

SECTION:	SUBJECT:  PURCHASING AND MATERIAL MANAGEMENT POLICY	Pg. 1 of 22
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PART I  
INTERPRETATION

DEFINITIONS

1.1. In this policy, unless a contrary intention appears,

**“agreement”** means a formal written legal agreement or contract for the supply of goods, services, equipment or construction;

**“best value”** means the optimal balance of performance and cost determined in accordance with a pre-defined evaluation plan. Best value may include a time horizon that reflects the overall life cycle of a given asset.

**“bid deposit”** means currencies, certified cheques, bond surety issued by a surety company or other form of negotiable instrument to ensure the successful bidder will enter into an agreement;

**“blanket purchase contract”** means any contract for the purchase of goods and services which will be required frequently or repetitively but where the exact quantity of goods and services required may not be precisely known or the time period during which the goods and services are to be delivered may not be precisely determined.

**“certificate of clearance”** from the Workplace Safety and Insurance Board means a certificate issued by an authorized official of the Workplace Safety and Insurance Board certifying that the Board waives its rights under subsection 9(3) of the Workers’ Compensation Act, R.S.O. 1990, Chapter W.11;

**“contract”** means any formal or deliberate written agreement for the purchase of goods, services, equipment or construction;

**“contract record”** is a document which outlines the terms and conditions of the agreement;

**“declaration respecting Workers’ Compensation Act, R.S.O. 1990/Corporation Tax Act”** means a declaration that the bidder has paid all assessments or compensation payable and has otherwise complied with all requirements of the Workplace Safety and Insurance Board and that the bidder has paid all taxes and/or penalties imposed on it pursuant to the Corporation Tax Act, R.S.O. 1990;

**“Director”** – means a person appointed to manage the Department of Corporate Services, Community Services, Emergency Services, and Physical Services or authorized designate.

**“employee – employer relationship”** refers to the definition utilized by the Canada Customs and Revenue Agency.

**“executed agreement”** means a form of agreement, either incorporated in the bid documents or prepared by the Town or its agents, to be executed by the successful bidder and the Town.

**“goods and services”** includes supplies, materials and equipment of every kind required to be used to carry out the operations of a department.

**“insurance documents”** means certified documents issued by an insurance company licensed to operate by the Government of Canada or the Province of Ontario certifying that the bidder is insured in accordance with the Town’s insurance requirements as contained in the bid documents;

**“irregular result”** means that in any procurement process where competitive bids or proposals are submitted and any of the following has occurred or is likely to occur:

- i. The lowest responsive bid or proposal exceeds the estimated cost or budget allocation;
- ii. For any reason the award of the contract to or the purchase from the lowest responsive bidder or proponent is procedurally inappropriate or not in the best interests of the Corporation;
- iii. The specifications of a tender call or request for proposal cannot be met by two or more suppliers;
- iv. A negotiated result in accordance with section 4.2(2) of this policy; or
- v. Concurrence cannot be achieved between the Director and Chief Administrative Officer regarding the award of contract.

**“irregularities contained in bids”** is defined in Appendix “A” and includes the appropriate response to those irregularities;

**“irrevocable letter of credit”** means an irrevocable letter on the financial institution’s standard form containing a request that the party to whom it is addressed pay the bearer or a person named therein money as a result of failure to perform or fulfill all the covenants, undertakings, terms, conditions and agreements contained in a contract;

**“labour and material bond”** means a bond issued by a surety company on the Town of Kirkland Lake standard Form of Bond to ensure that the contractor will pay his or her suppliers and thereby protects the Corporation against items which might be granted to supplier should the contractor not make proper payments;

**“letter of agreement to bond”** means a letter or other form issued by a bonding agency licensed to operate by the Government of Canada or the Province of Ontario advising that, if the bidder is successful the bonding agency will issue the required bonds;

**“performance bond”** means a bond issued by a surety company on the Town of Kirkland Lake standard Form of Bond executed in connection with a contract and which secures the performance and fulfillment of the undertakings, covenants, terms, conditions and agreements contained in the contracts;

**“professional service supplier”** means a supplier of services requiring professional skills for a defined service requirement including,

- i. Architects, engineers, designers, management and financial consultants; and
- ii. Firms or individuals having specialized competence in environmental, planning or other disciplines.

**“purchase order”** means the purchasing document used to formalize a purchasing transaction with a vendor;

**“purchase requisition”** means a written or electronically produced request in an approved format and duly authorized to obtain goods or services;

**“quotation”** means a request for prices on specific goods and/or services from selected vendors which are submitted verbally, in writing or transmitted by facsimile as specified in the Request for Quotation;

**“request for expression of interest”** is a focused market research tool used to determine vendor interest in a proposed procurement. It may be issued simultaneously with a Request for Qualifications when the proposed procurement is well defined and the purchaser has clear expectations for the procurement.

