



THE CORPORATION OF THE CITY OF BRAMPTON

# BY-LAW

310-2015

**A By-law to repeal Purchasing By-law 35-2012, as amended and replace with this updated By-law to provide for the procurement of goods, services and construction**

**(The Purchasing By-law)**

WHEREAS the *Municipal Act, 2001*, Subsection 270 (1), provides that a municipality shall adopt a policy for its procurement of goods and services; and

WHEREAS the objective of the procurement function is to provide Departments with goods, services and construction on a timely basis, as efficiently as possible, and for the best value; and

WHEREAS to achieve the objective of the procurement function it is desirable to use methods and processes which enable Vendors to compete for the opportunity to sell to the City, and have as their goals encouraging competition, openness and transparency, fairness, objectivity, accountability, efficiency and effectiveness; and

WHEREAS integrity is required in procurements to maintain the public's trust and reduce the City's exposure to legal risk, achieved through the requirement of complying with all applicable laws; and

WHEREAS the *Agreement on Internal Trade* between the Federal Government and the Provinces applies to Canadian municipalities with respect to Chapter Five Annex 502.4 and other relevant sections, and

WHEREAS the Purpose of Chapter Five of the *Agreement on Internal Trade* "is to establish a framework that will ensure equal access to procurement for all Canadian suppliers in order to contribute to a reduction in Purchasing costs and the development of a strong economy in a context of transparency and efficiency"; and

WHEREAS the *Trade and Cooperation Agreement Between Ontario and Quebec* applies to Ontario municipalities and the City of Brampton supports the Objectives and Mutually Agreed Principles of the *Trade and Cooperation Agreement Between Ontario and Quebec*; and

WHEREAS the Honourable Madam Justice Bellamy's report from the "*Toronto Computer Leasing Inquiry*" released September 12, 2005 contains recommendations aimed at improving practices in procurement, the general principles of which are applicable to the Councils and staff of municipalities;

WHEREAS this By-law is enacted to incorporate the provisions of By-law 35-2012 with amendments authorized by Council by Resolution CS114-2015, Confirming By-law 223-2015;

NOW THEREFORE the Council of The Corporation of the City of Brampton ENACTS as follows:

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**1.0 OBJECTIVE**

The objective of this By-law is to promote Procurement activities and decisions which are consistent with the strategic objectives of the City provided that the requirements of any applicable international or inter-provincial trade agreements are not compromised.

**2.0 DEFINITIONS**

In this By-law,

- 2.1** "Acting City Manager" means a person designated to act on behalf of the City Manager in the absence of the City Manager and who has all the authority and responsibility of the City Manager for the duration of the "Acting" designation;
- 2.2** "Acting Department Head" means a person designated to act on behalf of a Department Head in the absence of the Department Head and who has all the authority and responsibility of the Department Head for the duration of the "Acting" designation;
- 2.3** "Approved as to Content" means that the content, substance and material dealt within the document are approved and are in accordance with the By-law;
- 2.4** "Approved as to Form" means that the document is approved for execution in the correct form, style and procedures of the City in accordance with the By-law;
- 2.5** "Bid" means an offer in writing to supply certain specified goods, services or construction, at a certain price or prices, in a competitive Procurement Process and includes both proposals in response to Request for Proposals and Bids in response to a call for Bids;
- 2.6** "Bid Opening Committee" means a committee comprised of at least two (2) representatives from Purchasing, one of whom will be the Purchasing Agent or designate, and at least one (1) representative from the requesting Department(s) conducted under the chairmanship of the Purchasing Agent or designate to facilitate the public opening of Bids as determined by the Purchasing Agent;
- 2.7** "Bidder" means any proponent, respondent or other person or entity who has obtained official procurement documents for the purpose of submitting or who has submitted a Bid in response to a Procurement Process;
- 2.8** "Buying Group" means a group of two or more members which combines the Purchasing requirements and activities of the members of the group into one joint Procurement Process. Buying Groups include cooperative arrangements in which individual members administer the procurement function for specific Contracts for the group, and more formal corporate arrangements in which the Buying Group administers procurement for group members. Buying Groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations;
- 2.9** "City" means The Corporation of the City of Brampton;
- 2.10** "City Manager" means the highest ranking administrator of the Corporation;
- 2.11** "Conferred Value" includes, but is not limited to;
- 2.11.1** The exchange of goods and/or services by the City in return for other goods and/or services; and
- 2.11.2** Revenue generating opportunities.
- 2.12** "Confidential Information" means all information of the City that is confidential in nature, including all Confidential Information in the custody or control of the City, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied. For greater certainty, Confidential Information shall include;

- 2.12.1 All new information derived at any time from any such information whether created by the City or a Vendor or any third party;
- 2.12.2 All information considered by Council in camera; and
- 2.12.3 All information (including personal information) that the City is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise.
- 2.13 "Consulting Services" means the provision of expertise or strategic advice that is presented for consideration and decision-making.
  - 2.13.1 Consulting Services does not include services in which the physical component of an activity would exceed the advisory services component (e.g. services for the operation and maintenance of a facility; temporary help services; training/education instructors and photography).
- 2.14 "Contract" means a formal legal agreement between two or more parties, usually written, or a Purchase Order with binding legal and moral implications whereby goods and/or services are exchanged for money or other consideration;
- 2.15 "Contract Extension" means an amendment to a Contract which has the effect of increasing the value of the Contract in funds, increasing the scope of work and/or extending the term of the Contract;
- 2.16 "Council" means the Council of The Corporation of the City of Brampton;
- 2.17 "Department" means the City Departments described in Schedule F;
- 2.18 "Department Head" means the individual accountable for departmental operations as described in Schedule F, and includes an Acting Department Head and delegated authority in accordance with the Purchasing Policy, Delegation of Department Head Authority;
- 2.19 "Deputy Purchasing Agent" means the staff person so designated in or pursuant to Schedule E to this By-law;
- 2.20 "Direct Negotiation" means a procurement method where there is no competitive process and negotiations are entered into with one or more than one Vendor, but do not include negotiations conducted as part of a negotiated Procurement Process;
- 2.21 "Direct (Emergency) Process" means a Procurement Process where the usual competitive process is suspended due to the prevailing Emergency circumstances;
- 2.22 "Disposal" means the sale, exchange, transfer, destruction or gift of goods owned by the City, excluding Real Property, which are deemed surplus to its needs, and "dispose" and "disposed" shall have similar meanings;
- 2.23 "Eligible Bid" means a Bid that in accordance with this By-law and the City's policies and procedures:
  - 2.23.1 has been found to have met specific mandatory requirements (procedural and substantive);
  - 2.23.2 does not give rise to any conflicts of interest;
  - 2.23.3 has not been submitted by a Vendor ineligible to bid; and
  - 2.23.4 has not been disqualified and rejected.
- 2.24 "Emergency" means an unforeseeable, serious emergency situation where the immediate purchase of goods, services or construction is essential in order to maintain a required service or to prevent danger to life, health or property within the City of Brampton;
- 2.25 "Executive Leadership Team" means the leadership team including the City Manager and all Department Heads;
- 2.26 "Mayor" means the elected Mayor of the City or the person duly appointed to act in the place of the Mayor;
- 2.27 "Non-Standard Result" means a result in a procurement in which Bids are submitted and any of the following has occurred or is likely to occur
  - 2.27.1 No Eligible Bids are received;
  - 2.27.2 Less than 3 Eligible Bids are received;

