

The Corporation of the Town of Ajax

By-law Number 68-2023

Being a By-law to define the Procurement policies for the acquisition of Goods and/or Services by the Town of Ajax.

Whereas this By-law establishes authority and sets out the methods by which the Town of Ajax will procure Goods and/or Services, subject to certain exceptions set out herein;

Now therefore, the Council of the Town of Ajax enacts as follows:

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1. Short Title

This By-law may be cited as the Procurement By-law.

2. Purposes, Goals and Objectives

2.1. The purpose, goals and objectives of this By-law and each of the methods of acquisition authorized are:

- to encourage competition among suppliers;
- to maximize savings for taxpayers;
- to ensure service and product delivery, quality, efficiency and effectiveness;
- to ensure fairness among Bidders;
- to ensure openness, accountability and transparency, while protecting the

financial and operational best interests of the Town; • to have regard for the accessibility for persons with disabilities to the Goods/Services and Construction purchased by the Town.

2.2. This By-law shall be applied and administered having regard for the Town's "Capital Expenditure Control Policy" and any other financial control policies, as amended.

3. Definitions

Award: means the selection of a Bidder/Proponent and their Goods/Services as accepted by the Town.

Bid: means the Bidder's or Proponent's offer to sell the Goods/Services to the Town.

Bidder: means, a person, supplier, vendor, contractor, consultant, developer or professional, who is responding to a procurement process and / or submits a Bid to the Town.

Bid Document: means a Request for Tender, Request for Quotation, Request for Proposal or other documents that state, the Town's desire to buy or to consider buying and Bidders/Proponents offer to sell to the Town, the Goods/Services defined in the specifications.

Bid Irregularity: means a deviation between the requirements of a Bid Document request and the information provided in the Bid response.

Company: The person, contractor, consultant, firm or corporation to whom the Town has awarded the Contract, its successors and assigns.

Contract: means, a binding agreement between two or more parties that creates an obligation to provide a particular Good/Service.

Council: means the Council of the Town.

Department: means a Department as established by the Town from time to time.

Department Head: means the person chosen by the Town to be the head of a Department.

EOI: means Expression of Interest, a process whereby the Town uses a focused market research tool to determine Bidder interest in proposed procurement.

Emergency: means an event or occurrence that the Department Head deems an immediate threat to the welfare and protection of persons, property, the environment or the security of town interests and the event or occurrence necessitates the immediate need for goods, services or construction to mitigate the emergency and time does not permit for a competitive procurement process

Formal Process: means the request for Bid is issued in writing, on prescribed forms. Bidders/Proponents must submit their Bid, using these forms, by a predetermined time. Formal processes must follow the provisions detailed in the various procurement related QMS Standard Operating Procedures/Work Instructions.

Goods/Services: means all goods and services, as set out in the Bid Document, which include all supplies, materials, equipment, general maintenance and services, construction and works contracts, leases, rentals, and repairs of equipment; consulting and professional services, including the services provided by architects, engineers, designers, real estate appraisers, management or financial consultants, brokers or lawyers and any other consulting or professional service rendered on behalf of the Town.

Informal Process: means the request for Bid may or may not be published and

received on prescribed forms, by a predetermined time. Depending on the purchase value, Bids may be received electronically, verbally or in written formats.

Major Irregularity: means an irregularity in a Bid, such that a strict compliance component is missing, which is required at the time of Bid submission, affecting the price, quality, quantity or delivery and is material to the Award. If the irregularity is permitted, the Bidder/Proponent could gain an unfair advantage over competitors and therefore results in the automatic rejection of the Bid.

Minor Irregularity: means an irregularity in a Bid, such that a Bid submission is substantially compliant, and the irregularity affects form rather than substance. The effect on the price, quality, quantity or delivery is not material to the Award. If irregularity is permitted, the Bidder/Proponent would not gain an unfair advantage over competitors. The Bidder/Proponent will, if any, be allowed time to clarify/correct the submission, only with respect to the Minor Irregularity.

MFIPPA: means Municipal Freedom of Information and Protection of Privacy Act.

Proposal: means an offer from a Proponent to provide Goods/Services to the Town, acceptance of which may be subject to further negotiation. It is the response submitted to a RFP.