**“request for information”** is used prior to issuing a tender call as a general market research tool to determine what products and services are available, scope out business requirements, and/or estimate project costs;

**“request for proposal”** means a process where a need is identified, but the method by which it will be achieved is unknown at the outset. This process allows vendors to propose solutions or methods to arrive at the desired result;

**“sealed bid”** means a formal sealed response received as a part of a quotation, tender or proposal;

**“supplier”** means any individual or organization providing goods or services to the Town of Kirkland Lake including but not limited to contractors, consultants, vendors, service organizations etc.

**“Tender”** means a sealed bid which contains an offer in writing to execute some specified services, or to supply certain specified goods, at a certain price, in response to a publicly advertised request for bids;

**“Triggering event”** means an occurrence resulting from an unforeseen action or consequence of an unforeseen event, which must be remedied on a time sensitive basis to avoid a material financial risk to the Town or serious or prolonged risk to persons or property;

**“Value Analysis”** typically refers to a life cycle costing approach to valuing a given alternative, which calculates the long-term expected impacts of implementing the particular option;

## PART II GENERAL PROCUREMENT POLICY

### APPLICATION

- 2.1 The procedures prescribed in this Policy shall be followed to make a contract award or to make a recommendation of a contract award to Town Council.

### PROCUREMENT DOCUMENTATION

- 2.2 (1) In order to maintain consistency, the Chief Administrative Officer shall provide guidelines to Directors on procurement policies and procedures and on the structure, format and general content of procurement documentation.

- (2) Procurement documentation shall avoid use of specific products or brand names.
- (3) Notwithstanding Subsection 2.2 (3), a Director may specify a specific product, brand name or approved equal for essential functionality purposes to avoid unacceptable risk or for some other valid purpose. In such instances, the Chief Administrative Officer and Director shall manage the procurement to achieve a competitive situation if possible.
- (4) The use of standards in procurement documentation that have been certified, evaluated, qualified, registered or verified by independent nationally recognized and industry-supported organizations such as the Standards Council of Canada shall be preferred.
- (5) Directors shall give consideration to the need for value analysis comparisons of options or choices.
- (6) Ensure that adequate value analysis comparisons are conducted to provide assurance that the specification will provide best value.
- (7) The Director shall issue tender documents for goods and services and shall give notice of the purchasing procurement documents electronically via the Internet as well as any other means as appropriate.

### PART III GENERAL PROCUREMENT PROCEDURES

#### REQUEST FOR QUOTATION

- 3.1 Request for Quotation procedures used unless otherwise determined by the Chief Administrative Officer:
- i. the item is greater than \$25,000 but not greater than \$100,000;
  - ii. the requirement can be fully defined; and,
  - iii. best value for the Town can be achieved by an award selection made on the basis of the lowest bid that meets specifications.

#### INFORMAL QUOTATION (GREATER THAN \$25,000 BUT NOT GREATER THAN \$50,000)

- 3.2 These guidelines are provided to assist the Directors should he/she choose to exercise authority in the purchase goods or services between \$25,000 and \$50,000. Guidelines are organized by objective as follows:

##### OBJECTIVE 1: Competitive Process

A competitive process is undertaken whereby a minimum of 3 bids is obtained, and the lowest compliant bid is awarded the contract. Care must be taken as to how bids are sought, bidders lists are maintained and how competition is encouraged. Although a minimum of 3 bids is required, an open process without a minimum number of bids will be more competitive, and is encouraged.

##### OBJECTIVE 2: Open process

Departmental needs are communicated to bidders, who are able to bid on goods or services they are qualified to provide. There should be no limitation of bids to an established listing.

OBJECTIVE 3: Transparent process

The process is undertaken based on clear definition of the product or service requirement, and a clear outline of the review and criteria to be undertaken. The decision to choose the low bidder will be based solely on the requirements as documented, the bidder document, and the application of the review criteria. The same decision should be arrived at each time given the same set of facts, which will facilitate the dispute resolution process.

OBJECTIVE 4: Fair process

The process will be fair, such that no action is undertaken by Town staff to allow any given bidder an unfair advantage. This does not however, require Town action to ensure that existing conditions are changed to ensure that any conversion costs from an incumbent to another supplier are ignored in an evaluation – it is in the best interest of the Town to ensure that such “leveling of the playing field” is not required.

OBJECTIVE 5: Insurance and Risk Management

The Town's standard Insurance form must be completed and forwarded to Insurance Risk for review and input into the Insurance Program. WSIB certificates of clearance must be submitted to Accounts Payable at the commencement of the project and periodically as the work is completed. The Town's standard Performance and Labour and Material Bonds are to be maintained and updated throughout the contract and released upon completion.

OBJECTIVE 6: Authorization for Capital Works

Purchase Orders must be completed, ensuring that the general ledger account has sufficient funds to pay for the contract.

OBJECTIVE 7: Standardization

In order to assist in cross-training, enable multiple bidders to understand the process requirements, and ensure that legal and insurance risks are controlled, standard formats should be followed for Requests for Quotation.

FORMAL QUOTATION (UP TO \$100,000)

- 3.3 (1) The Department shall be responsible to review the quote submission and verify that all specifications of the quote are met.
- (2) The Director shall forward to the Chief Administrative Officer a summary of the bids and recommend the award of contract to the lowest responsive quote subject to review by the Director or designate regarding specifications and contractor performance.
- (3) The Town reserves the right to accept or reject any submission.

