

**THE CORPORATION OF THE
TOWNSHIP OF SOUTH GLENGARRY
BY-LAW 33-18
FOR THE YEAR 2018**

***BEING A BY-LAW TO ESTABLISH A PURCHASING POLICY FOR THE
TOWNSHIP OF SOUTH GLENGARRY.***

***NOW THEREFORE THE COUNCIL FOR THE TOWNSHIP OF SOUTH
GLENGARRY HEREBY ENACTS THE FOLLOWING BY-LAW:***

1. SHORT TITLE

- 1.1. This By-law may be cited as the "Procurement By-Law" or "Procurement Policy".

2. PURPOSE/OBJECTIVES

- 2.1. The objectives of this By-law are:

- 2.1.1. to provide direction to Administration on the proper steps to follow in procurement while allowing enough flexibility to promote innovative procurement processes that provide best value for the Township;
- 2.1.2. to obtain best value when purchasing goods and services for the Township while treating all suppliers fairly;
- 2.1.3. to ensure purchases are made using a competitive process that is open, transparent and fair to all suppliers;
- 2.1.4. to ensure public accountability.

3. DEFINITIONS

- 3.1. In this By-Law,

"Administration" means those having the authority under this Procurement By-Law to conduct procurement processes;

"Agreement" means a binding contract between two or more parties that create an obligation to do or not to do a particular thing;

"Award" means authorization to proceed with the purchase of goods and services from a chosen supplier;

"Best Value" means the optimal balance of all factors, both cost and non-cost;

"CAO" means the Chief Administrative Officer of the Township or designate;

"Council" means the Council of The Township of South Glengarry;

"General Manager" means the person responsible for the operation of a Division and includes: General Manager – Infrastructure Services, General Manager – Community Services, General Manager – Corporate Services, and Fire Chief;

"Manager/Director" means the person responsible for the operation of a Department and includes: Manager – Roads, Manager – Property Standards & Enforcement, Director – Water & Wastewater, Director – Development, & Clerk ;

"Professional Services" means services requiring the skills of professionals for a defined service requirement including:

- a. architects, engineers, designers, management and financial consultants; and,
- b. firms or individuals having specialized competence in environmental, planning, information technology or other disciplines;

"*Province*", as the term is used in this By-Law either means the Province of Ontario or the Canadian provinces collectively, including the Federal Government and territorial governments;

"*Purchase*" means to acquire goods or services by purchase, rental, lease or trade;

"*Respondent*" means a supplier providing a submission in response to a solicitation;

"*Routine Occurrence*" means an activity that occurs at least three times per term of Council;

"*Solicitation*" means a formal request for submissions;

"*Special Circumstance*" means a) an event that is exceptional or could not be foreseen and is a threat to the health, safety or welfare of the public, or b) an event that could cause loss or damage to public or other property or c) an event that has disrupted essential services that need to be re-established without delay, or d) where Council declares in an open meeting by resolution that a special circumstance exists, such declaration to be done by citing the special circumstance clause of this By-Law;

"*Standing Offer*" means an offer from a supplier that allows the Township to purchase frequently ordered goods or services from suppliers at prearranged prices, under set terms and conditions, when and if these are requested but no contract exists until the Township places an order against the Standing Offer;

"*Submission*" means an offer or bid from a Respondent in response to a solicitation;

"*Substantive Objection*" means a written objection provided to the Clerk or the General Manager responsible for the procurement by an interested party that could potentially affect the integrity of the procurement process, giving specific reasons for the objection and subject to the provision that the objection is not precluded by legislation or applicable trade agreements;

"*Successful Respondent*" means a Respondent that has signed an Agreement;

"*Township*" means The Corporation of the Township of South Glengarry;

"Township Management Team" means the Chief Administrative Officer, General Managers, Fire Chief, and Managers/Directors.

