

Board Report

Date of Report: Nov. 22, 2019

Date of Meeting: Dec. 10, 2019

Report Number: 2019-PAC-020

File: 2019BOARD1210

Subject: FirstOntario Performing Arts Centre Board Procurement Policy

Recommendation

That the FirstOntario Performing Arts Centre Board approve the PAC's Procurement Bylaw 2019-12-02, attached as Appendix 1 to take effect January 1, 2020.

Background

The Procurement Bylaw 2019-12-02, included as Appendix 1, is being presented for the Board's review and subsequent approval, as required for the transition of business from the City of St. Catharines to the PAC Board.

As required by the *Municipal Act, 2001*, Part IV, Section 270 (2) (3), a local board shall adopt and maintain policies with respect to the following matters: its procurement of goods and services.

This Bylaw mirrors the City's Procurement Bylaw, which was recently passed by Council at the November 4, 2019 meeting. It has been revised to reflect the FirstOntario Performing Arts Centre Board's (PAC) operational needs.

Report

The PAC's procurement Bylaw provides guidance for the Board and its employees to conduct the purchasing of goods and services in a fair, transparent and fiscally responsible manner. It outlines the advantages of competitive bidding, best value for tax dollars and principles of openness and accountability. This policy outlines the different methods of procurement for the PAC, as well as the roles and responsibilities of staff, the Board, suppliers and bidders in each instance.

Schedule 1 in the Procurement Bylaw provides a list of good and services that are exempt from the procurement policy. Some exemptions relate directly to the PAC

business needs, such as artist and venue rental contracts, while other exemptions relate to the general operations of the business, such as utilities and legislated tax remittances.

Schedule 2 outlines the spending authority levels for the Board and staff. Compared to the City's Procurement Policy, these levels have been adjusted to reflect the actual volume of contract amounts and purchases in the organization. These adjustments were made while preserving the overarching principles of competition, best value, fairness, objectivity, accountability and transparency.

Financial Implications

The Procurement Bylaw provides a detailed description of the PAC's procurement policy. The policy includes levels of spending and signing authority to be followed by the PAC.

Conclusion

As outlined in the *Municipal Act, 2001*, the PAC is required to have a Procurement Bylaw to oversee the purchase of goods and services.

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Approved by:

David Oakes, Deputy CAO/Acting ED

Appendices:

Appendix 1: PAC Procurement Bylaw 2019-12-02

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FIRSTONTARIO ST. CATHARINES PERFORMING ARTS CENTRE BOARD

BYLAW NO. 2019-12-02

A BYLAW TO DEFINE THE PROCUREMENT POLICIES AND PROCEDURES FOR THE FIRSTONTARIO ST. CATHARINES PERFORMING ARTS CENTRE BOARD

WHEREAS Section 270(1) of the Municipal Act, 2001, as amended requires municipal service boards to adopt policies with respect to its procurement of goods, services and construction;

AND WHEREAS The FirstOntario St. Catharines Performing Arts Centre Board has deemed it desirable to set out its policies with respect to the Procurement or Disposal of Goods and Services in this Bylaw;

Now therefore, the Board enacts the following:

Part 1 - Purposes, Goals and Objectives

1. The purposes, goals and objectives of this Bylaw and of each of the methods of Purchasing authorized herein are:
 - (a) to encourage competitive bidding;
 - (b) to ensure objectivity and integrity in the Purchasing process;
 - (c) to ensure fairness between Bidders;
 - (d) to maximize savings for taxpayers;
 - (e) to offer a variety of Purchasing methods, and to use the most appropriate method depending on the particular circumstances of the acquisition;
 - (f) to the extent possible, ensure openness, accountability and transparency while protecting the best interests of the Performing Arts Centre, and the taxpayers of the Corporation of the City of St. Catharines;
 - (g) to obtain the Best Value for the Performing Arts Centre when procuring Goods and/or Services;
 - (h) to avoid real and perceived conflicts between the interests of the Performing Arts Centre and those of the Performing Arts Centre's employees and appointed board and to ensure compliance with the Municipal Conflict of Interest Act, R.S.O. 1990, c.M.50, as amended;

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- (i) to encourage the Purchase of Goods and/or Services with due regard to the preservation of the natural environment;
- (j) to promote, and incorporate wherever possible in Purchasing activities of the Performing Arts Centre, the requirements of the Ontarians with Disabilities Act, 2001, S.O. 2001, c. 32, as amended;
- (k) to adhere to the code of ethics of the Ontario Public Buyers Association and the National Institute of Government Purchasing;
- (l) to maintain timely and relevant policies and procedures.

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Part II – Definitions

2. For the purposes of this bylaw:

Award means selection to enter into a Contract with a chosen Supplier;

Best Value means the best combination of cost, technical merit, and quality as determined by the Board. The Best Value may not be the lowest cost;

Bid means a Tender, Proposal or Quotation or other formal offer or submission from a Bidder in response to a Bid Solicitation from the Board;

Bidder means the legal entity that submits a Bid in response to a Bid Solicitation;

Bid Solicitation means a formal request for Bids issued by the Board, which describes what is needed and how it will be obtained. Bid Solicitations include Requests for Quotation, Requests for Tender, and Requests for Proposal;

Board of Directors or Board means the Municipal Service Board of the FirstOntario Performing Arts Centre;

Budget means the Budget or portion of the Budget approved by the Board and by Council;

City means The Corporation of the City of St. Catharines;

Compliant means in relation to a Bid or the Supplier making a Bid in response to a particular method of Procurement being used under this bylaw, that the Bid or the Supplier as the case may be, complies or has complied in all material respects with the requirements of the particular method of Procurement as reflected in the documents issued for that purpose and is not liable to disqualification for failure to comply;

Conflict of Interest means a situation or circumstance, real or perceived, which could give a Supplier an unfair advantage during a procurement process, or compromise the ability of the Supplier to perform its obligations under its Contract. A situation where a personal, business or other interest of an elected or appointed official, officer or employee of the PAC is, or can be reasonably be perceived to be, in conflict with the interests of the PAC, and includes, but is not limited to:

- a) the giving or receiving of a Direct or Indirect Interest, or a direct or indirect advantage or privilege, by any person or business that offers Goods, Services or Construction to the PAC;
- b) a Direct or an Indirect interest in any business that provides Goods, Services or Construction to the PAC;

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- c) a Conflict of Interest as defined in the Municipal Conflict of Interest Act;
- d) a Conflict of Interest as defined in the PAC's Code of Conduct Policy, as may be amended

Construction means a construction, reconstruction, demolition, repair or renovation of a building, structure or other infrastructure or engineering or architectural work and includes site preparation, excavation, drilling, soil or seismic investigation, the supply of products and materials and the supply of equipment and machinery incidental to the Construction, and the installation and repair of fixtures of a building, structure or other engineering or architectural work;

Consulting Services, Professional or Specialized Services or Consultants means those Services of an advisory or professional nature required by the PAC to support Construction, policy development, decision making, administration, or the general management of the PAC, and are generally provided by persons who possess specific knowledge, expertise, technical skills or unique abilities;

Contract means a binding agreement between two or more parties that creates an obligation to Procure Goods, Services, or Construction and includes both a Purchase Order and a Formal Agreement;

Council means the Council of the City of St. Catharines;

Delegate or Delegation means the formal process of a Department Head delegating authority in writing to a Delegate;

Delegate also means a PAC employee who through a formal process, has been authorized to act on behalf of another either:

- a) during a temporary absence; or
- b) on a permanent basis to support operational effectiveness.