REQUEST FOR TENDER

- 3.4 (1) Request for Tender procedures shall be used where:
  - i. the item is greater than \$75,000;
  - ii. the requirement can be fully defined; and,
  - iii. best value for the Town can be achieved by an award selection made on the basis of the lowest bid that meets specifications.
- (2) The Director or designate shall provide to the Town Clerk a purchase request in writing containing the relevant specifications, budget authorization, approval authority and terms and conditions for the purchase of goods, services or construction.

- (3) The Clerk shall be responsible for arranging for the public opening of tender bids at the time and date specified by the tender call. There shall be in attendance at that time,
  - i. The Director or designate and
  - ii. At least one other representative from the Department
  - iii. Town Clerk or Chief Administrative Officer or designate
- (4) Director shall forward to the Chief Administrative Officer a summary of the bids and recommend the award of contract to the lowest responsive bidder, subject to review by the Director or designate regarding specifications and contractor performance.
- (5) With respect to all reports initiated for tenders, there shall be a report on the sources of financing, allocation of revenues, and other financial commentary as considered appropriate.
- (6) The Town reserves the right to accept or reject any submission.

#### REQUEST FOR PROPOSAL

- 3.5 (1) The Request for Proposal procedure shall be used where:
  - i. the requirement is best described in a general performance specification;
  - ii. innovative solutions are sought; and,
  - iii. to achieve best value, the award selection will be made on an evaluated point per item or other method involving a combination of mandatory and desirable requirements.
- (2) The Request for Proposal method of purchase is a competitive method of purchase that may or may not include Vendor pre-qualification.
- (3) A Request for Information or Request for Expression of Interest may be issued in advance of a proposal to assist in the development of a more definitive set of terms and conditions, scope of work/service and the selection of qualified Vendors.
- (4) Where the requirement is not straightforward or an excessive workload would be required to evaluate proposals, either due to their complexity, length, number or any combination thereof, a procedure may be used that would include a pre-qualification phase.
- (5) A list of evaluation criteria for assistance in formulating an evaluation scheme using a Request for Proposal. This may include factors such as qualifications and experience, strategy, approach, methodology, scheduling and past performance, facilities, equipment, and pricing.
- (6) Directors shall identify appropriate criteria from the list for use in a Request for Proposal but are not limited to criteria from the list. Cost will always be included as a factor, as best value includes both quality and cost.
- (7) The Director shall provide Chief Administrative Officer a purchase request in writing containing the budget authorization, approval authority, terms of reference and evaluation criteria to be applied in assessing the proposals submitted.
- (8) A Selection Committee shall review all proposals against the established criteria, reach consensus on the final rating results, and ensure that the final rating results, with supporting documents, are kept in the procurement file.

- (9) The Director shall forward to the Chief Administrative Officer an evaluation summary of the procurement, as well as the Committee's recommendation for award of contract to the supplier meeting all mandatory requirements and providing best value as stipulated in the Request for Proposal. Where the lowest bid is not accepted, the Chief Administrative Officer is responsible for documenting the determination of best value, in a confidential report to Council prior to award of contract.
- (10) With respect to all reports initiated for Request for Proposals, a report on the sources of financing, allocation of revenues, and other financial commentary as considered appropriate, shall be prepared.
- (11) Reporting will not include summaries of bids as this information will remain confidential. Any disclosure of information shall be made by the appropriate officer in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990.
- (12) Unsuccessful proponents may, upon their request, attend a debriefing session with the Director to review their bid submission. Discussions relating to any bid submissions other than that of the proponent present will be strictly prohibited.
- (13) The Town reserves the right to accept or reject any submission.

#### BLANKET CONTRACT PURCHASES

- 3.6 (1) A Request for a Blanket Contract may be used where:
- i. one or more clients repetitively order the same goods or services and the actual demand is not known in advance, or
  - ii. a need is anticipated for a range of goods and services for a specific purpose, but the actual demand is not known at the outset, and delivery is to be made when a requirement arises.
- (2) To establish prices and select sources, Chief Administrative Officer shall employ the provisions contained in this Policy for the acquisition of goods, services and construction.
  - (3) More than one supplier may be selected where it is in the best interests of the Town and the bid solicitation allows for more than one.
  - (4) Where purchasing action is initiated by a department for frequently used goods or services, it is to be made with the supplier or suppliers listed in the Blanket Contract.
  - (5) In a Request for Blanket Contract, the expected quantity of the specified goods or services to be purchased over the time period of the agreement will be as accurate an estimate as practical and be based, to the extent possible, on previous usage adjusted for any known factors that may change usage.

