minimal procedural requirements, and without limiting the generality of the foregoing, includes procurement in which there is no requirement to obtain competitive pricing.

“Low Value” means low value within the meaning of Table One.

“Lowest overall cost” means the cost of acquiring goods and services after the evaluation factors set forth in the Solicitation are taken into account. Such factors may include price, quality, life cycle costs and all other terms, conditions, and circumstances of the acquisition.

“Lowest Responsive Submission” means a submission in response to a solicitation which includes all required components and which shows the lowest overall cost when all evaluation factors contained in the solicitation are taken into account.

“Medium Value” means medium value within the meaning of Table One.

“Non-competitive Acquisition” means procurement which does not include any competitive process, and without limiting the generality of the foregoing, includes procurement through negotiation, sole sourcing, and single sourcing.

“Option to Buy” means the right to acquire goods upon stated terms, most often but not exclusively encountered in the context of rental, lease (but not a financing lease), or hire-purchase agreements. The exercise of an option to extend a contract for the acquisition of goods and services shall also be deemed to be the exercise of an option to buy, but only if the option to extend formed part of the original contract as awarded.

“Pre-approved Solicitation” means any solicitation implementing a project, acquisition of goods and services, or other undertaking which has been classified as a pre-approved solicitation, project, acquisition of goods and services, or other undertaking by Council through Resolution following a report from the applicable department describing the proposed solicitation, project, acquisition of goods and services or other undertaking. The Purchasing Officer shall determine in his or her discretion whether or not any proposed solicitation matches the identification and description in the applicable Council Resolution.

“Procedures” means procedures developed by the Purchasing Officer pursuant to Articles 2.08(c) (*Best Practices for the Disposal of Goods and Equipment*), 3.04(a) (*Best Purchasing and Acquisition Practices*), 5.03(a) (*Best Purchasing and Acquisition Practices for the Solicitation of Consulting Services*), and 6.03(a) (*Best Practices for the Documentation of past Failures of Vendors to provide appropriate Performance*).

“Purchasing Officer” means the person so designated by the Treasurer of the City from time to time and shall be synonymous with “Manager of Purchasing”.

“Responsive” means, when applied to a submission, that the submission contains each and every element required by the solicitation for the submission, and otherwise fully complies with the requirements of the solicitation.

“Request for Expressions of Interest” means a general market research tool to determine vendor interest in a proposed procurement. It is used prior to issuing another solicitation and is not intended to result in the award of a contract.

“Request for Proposals” means a competitive procurement process for obtaining unique proposals designed to meet terms of reference.

“Request for Quotations” means a competitive procurement process for obtaining bids based on defined requirements for which fixed or calculated price will be paid.

“Request for Supplier Qualification” means a solicitation process for screening potential Vendors through such attributes as experience, financial strength, education, or other pertinent considerations, in order to establish a list of qualified Vendors who may then be allowed to submit bids or proposals, or who may be hired on a rotational or “best fit” basis to fulfill specific requirements.

“Request for Tenders” means a competitive procurement process for obtaining defined requirements for which a clear or single solution exists.

“Services” means any and all services, and includes construction services.

“Single Sourcing” means the procurement of a good or service from a particular vendor rather than through the solicitation of bids from other vendors who can provide the same item.

“Sole Sourcing” means the procurement of a good or service that is unique to a particular vendor and cannot be obtained from another source.

“Solicitation” means any and all forms of solicitation for goods and services by the City, including but not limited to requests for tenders, requests for quotations, requests for proposals, requests for supplier qualification, requests for information, and requests for expressions of interest.

“Submission” means any and all offers, bids, or other responses to a solicitation by the City.

“Surplus” means goods belonging to the City of Brantford which, through obsolescence or other causes, no longer serve any useful purpose to the operating department of the City in which the goods were used.

“Table One” means the Table One entitled “Methods through which Goods and Services may be Acquired” within Section 3.01 of this Policy.

“Two Envelope Method” means a procurement process in which a submission is submitted into two separate envelopes. The technical and qualitative information is submitted in the first envelope and the price information is provided in the second envelope. The second envelope is considered in the evaluation process only if the first envelope shows the bidder to be qualified.

“Vendor” means a seller or supplier of goods and/or services.

“Working Days” means days on which the main municipal offices of the City are open for business.

"Unsolicited Proposal" means an offer to supply goods or services to the City that has not been preceded by the issuance of a solicitation by the City.

## **CHAPTER 2** **GENERAL MATTERS**

### **2.01 No Local Preference**

- (a) Except as set forth in (b) and (c), no local preference shall be shown or taken into account in acquiring goods and services on behalf of the municipality.
- (b) Where there are two responses to a solicitation for goods or services which after evaluation appear equal in all respects, a local preference may be shown for the sole purpose of breaking the tie. In such circumstances, the “local” Vendor shall be deemed to be the Vendor whose business premises shall have the nearest geographical proximity to the point of delivery of the goods and services. For purposes of the foregoing, “business premises” mean the business premises from which the goods and services shall be supplied.
- (c) Despite (a), a local preference may be shown when the intrinsic nature of the acquisition necessitates a local preference, such as a solicitation by the municipality for municipal office space.

### **2.02 Co-operative Purchasing Arrangements**

- (a) The Purchasing Officer may make cooperative purchasing arrangements with other municipalities or public authorities under which particular varieties of goods and services may be acquired by the municipality in conjunction with such other municipalities and public authorities at a lower overall cost than they might otherwise achieve were they to proceed independently.
- (b) Because the cooperative arrangements may require the cooperation of multiple organizations with differing purchasing procedures, deviations from the requirements of this Policy are permitted in such cooperative arrangements provided that the principles set forth in Chapter 1 are fully respected.
- (c) Where the Purchasing Officer has effected cooperative purchasing arrangements in accordance with this section, operating departments shall acquire the particular varieties of goods and services in accordance with such cooperative arrangements and not otherwise. The Purchasing Officer shall be permitted to authorize exceptions from the foregoing in extenuating circumstances.

### **2.03 Acquisition of Supplies/Services from other Government Bodies**

- (a) The City may acquire supplies or services from federal, provincial or municipal body, ministry, agency, board, corporation or authority or in the case of Provincial and Federal Standing Agreements, or other competitive procurement processes, the City may take advantage of these opportunities if they are deemed to be in the best interest of the City.