Department means an area of operation within the PAC, provided with a Budget to deliver Goods, Services or Construction to the public;

Department Head means the most senior manager responsible for a Department. The position may be identified by the title, Director;

Department Representative means a PAC employee authorized to Procure and Dispose of Goods, Services or Construction on behalf of the Department up to a specified dollar value;

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Direct Interest arises when an employee may derive or be seen to derive some personal benefit or avoidance of a personal loss. These interests are generally financial in nature;

Disposal or Dispose means the sale, trade, redeployment, and/or destruction or donation of surplus personal property, vehicles or equipment;

ED means the Executive Director of the Performing Arts Centre;

Evaluation means the process that takes place after the Bid submission deadline to determine if the Bids submitted are Compliant and to evaluate the Bids using the evaluation criteria included in the Bid Solicitation.

Fairness Monitor means an independent third party whose role is to observe all or part of a Procurement process, to provide feedback on fairness issues;

Formal Agreement means a written Contract outlining the terms and conditions for the Procurement of Goods and Services, and executed by the PAC and the Supplier;

Goods means, in relation to Procurement, moveable property (including the costs of installing, operating, maintaining or manufacturing such moveable property), including raw materials, products, 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 general Construction Contract but does not include Real Property;

Group Purchasing Organization or “GPO” means an entity whose goal is to leverage the power of a group of businesses or organizations to obtain discounts from Suppliers based on the collective buying power of its members;

Indirect Interest arises when the potential benefit or loss would be experienced by another person or corporation having a relationship with the employee. These interests are generally financial in nature;

Lease means a contract by which one party (lessee) enters into a contract with a second party (lessor) for possession and use of Goods for a specified period of time at a pre-determined cost;

Litigation means any unresolved dispute between the PAC and any other party or related party adverse in interest, including third party and cross claims, where either a legal proceeding has been commenced or a threat of legal action has been made in writing for an injunction, a mandatory order, a declaration or for the payment of damages or recovery of money;

Negotiated Request for Proposal or “NRFP” means a non-binding flexible format public request for Proposal by the PAC made in accordance with this bylaw, seeking

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Proposals to supply Goods and/or Services which may or may not result in an Award by the PAC;

Negotiation means a process whereby the PAC may negotiate directly with one or more Suppliers with the intent to Award a Contract or extend an existing Contract;

Performing Arts Centre or “**PAC**” means the FirstOntario Performing Arts Centre Board;

Procure or Procurement or Purchase means to acquire Goods, Services or Construction by purchase, rental, Lease or trade;

Procurement Representative means the representative of the PAC specified in the Bid Solicitation document;

Proposal means a submission received in response to a Request for Proposal (RFP);

PCard or Purchasing Card means a credit card issued in the name of both the PAC and an authorized employee for Procuring Goods and Services on behalf of the PAC;

Purchase Order or “**PO**” means a standard Contract used by the PAC to formalize a Procurement with a Supplier of Goods, Services or Construction;

Purchase Requisition means a request for Goods or Services prepared by the requisitioning Department, for which the Budget has been approved;

Quotation or **Quote** means a binding statement of price, terms of sale, and description of the Goods and Services offered by a Supplier;

Real Property means land, or land and buildings, and includes fixtures attached to such land or buildings;

Request for Expressions of Interest or “**RFEOI**” means a request made by the PAC for the purpose of compiling a list of potential Bidders who may be interested in providing deliverables to the PAC;

Request for Pre-Qualification or “**RFPQ**” means a request for the submission of information from potential Bidders including the qualifications, experience, financial capability, background and staffing of any entity who may qualify to supply deliverables to the PAC;

Request for Proposal or “**RFP**” means a request for Proposals issued under this bylaw;

Request for Quotation or “**RFQ**” means a request for Quotation issued under this bylaw;

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Request for Tender or “**RFT**” means a request for Tender issued under this bylaw;

Roster means a list of Suppliers that have participated in and successfully met the requirements of a Request for Pre-Qualification (RFPQ), and have been pre-qualified to perform work assignments involving the delivery of a particular type of Goods, Services or Construction;

Services means intangible products that do not have a physical presence and includes Consulting, Professional and Specialized Services and Services procured as part of a Construction Contract;

Single Source means the non-competitive Procurement process to acquire Goods and/or Services from a specific Supplier even though there may be more than one Supplier capable of delivery of the same Goods, Services or Construction;

Sole Source means there is only one Supplier of the Goods, Services or Construction that meets the requirements of the PAC;

Standing Order means a Purchase Order to procure repetitively ordered Goods, Services or Construction for a defined period of time at an established price, under set terms and conditions if they are required;

Supplier means a person offering, providing or contractually required to provide Goods, Services or Construction to the PAC;

Tender means a written detailed offer from a Supplier to supply Goods, Services or Construction where there are clearly defined criteria or specifications;

Total Contract Price means the Contract cost for the full term of the Contract and in the case of a Contract containing renewal or extension provisions the total Contract cost for the initial term and all potential renewal or extended terms including the non-refundable portion of Harmonized Sales Tax (HST), where applicable, but including all other applicable fees charges and disbursements, less applicable rebates and discounts;

Unsolicited Proposals means Proposals received by the PAC from a Supplier(s) who have approached the PAC with a Proposal that has not been requested through a regular procurement process.

Part III - Application

3. This Bylaw applies to all Procurement and Disposal carried out by the PAC or any of its officers, and employees with the exception of:
 - a) those Goods and Services outlined in Schedule 1; or,

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- b) where an applicable trade agreement or statute of Ontario or Canada supersedes or is in conflict with this Bylaw, in which case the requirements of the trade agreement or statute shall take precedence; or,
- c) when a Board Resolution requires that the Procurement or Disposal be carried out in some manner other than by this Bylaw.

Part IV - Integrity of Procurement Process

4. Code of Conduct

- a) With regard to Procurement, Board members shall adhere to the Board's Code of Conduct.
- b) With regard to Procurement, employees shall adhere to the Code of Conduct for Employees.

5. Conflict of Interest

- (a) Personal Purchases shall not be made for any members of a board, employees or their families.
- (b) An employee of the PAC who has the responsibility for declaring surplus assets shall not bid on or personally obtain any goods that he or she has declared as surplus.
- (c) Every member of the board, employee of the PAC or spouse, parent or child (as defined in the Municipal Conflict of Interest Act) of every member of the board, or employee is expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any Purchase Order or Contract is, or might be awarded, any rebate, gift or money, except:
 - (i) gifts of a very small intrinsic value; or
 - (ii) moderate hospitality during the normal course of business that would not significantly exceed what would be perceived by others as influencing the making of a business decision.
- (d) All members of the board or employees of the PAC shall declare any Conflicts of Interest to the Executive Director and/or Administrative Supervisor and shall have no involvement in a Bid Solicitation process where a real or perceived Conflict of Interest has been found or deemed to exist, including, but

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not limited to:

- (i) requesting the Goods and/or Services, setting the parameters of the Purchase, evaluating Bids or recommending, deciding or making Awards;
- (ii) direct contact with those making those Purchasing decisions, both in Procurement and the user Department.