2.27.3 Another Procurement Process available under Section 11 would have resulted in successful completion of the procurement in the determination of the Purchasing Agent based on the bid results;

2.27.4 Award of a Contract to other than lowest Eligible Bid received.

- 2.28** "Official Vendor File" means the electronic database of Vendors who have registered through the City's online service as Brampton registered Vendors who wish to do business with the City of Brampton;
- 2.29** "Procurement" means acquiring goods, services, construction or any legal or equitable right, title or interest, in goods, services, construction and includes the lease of goods, services and "purchased," "acquisition" "procure", "buy" shall have similar meanings;
- 2.30** "Procurement Complaints and Disputes Resolution Committee" means a committee of City staff that will include the Purchasing Agent, the Director of Treasury Services and the appropriate Department Head(s) and may include the Treasurer and the City Manager as described in the Procurement Complaints and Disputes Resolution Policy and Procedures;
- 2.31** "Procurement Process" means all methods of procurement including Requests for Information, Requests for Expressions of Interest, Requests for Quotations, Requests for Proposals, Requests for Supplier Qualifications, Direct Negotiations and calls for Tenders;
- 2.32** "Purchase Order" means the legal document which is the City's commitment to the Vendor for the purchase of goods, services or construction at an agreed upon price, terms, conditions and delivery date and also serves as the Vendor's authority to ship and charge for the goods and/or services specified on the order;
- 2.33** "Purchasing" means central purchasing within Corporate Services of the City authorized to perform the purchasing activities on behalf of all Departments;
- 2.34** "Purchasing Agent" means the staff person so designated in or pursuant to Schedule "E" to this By-law who is vested with such authorities, duties and responsibilities as are prescribed by this By-law;
- 2.35** "Real Property" means all land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all "interests" in the property. It is distinguished from the other type of property, personal property, which is made up of movable items;
- 2.36** "Request for Expressions of Interest" or "RFEI" means a Procurement Process used to gather information on Vendor interest in an opportunity or information on Vendor capabilities/qualifications
- 2.37** "Request for Information" or "RFI" means a Procurement Process to gather general Vendor, service or product information from potential Vendors;
- 2.38** "Request for Proposals" or "RFP" means a Procurement Process where a need is identified, but how it will be achieved is not prescribed by the City at the outset. This process allows Vendors to propose solutions or methods to arrive at the end product and it allows for evaluation on criteria in addition to price;
- 2.39** "Request for Quotations" or "RFQ" or "Informal and Formal Invitational Procurement" means a Procurement Process where prices on specific goods, services or construction are requested from selected Vendors;
- 2.40** "Request for Supplier Qualifications" or "RFSQ" or "Prequalification" means a Procurement Process used to gather information on Vendor capabilities and qualifications, with the intention of creating a list of pre-qualified Vendors;

- 2.41** "Single Source" means engaging in Direct Negotiations with a Vendor to provide goods, services or construction where there is more than one Vendor capable of supplying the goods, services or construction in the market, but the circumstances fit into one of the Exceptions set out in Schedule B – Exceptions from Competitive Procurement Circumstances for Exclusions;
- 2.42** "Sole Source" means engaging in Direct Negotiations with a Vendor to provide goods, services or construction where there is only one Vendor is able to meet the requirements of the procurement under one of the circumstances set out in Schedule C – Exceptions From Competitive Procurement Circumstances for Sole Source Procurement;
- 2.43** "Supporting Policies and Procedures" means policies and procedures created and prescribed by the Treasurer or Purchasing Agent to support the objectives, principles and application of this By-law;
- 2.44** "Tender" means an offer in writing to supply specified goods, services or construction at a fixed price, in response to a publicly advertised or invited call for Bids;
- 2.45** "Total Procurement Value" means the total estimated cost and Conferred Value as determined by the requisitioning Department Head for the Procurement of the particular goods, services, construction, exclusive of taxes; and
- 2.46** "Vendor" means an individual or organization that may offer goods, services or construction to the City including but not limited to contractors, consultants, suppliers and service organizations

### **3.0 PURCHASING PRINCIPLES**

#### **3.1 Non-Discrimination**

- 3.1.1** In accordance with the requirements of the *Agreement on Internal Trade*, the City will not adopt or maintain any measures that would differentiate between Vendors, or goods or services or construction on the basis of geographic location in Canada.
- 3.1.2** Discriminatory procurement practices which are not allowed under this By-law include, but are not limited to, those listed in Schedule "A" (Discriminatory Practices).

#### **3.2 Transparency**

- 3.2.1** The City will ensure that its By-laws, policies, regulations, and administrative procedures as they relate to this By-law and the City's Purchasing function are made readily accessible to the public.
- 3.2.2** The City will ensure that its notices of awarded contracts are made readily accessible to the public.

#### **3.3 Fair Acquisition Process**

- 3.3.1** Unless specifically set out herein, purchases covered by this By-law shall be subject to a procurement method permitted by the By-law.
- 3.3.2** Long-term Contracts (ie. greater than five year initial term) are appropriate so long as properly procured in accordance with this By-law and there is a demonstrated business need approved by the requisitioning Department Head, Treasurer and Purchasing Agent.
- 3.3.3** Unless specifically set out herein, the City will ensure that its needs for goods, services and construction are met through a fair acquisition process that is based on the highest degree of competition, efficiency and effectiveness, and is consistent with Sections 3.1 (Non-Discrimination) and 3.2 (Transparency) of this By-law.
- 3.3.4** The information provided in a procurement notice shall include at least the following:

- 3.3.4.1 a brief description of the procurement contemplated;
  - 3.3.4.2 the place where a person may obtain information and Bid documents;
  - 3.3.4.3 the conditions for obtaining the procurement documents;
  - 3.3.4.4 the place where the Bids are to be sent;
  - 3.3.4.5 the date and time limit for submitting Bids;
  - 3.3.4.6 the time and place of the opening of the Bids in the event of a public opening; and
  - 3.3.4.7 a statement that the procurement is subject to this By-law and the "Agreement on Internal Trade" and the "Trade and Cooperation Agreement Between Ontario and Quebec".
- 3.3.5 Consistent with Section 3.2 (Transparency), the City may, in evaluating Bids, take into account the submitted price, quality, quantity, delivery, servicing, the capacity of the Vendor to meet the requirements of the procurement and any other criteria consistent with Section 3.1 (Non-Discrimination). Procurement documents shall clearly identify the requirements of the Procurement, the criteria that will be used in the evaluation of Bids and the methods of weighting and evaluating the criteria.
- 3.3.6 Subject to Section 3.1 (Non-Discrimination), the City may limit Bids for goods, services and construction to Vendors qualified, through a pre-qualification process, prior to the close of call for Bids.