4. **ADMINISTRATION RESPONSIBILITIES AND AUTHORITIES**

- 4.1. **Sufficient Funds:** The exercise of authority by Administration to enter into an Agreement is subject to the identification and availability of sufficient funds in appropriate accounts within the budget.
- 4.2. **Insufficient Funds:** Where a requirement exists to initiate a project for which goods or services are required and funds are not contained in appropriate accounts within the budget to meet the proposed expenditure, Administration shall, prior to the commencement of solicitation, unless it is a Request for Information, submit a report to Council containing:
 - 4.2.1. information surrounding the requirement to obtain the goods or services;

- 4.2.2. information on the availability of the funds within the budget which were originally approved for other purposes or on the requirement for additional funds.
- 4.3. **General Managers** have responsibility for procurement activities within their Divisions and are accountable for achieving the specific objectives of the procurement project.
- 4.4. **The Treasurer** is authorized to pay all accounts for which funds are budgeted and the expenditure is properly approved by the Manager/Director, General Manager, Chief Administrative Officer or by Council resolution. Where funds are not budgeted the Treasurer is authorized to pay the account if it has been approved by Council resolution.
 - 4.4.1. **The CAO** has the responsibility for procurement activities other than those the General Managers are responsible for;
 - 4.4.2. **Compliance with Applicable Trade Agreements:** ensuring that the Township complies with the basic principles of the procurement chapters of the trade agreements, including those set out in Schedule A;
 - 4.4.3. **Special Interest:** subject to the requirements of the applicable trade agreements, authority for procurement activities deemed by the CAO to be of special interest to the Township;
 - 4.4.4. **Not To Enter Into An Agreement:** authority to instruct Administration not to enter into an Agreement and to submit recommendations to Council for approval;
 - 4.4.5. **Additional Restrictions:** authority to provide additional restrictions concerning procurement;
 - 4.4.6. **Standard Procurement Documents:** responsibility to maintain standard procurement documents reflecting recent jurisprudence and best practices;
 - 4.4.7. **Review Substantive Changes:** responsibility to review and approve all substantive changes to standard clauses in solicitations and template documentation;
 - 4.4.8. **Give Direction:** responsibility, in order to maintain consistency, to provide directions to Administration on procurement policies and procedures and on the structure, format and general content of procurement documentation;
 - 4.4.9. **Cancel Solicitation:** authority to cancel a solicitation at any time prior to entering into an Agreement;
 - 4.4.10. **Overview:** authority and responsibility to overview the procurement process in order to maintain its integrity;
- 5. **COUNCIL RESPONSIBILITIES AND AUTHORITIES**
 - 5.1. Despite any other provision of this By-Law, the following Agreements are subject to Council approval prior to execution:
 - 5.1.1. any Agreement requiring approval from the Ontario Municipal Board;
 - 5.1.2. any Agreement prescribed by Statute to be made by

Council;

- 5.1.3. where a Substantive Objection emanating from the solicitation has been received;
 - 5.1.4. where a major irregularity (ie, one that makes the Submission substantially non-compliant) precludes the award of a tender to the supplier submitting the lowest responsive bid;
 - 5.1.5. where Council, by resolution, requires that an Agreement be subject to Council approval;
 - 5.1.6. where authority to approve has not been expressly delegated;
 - 5.1.7. Agreements in excess of \$30,000, or \$20,000 for non-routine Agreements.
- 5.2. **Insufficient Funds:** Council shall approve all procurement where a requirement exists to initiate a project for which goods or services are required and funds are not contained in appropriate accounts within the budget to meet the proposed expenditure.
 - 5.3. **Special Circumstances:** Subject to the requirements of the applicable trade agreements, when Council is of the opinion that a “Special Circumstance” warrants a non-competitive purchase the Council may authorize the purchase of such goods and services as is considered necessary to remedy the situation without regard to the requirements of this By-Law.
 - 5.4. **Co-operative Purchasing:** Council shall have the responsibility to approval participation with other government agencies or public authorities in Co-operative Purchasing if such procurement has not already been done co-operatively during the term of Council or if the quantities or process for the procurement has changed substantially (the policies of one of the government agencies or public authorities calling the co-operative tender are to be the accepted policy for that particular procurement).
 - 5.5. Subject to the requirements of the applicable trade agreements, Council may, by resolution, exercise any powers and duties conferred by this By-Law upon Administration.
6. **TOTAL PROJECT COST**
 - 6.1. No requirement may be divided into two or more parts to avoid the application of the provisions of this By-Law.
 - 6.2. The estimated value of a solicitation is to be calculated before taxes.
7. **NOTIFICATION OF PROCUREMENT OPPORTUNITIES**
 - 7.1. **Less than \$50,000:** For solicitations with an estimated value of less than \$50,000 Administration may provide notification by inviting submissions provided that all eligible Respondents from similar solicitations in the last 24 months are invited, all eligible and known persons with the capabilities and experience to provide the goods or services within the Township of South Glengarry are invited, at least three persons in total are invited to provide submissions (unless there are less than three person with the capabilities and experience to provide the goods or services), and the solicitation is posted on southglengarry.com.