Proponent: means a person, supplier, vendor, contractor; developer or professional submitting a Proposal.

Procurement: means the Procurement Section of the Finance Department.

Purchasing Card (P-Card): means a type of credit card issued at the corporate level, by an authorized lending institute. The cards are issued in an individuals' name, but the charges incurred are the liability of the Town.

QMS: means the Town's Quality Management System, which consists of Standard Operating Procedures and Work Instructions.

Quotation: means an offer from a Bidder to provide Goods/Services to the Town or buy Goods/Services from the Town, at a specific rate or price. It is the response submitted to a RFQ, the acceptance of which will result in the formation of a binding Contract between the Town and the Bidder submitting the Quotation.

RFI: means Request for Information, a process whereby the Town uses a general market research tool to determine what products and/or services are available; to scope out business requirements; and/or estimated project costs.

RFP: means Request for Proposal, a process whereby the Town identifies a need, but the method by which it will be achieved is unknown at the outset. This process allows Proponents to propose solutions or methods to arrive at a desired result.

RFQ: means Request for Quotation, a process whereby the Town, through a Formal or Informal Process, requests Bids for particular Goods/Services, which may or may not be required to be submitted on prescribed forms.

RFT: means Request for Tender, a process whereby the Town, through a Formal Process, requests Bids for particular Goods/Services which must be submitted on prescribed forms.

RPQ: means Request for Pre-Qualification, a process whereby the Town requests specific qualification criteria, which will then be used to identify and pre select Bidders, where the experience and qualifications of the Bidder must be clearly established and verified prior to the Bidder being allowed to submit a Bid. This process is typically used when selecting Architects and General Contractors for large construction or renovation projects.

Single Source: means the procurement of Goods/Services from a particular Bidder/Proponent rather than through the solicitation of Bids from multiple Bidders/Proponents who can also provide the same/similar Goods/Services.

Sole Source: means the procurement of Goods/Services that are unique to a particular Bidder/Proponent and cannot be obtained from another source.

Specifications: Detailed and exact non-restrictive written descriptions, instructions and drawings defining the Goods requested in the Bid Document.

Standard Operating Procedures/Work Instructions: means the procedures/instructions established by the Town to be followed in carrying out a given operation or a given situation.

Supplier: means the vendor, individual, partnership, firm or corporation, or any entity that is carrying out business of providing goods and/or services or construction to the Town.

Tender: means, an offer from a Bidder to provide Goods/Services in response to a RFT, the acceptance of which will result in the formation of a binding Contract between the Town and the Bidder submitting the Tender.

Terms of Reference: General and non-restrictive written descriptions/instructions of the Goods/Services required without detailing how the work should be completed.

Town: means The Corporation of the Town of Ajax.

Unsolicited Proposal: means proposals received by the Town from a vendor or vendors who have approached the Town with a proposal that has not been requested through a regular procurement process.

Work: All labour, materials, products, resources, articles, services, supplies and acts required to be done, furnished or performed by the Company, which are the subject of the Contract.

4. Procurement Procedures

Any person acquiring Goods/Services on behalf of the Town, shall do so in accordance with this By-law and the various procurement related QMS Standard Operating Procedures/Work Instructions.

4.1. Method of Solicitation -The method of solicitation may take the form of one of the following:

- Request for Quotation (RFQ)
- Request for Tender (RFT)
- Request for Proposal (RFP)
- Request for Pre-Qualification (RPQ)
- Negotiable Request for Proposal (NRFP)
- Request for Information (RFI)
- Request for Single/Sole Source (RFS)
- Expression of Interest (EOI)
- Non-Competitive Process

4.2. Where the factors of suitability, quality, service, and ability to deliver, are deemed to be equal, the Contract shall be awarded to the lowest, compliant Bidder or highest scoring, compliant Proponent, who meets the minimum Specifications.

4.3. Notwithstanding the provisions of this By-law, the Town shall have absolute discretion in awarding Contracts and retains the right to reject any or all Bids.

4.4. Purchases \$0 - \$10,000.00

Competitive Bids are not required. Quotations are encouraged to be sought to ensure best value is obtained wherever possible.

