

# **BY-LAW NUMBER 115-2007**

## **OF**

### **THE CORPORATION OF THE CITY OF BRANTFORD**

*Being a By-law to enact a Purchasing Policy*

#### **THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF BRANTFORD HEREBY ENACTS AS FOLLOWS:**

1. The attached policy is hereby enacted as a By-law of the Corporation of the City of Brantford.
2. The previous Purchasing Policy as enacted pursuant to By-law 115-2004 is hereby repealed in its entirety.
3. Administrative Policy Number 66 is hereby repealed in its entirety.
4. The City Clerk shall ensure that the Purchasing Policy shall be displayed and included on the City's web page so that members of the public and potential Vendors may have easy access to it. In addition to the Purchasing Policy, the City Clerk shall also include any procedures developed by the Purchasing Officer pursuant to the authority granted within the Policy.
5. Reference on the City's web page to the Purchasing Policies and any procedures generated thereunder may be treated separately or as part of a more general link to all of the policies and procedures of the municipality.
6. Schedule "A" of Chapter 160 of The City of Brantford Municipal Code is amended by deleting the rows entitled "Staff-approved Procurement. Tendered", "Staff-approved Procurement. Non-tendered", "Council-approved Procurement. Tendered.", and "Council-approved Procurement. Non-tendered" and substituting the following (except for the first row which reproduces the headings already within the said Chapter 160 and is added for ease of reference only) therefor:

Type of Document	Staff Position authorized to execute document	Terms, conditions, pre-requisites or other conditions which must be satisfied prior to execution
<p><b><u>Staff Approved Procurement.</u></b> (High Value within meaning of Table One in Purchasing Policy.)</p> <p>Includes all documents necessarily ancillary to the completion of the procurement of goods or services.</p>	<p>City Manager or applicable General Manager,</p> <p>PLUS,</p> <p>City Clerk</p>	<p>Procurement must have been made in accordance with the provisions of the Purchasing Policy or according to specific Council approval.</p> <p>Procurement must be within approved budget or alternative financing approved by Council.</p>
<p><b><u>Staff Approved Procurement.</u></b> (Medium Value, Level Two, within meaning of Table One in Purchasing Policy)</p> <p>Includes all documents necessarily ancillary to the completion of the procurement of goods or services.</p>	<p>Staff member of operating department with applicable signing authority,</p> <p>PLUS,</p> <p>Purchasing Officer</p>	<p>Procurement must have been made in accordance with the provisions of the Purchasing Policy or according to specific Council approval.</p> <p>Procurement must be within approved budget or alternative financing approved by Council.</p>
<p><b><u>Staff Approved Procurement.</u></b> (Medium Value, Level One, within meaning of Table One in Purchasing Policy.)</p> <p>Includes all documents necessarily ancillary to the completion of the procurement of goods or services.</p>	<p>Staff member of operating department with applicable signing authority</p> <p>or,</p> <p>Purchasing Officer</p>	<p>Procurement must have been made in accordance with the provisions of the Purchasing Policy or according to specific Council approval.</p> <p>Procurement must be within approved budget or alternative financing approved by Council.</p>
<p><b><u>Staff Approved Procurement.</u></b> (Low Value within meaning of Table One in Purchasing Policy, or matters within Schedule 1 to Purchasing Policy)</p> <p>Includes all documents necessarily ancillary to the completion of the procurement of goods or services.</p>	<p>Staff member of operating department with applicable signing authority</p> <p>or,</p> <p>Purchasing Officer</p>	<p>Procurement must have been made in accordance with the provisions of the Purchasing Policy or according to specific Council approval.</p> <p>Procurement must be within approved budget or alternative financing approved by Council.</p>
<p><b><u>Council Approved Procurement</u></b> (any value where approved by Council)</p> <p>Includes all documents necessarily ancillary to the completion of the procurement of goods or services.</p>	<p>Mayor and Clerk</p>	<p>Council approval must have been expressed through By-law.</p> <p>Procurement must have been made in accordance with the provisions of the Purchasing Policy or according to specific Council approval.</p>

7. This By-law, and the attached policy, shall come into effect immediately upon passage.

READ A FIRST TIME:  
 READ A SECOND TIME:  
 PASSED:

\_\_\_\_\_  
 MAYOR

\_\_\_\_\_  
 CLERK

**CITY OF BRANTFORD PURCHASING POLICY**



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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 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 prequalification processes set forth in Section 3.08;  
and,
- (iii) 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 prequalification processes set forth in Section 3.08;  
and,
- (iii) 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.

### 1.03 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.

### 1.04 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.

### 1.05 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.

“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.

“Prequalification Process” means a solicitation process in which detailed written submissions describing attributes such as experience, financial strength, education, or background, or other pertinent considerations are solicited in a Request for Prequalification.

“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;

“Pursuing litigation” means actually commencing and/or continuing a judicial proceeding.

“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 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 prequalification, 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.

“Threatening litigation” means transmitting a written threat to commence a judicial proceeding

“Two Envelope Method” means a procurement process in which a submission is submitted into two separate envelopes. The technical and qualitative information are submitted in the first envelope and the

price information is provided in the second envelope. The second envelope is opened 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.

## **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 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.

## 2.04 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.

## 2.05 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.

## 2.06 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 Chapter 160 of the City of Brantford Municipal Code (Routine Execution of Documents By-law).
- (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 Chapter 160 of the City of Brantford Municipal Code.

## 2.07 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) Except where surplus goods are traded in as part of a replacement purchase, or are given to another operating department within the City administration which has a use for the surplus goods or equipment, the disposal of surplus goods shall occur through a competitive public offering process. Where a public offering process is not practicable or is unsuccessful in disposing of surplus goods, disposal of the goods shall occur by transportation to the City's landfill 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 (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.

2.08 Persons with Disabilities

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 Accessibility Plan.

2.09 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.

2.10 Review of this Policy

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

2.11 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.

2.12 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. 20.

## 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**

Estimated Value of Goods and Services Not including Taxes	Low <\$5,000	Medium \$5,000 and over but < \$250,000	High \$250,000 and over
<p style="text-align: center;"><b>Permitted Method(s) of Acquisition</b></p> <p style="text-align: center;"><b>Note:</b> <b>Minimum Standards Only</b></p> <p>(See Section 3.02. More formal methods associated with high value acquisitions may still be used for lower ranked acquisitions)</p>	<p style="text-align: center;"><b>Informal Procurement</b></p> <p>May use any acquisition process</p> <p>Competition not required.</p>	<p><b>Level One. Less than \$25,000</b></p> <p>Must be at least three written quotations unless there are insufficient vendors. Public advertising <b>is not</b> required.</p>	<p><b>Requests for Proposals</b></p>
		<p><b>Level Two. \$25,000 and over</b></p> <p>Must be at least three written quotations unless there are insufficient vendors. Public advertising <b>is</b> required.</p>	<p><b>Requests for Tenders</b></p>
		<p><b>Non-competitive acquisition</b></p> <p>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.</p>	<p><b>Non-competitive acquisition</b></p> <p>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</p>
<p><b>Who will administer the acquisition process?</b></p> <p>(Note: other provisions such as Section 3.08 may apply)</p>	<p>Department Staff</p> <p>Purchasing Division staff may assist if required</p>	<p><b>Level One. Less than \$25,000</b> Department Staff, but Purchasing Division staff may assist as required.</p> <p><b>Level Two. \$25,000 and over</b> Purchasing Division Staff</p>	<p>Purchasing Division Staff</p>
<p><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, Section 3.07 etc.)</p>	<p>May be awarded by department staff with appropriate signing authority if within approved budget.</p>	<p>May be awarded by department staff (in consultation with Purchasing Division Staff) with appropriate signing authority if within approved budget.</p>	<p style="text-align: center;">Awarded by Council;</p> <p style="text-align: center;">or,</p> <p>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 “Pre-approved Solicitation”</p>

### 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. For instance, department staff may choose to use Requests for Proposals or Requests for Tenders for medium value acquisitions, despite the fact that Table One would authorize the same acquisition to occur through a Request for Quotations.

### 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 account of 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 Special Provisions regarding Engineering Works

Despite the provisions of Table One, the Purchasing Officer may permit Department Staff to administer the acquisition process if the acquisition consists of a solicitation for Engineering Works, but under no circumstances shall the administration of the acquisition by Department staff include advertising for or the opening of solicitations, which functions shall nevertheless be done by the Purchasing Division in all circumstances.

### 3.08 Prequalification Processes

(a) Except for the acquisition of consulting services in accordance with Chapter 5, it is the policy of the municipality that prequalification processes are generally discouraged in the acquisition of goods and services.

(b) Except for the acquisition of consulting services in accordance with Chapter 5 of this Policy, prequalification processes may only be used in any solicitation if the Purchasing Officer has concluded that their application is appropriate in the circumstances of the particular acquisition.

(c) In generating specifications for any prequalification process, the Purchasing Officer shall ensure that any Request for Prequalification:

- (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.

(d) Nothing in (c) above shall operate to prohibit the inclusion within any Request for Prequalification 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.

### 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.

(b) In any solicitations which occur by way of Request for Expressions of Interest, Request for Quotations, Request for Tender, or Request for Proposal, 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 apply to 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) For low-value informal procurements 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) When no 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.

## 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 the estimated cost is at the High Level of Value depicted in Table One, the City shall employ the Two-Envelope Process and shall only open the envelope containing the prices of bidders if the other 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 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 at the High Level of Value depicted in Table One, the Purchasing Officer may choose to engage in a preliminary prequalification 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 prequalification 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 with potential Vendors

(a) It is a matter of great importance to the City in the administration of contracts that the City's relationship with vendors should be as productive, amicable, and harmonious as is reasonably possible.

(b) When a potential vendor has responded to a solicitation from the municipality for the supply of goods and services to the City, and the potential vendor is:

(i) threatening litigation or pursuing litigation against the City in relation to previous contracts awarded to that bidder by the City; or,

(ii) a person against whom the City is pursuing litigation,

the City shall be entitled to reject the submission of the Vendor, despite the fact that its submission might otherwise have met the conditions which would have made it successful.

(c) All solicitations prepared by or on behalf of the City shall implement and reflect the requirements of this section.

## **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 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; or,

(iii) a contract awarded following a solicitation for which Council has made a specific exception pursuant to this subsection.

(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, or Request for Proposal, 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 engage in a further solicitation, either with or without amendments 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,

(c) If the lowest submission is within 15% of the available funds, 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 medium value and low value acquisitions, such additional funds shall not exceed the lesser of 15% of the original contract, or \$15,000;

or,

When dealing with high value acquisitions, 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 Senior Management Committee of the City.

#### 8.04 Application of amounts set aside as a contingency

(a) 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 or solicitation 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 will 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.

## **CHAPTER 10**

### **ERRORS IN SUBMISSIONS**

#### 10.01 Recognition of Issue

The municipality recognizes that 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 submission. The purpose of this Chapter is to define the consequences of certain common errors in submissions which may be received by the municipality.

#### 10.02 Consequences of specific varieties of error

The following Table Two is a list of some errors or irregularities in the submission of a 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 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 SUBMISSIONS AND CONSEQUENCES**  
**OF EACH ERROR OR IRREGULARITY**

<b>ERROR OR IRREGULARITY</b>	<b>CONSEQUENCE</b>
Late submission	Automatic Rejection
Impossible to identify either the person making the submission or the solicitation to which the submission relates from the outside of the envelope containing the submission	Automatic Rejection
Missing deposit, or deposit not contained within envelope containing submission	Automatic Rejection
Deposit or other required performance security not in required amount or form	Automatic Rejection
Deposit or other required performance security is either unenforceable, or is not fully enforceable on its face. Includes the situation where a bid bond is issued by a surety company which is not licensed in Ontario.	Automatic Rejection
Submission not written in ink or other non-erasable medium	Automatic Rejection
Submission is Qualified – i.e. contains a restriction or qualification where such restrictions or qualifications are not permitted by the solicitation	Automatic Rejection
All required items not included in submission. Including but not limited to: Missing signature, missing schedules, missing forms or other documents required by the solicitation.	Automatic Rejection
Submission not received in required form	Automatic Rejection
Any addenda to solicitation not acknowledged	May provide acknowledgement within two working days of notification of the error was given by the City, but no change in submission permitted
Submission contains obvious clerical or mathematical errors	May correct error within two working days from the time that notification of

	the error was given by the City
Item shown as a “total” or sum inconsistent with figures added	May correct error within two working days from the time that notification of the error was given by the City
Alterations have been made to the submission but have not been initialed to verify authenticity	May correct error within two working days from the time that notification of the error was given by the City
Mistake in submission not obvious on the face of the submission	No relief
Failure to attend mandatory site meeting at the time specified in the solicitation.	Automatic Rejection

## **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 are 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.

## 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:<sup>1</sup>

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.

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<sup>1</sup> Any such acquisitions shall nevertheless be deemed to have been compliant with the requirements of the Purchasing Policy for purposes of Chapter 160 of the City of Brantford Municipal Code:

- (p) Debenture Payments;
- (q) Purchases of Investments where done pursuant to the approved investment and Financial Policies of the City.

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) Counselling fees
- (h) Newspaper Advertising

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, which 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.