6. Supplier Conflict of Interest

- a) All Suppliers hired by the PAC, acting as an agent or representative of the PAC shall immediately disclose any actual or perceived conflict of interest, in writing to the Administrative Supervisor.
- b) Suppliers and affiliated persons shall be precluded from submitting a Bid for any Bid Solicitation in which the Supplier or its employees has participated in the preparation of the Bid Solicitation. In this situation, any submitted Bid shall be rejected or disqualified.
- c) Failure by a Supplier to have disclosed in their Bid an actual or perceived Conflict of Interest may result in cancellation or suspension of the Award, or termination of the Contract at the PAC's discretion, without compensation.

7. Lobbying Restrictions

- a) During a Bid Solicitation process, all communications shall be made through the PAC Representative specifically identified in the Bid Solicitation.
- b) Any Supplier or person acting on behalf of a Supplier or group of Suppliers, who contacts any elected official, Board member, consultant participating in the preparation or review of the Bid Solicitation or any employee other than the PAC Representative to attempt to seek information or to influence the Award, or offers gratuities or bribes shall be deemed to have engaged in lobbying.
- c) Lobbying restrictions shall apply to Suppliers, their staff members, or anyone involved in preparing a Bid. This restriction extends to all of the PAC's employees and anyone involved in preparing a Bid Solicitation or participating in a Bid Evaluation process, and members of the Board.
- d) The Administrative Supervisor may reject or disqualify any Bid from a Supplier that engages in such lobbying at any stage of the Bid Solicitation process.

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- e) Elected officials and Board members shall refer any inquiries about a Bid Solicitation process to the ED.

8. Non Discriminatory Practices

- a) In order to comply with applicable law and trade agreements, including the Discriminatory Business Practices Act, R.S.O., 1990, the PAC shall not discriminate between Suppliers based on location, whether it be; City, Region, or Province or Country, resulting in no local preference.

Part V – Roles and Responsibilities

9. Employees

- a) All PAC employees shall:
 - i. Comply with the provisions of this Bylaw in the performance of their duties; and report non-compliance with the policy to the Administrative Supervisor.
 - ii. Attend Procurement training as required.

10. Administrative Supervisor

- a) Administrative Supervisor of the PAC is responsible for and has the authority to:
 - i. act as the Procurement Representative for the PAC;
 - ii. acquire Goods, Services and Construction;
 - iii. dispose of PAC assets and other property, excluding Real Property;
 - iv. call for, receive, open and review Bids;
 - v. provide professional procurement advice and services to requisitioning Departments including the application of this Bylaw to Procurement and Disposals and exercise discretion as prescribed when alternative courses of action are permitted;
 - vi. require a requisitioning Department to use a specific method of Procurement;
 - vii. establish through consultation with the requisitioning Department and legal counsel, standards and terms and conditions (as applicable) for

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Bid Solicitations, Contracts and other documents;

- viii. establish and update the necessary policies and procedures, and related documents and forms to carry out the objectives and requirements of this Bylaw and any related policies;
- ix. co-ordinate the standardization of specifications for similar items ordered by different Departments, resulting in benefits to the PAC through reduced costs and common standards;
- x. advise the Requisitioning Department when a Procurement process may not conform to an applicable trade agreement as early as possible in the Bid Solicitation process;
- xi. provide ongoing training and education related to this Bylaw;
- xii. retain documentation evidencing procurement processes;
- xiii. monitor adherence to this Bylaw, and report non-compliance in writing, to the ED and appropriate Department Heads;
- xiv. collaborate with Group Purchasing Organizations and participate in opportunities where deemed beneficial to the PAC.
- xv. review Bids where there have been allegations of lobbying, Conflict of Interest, or other inappropriate behavior and report to the ED on the outcome of such reviews;

11. Department Heads

- a) The Department Heads are responsible for the Procurement of Goods, Services and Construction for their Department and have the following responsibilities within their Department operations to:
 - i. ensure that all Procurement activities and decisions are compliant with all applicable sections of this Bylaw;
 - ii. ensure that spending authorities provided to Delegates support effective and efficient Procurement;
 - iii. ensure that all authority to Award a Contract is subject to the identification and availability of sufficient funds in the appropriate Board-approved Budget;
 - iv. prepare accurate and complete market-ready specifications, scope of work and terms of reference;

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- v. report to the Board on proposed Procurement which requires Board approval, as outlined in Schedule 2;
- vi. review Contract documents to ensure the scope of work and/or service sought in the Bid Solicitation is accurately represented in the executed Contract;
- vii. ensure that the Goods, Services or Construction Procured or Disposed of are being delivered or removed in accordance with the scope of work and or other terms of the applicable Contract;
- viii. support the timely payment of accounts within the times set out in the Contract (provided the Supplier has met all conditions of the Contract); and
- ix. review Supplier performance, and take appropriate steps after the review.

12. Executive Director

- a) The ED are responsible for and have the authority to:
 - i. notify Board of non-compliance with this Bylaw if the non-compliance cannot be rectified
 - ii. impose restrictions on Procurement activities from time to time where it may be considered necessary and in the best interests of the PAC; and
 - iii. support the Board in satisfying Board's role.

13. Board of Directors

- a) In accordance with best practices in Municipal procurement, there is a need for a clear separation of governance and administrative functions in relation to the PAC's procurement functions.
- b) Board shall approve the Budget and scope of projects as part of the annual operating and capital budget process or individual project approval submissions from Departments throughout the year. Approval of the project scope and Budget by the Board shall be deemed to be approval for the subsequent Award of a Contract in accordance with the procurement processes and staff Delegations of Authority to Award detailed in this Policy and where the cost amount of the Contract is within the Budget previously approved by the Board and City Council. For projects funded through reserve funds, the Board must comply with the City's Reserve Funds Policies.

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- c) In keeping with municipal procurement best practices, the Board shall have no involvement in specific procurements, including not receiving any related information or documents from the time those procurements have been advertised or solicited until the Contract has been entered into except where the recommendation for Award has been forwarded to Board for approval as noted above.
- d) The Board members who receive inquiries from Suppliers related to any specific procurement are required to advise the Supplier(s) to communicate with the PAC Representative listed in the procurement document, if any, or with the Administrative Supervisor.

Part VI – Approval Levels

- 14. Notwithstanding any other provision of this Bylaw, any of the following situations require Board Approval to proceed with an Award:
 - a) the recommended Award exceeds the approved Budget by \$100,000 or greater, or
 - b) the recommended Award is not the lowest Compliant Bid for a RFT; or the highest ranked Proponent for an RFP, or
 - c) the recommended Award would result in a Contract term, including renewals exceeding ten years, or
 - d) when recommended by the ED, or
 - e) the Award is for a Sole or Single Source Contract and the total cost of the Contract exceeds \$50,000.
- 15. Employees of the Board identified in Schedule 2 shall have the authority to Procure, Award and execute Contracts and all other documents necessary to effect the Award or Purchase complies with this Bylaw.
- 16. Formal approval of the annual Budget constitutes Board's approval to proceed with the Procurement process. No further authorization by way of a bylaw or resolution to Award or execute a Contract is required, except as specifically stipulated in Schedule 2.
- 17. The authority in Schedule 2 to Procure, and execute related Contracts is established based on the Total Contract Price at the time the Contracts were originally executed. The Total Contract Price for the purposes of determining the necessary approvals and procedures shall:

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- a) be the Total Contract Price at the time the Contract was originally executed; and,
 - b) include the non-refundable portion of taxes and duties;
 - c) in the case of multi-year Contracts, the Total Contract Price will be the estimated total expenditure under the Contract, including all renewals or option years.
18. In the case of Goods and Services of a similar type being supplied on a repetitive basis over the year or season, the Total Contract Price will be determined based on the estimated cost of such Goods and Services supplied in the whole calendar year or season.
19. No Procurement, or Contract shall be divided in order to reduce the Total Contract Price or to otherwise avoid or circumvent the application of any of the provisions of this bylaw.
20. The authority to execute Contracts shall be subject to all the following requirements:
- a) the documents being in a form satisfactory to legal counsel; and
 - b) any proof of insurance and the provision of financial securities required under the Contract are satisfactory to legal counsel; and
 - c) the Procurement is in compliance with this Bylaw.