7.2. **Greater than \$50,000:** For solicitations with an estimated value of \$50,000 or more, or as an alternative notification for solicitations with a value of less than \$50,000, Administration shall place an advertisement in at least one local newspaper (e.g.: Standard Freeholder, Glengarry News, etc.), on the Corporate website, and on an electronic bulletin board designated under any applicable trade agreement, as described in Schedule B.

7.3. In addition, the thresholds for covered procurements under the *Canadian Free Trade Agreement (CFTA)* and the *Canada-European Union Comprehensive and Trade Agreement (CETA)* are set out in Schedule C.

8. **PROCUREMENT TYPE TO BE USED**

8.1. **Request for Quotation or Request for Tender** may be used where:

8.1.1. a requirement can be fully defined and best value for the Township can be achieved by an award selection made on the basis of the best price;

8.1.2. services, for which the requirement can be described in specific terms, minimum qualifications clearly defined, and best value achieved by selecting the best submission.

8.2. **Request for Proposal** may be used where any of the following apply:

8.2.1. to achieve best value, the award selection will be made on an evaluation involving a combination of mandatory and desirable requirements;

8.2.2. the requirement is best described in a general performance specification;

8.2.3. innovative solutions are sought.

8.3. **Request for Standing Offer** may be used where a need is anticipated for a range of goods and services for a specific purpose but the actual demand is not known at the outset and delivery is to be made when a requirement arises; the following shall apply in such circumstances:

8.3.1. to establish prices and select sources, Administration shall employ the provisions contained in this By-Law for the acquisition of goods and services;

8.3.2. more than one supplier may be selected where it is in the best interests of the Township;

8.3.3. the expected quantity of the specified goods or services to be purchased over the time period of the agreement will be as accurate an estimate as practical and be based, to the extent possible, on previous usage adjusted for any known factors that may change usage;

8.3.4. a call-up against a standing offer is considered to be an individual Agreement, and the normal award limits apply;

8.3.5. the requirements of the applicable trade agreements will apply.

8.4. In accordance with the CFTA, the Township may limit tenders to pre-qualified suppliers provided that the prequalification process is

consistent with the requirements of the CFTA. A request for prequalification inviting interested suppliers to apply for inclusion on a prequalification list must be published in a tender notice annually on one of the tendering websites or systems designated by the Province and must include:

- 8.4.1. the criteria that will be used to prequalify suppliers, unless those requirements are included in the qualification documentation;
 - 8.4.2. a statement that only the suppliers on the prequalified list will receive further notices of procurement covered by the list; and
 - 8.4.3. the period of validity of the list, or if the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list.
- 8.5. Notwithstanding Section 8.4, where a prequalification list will be valid for three years or less, the Township may publish the request for prequalification only once, at the beginning of the period of validity of the list, provided that the request for prequalification states the period of validity and that further requests will not be published.
- 8.6. The Township must allow all prequalified suppliers to participate in a specific procurement unless the Township states in its request for prequalification any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.
- 8.7. Other procurement process types, including negotiations, may be used with the approval of the CAO provided it complies with this By-Law and the applicable trade agreements. Negotiations may be conducted provided they are in accordance with the requirements of the Canadian Free Trade Agreement (CFTA) as set out in Schedule D.
9. The goals for each procurement process as defined above shall be additional objectives of this By-Law.