4.5. Low Value Purchases

Permitted for any employee with the appropriate delegated authority approval and authorized to use a JD Edwards OD Purchase Order and / or Purchasing Card (P-card) for purchase of low-value goods, services and construction. All employees authorized to purchase low value goods and services under \$10,000.00 must abide by the general rules and responsibilities to create purchase orders and the Purchasing Card Policy. Procurements may not be split to fall below this threshold.

4.6. Purchases Over \$10,000.00

- The Bid solicitation process shall be conducted by Procurement, unless the Goods/Services are exempted under Section 8, Exceptions/Exemptions from Competitive Process.
- The Department shall provide Procurement with the relevant information required for the acquisition, such as; Specifications, Terms of Reference, special provisions, plans, drawings, etc.
- The bid process method to be followed is based on the dollar value of the estimated contract value (inclusive of taxes):

Contract Value	Bid Process
\$10,000.01 to \$100,000.00	Informal
Over \$100,000.00	Formal

4.7. Negotiations Following a Competitive Bid Process

- Negotiations with suppliers may be used when one or more of the following circumstances apply:
- When bids have been solicited and no responsive bid has been received;
- In the case of a RFT/RFQ, prior to the onset of any negotiations, the competitive Bid method of solicitation must be cancelled [where applicable] and:
- all Bidders that submitted a Bid for the solicitation, will be notified in writing that a Contract with respect to the Bid Document [RFT/RFQ] will not be awarded;
- any Bid securities, including Bid Bonds and Agreements to Bond will be returned [where applicable].
- When using a competitive Bid process, purchases of Goods/Services may be acquired through negotiation under the following conditions:
- where two or more identical Bids are received;
- where the lowest compliant Bid meeting Specifications is excessive in total cost and/or substantially exceeds the estimated cost or budget;
- where all Bids received fail to meet Specifications and/or terms and conditions and it is impractical to recall the request for Bid.
- Where negotiations are undertaken with more than one Bidder/Proponent, all Bidders/Proponents shall be given full disclosure on all information relating to the negotiation, subject to the provisions of the MFIPPA.

4.8. Purchasing Cards

Purchases made by P-Cards are subject to the requirements of this By-law, various procurement related QMS Standard Operating Procedures/Work Instructions and other financial control policies.

4.9. Contract Award Approval Levels

- In determining the appropriate authority level, the Contract purchase value shall be considered to include all applicable costs (e.g. freight, taxes, duties, etc.) in the acquisition of the Goods/Services for the entire time period the Contract is being awarded to a particular Bidder/Proponent.
- Authority is granted to the staff to award or enter into Contracts that are within budget and are awarded to the lowest compliant Bidder or highest scoring compliant Proponent, as detailed in the following chart:

Contract Value	Approval Authority
\$0 to \$100,000.00	Department Head or Designate
\$100,000.01 to \$500,000.00	CAO and Director of Finance/Treasurer

- The following Contracts must be awarded by Council:
 - Contracts over \$500,000.00
 - All over budget and unbudgeted capital in excess of \$100,000.00 or 20% of the approved budget amount, whichever is greater
 - Any recommended award that is not to the lowest Bidder or highest scoring Proponent meeting specifications

4.10. Council Recess Periods - Contract Award Over \$500,000.00

Unless otherwise authorized by Council, Council's recess periods are to cover the annual Summer break (July - August); Municipal Election period; and the annual Seasonal break (December/January). The following shall apply during the Council recess periods:

- the CAO and Director of Finance/Treasurer, or their designates, are authorized to issue Awards and enter into Contracts, provided they are within budget;
- the Mayor, CAO and Director of Finance/Treasurer, or their designates, are authorized to issue Awards and enter into Contracts if they exceed the budget or are unbudgeted;
- a report will be prepared by the applicable Department Head, and presented to GGC at its first meeting following the recess period, regarding all Contract Awards exceeding \$500,000.00 and awarded during the recess period.

5. Non-Competitive Process (Single/Sole Source Purchases)

5.1. All Non-Competitive purchases of Goods/Services, greater than \$10,000.00 must be assessed by the Manager of Procurement prior to any negotiations/discussions with a Vendor.

5.2. Procurement, in consultation with Departments, shall obtain a written Bid, from the Bidder/Proponent, for any Non-Competitive purchase of Goods/Services, prior to the purchase of the Goods/Services. The Manager of Procurement shall determine whether or not an informal process will be used, regardless of the Contract value.