## 2.04 General Supply Contracts

- (a) Where the Purchasing Officer perceives continuing common needs for particular goods and services in multiple departments within the municipality, he or she may issue solicitations for the general supply of the needs of all departments of the municipality for such particular goods and services.
- (b) Where a contract for the general supply of the needs of multiple departments of the municipality for particular goods and services has been awarded in accordance with (a) above, operating departments shall acquire the particular varieties of goods and services in accordance with such cooperative arrangements and not otherwise. The Purchasing Officer shall be permitted to authorize exceptions from the foregoing in extenuating circumstances.

## 2.05 General Ability of Council to Overrule Procedural Requirements

- (a) The municipal Council of the City may overrule any requirement of this policy on a transaction-specific basis through resolution.
- (b) The elimination of any requirement of this policy on a general or continuing basis must be approved through a By-law which amends this Policy.

## 2.06 Forms, Contracts and Documents

- (a) The Purchasing Officer may develop or adopt standard forms of solicitations and other documents to be used in conjunction with the acquisition of goods and services for the municipality.
- (b) Documents used pursuant to (a) shall have been approved by the City Solicitor.
- (c) Where the Purchasing Officer has developed a standard form in accordance with (a) above, operating departments shall acquire the particular varieties of goods and services in accordance with standard forms and not otherwise, provided that the Purchasing Officer may authorize or draft minor variations therefrom as necessary.

## 2.07 Execution of Contracts and Documents

- (a) The execution of contracts and documents in connection with the acquisition of goods and services by the municipality shall be in accordance with the requirements of Corporate Policy No. 010 Execution of Routine Documents.
- (b) Employees are responsible for determining whether or not they have authority to execute documents on behalf of the City in accordance with the foregoing.
- (c) Without limiting the generality of anything else contained in this policy or the seriousness of any other contravention of this policy, it shall be a serious contravention of this policy for any employee to execute a contract or other document in connection with a solicitation of goods or services if the execution of such contract or other document is not in accordance with the requirements of Corporate Policy No. 010 Execution of Routine Documents.

## 2.08 Disposal of Surplus Goods and Equipment

- (a) Except where otherwise required by Council for specific varieties of goods or equipment, surplus goods shall be disposed of by the Purchasing Officer in accordance with this Policy.
- (b) Surplus goods shall be disposed of by any one of the following methods, ranked in order of preference as follows:
  - (i) Given to another operating department within the City administration or subsidiary company which has a use for the surplus goods or equipment;
  - (ii) Traded in as part of a replacement purchase;
  - (iii) Sold by a competitive public offering process or auction;
  - (iv) Offered or donated to other public or non-profit agencies; or
  - (v) Disposal of the goods by transportation to the City's landfill site, recycling site or other appropriate disposal facility.
- (c) The Purchasing Officer may make written procedures from time to time consistent with the requirements of this Policy to reflect best practices for the disposal of surplus goods.
- (d) Procedures enacted pursuant to (c) shall have been approved by the Senior Management Committee of the City.
- (e) Where the Purchasing Officer has developed procedures in accordance with (c) above, operating departments shall follow such procedures.

## 2.09 Persons with Disabilities

- (a) In acquiring goods and services for the municipality, municipal staff shall consider and have regard to disability accessibility issues as they may reasonably pertain to such acquisitions of goods and services and shall comply with the requirements of the City's Municipal Accessibility Plan and the City of Brantford's Facility Accessibility Design Standards ("FADS"). All new and renovated City owned facilities shall be designed to meet or exceed the City of Brantford's FADS and comply with legislation concerning people with disabilities.
- (b) Contracts for the acquisition of goods and services shall include the following elements:
  - (i) that the Vendor shall comply with the Accessibility for Ontarians with Disabilities Act (AODA) standards for Customer Service (O. Reg. 429/07) and the Integrated Accessibility Standards (O. Reg. 191/11) and their relation to the Human Rights Code;
  - (ii) that the Vendor shall ensure that its employees are trained on providing accessible customer services. Any training or training resources must conform to the legislated requirements under the Act; and
  - (iii) that the Vendor shall maintain records of the training, including dates when training was provided, the number of employees who received training and individual training records. Where requested by the City, the person, business or

organization shall provide written proof, as well as any documentation regarding training policies, practices and procedures, to the City.

#### 2.10 In-house Bids

Unless specifically approved by City Council, the Municipality does not permit in-house bids for the acquisition of goods and services for the City.

#### 2.11 Review of this Policy

This Policy shall be reviewed during the first full calendar year of the term of each elected Council.

#### 2.12 Green Procurement

In acquiring goods and services for the municipality, municipal staff shall consider whether it is feasible to incorporate environmental considerations into solicitations for goods and services. The Purchasing Officer shall keep apprised of best purchasing practices for responsible environmental procurement, and shall bring same to the attention of operating departments wherever the same are applicable.

#### 2.13 Financing Leases

In addition to the requirements of this policy, the acquisition of goods through financing leases shall be performed in accordance with the requirements of Finance Policy No. 006.

#### 2.14 Unsolicited Proposals

- (a) Unsolicited Proposals received by the City shall be reviewed by the Purchasing Officer and the General Manager of the applicable department to determine if the proposal warrants consideration.
- (b) Any Unsolicited Proposal shall not be considered if:
  - (i) It resembles a current or upcoming competitive procurement that has or will be requested;
  - (ii) It requires substantial assistance from the City to complete the proposal;
  - (iii) The goods or services are readily available from other sources; or
  - (iv) It is not deemed by the General Manager to be of sufficient value to the City.
- (c) Any Unsolicited Proposal warranting execution shall be either procured through a competitive bid process as per Table One or require Council approval to award as a single source or sole source purchase.
- (d) Where a competitive bid process is undertaken for the good or service, the person submitting the Unsolicited Proposal shall not be precluded from participating in the procurement process.

## 2.15 Mandatory Consultation

Solicitations involving:

- (a) project management for municipal building assets, municipal accessibility plan initiatives, and security initiatives may only be issued if there has been prior consultation with the Property Management Department of the City; and
- (b) information technology and office automation acquisitions or communications services may only be issued if there has been prior consultation with the Information Technology Services Department of the City.

