BY-LAW NUMBER 2017-106

OF THE

CORPORATION OF THE CITY OF KITCHENER

(Being a By-law to repeal and replace Chapter 170 of The City of Kitchener Municipal Code with respect to Purchasing and Materials Management).

WHEREAS it is deemed expedient to exercise the powers conferred on Council by the Municipal Act, 2001, S.O. 2001, c.25;

NOW THEREFORE the Council of the Corporation of the City of Kitchener enacts as follows:

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170.1 DEFINITIONS AND INTERPRETATION

Words within this By-law have the following meanings, unless expressly stated otherwise:

“Acquisition” means to obtain Goods, Services, Construction or Consulting Services;

“Agreement” means a written document, executed by the City and the Supplier, outlining the Goods, Services, Construction or Consulting Services being procured;

“Approval Authority” means the authority to approve and award Procurements, as well as any assignment or corporate change requests related to such Procurements, up to the Procurement Values for the respective body or person(s) set out in Section 170.7 Standard Procurement and Section 170.8 Non-Standard Procurement;

“Authorized Delegate” means the person who has been delegated by Council an Approval Authority and includes any other person further sub-delegated such Approval Authority in accordance within the Procurement procedures. An Authorized Delegate includes a person authorized to act on their behalf temporarily;

“Best Value” means the optimal balance of performance and cost determined in accordance with pre-defined evaluation criteria;

“Bid” means an offer or submission in response to a Solicitation Document;

“Bidder” means a Supplier that submits a Bid;

“CAO” means the Chief Administrative Officer of the City or designate;

“City” means The Corporation of the City of Kitchener;

“Competitive Process” means either an Open Competition or an Invitational Competition;

“Confidential Information” means information of commercial value, the disclosure of which is likely to have the effect of either impairing the City’s ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the Supplier or other organization from which the information was obtained, unless the City is required by law to disclose such information;

“Construction” means the process of using labour to build, alter, repair, improve or demolish any structure, building or public improvement, and generally does not apply to routine maintenance, repair or operations of existing real property;

“Consulting Services” means the provision of expertise or strategic advice that is
presented for consideration and decision-making, and are generally acquired to obtain information, advice, training or direct assistance;

“Contract” means a commitment by the City for the Procurement of Goods, Services, Construction or Consulting Services from a Supplier which may be evidenced by: a Solicitation Document; an Agreement executed by the Supplier and the City; or a purchase order; issued to the Supplier by a duly authorized employee of the City;

“Cooperative Purchasing” means a variety of arrangements whereby two or more publicly funded entities combine their requirements in a single Procurement process to obtain advantages of volume purchases from the same Supplier(s);

“Corporate Leadership Team” consists of the City’s Chief Administrative Officer, Deputy CAO of Finance and Corporate Services, Deputy CAO of Community Services and Deputy CAO of Infrastructure Services; as outlined within Chapter 115 of The City of Kitchener Municipal Code;

“Council” means the Council of the City;

“Department” means any department within the City;

“Deputy CAO” means the Deputy CAO of a Department or an appointed designate thereof;

“Director of Supply Services” means the City’s Director of Supply Services or designate;

“Disposal” means an act through which the City gives up title to property or ownership of goods;

“Emergency” means a situation, or the threat of an impending situation, which may affect the environment, life, safety, health or welfare of the general public, or the property of the residents of the City, or an action taken to prevent serious damage, disruption of work, or to restore or to maintain essential service to a minimum level;

“Goods” includes supplies, equipment, materials, products, structures and fixtures to be delivered, installed or constructed;

“HST” means harmonized sales tax;

“Immediate Family” means the spouse, child or stepchild of the individual and the father, mother, sister, brother, stepmother, stepfather, grandchild and grandparent of either the individual or their spouse;

“Internal Business Partner” means the City Division initiating or requesting the Acquisition of the Goods, Services, Construction or Consulting Services;
"Invitational Competition" means a competitive process in which an invitation to submit Bids is issued to a minimum of three Suppliers;

"Joint Venture" means an association of two or more persons who combine their expertise and resources in a single joint business enterprise to qualify, Bid, and perform the Contract. Joint Ventures, sometimes referred to as a consortium, may take the form of a partnership or special purpose vehicle;

"Limited Competition Procurement" means the Acquisition of Goods, Services, Construction, or Consulting Services through a process where Bids are solicited from less than three Suppliers when a Standard Procurement would require an Invitational or Open Competition for the type and Procurement Value of the Goods, Services, Construction, or Consulting Services;

"Local Boards and Affiliates" means municipally or provincially established corporate entities in which the City has a minority or majority share and where City Councillors may be members of the governing Board for that entity (e.g. Centre in the Square, Kitchener Housing Inc.);

"Non-Competitive Procurement" means using a process for Acquisition of Goods, Services, Construction, or Consulting Services directly from a particular Supplier without conducting a Competitive Process when a Standard Procurement would require an Invitational Competition or an Open Competition for the type and Procurement Value of the Goods, Services, Construction, or Consulting Services;

"Non-Standard Procurement" means the Acquisition of Goods, Services, Construction and/or Consulting Services through a process other than the process normally required for the type and Procurement Value of the Goods, Services, Construction and/or Consulting Services as set out in Section 170.8.