5.3. A Non-Competitive Process shall only be used if one or more of the following conditions apply and a process of negotiation is undertaken to obtain the best value in the circumstances for the Town:

- the Goods/Services are only available from one source or one supplier by reason of:

Sole Source:

5.3.1. a statutory or market based monopoly;

5.3.2. scarcity of supply in the market;

5.3.3. existence of exclusive rights (patents, copyright or license);

Single Source:

5.3.4. need for compatibility with Goods/Services previously acquired and there are no reasonable alternatives, substitutes or accommodations;

5.3.5. need to avoid violating warranties and guaranties where service/support is required;

5.3.6. the extension of an existing Contract would prove more cost effective or beneficial or the change in supplier would cause significant duplication in costs;

5.3.7. due to market conditions, required Goods/Services are in short supply;

5.3.8. the required Goods/Services are to be supplied by a particular Bidder/Proponent having special knowledge, skill, expertise or experience, which cannot be provided by any other person; or

5.3.9. the nature of the requirement is such that it would not be in the public interest to solicit competitive Bids, as in the case of security or confidential matters.

5.3.10. Replacement parts, components or services used in support of equipment specifically designed by the manufacturer

5.3.11. for technical services in connection with the assembly, installation, or servicing of highly technical or specialized equipment

- an attempt to purchase the required Goods/Services has been made in good faith, using a competitive Bid method and has failed to identify a successful Bidder/Proponent;
- Goods/Services are to be supplied as a result of an emergency, which would not reasonably permit the use of other procurement procedure methods;
- where, at the discretion of the Department Head in consultation with the Manager of Procurement, and where deemed necessary, the approval of the CAO, it is deemed to be in the best interest of the Town to negotiate with Bidders/Proponents.

5.4. Where a Non-Competitive Procurement Process is undertaken, full disclosure shall be made available on all information relating to the purchase, subject to the provisions of the MFIPPA.

6. Unsolicited Bids

Unsolicited Bids received by the Town shall be reviewed by the Department Head and the Manager of Procurement. Any procurement activity resulting from the receipt of an unsolicited Bid shall comply with the provisions of the Non-Competitive Process requirements of this By-law.

7. Applicable Legislation

7.1. The Municipal Act, 2001, Subsection 270 (1), provides that a municipality shall adopt a Bylaw /policy for its procurement of goods and services. Integrity is required in procurements to maintain the public's trust and reduce the Town's exposure to legal risk, achieved through the requirement of complying with all applicable laws. Procurement activities at the Town must be conducted in accordance with all laws, regulations and standards, including, but not limited to:

- a. Municipal Act and Regulations
- b. Municipal Freedom of Information and Protection of Privacy Act and Regulations
- c. Competition Act (R.S.C., 1985, c. C-34) and Regulations
- d. Income Tax Act and Regulations
- e. Accessibility for Ontarians with Disabilities Act and Regulations
- f. Municipal Conflict of Interest Act and Regulations
- g. Occupational Health and Safety Act and Regulations
- h. Discriminatory Business Practices Act, R.S.O. 1990, Chapter D.12
- i. Ontario Business Corporations Act

7.2. Procurement activities at the Town must comply with the applicable sections of the following trade agreements as amended from time to time:

- a. Canadian Free Trade Agreement (CFTA)
- b. Trade and Cooperation Agreement between Ontario and Quebec – Quebec and Ontario
- c. Comprehensive Economic Trade Agreement CETA

8. Prohibitions

8.1. Except where a Bid is requested on a unit price basis, and subject to the provisions of the MFIPPA, no employee, or any appointed or elected official of the Town shall divulge the unit prices paid for by the Town for Goods/Services. However, the total price of a Contract, as well as the name of the successful Bidder/Proponent may be revealed to any interested party.

8.2. No Contract shall be awarded to any person or corporation who or which has a claim or has instituted a legal proceeding against the Town or against whom the Town has a claim or has instituted a legal proceeding with respect to any previous Contract.

8.3. No personal purchase of Goods/Services shall be made by the Town on behalf of a member of Council, a member of a local board or an employee of the Town, unless authorized by Council.