## 2.16 Dispute Resolution

In the event any Vendor involved in a procurement process with the City presents a dispute in regards to that process, the following dispute resolution process shall be followed:

- (a) The Vendor identifying the dispute shall be required to state the nature of the dispute in writing, giving full details and history of the events leading to the dispute claim, addressed to the Purchasing Officer.
- (b) The award of any contract shall not be rescinded nor the progress of any project be delayed by a request for dispute resolution unless recommended by the General Manager of the city department involved in the procurement of the good or service and the Purchasing Officer.
- (c) Upon receiving the dispute claim, a bid debriefing will take place with the Purchasing Officer, the Purchasing staff member assigned to that procurement file and any City staff member involved in the procurement process and up to 2 representatives of the Vendor. The Purchasing Officer shall convene the meeting between the parties within fourteen (14) days of the receipt of the dispute claim. The debriefing session will be structured so as to provide assistance to the Vendor to both understand the procurement process that occurred and to assist them in improving their future bids to the City.
- (d) Should the debriefing session fail to satisfy the Vendor, the Vendor may request a further meeting with the General Manager of the department involved in the procurement of the good or service and the Purchasing Officer. This request must be addressed to the Purchasing Officer and received in writing within fourteen (14) days of the meeting described in section c). The Purchasing Officer shall convene the meeting between the parties.
- (e) In the event a resolution cannot be achieved and the Vendor requests to further prosecute the dispute claim, the Purchasing Officer shall request the Vendor to pursue the matter through the City Solicitor. The dispute claim shall then be handled by the City Solicitor or his designate.

**CHAPTER 3**  
**METHODS THROUGH WHICH GOODS AND SERVICES MAY BE ACQUIRED**

3.01 Summary of Methods

Goods and services shall be acquired by the municipality in accordance with the methods set forth in the following Table One, and not otherwise.

**Table One**  
**METHODS THROUGH WHICH GOODS AND SERVICES MAY BE ACQUIRED**

<b>Estimated Value of Goods and Services Not including Taxes</b>	<b>Low &lt;\$5,000</b>	<b>Medium \$5,000 and over but &lt; \$250,000</b>	<b>High \$250,000 and over</b>
<p align="center"><b>Permitted Method(s) of Acquisition</b></p> <p>Note: Minimum Standards Only</p> <p>See Section 3.02. More formal methods associated with high value acquisitions may still be used for lower ranked acquisitions.</p>	<p align="center"><b>Informal Procurement</b></p> <ul style="list-style-type: none"> <li>• May use any acquisition process.</li> <li>• Competition not required.</li> </ul>	<p align="center"><b>Level One - Less than \$40,000</b></p> <ul style="list-style-type: none"> <li>• Must be at least three written quotations unless there are insufficient Vendors. Public advertising <b>is not</b> required.</li> </ul> <p align="center"><b>Level Two - \$40,000 and over</b></p> <ul style="list-style-type: none"> <li>• Requires a competitive process issued through Purchasing Division. Public advertising <b>is</b> required.</li> </ul>	<p align="center"><b>Requests for Proposals</b></p> <p align="center"><b>Requests for Tenders / Quotations</b></p>
		<p align="center"><b>Non-competitive acquisition</b></p> <ul style="list-style-type: none"> <li>• Only where specifically allowed pursuant to Chapter 4 of purchasing policy. Purchasing Officer to enforce compliance with policy and determine whether or not conditions for non-competitive acquisition have been met.</li> </ul>	<p align="center"><b>Non-competitive acquisition</b></p> <ul style="list-style-type: none"> <li>• Only where specifically allowed pursuant to Chapter 4 of purchasing policy. Purchasing Officer to enforce compliance with policy and determine whether or not conditions for non-competitive acquisition have been met</li> </ul>
<p align="center"><b>Who will administer the acquisition process?</b></p> <p>Note: other provisions such as Section 3.07 may apply.</p>	<p align="center"><b>Department Staff</b></p> <ul style="list-style-type: none"> <li>• Purchasing Division Staff may assist if required.</li> </ul>	<p align="center"><b>Level One - Less than \$40,000</b></p> <ul style="list-style-type: none"> <li>• Department Staff, but Purchasing Division Staff may assist as required.</li> </ul> <p align="center"><b>Level Two - \$40,000 and over</b></p> <ul style="list-style-type: none"> <li>• Purchasing Division Staff</li> </ul>	<p align="center"><b>Purchasing Division Staff</b></p>
		<p align="center"><b>RFP, RFSQ, &amp; Multi-Year Options - Level One &amp; Two</b></p> <ul style="list-style-type: none"> <li>• Purchasing Division Staff</li> </ul>	
<p align="center"><b>What other conditions must be satisfied?</b></p> <p>Note: other conditions or processes may apply i.e. Financial Policies regarding petty cash, issuance of cheques, verification of expenses, Section 2.02, Section 2.03, etc.</p>	<ul style="list-style-type: none"> <li>• May be awarded by Department Staff with appropriate signing authority if within approved budget.</li> </ul>	<ul style="list-style-type: none"> <li>• May be awarded by Department Staff (in consultation with Purchasing Division Staff) with appropriate signing authority if within approved budget.</li> <li>• Purchase order shall be entered for all purchases, unless approved otherwise by the Purchasing Officer.</li> <li>• Non-competitive acquisitions \$100,000 and over shall be approved by Council.</li> </ul>	<p align="center"><b>Awarded by Council</b></p> <p align="center">or</p> <ul style="list-style-type: none"> <li>• May be awarded by Department Staff (in consultation with Purchasing Division Staff) with the appropriate signing authority if it is within the approved budget and the acquisition is a <b>"Pre-approved Solicitation"</b></li> </ul>

### 3.02 Interpretation

The permitted methods of acquisition defined in Table One are minimum standards. Although Table One indicates that the allowed methods of acquisition shall become progressively more formal as the estimated value of goods and services increases, Department Staff may choose to use more formal methods of acquisition than are specified as minimum standards in the table.

### 3.03 Inflation Adjustment to Figures and Limits

The dollar limits contained in Table One shall be adjusted as part of the review of this Policy pursuant to section 2.10 to take into account the effect of inflation.

### 3.04 Procedures

- (a) The Purchasing Officer may make written procedures from time to time consistent with the requirements of this Policy to reflect best purchasing and acquisition practices. Without limiting the generality of the foregoing, such procedures shall include rules for issuance of solicitations, receipt of submissions, the creation and drafting of specifications for solicitations, advertising, deposit requirements, prequalification processes, breaking ties between identical submissions, calculating the Estimated Value of Goods and Services, minimum standards for performance security, and the opening procedures for solicitations.
- (b) Procedures enacted pursuant to (a) shall have been approved by the Senior Management Committee of the City.
- (c) Where the Purchasing Officer has developed procedures in accordance with (a) above, operating departments shall follow such procedures.

