



By-law 2013-073
Procurement By-law

This By-law printed under and by
the authority of the Council of the
City of Barrie

A By-law of The Corporation of the City of Barrie to repeal and replace By-law 2008-121 as amended being a by-law to establish and maintain a policy concerning the procurement of goods and services.

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BY-LAW NUMBER 2013-073

A By-law of The Corporation of the City of Barrie to repeal and replace By-law 2008-121 as amended being a by-law to establish and maintain a policy concerning the procurement of goods and services.

WHEREAS the Municipal Act 2001, S.O., Section 270 requires all municipalities and local boards to establish and maintain a policy concerning the procurement of goods and services.

AND WHEREAS the Corporation of the City of Barrie is committed to ensuring its procurement decisions are fair, open and transparent;

AND WHEREAS purchases made by the City of Barrie should reflect best value for the taxpayer, protect the Corporation's financial interests and encourage competitive bidding;

AND WHEREAS the Corporation of the City of Barrie must be prepared to manage extraordinary circumstances from time to time, and that such circumstances may require immediate procurement decisions that are necessary to prevent or alleviate serious delay, a threat to public health, safety or welfare, the disruption of essential services or damage to public property or to respond to any emergency of the Corporation or as required under the provincial Emergency Management and Civil Protection Act (as amended);

AND WHEREAS effective planning, monitoring and control of public sector procurement are essential for maintaining public trust and confidence;

AND WHEREAS by motion 13-G-078, it is deemed expedient that the Council of the Corporation of the City of Barrie repeal By-law 2008-121 as amended being a by-law to establish a policy concerning the procurement of goods and services.

NOW THEREFORE the Council of The Corporation of the City of Barrie enacts as follows:

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

- 1.1 The purposes, goals, and objectives of this By-law, and of each of the methods of procurement authorized, herein are:
- a) To encourage competitive bidding;
 - b) To ensure fairness and objectivity amongst bidders during the procurement process;
 - c) To the extent possible, ensure openness, accountability and transparency while protecting the financial best interests of the Corporation and those of the Corporation's employees and elected officials;
 - d) To obtain the best value for the Corporation when procuring goods and service(s) and construction;
 - e) To avoid conflicts between the interests of the Corporation and those of the Corporation's employees and members of Council;
 - f) To promote respect for environment/human rights/international/interprovincial trade treaties or agreements/fair labour practices;

- g) To encourage the procurement of goods, services and construction with due regard to the preservation of a natural environment. To this end, a supplier may be selected to supply goods made by methods resulting in the least damage to the environment and supply goods incorporating recycled materials where practicable.
- h) To promote, and incorporate, whenever possible, the requirements of the *Ontarians with Disabilities Act, 2001* (ODA), the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA), and specifically, Ontario Regulation 429-07 and Ontario Regulation 191-11 made under the *Accessibility for Ontarians with Disabilities Act, 2005* in procurement activities of the Corporation. Considerations shall be made for the aforementioned legislation, as well as any requirements contained in other legislation (either provincial or federal) which may impact the procurement activities of the Corporation.
- i) To extend authority to the CAO and General Managers for the approval of detailed Purchasing Procedures that are consistent with the intent of the Procurement By-law and, to supplement and amend those procedures as and when deemed necessary, to meet the present and future needs of the Corporation;
- j) To support effective business planning such that goods, services and construction will only be acquired after consideration of need, alternatives, timing and appropriate life cycle management issues;
- k) To support the provision of services, the City owns and operates thousands of assets and in doing so, incurs costs throughout the entire lifecycle of each of those assets. It is essential that the City have a comprehensive understanding of all activities and associated costs that are required in order for each asset to realize their respective Maximum Potential Useful Life. The City will consider all costs, including, but not limited to, acquisition, operating, training, maintenance, quality, warranty, payment terms, lifecycle intervention costs, disposal value and disposal costs in evaluating bid submissions from, responsive and responsible bidders. Where costs are submitted for more than one year, the net present value of the annual costs will be used to evaluate the costs.
- l) To reduce the risk of vendor dependency such that suppliers shall not be permitted to gain a monopoly a particular type of service and relationships shall not be created which may result in a continuous reliance on a particular supplier;
- m) To comply with the requirements of Section 271 of the *Municipal Act, S.O., 2001*, as amended from time to time;

2 APPLICATION OF BY-LAW

- 2.1 This By-law shall apply to staff in all departments of the Corporation and may be adopted in principle and, at their own discretion, by affiliate boards and commissions of the Corporation.
- 2.2 No purchase for goods, service(s), construction or disposal of personal property and real property shall be authorized unless it is in compliance with this Procurement By-law.
- 2.3 The open and competitive purchasing procedures set out in this By-law shall not apply to the purchase of those services set out in **Schedule "A"** attached, provided that the total cost of the purchase does not exceed the amount approved for such expenditures.
- 2.4 No contract for goods, service(s) or construction shall be structured in such a manner so as to circumvent any intent and/or thresholds of this By-law.
- 2.5 Any procurement undertaken or requested by an individual must be of an aggregate value that is within their authorization limit and, should the value exceed their limit, the procurement must have prior authorization of their supervisor that would have an authorization limit that would meet or exceed the aggregate value of the procurement
- 2.6 No purchase shall be processed for personal items of direct benefit to employees of the Corporation or any member of Council except, where permitted by policy, or under the auspices of a Corporation sponsored employee program or such purchase is approved in advance by the CAO.
- 2.7 No goods and/or services shall be purchased from an employee of the Corporation, or any associate or family member of an employee, unless the extent of the interest of such individual has been fully disclosed to the Manager of Purchasing and the purchase has been subsequently approved by the CAO.
- 2.8 No staff member or member of Council shall personally obtain any real or personal property that has been declared surplus, unless it is obtained through a public process.
- 2.9 No employee or Council member shall purchase, on behalf of the Corporation, any goods, service(s) or construction, except in accordance with this By-law.
- 2.10 All procurement undertaken by the Corporation shall be in accordance with the Corporation's code of conduct, policies and procedures manual and in accordance with the *Municipal Conflict of Interest Act, R.S.O. 1990, c.M.50*.

- 2.11 Where an applicable national (i.e.: *Agreement on Internal Trade* (AIT)) or international trade agreement is in conflict with this By-law, the trade agreement shall take precedence.
- 2.12 The Corporation may only enter into a financing lease in accordance with the Corporation's finance lease policy.
- 2.13 The Manager of Purchasing, with concurrence of the opinion of the City Solicitor, may use the privilege clause for consideration of the acceptance or rejection of any bid received by the Corporation pursuant to this By-law.

3 DEFINITIONS

3.1 In this By-law,

- a) "Acting" means the formal delegation of approval by the person in the position of authority to the person acting in that role on a temporary basis.
- b) "Authority" or "Authorized" means the legal right to conduct the tasks outlined in this By-law as directed by Council and delegated through the office of the CAO to the General Manager of Corporate Services or any successor and subsequently to the Manager of Purchasing. Authorized purchases are those that have prior approval of Council either through resolution or through the departmental budgets.
- c) "Award or Acceptance" means authorization to proceed with the purchase for goods, service(s) or construction from one or more selected supplier(s)/contractor(s).
- d) "Agreement" means a binding contract between the City and one or more parties, which has been duly authorised and executed in accordance with this By-law and other applicable legislations.
- e) "Approval" means the act of approving in accordance with delegated authorities.
- f) "Best value" means the optimal balance of performance and cost determined in accordance with pre-defined evaluation criteria. Best value may include a time horizon that reflects the overall life cycle of a given asset.
- g) "Bid" means an offer or submission from a bidder/proponent or Offeror in response to a call for bid and in accordance with the terms and conditions of the Corporation's bid documents.
- h) "Bid Bond" means an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees the bidder will not withdraw the bid, the bidder will furnish bonds as required, and if the contract is awarded to the bonded (insured) bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.
- i) "Bid Irregularity" means a deviation from the requirements of a call for bid, as set out in **Schedule "B", Chart of Bid Irregularities**.
- j) "Bidder" means one who submits a response to a call for bid.
- k) "Bid Deposit" means a sum of money or a bond issued by a surety (as per the Instructions to bidders in the call for bid) and submitted with the bid, guaranteeing the bidder will not withdraw the bid for a specified period of time, will furnish bonds or letter of credit as required, and will accept the contract, if awarded, or forfeit the deposit.
- l) "Bid Solicitation" means a formal competitive procurement process, such as a Request for Quotation, Proposal or Tender.
- m) "Bond" means a form of financial protection against damages; a binding agreement executed by a contractor and a 3rd party (surety) to guarantee the performance of certain obligations or duties to the Corporation.
- n) "CAO" means the Chief Administrative Officer of the Corporation of the City of Barrie or designate.
- o) "City Solicitor" means the Solicitor of the Corporation of the City of Barrie.
- p) "Contract" means a written, legal, bilateral and binding agreement or contract, signed by both parties, for the supply of goods, services or construction in return for money or other consideration.
- q) "Contract Security" means a "Performance Bond", "Labour and Material Bond", Irrevocable Letter of Credit" or other form of acceptable monetary security.
- r) "Contractor" means the person having a contract with the Corporation to furnish goods, service(s) or construction for agreed upon price(s).