Part VII - Procurement Planning

21. Planning

- a) Except for the exemptions in Schedule 1 and low dollar value Procurement up to \$10,000, all Procurement shall be conducted through or reviewed by each Department Head.

22. Selection of Method of Procurement

- a) The selection of the appropriate Procurement method will be based on the specific circumstances of the Procurement including the recommended Procurement Method for the dollar value of the transaction as set out in Schedule 3.
- b) The Administrative Supervisor shall be responsible for confirming the Procurement Method to be used.

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- c) Procurement authorized under Parts VIII and IX shall be aligned with the Procurement Objectives in Part I.
- d) Requisitioning Departments are responsible for identifying and complying with all the requirements applicable to the specific method of Procurement being undertaken as outlined in Parts VIII and IX of the Administrative Supervisor's policies and procedures.

23. Specifications and Evaluation Criteria

- a) Requisitioning Departments are responsible to provide all the specifications necessary for the Bid Solicitation including:
 - i. the scope of work, and relevant information such as specifications, provisions, terms, and minimum requirements for the Procurement; and,
 - ii. ensuring the specifications provide a clear and accurate description of requirements to be met in the Contract.
- b) Requisitioning Departments are responsible for determining the Evaluation criteria for a response to a RFP Bid Solicitation.
- c) The Executive Director and legal counsel may review and recommend improvements or clarifications to both specifications and Evaluation criteria, to improve the likelihood of attracting and selecting the best suited Bidder.
- d) If specifications are developed by an external consultant, that consultant shall not be permitted to submit a Bid in response to the Bid Solicitation for which the Specifications were prepared.
- e) The Administrative Supervisor may issue an RFEOI for the purpose of informing specifications and to improve the likelihood of a subsequent Bid Solicitation resulting in Best Value for money.

24. Request for Expressions of Interest (RFEOI)

- a) A RFEOI may be undertaken to gather information from Suppliers related to the types of Goods, Services or Construction available and/or the scope of business requirements.
- b) RFEOIs shall not be used to obtain specific costs for specified Goods, Services or Construction.

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- c) Receipt of a response to a RFEOI issued by the PAC does not create any Contract or obligation between the PAC and the Supplier.

25. Request for Pre-Qualification (RFPQ)

- a) The intent of a RFPQ is to pre-qualify Suppliers that are most likely to provide a positive outcome or response to a Bid Solicitation. A RFPQ may be undertaken to qualify Suppliers who meet specified criteria and include them in a list or Roster (Part IX). These listed Suppliers may be invited to participate and compete in a subsequent Bid Solicitation.
- b) Planning for the Issuance of a RFPQ shall be conducted in accordance with Part VII.
- c) Issuance of the RFPQ as well as receipt, and Evaluation of the responses shall be conducted in accordance with Part X.
- d) Receipt of a response to a RFPQ issued by the PAC does not create any Contract or obligation between the PAC and the Supplier.

Part VIII – Methods of Procurement

26. Procurement Methods outlined in Parts VIII and IX shall be conducted in compliance with the Bylaw and policies and procedures supporting this Bylaw.

27. Direct Purchase (Low Dollar Value Procurement up to \$10,000)

- a) Department Representatives may make a direct purchase from one Supplier for Goods and Services for a Total Contract Price up to \$10,000 which results in the Procurement without competitive bidding.
- b) This method of Procurement is appropriate when the administrative burden of another Procurement method is significant in relation to the price or value of the Goods and Services being procured, and associated risks are assessed as low, otherwise either the Informal Quotation Method can be used.
- c) Department Representatives shall utilize Standing Orders or Rosters when available (Part IX).
- d) Department Representatives may enter into Negotiation with a specific Supplier (in accordance with Part X).
- e) The Requisitioning Department is responsible for ensuring that Suppliers providing Goods, Services or Construction to the PAC, where applicable, provide comprehensive liability insurance, workers' compensation certificate and comply with the Occupational Health and Safety Act, and declaration of

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compliance with the Accessibility for Ontarians with Disabilities Act 2005 as amended.

- f) Payment for Goods, Services and Construction up to \$10,000 may be made through the following means:
 - i. PCard may be used in accordance with the PCard Policy to make a Procurement up to \$10,000.

28. Informal Quotation (Procurement greater than \$10,000 and less than \$25,000)

- a) An informal Quotation shall be utilized for Procurement with a Total Contract Price greater than \$10,000 and less than \$25,000, to obtain competitive bidding in an expeditious and cost effective manner.
- b) The Requisitioning Department will solicit, without formal advertising, at least three written Quotations (if possible).
- c) Quotations received will be evaluated on cost and criteria outlined in the informal Quotation to select the preferred Supplier.
- d) The Requisitioning Department is responsible for ensuring that Suppliers providing Goods, Services or Construction to the PAC, where applicable, provide comprehensive liability insurance, workers' compensation certificate and comply with the Occupational Health and Safety Act, and declaration of compliance with the Accessibility for Ontarians with Disabilities Act 2005 as amended.
- e) In accordance with Schedule 2, the requisitioning Department is authorized to create a Purchase Requisition for the successful Bidder.
- f) The Administrative Supervisor may review the Quotations and the Purchase Requisition for compliance with the Bylaw, prior to issuance of the Contract.

29. Formal Request for Quotation (Procurement greater than \$25,000 and less than \$100,000)

- a) A Formal Request for Quotation shall be utilized for Procurement with a Total Contract Price value greater than \$25,000 and less than \$100,000.
- b) The Requisitioning Department will provide the requirements relevant to the Procurement such as specifications, provisions, terms, and supplemental general conditions for the Bid Solicitation.
- c) The Administrative Supervisor will prepare and issue the Bid Solicitation by using either:

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- i. a Roster of Suppliers compiled by the Administrative Supervisor in conjunction with the Requisitioning Department; or,
 - ii. publically advertising the Bid Solicitation in compliance with Part X; or,
 - iii. both a) and b) above, if deemed beneficial.
- d) Suppliers shall submit only one Quotation which cannot be altered after submission.
- e) If possible at least three Quotations shall be solicited and subsequently evaluated:
 - i. jointly by the Executive Director and Requisitioning Department and the Board;
 - ii. on cost and Evaluation criteria outlined in the Bid Solicitation to select the preferred Supplier.
- f) The Administrative Supervisor shall issue a notice of Award prior to issuing the Purchase Requisition.
- g) The Administrative Supervisor shall ensure the Purchase Requisition contains the relevant information such as specifications, provisions, terms, and supplemental general conditions for the Procurement; and, is authorized appropriately as per Schedule 2.
- h) After the Purchase Requisition has been authorized, Administrative Supervisor will issue a Contract and provide it to the Supplier confirming the terms of the Procurement.