### 3.05 Special Provisions for Emergencies

- (a) When emergency conditions occur, the provisions of Table One shall be read in conjunction with this section and section 4.02(f).
- (b) Despite the requirement that Council approval shall first be obtained in certain situations set forth in Table One, it shall not be necessary to obtain Council approval where the acquisition of goods and services is required to meet an emergency.
- (c) Except for the adjustments made in accordance with (a) and Article 4.02(f), all other terms and requirements of this Policy shall continue to apply to the acquisition of goods and services in an emergency.
- (d) Whenever the provisions of this section or section 4.02(f) are applied in an emergency situation, a report to Council shall be made by the applicable General Manager or the City Manager as soon as practicable thereafter detailing the circumstances of the emergency, the details of the goods and services acquired in order to meet the emergency, and all other pertinent details.

### 3.06 Division of Procurement to Avoid Compliance with Policy

The procurement of goods and services shall not be separated or divided into multiple procurements where the purpose of such separation or division is to take advantage of the reduced formality in the acquisition of goods and service where the acquisition occurs at a lower estimated cost. Related procurements shall be combined wherever possible with a view to obtaining the lowest overall cost to the taxpayer.

### 3.07 Request for Supplier Qualification (RFSQ) Process

- (a) The purpose of a Request for Supplier Qualification (prequalification) is to ensure that each Vendor bidding to perform work for the City can demonstrate its ability to provide the necessary expertise and resources to satisfactorily complete the work required.
- (b) In generating specifications for any prequalification process, the Purchasing Officer shall ensure that any Request for Supplier Qualification:
  - (i) includes only reasonable requirements;
  - (ii) does not include any unnecessary condition or restriction which would prevent an appropriate level of competition in the solicitation; and
  - (iii) does not disallow the participation of bidders or proponents who are capable of performing the work.
- (c) Only prequalified Vendors shall be invited to respond to a subsequent Request of Quotations, Request for Tenders, or Request for Proposals.
- (d) A RFSQ may be used to form a Vendor of Record (VOR) list for a defined period of time where future projects are unknown.
- (e) Nothing in (b) above shall prohibit the inclusion within any Request for Supplier Qualification of a requirement which only permits a fixed number of candidates to advance to the next phase of a solicitation process if the Purchasing Officer concludes that such a requirement is necessary and advisable in the circumstances. All RFSQ shall be issued through the Purchasing Division.

### 3.08 Consulting and Professional Services Roster

- (a) It may be determined by the General Manager and Purchasing Officer that it would be beneficial to develop a roster for consulting and professional services. The roster shall define the type of services included as part of the process, typically segmented by consulting discipline.
- (b) The highest ranked firms shall be placed on the roster in accordance with the terms and conditions of the RFSQ. Once a roster is established, projects may be presented to firms on a rotational or "best fit" basis. For projects \$100,000 up to \$249,999, a Request for Quote shall be requested from all Vendors listed on the roster.
- (c) Projects shall be awarded fairly to all consultants on the roster. The Director shall ensure that there is a reasonably equitable distribution of the work, based on the total dollar value of the

projects awarded, during the term of the roster, unless a Request for Quotation process was completed.

### 3.09 Authority of Department Staff

References within Table One or within the remainder of this policy to “Department Staff” or “Operating Departments” shall not be deemed to confer upon any staff member any jurisdiction or authority which that staff member would not otherwise have and, without limiting the generality of the foregoing, nothing in this policy shall diminish or reduce any reporting relationship or the authority of management to give direction to subordinate employees.

### 3.10 Prohibited Classes of Vendor

- (a) The City shall not acquire goods and services from any of the following:
  - (i) Municipal Councillors;
  - (ii) Staff of the municipality at or above the level of Director; or
  - (iii) Corporations or partnerships in which the individuals in (i) or (ii) hold a “controlling interest”. For purposes of the foregoing, “controlling” shall be interpreted and applied in the same manner that it is defined and applied in the Income Tax Act (Canada).
- (b) In any solicitations which occur by way of Request for Expressions of Interest, Request for Quotations, Request for Tender, Request for Proposal, or Request for Supplier Qualification information shall be solicited which shall permit the City to determine whether the prohibition in (a) will be contravened. The Purchasing Officer shall, unless he or she has actual notice to the contrary, be entitled to rely upon any certificate or affidavit so produced.
- (c) When acquiring goods and services on behalf of local boards or subsidiaries of the municipality, the requirements of (a) above shall be deemed to include members or staff having an equivalent level of the local board or subsidiary as applicable.
- (d) Nothing in (a) above shall prohibit the supply of the normal functions of the office or employment of municipal staff or members of Council to the municipality.

## **CHAPTER 4**

### **NON-COMPETITIVE PROCUREMENT**

#### **4.01 General Rule**

Unless permitted by a specific exception within this Policy, all acquisitions of goods and services made pursuant to this Policy shall include a competitive process.

#### **4.02 Exceptions**

In acquiring goods and services for the municipality, non-competitive procurement processes may be used in the following circumstances:

- (a) Informal procurements under \$5,000, as set forth in Table One;
- (b) For procurements of goods and services where there is a statutory or market based monopoly; or in circumstances where in the Purchasing Officer has concluded that market conditions make it impractical to use competitive procurement processes;
- (c) For procurements of goods and services where the required item is covered by an exclusive right such as a patent, copyright or exclusive licence;
- (d) For procurements of goods and services when the City is exercising an existing “option to buy” where such option to buy was obtained through a competitive process or pursuant to specific Council approval;
- (e) For procurements of goods and services when in the opinion of the Purchasing Officer it is important to acquire compatible goods or services and compatible goods or services are only available from a particular Vendor;
- (f) For procurements of goods and services when the acquisition of the goods and services are necessary to respond to an emergency and there is insufficient time to use competitive procurement processes;
- (g) In any case where Council has granted specific approval for the use of non-competitive procurement processes;
- (h) In any case where Council has approved a specific standard for goods or services, and the approval of the standard necessarily implies that non-competitive procurement processes will be used;
- (i) In any case where elsewhere within this Policy the use of non-competitive procurement processes is expressly authorized;
- (j) In any case involving the acquisition of unique historical artifacts;
- (k) In any case where the goods and services are being acquired from one of the City’s wholly owned subsidiaries;

- (l) When no compliant submissions have been received in response to a competitive solicitation, and the Purchasing Officer has concluded that it would be impractical to issue a further competitive solicitation; or
- (m) To permit a temporary extension of no more than six (6 months) of an existing contract that has expired or is about to expire to permit the uninterrupted supply of goods and services while a new solicitation is being prepared.