- s) "Construction" means the process of utilizing labour to build, alter, repair, improve or demolish any structure, building or public improvement, generally does not apply to routine maintenance, repair or operations of existing real property.
- t) "Cooperative Purchasing" means the action taken when two or more Public Sector entities combine their requirements to obtain advantages of volume purchases including administrative savings and other benefits. A variety of arrangements whereby two or more public procurement entities purchase from the same supplier(s) or contractor(s) using a single call for bid.
- u) "Consulting Services" means services provided by architects, engineers, designers, surveyors, geo-technical consultants, planners, software consultants, and any other similar services rendered on behalf of the Corporation.
- v) "Corporation" means the Corporation of the City of Barrie.
- w) "Council" means the Council of the Corporation.
- x) "Department" means a department of the Corporation.
- y) "Department Head" means a Director, City Clerk, Fire Chief, or respective designate, of the Corporation who is responsible for a specific department.
- z) "Designate" means a person authorized by the CAO, General Manager, Director, or Manager to act on his/her behalf, for the purpose of this By-law.
- aa) "Disposal" means an act through which the City gives up title to real or personal property, and includes sale as a result of a Call for Bids or Public Auction, returning to original suppliers, through the recycling process or applicable waste stream.
- bb) "Evaluation Committee" means a component of the request for proposal process, whereby a committee is established to conduct proposal reviews, evaluations, interviews, and/or presentations during the proposal evaluation for goods, service(s) or construction. Usually comprised of three or more persons from the functional area identified in the scope of work and facilitated by a member of the Purchasing Branch.
- cc) "Evaluation Criteria" means the criteria to be used in Request for Proposals to determine which respondents proposal best meets the City's needs, and can include but not limited to , company background, project team and manager, related experience, availability for duration of works, comprehension, understanding and approach to works, planning and resources, innovation, schedule of fees, quality of service, compatibility, product reliability, operating efficiency/costs, and other factors deemed appropriate.
- dd) "Executive Management Team" means the management group consisting of the CAO and General Managers of all divisions.
- ee) "Exempt Purchases" are purchases are allowable exemptions as defined in the Agreement on Internal Trade, and in general obtaining quotes are not possible or viable; however does not preclude staff from conducting due diligence to ensure best value is achieved.
- ff) "Extraordinary Circumstance (Emergency) Purchases" means an event or circumstance where the immediate purchase for goods or service(s) or the entering into of a construction contract is essential or necessary to prevent or alleviate serious delay, a threat to public health, safety or welfare, the disruption of essential services or damage to public property or any other expenditure that is necessary to respond to any emergency of the Corporation or as required under the provincial *Emergency Management and Civil Protection Act* (as amended).
- gg) "General Manager" means a person appointed by Council with administrative responsibilities for a division consisting of a group of departments.
- hh) "Goods" means moveable property including the costs of installing, operating, maintaining, or manufacturing such moveable property, and any necessary raw materials, products, supplies, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a construction contract.
- ii) "Irrevocable Letter of Credit" means a document issued by a bank or, credit union as authorized by city policy, authorizing the bearer to draw upon a specified amount from that bank or its agent; a letter or similar statement extending credit up to a given amount at certain affiliated banks for a person who has paid or guaranteed that amount to the issuing bank, may be considered in lieu of a performance, labour and material bond or other prescribed surety.
- jj) "In-House Bid" means a bid made by a department and authorized by the General Manager responsible for that department, submitted in response to a call for bid, where the provision of the goods or services will be entirely by the employees of the corporation.

- kk) "Labour and Material Bond" means a bond that assures payments, as required to all persons supplying labour or material for the completion of work under a contract.
- ll) "Low Cost Purchase" (LCP) means a purchase for goods, service(s) or construction, as per the thresholds stated in **Schedule "C"** of this By-law (excluding taxes) and, is not included as part of an existing supply agreement or available through the Corporation's existing materials inventory,.
- mm) "Lowest Compliant Bid" means the bid of a responsive and responsible bidder who fully complied with all of the call for bid requirements and whose past performance, reputation and financial capability is deemed acceptable and has offered the most advantageous pricing or cost benefit based on the criteria stipulated in the call for bid.
- nn) "Manager of Purchasing" means the Manager of Purchasing or designate who is responsible for the Corporation's procurement function and is hereby authorized to act as agent in all such matters pertaining thereto.
- oo) "Offeror" means a person or company that makes an offer in response to a sale of personal or real property.
- pp) "Performance Bond" means an instrument executed, subsequent to award, by the successful bidder that protects the Corporation from loss due to the bidder's inability to complete the contract as agreed. A risk mechanism satisfactory to the Corporation that secures the fulfillment of all contract requirements. The performance bond shall be from an Ontario based surety company and in a form satisfactory to the Corporation.
- qq) "Personal Property" means tangible or intangible property, other than real property. Movable property subject to ownership, with exchange value.
- rr) "Privilege Clause" means the Corporation may not accept the lowest or any submission for award.
- ss) "Procurement" means purchasing, renting, leasing or otherwise acquiring any goods, service(s) or construction; includes all functions that pertain to the acquisition, including the description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.
- tt) "Proponent" means one who submits a response to a request for proposal (RFP).
- uu) "Proposal" means the submission received or the response to a request for proposal (RFP).
- vv) "Purchase Order" means the Corporation's written document to a vendor formalizing all the terms and conditions of a proposed transaction. The purchase order issued by a duly authorized employee of the Corporation, to a supplier/contractor, is a written or verbal acceptance of an offer received in accordance with this By-law.
- ww) "Purchasing Card" means a payment method whereby duly authorized employees of the Corporation are empowered to purchase directly from suppliers/contractors/vendors using a credit card provided by the Corporation, as issued by a bank or major credit card provider and, in accordance with a written card holder agreement and procedure.
- xx) "Purchasing Branch" means the branch of the Finance Department responsible for the procurement of goods, service(s), and construction for the Corporation.
- yy) "Purchasing Review Committee" means two or more persons designated by the Executive Management Team and the Manager of Purchasing that would be assembled to collectively review bid irregularities or other matters pertaining to a procurement with the objective of presenting a solution, recommendation or otherwise resolve an issue.
- zz) "Real Property" means Land and its permanently affixed buildings or structures. Any property which is not personal property.
- aaa) "Request for Expression of Interest" (RFEOI) means a request which will be used to determine the interest of the market place to provide goods or service(s) which the Corporation is contemplating purchasing.
- bbb) "Request for Information" (RFI) means a non-binding solicitation of input from interested parties with respect to a possible future procurement process. This is a common procurement practice used to obtain product/service details, comments, feedback or reactions from potential suppliers/contractors prior to the issuing of a call for bid. A firm price or cost information is not required. Feedback may include best practices, industry standards, technology issues, etc.

- ccc) "Request for Pre-Qualification" (RFPQ) means a request for the detailed submission of the experience, financial strength, education, background and personnel or individuals, firms or Corporations who may, from time to time, qualify to supply goods, service(s) or construction to the Corporation, but which does not create any contractual obligation between the respondent submitting the pre-qualification submission and the Corporation, but which may be a pre-condition to a further procurement contract(s) with the Corporation.
- ddd) "Request for Proposal" (RFP) means the request for proposals from proponents for goods, service(s) or construction and is generally based on providing a solution to objectives stated within applicable terms of reference. The request document must clearly state the evaluation criteria and weighting and, price may not be the primary evaluation factor and subsequent award recommendation.
- eee) "Request for Quotation" (RFQ) means a request for quotation for the provision of goods, service(s) or construction to the Corporation based on defined requirements and where a clear solution exists.
- fff) "Request for Tender" (RFT) means a request for tenders for the provisions for goods, service(s) or construction to the Corporation, based on defined requirements and where a clear solution exists.
- ggg) "Responsible Bidder or Proponent or Offeror" means a bidder/proponent/offeror, as the context requires, that is fully capable and qualified to meet all the requirements of the call for bid, or other process, and shall be duly authorized to enter into a subsequent contract agreement on behalf of the named submitter, as may be applicable. Such bidder/proponent/offeror shall possess the capacity and ability, including financial and technical, to perform as contractually required and, shall be able to provide credible and acceptable documented evidence to ensure good faith performance.
- hhh) "Respondent" means one who submits a response to a request for a submission.
- iii) "Responsive Bidder or Proponent or Offeror" means a bidder/proponent/offeror who has submitted a responsive bid/proposal/offer to a call for bid, or other such process, that fully conforms in all material respects of the call for bid and all of its requirements, including all form and substance.
- jjj) "Service" means the furnishing of labour, time or effort by a contractor/supplier, which may involve to a lesser degree, the delivery or supply of products.
- kkk) "Single Source" means a procurement decision whereby purchases for goods, service(s) or construction are directed to one source, where other sources may be available.
- lll) "Sole Source" means there is only one source of supply as a result of a patent or copyright.
- mmm) "Supplier" means the person actually performing services(s) or manufacturing, producing, or providing goods to the Corporation.
- nnn) "Surety" means a pledge or guarantee by an insurance company, bank, individual or Corporation on behalf of the bidder/proponent/offeror which (the surety) protects against default or failure of the principal to satisfy the obligations of a contract.
- ooo) "Tie Bid" means two or more compliant bids/proposals/offers goods, service(s) or construction that is equal in all respects including price.
- ppp) "Total Acquisition Cost" means the aggregate cost of a single purchase award transaction, or purchase order award amount and, includes the extended amount of the unit value, including any ongoing relevant service charges, fees, etc. applicable to the purchase, all applicable taxes, freight, duty, licensing and other related costs, less any applicable rebates or discounts.
- qqq) "Total Cost of Ownership and TCO Analysis" means a measure of all of the cost components associated with the procurement of a product or service. The sum of all fixed and variable costs attributed to a product or service. A philosophy of understanding all supply chain related costs of doing business with a particular supplier for a particular good or service. A TCO analysis is used to gauge the viability of any capital investment and is used as a product/process comparison tool. TCO directly relates to an asset and/or related systems total costs thus giving a picture of the cost over the life of the asset.
- rrr) "Two Envelope Process" means a Request for Proposal where the proposal details and price information are submitted in separate envelopes within the submission package and designed to permit review and evaluation of proposal content without the knowledge or influence of price.