10. NON-COMPETITIVE PURCHASES

- 10.1. The requirement for notification and/or competitive solicitation for goods and services may be waived by the CAO and replaced with negotiations by Administration under the following circumstances:
- 10.1.1. for legal services provided that the CAO shall report to Council once per term on the use of such services;
 - 10.1.2. where the estimated value of the solicitation is expected to be less than \$5,000, or less than \$40,000 for professional services;
 - 10.1.3. where competition is precluded due to the application of any Act or legislation or because of the existence of patent rights, copyrights, technical secrets or controls of raw material;
 - 10.1.4. where only one source of supply would be acceptable and cost effective;
 - 10.1.5. where the nature of the requirement is such that it would not be in the public interest to solicit competitive submissions, as in the case of security or confidentiality matters;

- 10.1.6. where the possibility of a follow-on Agreement was identified in the original solicitation;
 - 10.1.7. where delivery time is critical;
 - 10.1.8. where the requirement is for a utility for which there exists a monopoly;
 - 10.1.9. where a professional has knowledge of relevant document(s) which will therefore limit research or affords continuity.
- 10.2. In addition to the above, the *Canadian Free Trade Agreement* sets out:
- 10.2.1. a number of **exclusions** from the requirement to comply with the procurement chapter of the CFTA. The main exclusions are set out in Schedule E.
 - 10.2.2. a number of **exceptions** (limited tendering) from the requirement to comply with the procurement chapter of the CFTA. The Township may use limited tendering in the circumstances set out in Schedule F.
- 10.3. When a non-competitive process is used Administration shall continue to take steps to ensure best-value for the Township.

11. **SUBMISSION OPENINGS**

- 11.1. In the case of Request for Quotations and Request for Tenders, Submissions will be opened at the appointed time in the presence of any member of the public in attendance for the opening. Submissions will be opened by a member of the Township Management Team in the presence of one other staff.

12. **AUTHORITY TO ENTER INTO AGREEMENTS**

- 12.1. Administration has the authority to enter into an Agreement with the successful Respondent if the estimated value of the solicitation is expected to be less than \$30,000. Authority to enter into Agreements is as follows:
 - 12.1.1. **The CAO** may, for and in the name of the Corporation, enter into any Agreement of routine occurrence involving any single expenditure that is estimated to be less than **\$30,000**;
 - 12.1.2. **General Managers** may, for and in the name of the Corporation, enter into any Agreement of routine occurrence involving any single expenditure that is estimated to be less than **\$20,000**;
 - 12.1.3. **Managers/Directors** may, for and in the name of the Corporation, enter into any Agreement of routine occurrence involving any single expenditure that is estimated to be less than **\$10,000**;
 - 12.1.4. **Delegated Authority** to enter into any Agreement may be provided by a Manager/Director, General Manager, or the CAO to any employee or Deputy Fire Chief for any expenditure that is less than **\$2,500**.
 - 12.1.5. **Non-Routine Agreements** with an estimated value of less than **\$20,000** may be approved by the CAO;

- 12.1.6. **Council** shall have authority to enter into any other Agreement and delegates its authority to the Mayor (or Deputy Mayor when acting for the Mayor) and Clerk (or Deputy Clerk when acting for the Clerk) jointly to enter into any Agreement for and in the name of the Corporation provided that a resolution of Council authorizing the Mayor and Clerk to sign the Agreement has been passed by Council. Council retains the authority to name in the resolution any other individual(s) to enter into an Agreement on behalf of the Township.

13. **NO ACCEPTABLE SUBMISSIONS RECEIVED**

- 13.1. In the event there are no acceptable submissions, Council may waive the need for a revised solicitation and the Township may enter negotiations with the Respondent with the best submission; the CAO shall have such authority if the Agreement is expected to have a value less than \$30,000.