## **CHAPTER 5**

### **ACQUISITION OF CONSULTING SERVICES**

#### **5.01 Considerations in the Engagement of Consulting Services**

While price is always an important consideration in any procurement, when consultants are being engaged by the municipality, price is very often secondary to considerations of the experience and qualifications of the proposed consultant examined in light of the requirements of the particular project or engagement for which the consultant is being retained.

#### **5.02 Use of Two-Envelope Processes**

- (a) When acquiring consulting services and where an evaluation of experience and qualifications is required, the City shall employ the Two-Envelope Process and shall only consider the financial envelope containing the prices of bidders if the technical envelope has permitted the evaluation committee to determine that the bidder has the necessary technical and qualitative requirements to perform the consulting engagement.
- (b) The evaluation committee shall be composed of the Purchasing Officer or designate and such other individuals as may be appointed thereto by the General Manager (or the City Manager where applicable) responsible for the project. In addition to the other members of the committee appointed by the General Manager or City Manager, the General Manager (or City Manager, as the case may be) may also place himself or herself on the committee.
- (c) As an alternative to the Two-Envelope process when acquiring consulting services the Purchasing Officer may choose to engage in a preliminary Request for Supplier Qualification process to select not less than three qualified bidders who shall be invited to make a submission in response to a formal Solicitation. In circumstances where such a choice has been made to proceed through a preliminary Request for Supplier Qualification process, an evaluation committee composed exactly as set forth in (a) and (b) above shall be established to determine the list of qualified bidders who shall receive an invitation.
- (d) Solicitations for consulting services shall include evaluation criteria consistent with section 1.01 of this Policy to be used in the selection process.

#### **5.03 Procedures**

- (a) The Purchasing Officer may make written procedures from time to time consistent with the requirements of this Policy to reflect best purchasing and acquisition practices respecting the solicitation of consulting services.
- (b) Procedures enacted pursuant to (a) shall have been approved by the Senior Management Committee of the City.
- (c) Where the Purchasing Officer has developed procedures in accordance with (a) above, operating departments shall follow such procedures.

## **CHAPTER 6**

### **SELECTION OF SUCCESSFUL VENDORS**

#### **6.01 General Rule**

- (a) Unless permitted by a specific exception within this policy, whenever a competitive process is used to acquire goods and services for the municipality, the Vendor who has made the lowest responsive submission shall be awarded the contract to supply the goods and services to the municipality.
- (b) The rule in (a) shall be read with necessary modifications when a solicitation includes a revenue component. In such circumstances, the Vendor who has made the responsive submission which has the best financial impact on the municipality shall be awarded the contract to supply the goods and services to the municipality.
- (c) When possible, solicitations should include specific reference to those components of the definition of lowest overall cost which pertain to the competition and shall be used in the analysis of submissions.

#### **6.02 Exceptions**

In acquiring goods and services for the municipality, the general rule in section 6.01 shall not apply in the following circumstances:

- (a) When there has been a documented failure of the Vendor to provide appropriate performance in past procurements with the City; and the Purchasing Officer gave notice to the Vendor at the time of the non-performance that the Vendor's default would be taken into account in future competitions involving the Vendor;
- (b) When factors other than price are specifically solicited by the municipality and after taking these other factors into account, the municipality has determined that the contract to supply the goods and services should not be awarded to the lowest responsive bidder;
- (c) When considering proposals submitted in response to a request for proposals;
- (d) When there are litigious circumstances as set forth in Section 6.04; and
- (e) In solicitations for consulting services as set forth in Chapter 5.

#### **6.03 Procedures**

- (a) The Purchasing Officer shall make written procedures from time to time consistent with the requirements of this Policy to reflect best practices for the documentation of past failures of Vendors to provide appropriate performance in past procurements.
- (b) Procedures enacted pursuant to (a) shall have been approved by the Senior Management Committee of the City.

- (c) Where the Purchasing Officer has developed procedures in accordance with (a), operating departments shall follow such procedures and shall cooperate with the Purchasing Officer in the documentation of such past failures.

#### 6.04 Litigation Exclusion Provision

- (a) The City, acting through the City Treasurer in consultation with the City Solicitor, may in its absolute discretion after considering the criteria outlined in subsection (b), reject a quotation, tender or proposal submitted by a Vendor if the City is engaged in legal action against the Vendor, or if the Vendor or any officer or director of the Vendor is engaged, either directly or indirectly through a corporation or personally, in a legal action against the City, its elected representatives, appointed officers, or employees, in relation to:
  - (i) any other related contract or services; or
  - (ii) any matter arising from the City's exercise of its powers, duties, or functions.
- (b) In determining whether or not to reject a quotation, tender or proposal under this clause, the City Treasurer and the City Solicitor will consider whether:
  - (i) the litigation is likely to adversely affect the Vendor's ability to work with the City, its consultants and representatives; or
  - (ii) the City's experience with the Vendor indicates that the City is likely to incur increased staff and legal costs in the administration of the contract if it is awarded to the Vendor; or
  - (iii) the Vendor has been convicted of a criminal act against the City or one of its local boards or corporations; or
  - (iv) the Vendor has failed to satisfy an outstanding debt to the City or one of its local boards or corporations; or
  - (v) there are reasonable grounds to believe it would not be in the best interests of the City to enter into a contract with the Vendor.
- (3) The Purchasing Officer is to advise Council by way of a memorandum when the City Treasurer intends to exercise his or her discretion to reject a quotation, tender or proposal in accordance with subsection (a).

**CHAPTER 7**  
**PROCUREMENTS WHICH MUST BE AWARDED BY COUNCIL**

7.01 General

The rules for determining whether or not it is Council or staff which must award particular procurements and contracts are generally contained within Table One, as interpreted in conjunction with the definition of the term “pre-approved solicitation” in Section 1.05.