30. Request for Tender (RFT) (Procurement equal to or greater than \$100,000)

- a) For Procurement with a Total Contract Price equal to, or greater than, \$100,000, a Request for Tender shall be issued through the Administrative Supervisor, provided all of the following conditions apply:
 - i. two or more sources are considered capable of supplying the requirements;
 - ii. the requirements are adequately defined to permit the Evaluation of Bids against clearly stated Evaluation criteria;

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- iii. the PAC intends to accept the lowest compliant Bid without Negotiations.
- b) If the conditions in 33 a) do not apply, the appropriateness of procuring through a RFP shall be evaluated.
- c) The requisitioning Department shall prepare the Bid Solicitation after completing the Procurement planning including determination of all the specifications necessary for the Bid Solicitation, in compliance with Part VII.
- d) Specifications as well as specific processes and procedures that will be followed for the Procurement will also be outlined in the Bid Solicitation including:
 - i. the scope of work, and relevant information such as specifications, provisions, terms, and minimum requirements for the Procurement;
 - ii. procedures for communication during the procurement (Part X);
 - iii. process for receipt and opening of Bids (Part X);
 - iv. the basis of Award (Part X);
 - v. opportunity for post Award debriefing (Part XIII); and
 - vi. Requirements for security, insurance and indemnification (Part XI).
- e) The Administrative Supervisor will review the Bid Solicitation and arrange for its issuance.
- f) The Administrative Supervisor will advertise the Bid Solicitation in accordance with Part X on Advertising, except where a list of pre-qualified Suppliers has been compiled in accordance with Part VII on RFPQ.
- g) Where an RFPQ has previously been conducted, only pre-qualified Suppliers shall be notified and Bids shall only be accepted from pre-qualified Suppliers.
- h) RFT submissions will be evaluated by staff to ensure compliance with terms and conditions of the solicitation and recommendation will be made to Award to the lowest compliant Bidder.
- i) Upon Award of the Contract, the requisitioning Department will:
 - i. ensure that for Contracts which exceed \$100,000, and prior to the Award of the Contract, the requisitioning Department will ensure that the

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Contract has been reviewed through legal counsel and provided to the Administrative Supervisor;

- ii. ensure the Contract is executed in accordance to the provisions of this Bylaw and provided to the Administrative Supervisor, where applicable; and/or,
 - iii. create and provide to the Administrative Supervisor an approved Purchase Requisition in accordance with Schedule “2”, containing all relevant information such as specifications, provisions, terms and supplemental general conditions.
- j) Upon receipt of an approved Purchase Requisition, and an executed Contract where applicable, the Administrative Supervisor will execute a Purchase order confirming the terms of the Procurement to the Supplier and applicable Department Representative(s).

31. Request for Proposal (RFP) or Negotiated Request for Proposal (NRFP) (Procurement equal to or greater than \$100,000)

- a) For Procurement with a Total Contract Price equal to or greater than \$100,000, an RFP or a NRFP shall be issued through the Administrative Supervisor provided one or more of the following conditions apply:
 - i. The Procurement is required as a result of a problem, requirement or objective for which there is no clear solution;
 - ii. The precise Goods and Services are not known and the Bidder is expected to define them so as to provide the Best Value solution; or,
 - iii. The selection of the successful Bidder is based on the effectiveness of the proposed solution rather than on cost alone;
 - iv. Procurement is in competitive format for requirements such as a design or a design build solicitation.
- b) The requisitioning Department shall prepare the Bid Solicitation after completing the Procurement planning including determination of all the specifications necessary for the Bid Solicitation, in compliance with Part VII.
- c) Specifications as well as specific processes and procedures that will be followed for the Procurement will also be outlined in the Bid Solicitation including:
 - i. the scope of work, and relevant information such as specifications, provisions, terms, and minimum requirements for the Procurement;

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- ii. procedures for communication during the procurement (Part X);
 - iii. process for receipt and opening of Bids (Part X);
 - iv. the basis of Award; and,
 - v. Requirements for security, insurance and indemnification (Part XI).
- d) The Administrative Supervisor will review the Bid Solicitation and arrange for its issuance.
- e) The Administrative Supervisor will advertise the Bid Solicitation in accordance with Part X, except where a list of prequalified Suppliers has been compiled in accordance with Part VII.
- f) All RFPs will be evaluated consistently with specified processes which includes a specified Evaluation team, and criteria identified in the Bid Solicitation.
- g) Ensure that for Contracts which exceed \$100,000, and prior to the Award of the Contract, the requisitioning Department will ensure that the Contract has been reviewed through legal counsel and provided to the Administrative Supervisor.
- h) Award of an RFP shall comply with Part X and Schedule "2".

Part IX - Special Circumstance Procurement

32. Unsolicited Proposals

- a) Unsolicited Proposals, and/or communications regarding potential unsolicited Proposals, are Proposals received by the PAC from a Supplier or Suppliers who have approached the PAC, i.e. any employee or board member, without solicitation, to advise the PAC of their ability or desire to undertake PAC requirements. Unsolicited Proposals can be new or innovative ideas that could assist the PAC in achieving its goals and have not been requested through the regular procurement process.
- b) PAC employees or Board members shall not accept an unsolicited Proposal and/or communication with respect to a potential unsolicited Proposal. The Supplier shall be advised to direct the unsolicited Proposal to the Administrative Supervisor.
- c) The Administrative Supervisor will log the unsolicited Proposal and direct it to the appropriate Department Head. The Department Head shall first assess

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such Proposals on the basis of whether they align with the PAC's strategic goals and objectives, do not circumvent the PAC's regular procurement processes, and the Proposal's scale and scope aligns with the requirements and funding ability of the PAC.

- d) If it is determined by the Department Head that there is a legitimate need for the Goods, Services and/or Construction offered by way of the unsolicited Proposal and that funding is available, then it will be reviewed together by the Department Head, the Executive Director and, where appropriate, any other Department Head to determine the applicable acquisition process to be conducted in accordance with this Bylaw.

33. Single and Sole Source Procurement

- a) Bid Solicitations are not required for Single or Sole Source Purchases, provided that any of the following conditions apply:
 - i. the compatibility of a Purchase with existing equipment, product standards, facilities or service is a paramount consideration;
 - ii. a Good or Service is Purchased for testing or trial use;
 - iii. there is an absence of competition for technical reasons and the Goods and/or Services can only be supplied by a particular Supplier;
 - iv. an unforeseeable situation of urgency exists and the Goods and/or Services cannot be obtained in time by means of competitive procurement procedures;
 - v. the PAC has a rental Contract with a purchase option and such purchase option is beneficial to the PAC;
 - vi. for matters involving security, police matters or confidential issues, in which case a Purchase may be made in a manner that protects the confidentiality of the Supplier or the PAC;
 - vii. there are no Bids in response to a Bid Solicitation;
 - viii. a Roster for Professional Services has been developed in accordance with this bylaw.
- b) All Purchases shall be authorized in accordance with the Purchasing authorities set out in Schedule "2" and all Contracts shall be signed in accordance with the document execution authorities set out in Schedule "2".

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- c) Where required by trade agreements, the PAC shall publish notice of Single or Sole Source Awards.