3.2 To establish the definition of any other Procurement term not herein included, reference shall be made to the latest edition of the National Institute of Governmental Purchasing (NIGP) Public Procurement Dictionary of Terms.

INTERPRETATION

- 4.1 That words imparting the singular number or the masculine gender only include more persons, parties or things of the same kind than one, and females as well as males and the reverse.
- 4.2 That a word interpreted in the singular number has corresponding meaning when used in the plural.
- 4.3 That the dollar values stated are in terms of Total Acquisition Cost excluding applicable taxes.
- 4.4 That the headings contained in this By-law are for reference only.
- 4.5 That Schedule "A"- Purchasing Exemptions is incorporated into this By-law.
- 4.6 That Schedule "B"- Chart of Bid Irregularities is incorporated into this By-law.
- 4.7 That Schedule "C"- Thresholds of Procurement is incorporated into this By-law.
- 4.8 That Schedule "D"- Reporting Procedures is incorporated into this By-law.
- 4.9 That Schedule "E"- Statement of Ethics for Public Purchasers is incorporated into this By-law.
- 4.10 That Schedule "F" to this Bylaw – Green (Sustainable) Procurement forms an integral part of this By-law.
- 4.11 That Schedule "G" to this Bylaw – Fair Trade Certified Products forms an integral part of this By-law.

5 RESPONSIBILITIES AND AUTHORITIES

- 5.1 **Purchasing Branch** – the Purchasing Branch is responsible for:
 - 5.1.1 Providing procurement advice and related services, including the necessary forms, contracts, and bid document templates that may be required by departments, the CAO and Council for the purposes of fulfilling the procurement needs of the Corporation;
 - 5.1.2 Facilitating all aspects for the call for bid including opening and ensuring compliance with the terms and conditions of the call for bid;
 - 5.1.3 Notifying the market, receiving, opening and reviewing all bids;
 - 5.1.4 Ensuring compliance with this By-law and reporting non-compliance, in writing, to the appropriate Department Head, Director of Finance, General Manager of Corporate services, the CAO and Council, where warranted;
 - 5.1.5 The standardization of goods and service(s) in conjunction with departments, where appropriate and feasible;
 - 5.1.6 The consolidation of all similar goods and service(s) where appropriate and possible;
 - 5.1.7 The disposal of personal property which has been declared surplus by a Department Head;
 - 5.1.8 Acting as the Corporation's representative with Co-operative Purchasing initiatives with other members of the broader public sector, or private sector entities, where such involvement is determined to be in the best interests of the Corporation; and
 - 5.1.9 Compliance with section 1 purposes, goals, and objectives of this By-law and;
 - 5.1.10 Where a tender/proposal has been approved by Council and awarded to the successful bidder/proponent and the successful bidder/proponent fails to enter into a contract or other obligation of the award, the Manager of Purchasing shall be granted the authority to proceed to the next lowest responsive and responsible bidder or the next highest evaluated responsive and responsible proponent for a proposal call, for the award of this contract, without going back to Council for approval, providing there are no bid irregularities, requirements remain unchanged and the new contract would be within budget. The authorization shall be granted in succession by the Department Head for the respective project and the General Manager of Corporate services and, the Manager of Purchasing shall prepare a report to the Director of Finance for information purposes.
- 5.2 **General Managers and Department Heads** – General Managers and Department Heads shall have the responsibility and authority for all procurement activity within the prescribed limits of this By-law, to delegate authority approval limits to staff for procurement in compliance with this By-law and all applicable policies to ensure:

- 5.2.1 That all of Section 1 Purposes, Goals, and Objectives of this By-law are complied with;
- 5.2.2 That all procurement activities and decisions shall be authorized by this By-law and shall be carried out within the financial and other limits set out herein;
- 5.2.3 That no procurement activity or decision shall be contrary to this By-law;
- 5.2.4 That no procurement activity or respective decision shall be contrary to any specific direction of the CAO, a General Manager, the Director of Finance, the Purchasing Branch or Council
- 5.2.5 That monitoring of all contract expenditures and financial limitations have been complied with;
- 5.2.6 That payments to suppliers are approved for processing within the times set out in the contract, provided the supplier/contractor has met all conditions of the contract;
- 5.2.7 That all goods, service(s) or construction contracted for have been received and accepted;
- 5.2.8 That the authority to award a Contract is subject to the specific item of procurement being clearly identified within the appropriate account(s) of a Council approved budget or specific council authority and, the availability of sufficient funds in appropriate accounts and/or where a determination is made by the Director of Finance confirming that the required funding is part of the annual base budget.

5.3 **Chief Administrative Officer (CAO)** – The CAO is responsible for:

- 5.3.1 Ensuring General Managers and Department Heads adhere to the Procurement By-law, to submit recommendations to Council for approval, and provide additional restrictions concerning procurement where such action is considered necessary and in the best interest of the Corporation and;
- 5.3.2 Awarding contracts during the time that regular Council meetings are suspended, during a period of recess, for single and sole source purchases, or as a result of a call for bid, provided that a report is submitted to Council, as soon as reasonably possible, setting out the details of any contract awarded pursuant to this authority.

6 PRESCRIBED COUNCIL APPROVAL

- 6.1 Despite any other provision of this By-law, save and except for the circumstances in Section 5.3 CAO authority, the following contract awards are subject to Council approval:
 - 6.1.1 Any contract requiring approval from the Ontario Municipal Board;
 - 6.1.2 Any contract prescribed by statute to be made by Council;
 - 6.1.3 Any contract that requires debt financing;
 - 6.1.4 Any contract prescribed by a court order;
 - 6.1.5 Where the Procurement By-law is being waived;
 - 6.1.6 Where Council has expressly directed staff to report prior to award;
 - 6.1.7 Where authority to approve has not been expressly delegated;
 - 6.1.8 Where a submission in response to a call for bid contains an irregularity not resolved by the Purchasing Review Committee;
 - 6.1.9 Where there is a challenge to the call for bids process that cannot be resolved by the Purchasing Review Committee; and

7 PURCHASING REVIEW COMMITTEE

- 7.1 There shall be a Purchasing Review Committee, hereinafter referred to as “PRC”, established in accordance with this By-law and will be responsible for reviewing Bid Irregularities.
- 7.2 **Schedule “B”** to this By-law establishes the action that will be taken if a bid irregularity exists.
- 7.3 If a bid contains informality or irregularity to the call for bid process, the issue may be referred to the PRC to determine whether the bid complies with the submission requirements set out in the call for bid, the PRC decision shall determine acceptance or rejection of the bid subject to any Council review as set out below.

- 7.4 If the PRC cannot reach agreement or otherwise considers it advisable, a report of the findings of the PRC shall be prepared for Council's consideration and Council shall determine if the bid is compliant.
- 7.5 Challenges to a call for bid shall be dealt with as follows:
- 7.5.1 The Manager of Purchasing shall review all challenges to the call for bid;
- 7.5.2 If necessary, the Manager of Purchasing may solicit an opinion from the City Solicitor regarding the matter;
- 7.5.3 If unresolved, the bidder/proponent or the Manager of Purchasing may request that the PRC review the matter; and
- 7.5.4 If the PRC cannot reach agreement or otherwise considers it advisable, a report of the finding of the PRC shall be forwarded to Council for review and **determination**.

8 PROCUREMENT PROCESS

- 8.1 Where applicable, each of the prescribed procurement methods shall be undertaken in compliance with the following requirements:
- 8.1.1 Each call for bid shall be conducted in a fair, open, equitable, consistent and professional manner.
- 8.1.2 The scope of the goods, service(s) or construction shall be clearly and comprehensively defined by the call for bid document;
- 8.1.3 The form of call for bid document shall be, to the extent possible, standardized using common forms and processes;
- 8.1.4 The call for bid document shall be publicly advertised in accordance with **Schedule "C"** to maximize the response potential to the call for bid;
- 8.1.5 Where the call for bid exceeds the threshold value indicated in the Agreement on Internal Trade (AIT), the document will be advertised nationally by posting electronically in accordance with the *Agreement of Internal Trade* (AIT);
- 8.1.6 The evaluation criteria and weighting for Proposals shall be identified in the Request For Proposal document and shall be evaluated based on that criteria using the established rating system;
- 8.1.7 All calls for bid documents shall clearly set out the requirements for the price element of the submission, specifying whether the bid price is submitted on a unit price or total price basis and, whether it is net of any taxes, import duties, customs clearance fees, administrative costs, contingencies or other deductions or additions and how any contract extras shall be dealt with;
- 8.1.8 All calls for bid documents shall contain or reference the Corporation's standard statement respecting the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Personal Information Protection and Electronic Document Act*, as amended;
- 8.1.9 All bids received by the Corporation shall be deposited in a secure location until opened and recorded.
- 8.1.10 All bids shall be thoroughly reviewed and/or evaluated using Purchasing Branch guidelines in an open, fair, consistent and transparent process; and
- 8.1.11 All contracts shall be monitored and documented by the Department Head in accordance with Section 20 Supplier/Contractor Performance, to ensure that performance is in compliance with the requirements of the contract and steps shall be taken to correct the performance of a supplier/contractor where it falls below the standard required by the contract.