"Open Competition" means the solicitation of Bids through a publicly posted Solicitation Document;

"Personal information" refers to personal information as defined within the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M. 56;

"Procurement" or "Purchasing" means the Acquisition of Goods, Services, Construction or Consulting Services by purchasing, renting or leasing;

"Procurement Value" means the estimated amount (excluding taxes) for budget or planning purposes in acquiring particular Goods, Services, Construction or Consulting Services which amount may be higher, lower or equal to the actual cost of the Goods, Services, Construction or Consulting Services when ultimately acquired. For greater certainty, when multi-year Contracts are awarded for the Acquisition of Goods, Services, Construction or Consulting Services, the estimated value of the Goods,
Services, Construction or Consulting Services for such multi-year Contracts is the estimated amount to be paid for the Goods, Services, Construction or Consulting Services over the entire Contract, and is not limited to the amount which may be payable in any particular budget year. The Procurement Value must include all anticipated costs to the City, including, as applicable, Acquisition, maintenance, replacement, Disposal, and training, delivery, installation and extension options, less applicable rebates or discounts and shall exclude HST or other taxes;

“Profit Sharing Contracts” means Contracts whereby the City receives a portion of revenues, sales or profits earned by a third party under Contract with the City;

“Purchase Order” means the City’s written document issued by a duly authorized employee of the City to a Supplier formalizing all the terms and conditions of the purchase and supply of the Goods, Services, Construction or Consulting Services; identified on the face of the Purchase Order;

“Purchasing Card” means a corporate credit card provided by the City to a duly authorized employee of the City for use as a payment method to purchase directly from Suppliers where permitted under this By-law and in accordance with a written card holder agreement and applicable procedures;

“Revenue Generating Contracts” means a legal Agreement between the City and a third party that yields a financial return for the City. Revenue Generating Contracts include, but are not limited to:
- Service Revenue Contracts;
- Profit Sharing Contracts; and
- Advertising Contracts;

“Services” means the furnishing of labour, time or effort by a Supplier, which may involve the delivery or supply of products incidental to the provision of the services, and includes professional, construction or maintenance services;

“Solicitation Document” means the document issued by the City to solicit Bids from Bidders;

“Standard Procurement” means the Acquisition of Goods, Services, Construction, or Consulting Services in accordance with the procedures and requirements set out in section 170.7 of this By-law;

“Supplier” means a person carrying on the business of providing Goods, Services, Construction or Consulting Services;

“Specifications” means the detailed description of and written requirements and standards for Goods, Services, Construction or Consulting Services and also includes any drawings, designs and models;
“Standardization” is a management decision-making process that examines a specific common need or requirement and then selects Goods, Services, Construction or Consulting Services that best fills that need to become the standard;

“Supply Services” is the division within the City responsible for Procurement and inventory management;

“Transborder data flow of Personal Information” refers to the transference of computerized domestic data (electronic information) containing Personal Information as defined within the Municipal Freedom of Information and Protection of Privacy Act outside the geographical borders of Canada to another country or jurisdiction. For further clarification, transborder data flow of information does not include any data which does not contain Personal Information or data which is not crossing any international border to a foreign jurisdiction (i.e., stays in Canada but outside of Ontario).

170.2 PURPOSES OF THIS BY-LAW

The purposes of this By-law are:

170.2.1 to express the City’s goals and objectives in relation to its Procurement of Goods, Services, Construction and Consulting Services;

170.2.2 to describe the roles, responsibilities and authorities of the City’s employees, officers and elected officials in carrying out the City’s Procurement operations; and,

170.2.3 to comply with the requirements of Section 270(1) of the Municipal Act, S.O., 2001, S.O. c. 25, as amended from time to time.

170.3 GOALS & OBJECTIVES

The goals and objectives are to:

170.3.1 provide Goods, Services, Construction, or Consulting Services through Procurement and inventory management in an efficient, timely and cost effective manner, while maintaining the controls necessary for a public agency, in accordance with this By-law as approved by Council;

170.3.2 encourage an open and competitive bidding process for the Acquisition and Disposal of Goods, Services, Construction, or Consulting Services and the objective and equitable treatment of all Suppliers while ensuring the principles of fairness, transparency and accountability are reflected in the City’s Procurement processes;
170.3.3 ensure the Best Value of an Acquisition is obtained by determining the total cost of an Acquisition. Factors to consider may include, but shall not be limited to, the determination of the total cost of performing the intended function over the lifetime of the task, Acquisition cost, installation, Disposal value, Disposal cost, quality of product, training cost, maintenance cost, quality of performance and environmental impact;

170.3.4 support effective business planning such that Goods, Services, Construction, or Consulting Services will only be acquired after consideration of need, alternatives, timing and appropriate life cycle management issues;

170.3.5 adhere to the highest standards of ethical conduct and to avoid conflicts between the interests of the City and those of the City's employees, officers and elected officials;

170.3.6 ensure compliance with all applicable trade agreements, laws and regulations;

170.3.7 practice reciprocal non-discrimination and geographic neutrality with respect to Ontario's trading partners and avoid preferential treatment of local Suppliers;

170.3.8 avoid creating situations or relationships which may result in a continuous reliance on a particular Supplier; and,

170.3.9 encourage the Procurement of Goods, Services, Construction, or Consulting Services with due regard to the preservation of the natural environment.