### **3.4 Exceptions**

- 3.4.1 The City may exclude a procurement from a competitive Procurement Process in the circumstances listed in Schedule B (Exceptions - Circumstances for Exclusions) provided that the exclusion is not for the purposes of avoiding competition between Vendors or in order to discriminate against Vendors within Canada.
- 3.4.2 Where only one supplier is able to meet the requirements of procurement, the City may exclude a procurement from a competitive Procurement Process in the circumstances listed in Schedule C (Exceptions - Circumstances for Sole Supplier Procurement), provided the exclusion is not for the purpose of avoiding competition or in order to discriminate against Vendors within Canada.
- 3.4.3 Procurements that have commenced and which subsequently are found not fully to comply with the requirement of the Purchasing By-law must be approved by City Council in order to complete the Procurement Process and enable a Purchase Order and/or a payment to be issued.
- 3.4.4 Where it is known before commencement that a Procurement may or will not be compliant with this By-law, the Procurement shall not be commenced unless:
  - 3.4.4.1 For a Procurement with a value of less than \$100,000, the Procurement has been approved in advance by City Council; and
  - 3.4.4.2 For a Procurement with a value of \$100,000 or greater, the Procurement has been approved in advance by City Council after City Council has received a legal opinion that includes a risk assessment and addresses the application of relevant Trade Treaties such as the Agreement on Internal

Trade and the Trade and Cooperation Agreement  
Between Ontario and Quebec.

**3.5 Non-Application**

3.5.1 The By-law does not apply to the exclusions described in Schedule D of the By-law.

3.5.1.1 Approvals:

A recommendation made under 3.5.1 must be approved:

3.5.1.1.1 In accordance with the Financial Spending Authority SOP.

**3.6 Canadian Content**

3.6.1 In accordance with the requirements of the *Agreement on Internal Trade*, the City may accord a preference for Canadian value-added, provided that the preference is no greater than 10 percent.

3.6.2 The City may limit its tendering to Canadian goods or Vendors, provided the City is satisfied that there is sufficient competition among Canadian Vendors and the requirement for Canadian content is no greater than necessary to qualify the procured good as a Canadian good.

3.6.3 In order to better ensure open, fair and competitive practices amongst entities who are party to various trade treaties, the Purchasing Agent may elect to designate jurisdictions that impose local trade restrictions and companies from those jurisdictions shall be ineligible to submit Bids in respect of City Procurement Processes or otherwise conduct business with the City.

**3.7 Complaints and Disputes Resolution**

**3.7.1 Specific Procurements**

3.7.1.1 Complaints and disputes arising from or related to application of this By-law shall be referred to the City's Procurement Complaints and Disputes Resolution Policy and Procedures.

3.7.1.2 The final stage of complaints and disputes resolution shall be heard by the City's Procurement Complaints and Disputes Resolution Committee in accordance with the Procurement Complaints and Disputes Resolution Policy and Procedures.

3.7.1.3 Complaints and disputes arising from or related to specific Procurement Processes conducted pursuant to this By-law will not be heard or resolved by City Council, by any Committee of City Council or by any individual member of City Council.

3.7.1.4 The City will provide Vendors from other Provinces the same rights and privileges to challenge Contract decisions that are available to Ontario Vendors.

3.7.1.5 The complaints and disputes resolution process shall not cause delay in the awarding of a Contract by the City.

3.7.1.6 The complaints and disputes resolution process shall be conducted with regard for the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M-26.



### **3.7.2 Content of this By-law**

- 3.7.2.1 Complaints relating to the content of this By-law shall be referred to the City's Procurement Complaints and Disputes Resolution Policy and Procedures.
- 3.7.2.2 The final stage of complaints resolution with respect to the content of this By-law shall be heard by the City Council through Committee of Council.

### **3.8 Language**

- 3.8.1 The City's Procurement Processes will be conducted in the English language and where required by legislation or by agreement with the Federal Government, the Government of Ontario or an Ontario municipality, also in the French language.

### **3.9 Confidentiality**

- 3.9.1 Nothing in this By-law requires the City to breach confidentiality obligations imposed by law or to compromise security concerns or commercially sensitive or proprietary information identified by a Vendor in its procurement documents.
- 3.9.2 Notwithstanding Section 3.8.1, information collected by the City is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M-26.

### **3.10 Ethical Procurement**

- 3.10.1 The City of Brampton supports Article 32 of the United Nations "*Convention on the Rights of the Child*" which states:
- 3.10.2 It is "*the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*"
- 3.10.3 Article 1 of the "*Convention on the Rights of the Child*" defines a child as "*every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*"
- 3.10.4 The City of Brampton does not wish to encourage the purchase of products manufactured in factories where children are required to perform work in contravention of Article 32 of the UN "*Convention on the Rights of the Child*". The terms of procurements authorized by this By-law may include a requirement for Bidders to confirm in writing, compliance with this requirement in their Bid response.

## **4.0 CITY COUNCIL AND ITS COMMITTEES**

Prior to the commencement of a Procurement Process, being the date Procurements are advertised or solicited, City Council shall authorize the commencement, including scope and specific Procurement expenditure estimate, of Procurements with an estimated value of \$1,000,000 or greater and Procurements less than \$1,000,000 that are deemed to be of interest, such as Procurements that are of significant risk, involve security concerns or are of significant community interest as recommended by the requisitioning Department Head and/or the Treasurer and approved by the City Manager.

- 4.1 In keeping with municipal procurement best practices, the Mayor and Members of Council shall have no involvement in specific Procurements, including not seeing any related documents or receiving any related information from the time those Procurements have been advertised or solicited until the Contract has been entered into.

- 4.2 The Mayor and Members of Council who receive inquiries from Bidders related to any specific Procurement are required to advise the Bidders(s) to communicate with the contact person listed in the Procurement document.
- 4.3 Where Council approval to commence Procurement has been received, in accordance with Section 4.0, and the Procurement results in a Contract greater than 20% of the amount approved by Council, the requisitioning Department Head shall report the Contract amount to Council within 60 days of the award of Contract.
- 4.4 If the Contract award amount is within 20% of the amount approved by Council, in accordance with 4.0, the Contract amount shall be reported to Council as information only, in accordance with Section 14.0.
- 4.5 Where no prior Council approval to commence Procurement has been received and the Procurement results in a recommended award of a Contract in an amount greater than \$1 million, a report shall be forwarded to Council prior to award of the Contract, disclosing the Contract amount.
- 4.6 Where a Contract with an original award value of less than \$1 million, requires a Contract Extension that will cause the Contract to exceed \$1 million, the requisitioning Department Head shall report the Contract Extension to City Council within 60 days of the Contract Extension.
- 4.7 For a Contract previously approved or reported under section 4.0, future Contract Extensions that exceed \$1 million, the requisitioning Department Head shall report every \$1 million cumulative Contract increase to City Council within 60 days of the Contract Extension.
- 4.8 For Procurements described in Section 4.0, during the months where there is no meeting of Council, and in the year of a Municipal Election during the period between Nomination Day and the commencement of the new term of office, where no regular meeting of Council is scheduled, Council authority shall be delegated to Treasurer and Executive Leadership Team. Any exercise of such delegated authority shall be reported to Council as information only, in accordance with Section 14.0.

## 5.0 AUTHORITY OF THE PURCHASING AGENT

The Purchasing Agent shall:

- 5.1 Act on behalf of or in consultation with Requisitioning Department Head(s) to authorize the use of the most appropriate procurement method;
- 5.2 Execute procurement documents including Contracts and all other documents related to specific procurements under the Corporate Seal on behalf of the Mayor and the Clerk;
- 5.3 Ensure that all Contracts and related documents executed under Sections 5.2 are Approved as to Form by the City Solicitor; and
- 5.4 Ensure that all Contracts and related documents executed under Section 5.2 are Approved as to Content by the appropriate Requisitioning Department Head(s).