8.4. No employee or member of Council shall purchase or offer to purchase any Goods/Services on behalf of the Town except as may be provided for in this By-law.

8.5. No requirements for Goods/Services, including consulting or professional services, shall be divided to avoid the requirements of this By-law and the total project, annual requirement, or total Contract value shall be considered.

9. Exceptions/Exemptions from Competitive Process

Unless otherwise noted, Goods/Services as set out below may be procured without a competitive process. If the value exceeds \$500,000.00, the Contract must be awarded by Council. Exemptions do not preclude a bid process where competition may exist. It is expected that the intent of the Bylaw is followed wherever possible to ensure the best interests of the Town are taken into consideration.

9.1. Utilities (excluding purchases arranged through 3rd party agreements):

- Electricity, Water & Sewer, Natural Gas, Television Services
- Elexicon Energy – as a shareholder it may be permissible for the Town to solely procure goods and /or services from Elexicon Energy, or its subsidiaries, when the Town's best interests are served.

9.2. Training and Education:

- Membership Fees, Conferences, Seminars, Courses, Books, Magazines

9.3. Advertising:

- Newspapers, Radio, Television, Magazines, Trade Journals, Internet

9.4. General Expenses:

- Subscriptions, Transportation (Bus, Train, Airplane), Postage, Catering, Meeting Expenses, Meeting Venue Rentals, Fund raising events.

Public Relations; media; social media monitoring

- Trade Show Registration and Booth Rentals, Event Sponsorship, Speakers

9.5. Professional Services:

- Insurance Claims
- Insurance: general insurance service for the Town being member of Durham Municipal Insurance Pool (DMIP) ; procurements relating to a claim where a bid process is not practical
- Recruitment; Professional Search, Executive services
- Legal Services
 - Services that, under applicable law, may only be provided by Licensed Lawyers or Notaries;
 - Services of expert witnesses or factual witnesses used in Court or Legal proceedings;
 - Services related to Municipal Policy and Approval Appeals;
 - Legal Counsel, where retained by the Town Solicitor.
- Motivational speakers
- Investment Services and related financial advice, banking
- Commissioning and Restoration of Artwork, Historical / Heritage Assets
- Appraisal Services
- Arbitrators, Mediators, investigators
- Facilitators, instructors, speakers, or performers
- Honoraria
- Real property
- Translators, interpreters, braille services, TTY

9.6. Proprietary Software Licenses, directly from software OEMs such as ESRI, Oracle, Amanda etc.

- Renewals of licenses, annual maintenance, and support for procured software and applications; true ups as required.

9.7. Toronto and Region Conservation Authority (TRCA) and Central Lake Ontario Conservation Authority (CLOCA)

9.8. Government to Government procurement

9.9. Any exemption and/or non-application that can be established to be in accordance with applicable trade agreements, as amended.

10. Local Preference

10.1. The following legislative documents prohibit municipalities from adopting a Local Preference Policy:

- The Discriminatory Business Practices Act (R.S.O. 1990, Chapter D12), as amended; and
- The Canadian Government's implementation of the Agreement of Internal Trade.
- The Canadian Free Trade Agreement [CFTA], Article 503.5 Prohibited Practices.
- Canadian /European Union Comprehensive Economic and Trade Agreement [CETA], Article 19.4 – General Principles – Non-Discrimination

10.2. The primary objective of the procurement process is to acquire Goods/Services at the lowest possible cost, consistent with the demands of suitability, quality, service, and delivery capabilities.

10.3. If in the determination of the Manager of Procurement or designate, a competitive market exists, and two or more compliant Bids are received and are identical in price, and provided suitability, quality, service, and delivery are similar, then priority of acceptance may be made first for a local Bid, if any then, for a regional Bid, if any otherwise, the Manager of Procurement or designate, will proceed to procure 'best and final offers' [BAFO] from the Bidders/Proponents involved in order to break the tie.

11. Co-operative Purchasing

11.1. The Town shall participate with other government agencies or public authorities in co-operative or group procurement organizations for purchasing of Goods/Services, where it is in the best interest of the Town to do so.

11.2. The decision to participate in co-operative purchasing agreements will be made jointly by the Manager of Procurement or designate and the responsible operating Department.