#### NON-COMPETITIVE PURCHASES

- 3.7 (1) The requirement for competitive bid solicitation for goods, services and construction may be waived under joint authority of the appropriate Director and Chief Administrative Officer and replaced with negotiations by the Director under the following circumstances:

- i. where competition is precluded due to the application of any Act or legislation or because of the existence of patent rights, copyrights, technical secrets or controls of raw material;
  - ii. where due to abnormal market condition, the goods, services or construction required are in short supply;
  - iii. where only one source of supply would be acceptable and cost effective;
  - iv. where there is an absence of competition for technical or other reasons and the goods, services or construction can only be supplied by a particular supplier and no alternative exists;
  - v. where the nature of the requirement is such that it would not be in the public interest to solicit competitive bids as in the case of security or confidentiality matters;
  - vi. where in the event of an “*Emergency*” as defined by this Policy, a requirement exists;
  - vii. where the requirement is for a utility for which there exists a monopoly.
- (2) When a Director intends to select a supplier to provide goods, services or construction pursuant to subsection 3.7(1), a written report indicating the compelling rationale that warrants a non-competitive selection will be submitted by the Department to Town Council for approval prior to the selection.

## PROCUREMENT IN EMERGENCIES

3.8 (1) In subsection 3.7 (1)(vi) “*Emergency*” includes

- i. an imminent or actual danger to the life, health or safety of an official or an employee while acting on the Town’s behalf;
  - ii. an imminent or actual danger of injury to or destruction of real or personal property belonging to the Town;
  - iii. an unexpected interruption of an essential public service;
  - iv. an emergency as defined by the Emergency Plans Act, R.S.O. 1990, Chapter E.9 and the emergency plan formulated thereunder by the Town;
  - v. a spill of a pollutant as contemplated by Part X of the Environmental Protection Act, R.S.O. 1990, Chapter E.19 and,
  - vi. mandate of a non-compliance order.
- (2) Where, in the opinion of the Chief Administrative Officer or two Directors, an emergency has occurred,
- i. On receipt of a requisition authorized by a Director and Chief Administrative Officer (or two Directors) may initiate a purchase order in excess of the preauthorized expenditure limit; and
  - ii. any purchase order issued under such conditions together with a source of financing shall be justified and reported to the next meeting of the Town Council following the date of the requisition.

## DIRECT NEGOTIATION

3.9 Unless otherwise provided in accordance with the Purchasing By-law and this policy, goods and services may be purchased using the Direct Negotiation method only if one or more of the following conditions apply:

- i. the required goods and services are reasonably available from only one source by reason of the scarcity of supply in the market or the existence of exclusive rights held by any supplier or the need for compatibility with



goods and services previously acquired and there are no reasonable alternatives or substitutes.

- ii. The required goods and services will be additional to similar goods and services being supplied under an existing contract (i.e. contract extension or renewal);
- iii. An attempt to purchase the required goods and services has been made in good faith using a method other than Direct Negotiation under Section 3.1 through 3.5 of this policy which has failed to identify a successful supplier and it is not reasonable or desirable that a further attempt to purchase the goods and services be made using a method other than Direct Negotiation.
- iv. The goods and services are required as a result of an emergency, which would not reasonably permit the use of a method other than Direct Negotiation.
- v. The required goods and services are to be supplied by a particular vendor or supplier having special knowledge, skills, expertise or experience.

#### PURCHASE OF USED FLEET EQUIPMENT

- 3.10 (1) The Director of Physical Services is authorized to purchase used fleet equipment that is sold by other municipalities by private sale or public auction; sold through a vendor licensed to sell used equipment; by sealed bid; or by negotiation providing that:
- a. The equipment meets or exceeds the departmental equipment requirements.
  - b. It is documented that it is fiscally responsible to purchase a used piece of equipment rather than purchase new.
  - c. If the total expenditure per piece of equipment exceeds \$35,000.00 a report will be forwarded to Council detailing purchase information and expenses.
- (2) The Director of Physical Services is exempt from the Town's formal quotation/tender/RFP process when purchasing used fleet equipment.

#### CONSTRUCTION TENDER CALL BEFORE AND AFTER APPROVALS RECEIVED

- 3.11(1) Following the adoption of the capital budget by Town Council and the receipt of the necessary approvals from the Ontario Municipal Board, the Director is authorized to call tenders for municipal construction projects and the acquisition of equipment.
- (2) Notwithstanding section 3.10 (1) the Director may call tenders for municipal construction projects and the acquisition of equipment prior to the adoption of the capital budget by Town Council and before the receipt of the necessary approvals from the Ontario Municipal Board provided the call and award of such tenders are specifically subject to receipt of such approvals.

#### CONDITIONAL BID BEFORE CAPITAL BUDGET ADOPTION

- 3.12 (1) The Clerk is authorized to obtain, prior to the adoption of the capital budget by Town Council, sealed bids for additional and replacement equipment, provided that the documents include a clause specifically stating that the acceptance of a bid and placing of the order is subject to budget approval by Town Council and the items specified are subject to change in quantity and/or deletion.