9 SPECIFICATIONS

- 9.1 The preparation of the Specifications for a requirement shall be the responsibility of the Client Department. Specifications shall be approved by the Client Department Authorized Delegate and shall be forwarded directly to the Purchasing Branch with applicable approvals.
- 9.2 The Purchasing Branch may review and recommend improvements to the Specifications when deemed necessary. The Client Department and the Purchasing Branch shall collaborate in the finalization of the Specifications and associated procurement document(s).

9.3 The following requirements shall be followed in the preparation of the Specifications:

- 9.3.1 Specifications should be clear and concise, however must not be structured to restrict or limit competition due to brand or other specific requirements and allow potential vendors to provide alternatives in the event an equivalent product or method is available to maintain a competitive procurement process. Biasing of specifications in favour of, or against, a particular good or service is prohibited; with the exception of unique situations, such as standardization or compatibility with existing systems. The reasons for specifying a brand shall be included in the bid document.
- 9.3.2 Vendors may be requested to expend time, money or effort on the content or in the development of Specifications or otherwise help define a requirement to be contained in the Specifications or Bid Document. A vendor who provides such assistance shall be deemed a consultant of the City, and shall be unable to submit a Bid for which the Specifications apply unless exemption is requested and submitted prior to the issuance of the Bid Document and written approval is given by the Manager of Purchasing.

10 REQUIREMENT FOR APPROVED FUNDS

10.1 The authority to procure goods and services or award a contract is subject to the identification and availability of sufficient funds in appropriate accounts within Council's approved budget. The Manager of Purchasing shall reject all purchase requests for purchases or contracts for which sufficient funds are not available and identified unless, in the opinion of the Manager of Purchasing, the deficiency is minimal and alternative funding has been identified.

11 STANDARD PROCUREMENT METHODS

11.1 The method of procurement for goods, service(s) and construction shall be in accordance with the methods described in this section as recommended by the Manager of Purchasing and shall be advertised, reported, approved and the contract executed in accordance with Schedule "C" of this By-law.

11.1.1 REQUEST FOR EXPRESSIONS OF INTEREST (RFEOI)

- i. A request that will be used to determine the interest of the market place to provide goods or service(s) which the Corporation is contemplating purchasing. The submission of an expression of interest may be made a specific pre-condition of any other procurement procedure utilized by the Corporation. The submission of an expression of interest (EOI) does not create any contractual obligation between the Corporation and the interested respondent.

11.1.2 REQUEST FOR INFORMATION (RFI)

- i. A request which will be used as a general market research tool to determine what goods and service(s) are available that may meet business/operational requirements and acquisition strategies. The RFI may request publicly available commodity costs details for the purpose of budget planning or developing a future call for bid. The submission of information does not create any contractual obligation between the Corporation and the interested respondent.

11.1.3 REQUEST FOR PRE-QUALIFICATION (RFPQ)

- i. A Request for Pre-Qualification (RFPQ) may be conducted for any goods, service(s) or construction to determine qualified bidders/proponents that may bid on a subsequent procurement process undertaken by the Corporation, under any of the following circumstances:
- a) The work is considered "high risk" with respect to regulations governed under the Occupational Health and Safety Act.
 - b) The value and complexity of the work is such that contract administration costs (work inspection, follow-up, delay, extra fee negotiations) would result in substantial additional costs and/or loss to the Corporation, if the work is not performed as prescribed.
 - c) The goods and/or service(s) to be provided shall meet fundamental mandatory standards or regulations of the federal, provincial, municipal or recognized City of Barrie standards and/or requires a stipulated performance and experience level.
 - d) The work requires a stipulated performance and experience level.
 - e) The work requires elements of confidentiality and/or security.
 - f) The Manager of Purchasing deems pre-qualification to be appropriate.

- ii. When the Request for Pre-Qualification (RFPQ) is utilized, a pre-qualification application document shall be provided to the potential bidders/proponents setting out the scope of work for the ensuing project and, evaluation criteria and weighting for pre-qualification.
- iii. The selection of qualified bidder/proponents following a pre-qualification process does not create any contractual obligation between the Corporation and the pre-qualified respondent(s). Pre-qualification may be made a specific pre-condition of any other procurement procedure utilized by the Corporation.

11.1.4 LOW COST PURCHASE (LCP)

- i. A Low Cost Purchase (LCP) shall be conducted for the procurement of goods, service(s) or construction, not covered under an existing contract or supply agreement and, having a purchase value up to the limit as stated in Schedule "C" of this By-law. These purchases may be made utilizing a purchase order, petty cash, or corporate purchasing card. The Department Head shall authorize specific individuals to make low cost purchases and assign a limit of spending authority. These purchases are within the discretion of the Department Head. The Department Head shall ensure purchases are demonstrated to have been made at fair market value. The requirement of competitive bid solicitation is at the discretion of the Department Head and the purchase can be processed directly by the respective department or, facilitated by the Purchasing Branch, upon request.

11.1.5 INFORMAL REQUEST FOR QUOTATION (RFQ)

- i. An informal request for quotation (RFQ) shall be conducted for the procurement of goods, service(s) or construction having an estimated award value as stated in Schedule "C" of this By-law. A written specification and price schedule shall be utilized to solicit bids from a minimum of three (3) bidders. The award must be to the lowest compliant Bidder. The call for bid may be advertised, where warranted. Bids will be accepted in one or more of the following formats, as set out in the call for bid:
 - a) Electronically (facsimile and/or email and/or internet); or
 - b) Informal sealed bid.
 - c) It is intended that the lowest priced bidder tender will be accepted without negotiation.

11.1.6 FORMAL REQUEST FOR QUOTATION (RFQ)

- i. A formal request for quotation (RFQ) shall be conducted for the procurement of goods, service(s) or construction having an estimated contract value as stated in Schedule "C" of this By-law. The award must be to the lowest compliant Bidder(s). The bid shall be publicly advertised by the Purchasing Branch.
- ii. In the case of a request for quotation where bidders are pre-qualified, only the pre-qualified bidders shall be directly invited to respond to the request.
- iii. It is intended that the lowest priced compliant bidder will be accepted without negotiation.

11.1.7 REQUEST FOR TENDER (RFT)

- i. A request for tender (RFT) shall be conducted for the procurement of goods, service(s) or construction having a total award value as stated in Schedule "C" of this By-law. The award must be to the lowest compliant Bidder(s). A request for tender (RFT) shall be used where all of the following criteria apply:
 - a) A Contract Agreement shall be used to bind the parties to the award;
 - b) A Performance Bond and/or Labour & Materials Bond or the equivalent Irrevocable Letter of Credit is a requirement of the award to ensure the protection of the Corporation's interests and for the fair treatment of sub-trades;
 - c) Two or more sources are considered capable of supplying the goods, service(s) or construction;

- d) The goods, service(s) or construction is adequately and generically defined to permit the comparison of bids against clearly stated criteria and/or specifications;
 - e) The market conditions are such that bids can be submitted on a competitive pricing basis; and
 - f) It is intended that the lowest priced compliant tender will be accepted without negotiation.
- ii. The Department's Head shall provide to the Purchasing Branch, a written document containing the relevant information such as the, specifications, provisions, plans, and supplemental general conditions. Notice of the call for bid shall be by public advertising (web and/or national newspaper/trade paper), as well as internet advertising.
 - iii. Formal sealed bids shall be received and prior to staff review, the bid envelope shall be publicly opened and the unofficial total(s) of each bid shall be read out at the specified date and time of opening. All bid amounts shall be recorded on a summary of bidders' sheet.

11.1.8 REQUEST FOR PROPOSAL

- i. This method of procurement of goods, service(s), or construction shall be used for obtaining competitive proposals in situations where the requirement cannot be expressly stated or defined and where a solution is requested based on clear terms of reference and, where any of the following apply:
 - a) The selection of the successful proponent depends upon the effectiveness of the proposed solution based on several stated criteria as opposed to the price alone;
 - b) A possibility exists where negotiation with one or more proponents may be required with respect to any aspect of the contract;
 - c) The precise goods, service(s) or construction, or the specifications therefore are not known or are not definable and it is expected that the proponent will further define them; and
 - d) The services required are Consulting Services.
 - e) It is intended that the highest scoring compliant respondent is awarded the contract.
- ii. A proposal evaluation committee shall determine the most qualified, responsive and responsible proponent offering best value for the award and using the evaluation criteria and rating stated in the proposal document and/or subsequent addendum. The selection of consulting services shall be in accordance with the thresholds and criteria as stated in Schedule "C".

11.1.9 TWO ENVELOPE REQUEST FOR PROPOSAL

- i. The Manager of Purchasing will have the discretion to determine where a "Two Step" proposal method shall be made a requirement of the Request for Proposal process, in the interest of the proponents and/or to protect the integrity of the evaluation team members. The process consists of two stages described as follows:
 - a) Step 1 consists of a request for technical call for proposal, evaluations and discussion without pricing requirements and the selection of responsive and responsible proponent(s)/offeror(s) whose requirements are considered most acceptable; and
 - b) Step 2 consists of reviewing sealed proposal prices from only those proponent(s)/offeror(s) whose technical requirements have been rated most acceptable.

12 ALTERNATE PROCUREMENT METHODS

12.1 UNSOLICITED SUBMISSIONS, PROPOSALS AND PRESENTATIONS

- 12.1.1 All unsolicited submissions, proposals and offers for presentations or product/service trials received by the Corporation and, with the anticipated expectation on the part of the submitter, proponent or presenter of obtaining consideration for an ensuing contract or purchase by the Corporation, shall be directed to the Manager of Purchasing for review and approval for acceptance.
- 12.1.2 In the event that an actual goods/services product presentation or demonstration would be required in advance of a purchase decision, such presentation or demonstration should be included as part of the formal competitive bid process.
- 12.1.3 Any procurement activity resulting from the receipt of an unsolicited bid shall comply with the provisions of this Procurement By-law.
- 12.1.4 Where a contract resulting from an unsolicited bid is awarded on a non-competitive basis, the single or sole source purchase provisions of this Procurement By-law shall apply.

13 NEGOTIATION

- 13.1 Negotiation may be used for the procurement of goods, service(s) or construction or for the sale of personal or real property for any contract, when one or more of the following criteria apply:
 - 13.1.1 Due to abnormal market conditions, the goods, service(s) or construction required are in short supply and/or market price fluctuations or instability exists;
 - 13.1.2 Where competition is precluded or severely restricted due to the existence of any patent right, copyright, technical secret or control of raw material;
 - 13.1.3 Where only one proposal is received and it exceeds the amount budgeted for the procurement, negotiations may be conducted; provided the proponent is responsive and responsible;
 - 13.1.4 Negotiations may be conducted with the highest offeror in response to the sale of Personal property;
 - 13.1.5 Negotiations may be conducted with the highest evaluated responsive and responsible proponent to a Request for Proposal as a condition of the award; if a negotiated settlement cannot be reached, the Corporation may proceed to negotiate with the next highest evaluated responsive and responsible proponent, as a condition of the award;
 - 13.1.6 Where the extension or reinstatement of an existing contract, with approval of the respective General Manager, would be more cost effective and beneficial to the Corporation and, that the possibility of an extension or reinstatement was clearly stated within the original competitive bid process document;
 - 13.1.7 Where, for security or confidentiality reasons, it is in the best interest of the Corporation;
 - 13.1.8 Where extraordinary circumstances exist; or
 - 13.1.9 Where authorized by Council to do so.

14 SOLE SOURCE PURCHASE

- 14.1 A sole source purchase may be conducted for the procurement for goods, service(s) or construction of any contract value without the competitive bid process, when any of the following circumstances apply:
 - 14.1.1 One supplier/contractor possessing the unique ability or capability to meet the requirements of the Corporation due to a patent, sales/distributor agreement or copyright;
 - 14.1.2 Service is obtained from a public utility;
 - 14.1.3 Where goods are offered for sale to the Corporation by bid, auction or negotiation, such purchase will be deemed to be a sole source purchase and the CAO may authorize the submission of a bid or the conduct of negotiations where he/she determines the purchase to be clearly in the best interest of the Corporation.
- 14.2 A sole source purchase shall be facilitated by the Purchasing Branch and shall be in compliance with Schedule "C" of this By-law.

- 14.3 Where it is expected that the estimated expenditure may exceed the amount, as stated in Schedule "C" of this By-law: the Manager of Purchasing shall obtain approval of the CAO for the purchase.
- 14.3.1 An information report shall be submitted to Council explaining the actions taken and the reason(s) therefore and;
- 14.3.2 A purchase order shall be issued in advance of the purchase transaction.

15 SINGLE SOURCE PURCHASE

- 15.1 A single source purchase may be conducted for the procurement of goods, service(s) or construction of any contract value without the competitive bid process, when any of the following circumstances apply:
- 15.1.1 There is a need for standardization to maintain functionality or existing service capacity;
- 15.1.2 For matters involving security, police matters, or confidential issues, a purchase may be made in a manner that protects the confidentiality of the supplier/contractor or the Corporation;
- 15.1.3 Where a good is purchased for testing or trial use and there is a clearly established deadline for the testing or trial period that does not exceed 12 months;
- 15.1.4 Where the Corporation has a rental contract with a purchase/rental extension option and such purchase / rental extension option may be beneficial to the Corporation;
- 15.1.5 An Extraordinary Circumstance (Emergency) purchase situation.
- 15.2 A single source bid shall be facilitated by the Purchasing Branch and shall be in compliance with Schedule "C" of this By-law.
- 15.3 Where it is expected that the estimated expenditure may exceed the amount, as stated in Schedule "C" of this By-law: the Manager of Purchasing shall obtain approval of the CAO for the purchase.
- 15.3.1 An information report shall be submitted to Council explaining the actions taken and the reason(s) therefore and;
- 15.3.2 A purchase order shall be issued in advance of the purchase transaction.

16 EXTRAORDINARY CIRCUMSTANCE (EMERGENCY) PURCHASES

- 16.1 Notwithstanding the provisions of this By-law, an emergency purchase shall be made, when an event occurs that is determined by the respective department's General Manager, to be a threat to any of the following:
- 16.1.1 Public health and/or safety;
- 16.1.2 The maintenance of essential corporate services or to prevent the disruption of essential corporate services;
- 16.1.3 The welfare of persons or of public property; or
- 16.1.4 The security of the Corporation's interests and the occurrence requires the immediate delivery of goods, service(s) or construction and time does not permit for competitive bids.
- 16.2 The Manager of Purchasing, upon the request of the respective Department Head and, with the approval of the respective General Manager, shall secure any goods, service(s) or construction required; in an efficient, expeditious manner that is in the best interest of the Corporation for extraordinary (emergency) purchases having an estimated expenditure as stated in Schedule "C" of this By-law:
- 16.2.1 A purchase order shall be issued or purchasing card shall be used; and
- 16.2.2 In case of an after hour emergency, a purchase order shall be issued the next regular business day.
- 16.3 Where it is expected that the estimated expenditure may exceed the amount, as stated in Schedule "C" of this By-law: the Manager of Purchasing shall obtain approval of the CAO for the purchase and, shall secure any goods, service(s) or construction required; in an efficient, expeditious manner that is in the best interest of the Corporation.
- 16.3.1 An information report shall be submitted to Council explaining the actions taken and the reason(s) therefore and;

16.3.2 A purchase order shall be issued, purchasing card used or the Corporations' emergency management purchasing card shall be used; and;

16.3.3 In case of an afterhours emergency, if a purchasing card is not available, a purchase order shall be issued the next regular business day.

17 CORPORATE PURCHASING CARD PROGRAM

17.1 Purchases made utilising a Corporation Purchasing Card must be in accordance with the Procurement By-Law and the Corporations PCard Procedures.

18 CO-OPERATIVE PURCHASING

18.1 The Corporation may participate with other government agencies or members of the broader public sector in co-operative purchasing initiatives where it is in the best interests of the Corporation to do so. The Corporation must participate or have the City's requirements included in the cooperative purchasing process.

18.2 The terms of reference and constitution of the originating co-operative shall form the basis of accepted policy and procedure when participating in, or calling, co-operative bids.

19 IN-HOUSE BIDS

19.1 The acceptance and award of in-house bids shall require the prior approval of Council and only be permitted where private sector suppliers have also been given an opportunity to submit bids.

20 CONTRACT EXECUTION

20.1 Successful bidder(s)/proponent(s) may be required to execute a contract agreement with the Corporation which shall include but, not be limited to, the following items for performance of a contract: contract security, Insurance, Workplace Safety and Insurance Board (WSIB) compliance, the supplier/contractor's Health & Safety Policy and Procedures, project schedule, accrediting credentials and any other relevant documentation as may be warranted and requested at the discretion of the Manager of Purchasing.

20.2 Subject to statutory requirements and where all the requirements of this By-law have been met, a General Manager is authorized to execute contracts and any ancillary documents that have been prepared in a form satisfactory to the City Solicitor and Manager of Purchasing when all of the following commitments have been met:

20.2.1 The contract is specific to one Division;

20.2.2 Sufficient funds are available within the division's Council-approved budget;

20.2.3 The procurement process and reporting procedures were carried out in accordance with this By-law;

20.2.4 There is no future financial or performance obligation at the termination of the contract; and

20.2.5 The term is for a specific period or until completion of a defined project.

20.2.6 Upon execution the contract becomes a public record and may be released in whole or in part, to the public upon request, subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act.

20.2.7 The City Clerk as the official records holder for the Corporation is required to hold the Corporation's executed contracts. An original of executed contracts must be provided to the City Clerk's Office for appropriate records retention.

21 BID IRREGULARITIES

21.1 Any bid irregularities shall be addressed in accordance with **Schedule "B"**.

22 SUPPLIER/CONTRACTOR PERFORMANCE

22.1 The respective Department Head shall be responsible for monitoring and documenting supplier performance and compliance with procurement contracts. The Department Head shall address performance matters directly with the supplier/contractor to resolve and document all performance evidence and acknowledgements related to same.

22.2 The Purchasing Branch shall be advised of contractor performance in writing. The Manager of Purchasing will consult with the Department Head, and/or Purchasing Review Committee and/or Solicitor, to resolve unsatisfactory performance. If performance problems cannot be resolved, the Manager of Purchasing may terminate the contract, where deemed permissible and necessary.

23 ALTERNATIVE DISPUTE RESOLUTION

- 23.1 All vendors dealing with the City of Barrie or bidding on potential contracts with the City shall resolve any and all disputes they have specific to the competitive process through Alternate Dispute Resolution (“ADR”) described below, and agree to this as part of any response to a request, or through their acceptance of a City purchase order, unless otherwise stated in the procurement document.
- 23.2 The award of any contract shall not be rescinded nor the progress of any project be delayed by a request for use of the Alternative Dispute Resolution Process, unless recommended by the involved General Manager and the Manager of Purchasing .
- 23.3 In summary, any bidder who has asked to participate in the ADR process will be provided with information designed to assist them to both understand the bid process and the decisions of the City. Where the bidder deems the information is not satisfactory and wishes to pursue further, the bidder may request mediation and/or arbitration in an effort to bring closure to their concern(s).
- 23.4 For those bidders who fail to meet the timelines for ADR participation as noted below, the Manager of Purchasing may allow, a bidder debriefing opportunity where the reasons for non award will be reviewed. This will end the process.

Note: Any information provided to a bidder through this process and/or any information provided by the bidder to the Corporation will remain confidential wherever requested.

- 23.5 The step by step procedure to be followed for the ADR process is as follows:

- 23.5.1 A written request must be received by the Manager of Purchasing within seven (7) days of the published award decision. Within fourteen (14) days of this request, or such later date as may be mutually agreed upon, a debriefing will take place with applicable City Staff, including a representative from purchasing, and up to 2 representative s from the bidder. Only the details of the bidder's submission will be discussed at this meeting.
- 23.5.2 Should the bidder continue to have concerns following the meeting described above, that bidder may request in writing within seven (7) days of the first meeting an award debriefing session with the Manager of Purchasing, Purchasing Staff member assigned to that procurement file, and up to 2 representatives of the vendor. This meeting shall take place within fourteen (14) days of the request described above, or such later date as may be mutually agreed upon.
- 23.5.3 At this meeting, the successful bidder for the specific contract in dispute shall be identified, and the reasons why the contract was awarded to that bidder will be discussed at this meeting. However, this would not include any proprietary information respecting any bids.
- 23.5.4 If the bidder continues to have concerns respecting this specific contract award and the decision made respecting same, the bidder may then request a meeting with the General Manager from the department involved, as well as the General Manager of Corporate Services and up to 2 representatives of the vendor. This request must be received in writing within seven (7) days following the meeting described in Number 2. above, and the meeting shall take place within fourteen (14) days of that request or at such later date as may be mutually agreed upon.
- 23.5.5 Following the review described in Number 3 above, the Manager of Purchasing and General Manager may recommend, or the unsuccessful bidder may ask the City to appoint a mediator or arbitrator to assist in trying to resolve any outstanding issues between the parties. This mediator shall not have the authority to make a binding decision, but shall make their best efforts to assist the parties to reach a mutually acceptable solution.
- 23.5.6 Costs for the mediator and/or arbitrator, as the case may be, shall be equally shared by the parties and a bond for half of the total estimated associated costs shall be posted by the unsuccessful bidder in advance of the process beginning. Any resolution reached through the mediation or arbitration process shall remain confidential if requested by either of the parties.

NOTE: Any disputes that arise between the Successful Bidder and the City within Contract performance may be handled through the ADR process or process outlined within the performance contract as agreed to by both parties.

24 REPORTING TO COUNCIL

- 24.1 The contract value for goods, service(s) or construction shall be reported to Council as per **Schedule “D”** of this By-law or where the Procurement By-law is being waived, or where the acquisition exceeds the approved budget or where as otherwise requested to do so by the CAO, A report shall be submitted by the Department Head, in conjunction with the Manager of Purchasing for Council approval.

25 ACCESS TO INFORMATION

- 25.1 The disclosure of information received relevant to the issue of call for bids or the award of contracts shall be made available in accordance with the provisions of the Corporation's policy under the Municipal Freedom of Information and Protection of Privacy Act and the Personal Health Information Protection Act, as amended.

26 DISPOSAL OF PERSONAL PROPERTY

- 26.1 The Department Head shall submit to the Manager of Purchasing, a written report of all personal property, including but not limited to, furniture, vehicles, equipment, supplies, and other goods and material, which are deemed surplus or which have become obsolete, worn out, or otherwise incapable of use.
- 26.2 The Purchasing Branch shall first offer the surplus personal property to other departments. Any surplus assets not required by departments and that are deemed by the Manager of Purchasing as having a residual value, shall be publicly advertised for sale or disposed of in accordance with one of the following methods, as determined by the Manager of Purchasing. The Manager of Purchasing, in conjunction with the respective Department Head, will determine a reasonable sale value of the asset.
- 26.2.1 Call for bid: If it is determined by the Manager of Purchasing that the highest return for personal property is by a call for bids, a sale bid shall be issued and publicly advertised. Bids shall be submitted by facsimile, electronically or sealed submission, as determined by the Manager of Purchasing.
- 26.2.2 Public Auction: If it is determined by the Manager of Purchasing that the highest return for personal property is by public auction, the Manager of Purchasing shall arrange for the personal property to be sold at a public auction. A minimum bid may or may not be set and, shall be determined by the Manager of Purchasing in consultation with the Department Head.
- 26.2.3 Return to the original supplier: If it is determined by the Manager of Purchasing that a higher return net of disposal cost can be achieved by sale or trade-in of the personal property to the original supplier or suppliers in that line of business, the Manager of Purchasing shall sell such personal property at the highest return; or
- 26.3 No staff member, Councillor or board member of the Corporation shall personally obtain any personal property that has been declared surplus unless it is obtained through a public process.
- 26.4 Any personal property still available for disposal after the foregoing provisions have been carried out or, deemed by the Manager of Purchasing as not suitable for resale, shall be disposed of by one of the following methods:
- 26.4.1 The Manager of Purchasing shall notify community interest and/or non-profit organizations of the relevant items for disposal and, request they submit to the Manager of Purchasing, a letter of interest;
- 26.4.2 Where personal property has little or no value, the Manager of Purchasing may dispose of the items directly through a recycling process or applicable waste stream.

27 DISPOSAL OF REAL PROPERTY

- 27.1 See the Corporation of the City of Barrie By-law # 95-104, as amended by By-law # 95-286 and By-law # 2004-107 as may be further amended or replaced, for the sale of real property owned by the Corporation.
- 27.2 No staff member, Councillor or board member of the Corporation shall personally obtain any real property that has been declared surplus unless it is obtained through a public process.

28 TIE BIDS

- 28.1 In the case of tied bids between two responsive and responsible bidders and, where multiple awards are not an alternative for award, the Corporation shall determine the successful bidder by a coin toss as prescribed in the Purchasing Branch procedures.
- 28.2 In the case of tied bids between three or more responsive and responsible bidders and, where multiple awards are not an alternative for award, the Corporation shall determine the successful bidder by a draw of the bidder names from a receptacle as prescribed in the Purchasing Branch procedures.

29 LITIGATION

- 29.1 The CAO may prohibit the acceptance, award or extension of contracts with bidders who are in litigation with the Corporation, subject to the following exceptions:
- 29.1.1 In the case of an Extraordinary circumstance (emergency) purchase as outlined in this By-law.

- 29.1.2 Where there is a legal obligation to enter into a contract or where there is an inter-municipal or cooperative agreement, in which the Corporation is a participant.

30 BY-LAW REVIEW

- 30.1 This Procurement By-law will be reviewed every five (5) years, or such earlier date as the Manager of Purchasing or Council may deem it appropriate to evaluate its effectiveness.

31 SHORT TITLE

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

32 SCHEDULES

- 32.1 That Schedule "A" to this Bylaw – Purchasing exemptions forms an integral part of this By-law
- 32.2 That Schedule "B" to this Bylaw – Chart of Bid Irregularities forms an integral part of this By-law
- 32.3 That Schedule "C" to this Bylaw – Thresholds of Procurement forms an integral part of this By-law
- 32.4 That Schedule "D" to this Bylaw – Reporting Procedures forms an integral part of this By-law
- 32.5 That Schedule "E" to this Bylaw – Statement of Ethics for Public Purchasers forms an integral part of this By-law
- 32.6 That Schedule "F" to this Bylaw – Green (Sustainable) Procurement forms an integral part of this By-law
- 32.7 That Schedule "G" to this Bylaw – Fair Trade Certified Products forms an integral part of this By-law

33. REPEAL

- 33.1 That By-law 2008-121 be repealed.

34. ENACTMENT

- 34.1 That this By-law shall come into force and effect upon the day of passing thereof.

READ a first and second time this 15th day of April, 2013.

READ a third time and finally passed this 15th day of April, 2013.

THE CORPORATION OF THE CITY OF BARRIE

"J.R. LEHMAN"

MAYOR – J. R. LEHMAN

"DAWN A. MCALPINE"

CITY CLERK – DAWN A. MCALPINE

SCHEDULE "A" TO BY-LAW 2013-073

EXEMPT PURCHASES

The acquisition methods described in this By-law do not apply to the following items, however where possible staff should issue a Purchase Order or utilise a Corporate Purchasing Card to complete the procurement:

1. Training and Education
 - Conferences, conventions, courses and seminars
 - Magazines, books and periodicals
 - Memberships
2. Refundable Employees Expenses
 - Advances
 - Meal allowances
 - Travel
 - Miscellaneous – non-travel
3. General Expenses
 - Payroll Deduction Remittances such as income tax, Employment Insurance Premiums, Employer health Tax.
 - Workers Safety Insurance Board payments
 - Medical Fees
 - Debenture payments
 - HST remittances
 - Insurance premiums
 - Grants to agencies
 - Damage claims
 - Legal settlements
 - Arbitration awards
 - Petty cash replenishment
 - Tax remittances
 - Charges to and from other government bodies
 - Sinking fund payments
 - Payments for employment
 - Postage
 - Real Property Payments including purchases, leases, easements, encroachments, or the like.
4. Professional and Special Services
 - Medical, laboratory and pharmacy services (individuals)
 - Legal fees for expert or professional legal services for all Corporation and Insurance matters
 - Medical Professional Services
 - Honorariums
 - Expert witnesses
 - MPAC as approved in annual budgets
5. Committee fees
 - Medical, laboratory, and pharmacy services(Committee)
 - Medical and dental fees
 - Witness fees
 - Honorariums
6. Utilities (monthly charges)
 - Water and Sewer
 - Hydro
 - Natural Gas
 - Telephone Services – (excluding cellular)
 - Cable Television
7. Utility relocates by Public Utility
8. Purchases from other levels of Governments
9. Federal/Provincial/Municipal Mandated Programs and Payments
10. The lease or purchase of real property
11. Recreation program facilitators and/or hosts
12. Events supporting local non-profit organizations
13. Entertainers for theatre or special events
14. Refunds
 - Property Tax refunds
 - Building permit refunds
 - Cancelled services, program, events, tickets

SCHEDULE "B" TO BY-LAW 2013-073

CHART OF BID IRREGULARITIES

Any other bid irregularities shall be forwarded to the Purchasing Review Committee for determination in accordance with Section 8 Purchasing Review Committee of this By-law.

BID IRREGULARITIES

Notes:
I) The following list of irregularities should not be considered all-inclusive. The Manager of Purchasing and, as may be warranted, in consultation with any, or a selection of the following, respective departmental staff, senior staff and/or the Corporation's Solicitor, shall review irregularities not specifically listed and, acting in the best interests of the Corporation, shall have authority to waive such irregularities, permit correction to the irregularity or, reject the submission as may appropriate.
II) This Bid Irregularity List shall apply only where the irregularity exists with respect to a stated requirement of a relevant quotation, proposal, and tender or otherwise referenced competitive bid document issued by the Corporation.
III) This Bid Irregularity List shall apply where the irregularity is with respect to a requirement of an Expression of Interest, Request for Information, Pre-Qualification or, other similar invitation offered by the Corporation and, where the submission must be received on/before a specified date and time.
IV) Where a submitter has been given notice of a specified time period after notification for which to correct an irregularity, should the submitter fail to effect the correction by the stipulated date and time, then the submitter shall be deemed to be in default of the process and, where applicable, the bid deposit shall be forfeited. The submission will be given no further consideration for award.

ITEM	IRREGULARITY	RESPONSE
<u>GENERAL</u>		
1.	Late submissions.	Rejection not opened and read publicly. Submission to be returned to submitter. Should it not be clear as to the submitter's name and address then, the package will be opened solely to access this information.
2.	Unsealed Submission Package.	Rejection.
3.	Submitter has not been previously qualified under a related pre-qualification process, where applicable.	Rejection.
4.	Failure to have a representative in attendance and registered at a Mandatory Attendance Site/Information meeting.	Rejection.
5.	Submission not completed in a non-erasable medium and/or signed in ink.	Rejection.
6.	Failure to include the form of Tender, Quotation, Proposal or Pre-Qualification, as may be applicable, for inclusion with the submission.	Rejection.
7.	Incomplete or partial price details where, all items are mandatory to be bid.	Rejection.
8.	Forms that compose the submission documents are not completed in their entirety.	Rejection unless, in the opinion of the Manager of Purchasing, the missing information is minor and would not adversely affect an award decision.
9.	Conditional Bids (Bids qualified, based on a Bidder's condition or restricted by an appended statement).	Rejection unless, in the opinion of the Manager of Purchasing, the qualification or restriction is minor and would not adversely affect an award decision.
10.	More than one submission from the same submitter and, not identified as an alternative or optional submission or, no written withdrawal notice has been received.	The submission package bearing the most recent date/time stamp will be considered the intended submission and the previously date/time stamped submissions will be considered withdrawn and, returned to the submitter.
11.	Bids containing minor, obvious clerical errors that do not result in any ambiguity with respect to the overall submission and/or award decision.	Two business days to correct and initial.

ITEM	IRREGULARITY	RESPONSE
12.	Un-initialled changes to the submission.	Two business days to initial changes. The Corporation reserves the right to waive the initialing requirement and accept the submission as corrected.
13.	Authority to bind the Corporation or signature missing.	Rejection.
14.	Failure to include required supplementary copies of the original at time of submission.	Two business days to submit.
15.	Failure to acknowledge addenda identified as amending .	Rejection.
16.	Failure to acknowledge addenda identified as informational .	Two business days to acknowledge.
17.	Other Irregularities.	The Manager of Purchasing shall have authority to waive irregularities, which are minor, other irregularities will be reviewed on a case by case basis.
18.	Any Irregularity.	Despite the provisions herein contained, Council may waive any irregularity where it considers it to be in the best interest of the Municipality.
PRICING		
19.	Failure to include the Schedule(s) of Items & Prices, Price Form or Price details, as may be applicable, for inclusion with the submission.	Rejection.
20.	Unit price has been changed but not initialled and, the price extension is consistent with the unit price as amended.	Two business days to initial. The Corporation reserves the right to waive the initialing requirement and accept the submission as corrected.
21.	Unit price has been changed but not initialled and, the price extension is not consistent with the unit price as amended.	Rejection.
22.	Unit price extension which is not consistent with the unit prices.	The Corporation will update the extended price based on the stated unit price.
23.	Where an error has been made transferring an amount from one part of the submission to another.	The Corporation will update with the amount shown before transfer, subject to any corrections noted in foregoing irregularities and the ensuing totals corrected accordingly.
24.	Pricing appears to be unbalanced to the extent that it would have a significant adverse affect to the Corporation if awarded.	Rejection.
BID DEPOSIT		
25.	Bid Deposit or Bid Bond not submitted with bid.	Rejection.
27	Bid Deposit or Bid Bond not in the acceptable form.	Rejection.
26.	Bid Deposit or Bid Bond amount is insufficient.	Rejection.
27.	Surety provider and/or Bidder's authorized signature missing from Bid Bond.	Rejection.
28.	Effective period of Bid Bond is less than the irrevocable period stipulated in the bid document	Rejection
AGREEMENT TO BOND		
29.	Agreement To Bond not submitted with bid	Rejection
32	Agreement To Bond not in the form specified.	Rejection
30.	Agreement To Bond amount is insufficient.	Rejection
31.	Surety provider and/or Bidder's authorized signature missing from Agreement To Bond.	Rejection
STATUTORY DECLARATION		
32.	Statutory Declaration not submitted with bid	Rejection
35 New	Statutory Declaration not in the form specified.	Rejection
33.	Commissioner/Notary Public and/or Bidder's authorized signature missing from Statutory Declaration.	Rejection
POST AWARD NOTIFICATION		

ITEM	IRREGULARITY	RESPONSE
34.	Failure to execute required bonding or Financial Security within the prescribed time period.	Rejection and Bid Deposit forfeiture.
35.	Failure to execute a Contract Agreement within the prescribed period.	Rejection and Bid Deposit forfeiture.
36.	Failure to provide supporting document, as specified within the bid document and within the prescribed period.	Rejection and Bid Deposit forfeiture.