14. **EMERGENCIES**

- 14.1. Notwithstanding this By-Law, in an emergency which, in the opinion of a General Manager, constitutes an imminent danger to life or property, authorization may be given to the aforementioned General Manager by the Mayor or Chief Administrative Officer for the purchase of goods or services where the estimated value of the solicitation is not expected to exceed \$50,000.
- 14.2. Notwithstanding this By-Law, subject to the requirements of the applicable trade agreements, in an emergency which, in the opinion of a General Manager, constitutes an imminent danger to life or property, authorization may be given to the aforementioned General Manager jointly by the Mayor and Chief Administrative Officer for the purchase of goods or services where the estimated value of the solicitation is not expected to exceed \$100,000.
- 14.3. All emergency authorizations shall be reported to Council at the following Council meeting by the General Manager responsible for the purchase of the goods or services.
- 14.4. Emergency purchases, while not bound by the provisions of this By-Law will, nevertheless, have regard to this By-Law and will be handled as swiftly and as cost effectively as possible.

15. **RESPONDENT DISQUALIFICATION**

- 15.1. The Township may disqualify any Respondent or prospective Respondent, or successful Respondent for failure to meet quality, service, project budget, or failure to meet specifications, requirements, after sales service and to materially comply with the terms of an Agreement in the following circumstances:
 - 15.1.1. convicted of a criminal offence for attempting to obtain a contract with the Township;
 - 15.1.2. material breach of any term of the Agreement, including unwillingness to perform in accordance with the terms and conditions of the Agreement;
 - 15.1.3. any unsatisfactory performance on one or more agreements with the Township in accordance with the terms and conditions, or in accordance of specifications or both;

- 15.1.4. inappropriate gift – ie, one that is intended to attempt to influence, as determined by an objective person – offered to any Member of Council, official, agent or employee of the Township.

16. SUCCESSFUL RESPONDENTS CONFIDENTIALITY

- 16.1. Successful Respondents are required to maintain confidentiality with respect to any and all work conducted for or on behalf of the Township. Successful Respondents will direct any and all inquiries regarding the Agreement or the performance of the Agreement to the Township.

17. TREATMENT OF TENDERS AND AWARD OF CONTRACTS

- 17.1. The Township must receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
- 17.2. The Township must not penalize any supplier whose tender is received after the final date and time specified for receiving tenders if the delay is due solely to mishandling on the part of the Township.
- 17.3. If the Township provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the Township must provide the same opportunity to all participating suppliers.
- 17.4. To be considered for an award, a tender must be submitted in writing and must, at the time of opening, comply with the essential requirements set out in the tender notices and tender documentation and be from a supplier that satisfies the conditions for participation.
- 17.5. Unless the Township determines that it is not in the public interest to award a contract, the Township must award the contract to the supplier that the Township had determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the tender notices and tender documentation has submitted:
 - a. the most advantageous tender, or
 - b. if the price is the sole criterion, the lowest price.
- 17.6. If the Township receives a tender from a supplier with a price that is abnormally lower than the prices in other submitted tenders, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

18. TRANSPARENCY OF INFORMATION

- 18.1. Township must promptly inform participating suppliers of its contract award decisions, and, on the request of a supplier, will do so in writing. On request, the Township must provide an unsuccessful supplier with an explanation of the reasons why the Township did not select its tender.
- 18.2. No later than 72 days after the award of each contract covered by this By-Law, the Township must publish a notice on one of the tendering websites or systems designated by the Province. The information must remain readily accessible for a reasonable period of time. The notice must include at least the following:
 - (a) a description of the goods or services procured;

- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the successful tender;
- (e) the date of award; and
- (f) if limited tendering was used, the conditions and circumstances described in Schedule F that justified its use.

19. OTHER

- 19.1. The interests of the municipality, the public and persons participating in a procurement process are protected with the clearly defined notification requirements, responsibilities and authorities laid out in this By-Law.
- 19.2. This By-Law will be reviewed by Administration at least once per term of Council to evaluate effectiveness.
- 18.3. If any portion of this By-Law is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of the By-Law shall remain valid and binding.

20. ENACTMENT

- 20.1. This By-Law shall come into force and effect upon final passing.
- 20.2. By-Law No. 39-07 is repealed and any other bylaw relating to the purchasing policies of the Township of South Glengarry upon the final passing of this By-law.

READ A FIRST AND SECOND TIME IN OPEN COUNCIL THIS 22ND DAY OF MAY, 2018.