#### NOTIFICATION OF PROCUREMENT OPPORTUNITIES

- 3.13 (1) Where it is expected that the value of the purchase of service will exceed \$5,000.00, and where the number of suppliers of the service is unknown, or where it is determined that it is in the best interests of the municipality, notification of the requirement of service shall be given by advertising in the local newspaper. And where it is in the best interest of the municipality to give notification outside of the local newspaper area of coverage, then the director shall give consideration to the extent of the advertisement that is in the best interest of the town. Where appropriate, electronic means of communication can be used.
- (2) Notwithstanding Schedule 'A' of the bylaw, or the above, the Chief Administrative Officer may at any time direct the method of notification to be used to acquire services.

#### PART IV BID AND CONTRACT ADMINISTRATION

##### SUBMISSION OF BIDS

- 4.1 (1) Bids shall be accepted in paper form by the Clerk at the time and date specified by the tender call.
- (2) The closing time for receiving tender bids shall be 2:00 p.m.
- (3) The opening of bids shall commence at 2:05 p.m. unless the Director acting reasonably postpones the start to some later hour, but the opening shall continue, once started, until the last bid is opened.
- (4) Tender bids received by the Clerk later than the specified closing time shall be returned unopened to the bidder.
- (5) A bidder who has already submitted a tender bid may submit a further tender bid at any time up to the official closing time and date specified by the tender call. The last tender bid received shall supersede and invalidate all bids previously submitted by that bidder.
- (6) A bidder may withdraw his or her tender bid at any time up to official closing time by letter bearing his or her signature as in his or her bid submitted to the Clerk.
- (7) A tender requiring an appropriate bid deposit shall be void if such security is not received in the manner specified in section 4.4 and if no other bid is valid, the Director and Chief Administrative Officer shall direct what action is to be taken with respect to the recalling of tenders.
- (8) All bidders may be requested to supply a list of all subcontractors to be employed on a project. Any changes to the list of subcontractors or addition thereto must be approved by the Director responsible for the project.

##### NO ACCEPTABLE BID OR EQUAL BIDS RECEIVED

- 4.2 (1) Where bids are received in response to a bid solicitation but exceed budget, are not responsive to the requirement, or do not represent fair market value, a revised solicitation shall be issued in an effort to obtain an acceptable bid unless Subsection 4.2 (2) applies.

- (2) The Chief Administrative Officer and the Director jointly may waive the need for a revised bid solicitation and enter into negotiations with the lowest responsive bidder, or the highest responsive bidder for a revenue-driven bid selection emanating from a bid solicitation, under the following circumstances:
  - i. the total cost of the lowest responsive bid is in excess of the funds appropriated by Town Council for the project or the highest responsive bid revenue is less than that made in appropriate accounts in Town Council approved divisional estimates, and
  - ii. the Chief Administrative Officer and Director agree that the changes required to achieve an acceptable bid will not change the general nature of the requirement described in the bid solicitation.
- (3) The method of negotiation shall be those accepted as standard negotiating procedures that employ ethical public procurement practices.
- (4) In the case of building construction contracts, where the total cost of the lowest responsive bid is in excess of the appropriation made by Town Council, negotiations shall be made in accordance with the guidelines established by the Canadian Construction Documents Committee.
- (5) The Town of Kirkland Lake has the right to cease negotiations and reject any offer.
- (6) If two equal bids are received, the Director will offer an opportunity for bidders to re-bid. Should a tie persist the following factors will be considered:
  - i. prompt payment discount,
  - ii. when delivery is an important factor, the bidder offering the best delivery date be given preference,
  - iii. a bidder in a position to offer better after sales service, with a good record in this regard shall be given preference,
  - iv. a bidder with an overall satisfactory performance record shall be given preference over a bidder known to have an unsatisfactory performance record or no previous experience with the Town,
  - v. if (i) through (iv) do not break the tie equal bidders shall draw straws.

#### ONLY ONE BID RECEIVED

- 4.3
- (1) In the event only one bid is received in response to a request for tender, the Director may return the unopened bid to the bidder when, in the opinion of the Chief Administrative Officer and the Director, using criteria, based on the number of bids which might reasonably be expected on a given type of bid, additional bids could be secured. In returning the unopened bid the Director shall inform the bidder that the Town may be recalling the tender at a later date.
  - (2) In the event that only one bid is received in response to a request for tender, the bid may be opened and evaluated in accordance with the Town's usual procedures when, in the opinion of the Chief Administrative Officer and Director, the bid should be considered by the Town. If, after evaluation by the Chief Administrative Officer and the Director, the bid is found not to be acceptable, they may follow the procedures set out in Subsection 4.2 (1) to (4).
  - (3) In the event that the bid received is found acceptable, it will be awarded as an Irregular result under Schedule "A" of the Purchasing By-law.