SCHEDULE "C" TO BY-LAW 2013-073

THRESHOLDS OF PROCUREMENT

PURCHASE THRESHOLD	PROCUREMENT TYPE	METHOD	ADVERTISING	APPROVAL	PURCHASE
PURCHASES					
<p>Up to \$10,000 Purchases made by department staff at the discretion of Department Head</p>	<p>LOW COST PURCHASE (LCP)</p>	<p>Official purchase order, petty cash, or corporate purchasing card. Competitive bids at the discretion of the Department Head and the purchase can be processed directly by the respective department or, facilitated by the Purchasing Branch upon request.</p>	<p>Advertising discretionary</p>	<p>Department Heads shall authorize specific staff to make low cost purchases and assign selected staff with a limit of spending authority and communicate such to the Director of Finance.</p>	<p>A purchase order or purchasing card shall be issued/presented by Department/Purchasing in advance of the purchase transaction.</p>
<p>Over \$10,000 up to \$50,000 Purchases made by department staff at the discretion of Department Head</p>	<p>INFORMAL REQUEST FOR QUOTATION (RFQ) or REQUEST FOR PROPOSAL (RFP)</p>	<p>Competitive bids must be solicited from minimum three Bidders/Proponents. The bid solicitation and purchase can be facilitated directly by the respective department or, facilitated by the Purchasing Branch upon request.</p>	<p>Advertising discretionary</p>	<p>Department Heads shall authorize specific staff to make bid solicitations as may be warranted however, these staff must have the required limit of spending authority or, obtain purchase authorization from Department Head/General Manager.</p>	<p>A purchase order shall be issued by Purchasing in advance of the purchase transaction.</p>
<p>Over \$10,000 up to \$100,000 Purchases made by department staff at the discretion of Department Head</p>	<p>REQUEST FOR PROPOSAL (RFP) for Consulting Services</p>	<p>Proposal request may be administered directly by the department, based on stated terms of reference and for a value based award. Alternatively, a formal RFP process can be administered by Purchasing where requested.</p>	<p>Advertising discretionary</p>	<p>Department Heads shall authorize specific staff to make bid solicitations as may be warranted however, these staff must have the required limit of spending authority or, obtain purchase authorization from Department Head/General Manager.</p>	<p>A purchase order shall be issued by Purchasing in advance of the purchase transaction, and at the discretion of Purchasing a professional agreement executed in advance of commencement of contract.</p>
<p>Over \$50,000 up to \$250,000 Purchase process facilitated by Purchasing Branch</p>	<p>FORMAL REQUEST FOR QUOTATION (RFQ) or REQUEST FOR PROPOSAL (RFP) excluding Consulting Services</p>	<p>Formal competitive bid process administered by the Purchasing Branch on behalf of the department and based on specifications or terms of reference as provided by the department.</p>	<p>Advertising required</p>	<p>Staff presenting the requisition for processing must have the required level of authorization or, obtain purchase authorization from Department Head/General Manager.</p>	<p>A purchase order shall be issued by the Purchasing Branch in advance of the purchase transaction and at the discretion of Purchasing an agreement executed in advance of commencement of contract.</p>

SCHEDULE "C" TO BY-LAW 2013-073

THRESHOLDS OF PROCUREMENT

PURCHASE THRESHOLD	PROCUREMENT TYPE	METHOD	ADVERTISING	APPROVAL	PURCHASE
<p>Over \$250,000 (\$100,000 for consultants) Purchase facilitated by Purchasing Branch</p>	<p>REQUEST FOR TENDER (RFT) or REQUEST FOR PROPOSAL (RFP)</p>	<p>Formal competitive bid process administered by the Purchasing Branch on behalf of the department and based on specifications or terms of reference as provided by the department.</p>	<p>Advertising required</p>	<p>The staff member presenting the request for processing must have the required level of authorization or obtain purchase authorization from Department Head/General Manager.</p>	<p>A purchase order shall be issued by the Purchasing Branch in advance of the purchase transaction and at the discretion of Purchasing an agreement executed in advance of commencement of contract.</p>
STANDING SUPPLY AGREEMENTS and REVENUE CONTRACTS					
<p>ANY AMOUNT Facilitated by Purchasing Branch</p>	<p>PROCESS IN ACCORDANCE WITH PRECEDING THRESHOLD VALUES</p>	<p>Informal/Formal competitive bid process administered by the Purchasing Branch on behalf of the department and based on specifications or terms of reference as provided by the department.</p>	<p>In accordance with above thresholds.</p>	<p>Processed on the authority of the Manager of Purchasing as a repetitive commodity standing or revenue agreement. Award authorization based on the projected value of the award for the full term of the contract.</p>	<p>A purchase order or price list shall be issued by the Purchasing Branch in advance of the purchase transaction for standing agreements and at the discretion of Purchasing an agreement executed in advance of commencement of contract. An agreement will be executed for all revenue related contracts.</p>
EXPRESSION OF INTEREST, REQUEST FOR INFORMATION AND PRE-QUALIFICATIONS (incl standardisation)					
<p>Not Applicable Facilitated by Purchasing Branch</p>	<p>REQUEST FOR INFORMATION (RFI) EXPRESSIONS OF INTEREST (EOI) REQUEST FOR PRE-QUALIFICATION (RFPQ)</p>	<p>Formal solicitation process administered by the Purchasing Branch on behalf of the department and based on specifications or terms of reference as provided by the department.</p>	<p>Advertising required</p>	<p>No award for RFI or EOI. Pre-qualification determined by department and reviewed by Manager of Purchasing.</p>	<p>No action for RFI or EOI. The Purchasing Branch to advise applicants of Pre-qualification results.</p>

SINGLE OR SOLE SOURCE PURCHASE					
Over \$10,000	SINGLE SOURCE SOLE SOURCE	Purchase process at the discretion of the Manager of Purchasing given the circumstances.	Not applicable	The staff member presenting the request for processing must have the authorization of the respective Department Head and General Manager before process is commenced. Consideration of a non-competitive purchase must be reviewed and recommended by the Manager of Purchasing and approved by the CAO	A purchase order shall be issued by the Purchasing Branch in advance of the purchase transaction. An information report to Council required.

SCHEDULE "D" TO BY-LAW 2013-073**REPORTING PROCEDURES**

The Manager of Purchasing shall submit the following reports to Council;

An Annual information report:

- a) Summarizing the details for Contracts awarded by Directors in accordance with Motion 02-G-628 Long Term Financial Strategies, item (f) Delegated Authority and exceeding \$1,000,000, including amendments and renewals.
- b) A listing of professional services providers that have received payments from the Corporation with a total cumulative value of \$250,000 or more, within the calendar year.
- c) A listing of all Single and Sole Source awards exceeding \$10,000.

The Manager of Purchasing shall state within these reports, the respective compliance with the Procurement By-law.

SCHEDULE "E" TO BY-LAW 2013-073**STATEMENT OF ETHICS FOR PUBLIC PURCHASERS****Statement of Ethics for Procurement**

Goal: To ensure ethical, professional and accountable procurement.

All staff authorized to purchase Goods, Services and/or Construction on behalf of the Corporation shall, at minimum, adhere to the following principles.

a) Open and Honest Dealings with Everyone who is Involved in the Procurement Process. Procurement activities must be open and accountable. This includes all businesses with which this Corporation contracts or from which it purchases Goods, Services and/or Construction, as well as all members of our staff and of the public who utilize the services of the Purchasing Branch.

b) Fair and Impartial Award Recommendations for All Contracts and Tenders. Contracting and Procurement activities must be fair, transparent and conducted with a view to obtaining the best value for public money. This means that we do not extend preferential treatment to any vendor, including local companies. Not only is it against the law, it is not good business practice, since it limits fair and open competition for all vendors and is therefore a detriment to obtaining the best possible value for each tax dollar.

c) An Irreproachable Standard of Personal Integrity on the Part of All Those Designated as Procurement Representatives for This Corporation. Individuals involved with procurement activities must act, and be seen to act, with integrity and professionalism. Honesty, care and due diligence must be integral to all procurement activities within and between the organization, suppliers and other stakeholders. Respect must be demonstrated for each other and for the environment. Confidential information must be safeguarded. Participants must not engage in any activity that may create, or appear to create, a conflict of interest, such as accepting gifts or favours, providing preferential treatment, or publicly endorsing suppliers or products.

d) Cooperation with Other Public Agencies in Order to Obtain the Best Possible Value for Every Tax Dollar. This Corporation is a member of a cooperative purchasing group. Made up of several public agencies, this group pools its expertise and resources in order to practise good value analysis and to purchase Goods, Services and/or Construction in volume and save tax dollars

SCHEDULE "F" TO BY-LAW 2013-073
GREEN (SUSTAINABLE) PROCUREMENT
Green (Sustainable) Procurement

The Corporation is committed to the purchase of goods and/or services with due regard to the preservation of the natural environment and to encourage the use of environmentally friendly products and services.

All departments, in conjunction with the Purchasing Branch, are encouraged to seek additional ways of achieving the goal of being environmentally safe and responsible by thorough review of each procurement process of goods, services and construction to ensure that wherever possible and economically feasible, specifications/terms of reference provide for:

- a) Expanded use of products and services that contain post-consumer recyclable waste and/or recyclable content to the maximum level allowable, without significantly affecting the intended use or performance of the product or service;
- b) Consideration of products, certified by an Independently accredited organization, that prevent the over consumption of energy and other resource and reduce the production of waste, and the release of substances harmful to the biosphere;
- c) Consideration of products certified by an independently accredited organization, which favour environmentally-benign, post-consumer, bio-degradable, and non-toxic ingredients.
- d) Consideration for the process by which products are manufactured, operated, transported, stored, packaged and the method of disposal.

It is also recognized that a cost analysis may be required in order to ensure that the products are made available at competitive prices in order to increase the development and awareness of Environmentally Sound Products.

SCHEDULE "G" TO BY-LAW 2013-073**FAIR TRADE CERTIFIED PRODUCTS****Fair Trade Certified Products**

The Corporation shall give equal consideration for the purchase of "Fair Trade Certified" products that are offered in response to a procurement request provided the submission is compliant with this By-law, that it meets or exceeds the stated specification or terms of reference and, is determined to be the economically best value for purchase.