**170.4 APPLICATION**

170.4.1 This By-law applies to all divisions within the City and may be adopted in principle, and at their own discretion, by Local Boards and Affiliates of the City.

170.4.2 This By-law applies to the Procurement of all Goods, Services, Construction, or Consulting Services except those items set out within Schedule "A". This By-law also applies to the Disposal of assets owned by the City.

170.4.3 In addition to the items set out in Schedule "A", this By-law does not apply to the Acquisition or Disposal of real property.

170.4.4 In addition to this By-law, the City has procedures, templates and forms for use during the Procurement cycle. All tools for engaging in Procurement will be maintained and updated by Supply Services as required.
170.5 AUTHORITY AND RESPONSIBILITY

170.5.1 Specific responsibilities pertaining to all stages of a Procurement process, from the initial identification of requirements through to the management of Contracts with Suppliers, are detailed in this By-law and the City's Procurement procedures. In addition to those specific responsibilities, the general roles and responsibilities delegated to the City's elected officials, officers and employees are set out below.

170.5.2 Council

In accordance with best practices in municipal Procurement, Council recognizes the need for a clear separation of political and administrative functions in relation to the City's Procurement operations. It is the role of Council to establish policy and to approve expenditures through the City's budget approval process. Through this By-law, Council delegates to the City's officers and employees the authority to incur expenditures in accordance with approved budgets through the Procurement of Goods, Services, Construction and Consulting Services in accordance with the rules and processes set out in this By-law.

To facilitate Council's oversight role in respect of significant projects, Council may require Departments to obtain Council's authority to initiate specific Procurements by identifying Procurement projects of interest, such as Procurements that are of a high Procurement Value or involve significant risk, security concerns or significant community interest.

To avoid the potential appearance of bias or political influence in Procurement Contract award decisions, members of Council will have no involvement in competitive Procurement processes from the time those Procurement processes have been initiated through the advertisement or issuance of the Solicitation Document until a Contract has been entered into with the successful Bidder, except where Council considers or approves the Contract award in accordance with this By-law.

170.5.3 CAO

As per Chapter 115 of The City of Kitchener Municipal Code (Corporate Leadership Team By-law), the CAO shall be given delegated authority to approve any Contract awards each year during the months of June, July and August, provided that the total costs are within the relevant approved budget and that an information only report regarding these Contract awards is brought to Council at its next meeting.
The CAO shall be given delegated authority to approve any Contract award that would not be permitted for approval by Council under Sections 275 (1) to (4.1) of the Municipal Act, 2001 (otherwise known as "Restricted Acts After Nomination Day"), provided the total costs are within the most recently approved budget adopted by the Council before nomination day in the election and that an information only report regarding these Contract awards is brought to Council at its next meeting.

170.5.4 Treasurer / Deputy CAO of Finance and Corporate Services

The Treasurer/ Deputy CAO of Finance and Corporate Services is responsible for overseeing Supply Services and providing support and guidance to the Director of Supply Services, as required.

170.5.5 Director of Supply Services

It is the role of Supply Services to lead the City’s Procurement and inventory management operations. In fulfilling this role, the Director of Supply Services, or designate, is responsible for:

a. researching developments in Canadian public Procurement requirements and best practices and, through collaboration with the Internal Business Partners, recommending updates to this By-law and developing the City’s Procurement procedures to reflect such developments and support the City’s Procurement goals and objectives;

b. providing Procurement advice and related services, including developing and maintaining the necessary forms and Solicitation Document templates, for the purposes of fulfilling the Procurement needs of the City;

c. developing Procurement strategies and continually analyzing the City’s business requirements and spending patterns to identify opportunities for more strategic sourcing, including:
   
   i. the Standardization of goods and services in conjunction with Internal Business Partners, where appropriate and feasible; and

   ii. the consolidation of all similar goods and services where appropriate and possible;

d. ensuring the consistent application of Procurement procedures and providing Procurement services and inventory management in an efficient and diligent manner;

e. addressing and, where possible, resolving issues or concerns that arise in
respect of a Procurement process or the application and interpretation of this By-law and the City’s Procurement procedures and seeking guidance and advice from the Treasurer / Deputy CAO of Finance and Corporate Services and Legal Services, as required;

f. referring unresolved complaints from Bidders or Suppliers to the Procurement complaint resolution procedure, as necessary, or where required in accordance with applicable procedures;

g. ensuring compliance with this By-law and reporting non-compliance, in writing, to the appropriate Deputy CAO and/or the CAO where warranted;

h. providing appropriate orientation, training and tools to City employees involved in Procurement activities;

i. serving as the City’s representative as a member of Cooperative Purchasing groups and organizations, where such membership is determined to be in the best interests of the City; and,

j. executing all Agreements, amendments to Agreements, assignments of Agreements and related documents concerning the Procurement of Goods, Services, Construction, or Consulting Services, where the Contract has been awarded as outlined within this By-law, regardless of who the Approval Authority for the Acquisition is.