#### GUARANTEES OF CONTRACT EXECUTION AND PERFORMANCE

- 4.4 (1) The Chief Administrative Officer and Director may require that a bid be accompanied by a Bid Deposit to guarantee entry into a contract.
- (2) In addition to the security referred to in Subsection 4.4 (1), the successful supplier may be required to provide,
- i. a Performance Bond to guarantee the faithful performance of the contract,
  - ii. a Labour & Material Bond to guarantee the payment for labour and materials to be supplied in connection with the contract and,
  - iii. an irrevocable letter of credit.
- (3) The Chief Administrative Officer and Director shall select the appropriate means to guarantee execution and performance of the contract. Means may include one or more of, but are not limited to, financial bonds or other forms of security deposits, provisions for liquidated damages, progress payments, and holdbacks.
- (4) In all circumstances with respect to tenders the Director after consultation with the Town Treasurer and the Chief Administrative Officer is authorized to determine whether or not a letter of agreement to bond is to be submitted with the bids.
- (5) A bid deposit shall be required to accompany and be included in the envelope containing the bid documents in the following circumstances:
- i. all bids for municipal construction projects;
  - ii. special maintenance contracts, except for those contracts, whose price in the opinion of the Director is disproportionate to the cost to the contractor of obtaining a bid deposit;
- (6) When a bid deposit is required as part of 4.4 (5) the Chief Administrative Officer in conjunction with the Director shall determine the amount of the bid deposit which may be 10 per cent of the estimated value of the work prior to bidding or an amount equal to 10 per cent of the bid submitted.
- (7) Prior to commencement of work and where deemed appropriate, evidence of Insurance Coverage satisfactory to the Director, Insurance Risk must be obtained, ensuring indemnification of the Town of Kirkland Lake from any and all claims, demands, losses, costs or damages resulting from the performance of a supplier's obligations under the contract.
- (8) Prior to payment to a supplier, a Certificate of Clearance from the Workplace Safety and Insurance Board shall be obtained ensuring all premiums or levies have been paid to the Board to-date.
- (9) The Chief Administrative Officer and Director shall ensure that the guarantee methods selected will:
- i. not be excessive but sufficient to cover financial risks to the Town,
  - ii. provide flexibility in applying leverage on a supplier so that the penalty is proportional to the deficiencies, and
  - iii. comply with provincial statutes and regulations.
- (10) All bidders shall include in the tender/sealed bid envelope the following:
- i. the tender/bid form issued by the Town or its agents; and

- ii. the statutory declaration, if applicable.
- (11) When a performance bond or labour and material bond is required, the amount of the bond shall be 50 per cent of the amount of the tender bid, unless the Chief Administrative Officer recommends and the Town Council approves a higher level of bonding.
- (12) If the risk to the Town is not adequately limited by the progress payment provisions of the contract, a minimum payment holdback of 10 per cent shall be mandatory on all construction contracts.
- (13) The responsible manager may release the holdback funds on construction contracts upon:
- i. the contractor submitting a statutory declaration that all accounts have been paid and that all documents have been received for all damage claims,
  - ii. receipt of clearance from the Workplace Safety and Insurance Board for any arrears of Workplace Safety and Insurance Board assessment,
  - iii. all the requirements of the Construction Lien Act, R.S.O. 1990, being satisfied,
  - iv. receipt of certification from the Town Solicitor, where applicable, that liens have not been registered, and
  - v. substantial performance
- (14) The conditions for release of holdback funds provided in Subsection 4.4 (13) apply to other goods or services contracts with necessary modifications.
- (15) The Clerk is authorized to cash and deposit any bid deposit cheques in the Town's possession which are forfeited as a result of non-compliance with the terms, conditions and/or specifications of a sealed bid.

#### REQUIREMENT AT TIME OF EXECUTION

- 4.5 (1) The successful bidder, if requested in the tender document shall submit the following documentation in a form satisfactory to the Town within ten working days after being notified in writing to do so by the Town:
- i. executed performance bonds and labour and material bonds;
  - ii. executed agreement;
  - iii. insurance documents in compliance with the tender documents;
  - iv. declarations respecting the Workplace Safety and Insurance Board;
  - v. certificate of clearance from the Workplace Safety and Insurance Board; and
  - vi. any other documentation requested to facilitate the execution of the contract.

#### CONTRACTUAL AGREEMENT

- 4.6 (1) The award of contract may be made by way of a formal agreement, Contract Record or Purchase Order.
- (2) A Purchase Order or Contract Record is to be used when the resulting contract is straightforward and will contain the Town's standard terms and conditions.

- (3) Formal agreement is to be used when the resulting contract is complex and will contain terms and conditions other than the Town's standard terms and conditions.
- (4) It shall be the responsibility of the Chief Administrative Officer and Director and/or the Town Solicitor to determine if it is in the best interest of the Town to establish a formal agreement with the supplier.
- (5) Where it is determined that Subsection 4.6 (4) is to apply, the formal agreement shall be reviewed and approved for execution by the Town Solicitor.
- (6) Where a formal agreement is required, as a result of the award of a contract by delegated authority, the Mayor and Clerk shall execute the agreement in the name of the Town of Kirkland Lake .
- (7) Where a formal agreement is issued, Director may issue a Purchase Order or Contract Record incorporating the formal agreement.
- (8) Where a formal agreement is not required, Director shall issue a Purchase Order or Contract Record incorporating the terms and conditions relevant to the award of contract.