11.3. The policies of the government agencies or public authorities calling the co-operative Bid Document, as amended, are to be the accepted governing policy for that particular Bid Document.

11.4. In addition to the Durham Purchasing Cooperative (DPC), the Town may also consider other co-operatives or group procurement organizations that are in the best interest of the Town such as OECM, Source well, Canoe, CCPI, Supply Ontario etc.

12. Emergency Purchases (greater than \$10,000.00)

12.1. Emergency purchases of Goods/Services will be approved by the Department Head and as soon as possible by the Treasurer and Manager of Procurement and where applicable, the CAO or their designates when the immediate purchase is essential to prevent serious delays in the work of any department which might involve; danger to life; damage to property; costly downtime; or the provision of an essential service.

12.2. As soon as possible following the Emergency, the Department shall prepare the required reports identified in the Corporate Policies, Operating Procedures and Work Instructions.

13. Ethics in Purchasing

The code of purchasing ethics, established by NIGP, The Institute of Public Procurement and the Ontario Public Buyers Association (OPBA), shall apply to all Finance Department, Procurement Section staff involved in any procurement or related processes.

14. Code of Conduct

All Town staff are governed by the Town's Code of Conduct Policy, Corporate Policy #014, as amended. Council is governed by the Municipal Conflict of Interest Act, R.S.O. 1990, as amended and the Town's Council Member Code of Conduct, By-law No. 90-2013, as amended.

15. Review of Bids & Bid Irregularities

15.1. Bids received, are reviewed by staff, for compliance with the Bidding process and procedural rules as set out in the Bid Document. Bids are further evaluated to determine the following, all in accordance with the Bid Document:

- technical requirements have been met;
- minimum specifications have been met;
- minimum required qualifications have been met;
- minimum experiences have been met;
- accuracy of the Bid.

15.2. Bid irregularities found in a Bid, are categorized as a Major Irregularity or a Minor Irregularity, with respect to Bid compliance. A Major Irregularity found in the Bid will result in automatic rejection of the Bid. Where a Minor Irregularity is found in the Bid, the Town reserves the right to waive, correct, or have the Bidder/Proponent clarify the irregularity in order to serve the best interests of the Town.

15.3. Appendix A [attached] provides the Town with the right to waive any irregularities and/or omissions in a Bid, this shall give the Town the discretion to waive Bid Irregularities; and in the absence of such waiver, Appendix A shall govern the Town's response.

15.4. In exercising judgement, the Manager of Procurement or designate, shall consider the advice of the Town Solicitor.

16. Bidder/Proponent Performance

16.1. The Department shall be responsible for monitoring the Contract performance of Bidders/Proponents and for documenting evidence of such performance in

accordance with the various Vendor Performance related QMS Standard Operating Procedures/Work Instructions.

16.2. The Town may, in its sole discretion, reject a Bid from a Bidder/Proponent if:

- the Bidder/Proponent has not performed works for previous Contracts in compliance with the Contract Documents;
- the Bidder/Proponent has previously provided Goods/Services in an unsatisfactory manner;
- the Bidder/Proponent failed to satisfy an outstanding debt/obligation to the Town;
- there have been past bad dealings between the Town and the Bidder/Proponent;
- the Town determines that the Bidder/Proponent does not have sufficient experience in the supply of the Goods/Services; or
- the Town has concerns with the financial ability of the Bidder/Proponent to perform the Contract.

16.3. Rejection of a Bid, for any of the above noted situations, must be substantiated by written documentation related to Bidder/Proponent performance of a Contract where applicable.

16.4. Rejection of a Bid for performance shall be approved by the appropriate Department Head and the Manager of Procurement or designate.

17. Review Process

17.1. This By-law and the various procurement related QMS Standard Operating Procedures and Work Instructions will be reviewed and if necessary, revised on an annual basis.

17.2. While this will not preclude an earlier review, it does establish a time frame to ensure both the Procurement By-law and the various procurement related QMS Standard Operating Procedures/Work Instructions are fully reviewed on a periodic basis, so that any necessary enhancements can be made.

By-law Number 39-2019 is hereby repealed.

READ a first and second time this Twenty-Seventh day of November 2023.

READ a third time and passed this Twenty-Seventh day of November 2023.

Mayor

Deputy Clerk