170.5.6 Legal Services

It is the role of Legal Services to provide legal advice and assistance in respect of the City’s Procurement activities and its relationships with Suppliers. In fulfilling this role, Legal Services is responsible for:

a. advising the Director of Supply Services as required, in relation to legal issues arising from Procurement activities, and reviewing and approving specific Procurement documentation referred for legal review by the Director of Supply Services;

b. providing advice on the finalization of Contracts and Agreements, and reviewing and advising on proposed changes to the City’s standard terms and conditions, Agreements, and Solicitation Document templates;

c. providing opinions during the Procurement complaint resolution procedure, as requested; and

d. providing legal advice and counsel to the City in the event of a Contract dispute or legal challenge flowing from a Procurement process.
170.5.7 Deputy CAOs and Executive Directors

It is the role of the Internal Business Partners to ensure that their requirements for Goods, Services, Construction and Consulting Services are met in accordance with the goals and objectives of this By-law. In fulfilling this role, the Deputy CAOs and Executive Directors, or their designates, are responsible for:

a. exercising their Approval Authority for all Procurement activity within the prescribed limits of this By-law;

b. delegating Authority Approval limits to staff in compliance with this By-law and all applicable procedures;

c. ensuring that all Procurement activities and decisions are authorized by this By-law and are carried out in accordance with the City's Procurement procedures;

d. having regard to the requirements of the City's Contractor Safety Program in the Acquisition of Services, Construction, or Consulting Services to which the Program applies;

e. monitoring all Contract expenditures to ensure compliance with financial limits;

f. identifying and addressing non-compliance with this By-law and applicable procedures within their Departments; and

g. upon discovery of instances of non-compliance, notifying Supply Services and consulting with Legal Services to obtain advice with respect to mitigating potential risks to the City arising from the non-compliance.

170.5.8 Corporate Leadership Team

It is the role of the Corporate Leadership Team to provide strategic and operational governance for the City as outlined within Chapter 115 of The City of Kitchener Municipal Code (Corporate Leadership Team By-law). In fulfilling this role with respect to the Procurement activities of the City, the Corporate Leadership Team is responsible for:

a. approval of Procurement procedures developed by the Director of Supply Services.

170.5.9 Department Employees

Employees of all Departments are responsible for complying with this By-law.
Department employees involved in Procurement activities must clearly understand their obligations and responsibilities under this By-law and all applicable procedures, and should consult with Supply Services in respect of any questions regarding the application or interpretation of this By-law or the Procurement procedures. Department employees involved in Procurement activities are encouraged to develop and foster productive and cooperative professional relationships with their colleagues in Supply Services.

170.5.10 Supply Services Employees

Employees of Supply Services are responsible for complying with this By-law and ensuring all Procurement procedures are applied consistently. Supply Services employees must clearly understand their obligations and responsibilities under this By-law and all applicable procedures and should consult with the Director of Supply Services in respect of any questions regarding the application or interpretation of this By-law or the Procurement procedures. Supply Services employees are expected to provide purchasing and inventory management services to Internal Business Partners in an efficient and diligent manner, and are encouraged to develop and foster productive and cooperative professional relationships with their colleagues in all Departments.

170.6 CONDUCT AND CONFLICTS OF INTEREST

170.6.1 Council and City Employees

The City's Procurement activities must be conducted with integrity so as to maintain the public’s trust. All Procurement activities undertaken by the City must be conducted in accordance with:

a. the City's Code of Conduct for Members of Council, Local Boards, & Advisory Committees (Policy#GOV-COU-005), as applicable;

b. the City's Conflict of Interest Policy (Policy#II-45) for employees, as applicable;

c. the City's Confidentiality of Information Policy (Policy#II-40), as applicable;

d. the Statement of Ethics for Public Procurement (Schedule "B" of this By-law); and

e. the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50, as applicable.
170.6.2 All participants in a Procurement process, including any Suppliers acting on the City's behalf, must declare any perceived, possible or actual conflicts of interest.

170.6.3 No purchase will be processed for personal items of direct benefit to any member of Council, employees of the City and their Immediate Family, except where permitted by policy, or under the auspices of a City-sponsored employee program or with the prior written approval of the CAO.

170.6.4 No Goods, Services, Construction, or Consulting Services will be purchased from an employee of the City, or any associate or Immediate Family of an employee, unless the extent of the interest of such individual has been fully disclosed to the Director of Supply Services and the purchase has been subsequently approved in writing by the CAO.

170.6.5 The following activities are prohibited, unless specifically approved by Council:

   a. Any attempt to evade or circumvent the requirements of the Procurement Policy including, but not limited to, the division of purchases to avoid the requirements of the Procurement Policy by any method, which includes purchases made using Procurement cards.

   b. The purchase of any surplus goods by a City employee, elected City official or a member of the Immediate Family of a City employee or elected City official if that City employee or elected City official:

      i. was responsible for declaring the goods surplus to the City's needs; or
      
      ii. is otherwise involved in the Disposal of goods surplus to the City's needs.

170.6.7 Members of Council are required to declare any direct or indirect pecuniary interest, and its general nature, which may result in a conflict of interest pursuant to the Municipal Conflict of Interest Act and the member of Council shall otherwise comply with that Act.

170.6.8 Any Contract with the City in which a member of Council or any employee of the City has an undeclared direct or indirect pecuniary interest may be voided.

170.6.9 Suppliers

The City expects its Suppliers to act with integrity and conduct business in an ethical manner. The City may refuse to do business with any Supplier that:
a. has engaged in illegal or unethical Bidding practices;

b. has an actual or potential conflict of interest;

c. has an unfair advantage in the Procurement process; or

d. fails to adhere to ethical business practices.