7.02 Contracts Which Must Be Awarded by Council

Despite the contents of Table One or any other requirement of this Policy, the following contracts shall be awarded by Council and not Municipal Staff:

- (a) Contracts for the supply of goods and services which have a term of one year and a day, or greater, provided that the foregoing shall not apply to:
  - (i) a contract which includes a non-binding option under which the City may obtain not more than four successive one-year extensions of the term;
  - (ii) a contract which includes a non-binding option under which the City may obtain not more than two successive multi-year extensions of the term provided the initial multi-year term was approved by Council;
  - (iii) a contract for which funding is to be paid from an account or accounts which have been approved as part of a multi-year budget pursuant to the Municipal Act, and the contract is within the limits of such multi-year budget, as approved;
  - (iv) a contract awarded following a solicitation for which Council has made a specific exception pursuant to this subsection;
  - (vi) a contract under which the total amount to be paid over the full term of the contract will not exceed five thousand dollars (\$5,000.00); or
  - (vii) a standing offer agreement for a multi-year roster.
- (b) Contracts which are proposed to be awarded to one or more members of the staff of the City of Brantford or to corporations or partnerships which are controlled by one or more staff of the City of Brantford. For purposes of the foregoing, “controlled” shall be interpreted and applied in the same manner that it is defined and applied in the Income Tax Act (Canada);
- (c) Contracts awarded pursuant to Section 3.05(b); and
- (d) Such other specific contracts as Council may from time to time specify by Resolution, provided that the addition on a general or continuing basis of any class or variety of contract which shall thereafter be awarded by Council must be approved through a By-law which amends this Policy.

### 7.03 Information to be Obtained

In any solicitations which occur by way of Request for Expressions of Interest, Request for Quotations, Request for Tender, Request for Proposal, Request for Supplier Qualification a certificate or affidavit shall be solicited verifying whether or not any of the items in Section 7.02 apply. The Purchasing Officer shall, unless he or she has actual notice to the contrary, be entitled to rely upon any certificate or affidavit so produced.

## **CHAPTER 8**

### **UNFORSEEN AND CONTINGENT EVENTS**

#### 8.01 Introduction

- (a) The acquisition of goods and services is sometimes complicated by the happening of events and circumstances which are either entirely unforeseen or are foreseen with greater or lesser degrees of probability.
- (b) The purpose of this Chapter is to make provision for the treatment of some of the more common examples of the foregoing. It is not intended to provide an exhaustive description of all possibilities.

#### 8.02 Insufficient Budget at Time of Award of Solicitation

In the event that all submissions received in response to a solicitation exceed the funds available for the completion of the project, the municipality may pursue the following options:

- (a) The municipality may add funds to those already allocated to the project so that there are sufficient funds to enable the municipality to select a submission;
- (b) All submissions may be rejected and the City may cancel the solicitation and abandon the procurement of the good or service;
- (c) All submissions may be rejected and the City may engage in a further solicitation, either with amendments; or without amendments and a reasonable delay in time from the preceding solicitation. Before proceeding to engage in a further solicitation which does not include any significant amendment from the preceding solicitation, the Purchasing Officer shall consider whether any unfair advantage will be obtained by any person by so proceeding, and the Purchasing Officer shall consult with the City Solicitor with respect to same; or
- (d) If the lowest submission is within 15% of the available funds (excluding HST), the City may negotiate with the Vendor who submitted the lowest responsive submission in an attempt to achieve the acquisition of the goods and services at a price which fits within the available funds. The City may proceed to the Vendor who submitted the next lowest responsive submission in the event that negotiations are unsuccessful, and so on until the City is able to negotiate a price or the City chooses to abandon the process and reject all submissions. For purposes of the foregoing, negotiation may include minor adjustments in the specifications of the goods and services to be acquired, and the minor adjustment of other obligations of the parties.

#### 8.03 Additional Costs Encountered During Completion of Contract or Project

- (a) Whenever any purchase of goods or services has been authorized pursuant to this Policy, the responsible Operating Department may authorize the disbursement of additional funds to complete the purchase of goods and services where unexpected contingencies have arisen for which no or insufficient provision has been made, provided that:

- (i) When dealing with acquisitions up to \$100,000, such additional funds shall not exceed the lesser of 15% of the original contract, or \$15,000;  
or  
When dealing with acquisitions over \$100,000, such additional funds shall not exceed the lesser of 10% of the original contract, or \$100,000; and
  - (ii) the additional funds are required in order to complete the work set out in the original contract; and
  - (iii) there are sufficient funds in the applicable department budget to pay the additional funds.
- (b) Where the original contract for the acquisition of goods and services was approved by Council, a further approval of the amounts permitted to be disbursed pursuant to (a) above shall not be required unless a contrary intention was expressed in the original Council approval.
- (c) If the rules in (a) and (b) are insufficient to provide the additional funds required to complete the work set out in the original contract, a further approval shall be required in respect of the funds, obtained as follows:
- (i) If the contract was originally approved by Council, the additional funds required to complete the work shall be requested from Council; or
  - (ii) If the contract was originally approved by Staff, the additional funds required to complete the work shall be requested from the applicable General Manager.

#### 8.04 Application of Amounts Set Aside as a Contingency

- (a) Department Staff are encouraged to make reasonable provision for probable contingencies in the development of the Estimated Value of Goods and Services, the specifications, and the contract documents for the acquisition of goods and services for the municipality.
- (b) In the event that a contract makes explicit provision or allowance for the happening of any contingency, the application of such provision or the expenditure of any related allowance shall be a normal part of the administration of the contract for all purposes of this Policy.

## CHAPTER 9

### PUBLIC DISCLOSURE, TRANSPARENCY AND INTEGRITY

#### 9.01 General Rule

Citizens of the City and other interested members of the public are generally entitled to know the manner in which the municipality expends funds.

#### 9.02 Application of Rule

Except where confidentiality is obligatory under the *Municipal Freedom of Information and Protection of Privacy Act* or other applicable law, all information in relation to solicitations and prices paid for goods and services may be disclosed to the public upon request.

#### 9.03 Integrity

Without limiting the application of the confidentiality provisions of the *Municipal Freedom of Information and Protection of Privacy Act* or the requirements of the Code of Conduct, no employee shall share confidential information with any potential Vendor which would cause that potential Vendor to gain an unfair advantage or to suffer any disadvantage in a competitive process for the supply of goods and services to the municipality.