34. Rosters for Professional or Specialized Services

- a) A Roster of qualified Suppliers of Professional or Specialized Services for projects requiring particular expertise may be developed from a RFPQ, which shall be conducted in accordance with Part VII.
- b) Subsequent Procurement utilizing the Roster shall be conducted in compliance with the Bylaw, which requires that for any Procurement greater than \$10,000, at least three Suppliers from the Roster shall be selected and invited to submit Bids in response to a Bid Solicitation. If more than three Suppliers are listed on the Roster, an equitable rotation for selecting Suppliers must be established.
- c) Roster lists shall be compliant with trade agreements and shall only be valid to a maximum of (3) years from the date of formation.
- d) If in the opinion of the Executive Director, the Roster is misused or ineffective the Executive Director shall have the authority to terminate and or reestablish the Roster.

35. Emergency Procurement

- a) In specified circumstances Procurement may be required to respond to an emergency which shall mean either:
 - i. An emergency declared pursuant to the Emergency Management and Civil Protection Act 1990 (the "Act"); or
 - ii. An event or circumstance where the City's municipal emergency control group established under the Act has been activated; or when immediate Procurement of Goods, Services or Construction 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. This may include but is not limited to compliance with Laws such as fulfilling a statutory order such as an environmental, public health, or workplace safety compliance order.
- b) To respond to an emergency, Goods, Services or Construction may be procured by the most economical and expedient means, utilizing where possible:
 - i. Standing Order; and/or

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- ii. Rosters
- c) Approval limits for Procurement shall comply with Schedule 2, except that:
 - i. the requirement for a Board approved Budget shall be waived, and
 - ii. Procurement in an Emergency exceeding \$100,000 shall be approved by the Executive Director in consultation with the Board.
- d) Reporting is required as outlined under the City's Emergency Plan approved pursuant to the Act.

36. Leased Goods

- a) The acquisition of Goods through a Lease shall be completed in consultation with the Administrative Supervisor.
- b) Depending upon the terms and conditions of a Lease, Lease payments may be included in the PAC's debt and debt servicing costs, and as such decisions to Lease require a high level of scrutiny.
- c) Any decision to Lease Goods which may include the Lease of office equipment, vehicles, machinery, and equipment shall be based on the cost of leasing compared to another method of Procurement and an assessment of the risks associated with the Lease.
- d) Authority to incur expenditures through a Lease shall be subject to the spending authority levels as outlined in Schedule 2 of this Bylaw and compliance with the PAC's Lease Financing Policy and the Municipal Act, 2001. The Total Contract Price of Procurement shall be defined as the total payments that shall be made during the term of the Lease agreement plus any optional payments that may be made.

37. Co-Operative Procurement

- a) The Administrative Supervisor may enter into arrangements with any government body, ministry, agency, board, corporation or authority on a co-operative or joint basis for Purchases of Goods, Services or Construction where there are economic advantages in so doing. Where a co-operative or joint basis Purchase occurs, such Purchases are deemed to comply with this bylaw. Co-operative Procurement for reporting purposes shall be considered a Request for Proposal or a Request for Tender based on the process undertaken by the originating agency.

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- b) The appropriate level of Authorization on Schedule 2, will be determined by using the Total Contract Price of Procurement that would have been included in a Bid Solicitation if Co-operative Procurement was not utilized.

Part X - Specific Processes Required for Procurement

38. Advertising of Bid Solicitations

- a) Purchases not covered under the monetary thresholds of applicable trade agreements shall, at a minimum, be advertised on the Bidding System for a minimum of ten (10) calendar days preceding the stated closing date.
- b) When required by trade agreements, Purchases shall be advertised on the bidding system for a minimum of twenty-five (25) calendar days preceding the closing date. This requirement may be reduced by Procurement to ten (10) calendar days provided that:
 - i. an RFPQ has been previously issued for the Purchase or;
 - ii. a notice of planned procurement has been posted for the Purchase using the Bidding System at least forty (40) calendar days (and not more than twelve (12) months) in advance of the Bid posting.
- b) The PAC shall advertise Bids that are impacted by trade agreements on any designated electronic Canada-wide single point of access as directed by the Government of Canada.
- c) Any person involved in Purchases may advertise Purchases on multiple or alternative platforms in addition to those prescribed in this section if they determine that it is the PAC's best interest to do so.
- d) Procurement of Goods, Services or Construction equal to or greater than \$50,000, for which Bidders have not been pre-qualified, shall at a minimum be advertised on the PAC's website or a website authorized by the Administrative Supervisor for posting Bid Solicitations, from the date the Bid Solicitation is issued up to and including the date on which the Bid Solicitation closes;
- e) Where the Bidders have been previously pre-qualified in accordance with this Bylaw no further advertising is required for Procurement.

39. Communication during the Blackout Period

- a) During the period of time from when the Bid Solicitation for a RFT or RFP is issued and until the Bid is Awarded by the PAC (the blackout period),

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communication by the Bidders shall be through the Administrative Supervisor, or as specified in the Bid Solicitation.

- b) Prior to the deadline for clarifications, as stipulated in the Bid Solicitation, the Bidders may seek clarification in writing from the Procurement Representative.

40. Addenda to a Bid Solicitation Document

- a) Adjustments, clarifications and changes to a Bid Solicitation shall be issued in writing by the Administrative Supervisor as an addendum within the timeframe stipulated in the Bid Solicitation.
- b) Submission times and dates may be extended to allow for the issuance of an Addendum within a reasonable timeframe and not less than 48 hours prior to the submission deadline, as authorized by the Administrative Supervisor as outlined in the Policy and Procedures and acceptable to the Administrative Supervisor.
- c) The Supplier is responsible for obtaining and incorporating into a Bid any addenda issued.

41. Receipt and Opening of Bids

- a) All Bids (except responses to informal quotation) shall be received by the PAC in accordance with the instructions in the Bid Solicitation, which will specify a time, date, and location.
- b) All Bids received by the submission deadline shall be opened and specified information shall be made available to the Bidders as outlined in the Bid Solicitation.
- c) The PAC's standard Bid Solicitation documents shall provide that the PAC shall have the right to reject the lowest or any Bid in its absolute discretion.

42. Bid Evaluation

- a) All Bid Evaluation criteria will be disclosed in the Bid Solicitation. In addition to price, criteria may include but not limited to the following:
 - i. Skill and demonstrated experience of the Bidder to provide the Goods, Services or Construction;
 - ii. Schedule for the delivery of Goods, Services or Construction;

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- iii. References;
- iv. Past performance on previous PAC Contracts, including the value, frequency and validity of claims and change orders requested;
- v. Sufficiency of financial resources;
- vi. Ability to provide ongoing maintenance or support for the Goods provided;
- vii. Incorporation of accessibility criteria and features;

43. Bid Irregularities

- a) The Administrative Supervisor will maintain procedures to administer Bid irregularities.
- b) Each Bid Solicitation document issued by the PAC will outline irregularities with Bid Submissions that may lead to the disqualification of a Bid, or may require corrective action to take place in order to make the Bid compliant as provided in Schedule 4.
- c) The process for administering irregularities arising from Bids shall be in the first instance, in accordance with Schedule 4 and in the event the Bid Solicitation does not provide a full answer to the irregularity in question, then in accordance with the procedures maintained by the Administrative Supervisor.
- d) Notwithstanding sub-sections a), b) and c) and provided the Administrative Supervisor and requisitioning Department agree, prior to the issuance of the Bid Solicitation, bid irregularities may be governed by the provisions of other standard agreements in use such as, but not limited to, Niagara Peninsula Standard Contract Document or with the Canadian Construction Documents Committee in place of Schedule 4.