MAYOR

CLERK

READ A THIRD AND FINAL TIME IN OPEN COUNCIL THIS 18TH DAY OF JUNE, 2018.

MAYOR

CLERK

Schedule A

Canadian Free Trade Agreement

General Principles

1. The Township shall provide open, transparent, and non-discriminatory access to covered procurement to all suppliers covered under the Canadian Free Trade Agreement (CFTA) and shall accord such suppliers equal treatment.
2. The following are illustration of practices considered to be inconsistent with the principles described in 1:
 - a. according a preference for local goods, services, or suppliers;
 - b. scheduling events in the tendering process in order to prevent suppliers from submitting tenders;
 - c. specifying quantities of, or delivery schedules for, the goods or services to be supplied in order to prevent suppliers from meeting the requirements of the procurement;
 - d. using price discounts or preferential margins in order to favour particular suppliers;
 - e. limiting participation in a procurement only to suppliers that have previously been awarded one or more contracts by a procuring entity;
 - f. requiring prior experience if not essential to meet the requirements of the procurement;
 - g. providing information to one supplier in order to give that supplier an advantage over other suppliers; and
 - h. adopting or applying any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of any other Party in its procurement.

Schedule B

Notices

1. The Township must publish a tender notice for each covered procurement on one of the tendering websites or systems designated by its Province.
2. Each Province must notify the Secretariat of those designated tendering websites or systems on the effective date. A province must notify the Secretariat of any amendment to its notification.
3. The Provinces recognize that the Government of Canada will be developing an electronic Canada-wide single point of access (“SPA”) in accordance with international obligations.
4. Once developed, the Government of Canada will consult with the Provinces in order to determine how to adapt the SPA for the purposes of the CFTA. Once all Provinces agree that the SPA is suitable for the purposes of the CFTA, a procuring entity must make its tender notices for each covered procurement directly accessible through the SPA.
5. All tender notices must be available to suppliers free of charge.
6. Each tender notice must include:
 - a. the name and address of the Township and other information necessary to contact the Township and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
 - b. a brief description of the procurement;
 - c. the nature and the quantity, or estimated quantity, of the goods or services to be procured unless those requirements are included in tender documentation;
 - d. the address and final date for the submission of tenders;
 - e. the date, time, and place for any public opening of tenders;
 - f. a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers, unless those requirements are included in tender documentation that is made available to all interested suppliers at the same time as the tender notice; a statement that the procurement is subject to the procurement chapter of the CFTA;
 - g. the time-frame for delivery of goods or services, or the duration of the contract;
 - h. a description of any options, unless those requirements are included in tender documentation;
 - i. the procurement method that will be used, and whether it will involve negotiation or electronic auction;
 - j. if a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender, unless the criteria and any limitations are included in the tender documentation; and

- k. the language or languages in which tenders or responses to requests for prequalification may be submitted, if they may be submitted in a language other than that of the tender notice.

Schedule C

Thresholds for Covered Procurements

Canadian Free Trade Agreement (CFTA):

The thresholds applicable to the Township under the CFTA as of January 1, 2018, are as follows:

- a) \$101,100 or greater for goods or services, excluding construction; or
- b) \$252,700 or greater for construction.

Note that these thresholds are adjusted for inflation each year (in accordance with the formula described in Annex 504.4). The adjustment takes effect each year on January 1 every two years, and is publicized on the website of the Internal Trade Secretariat for the CFTA at:

<https://www.cfta-alec.ca/procurement/covered-procurement-thresholds/>

Canada-European Union Comprehensive and Trade Agreement (CETA):

The thresholds applicable to the Township under CETA as of January 1, 2018, are as follows:

Goods	Services	Construction
\$237,700	\$237,700	\$9.1 million

Schedule D

Negotiation

1. The Township may conduct negotiations with suppliers if:
 - . (a) it has indicated its intent to conduct negotiations in the required tender notice;
 - . (b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the tender documentation.