#### 9.04 Notice of Collection of Personal Information under this Policy

The Municipal Freedom of Information and Protection of Privacy Act make public bodies accountable to the public and protect personal privacy. The privacy legislation stipulates a right of access to records held by public bodies and regulates how public bodies manage personal information. Personal Information, as defined in the *Municipal Freedom of Information and Protection of Privacy Act*, is collected pursuant to sections 2, 4, 8, 9, 10 and 270 of the *Municipal Act, 2001*, and may be used for (i) execution of various functions of the City; (ii) administration of contracts or relationships between the City and its employees, suppliers, service providers, contractors, partners, and other; (iii) to contact bidders, suppliers, service providers, contractors, partners and others; (iv) City's insurance purposes (including defense of claims); (v) collation of group and meta data); (vi) assessment of the City's purchasing and procurement bylaws, policies, practices, and procedures; (vii) as otherwise permitted by law. Questions about such collection should be directed to:

Purchasing Officer  
City of Brantford  
100 Wellington Square  
PO Box 818  
Brantford, Ontario N3T 5R7  
P: 519.759.4150  
Email: [purchasing@brantford.ca](mailto:purchasing@brantford.ca)

In the event a competitive bid process, additional notices of collection may be contained therein.

**CHAPTER 10**  
**ERRORS IN BINDING SUBMISSIONS**

10.01 Recognition of Issue

The municipality recognizes that binding submissions presented in response to solicitations of the municipality may from time to time contain errors, not all of which shall be fatal to the consideration of the binding submission. The purpose of this Chapter is to define the consequences of certain common errors in binding submissions which may be received by the municipality.

10.02 Consequences of Specific Varieties of Errors in Binding Submissions

The following Table Two is a list of some errors or irregularities in the submission of a binding solicitation to the municipality and the consequences associated with each such error or irregularity. Errors or irregularities which are capable of being corrected and have been corrected in accordance with Table Two shall not prevent a binding submission from being classified as “Responsive” for purposes of this policy. Table Two is not intended to provide an exhaustive description of all possibilities.

**Table Two**  
**ERRORS AND IRREGULARITIES IN BINDING SUBMISSIONS AND CONSEQUENCES**  
**OF EACH ERROR OR IRREGULARITY**

ERROR OR IRREGULARITY	CONSEQUENCE
Late submission.	Automatic rejection. Electronic Bidding System shall not accept late submissions.
Bid not submitted through electronic bidding system.	Automatic rejection.
Bid Form not signed.	Automatic rejection. Electronic Bidding System shall not accept bids unless the bidder has checked the box confirming authority to submit a bid on behalf of the bidder.
Failure to provide bid security.	Automatic rejection.
Bid security is either unenforceable, or is not fully enforceable on its face.	Automatic rejection.
Bid security not in required amount or format.	Automatic rejection.

The City is unable to verify the digital bond.	Upon request by the City, the bidder shall, within 2 business days, remedy the verification to the City's satisfaction or submit the original bid security. Failure to comply shall result in rejection.
Addendum, if issued, not acknowledged.	Automatic rejection. Electronic Bidding System shall not accept submissions where all addenda have not been acknowledged.
Failure to attend mandatory site meeting, if applicable, at the time specified in the Solicitation or failure to sign in as required in the Solicitation.	Automatic rejection.

### 10.03 Non-Binding Submission

Where the City issues a non-binding process it is not intended to create a formal, legally binding bidding process and shall not give rise to the legal rights or duties applied to a formal Contract A binding bidding process or any other legal obligations arising out of any tendering process contract or collateral contract, and instead shall be governed by the common law applicable to direct commercial negotiations.

No legal obligation regarding the procurement of any good or service shall be created until the City and the selected Vendor have entered into a written contract for the deliverables.

## **CHAPTER 11** **ENFORCEMENT**

### **11.01 Role of Purchasing Officer**

- (a) The Purchasing Officer shall enforce compliance with this Policy.
- (b) In enforcing compliance with this Policy, the Purchasing Officer may report transgressions of this Policy directly to Council, the City Manager, the City Treasurer, or such other management staff of the City who may seem appropriate to him or her in the circumstances.
- (c) It is the intention that in reporting transgressions pursuant to (b) above, the Purchasing Officer shall generally report to the next highest level in the management chain above the person who has committed the transgression, but the Purchasing Officer may report directly to a higher level if the consequences of the transgression appear especially significant to him or her.
- (d) If reporting transgressions to the City Manager or to Council pursuant to the foregoing, the Purchasing Officer shall liaise with and seek direction from the City Solicitor prior to so doing.

### **11.02 Independence of Purchasing Officer**

- (a) In fulfilling his or her role in enforcing compliance with this Policy and subject to section 11.01(d) above, the Purchasing Officer shall be independent of management structure and any inappropriate administrative or political influences.
- (b) The Purchasing Officer shall otherwise be subject to usual management and administrative control and direction, including administrative control and direction regarding his or her administrative roles and responsibilities (such as the development of procedures) pursuant to this Policy.

### **11.03 Review Rights**

For purposes of enforcement of this Policy, the Purchasing Officer shall have the right to examine any document or file in the possession of any operating department which pertains to the acquisition of goods or services by that department.

### **11.04 Training**

As a proactive means of enforcing compliance with this Policy, the Purchasing Officer shall conduct training as required to teach the requirements of this Policy to the staff of the municipality.

### **11.05 Discipline**

Breaches of this Policy by employees may be subject to disciplinary action in accordance with principles and practices enforced by the Human Resources Department.

## 11.06 Accountability

Staff is accountable for the decisions and actions which they take pursuant to this Policy and in the administration of contracts which have been awarded pursuant to this policy.

## **CHAPTER 12**

### **VENDOR PERFORMANCE**

#### **12.01 Vendor Performance Program**

- (a) The purpose of the Vendor Performance Program is to monitor the performance of Vendors who supply goods and services to the City of Brantford. It shall be a tool used by the City to hold Vendors accountable for their actions and their responsibilities under contract with the City as well as a means to communicate to the Vendor both positive and negative demonstrated performance.
- (b) A successful Vendor Performance Program shall achieve the following goals:
  - (i) helps to achieve best value for taxpayer dollars;
  - (ii) by measuring, monitoring, evaluating and reporting on vendor performance, the Program shall create an atmosphere that fosters better communication and results in improved City-Vendor relationships;
  - (iii) helps to protect the City's interest and provides transparency on what the City's expectations are, what evaluation criteria will be used to assess Vendor performance and what the outcomes will be as a result;
  - (iv) a mechanism to inform future contract award decisions and prevent contracting with repeat poor performers.