## 6.0 RESPONSIBILITY OF THE PURCHASING AGENT

The Purchasing Agent is responsible for the Purchasing function of the City including:

- 6.1 The acquisition of goods, services and construction required by the City, but excluding Real Property;
- 6.2 The disposal of goods, constructed assets, but excluding Real Property

- 6.3 Determining the appropriate method of procurement based on the Total Procurement Value of the goods, services or construction (excluding taxes) provided by the requisitioning Department(s);
- 6.4 Delegating Purchasing Agent authority where appropriate; and
- 6.5 Maintaining an up to date Official Vendor File.

The Purchasing Agent may, in accordance with the Vendor Disqualification Protocol, remove a Vendor from consideration for Contracts under this By-law for the following reasons:

- 6.6 The Vendor or that Vendor's principals are or have been engaged in a lawsuit or other legal proceedings against the City;
- 6.7 The Vendor failed to honour a Bid submitted in response to a City Procurement Process;
- 6.8 The Vendor failed to disclose an actual, potential or perceived conflict of interest in connection with another City procurement or Contract;
- 6.9 The Vendor, or that Vendor's principals, was convicted of bid-rigging, price-fixing or collusion or other statutory offenses;
- 6.10 The Vendor engaged in unethical business practices; or
- 6.11 The Vendor had significant performance issues on a City Contract.

#### **7.0 OBJECTIVES OF THE PURCHASING AGENT**

- 7.1 Providing leadership, quality customer service and best value through the provision of open, fair, and transparent competitive Procurement Processes;
- 7.2 Promoting the most cost effective and efficient use of City funds by attaining optimum quality, quantity, price, delivery and performance;
- 7.3 Exercising professional Purchasing practices to obtain the most competitive offers from the most responsible and responsive Vendors;
- 7.4 Providing timely, efficient service delivery while developing and maintaining good client relations through consultation, education, training and cooperation, and the promotion of both internal and external partnerships;
- 7.5 Promoting standardization, education and sharing knowledge of products and market conditions while seeking innovative solutions;

#### **8.0 AUTHORITY AND RESPONSIBILITY OF THE DEPUTY PURCHASING AGENT**

The Deputy Purchasing Agent has all the powers and duties of the Purchasing Agent.

#### **9.0 RESPONSIBILITY OF THE DEPARTMENT HEAD**

- 9.1 The Department Head is responsible for:
  - 9.1.1 Ensuring compliance with this By-law and Supporting Policies and Procedures with respect to the activities of his or her Department;
  - 9.1.2 Notifying the Purchasing Agent as soon as possible of any apparent or potential non-compliance with this By-law or Supporting Policies and Procedures;
  - 9.1.3 Obtaining Council approval to proceed with any non-compliant Procurement in accordance with section 3.4.3 and 3.4.4;
  - 9.1.4 Ensuring that the Purchasing Agent and the City Solicitor are provided with a copy of any written approval granted by City Council under Section 3.4.3 and 3.4.4;

- 9.1.5 Providing the Purchasing Agent with confirmation of No Discriminatory Procurement Practices (Section 3.1.2) in the form prescribed by the Purchasing Agent for all procurements greater than \$100,000, and any procurements less than \$100,000 as required by the Purchasing Agent on a case by case basis;
- 9.1.6 Delegating appropriate authority to employees within their Department in respect of this By-law and Supporting Policies and Procedures; and
- 9.1.7 Reporting to City Council as required in Section 4.0.

## **10.0 GENERAL AUTHORITY**

- 10.1 Subject to Section 3.4, the purchase of goods, services or construction having a Total Procurement Value in excess of the amounts as set out in Section 11.4 of this By-law, exclusive of taxes shall not be authorized unless:
  - 10.1.1 The required goods, services and construction have been requisitioned in accordance with this By-law and any applicable prescribed policies and procedures;
  - 10.1.2 The form and content of all documents forming any part of the Contract including, but not limited to, Purchase Order, Bid call document, Quotation, Tender or Proposal documents, form of agreement, special provisions, terms and conditions, insurance, performance security, and any other relevant documents have been reviewed and approved by the Purchasing Agent; and
  - 10.1.3 The Procurement has been approved by the appropriate level of authority as detailed in this By-law.
- 10.2 Where any goods, services or construction are confidential in nature, the City Manager or the Treasurer may act as the Purchasing Agent and provide the necessary advice and services, which would otherwise be provided by the Purchasing Agent.
- 10.3 Where the purchase of goods, services or construction has been authorized in accordance with this By-law, the Purchase Order forming part of the Contract to purchase may be executed on behalf of the City by:
  - 10.3.1 The Purchasing Agent; or
  - 10.3.2 Delegate of the Purchasing Agent; or
  - 10.3.3 The City Manager or the Treasurer or the Deputy Treasurer (First).
- 10.4 Where a Bid has been awarded to a Bidder and the Bidder fails or refuses to enter into the Contract, or if a Bidder defaults on the Bidder's contractual obligations, the Purchasing Agent is authorized to proceed with the acceptance of the next ranked Eligible Bid, and so on as necessary, provided that the requirements remain substantially unchanged and the next ranked Eligible Bid is within the specific procurement budget. Unless otherwise required by this By-law, the approval of the Treasurer will also be required in addition to all other approval requirements.
- 10.5 If the Procurement Process fails to result in a Contract, the Purchasing Agent may cancel the procurement and commence a new procurement utilizing the most appropriate Procurement Process as determined by the Purchasing Agent in consultation with the requisitioning Department Head(s).

**10.6 Bids Exceeding Specific Procurement Budget**

- 10.6.1 Requisitioning Department Heads are required to provide the Purchasing Agent with the budget amount for specific procurements processed under Sections 11.6, 11.7, 11.8, 11.9, 11.10 and 11.12 in advance of the start of the Procurement Process.
- 10.6.2 Where Bids are received in response to a Procurement Process that exceed the specific Procurement estimate and the City is not able to provide additional budget funds for the Procurement, the Purchasing Agent, in consultation with the requisitioning Department Head and/or the Treasurer, may cancel or negotiate the Procurement in accordance with the appropriate Purchasing Policies and Procedures.

**11.0 PROCUREMENT PROCESSES**

- 11.1 There are different procurement methods available for procuring goods, services and construction, the selection of which will depend on the value of the goods, services and construction, the type of goods, services and construction and the complexity/risk of the procurement.
- 11.2 Unless otherwise provided in this By-law, all goods, services and construction having a price or value within each of the dollar ranges set out in this By-law, shall be purchased using one of the procurement methods listed and shall be conducted in accordance with the requirements of the specific procurement method used.
- 11.3 Notwithstanding the requirements of a particular category described in Section 11, the Purchasing Agent may prescribe that a more rigorous procurement method described in the By-law, be utilized.

**11.4 DIRECT PURCHASES UP TO \$5,000.00 (exempt from competitive Procurement)**

For acquisitions having a value of up to \$ 5,000.00, excluding taxes, or a lesser amount as determined by the requisitioning Department Head, which are not covered by a blanket Purchase Order or internal printing shall be carried out by the requisitioning Department Head, in accordance with this By-law and applicable Purchasing Policies and Procedures.

**11.5 INFORMAL INVITATIONAL PROCUREMENTS - \$5,000.01 to \$49,999.99**

This process is delegated to Departments to conduct.

**11.5.1 Requirements for Total Procurement Values of \$5,000.01 to \$49,999.99.**

11.5.1.1 Any procurement having an estimated Total Procurement Value greater than \$ 5,000.00 and less than \$50,000.00 shall be obtained using the competitive procurement method described in Section 11.5.1;

11.5.1.2 The procurement method may be administered by the requisitioning Department or by the Purchasing Agent subject to the following conditions:

11.5.1.2.1 At least three (3) Vendors registered in the City's Official Vendor File or any other Vendor known to provide the required goods, services or construction shall be requested/invited to submit written Bids;

11.5.1.2.2 It is not necessary to advertise informal Procurements within this Section of this By-law.

11.5.1.3 The Purchasing Agent and the requisitioning Department will recommend acceptance of a Bid provided that the recommended Bid is:

11.5.1.3.1 Within the Council approved budget, and

11.5.1.3.2 The lowest Eligible Bid in a Procurement Process where price is the only factor; or

11.5.1.3.3 The highest scoring Eligible Bid in the case of a Request for Proposal;

11.5.1.4 The Treasurer is authorized to deny a Department the authority to use this procurement method if in the opinion of the Treasurer, the Department has not complied with the requirements of Section 11.5 and the supporting Policies and Procedures.

11.5.1.5 Approvals:

A recommendation made under 11.5 must be approved by:

11.5.1.5.1 The Purchasing Agent; and

11.5.1.5.2 The requisitioning Department Head(s).

11.5.1.6 Additional Approval:

A recommendation made under 11.5 must also be approved by the Treasurer if:

11.5.1.6.1 The Bid is for consulting services; or

11.5.1.6.2 A Non-Standard result has occurred.

**11.6 FORMAL INVITATIONAL PROCUREMENTS INCLUDING REQUESTS FOR PROPOSALS – GOODS, SERVICES AND CONSTRUCTION - \$50,000.00 to \$99,999.99.**

This procurement method is conducted by Purchasing.

11.6.1 For any procurement having an estimated Total Procurement Value greater than \$49,999.99 and less than \$100,000.00 shall be obtained using the following formal competitive procurement method administered by Purchasing:

11.6.1.1 At least three (3) Vendors registered in the City's Official Vendor File or any other Vendor known to provide the required goods, services or construction shall be requested to submit written sealed Bids to be received on or before the specified closing date and time.

11.6.1.2 It is not necessary to advertise formal invitational Procurements within this Section 11.6 of this By-law.

11.6.1.3 The sealed Bids will be opened by the Purchasing Agent and a representative from the requisitioning Department.

11.6.1.4 All Bids will be evaluated in accordance with the evaluation methodology set out in the procurement document.

11.6.1.5 The Purchasing Agent and the requisitioning Department will recommend acceptance of a Bid provided that the recommended Bid is:

11.6.1.5.1 Within the Council approved budget, and

11.6.1.5.2 The lowest Eligible Bid in the case of a procurement where price is the only factor; or

11.6.1.5.3 The highest scoring Eligible Bid in the case of a Request for Proposal;

11.6.1.6 Approvals:

A recommendation made under 11.6 must be approved by:

11.6.1.6.1 The Purchasing Agent; and

11.6.1.6.2 The requisitioning Department Head(s).

11.6.2 Additional Approval:

A recommendation made under 11.6 must also be approved by the Treasurer if:

11.6.2.1 The Bid is for consulting services; or

11.6.2.2 A Non-Standard result has occurred.

**11.7 FORMAL OPEN PROCUREMENTS (INCLUDING REQUESTS FOR PROPOSALS) FOR GOODS, SERVICES AND CONSTRUCTION - \$100,000.00 AND GREATER (in accordance with the requirements of the *Agreement on Internal Trade* and the *Trade and Cooperation Agreement Between Ontario and Quebec*):**

This procurement method is conducted by Purchasing.

11.7.1 For any procurement having an estimated Total Procurement Value of \$100,000.00 or greater the following formal open Procurement Process, administered by Purchasing, shall be followed and may include Bidder pre-qualification.

11.7.1.1 This process will commence subsequent to the requirements of Section 4.1 being met;

11.7.1.2 The requirement will be advertised for a reasonable period of time based on the complexity of the specific procurement and at a minimum no less than fifteen (15) calendar days prior to the specified closing date and time, in/on:

11.7.1.2.1 At least one local newspaper; and

11.7.1.2.2 At least one internet bidding service,

11.7.1.2.3 In addition, the opportunity may be advertised in either or both of:

11.7.1.2.4 A national publication upon request from the user Department or direction from the Purchasing Agent

11.7.1.2.4.1 In any other media at the discretion of the Purchasing Agent;

11.7.1.3 All Bids will be sealed and received on or before the specified closing date and time.

11.7.1.4 All Bids and Proposals may be opened in public by the Bid Opening Committee.

11.7.1.5 All Bids will be evaluated in accordance with the evaluation methodology set out in the procurement document; and

11.7.1.6 The Purchasing Agent and the requisitioning Department Head(s) will recommend acceptance of a bid provided that the recommended Bid is:

11.7.1.6.1 Within the Council approved budget, and

11.7.1.6.2 The lowest Eligible Bid in the case of a call for Bids; or

11.7.1.6.3 The Proposal with the highest score or lowest price per point in the case of a Request for Proposal.

**11.7.2 Approvals**

A recommendation made under 11.7 must be approved by:

11.7.2.1 The Purchasing Agent, and

11.7.2.2 The requisitioning Department Head(s), and

11.7.2.3 The Treasurer.

**11.7.3 Additional Approval:**

A recommendation made under 11.7 must also be approved by the City Manager if:

11.7.3.1 The Bid is for consulting services; or

11.7.3.2 A Non-Standard result has occurred; or

11.7.3.3 The value of the Bid exceeds \$ 1,000,000.

**11.8 REQUEST FOR PROPOSALS**

11.8.1 In addition to the processes described in this By-law, a Request For Proposals:

11.8.1.1 May or may not have a preceding pre-qualification or an expression of interest;

11.8.1.2 Has the most flexibility and will generally be governed by the terms of reference of the Request for Proposal as developed by the City;

11.8.1.3 Depending on its terms, may involve negotiations subsequent to the submission of proposals on any or all of the specifications, Contract terms and prices.

11.8.1.4 Approvals under this Section 11.8 shall be in accordance with the applicable Total Procurement Values as set out in Section 11.

**11.9 CONSULTING AND PROFESSIONAL SERVICES**

11.9.1 The acquisition of Consulting Services and professional services shall be carried out in accordance with the processes described in this By-law.

11.9.2 The procurement of the services of architects and engineers may be conducted by invitation only and without the requirement to publicly advertise.

11.9.3 Approvals under Section 11.9 shall be in accordance with the applicable Total Procurement Values as set out in Section 11.

**11.10 PRE-QUALIFICATION**

11.10.1 A Request for Supplier Qualification (RFSQ) or Prequalification, enables the City to gather information about Vendor capabilities and qualifications in order to either to identify qualified candidates in advance of expected future competitions or to narrow the field for an immediate need for a product, service or construction;

11.10.2 The terms and conditions of the RFSQ or Prequalification document must contain language that disclaims any obligation of the City to call on any Vendor to provide goods or services as a result of pre-qualification.



### **11.11 DIRECT (EMERGENCY) PROCUREMENTS**

- 11.11.1 The City Manager or Department Head(s) are authorized to use the direct (Emergency) Procurement method for any dollar value where an unforeseeable, serious Emergency situation exists and the goods, services or construction cannot be obtained in time by means of an open competitive procurement method.
- 11.11.2 This procurement method is undertaken at the sole discretion of the City Manager or Department Head(s);
- 11.11.3 A request for an Emergency purchase order must be received in Purchasing within sixty (60) days of the event. Staff who initiated the Procurement will provide a written justification and the City Manager or Department Head approval (where the amount of the Procurement exceeds \$5,000 exclusive of taxes) to Purchasing to obtain an Emergency purchase order.