#### EXERCISE OF CONTRACT RENEWAL OPTIONS

- 4.7 (1) Where a contract contains an option for renewal, the Chief Administrative Officer may authorize the Director to exercise such option provided that all of the following apply:
  - i. the supplier's performance in supplying the goods, services or construction is considered to have met the requirements of the contract,
  - ii. the Chief Administrative Officer and Director agree that the exercise of the option is in the best interest of the Town,
  - iii. funds are available in appropriate accounts within Town Council approved budget including authorized revisions to meet the proposed expenditure.
  - iv. a valid business case has been completed.
- (2) The business case shall be authorized by the Chief Administrative Officer and shall include a written explanation as to why the renewal is in the best interest of the Town and include comment on the market situation and trend.

#### CONTRACT AMENDMENTS AND REVISIONS

- 4.8 (1) No amendment or revision to a contract shall be made unless the amendment is in the best interest of the Town.
- (2) No amendment that changes the price of a contract shall be agreed to without a corresponding change in requirement or scope of work.
- (3) Amendments to contracts are subject to the identification and availability of sufficient funds in appropriate accounts within Town Council approved budget including authorized revisions.
- (4) The Chief Administrative Officer may authorize amendments to contracts provided that the total amended value of the contract is within the approval authority as noted in Schedule "A".

- (5) Where expenditures for the proposed amendment combined with the price of the original contract exceeds Town Council approved budget for the project, a report prepared by the Chief Administrative Officer shall be submitted to the Town Council recommending the amendment, and proposing the source of financing.

#### EXECUTION AND CUSTODY OF DOCUMENTS

- 4.9 (1) The Directors and Chief Administrative Officer shall have the authority to execute Purchase Orders and/or Contract Records issued in accordance with these provisions.
- (2) The Clerk shall be responsible for the safeguarding of original purchasing and contract documentation for the contracting of goods, services or construction for which the award is made by delegated authority.

#### CO-OPERATIVE PURCHASING

- 4.10 (1) The Town shall participate with other government agencies or public authorities in Co-operative Purchasing where it is in the best interests of the Town to do so.
- (2) The decision to participate in Co-operative Purchasing agreements will be made by the Chief Administrative Officer.
- (3) The policies of the government agencies or public authorities calling the co-operative tender are to be the accepted policy for that particular tender.
- (4) Departments shall participate with each other in cooperative purchasing where it is in the best interest of the town to do so.

#### EXCLUSION OF BIDDERS IN LITIGATION

- 4.11 (1) The Town may, in its absolute discretion, reject a Tender or Proposal submitted by the bidder if the bidder, or any officer or director of the bidder is or has been engaged, either directly or indirectly through another corporation, in a legal action against the Town, its elected or appointed officers and employees in relation to:
  - i. Any other contract or services; or
  - ii. Any matter arising from the Town's exercise of its powers, duties, or functions.
- (2) In determining whether or not to reject a quotation, tender or proposal under this clause, the Town will consider whether the litigation is likely to affect the bidder's ability to work with the Town, its consultants and representatives, and whether the Town's experience with the bidder indicates that the Town is likely to incur increased staff and legal costs in the administration of the contract if it is awarded to the bidder.

#### EXCLUSION OF BIDDERS DUE TO POOR PERFORMANCE

- 4.12 (1) The Director shall document evidence where the performance of a supplier has been unsatisfactory in terms of failure to meet contract specifications, terms and conditions or for Health and Safety violations
- (2) The Director may, in consultation with the Town Solicitor, prohibit an unsatisfactory supplier from bidding on future Contracts for a period of up to three years.

## RECEIPT OF GOODS

- 4.13(1) The Director shall,
- i. arrange for the prompt inspection of goods on receipt to confirm conformance with the terms of the contract, and
  - ii. inform the Chief Administrative Officer of discrepancies immediately.
- (2) The Chief Administrative Officer shall coordinate an appropriate course of action with the Director for any non-performance or discrepancies.

## REPORTING TO TOWN COUNCIL

- 4.14 (1) The Director shall submit to Town Council an information report quarterly containing the details relevant to the exercise of delegated authority for all contracts awarded that exceed \$25,000 including amendments and renewals. The Director shall certify in the report that the awards are in compliance with the Purchasing By-law.
- (2) Where a supplier has invoiced the Town a cumulative total value of \$75,000 or more in a calendar year, total payments relative to the supplier shall be included in an annual information report to Town Council.

## ACCESS TO INFORMATION

- 4.15 (1) The disclosure of information received relevant to the issue of bid solicitations or the award of contracts emanating from bid solicitations shall be made by the appropriate officers in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, as amended.
- (2) All records and information pertaining to tenders, proposals and other sealed bids, which reveal a trade secret or scientific, technical, commercial, financial or other labour relations information, supplied in confidence implicitly or explicitly, shall remain confidential if the disclosure could reasonably be expected to:
- i. prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organizations;
  - ii. result in similar information no longer being supplied to the Town where it is in the public interest that similar information continue to be so supplied;
  - iii. result in undue loss or gain to any person, group, committee or financial institution or agency; or
  - iv. result in information whose disclosure could reasonably be expected to be injurious to the financial interests of the Town.