#### **12.02 Scorecard**

- (a) A Vendor Performance Scorecard ("Scorecard") shall be the tool to capture a Vendor's level of performance to the City.
- (b) A Scorecard shall be completed for all contracts with a value of or in excess of \$100,000.00 (not including HST). For any contracts valued less than \$100,000.00, a Scorecard may be completed upon request of the contract administrator or the Purchasing staff member.
- (c) A Scorecard shall be completed by the contract administrator of the client department involved in the procurement. In completing the Scorecard, the contract administrator may contact other City staff, third party vendors and consultants for their comments. Once complete, the Scorecard shall be forwarded for further comment and consideration by the Purchasing staff member.
- (d) Once complete, the Scorecard shall be forwarded to the Vendor by the Purchasing staff member. If warranted, a meeting will be scheduled with the Vendor, the contract administrator and the Purchasing staff member to discuss the Scorecard. If no meeting has been requested by the City, the Vendor has ten (10) working days to respond to the Purchasing staff member to request a meeting to discuss the Scorecard. Vendor Scorecards will be retained in the Vendor Performance Database and considered for future contract awards. Unsatisfactory performance may result in a negative outcome.

### 12.03 Poor Performance

- (a) In the opinion of the Purchasing Officer, where significant poor Vendor performance and/or professional conduct issues have occurred during the course of any contract (regardless of the dollar value), the City may proceed with a Vendor Performance Infraction or any other action deemed appropriate.
- (b) A Vendor Performance Infraction involves a three stage approach to allow the City to work with the Vendor to resolve poor performance issues. The three stages include:
- 1) Informal Discussion or Meeting between the Vendor and the Staff Department contract administrator;
  - 2) Formal Notice; and
  - 3) Final Notice.
- (c) The first and second stages shall attempt to relay the following information to the Vendor:
- documented poor performance and the impact it has had on the City's operation or project;
  - the corrective action the City expects the Vendor to take and the timeframe for completion;
  - consequences if the Vendor fails to take corrective action(s) within the agreed-upon timeframe.
- (d) In the event that the Vendor does not comply with the second stage (Formal Notice issued by Purchasing) within the agreed upon timeframe, or has defaulted further on the performance of the contract, the City may exercise its right to take remedial action with the Vendor in the form of a Final Notice (issued by Purchasing). A Final Notice may include any of the following:
- continuing to work with the Vendor to seek remediation;
  - canceling the contract;
  - excluding the Vendor from participating in any bidding process for a specific time period;
  - seek compensable damages.
- (e) The Purchasing Officer shall confer with the applicable departmental senior management and the City's Legal Division to determine any recommended remedial action. Dependent on the remedial action taken, the Purchasing Officer may wish to notify:
- the Finance Department that the contract is in default and that payments to the Vendor should be withheld until further notice from the Purchasing staff member;
  - the Vendor's surety company of the confirmed default;
  - any other department that may have any dealings or City contracts with the Vendor.
- (f) The applicable General Manager may wish to bring a report to Committee and Council requesting endorsement of the Vendor's exclusion to bid.

#### 12.04 Appeal Process

- (a) The Vendor may request a meeting to appeal a Final Notice and the cancellation of a contract and/or the exclusion to bid. The Vendor shall state the nature of its appeal in writing, giving full details and explanation as to the history of the events, addressed to the Purchasing Officer.
- (b) Upon receiving the appeal request, a meeting will take place with the General Manager of the department involved in the procurement of the good or service, the Purchasing Officer, the Purchasing staff member assigned to that procurement file and any City staff member involved in the procurement process and up to 2 representatives of the Vendor.
- (c) The Purchasing Officer shall convene the meeting between the parties within fourteen (14) days of the receipt of the appeal request. The meeting will be structured so as to provide the Vendor the opportunity to explain and support the deficiencies that have occurred and request the City to reconsider cancellation of the contract.
- (d) In the event that the General Manager and the Purchasing Officer support the cancellation of the contract and/or the exclusion of the Vendor from participation in future bid solicitations, the Vendor shall pursue the matter through the City Solicitor. The appeal claim shall then be handled by the City Solicitor or his designate.

## **SCHEDULE 1** **EXEMPTIONS**

In acquiring the following goods and services, operating departments shall not be required to follow the procedures and methods described in this Policy:

1. Transaction-specific exceptions approved by Council

Transaction-specific exceptions approved by Council from time to time through resolution, it being the intention that any new exceptions of general or continuing application will be approved by By-law as additions to this Schedule.

2. Training and Education

- (a) Conferences, conventions, workshops, courses and seminars
- (b) Magazines, subscriptions, books and periodicals
- (c) Memberships
- (d) Staff development

3. Refundable Employee Expenses

- (a) Advances
- (b) Meal Allowances
- (c) Travel and Entertainment

4. Employer's General Expenses

- (a) Reimbursed Employee expenses
- (b) Payroll and honoraria remittances
- (c) Medical exams
- (d) Government licence fees
- (e) Grants and levies payable to outside agencies
- (f) Grants pursuant to community improvement plans and other similar initiatives
- (g) Damage and insurance deductible claims
- (h) Petty cash replenishment
- (i) Tax remittances
- (j) Refunds/overpayments of taxes/fees
- (k) Payments pursuant to agreements approved by Council
- (l) Realty taxes
- (m) Payment for employment
- (n) Bank charges and services payable to the Council-approved banker
- (o) Commodity Price Hedging Agreements if done in accordance with the City policy affecting such agreements
- (p) Debenture Payments

- (q) Purchases of Investments where done pursuant to the approved investment and Financial Policies of the City
- (r) Temporary staffing agencies and services
- (s) Maintenance fees for software and computer hardware for information systems previously acquired or acquired through a bid solicitation
- (t) Goods for the purpose of retail sales (re-sale) by the City (not including items that bear the City of Brantford logo or insignia). This exemption does not include food and beverage items

5. Professional and Special Services

- (a) Special tax, accounting and audit services and advice from the Council-approved auditor
- (b) Outside Legal Services
- (c) Witness fees
- (d) Council honoraria
- (e) Real Estate Appraisals
- (f) Arbitration fees
- (g) Counseling fees
- (h) Advertising
- (i) Entertainers for theatre or special events
- (j) Medical fees

6. Utilities

- (a) Water
- (b) Sewer
- (c) Natural Gas
- (d) Electricity
- (e) Postage
- (f) Television charges

7. Real Property Interests

- (a) All real estate transactions

8. Internal Acquisitions

Except for in-house bids, this shall continue to be governed by this policy (particularly section 2.10), acquisitions of goods and services between the City's internal departments and affiliates, and by the City from its local boards.