### **11.12 DIRECT NEGOTIATION PROCUREMENTS**

- 11.12.1 Unless otherwise provided in this By-law, the requisitioning Department Head in consultation with the Purchasing Agent may enter into negotiations with one or more Vendors for the supply of goods, services or construction for procurements described in Schedule "B" (Exceptions – Circumstances for Exclusions – Single Source), Schedule "C" (Exceptions - Circumstances for Sole Supplier Procurement – Sole Source) and Schedule "D" (Non-Application – Exclusions from Competitive Procurement).
- 11.12.2 Departments must provide the Purchasing Agent with valid justification for procurements described in Schedule "B" and Schedule "C".
  - 11.12.2.1 The business case must include all the pertinent facts that give rise to justifying the Single Source or Sole Source procurement, and
  - 11.12.2.2 The business case must be approved by the approval authorities described in Section 11.12.3.
- 11.12.3 A procurement recommended within Section 11.12, excluding a Direct (Emergency) Procurement as described in Section 11.11, shall be made in accordance with the following:
  - 11.12.3.1 Procurements, excluding 11.12.4 with a value \$5,000.01 to \$99,999.99
    - 11.12.3.1.1 Shall be approved by the Purchasing Agent and requisitioning Department Head(s),
  - 11.12.3.2 Procurements, excluding 11.12.4 with a value \$100,000.00 to \$999,999.99
    - 11.12.3.2.1 Shall be approved by the Purchasing Agent and requisitioning Department Head(s) and Treasurer
  - 11.12.3.3 Procurements, excluding 11.12.4 with a value \$1,000,000.00 or greater
    - 11.12.3.3.1 Shall be approved by the Purchasing Agent and requisitioning Department Head(s) and Treasurer and City Manager

### **11.13 CONTRACT EXTENSIONS**

11.13.1 Contract Extensions are permitted in the following circumstances:

11.13.1.1 Where the terms of the Contract includes the option for a Contract Extension or as defined in Section 2.15 of this By-law.

11.13.1.2 Any individual or cumulative scope changes required by unforeseen circumstances arising during performance of a Contract that do not exceed 10% of the original Contract value shall be considered to fall within the scope of the Contract and not require any separate competition. Such Contract Extensions shall be approved by the requisitioning Department Head(s) and Purchasing Agent.

11.13.1.3 Any individual extension to the value of a Contract beyond the value established in 11.13.1.2 is considered a non-competitive procurement and approval must be sought by the Department before proceeding. Approval authorities for any such extension shall be the same as those set out in Section 11.12 of this By-law for Direct Negotiation procurement, depending upon the value of the extension beyond the value established in 11.13.1.2.

11.13.1.4 Any cumulative extension to the value of a contract beyond the value established in 11.13.1.2 is considered a non-competitive procurement and approval must be sought by the Department before proceeding. Approval authorities for any such extension shall be the same as those set out in Section 11.12 of this By-law for Direct Negotiation Process, depending upon the cumulative value of the extension beyond the value established in 11.13.1.2.

11.13.1.5 Non-monetary Contract changes which alter the originally agreed Contract term and/or the originally approved City account numbers shall be approved by the requisitioning Department Head(s) and the Purchasing Agent.

### **11.14 NO COST PROCUREMENTS**

11.14.1 A "no cost" procurement is a procurement for goods, services or construction where the City will not bear any cost (expense or capital expenditure);

11.14.2 These types of procurements include:

11.14.2.1 Revenue generating opportunities, and/or

11.14.2.2 Cost pass through to a third party;

11.14.3 "No cost" procurements must be acquired in the same manner and using the same procurement methods and corresponding approval requirements as procurements that have a cost to the City, depending on the value of the no-cost procurement.

### **11.15 REQUEST FOR INFORMATION**

11.15.1 Where results of informal Vendor or product research are insufficient, formal procurement methods such as a Request for Information (RFI) or Request for Expression of Interest (RFEI) may be used if warranted as determined by the Purchasing Agent, taking into consideration the time and effort required to conduct them;

- 11.15.2 The RFI Procurement Process provides Vendors with a general or preliminary description of a problem or need and requests Vendors to provide information or advice on how better to define the problem or need, or alternative solutions;
- 11.15.3 The RFEI Procurement process is used to gain a better understanding of the capacity of the Vendor community to provide the services or solutions needed;
- 11.15.4 A response to RFI or RFEI must not be used to pre-qualify a potential Vendor and must not influence the chances of the participating Vendors from becoming the successful Bidder in any subsequent opportunity.

#### **11.16 UNSOLICITED PROPOSALS**

Unsolicited Proposals received by the City from a Vendor or Vendors who have approached the City without solicitation to advise the City of their ability or desire to undertake City requirements shall be reviewed by the Purchasing Agent and Department Head(s) to determine if it is in the best interest of the City to initiate a Procurement Process in accordance with this By-law.

#### **11.17 USE OF FORMAL AGREEMENTS**

- 11.17.1 Formal agreements shall be used in conjunction with a Purchase Order, for complex requirements, which may contain terms and conditions other than those of the City's standard terms and conditions.
- 11.17.2 The Purchasing Agent in consultation with the requisitioning Department Head shall determine if a formal agreement is required.
- 11.17.3 Formal agreements shall be reviewed and Approved as to Form by the City Solicitor, or his or her designate, Approved as to Content by the requisitioning Department Head and executed by the Purchasing Agent.
- 11.17.4 When a formal agreement is required, the Purchasing Agent shall issue a Purchase Order incorporating the formal agreement.

#### **11.18 TIE BIDS RECEIVED**

In the case of tied Bids, the successful Bidder will be determined by a coin toss, conducted by the Purchasing Agent, in the presence of the tied Bidders, the Department Head(s) and the Treasurer.

#### **11.19 DESIGN AND DEVELOPMENT SERVICE**

In keeping with the Purchasing Principles of Transparency (3.2) and fair acquisition process (3.3)

- 11.19.1 Hiring the services of a Vendor to design and develop specifications shall be in accordance with this By-law.
- 11.19.2 Where Vendors are retained to develop specifications, the Vendor shall not be permitted to Bid on the procurement that they have developed the specifications for, unless approved in advance by the requisitioning Department Head and the Purchasing Agent.

#### **11.20 COMMUNICATION DURING A PROCUREMENT**

- 11.20.1 A Procurement Process begins when the Procurement is advertised or solicited (Start Date) and ends when The City signs an agreement and/or issues a Purchase Order with a Vendor (End Date) or when the Procurement Process is cancelled. Throughout the Procurement Process, all communications with Bidders involved in the process must

occur formally, through the contact person identified in the procurement documents.

## **11.21 DISPOSAL OF SURPLUS GOODS AND/OR EQUIPMENT**

11.21.1 The Purchasing Agent is authorized to dispose of surplus, obsolete or non-repairable goods and equipment declared surplus to the Purchasing Agent by the Department Head in accordance with the City's Asset Disposal Policy. The Purchasing Agent may redeploy such goods and equipment to other City Departments or if no longer useful for City purposes, arrange for their disposal at the highest return using one of the following methods:

11.21.1.1 Scrap, dismantle or destroy, classify as waste and dispose; or

11.21.1.2 Donate or sell for a nominal fee to a non-profit or charitable organization; or

11.21.1.3 Trade-in, exchange for value; or

11.21.1.4 Sell by formal quotation or public Tender; or

11.21.1.5 Public auction.

## **11.22 COOPERATIVE PURCHASING**

11.22.1 The Purchasing Agent may participate with other governments, agencies or public authorities in Buying Groups such as co-operative ventures or Contracts where the best interest of the City would be served. The City shall ensure that the practices of such Buying Groups are consistent with the principles this By-law.

11.22.2 The Purchasing Agent is authorized to execute cooperative Purchasing Contracts, agreements and related documents under the Corporate Seal on behalf of the Mayor and the Clerk;

11.22.3 The Purchasing Agent shall ensure that all Contracts, agreements and related documents executed under Section 11.22 are Approved as to Form by the City Solicitor, or his or her designate; and

11.22.4 The Purchasing Agent shall ensure that all Contracts, agreements and related documents executed under Section 11.22 are Approved as to Content by the requisitioning Department Head(s).

## **11.23 "GREEN" PURCHASING**

11.23.1 The City encourages the procurement of goods, services and construction with due regard to protect natural ecosystems and resources, and the human and built communities. Vendors may be required to supply goods, services or construction made by methods resulting in the least damage to the environment, and/or supply goods, services or construction incorporating recycled materials where practical as specified in procurement documents.

## **12.0 FAIRNESS MONITOR**

12.1 The City may elect to utilize a fairness monitoring process for specific procurements, and may engage a fairness monitor as an independent third party to observe all or part of a Procurement Process, to provide related feedback on fairness issues to the Treasurer and the requisitioning Department Head(s), or to City Council for procurements in excess of \$1,000,000, and to provide an unbiased and impartial

opinion on the fairness, openness and transparency of the Procurement Process.

### **13.0 CODE OF CONDUCT AND CONFLICT OF INTEREST**

- 13.1 All procurements of goods, services and construction described in this By-law are subject to the requirements of the following policies of the City of Brampton and Ontario legislation, as may be applicable, including the following:
- 13.1.1 The Employee Code of Conduct Policy
  - 13.1.2 The Employee Conflict of Interest Policy
  - 13.1.3 The Code of Conduct for the Members of Council of the City of Brampton
  - 13.1.4 The *Municipal Conflict of Interest Act*
  - 13.1.5 The *Municipal Act, 2001*
- 13.2 The submission of all bids must include a declaration by the Bidder that there is no actual, potential or perceived conflict of interest in that Bidder submitting a Bid in respect of that Procurement Process or where there is an actual, potential or perceived conflict of interest, the Bidder must provide details of same. Where a Bidder submits details in respect of an actual, potential or perceived conflict of interest, the Purchasing Agent shall review details of same and, in consultation with the City Solicitor, determine if the actual, potential or perceived conflict of interest serves to disqualify that Bidder from further participation in the Procurement Process.

### **14.0 REPORTING**

The Treasurer shall report quarterly to City Council providing a summary of Purchasing activities for the previous quarter and cumulative year to date activities.

The report must include:

- Individual Contract details for Contracts with a value of \$100,000 and greater, and summary totals of Contracts with a value of less than \$100,000 for:
  - 14.1 Contracts; and
  - 14.2 Consulting Contracts (separately from Contract awards); and
  - 14.3 Contract Extensions; and
  - 14.4 Single Sourced Contracts; and
  - 14.5 Sole Sourced Contracts; and
  - 14.6 Non-Standard Results; and
- Individual Contract details for all Contract values for:
  - 14.7 Emergency Contracts (Purchase Orders); and
  - 14.8 Purchasing By-law non-compliance; and
- Summary information for:
  - 14.9 Disposal of surplus goods and equipment

**15.0 ADMINISTRATIVE PROCEDURES**

- 15.1 The Treasurer is authorized to recommend changes to this By-law and to create, amend and delete policies, and procedures that support the objectives, principles and application of this By-law.
- 15.2 The Purchasing Agent is responsible for the administration of this By-law and is authorized to prescribe Standard Operating Procedures, including those addressing conflict of interest, confidentiality and Non-Discrimination consistent with the objective, principles, policies and application of this By-law.

**16.0 PROHIBITIONS AND COMPLIANCE**

- 16.1 All employees and elected officials of the City are required to adhere to the Purchasing By-law, policies and procedures and other Financial Policies related to the acquisition of goods, services and construction for the City.
- 16.2 Any employee who knowingly contravenes this By-law commits an act of misconduct is liable to disciplinary action.
- 16.3 No acquisition of goods, services or construction or the disposal of surplus goods, or equipment shall be made where the quantity or delivery is divided or in any other manner arranged so that the price or value of the goods and services to be acquired or disposed of is artificially reduced to circumvent the requirements of this By-law.
- 16.4 All employees and elected officials will not acquire or accumulate, either directly or indirectly, where the benefit does not accrue to the City, points through loyalty programs such as Air Miles, Aeroplan, etc. when marking purchases on behalf of or for the City.
- 16.5 No goods, services or construction shall be requisitioned by any employee or the Mayor or Councillor unless:
  - 16.5.1 The goods, services or construction are legitimately required for the purposes of the City or any other local Board or other Agency on whose behalf the purchase is being undertaken; or
  - 16.5.2 The funds for the purchase of the goods, services or construction are available with an approved budget or the request to purchase is expressly made subject to funding approval of the City or any other local Board or other Agency on whose behalf this is being made.
  - 16.5.3 No employee or the Mayor or Councillor shall be permitted to purchase any surplus goods to be disposed of except by successfully bidding on the same at a public auction or by sealed Bid but in no case if the duties of that employee or the Mayor or Councillor include making decisions regarding the disposal of such goods or activities relating to the conduct of the disposal process unless specifically provided by another City Council Resolution;
  - 16.5.4 No employee or the Mayor or Councillor shall knowingly cause or permit anything to be done or communicated to anyone which is likely to cause any potential Bidder to have an unfair advantage or disadvantage in obtaining a Contract for the supply of goods, services or construction to the City, or any other municipality, local board or public body involved in the purchase of goods, services or construction either jointly or in cooperation with the City; and
  - 16.5.5 No employee or the Mayor or Councillor shall knowingly cause or permit anything to be done which will jeopardize the legal validity or fairness of any purchase of goods, services or construction under this By-law which is likely to subject the City to any claim, demand, action or proceeding as a result of such act or omission.

**17.0 REPEAL OF FORMER PURCHASING BY-LAW**

- 17.1 Purchasing By-law 35-2012, as amended and all Purchasing By-laws approved prior to the enactment of this By-law are hereby repealed; and
- 17.2 All Procurements that commenced, being the date they were advertised or solicited, (up to and including Contract award) prior to the effective date of this By-law are subject to the provisions of Purchasing By-law 35-2012, amended by By-law 243-2013.

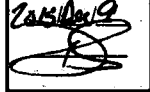
**18.0 SHORT TITLE**


18.1 This By-law shall be known as "The Purchasing By-law".

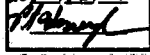
**19.0 EFFECTIVE DATE**

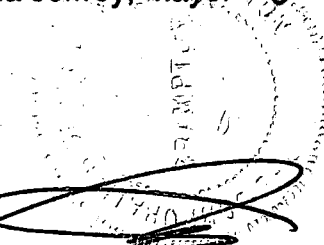

This By-law shall come into force and be effective as of March 1, 2016.