170.6.10 Where a Supplier is retained to participate in the development of a Solicitation Document or the Specifications for inclusion in a Solicitation Document, that Supplier will not be allowed to respond, directly or indirectly, to that Solicitation Document unless the Director of Supply Services is satisfied that there is not a reasonable alternative or that there is not a competitive advantage to be gained.

170.6.11 Illegal or unethical Bidding practices include:

a. Bid-rigging, price-fixing, bribery or collusion or other behaviours or practices prohibited by federal or provincial statutes;

b. attempting to gain favour or advantage by offering gifts or incentives to City officers and employees, members of Council or any other representative of the City;

c. lobbying members of Council or City officers and employees or engaging in any prohibited communications during a Procurement process;

d. submitting inaccurate or misleading information in response to a Procurement opportunity; and,

e. engaging in any other activity that compromises the City’s ability to run a fair Procurement process.

170.6.12 The City will report any suspected cases of collusion or other Bid-rigging offences under the Competition Act, R.S.C., 1985, c. C-34 to the Competition Bureau or to other relevant authorities.

170.6.13 In providing Goods, Services, Construction or Consulting Services to the City, Suppliers are expected to adhere to ethical business practices, including:

a. performing all City Contracts in a professional and competent manner and in accordance with the terms and conditions of the Contract; and

b. complying with all applicable laws, including safety and labour codes (both domestic and international as may be applicable).
170.7 STANDARD PROCUREMENT

170.7.1 Standard Procurement depends on the type and Procurement Value of the Goods, Services, Construction, or Consulting Services required. Standard Procurement processes include:

a. conducting an Invitational Competition by soliciting Bids from a minimum of three Suppliers; or

b. conducting an Open Competition by publicly advertising and posting the Solicitation Document.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Procurement Value Excluding Taxes</th>
<th>Procurement Process</th>
<th>Approval Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods, Services, Construction, Consulting Services</td>
<td>Up to $24,999</td>
<td>Non-Competitive</td>
<td>Deputy CAO or designate</td>
</tr>
<tr>
<td>Goods, Services, Construction</td>
<td>$25,000-$49,999</td>
<td>Invitational Competitive facilitated by the Department requiring Acquisition</td>
<td>Director, Supply Services</td>
</tr>
<tr>
<td>Goods, Services, Construction</td>
<td>$50,000-$99,999</td>
<td>Invitational Competitive facilitated by Supply Services</td>
<td>Director, Supply Services</td>
</tr>
<tr>
<td>Goods, Services, Construction</td>
<td>$100,000-$750,000</td>
<td>Open Competition</td>
<td>Director, Supply Services</td>
</tr>
<tr>
<td>Goods, Services, Construction</td>
<td>Greater than $750,000</td>
<td>Open Competition</td>
<td>Council</td>
</tr>
<tr>
<td>Consulting Services</td>
<td>$25,000-$99,999</td>
<td>Invitational Competitive</td>
<td>Director, Supply Services</td>
</tr>
<tr>
<td>Consulting Services</td>
<td>Greater than $100,000</td>
<td>Open Competition</td>
<td>Council</td>
</tr>
</tbody>
</table>

170.7.2 All standard Procurement processes must be conducted and reported in accordance with this By-law including the table set out in section 170.7.1 and all applicable procedures.

170.7.3 Regardless of Procurement Value, the Director of Supply Services shall submit a report to Council recommending award of a purchase greater than $100,000 if any one or more of the following conditions apply:

a. the value of the Bid being recommended for award including any
contingency allowance are in excess of the Council approved budget;

b. the project is not specifically identified within the Council approved budget;

c. there are other orders of government or granting agencies which require Council approval; or,

d. only one Bid was received in response to a Solicitation.

170.7.4 The City's Director of Supply Services shall prepare a quarterly information only report to Council on Solicitations awarded where the Procurement Value is between $100,000 and $750,000 and the Director of Supply Services approved the award.

170.7.5 The issuance and approval of award of a Revenue Generating Contract of any value requires the approval of the Deputy CAO of the Internal Business Partner. It will be at the discretion of the Deputy CAO of the Internal Business Partner and the Director of Supply Services whether to also seek Council approval on the issuance and/or approval of award of a Revenue Generating Contract.

170.7.6 Where any purchase of Goods, Services, Construction, or Consulting Services has been authorized under this By-law, the Director of Supply Services may authorize disbursement of additional funds provided that the additional funds:

a. shall not exceed the greater of $100,000 or ten percent (10%) of the original Contract price;

b. are available within the relevant budget; and

c. are required to complete works that are necessary as part of the original Contract.

The conditions above do not apply where the additional funds required are provided to the City.

170.7.7 The Procurement processes shown in the table in section 170.7.1 are minimum standards. Although the table indicates that the Procurement process shall become progressively more formal as the estimated Procurement Value increases, the Internal Business Partner or the Director of Supply Services may always choose to use a more formal Procurement process than the process indicated in the table.
170.8 NON-STANDARD PROCUREMENT

170.8.1 Non-Standard Procurement processes for Goods, Services, Construction, or Consulting Services includes, without limitation:

a. Non-Competitive Procurement; and
b. Limited Competition Procurement.