44. Negotiation

- a) Negotiation may be undertaken after the highest-ranked Bidder in an NRFP has been identified;
- b) A Single or Sole Source is being recommended;
- c) Negotiation with more than one Bidder at the same time, for the same Procurement opportunity is prohibited.

Part XI – Security and Insurance

45. Financial Security and Insurance

- a) The PAC may require specified financial security and insurance and shall stipulate these requirements within the terms of the Bid Solicitation.
- b) The financial security may include the following:
 - i. Bid security to ensure the successful Supplier on the Bid Solicitation enters into a Contract;
 - ii. Performance bonds to ensure the performance of the Contract;
 - iii. Labour and/or material bonds to ensure the payment of labour and materials supplied in connection with the Contract; and
 - iv. Other additional security that the Executive Director deems appropriate relative to the terms of the Bid Solicitation.
- c) The acceptable forms of financial security shall be stipulated within the terms of Bid Solicitation.
- d) Prior to execution of the Contract the Supplier shall provide to the PAC proof of insurance in accordance with the Bid Solicitation, satisfactory to the PAC Solicitor.
- e) Failure to comply with terms and conditions of financial security and insurance within the Bid Solicitation, within the timeframes provided, shall be just cause for cancellation of the Award.

Part XII – Contracts

46. Form and Execution of Contracts

- a) All Awards of greater than \$10,000 Total Contract Price shall require the issuance of a Contract in the form of a PO and a Formal Agreement. Awards for \$10,000 or less may also be evidenced by a PO or a Formal Agreement.
- b) A PO which refers to the PAC's standard terms and conditions outlined in the Bid Solicitation, shall be used when the terms and conditions of the Procurement are unambiguous.

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- c) A Formal Agreement shall be used when the terms of the Bid Solicitation are complex or are the result of Negotiation.
- d) It is the responsibility of the Administrative Supervisor in consultation with the legal counsel to determine when it is in the best interest of the PAC to establish a Formal Agreement with a Supplier.
- e) POs shall be executed in compliance with Schedule 2.
- f) If a Formal Agreement is required, it shall be executed in compliance with Schedule 2, providing the Formal Agreement is satisfactory in form and content to the legal counsel and in technical content to the Department Head.
- g) Contracts shall be executed prior to a Supplier commencing work. A PO shall be fully executed upon its provision to a Supplier.

47. Contract Renewals and Extensions

- a) Where a Contract contains an option for renewal or an extended term, the Department Head in conjunction with the Executive Director shall confirm that:
 - i. the exercise of the option is in the best interest of the PAC;
 - ii. Supplier performance is satisfactory, based on Contract terms and conditions;
 - iii. the Board approved Budget is available to meet the proposed expenditure.

48. Contract Amendments

- a) Contract amendments to Total Contract Price shall only result from a change in the scope of work, or to address circumstances that were not foreseeable at the time of the Contract Award.
- b) Provided that the Administrative Supervisor and the requisitioning Department Head are jointly able to confirm an existing Budget for the specified expenditure they may provide their approval on any Procurement where the amended Total Contract Price is not greater than \$100,000. If the amended Total Contract Price is greater than \$100,000 then it shall be approved by the ED.

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- c) Any amendment that cannot be funded from an existing approved Budget for the specific expenditure, shall be brought forward to the Board for approval of the amendment and additional required funding, prior to completion of the work outlined in the amendment.

Part XIII - Supplier and Material Management

49. Supplier Performance

- a) The requisitioning Department shall:
 - i. monitor and document the performance of Suppliers compared to the Contract; and,
 - ii. advise the ED in writing on a timely basis when the performance of a Supplier has been unsatisfactory.
- b) Failure to meet specifications or timelines, or failure to comply with appropriate safety practices, or any applicable law or policy are grounds for unsatisfactory performance.
- c) A Supplier shall be given the opportunity to respond to an allegation of unsatisfactory performance, in accordance with the terms of the Contract if applicable.
- d) The PAC may, in its sole discretion, disqualify a Supplier from bidding on any Bid Solicitation, or reject a Bid, or suspend a Supplier from future bid solicitations, if:
 - i. a Supplier has, at any time, threatened, commenced or engaged in legal claims or Litigation against the PAC;
 - ii. a Supplier has been convicted of corruption, collusion, bid-rigging any other anticompetitive activity or any other offence under the Criminal Code, for which a full pardon has not been granted;
 - iii. a Supplier is involved in unresolved claim or Litigation with the PAC;
 - iv. a Supplier previously provided Goods and/or Services to the PAC in an unsatisfactory manner;
 - v. a Supplier has failed to satisfy an outstanding debt to the PAC or one of its local boards or corporations;
 - vi. a Supplier has a history of illegitimate, frivolous, unreasonable or invalid claims;

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- vii. a Supplier is currently serving a suspension period;
- viii. a Supplier provides incomplete, unrepresentative references, or receives unsatisfactory external and/or internal references in a reference check undertaken by PAC Staff,
- ix. a Supplier has engaged in conduct that leads the PAC to determine that it would not be in the PAC's best interests to accept the Bid;
- x. the PAC is likely to incur increased legal costs in the administration of the Contract if it is Awarded to the Supplier.
- xi. There are reasonable grounds to believe it would not be in the best interests of the PAC to enter into a Contract with the Bidder.

50. Debriefing

All requests for a formal or informal Vendor debriefing to obtain feedback on why a Bid was not successful must be received by the City of St. Catharines in writing and directed to the Purchasing Agent. A request for a Vendor debriefing will not alter an Award decision.

51. Bid Dispute Resolution

All Supplier disputes or complaints, whether addressed to elected officials or PAC staff, shall be referred to the Purchasing Agent.

Part XIV – Disposal of Surplus or Obsolete Assets

- 52. Disposal of surplus assets is the responsibility of the Administrative Supervisor. The ED may delegate responsibility for Disposal of certain assets, if it is beneficial to the PAC to do so.
- 53. Department Heads are responsible for submitting to the Administrative Supervisor a list of surplus assets which may include:
 - a) surplus equipment and/or inventory; and,
 - b) obsolete or unrepairable items.

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54. The ED shall have the authority to:
- a) transfer surplus assets to other Departments who have a need for the Goods; and/or
 - b) sell or dispose of all surplus assets not required by the PAC, using public sale, auction, or trade-in or donation.
55. The sale of surplus assets shall be made to the highest Bidder and in accordance with provisions of this Bylaw.
56. Surplus assets shall not be sold directly to an employee or a board member, although this does not prohibit them from purchasing surplus assets through a public process, except in specified cases related to Information Technology equipment valued at under \$2,000, such as cell phones, laptop computers and tablets, as outlined in policy and procedures.
57. Surplus assets may be donated to nonprofit organizations for educational or teaching purposes, or as directed by the Board. Recipients of donated items shall not receive Goods with the intention of resale. All donated assets must be approved by the ED.
58. If it is determined that the Goods have no residual value, the Administrative Supervisor may dispose of them as waste.
59. Disposal of unsafe or hazardous surplus items is the responsibility of the requisitioning Department and shall be conducted in accordance with applicable laws and this Bylaw.

Part XV - General Administration of this Bylaw

60. In the interpretation and application of this Bylaw, to the extent that a process or policy is not clearly provided for herein, the ED shall have regard to the Purposes, Goals and Objectives set out in Part 1 herein, the Ontario Public Buyers Association Code of Ethics and any applicable law including the Municipal Act, 2001 and Municipal Conflict of Interest Act in carrying out its responsibilities.
61. Schedules “1”, “2”, “3” and “4” attached hereto shall form part of this Bylaw.
62. Severability

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- a) If any Section or Sections of this Bylaw or parts thereof are found by a Court of competent jurisdiction to be invalid or beyond the power of the Board to enact, such Section or Sections or parts of the Bylaw shall be deemed to be separate and independent therefrom and shall continue in full force and effect unless and until similarly found invalid or beyond the power of the Board to enact.

63. Review of Bylaw

- a) The ED shall review the effectiveness of this Bylaw at least every five years and report to Board as necessary.

64. Effective Date

- a) This Bylaw shall come into force and take effect on the 1st day of January 2020.

65. Title

- a) This Bylaw shall be referred to as the Procurement Bylaw.

Schedule 1 – Exemptions from Procurement Policies

The following Goods and Services are exempt from the application of this bylaw:

1. PAC Business

- Artist contracts
- Venue rental contracts
- Artist meal/rider buyouts
- Sponsorship and Advertising contracts
- Grant applications and contracts

2. Training and Education

- Conferences, conventions, courses and seminars;
- Magazines, books, periodicals;
- Memberships;
- Staff Development

3. Refundable Employee/Board Expenses

- Advances;
- Meal Allowances;
- Travel and Entertainment;
- Miscellaneous – Non-Travel;

4. Employer's General Expenses

- Payroll Deduction Remittances;
- Medical;
- Licenses (vehicles, etc.)
- Debenture Payments;
- Insurance Premiums;
- Grants to Agencies;
- Damage Claims;
- Customs Brokerage Fees;
- Tax Remittances;
- Charges to and from other government bodies;
- Payment for employment (i.e. Contract employees);
- Postage;
- Employee benefits

5. Professional and Special Services

- Committee Fees;
- Medical and laboratory Services;
- Legal settlements, disbursements and reimbursement of claimant expenses;
- Medical and Dental Fees;
- Funeral and Burial expenses;
- Appraisal Fees;

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- Expert Witness Fees related to legal proceedings;
- Honorariums;
- Advertising;

6. Banking Services and Charges

- Financial Services regarding the Management of Performing Arts Centre's financial assets and liabilities, treasury operations, including ancillary, and advisory services. Includes expenses related to the borrowing and investing of money

7. Utilities

- Water and Sewer;
- Hydro;
- Gas;
- Communication Infrastructure Services such as Bell, Cogeco, Rogers etc.;
- Utility relocations

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Schedule 2 – Purchasing and Execution Authority

Part VI of the Bylaw stipulates when Board approvals must be obtained prior to Award of a Procurement Contract.

Stipulated Authorities for Procurement, and Contract execution are:

- a) firmly established based on the Total Contract Price at the time the documents are originally executed,
- b) include any position which is higher in the Performing Arts Centre's reporting structure.

	Purchase Orders	Vouchers	Pcards	
Board	100,000+			
Executive Director	100,000	100,000	10,000	20,000
Operations Manager	25,000	25,000	10,000	20,000
Operations Administrator	25,000	25,000	5,000	20,000
Client Services Supervisor			3,000	5,000
Programming Manager	25,000	25,000	5,000	10,000
Marketing Supervisor	5,000	5,000	3,000	5,000
Administrative Supervisor	25,000	25,000	5,000	10,000
Administrative Assistant			1,500	3,000

Total Contract Price of Procurement	Authority for Procurement and Award	Authority for Contract Execution
Up to \$25,000 (1)	Specified Manager or Employee through Delegation from their Department Head	Department Head and/or designate as determined by the Department Head
Greater than \$25,000 and up to \$100,000	Executive Director and/or designate as determined by the Director	Executive Director and/or designate as determined by the Director
Greater than \$100,000 unless Part VI (Section 14) applies	Board	Board
When Part VI (Section 14) applies	Board in Conjunction with City approval	Board in Conjunction with City approval

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- (1) Procurement up to \$10,000 may be paid by using a PCard, the Authority for Procurement remains with the Department Head. Authority to Procure will be evidenced through the Manager's signature approving of the PCard expenditures.
- (2) Notwithstanding the limits set on this schedule, the ED may sign off on Grant application and contracts up to \$200,000 in total value.

Schedule 3 – Method of Procurement based on Total Contract Price

1. The selection of the appropriate method of Procurement shall consider the direction provided in Schedule 3 in combination with the specific circumstances of the Procurement.
2. When Requisitioning Departments are considering the method of Procurement for purchases greater than \$50,000, the Purchasing Division shall be consulted prior to selecting the Procurement method.

Total Contract Price	Suggested Procurement Method based on Estimated Total Contract Price
Low dollar value –\$10,000 or less	Either: <ul style="list-style-type: none"> • PCard for transactions up to \$10,000 (non-recurring purchase); • Direct Purchase with a Purchase Order.
Greater than \$10,000 and less than \$25,000	Informal Quotation
Greater than \$25,000 and less than \$100,000	Request for Quotation
\$100,000 and greater	Request for Tender or Request for Proposal or Negotiated Request for Proposal

Schedule 4 – Bid Irregularities

	IRREGULARITY	RESPONSE
1.	Late bids	Automatic rejection
2.	Unsealed envelopes	Automatic rejection
3.	Submission completed in an erasable medium	Automatic rejection
4.	Incomplete bids - part bids – all items not bid	Automatic rejection except where the tender form clearly states that an award may be made for individual items or where in the opinion of the Purchasing Division and the Director of the using department the incomplete nature is trivial or insignificant
5.	Qualified bids - qualified or restricted by an attached statement	Automatic rejection except where the change is requested by the Board or where, in the opinion of the Department Head, the change is trivial or insignificant
6.	Financial security not submitted or insufficient	Automatic rejection
7.	Bid not properly signed	Automatic rejection
8.	Mathematical errors	May be accepted if corrected in the checking procedure. Unit prices shall ordinarily be used to correct extensions.
9.	Agreement to bond insufficient or not submitted	Automatic rejection
10.	Bids received on documents other than those provided by the Board	Automatic rejection unless, in the opinion of the ED, the matter is trivial or insignificant
11.	Erasures, Overwriting or Strikeout Not Initialed	
	a. Changes which are minor i.e. address, clerical error	May be accepted, time limit given to initial
	b. Unit prices have been changed but not initialed and the contract totals are consistent with the price as amended	May be accepted, time limit given to initial
	c. Unit prices have been changed but not initialed and the contract totals are not	Automatic rejection

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	consistent with the prices as amended	
12.	Minor clerical errors	May be accepted, time limit given to correct and initial
13.	Documents, in which all necessary Addenda, which have financial implication, have not been acknowledged	Automatic rejection unless in the opinion of the Procurement Manager, and the applicable Department Head in consultation with the legal counsel, the Addendum (Addenda) does not significantly impact the bid, in which case the bidder will be provided two (2) business days to formally acknowledge the Addendum (Addenda) with no change or amendment permitted to the financial bid.
14.	Other Minor irregularities	May be accepted, Administrative Supervisor and the Department Head of the using department shall have authority to waive irregularities which they jointly consider to be minor