## PART V GENERAL

### ENVIRONMENTAL CONSIDERATIONS

- 5.1 In order to contribute to waste reduction and to increase the development and awareness of environmentally sound purchasing, acquisitions of goods and services will ensure that, wherever possible, specifications are amended to provide for expanded use of durable products, reusable products and products (including those used in services) that contain the maximum level of post-consumer waste and/or



recyclable content, without significantly affecting the intended use of the product or service. It is recognized that cost analysis is required in order to ensure that the products are made available at competitive prices.

#### DIRECT SOLICITATION OF DEPARTMENTS

- 5.2 (1) Unsolicited Proposals received by the Town shall be reviewed by the Director.
- (2) Any procurement activity resulting from the receipt of an Unsolicited Proposal shall comply with the provisions of the By-law.
- (3) A contract resulting from an Unsolicited Proposal shall be awarded on a non-competitive basis only when the procurement complies with the requirements of a non-competitive procurement.

#### ETHICS IN PURCHASING

- 5.3 (1) The code of purchasing ethics established by the National Institute of Governmental Purchasing and the Purchasing Management Association of Canada shall apply to all staff involved in the procurement process.

#### RESOLUTION OF QUESTIONS OF POLICY

- 5.4 Any question involving the meaning or application of this policy is to be submitted to the Chief Administrative Officer who will resolve the question.

#### AMENDMENT OR RESCINDING OF POLICY

- 5.5 This policy or any provision of it may be rescinded, remade or amended by the Chief Administrative Officer from time to time at his/her discretion.

#### PART VI

#### DISPOSAL OF SURPLUS OR SCRAP MATERIALS AND EQUIPMENT

#### ITEMS CONSIDERED OBSOLETE OR SURPLUS BY DEPARTMENTS

- 6.1 (1) All departments shall notify the Chief Administrative Officer when items become obsolete or surplus to their requirements.
- (2) The Director shall be responsible for ascertaining if the items can be of use to another department rather than disposed of.
- (3) Items that are not claimed for use by another department may be offered for sealed bids, public auction or other public sale, depending in the opinion of the Director on which method is most suitable for the equipment or material involved.
- (4) A major auction shall be held annually or as required dependant upon individual circumstances such as delivery of replacement items and storage capacity.
- (5) The revenue from the sale of obsolete material shall be credited to the appropriate account.

#### DISPOSAL OF SCRAP MATERIAL

- 6.1 (1) Where scrap material is available for disposal, the relevant Department Head shall be responsible for the disposal of all scrap material belonging to the Town.
- (2) The Director, after determining the value and possible alternate uses of the scrap material, may dispose of the material by:
- i. general advertising to secure sealed bids;
  - ii. direct contact with the appropriate dealers to view the scrap and submit offers to purchase;
  - iii. public auction; or
  - iv. other methods as deemed appropriate.
- (3) the revenue from the sale of scrap material shall be credited to the appropriate account.

## Appendix A

### IRREGULARITIES CONTAINED IN BIDS

IRREGULARITY	RESPONSE
1. Late Bids	Automatic rejection, not read publicly and returned unopened to the bidder.
2. Unsealed Envelopes	Automatic rejection
3. Insufficient Financial Security (No bid deposit or insufficient bid deposit)	Automatic rejection
4. Failure to insert the name of the bonding company in the space provided for in the Form of Tender.	Automatic rejection
5. Failure to provide a letter of agreement to bond where required.	Automatic rejection
6. Incomplete, illegible or obscure bids or bids which contain additions not called for, erasures, alterations, errors or irregularities of any kind.	May be rejected as informal
7. Documents, in which all necessary Agenda have not been acknowledged.	Automatic rejection
8. Failure to attend <b>mandatory</b> site visit.	Automatic rejection
9. Bids received on documents other than those provided by the Town of Kirkland Lake.	Automatic rejection
10. Failure to insert the Tenderer's business name in one of the two spaces provided in the Form of Tender.	Automatic rejection
11. Failure to include signature of the person authorized to bind the Tenderer in the space provided in the Form of Tender.	Automatic rejection
Conditions placed by the Tenderer on the Total Contract Price.	Automatic rejection
12. Bids Containing Minor Mathematical Errors	a) If the amount tendered for a unit price item does not agree with the extension of the estimated quantity and the tendered unit price, or if the extension has not been made, the unit price shall govern and the total price shall be corrected accordingly b) If both the unit price and the total price are left blank, then both shall be considered as zero. c) If the unit price is left blank but a total price is shown for the item, the unit price shall be established by dividing the total price by the estimated quantity.

IRREGULARITY	RESPONSE
	<ul style="list-style-type: none"> <li>d) If the total price is left blank for a lump sum item, it shall be considered as zero.</li> <li>e) If the Tender contains an error in addition and/or subtraction and/or transcription <u>in the approved tender documentation format requested (i.e. not the additional supporting documentation supplied)</u>, the error shall be corrected and the corrected total contract price shall govern.</li> <li>f) Tenders containing prices which appear to be so unbalanced as to likely affect the interests of the Town adversely may be rejected.</li> </ul>