170.8.2 The use of a Non-Standard Procurement process is only permitted under the following circumstances:

a. where a Standard Procurement process was conducted in accordance with this By-law and applicable procedures and has not resulted in the receipt of any Bids;

b. where only one Supplier is able to meet the requirements of a Procurement in order to:
   i. ensure compatibility with existing products;
   ii. recognize exclusive rights, such as exclusive licenses, copyright and patent rights; or
   iii. maintain specialized products that must be maintained by the manufacturer or its representative;

c. where there is an absence of competition for technical reasons and the Goods, Services, Construction, or Consulting Services can only be supplied by one particular Supplier and no alternative or substitute exists;

d. for the Procurement of Goods, Services, Construction, or Consulting Services relating to matters with Confidential Information or privileged nature where the disclosure of those matters through an open competition could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;

e. for the Procurement of Goods, Services, Construction, or Consulting Services from a publicly funded agency or a non-profit organization;

f. for the Procurement of Goods, Services, Construction, or Consulting Services through a Vendor of Record (VOR) Program, where analysis supports Best Value;

g. for the Procurement of Goods, Services, Construction, or Consulting Services under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;

h. for the Procurement of a prototype of Goods, Services, Construction
and/or Consulting Services 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; or,

i. for the Procurement of Goods, Services, Construction and/or Consulting Services that is financed primarily from donations that are subject to conditions that are inconsistent with a standard Procurement process conducted in accordance with this By-law and applicable procedures.

170.8.3 All non-standard Procurement processes must be approved and conducted in accordance with this By-law including the table set out in this section and all applicable procedures.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Procurement Value Excluding Taxes</th>
<th>Procurement Process</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Goods, Services, Construction, Consulting Services</td>
<td>Up to $99,999</td>
<td>Non-Competitive or Limited Competition</td>
<td>Director of Supply Services</td>
</tr>
<tr>
<td>Goods, Services, Construction, Consulting Services</td>
<td>Greater than $100,000</td>
<td>Non-Competitive or Limited Competition</td>
<td>Council</td>
</tr>
</tbody>
</table>
170.9 EMERGENCY PROCUREMENT

170.9.1 Notwithstanding any other provisions of this By-law and provided time does not permit the use of a Standard Procurement process, Goods, Services, Construction and Consulting Services may be purchased on an Emergency basis where they are required as a result of an unforeseen situation or event occurs that is a threat to any of the following:

a. public health or safety;

b. the maintenance of essential City services or to prevent the disruption of essential City services;

c. the welfare of persons or of public property; or

d. the security of the City's interests.

170.9.2 Where an Emergency purchase is required as described above, the Director of Supply Services has the Approval Authority to issue a Purchase Order for the requirements. When the Procurement Value of the Emergency purchase exceeds $100,000., the Director of Supply Services shall provide a report to Council as soon as reasonably possible under the circumstances.

170.9.3 Subject to the application of the provisions of By-law 93-200 as amended and the City's Emergency Plan, where there is a major Emergency and the City's Emergency Plan is implemented, the Director of Supply Services or a Deputy CAO shall authorize any required purchases. For amounts exceeding $100,000., the Director of Supply Services shall issue an information report to Council.

170.10 PRE-QUALIFICATION OF SUPPLIERS

170.10.1 The purpose for prequalification of Suppliers is to ensure that each Supplier intending to perform work on a City Contract can demonstrate its ability to provide the necessary expertise and resources to satisfactorily complete the work required.

170.10.2 Prequalification of Suppliers may be issued by Supply Services and will only be considered when one or more of the following circumstances exists:

a. the work will require substantial project management by the City if the Supplier is not appropriately experienced and could result in a substantial cost to the City;

b. the Goods, Services, Construction, or Consulting Services to be purchased must meet national safety standards;
c. the work involves complex, multi-disciplinary activities, specialized expertise, equipment, materials, or financial requirements;

d. there could be a substantial impact on City operations if the work is not satisfactorily performed the first time;

e. time requirements necessitate efficient use of time and expertise; or

f. any other circumstances deemed appropriate by the Director of Supply Services.

170.10.3 Prequalification requires Suppliers to provide such information as requested by the City to determine that the Supplier has the capability in all respects to perform the Contract requirements. This information may include such things as:

   a. previous experience on similar work (Supplier and/or any staff assigned);

   b. capacity to fulfill the Contract requirements; and

   c. the facilities and/or equipment to perform the work.

**170.11 BIDDER DEBRIEFINGS**

170.11.1 Where the City has conducted a competitive Procurement process, unsuccessful Bidders may request a debriefing from Supply Services. Debriefings must be conducted in accordance with the City’s debriefing procedure. The City will allow unsuccessful Bidders 60 calendar days following the date of the Contract award notification to request a debriefing.

**170.12 SUPPLIER COMPLAINT RESOLUTION**

170.12.1 The City encourages open, competitive Procurement processes and the objective and equitable treatment of all Suppliers.

170.12.2 Suppliers may formally protest the outcome of a Procurement process. Formal protests must be made by Suppliers and responded to by the City in accordance with the City’s Procurement protest procedure.
170.13 CONTRACT MANAGEMENT AND SUPPLIER PERFORMANCE

170.13.1 All Contracts must be managed by the respective Department employee acting as the project lead in accordance with this By-law and all applicable procedures to ensure that both the City and the Supplier fulfill the requirements of the Contract. Department Employees must involve Supply Services and Legal Services in the management of Contract disputes, as required by applicable procedures.

170.13.2 The respective Department Employee is responsible for monitoring and documenting Supplier performance and compliance with Procurement Contracts in accordance with the City’s Supplier performance evaluation procedure.

170.13.3 Documented poor performance or non-performance on any City Contract will be used to determine the eligibility of a Supplier to continue to provide Goods, Services, Construction, or Consulting Services to the City on a current Contract and to determine their ability to participate on future City Contracts. The City may suspend Suppliers from participating in future Solicitations for a period of three years in accordance with the City’s Supplier suspension procedure.

170.13.4 The Director of Supply Services shall apprise Council where any Supplier has been suspended under the City’s Supplier suspension procedure.

170.13.5 No Solicitation Document will be awarded to any Supplier which has a claim, or has instituted a legal proceeding against the City or against which the City has a claim, or has instituted a legal proceeding with respect to any previous Contract, without prior approval of Council.

170.14 UNSOLICITED PROPOSALS

170.14.1 All unsolicited proposals, including any offers for presentations or product/service trials submitted to the City with the expectation on the part of the submitter of obtaining consideration for an ensuing Contract or purchase by the City, must be directed to the Director of Supply Services for review and approval for acceptance.

170.14.2 Any Procurement resulting from the receipt of an unsolicited proposal must comply with the provisions of this By-law.

170.14.3 If it is determined that there is a legitimate need for the Goods, Services, Construction, or Consulting Services offered by way of an unsolicited proposal, then an Acquisition process shall be conducted in accordance with this By-law and all applicable procedures.
170.15 COOPERATIVE PURCHASING

170.15.1 The City may participate with other publicly funded agencies in Cooperative Purchasing for Goods, Services, Construction and Consulting Services when it is in the best interests of the City to do so.

170.15.2 In the event that the Cooperative Purchasing Contract was led by a publicly funded agency other than the City, the Procurement process must be consistent with the requirements of this By-law and the resulting Contract must permit the City to purchase from that Supplier under the same terms and conditions.

170.16 GREEN PROCUREMENT

170.16.1 The City is committed to the purchase of goods and services with due regard to the preservation of the natural environment and to encourage the use of environmentally friendly products and services.

170.16.2 All Departments, in conjunction with Supply Services, are encouraged to seek additional ways of achieving the goal of being environmentally safe and responsible by thorough review of each Procurement process to ensure that, wherever possible and economically feasible, the City’s Solicitation Document includes Specifications that reflect environmentally friendly attributes of the goods and services, as further described in the City’s Solicitation Document drafting procedure.

170.17 PROTECTION OF CONFIDENTIAL / PERSONAL INFORMATION

170.17.1 In situations where Supplier may receive the City’s Confidential Information as part of the provision of the Goods, Services, Construction, or Consulting Services, the City will ensure that the Solicitation Document and/or terms and conditions include requirements related to ensuring that Supplier’s duty to ensure privacy of the Confidential Information.

170.17.2 Where Personal Information, including the Transborder Data Flow of Personal Information is involved, the City’s purchasing process shall ensure that any Personal Information produced by or resulting from services provided by a Supplier to the City, collected, shared, stored, processed, provided, converted, manipulated, or enhanced, whether by or on behalf of the City will be protected in accordance with Municipal Freedom of Information and Protection of Privacy Act regardless of location. The Department responsible for the Personal Information shall ensure that individuals are made aware if their Personal Information will be collected, managed, processed, or stored by a Supplier.
170.18 DISPOSAL OF SURPLUS ASSETS

170.18.1 The Department Head must submit to the Director of Supply Services, a written report of all City assets, including but not limited to, furniture, vehicles, equipment, supplies, and other goods and material, which are deemed surplus or which have become obsolete, worn out, or otherwise incapable of use.

170.18.2 The Director of Supply Services, shall have the Approval Authority to sell, exchange, or otherwise dispose of City assets declared as surplus or obsolete to the needs of the City. The Director of Supply Services may first offer the surplus assets to other Departments. Any surplus assets not required by Departments and that are deemed by the Director of Supply Services as having a residual value may be disposed of by any of the following Disposal methods:

a. by auction or solicitation; or

b. by donation to a non-profit agency; or

c. by recycling; or

d. in the event that all efforts to dispose of the goods by sale are unsuccessful, by scrapping or destroying if recycling is unavailable.

170.18.3 No City employees, officers or elected officials, or any member of a City Board will personally obtain any City asset that has been declared surplus unless it is obtained through a public process.

170.18.4 The Disposal of artifacts is exempt from the requirements of this By-law.

170.19 INCORPORATION OF ACCESSIBILITY DESIGN, CRITERIA AND FEATURES

170.19.1 The City will promote, and incorporate, whenever possible, the requirements of the Ontarians with Disabilities Act, 2001 (ODA), the Accessibility for Ontarians with Disabilities Act, 2005 (AODA), and specifically, Ontario Regulation 429-07 and Ontario Regulation 191-11 made under the Accessibility for Ontarians with Disabilities Act, 2005 in procurement activities of the City.
170.20 BY-LAW ADMINISTRATION

170.20.1 This By-law may be referred to as the "Purchasing By-law".

170.20.2 Under this By-law and associated procedures, the Director of Supply Services is authorized to make all decisions, save and except where Council is specifically identified in this By-law as the authority. Any Supplier shall have the right to appeal that decision to Council.

170.20.3 Council may waive any provisions or requirements of this By-law.

170.20.4 This By-law will be reviewed every five (5) years, or such earlier date as the Director of Supply Services, or Deputy CAO of Finance and Corporate Services or Council may deem it appropriate to evaluate its effectiveness.

170.20.5 It is hereby declared that each and every of the foregoing sections of this By-law is severable and that, if any provisions of this By-law should for any reason be declared invalid by any court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

170.20.6 That the following By-law and the contents of Chapter 170 of The City of Kitchener Municipal Code be repealed and replaced:

By-law 2014-109, 15 September 2014;

170.20.7 Notwithstanding its repeal, any purchases begun but not yet completed by the effective date of this By-law shall be completed in accordance with the terms of the previous Chapter 170 of The City of Kitchener Municipal Code as if it were still in effect.

170.20.7 The Clerk of the City is hereby directed to make this By-law a part of The City of Kitchener Municipal Code by adding it to the Concordance and arranging and numbering it as Chapter 170 so as to fit within the scheme of the Code.

170.21 SCHEDULES

170.21.1 Schedule "A" to this By-law – Excluded Procurements forms an integral part of this By-law and is attached hereto.

170.21.2 Schedule "B" to this By-law – Statement of Ethics for Public Procurement forms an integral part of this By-law and is attached hereto.
PASSED at the Council Chambers in the City of Kitchener this 16th day of October, A.D. 2017.

[Signature]
Mayor

[Signature]
Clerk
Schedule ‘A’ – Excluded Procurements

This By-law does not apply to the Acquisition of the following:

1. Training and Education
   - conferences and conventions
   - courses, workshops and seminars
   - memberships and subscriptions, periodicals, books
   - training and development including course development and delivery
   - computer software for educational purposes

2. Employer’s General Expense
   - employee expenses (professional dues / license renewals, meal allowances, travel, advances, miscellaneous)
   - petty cash replenishment and cash advances
   - workers safety insurance board payments
   - health benefits, medical notes and exams
   - tax remittances
   - insurance premiums
   - damage claims
   - legal settlements
   - arbitration awards
   - charges to, and from, other publicly funded agencies or administrative authorities mandated by the government
   - Council approved grants and / or donations
   - employee, Councillor and Mayor’s income (eg sick leave gratuity, vacation leave, severance)
   - payroll deduction remittances
   - honorariums
   - debentures / debt / sinking funds
   - payments to Local Boards and Affiliates
   - real property including land, building, leasehold interests, easements, encroachments, licences and rentals
   - investments
   - refunds (such as property tax refunds, building permit refunds, and refunds for cancelled services, programs or events)
   - license fees (regular maintenance fees for vehicles, elevators, communications, software, etc. to maintain existing products and systems)
   - utilities (such as water, sewer, hydro, natural gas, telecommunications, postage, and cable services)
   - temporary staffing agencies and services
   - assessments and tools where positions and/or individuals are assessed for recruitment and selection purposes, including tools and assessments which would assist in the accommodation of individuals
   - election equipment, materials and supplies
   - media / advertising, and,
• software upgrades / maintenance costs

3. Special Services:
   • legal counsel fees
   • financial services fees related to financial assets and liabilities, including banking services, ancillary advisory and information services as well as management of investments, whether or not delivered by a financial institution
   • witness fees
   • committee fees
   • arbitrator fees
   • appraisal fees
   • real estate fees
   • land transfer taxes
   • registry office fees
   • insurance claims
   • revenue collected on behalf of a third party
   • utility relocates
   • railway crossing maintenance
   • collection agency fees

4. Acquisitions which will be reimbursed in full by a third party.

5. Acquisitions related to Local boards and Affiliates

6. Expenses related to partnerships that are primarily coordinated by volunteers

7. Goods or Services in which the supply is controlled by a statutory monopoly

8. Work to be performed under the provisions of a warranty or guarantee held in respect of the original work.

9. Goods or Services purchased on a commodity market (such as carbon tax allowances and offset credits, natural gas for re-sale)

10. Goods and Services related to cultural or artistic fields, such as:
    • events supporting local non-profit organizations
    • entertainers for theatre or special events
    • original works of art
    • a Contract to be awarded to the winner of a design contest
    • antiques or artifacts

11. Sponsorships

12. Construction costs of developer build parks when the City is reimbursing a developer for construction costs related to a park in the early stages of subdivision development
Schedule ‘B’ – Statement of Ethics for Public Procurement

The following ethical principles should govern the conduct of every City employee related to the Procurement of Goods, Services, Construction and Consulting Services:

a. open and honest dealings with everyone who is involved in the purchasing process;

b. fair and impartial award recommendations for all Contracts;

c. an irreproachable standard of personal integrity on the part of all those involved in the Procurement of goods, services, construction and consulting; and,

d. cooperation with other publicly funded agencies in order to obtain the Best Value for public money.