**READ a FIRST, SECOND and THIRD TIME and PASSED**  
this 9<sup>TH</sup> day of December, 2015

Approved  
as to form.  
2015/12/09  


  
Linda Jeffrey, Mayor

Approved  
as to  
content  
2015/12/08  
  
Treasurer

  
  
Peter Fay, City Clerk



## **SCHEDULE "A" TO BY-LAW 310-2015**

### **Discriminatory Practices**

Discriminatory procurement practices which are not allowed under this By-law include, but are not limited to:

1. Registration requirements and restrictions on calls for Bids based upon the location of a Vendor and its subcontractors, or the place where the goods or services are produced and, generally, pre-qualification procedures that discriminate between Vendors by province of origin;
2. The biasing of specifications in favour of, or against, a particular good or service for the purpose of circumventing this By-law;
3. The timing of Bid opening and closing dates for the purpose of preventing one or more qualified Vendors from submitting Bids;
4. The specification of quantities and delivery schedules of a scale and frequency that may reasonably be judged as deliberately designed to prevent qualified Vendors from meeting the requirements of the procurement;
5. The division of required quantities in a manner designed to circumvent this By-law;
6. The consideration, in evaluating Bids, of provincial content or economic benefits that favour a Vendor or good of one Province over another;
7. The giving of preference to selected Bids after Bids have been submitted and without any mention of the intended preference in the procurement documents;
8. The use of price discounts or preferential margins to favour Vendors of one Province;
9. The unjustifiable exclusion of a qualified Vendor from bidding; and/or
10. The requirement that a construction contractor or subcontractor use workers, materials or Vendors of materials originating from the Province where the work is being carried out.

The Treasurer is authorized to update this schedule as and when required as it relates to the *Agreement on Internal Trade*, Chapter Five Annex 502.4 and the *Trade and Cooperation Agreement Between Ontario and Quebec* and any other Federal or Provincial legislation or agreements that are or become applicable to the City of Brampton.

## **SCHEDULE "B" TO BY-LAW 310-2015**

### **Exceptions From Competitive Procurement Circumstances for Exclusions (Single Source)**

"Single Source" means engaging in Direct Negotiations with a Vendor to provide goods, services or construction where there is more than one Vendor capable of supplying the goods, services or construction in the market,

The following are the exceptions from a competitive Procurement Process under Section 3.4.1 of this By-law, but remain subject to the requirements of the Direct Negotiations Process Section 11.12 of the By-law:

1. Where goods and 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 the City's confidentiality, cause economic disruption or otherwise be contrary to the public interest;
2. Where a Contract is to be awarded under a cooperation agreement, in whole or in part, only to the extent that the agreement between the City and the Buying Group includes rules for awarding Contracts that differ from the obligations set out in this By-law;
3. Where compliance with the open tendering provisions set out in this By-law would interfere with the City's ability to maintain security or order or to protect human life or health; and/or
4. If no Bids or no Eligible Bids are received in response to a competitive Procurement Process.

The Treasurer is authorized to update this schedule as and when required as it relates to the *Agreement on Internal Trade*, Chapter Five Annex 502.4 and the *Trade and Cooperation Agreement Between Ontario and Quebec* and any other Federal or Provincial legislation or agreements that are or become applicable to the City of Brampton.

## **SCHEDULE "C" TO BY-LAW 310-2015**

### **Exceptions From Competitive Procurement Circumstances for Sole Supplier Procurement (Sole Source)**

"Sole Source" means engaging in Direct Negotiations with a Vendor to provide goods, services or construction where there is only one Vendor is able to meet the requirements of the Procurement

The following are the exceptions from a competitive Procurement Process under Section 3.4.2 of this By-law, but remain subject to the requirements of the Direct Negotiations Process Section 11.12 of the By-law:

1. To ensure compatibility with existing products, services and construction, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
2. Where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular Vendor and no alternative or substitute exists;
3. For the procurement of goods or services the supply of which is controlled by a Vendor that is a statutory monopoly;
4. For work to be performed on or about a building or land or portions thereof, leased to the City, that may be performed only by the Lessor;
5. For work 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;
6. For a Contract to be awarded to the winner of a design contest;
7. For the procurement of a prototype of a first good or service to be developed in the course of and for a particular Contract for research, experiment, study or original development, but not for any subsequent purchases;
8. For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;

The Treasurer is authorized to update this schedule as and when required as it relates to the *Agreement on Internal Trade*, Chapter Five Annex 502.4 and the *Trade and Cooperation Agreement Between Ontario and Quebec* and any other Federal or Provincial legislation or agreements that are or become applicable to the City of Brampton.

## **SCHEDULE "D" TO BY-LAW 310-2015**

### **Non-Application – Exclusions from Competitive Procurement**

The following circumstances do not require a competitive Procurement Process under Section 3.5.1 of this By-law. The purchasing and reporting methods described in the By-law do not apply to the following items.

1. Contracts with a public body or a non-profit organization;
2. Procurement from qualified philanthropic institutions;
3. Procurement of goods, services and construction that is financed primarily from donations that are subject to conditions that are inconsistent with this By-law;
4. Procurement of services provided only by any of the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, accountants, land surveyors, lawyers and notaries;
5. For the procurement of health services and social services;
6. For the procurement of the entertainment, cultural or artistic services;
7. Procurement of financial services respecting the management of financial assets and liabilities (ie. Treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
8. Services of financial analyst or the management of investments by organizations who have such functions as primary purpose;
9. For the procurement of original works of art;
10. For the procurement of subscriptions to newspapers, magazines or other periodicals;
11. For memberships in professional and business related associations;
12. For training and education including conferences, seminars, courses, conventions, workshops, staff training and staff development;
13. For travel and entertainment expenses;
14. For the Procurement of Real Property.

The Treasurer is authorized to create, amend and delete policies, protocols and procedures that support this schedule as required.

The Treasurer is authorized to update this schedule as and when required as it relates to the *Agreement on Internal Trade*, Chapter Five Annex 502.4 and the *Trade and Cooperation Agreement Between Ontario and Quebec* and any other Federal or Provincial legislation or agreements that are or become applicable to the City of Brampton.

**SCHEDULE "E" TO BY-LAW 310-2015**

**Designated Purchasing Agents**

The Manager of Purchasing is designated as Purchasing Agent for the City of Brampton.

The Procurement Supervisor is designated as Deputy Purchasing Agent for the City of Brampton.

The City Manager, Treasurer or Deputy Treasurer (First) may designate other employees as Purchasing Agent/Deputy Purchasing Agent on a temporary basis.

**SCHEDULE "F" TO BY-LAW 310-2015**

**Departments of The City of Brampton**

The following are Departments of The City.

<b>Department</b>	<b>Department Head</b>
<b>Office of the Mayor</b>	<b>Mayor</b>
<b>Chief Administrative Officer's Office</b>	<b>Chief Administrative Officer (City Manager)</b>
<b>Public Services Department</b>	<b>Chief Public Services Officer</b>
<b>Corporate Services Department</b>	<b>Chief Corporate Services Officer</b>
<b>Planning and Infrastructure Department</b>	<b>Chief Planning and Infrastructure Officer</b>
<b>Operating Services Department</b>	<b>Chief Operating Officer</b>