2. The Township must ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the tender documentation, and must:
 - (a) if negotiations are conducted concurrently with multiple suppliers, provide a common deadline for the participating suppliers to submit any new or revised tenders; or
 - (b) negotiations are conducted consecutively with one supplier at a time, provide a deadline for the participating supplier to submit any new or revised tender prior to proceeding to negotiate with the next ranked supplier.

3. In the course of negotiations, the Township must not give an unfair advantage to, or discriminate against, a supplier.

Schedule E

Non-Application (Exclusions)

The procurement chapter of the CFTA does not apply to:

- (a) public employment contracts;
- (b) non-legally binding agreements;
- (c) any form of assistance, such as grants, loans, equity infusions, guarantees, and fiscal incentives;
- (d) a contract awarded under a cooperation agreement between a procuring entity and an international cooperation organization if the procurement is financed, in whole or in part, by the organization, only to the extent that the agreement includes rules for awarding contracts that differ from the obligations of the procurement chapter of the CFTA;
- (e) acquisition or rental of land, existing buildings, or other immovable property, or the rights thereon;
- (f) measures necessary to protect intellectual property, provided that the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail or are a disguised restriction on trade;
- (g) procurement or acquisition of:
 - a. fiscal agency or depository services;
 - b. liquidation and management services for regulated financial institutions; or
 - c. services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes, and other securities;
- (h) procurement of:
 - a. financial services respecting the management of government financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
 - b. health services or social services;
 - c. services that may, under applicable law, only be provided by²¹ licensed lawyers or notaries; or
 - d. services of expert witnesses or factual witnesses used in court or legal proceedings; or
- (i) procurement of goods or services:
 - a. financed primarily from donations that require the procurement to be conducted in a manner inconsistent with the;
 - b. by a procuring entity on behalf of an entity not covered by the CFTA's procurement chapter;
 - c. between enterprises that are controlled by or affiliated with the same enterprise, or between one government body or enterprise and another government body or enterprise;

- d. by non-governmental bodies that exercise governmental authority delegated to them;
- e. from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities;
- f. under a commercial agreement between a procuring entity which operates sporting or convention facilities and an entity not covered by the CFTA's procurement chapter that contains provisions inconsistent with the CFTA's procurement chapter;
- g. conducted for the specific purpose of providing international assistance, including development aid, provided that the procuring entity does not discriminate on the basis of origin or location within Canada of goods, services, or suppliers; or
- h. conducted:
 - i. under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
 - ii. under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance, if the procedure or condition would be inconsistent with the CFTA's procurement chapter.

The procurement chapter of the CFTA also excludes 'set-asides' from the application of the chapter, as per the following:

"The procurement chapter does not apply to procurement that is part of a small business set-aside program provided that the program is fair, open, transparent, and does not discriminate on the basis of origin or location within Canada of goods, services, or suppliers."

Schedule F

Limited Tendering (Exceptions)

The Township may use limited tendering in the following circumstances:

(a) if:

- (i)) no tenders were submitted or no suppliers requested participation;
 - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
 - (iii) suppliers satisfied the conditions for participation; or
 - (iv) the submitted tenders were collusive,
- provided that the requirements of the tender documentation are not substantially modified,

(b) if the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

- a. the requirement is for a work of art;
- b. the protection of patents, copyrights, or other exclusive rights;
- c. due to an absence of competition for technical reasons;
- d. the supply of goods or services is controlled by a supplier that is a statutory monopoly;
- e. to ensure compatibility with existing goods, or to maintain specialized goods that must be maintained by the manufacturer of those goods or its representative;
- f. work is to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
- g. work is to be performed on a leased building or related property, or portions thereof, that may be performed only by the lessor; or
- h. the procurement is for subscriptions to newspapers, magazines, or other periodicals;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement, if a change of supplier for such additional goods or services:

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a) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and

b) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) if strictly necessary, and for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering;

(e) for goods purchased on a commodity market;

(f) if a procuring entity procures a prototype or a first good or service that is developed in the course of, and for, a particular contract for research,

experiment, study, or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers;

(h) if a contract is awarded to a winner of a design contest provided that:

. (i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a tender notice; and

. (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner; or

(i) if goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest.