

THE CORPORATION OF THE TOWN OF MIDLAND

BY-LAW 2024-58

A By-law to provide policies for the procurement of goods, services and construction and to repeal By-law 2018-52, as amended.

WHEREAS Section 270 (1) of the Municipal Act, 2001, S.O. c. 25 provides that a municipality shall adopt and maintain a policy with respect to its procurement of goods, services and construction;

AND WHEREAS the Corporation of the Town of Midland passed By-law 2018-52, as amended, to provide policies with respect to the procurement of goods, services and construction:

AND WHEREAS the Canadian Free Trade Agreement (CFTA), the Comprehensive Economic and Trade Agreement (CETA) and the Ontario-Quebec Trade and Cooperation Agreement (OQTCA) apply to the procurement of goods, services and construction by the Town of Midland;

AND WHEREAS Council deems it expedient to repeal By-law 2018-52, as amended, and adopt a new By-law to implement the required changes and enhancements for the procurement of goods, services and construction;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND HEREBY ENACTS AS FOLLOWS:

1. That Schedule 1, attached hereto, being the Town of Midland Procurement Policy, as to form and content, forms part of the By-law and is hereby approved.
2. That By-law 2018-52, as amended, is hereby repealed.
3. That this By-law shall come into full force and effect on the final passage thereof.

BY-LAW PASSED AND ENACTED THIS 4th DAY OF DECEMBER 2024.

THE CORPORATION OF THE TOWN OF MIDLAND

BILL GORDON – MAYOR

SHERRI EDGAR - CLERK

Schedule 1 to By-law 2024-58

Town of Midland Procurement Policy

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1. DEFINITIONS

- a) **“Associate”** means someone who is closely connected to another person as a companion, family member, friend or business partner.
- b) **“Best value”** means the optimal balance of performance and cost determined in accordance with pre-defined evaluation criteria;
- c) **“Bid”** means an offer or submission received from a Proponent in response to a Bid solicitation, which is subject to acceptance or rejection;
- d) **“Bidder”** means a submission in response to a solicitation document;
- e) **“Bid Review Committee”** means a committee constituted to review Bid Irregularities as required;
- f) **“Chief Administrative Officer”** means the Chief Administrative Officer (CAO) for the Corporation of the Town of Midland and/or their designate;
- g) **“Chief Financial Officer”** means the Chief Financial Officer (CFO) for the Corporation of the Town of Midland and/or their designate;
- h) **“Competitive Process”** means a set of procedures for developing a procurement contract through a bidding or proposal process. The intent is to solicit fair, impartial, competitive bids;
- i) **“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;
- j) **“Consulting and Professional Service”** means the provision of expertise or strategic advice that is presented for consideration and decision-making, and includes services provided by architects, engineers, designers, surveyors, geo-technical consultants, planners and technology consultants;
- k) **“Contract”** means a commitment by the Town for the procurement of goods, services or construction from a supplier, which may be evidenced by an agreement executed by the supplier and the Town, or a purchase order issued to the supplier by a duly authorized employee of the Town;
- l) **“Cooperative Purchasing”** means two or more public procurement entities combine their requirements in a single procurement process to obtain the benefits of volume purchases from the same supplier(s)/vendor(s) or contractor(s);

- m) **“Council”** means the Council of the Corporation of the Town of Midland;
- n) **“Department”** means an operating department of the Town, overseen by a Department Head/Director;
- o) **“Designate”** means a person authorized by the CAO, Director, or Manager to act on their behalf, for the purpose of this By-law;
- p) **“Director”** means the Director of a department or service area for the Town of Midland and/or their designate;
- q) **“Disposal”** means an act through which the Town gives up title to the property
- r) **“Division” means** an operating division of the Town, overseen by a Division Manager;
- s) **“Goods”** means moveable property including services that are incidental to the provision of the moveable property, such as manufacturing, delivery, installation or maintenance, and any necessary raw materials, products, supplies, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a construction contract;
- t) **“In-house Bid”** means a bid made by internal staff to compete with external entities for procurement opportunities;
- u) **“Invitational Competition”** means a competitive process in which an invitation to submit bids is issued to at least three suppliers;
- v) **“Low Cost Purchase” or “LCP”** means a purchase for goods, service(s) or construction, as per the thresholds stated in this By-law that are not covered by an existing supply agreement or qualified supplier roster or available through the Town’s existing materials inventory;
- w) **“Manager”** means the Manager of a department, division or service area for the Town of Midland and/or their designate;
- x) **“Non-Standard Procurement”** means the acquisition of goods, services or construction through a process or method other than the process and method normally required for the type and value of the goods, services or construction, as identified and described under Schedule “D” of the Town’s Procurement By-law. Non-standard procurement processes include:
 - i) A “Non-Competitive Procurement”, where the goods, services or construction are acquired directly from a particular supplier without

conducting a competitive process when an Invitational Competition or an Open Competition would normally be required; or

- ii) A “Limited Competition”, where bids are solicited from a limited number of suppliers when an Open Competition would normally be required.
- y) **“Open Competition”** means the solicitation of bids through a publicly posted solicitation document;
- z) **“Personal Property”** means tangible or intangible property, other than real property. Movable property subject to ownership, with exchange value;
- aa) **“Procurement or Purchasing”** means acquisition by lawful means, including by purchase, rental, lease or conditional sale of goods and/or services;
- bb) **“Procurement Card (P-Card)”** means an organizational credit card program primarily used for low-cost, non-inventory, non-capital items, such as office supplies. The card allows procurement or field employees to obtain goods and services without going through the requisition and authorization procedure. P-cards may be set up to restrict use to specific purchases and certain thresholds with pre-defined suppliers/vendors or stores, and offer central billings;
- cc) **“Procurement Manager”** means the staff position responsible for facilitating a procurement process and/or their designate;
- dd) **“Procurement Value”** means the total value of the goods, services or construction being procured, and must include all costs to the Town, including, as applicable, acquisition, maintenance, replacement, disposal, and training, delivery, installation and extension options, less applicable rebates or discounts and exclusive of sales taxes;
- ee) **“Purchase Order”** means a written order to a successful Bidder/Proponent setting out the terms and conditions for the purchase deliverables;
- ff) **“Qualified Supplier Roster”** means a list of suppliers that have participated in and successfully met the requirements of a Request for Supplier Qualifications (RFSQ), and have been pre-qualified to perform discrete work assignments involving the delivery of a particular type of goods or services;
- gg) **“Real Property”** means land and its permanently affixed buildings or structures. Any property that is not personal property;
- hh) **“Services”** means action and/or work undertaken on behalf of the Town under contract and may include consulting and professional advice;

- ii) **“Solicitation Document”** means the document issued by the Town to solicit bids from bidders;
- jj) **“Supplier”** means a person carrying on the business of providing goods, services or construction;
- kk) **“Supply Agreement”** means a standing offer from a pre-approved supplier to the Town to supply goods and services, as requested, through the use of an ordering process during a particular period of time, at a predetermined price or discount, generally within a pre-defined dollar limit;
- ll) **“Town”** means the Corporation of the Town of Midland;

2. INTRODUCTION

2.1 Purpose

The purpose of this by-law are;

- i) To express the Town’s goals and objectives in relation to its procurement of goods, services and construction;
- ii) To describe the roles, responsibilities and authorities of the Town’s employees, officers and elected officials in carrying out the Town’s procurement operations;
- iii) To extend authority to the CFO for the approval of detailed procurement procedures and protocols that are consistent with the intent of this By-law and, to supplement and amend those procedures and protocols as and when deemed necessary, to meet the present and future needs of the Town; and
- iv) To comply with the requirements of Section 270 of the *Municipal Act*, S.O., 2001, as amended from time to time.

2.2 Procurement Goals and Objectives

The goals and objectives of the Town’s procurement operations are;

- i) To obtain the best value for the Town when procuring goods and service(s) and construction;
- ii) To encourage competitive procurement and ensure the principles of fairness, objectivity, transparency and accountability are reflected in the Town’s procurement processes;

- iii) To support effective business planning such that goods, services and construction will only be acquired after consideration of need, alternatives, timing and appropriate life cycle management issues;
- iv) To adhere to the highest standards of ethical conduct and to avoid conflicts between the interests of the Town and those of the Town's employees, officers and elected officials;
- v) To ensure compliance with all applicable trade agreements, laws and regulations;
- vi) To practice reciprocal non-discrimination and geographic neutrality with respect to Ontario's trading partners and avoid preferential treatment of local suppliers;
- vii) To encourage the procurement of goods, services and construction with due regard to the preservation of the natural environment and the promotion of human rights and fair labour practices;
- viii) To avoid creating situations or relationships which may result in a continuous reliance on a particular supplier.

2.3 Application

- i) This By-law applies to all departments and committees of the Town and is applicable to all boards and commissions unless the board or commission approves their own by-law which meets or exceeds this by-law.
- ii) This By-law applies to the procurement of all goods, service(s) or construction except for those items set out in Schedule "A". This By-law also applies to the disposal of the Town's personal property.
- iii) In addition to the items set out in Schedule "A", this By-law does not apply to the acquisition or disposal of real property.
- iv) In addition to this By-law, the Town has procedures, protocols, templates and forms for use during the procurement cycle. All tools for engaging in procurement activity will be maintained and updated by Procurement as required and stored within the Town's network.

2.4 Title and Administration

This by-law may be referred to as the "Procurement By-law". The CFO is responsible for the oversight and administration of this by-law, which includes updating and evaluating the effectiveness, as appropriate at a minimum of every five (5) years.

2.5 Validity and Severability

Should any section, subsection, clause, paragraph or provision of the by-law be declared by a court of competent jurisdiction to be invalid or unenforceable, the decision shall not affect the validity or enforceability of any other provision of the Procurement By-law as a whole.

2.6 Interpretation

In this Procurement By-law;

- i) The word “may” is permissive
- ii) The words “shall” and “will” are imperative
- iii) Words used in the present terms include future
- iv) Words in the singular number include the plural number and vice versa
- v) Where employees of the town are authorized to do any act, such act may be done by their authorized delegate unless specifically stated otherwise
- vi) Where the context so requires, the masculine gender shall include the feminine and neutral genders and vice versa

3. GENERAL CONDITIONS

- i) No Town employee, council member or committee member shall purchase or offer to purchase, on behalf of the Town, any Goods, Services or Construction except in accordance with this by-law and following the rules set out in the Procurement Procedures, as amended from time to time.
- ii) Any employee who intentionally and knowingly acquires or disposes of any Goods or Services for the Town in contravention of this Procurement By-law or the Procurement Procedures, as amended from time to time, may be subject to disciplinary action.
- iii) Exceptions to this by-law are identified in Schedule A.
- iv) All purchases must have appropriate approved funding prior to the preparation of a Call for Bid.
- v) A Manager/Director shall not Award where the CFO has determined that the provisions of this Procurement By-law have not been adhered to and they so advised the Manager/Director.
- vi) Subdividing, splitting or otherwise structuring procurement requirements or contracts in order to reduce the procurement value or in any way circumvent the requirements or intent of this By-law is not permissible.

- vii) The Town shall not enter into any Contract for Goods, Services or Construction where there would be the establishment of an employee-employer relationship, except as exempted under Schedule A.
- viii) For the purpose of determining whether a Contract falls within the prescribed financial limits of the Contracts that may be awarded under the authority of a Division Manager/Department Director or provides financial limits on Contracts required to be reported to Council, the Contract amount shall be the sum of all costs to be paid to Proponent under the Contract, including the non-rebated portion of tax.
- ix) No employee, elected official or committee member shall personally obtain any real or personal property that has been declared Surplus, unless it is obtained through a public process.

3.1 Town's Code of Conduct and Conflict of Interest

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

- i) the Town's Code of Conduct By-law, as applicable;
- ii) the Town's Employee Code of Ethical Conduct, as applicable;
- iii) the Town's Accountability and Transparency Policy, as applicable;
- iv) the Statement of Ethics for Public Purchasers in Schedule E of this By-law; and
- v) the *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50, as applicable.

3.1.1 All participants in a procurement process, including any external consultants or other service providers acting on the Town's behalf, must declare any perceived, possible or actual conflicts of interest.

3.1.2 No purchase will be processed for personal items of direct benefit to officers or employees of the Town or any member of Council except where permitted by policy, or under the auspices of a Town-sponsored employee program or with the prior approval of the CAO.

3.1.3 No goods, services or construction will be purchased from an officer or employee of the Town, or any associate of an officer or employee, unless the extent of the interest of such individual has been fully disclosed to the Manager of Procurement and the purchase has been subsequently approved by the CAO.

3.2 Supplier/Vendor Code of Conduct and Conflict of Interest

The Town expects its Suppliers/Vendors to act with integrity and conduct business in an ethical manner;

3.2.1 The Town may refuse to do business with any supplier that:

- i) has engaged in illegal or unethical bidding practices;
- ii) has an actual or potential conflict of interest;
- iii) has an unfair advantage in the procurement process; or
- iv) fails to adhere to ethical business practices.

3.2.2 All suppliers participating in a procurement process must declare any perceived, possible or actual conflicts of interest. Examples include:

- i) engaging family members, companions, friends, or business associates of any public office holder at the Town which may have, or appear to have, any influence on the procurement process, or subsequent performance of the contract;
- ii) communicating with any person to obtain preferred treatment in the procurement process;
- iii) engaging current staff or public office holders at the Town to take part in the preparation of the bid or the performance of the contract, if awarded
- iv) engaging former Town staff or former public office holders to take any part in the development of the bid or the performance of the contract, if awarded, any time within one year of such person having left the employ or public office at the Town;
- v) prior involvement by the supplier or affiliated persons in developing the specifications or other evaluative criteria for the solicitation;
- vi) access to related confidential information by the supplier, or affiliated persons that is not readily available to other prospective suppliers;
- vii) conduct that compromises, or could be seen to compromise, the integrity of the procurement process.

3.2.3 The use of potential vendors to create specifications is not an accepted practice.

3.2.4 Illegal or unethical bidding practices include:

- i) bid-rigging, price-fixing, bribery or collusion or other behavior's or practices prohibited by federal or provincial statutes;
- ii) attempting to gain favour or advantage by offering gifts or incentives to Town officers and employees, members of Council or any other representative of the Town;

- iii) lobbying members of Council or Town officers and employees or engaging in any prohibited communications during a procurement process;
- iv) submitting inaccurate or misleading information in response to a procurement opportunity; and
- v) engaging in any other activity that compromises the Town's ability to run a fair procurement process.

3.2.5 The Town will report any suspected cases of collusion or other bid-rigging offenses under the *Competition Act R.S.C., 1985, c. C-34*, to the Competition Bureau or to other relevant authorities.

3.2.6 In providing goods, services or construction to the Town, suppliers are expected to adhere to ethical business practices, including:

- i) performing all Town contracts in a professional and competent manner and in accordance with the terms and conditions of the contract;
- ii) complying with all applicable laws, including safety and labour codes (both domestic and international as may be applicable);
- iii) ensuring that fair wages are paid to suppliers' employees; and
- iv) providing workplaces that are free from harassment or discrimination of any kind.

3.3 Records Retention and Access to Information

3.3.1 All procurement activities must be supported by appropriate documentation and all records relating to a procurement process must be retained in accordance with the Town's Records Retention By-law and any associated records management policies and procedures.

3.3.2 Disclosure of information related to the Town's procurement processes must be made in accordance with applicable procurement procedures and protocols and the Town's policies with respect to disclosure and protection of information in accordance with the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and the Personal Health Information Protection Act (PHIPA), as amended.

3.4 Occupational Health and Safety

The Town will require and incorporate the requirements of the *Occupational Health and safety Act, R.S.O. 1990, C. O.1*, in procurement activities of the Town.

3.5 Accessibility For Ontarians With Disabilities

3.5.1 In accordance with the requirements of the Ontarians with Disabilities Act, 2001 (ODA), the Accessibility for Ontarians with Disabilities Act, 2005 (AODA), and specifically, Ontario Regulation 413/12, s. 4 (1) and Ontario Regulation 191-11, s. 5 (1) made under the Accessibility for Ontarians with Disabilities Act, 2005, the Town shall incorporate accessibility design, criteria and features when procuring or acquiring goods, services or facilities, except where it is not practicable to do so.

3.5.2 If the Town determines that it is not practicable to incorporate accessibility design, criteria and features when procuring or acquiring goods, services or facilities, it shall provide, upon request, an explanation.

3.6 Legal Claims

The Town reserves the right to neither accept nor Award to any Bidder/Proponent, inclusive of its sub-contractor(s), a Contract with who the Town is in litigation.

3.7 Council and Committee Members

3.7.1 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 Town's procurement operations. It is the role of Council to establish policy and to approve expenditures through the Town's budget approval process. Through this By-law, Council delegates to the Town's officers and employees the authority to incur expenditures in accordance with approved budgets through the procurement of goods, services and construction in accordance with the rules and processes set out in this By-law.

3.7.2 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 value or involve significant risk, security concerns or significant community interest.

3.7.3 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 process have been initiated through the advertisement or

issuance of the solicitation document until a contract has been executed and awarded to the successful bidder, except where Council is required to approve the contract award in accordance with Section 8 of this By-law.

4. REQUIREMENTS FOR APPROVED FUNDS

- 4.1** The beginning of the Procurement process commences with the approval by Council of the operating and capital budgets for the Town. Upon approval of these budgets, Division Manager and/or the Department Director and the Procurement Manager have the authority to purchase Goods, Services and Construction (excluding the leasing of greater than one year, which requires Council approval). Division Manager and/or the Department Director are authorized to spend up to thirty percent (30%) of the previous year's approved operating budget before receiving the current budget year's approval from Council.
- 4.2** Sufficient funds must be allocated for each Acquisition in the appropriate accounts within the Council approved operating or capital budget prior to the Award and execution of the Contract.

4.3 Multi-Year Contracts:

Where certain Good and Services are routinely purchased on a multi-year basis, the exercise of authority to Award and execute such a Contract is subject to the following:

- i) the identification and availability of sufficient funds in appropriate accounts for the current year within Council approved estimates; and
- ii) in the opinion of the department Manager that the requirement for the Goods or Services will continue to exist in subsequent years and the concurrence of the CFO that the required funding can reasonably be expected to be made available.

4.4 Insufficient Budget at Time of Award of Solicitation:

In the event that the Bid that is recommended for Award exceeds the approved funds available, the Town may pursue any of the following options:

- i) Council may add additional funds to the approved budget, provided that there are sufficient funds available to allow the Town to Award. Division Manager and/or the Department Director are required to submit a Staff Report to Council seeking approval of the additional funds, unless the following condition applies:

- a) The total cost of the Goods, Services and/or Construction does not exceed 10% of the approved budget. For practicality purposes, this 10% guideline has a minimum of \$5,000 and maximum of \$50,000. If the request falls within these limits, the Division Manager and/or the Department Director shall submit a request for additional funding to the CFO. The Division Manager/Department Director and the CFO shall identify the additional funding sources required for the unfavourable variance and the CFO may submit the request to the CAO for approval at their discretion. Additional funds that exceed the maximum, regardless of whether they are in the 10% guideline, require the approval of Council.
 - b) Where the additional funding of up to 10% has been approved by staff, an explanation will be provided to Council as part of the regular financial updates.
- ii) Award part of the Call for Bid;
 - iii) Negotiate if the Call for Bid permits it;
 - iv) Cancel the Call for Bid; or,
 - v) Revise the Call for Bid and issue the revised Call for Bid

4.5 Acquisitions Outside of the Approved Budget – Informal Process:

Acquisitions that are deemed by a Division Manager and/or the Department Director to be necessary but are not in the approved budget must be discussed with the CFO prior to the commencement of the solicitation process.

Acquisitions outside of the Approved Budget may be approved by the CFO when the total cost of the Goods, Services and/or Construction does not exceed 10% of the approved budget. For practicality purposes, this 10% guideline has a minimum of \$5,000 and maximum of \$50,000.

The Division Manager/Department Director and the CFO shall identify the additional funding sources required for the unfavourable variance and the CFO may submit the request to the CAO for approval at their discretion.

Additional funds that exceed the maximum, regardless of whether they are in the 10% guideline, require the approval of Council. If the overall division operating budget cannot be met, Council approval is required.

5. RESPONSIBILITIES AND AUTHORITIES

Town employees are accountable for the decisions and actions which they take pursuant to this By-law and in the administration/oversight of Contracts that have been Awarded.

5.1 Procurement

Procurement Staff shall:

- i) Monitor adherence to the provisions of this by-law and the Procurement Procedures and report any noncompliance to the CFO;
- ii) Provide Procurement advice and related services, including the necessary forms, Contracts and Call for Bid document templates (in consultation with the Town Solicitor) that may be required by departments for the purpose of fulfilling the Procurement needs of the Town;
- iii) Facilitate all aspects of the Call for Bid process including creating and issuing the Call for Bid documents, opening, verifying compliance with the terms and conditions of the Call for Bid as well as facilitating the Award and execution of all Agreements and Contracts. Additionally, where applicable, facilitate Contract extensions, Contract Change Orders, Supplier/Vendor performance, dispute resolution, additional funding request and Contract termination notice;
- iv) Assist with the Disposal of physical materials and assets that have been deemed Surplus by Managers through one of the methods outlined in the Procurement Procedures;
- v) Act as the Town's representative with other public agencies including the GBAPPC, Broader Public Sector (BPS), Ontario Shared Services (OSS), Ontario Education Collaborative Marketplace (OECM), Ministry of Government Services (MGS), on initiatives and participate in cooperative contracts with these and related agencies where such involvement is in the best interest of the Town; and
- vi) Where applicable, participate in Negotiations.

Procurement Manager shall:

- i) Review and may authorize all Single, Sole and Emergency Purchase Acquisitions with the approval of the CAO that meet or exceed the thresholds outlined in Schedule B. Emergency Purchase Acquisitions should be discussed with the CFO prior to or immediately following the acquisition to ensure that funding is allocated accordingly;
- ii) Review and provide feedback to Managers who are contemplating Acquisitions outside of the provisions of the Procurement By-law;

5.2 Division Manager & Department Directors

Managers/Directors shall:

- i) Be responsible for Procurement activities within their division/department and shall be accountable for determining and achieving specific objectives as outlined for each Procurement project;
- ii) Ensure that there are sufficient funds available and identified for all procurement request;
- iii) Have the authority to Award and execute Contracts and/or delegate the authority to their employees based on the requirements of this by-law up to the thresholds as per their/their employees signing authority;
- iv) Along with their employees, ensure that the Manager of Procurement and/or the Town Solicitor reviews in advance Supplier/Vendor agreement templates;
- v) Along with their employees, be responsible for monitoring and documenting Supplier/Vendor performance and compliance with Contracts as outlined in the Supplier/Vendor Performance section of this by-law;
- vi) Along with their employees, ensure that Contract Change Order forms are properly completed with appropriate approvals and then issued to Procurement to process;
- vii) Along with their employees, ensure that additional funding forms are properly completed with appropriate approvals and then issued to Procurement to process. The required additional funding must be in place prior to the execution of the Contract or amendment thereto;
- viii) Ensure that Emergency Purchase, Single Source and Sole Source forms are completed and issued to the Manager of Procurement for review prior to the Contract commitment consistent with the requirements outlined in Schedule B and C.
- ix) Review in advance with the Manager of Procurement when contemplating any Acquisition where the provisions of the Procurement By-law are being waived by Council;

5.3 Chief Financial Officer (CFO)

- i) In the absence of the Manager of Procurement, the CFO may act in their place;

- ii) After consultation with the Manager of Procurement, the CFO shall address all instances of non-compliance of this by-law with the appropriate Manager(s) and shall be report any non-compliance to the CAO;
- iii) The CFO may approve additional funding for Acquisitions that are over the value authorized by Council, but cumulatively per project shall not exceed 10% of the approved budget. For practicality purposes, this 10% guideline has a minimum of \$5,000 and maximum of \$50,000;
- iv) Participate in the Bid Review Committee.

5.4 Chief Administrative Officer (CAO)

- i) The CAO shall ensure overall compliance to this by-law and Procurement Procedures, and shall address any non-compliance that the CFO has brought to their attention; and
- ii) The CAO together with a Division Manager and/or the Department Director has the authority to Award Emergency Purchases. Emergency Purchase Acquisitions should be discussed with the CFO prior to or immediately following the acquisition to ensure that funding is allocated accordingly.

5.5 Bid Review Committee

- i) Where irregularities occur or complaints or challenges are made by bidders or suppliers in respect of a procurement process, that are unable to be resolved by the Manager of Procurement, the Manager of Procurement will provide notice to the CFO to initiate the Bid Review Committee (BRC) process. The BRC shall consist of the CFO and Department Director. The BRC will review the matter with the objective of presenting a solution, recommendation or otherwise resolving an issue.
- ii) If the BRC cannot reach agreement on the resolution of a matter referred to it, or otherwise considers it advisable, a report of the findings of the BRC must be prepared and submitted to the CAO for consideration and determination of the matter and legal advice sought if necessary.

6. METHODS OF PROCUREMENT

6.1 Standard Procurement

6.1.1 A standard procurement is the acquisition of goods, services or construction through the applicable process and method identified and described in Schedule “B” of this By-law. Depending on the type and value of the goods, services or construction required, standard procurement processes include:

- i) placing an order under an existing Supply Agreement;
- ii) conducting a Qualified Supplier Roster Competition to solicit bids from suppliers on an existing Qualified Supplier Roster;
- iii) making Low Cost Purchases using petty cash, or a corporate purchasing card;
- iv) conducting an Informal Invitational Competition by obtaining multiple informal telephone, written and or internet quotes. A minimum of three (3) written quotes is always recommended;
- v) conducting an Invitational Competition by soliciting bids from a minimum of three (3) suppliers; or
- vi) conducting an Open Competition by publicly advertising and posting the solicitation document.

6.1.2 All standard procurement processes must be approved, conducted and reported in accordance with this By-law and all applicable procedures and protocols.

6.2 Non-Standard Procurement

6.2.1 A non-standard procurement is the acquisition of goods, services or construction through a process or method other than the process and method normally required for the type and value of the required goods, services or construction, as identified and described under Schedule “D” of this By-law. Non-standard procurement processes include:

- a) A Non-Competitive Process, where the goods, services or construction are acquired directly from a particular supplier without conducting a competitive process when an Invitational Competition or an Open Competition would normally be required; or
- b) A Limited Competition, where bids are solicited from a limited number of suppliers when an Open Competition would normally be required.

6.2.2 The use of a non-standard procurement process is only permitted under the specific circumstances set out in Schedule “D” of this By-law.

6.2.3 All non-standard procurement process must be approved and conducted in accordance with this By-law and all applicable procedures and protocols.

7. ALTERNATIVE METHODS OF PROCUREMENT

7.1 Corporate Purchasing Card (P-Card)

- i) Acquisitions made with the corporate purchasing card must comply with this by-law and the Town's purchasing card program and applicable policies and procedures;
- ii) No personal purchases may be made with the corporate purchasing card that is not authorized by Town policy. Town employees shall not use corporate purchases to gain personal points or other similar benefits in any Supplier/Vendor reward program.

7.2 Emergency Purchase

Notwithstanding any other provisions of this By-law, goods, services or construction may be purchased on an emergency basis where they are required as a result of an unforeseeable situation or event occurs that is a potential threat to any of the following:

- i) Public health and/or safety;
- ii) The maintenance of Town services or to prevent the disruption of Town services;
- iii) The welfare of persons or of public property; or
- iv) The security of the Town's interests, financial or non-financial; and
- v) Time does not permit the use of a standard procurement process.

All emergency purchases must be reported to the Manager of Procurement, the CAO and CFO as soon as reasonably possible under the circumstances and as deemed appropriate, and members of Council be advised.

7.3 Co-operative Purchase

7.3.1 The Town may participate in co-operative purchasing initiatives with other government or broader public sector entities where it is in the best interests of the Town to do so.

7.3.2 The co-operative purchasing process may be conducted in accordance with the procurement policies and procedures of the entity that is responsible

for co-ordinating and leading the process, provided that those policies and procedures are consistent with the Town's obligations under applicable trade agreements and the Town's procurement goals and objectives set out in this By-law.

7.4 Unsolicited Proposal

- i) All unsolicited proposals, including any offers for presentations or product/service trials submitted to the Town with the expectation on the part of the submitter of obtaining consideration for an ensuing contract or purchase by the Town, must be directed to the CAO for review and approval for acceptance.
- ii) In the event that an actual goods/services product presentation or demonstration would be required in advance of a purchase decision, such presentation or demonstration should be included as part of the formal competitive bid process.
- iii) Any procurement resulting from the receipt of an unsolicited bid must comply with the provisions of this Procurement By-law.
- iv) In the absence of a competitive process, a contract may only be awarded in respect of an unsolicited proposal if a Non-Standard Procurement is permitted in accordance with this By-law and all applicable procedures and protocols.

7.5 Sponsorship

All sponsorship opportunities will be facilitated as detailed in the Sponsorship, Advertising and Charitable Giving Policy (CP-2024-08).

8. Council Approval

The Division Manager and or the Department Director shall create a staff report to be included in the Council agenda for consideration for approval in the following circumstances:

- i) Where an Acquisition or Contract Change Order exceeds the approved budget by greater than 10%. All Acquisitions or Contract Change Orders that exceed \$50,000, regardless of whether they are within 10% of the approved budget require Council's approval. A minimum change order value of \$5,000 is allowable, regardless of the 10% guideline, for practicably purposes.

- ii) Where the overall best value compliant Bid submission is not being recommended for Award;
- iii) Where provision(s) of this by-law are being waived;
- iv) Where the Acquisition of a tangible capital asset was not included in the approved capital budget;
- v) Sponsorship agreements that include the naming rights of Town assets, and/or include exclusive privileges (other than event-related exclusivity) to the sponsor will require Council approval.
- vi) Any Contract prescribed by statute to be authorized by Council;
- vii) Where Council has directed staff to provide a report for approval.

9. OTHER

9.1 In-House Bids

The acceptance and Award of in-house Bids shall require the prior approval of Council and only be permitted where private sector Suppliers/Vendors have also been given an opportunity to submit Bids.

9.2 Tie Bids

- i) In the event of a tie score between two or more Compliant Bidders/Proponents, and where multiple Awards are not possible, best and final offers will be solicited from each of these suppliers/vendors in order to break the tie. If this effort is unsuccessful, then the Town shall determine the successful supplier/vendor by draw as outlined in the Procurement Procedures.

9.3 Supplier/Vendor Performance

- i) Division Manager are responsible for monitoring and documenting Supplier/Vendor performance and ensuring compliance with Contracts. Division Manager and/or the Department Director shall address performance issues directly with the Supplier/Vendor to resolve and document all performance issues and acknowledgements related to same;
- ii) Procurement shall be advised of Supplier/Vendor performance issues in writing from the Manager. The Manager of Procurement will consult with the Division Manager and Town Solicitor, where appropriate, to resolve any ongoing and/or escalating or unsatisfactory performance issues. If

performance issues cannot be resolved, the Manager of Procurement may, in consultation with the Towns solicitor terminate the Contract.

- iii) Any Supplier/Vendor (or its subcontractors) that is involved in unprofessional conduct (the nature of which the Town will be the sole judge), a health and safety violation, criminally charged or in dispute of any kind with the Town, the Town may terminate the Contract with that Supplier/Vendor. The Supplier/Vendor may also be excluded from bidding at the discretion of the Manager of Procurement in consultation with the relevant Division Manager and the Towns solicitor. The exclusion from bid participation shall not last longer than two years. All Bid exclusions shall be approved by Council.

9.4 Alternative Dispute Resolution – Competitive Bid Protest Protocol

- i) All Suppliers/Vendors dealing with the Town or bidding on potential Contracts shall resolve any and all disputes they have specific to the competitive Bid process through the Alternative Dispute Resolution (ADR) process described in the Call for Bid and shall agree to such process as part of any response to the competitive Bid process;
- ii) The Award of any Contract shall not be rescinded or the progress of any project delayed by a request for the use of the ADR unless recommended by the Manager of Procurement, Town's Solicitor, Manager of the respective department and the CAO;
- iii) Any Supplier/Vendor that has asked to participate in the ADR process will be provided with information by Procurement to assist them to understand the Bid process and to assist them to improve their future Bid submissions for the Town.

9.5 Alternative Dispute Resolution – Contract Disputes

Any Contract disputes that arise between the successful Bidder/Proponent and the Town during the term of the Contract shall be handled through the Contract dispute process as outlined within the Call for Bid or Contract.

9.6 Contract Change Order

- i) A Contract Change Order may be executed by the Division Manager and/or Director with appropriate signing authority provided that the total project cost has not exceeded the level authorized by Council;
- ii) Where a Contract Change Order or the cumulative value of the Contract Change Orders plus the original Contract price exceeds the level authorized by Council by less than 10% of the approved budget (\$5,000

minimum, \$50,000 maximum), the Division Manager and/or the Department Director shall obtain the appropriate Additional Funding authorization from the CFO prior to executing the Contract Change Order;

- iii) Where a Contract Change Order or the cumulative value of the Contract Change Orders plus the original Contract price exceeds the overall approved budget by more than 10% (\$5,000 minimum, \$50,000 maximum), then Council approval for the additional funds is required;
- iv) Where a Contract Change Order is to be paid by a third party and the security to ensure payment is in place to the satisfaction of the CFO, the Division/Department Manager may execute the Contract Change Order. Where a portion of the Contract Change Order is to be paid by the Town, the provisions of the by-law shall be followed.

SCHEDULE “A”**Goods & Services Exempt From Provisions of the Procurement By-law**

This By-law does not apply to the acquisition of the following goods or services:

1. Goods or services the supply of which is controlled by a statutory monopoly.
2. Work to be performed on property under the provisions of a lease, warranty or guarantee held in respect of the property or the original work.
3. Goods purchased on a commodity market.
4. The following goods and services related to training and education:
 - Computer software for educational purposes
 - Conferences, conventions
 - Courses, seminars and workshops
 - Memberships
 - Newspapers, magazines, books and periodicals
 - Delivery of training
5. Services provided by the following licensed professionals:
 - Dentists
 - Medical doctors
 - Notaries
 - Lawyers
 - Nurses
 - Pharmacists
6. Goods and services related to cultural or artistic fields, such as:
 - A contract to be awarded to the winner of a design contest
 - Events supporting local non-profit organizations
 - Entertainers for theatre or special events

- Original works of art
 - Sponsorship and/or Naming Rights for cultural, sports and/or other Town of Midland owned venues
7. The following special services
- Arbitrators
 - Expert witnesses
 - Financial services respecting the management of financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution
 - Health services and social services
 - Honorariums
 - Recreation program facilitators and/or hosts
 - Services of financial analysts or the management of investments by organizations who have such functions as a primary purpose
 - Staff recruitment services
 - Utility relocates by Public Utility

In addition, this By-law does not apply to payment of the Town's general expenses, such as:

- Arbitration awards
- Charges to and from other government bodies
- Council approved grants
- Damage claims
- Debenture payments
- Insurance premiums when a licensed broker is retained
- Refundable employee expenses (advances, meal allowances, travel, miscellaneous)
- Payroll deduction remittances
- Health benefits
- Legal settlements
- Licensing fees
- Petty cash replenishment
- Refunds (such as property tax refunds, building permit refunds and refunds for cancelled services, programs or events)

- Sinking fund payments
- Tax remittances
- Utility bills (such as water and sewer, hydro, natural gas, telecommunications and cable television)
- Workers Safety Insurance Board payments

SCHEDULE “B”
Procurement Thresholds – within Approved Budget
Goods, Consulting Services and Construction

Requirement	Procurement Threshold	Procurement Method	Execution Method	PO/Invoice Approval Authority	Authority to Execute Agreement	Authority for Low Value Procurement
Establish Supply Agreement or Qualified Supplier Roster	Any value	<ul style="list-style-type: none"> • Open Competition 	<ul style="list-style-type: none"> • Contract Agreement 	<ul style="list-style-type: none"> • Department Director 	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
Goods, Services and Construction from existing Qualified Supplier Roster	In accordance with roster limits	<ul style="list-style-type: none"> • Qualified Supplier Roster Competition 	<ul style="list-style-type: none"> • Contract Agreement and/or; • Purchase Order 	<ul style="list-style-type: none"> • Division Manager 	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
Low Cost Purchase (LCP) – excluding Consultants	\$0 - \$10,000	<ul style="list-style-type: none"> • Corporate Purchasing Card (P-Card) or; • Vendor Invoice 	<ul style="list-style-type: none"> • Corporate Purchasing Card (P-Card) or; • Contract Agreement and/or; Vendor Invoice 	<ul style="list-style-type: none"> • Division Manager 	Department Director	<ul style="list-style-type: none"> • Division Manager may delegate to division staff via memo to CFO/CAO or through P-Card Program
Informal Request for Quotation (RFQ) & Consultants	\$10,001 - \$50,000	<ul style="list-style-type: none"> • Call for Bid issued to a minimum of three (3) Vendors by electronic invitation 	<ul style="list-style-type: none"> • Contract Agreement and/or; • Purchase Order 	<ul style="list-style-type: none"> • Division Manager 	Department Director and Manager of Procurement	<ul style="list-style-type: none"> • Not applicable
Formal Request for Quotation (RFQ)	\$50,001 - \$100,000	<ul style="list-style-type: none"> • Call for Bid issued and electronically posted 	<ul style="list-style-type: none"> • Contract Agreement and/or; • Purchase Order 	<ul style="list-style-type: none"> • Department Director 	<ul style="list-style-type: none"> • Mayor and Clerk, or designate 	<ul style="list-style-type: none"> • Not applicable

Requirement	Procurement Threshold	Procurement Method	Execution Method	PO/Invoice Approval Authority	Authority to Execute Agreement	Authority for Low Value Procurement
Informal Request for Proposal (RFP) or Request for Tender (RFT) & Consultants	\$10,001 - \$50,000	<ul style="list-style-type: none"> • Call for Bid issued to a minimum of three (3) Vendors by electronic invitation 	<ul style="list-style-type: none"> • Contract Agreement 	<ul style="list-style-type: none"> • Division Manager 	Department Director and Manager of Procurement	<ul style="list-style-type: none"> • Not applicable
Formal Request for Proposal (RFP) or Request for Tender (RFT)	\$50,001 +	<ul style="list-style-type: none"> • Call for Bid issued and electronically posted 	<ul style="list-style-type: none"> • Contract Agreement 	<ul style="list-style-type: none"> • Department Director 	<ul style="list-style-type: none"> • Mayor and Clerk, or designate 	<ul style="list-style-type: none"> • Not applicable
Request for Information (RFI)	Not Applicable	<ul style="list-style-type: none"> • RFI document issued 	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
Emergency Purchases	Not Applicable	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Contract Agreement and where possible given the circumstances and; • Purchase Order 	<ul style="list-style-type: none"> • As per above limits 	<ul style="list-style-type: none"> • Emergency purchase Form submitted by Division/Department to Procurement for approval (based on timing, submission may be after acquisition is made); • Where possible, Mayor and Clerk, or designate 	<ul style="list-style-type: none"> • Division Manager may delegate to division staff via memo to CFO/CAO or through P-Card Program
Single and Sole Source	Not Applicable	<ul style="list-style-type: none"> • Not Applicable 	<ul style="list-style-type: none"> • Contract Agreement and; • Purchase Order 	<ul style="list-style-type: none"> • Department Director & CAO 	<ul style="list-style-type: none"> • Single or Sole Source Form submitted from the Division/Department to Procurement for approval before the commitment of Acquisition is made; 	<ul style="list-style-type: none"> • Not applicable

Requirement	Procurement Threshold	Procurement Method	Execution Method	PO/Invoice Approval Authority	Authority to Execute Agreement	Authority for Low Value Procurement
					<ul style="list-style-type: none"> •Vendor quotation is required; •Mayor and Clerk, or designate 	
Purchase where the provisions of the by-law are being waived	Any Amount	•Not applicable	<ul style="list-style-type: none"> •Where appropriate, Contract Agreement and/or; •Purchase Order •Notice provided to Procurement 	•Council	•Mayor and Clerk, or designate	•Not applicable

SCHEDULE “C”**Procurement Thresholds – Sufficient Funding has not been included in the Approved Budget****Goods, Consulting Services and Construction**

Requirement	Procurement Threshold	Execution Method	PO/Invoice Approval Authority	Authority to Execute Agreement	Reporting Method
Goods, Services & Construction & Contract Change Orders	<10% (\$5,000 minimum, \$50,000 maximum) of approved budget	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Department Director & CFO 	<ul style="list-style-type: none"> • Mayor and Clerk, or designate 	<ul style="list-style-type: none"> • Via regular financial update report to Council
Goods, Services & Construction & Contract Change Orders	>10% of approved budget or >\$50,000 maximum	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Council 	<ul style="list-style-type: none"> • Mayor and Clerk, or designate 	<ul style="list-style-type: none"> • Via report to Council by Division/Department
Emergency Purchases	<10% (\$5,000 minimum, \$50,000 maximum) of approved budget	<ul style="list-style-type: none"> • Contract Agreement and/or; • Purchase Order 	<ul style="list-style-type: none"> • Department Director & CFO 	<ul style="list-style-type: none"> • Where possible, Mayor and Clerk, or designate 	<ul style="list-style-type: none"> • Emergency Form submitted from the Division/Department for approval (based on timing, submission may be after acquisition is made) • Via regular financial update report to Council
Emergency Purchases	>10% of approved budget or >\$50,000 maximum	<ul style="list-style-type: none"> • Contract Agreement and/or; • Purchase Order 	<ul style="list-style-type: none"> • Department Director & CAO 	<ul style="list-style-type: none"> • Where possible, Mayor and Clerk, or designate • Mayor and Clerk, or designate 	<ul style="list-style-type: none"> • Via report to Council by Division/Department following the emergency

Requirement	Procurement Threshold	Execution Method	PO/Invoice Approval Authority	Authority to Execute Agreement	Reporting Method
Single and Sole Source	<10% (\$5,000 minimum, \$50,000 maximum) of approved budget	<ul style="list-style-type: none"> •Contract Agreement and/or; •Purchase Order 	<ul style="list-style-type: none"> •Department Director & CAO 	<ul style="list-style-type: none"> •Mayor and Clerk, or designate 	<ul style="list-style-type: none"> •Single Source Form submitted from the Division/Department for approval before the commitment is made; •Vendor quotation is required
Single and Sole Source	>10% of approved budget or >\$50,000 maximum	<ul style="list-style-type: none"> •Contract Agreement and/or; •Purchase Order 	<ul style="list-style-type: none"> •Council 	<ul style="list-style-type: none"> •Mayor and Clerk, or designate 	<ul style="list-style-type: none"> •Single Source Form submitted from the Division/Department for approval before the commitment is made; •Vendor quotation is required
Purchase where the provisions of the by-law are being waived	Any Amount	<ul style="list-style-type: none"> •Where appropriate, Contract Agreement and/or; •Purchase Order Notice provided to Procurement 	<ul style="list-style-type: none"> •Council 	<ul style="list-style-type: none"> •Mayor and Clerk, or designate 	<ul style="list-style-type: none"> •Via report to Council by Division/Department

SCHEDULE “D” NON-STANDARDS PROCUREMENTS

Goods, services and construction may only be acquired through a non-standard procurement process under the following circumstances:

1. Where a standard procurement process conducted in accordance with this By-law and applicable procedures and protocols has not resulted in the receipt of any bids.
2. Where only one supplier is able to meet the requirements of a procurement in order to:
 - a) ensure compatibility with existing products; or
 - b) recognize exclusive rights, such as exclusive licenses, copyright and patent rights; or
 - c) maintain specialized products that must be maintained by the manufacturer or its representative.
3. Where there is an absence of competition for technical reasons and the goods or services can only be supplied by one particular supplier and no alternative or substitute exists.
4. The procurement is for additional deliverables by the original supplier of the goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:
 - a) Cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
 - b) Would cause significant inconvenience or substantial duplication of costs for the Town.
5. For the procurement of goods or services relating to matters of a confidential 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;
6. For the procurement of goods or services or construction from a public body or a non-profit organization.
7. For the procurement of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases.
8. For the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases.
9. For the procurement of goods, services and construction 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 and protocols.

10. The procurement is otherwise exempt from Open Competition requirements under all applicable trade agreements, and it is in the best interests of the Town to proceed with a non-standard procurement.

SCHEDULE “E” STATEMENT OF ETHICS FOR PUBLIC PURCHASERS
Statement of Ethics for Procurement

Goal: To ensure ethical, professional and accountable procurement.

All employees authorized to purchase Goods, Services and/or Construction on behalf of the Town must adhere to the following principles.

- a) **Open and Honest Dealings with Everyone who is Involved in the Purchasing Process. Procurement activities must be open and accountable.** This includes all businesses with which this Town contracts or from which it purchases Goods, Services and/or Construction, as well as all members of our staff and of the public who utilize the services of the Purchasing.
- b) **Fair and Impartial Award Recommendations for All Contracts and Tenders. Contracting and purchasing activities must be fair, transparent and conducted with a view to obtaining the best value for public money.** This means that Town Staff do not extend preferential treatment to any vendor, including local companies. Not only is it against the law, it is not good business practice, since it limits fair and open competition for all vendors and is therefore a detriment to obtaining the best possible value for each tax dollar.
- c) **An Irreproachable Standard of Personal Integrity on the Part of All Those Designated as Purchasing Representatives for This Town.** Individuals involved with procurement activities must act, and be seen to act, with integrity and professionalism. Honesty, care and due diligence must be integral to all procurement activities within and between the organization, suppliers and other stakeholders. Respect must be demonstrated for each other and for the environment. Confidential information must be safeguarded. Participants must not engage in any activity that may create, or appear to create, a conflict of interest, such as accepting gifts or favours, providing preferential treatment, or publicly endorsing suppliers or products.