

**THE CORPORATION OF THE TOWN
OF ESSEX**

BY-LAW NO. 2129

**BEING A BY-LAW TO ADOPT A
POLICY FOR THE PROCUREMENT
AND DISPOSAL OF GOODS AND
SERVICES**

WHEREAS Section 270. (1) of the Municipal Act, 2001 requires that a municipality adopt and maintain policies and procedures with respect to its procurement of goods and services;

AND WHEREAS the fundamental objective of the procurement process is to provide The Corporation of the Town of Essex (the "Town of Essex") with the goods and services that it requires in the course of business in the right quality, in the right quantity, on a timely basis, in an efficient manner and at the lowest overall cost;

AND WHEREAS the Town of Essex has undertaken a comprehensive review of its purchasing processes to identify improvements in accountability, transparency, efficiency and sustainability;

AND WHEREAS the Council of the Town of Essex deems it desirable to repeal, in its entirety, By-Law No. 1043, as amended and pass a new By-Law to adopt the revised policy related to the procurement and disposal of goods and services;

AND WHEREAS this By-Law authorizes the policies and procedures which the Town of Essex shall follow when purchasing and disposing of all goods and services;

NOW THEREFORE THE CORPORATION OF THE TOWN OF ESSEX ENACTS AS FOLLOWS:

1. That By-Law No. 1043 is hereby repealed.
2. The Policies and Procedures for the Procurement and Disposal of Goods and Services contained in schedule "A" to this By-Law shall come into full force and effect up the final reading and passing of this By-Law.

Read a first and a second time and provisionally adopted February 22, 2022.

Mayor

Clerk

Read a third time and finally passed on March 7, 2022.

Mayor

Clerk



POLICY MANUAL

THE CORPORATION OF THE TOWN OF ESSEX

SECTION: CORPORATE COUNCIL		DOCUMENT NO: BY-LAW2129
		EFFECTIVE DATE: March 01, 2022
SUBJECT: PROCUREMENT AND DISPOSAL OF GOODS AND SERVICES		REPLACES ISSUE OF BY-LAW1403
PREPARED BY: Jackson Tang, Assistant Manager, Business Services	APPROVED BY:	APPROVED DATE:

SECTION 1.00 – INTRODUCTION

1.01 Short Title

This Policy is formally referred to as the “Procurement Policy” but may also be cited as the “Purchasing Policy”.

1.02 Definitions

In this Procurement Policy,

“Acquisition” means the acquisition of goods or services by means of purchase, lease, rental, or exchange transaction.

“Applicable Law” means any applicable federal, provincial, or municipal law, statutes, by-laws, regulations rules, lawful orders, or lawful directives applicable in Ontario from time to time.

“Agreement” means a formal written legal Agreement or Contract for the supply of goods and services.

"Authorized Signing Authority" means the Mayor and Clerk, or any other individuals designated by Council to have the authority to bind the Corporation.

"Award" means the authorization to proceed with the purchase of goods and/or services from a bidder.

"Best Value" means the optimal balance of cost, including lifecycle cost and performance that provides the greatest overall benefit under the specified selection criteria in accordance with a predetermined evaluation plan.

"Bid" means an offer or submission from a supplier in response to a Request for Quotation, Request for Tender, Request for Proposal, or any other bid solicitation issued by the Town of Essex.

"Bid Bond" means a form of security provided by a bidder as required under the terms and conditions of a Bid Solicitation to guarantee that the successful bidder enters a contract with the Town of Essex. The bid bond may be in the form of a certified cheque, bank draft or security provided by a bonding agency.

"Bid Document" means a document issued by the Town of Essex to secure bids or proposals for goods and services and includes, but is not limited to a Request for Quotation, Request for Tender, and Request for Proposal, Request for Expression of Interest, and a Request for Pre-Qualification.

"Bidder" means any legal entity submitting a competitive bid in response to a Request for Quotation, Request for Tender, Request for Proposal, or any other bid solicitation issued by the Town of Essex.

"Bid Irregularity" means a deviation between the requirements (terms, conditions, specifications, special instructions) of a bid request and the information provided in a bid response. For purposes of this Policy, bid irregularities are further classified as "major irregularities" or "minor irregularities" which are further defined as follows.

"Major Irregularity" generally means a deviation from the bid request which affects the price, quality, quantity, or delivery and is material to the award. If the deviation is permitted, the bidder could gain an unfair advantage over competitors. Mandatory requirements for bidders responding to bid documents as defined in the bid document shall also be considered a major irregularity. The Town of Essex shall reject any bid which contains a major irregularity.

"Minor Irregularity" means a deviation from the bid request which affects form rather than substance. The effect on the price, quality, quantity, or delivery is not material to the award. If the deviation is permitted or corrected the bidder would not gain an unfair advantage over competitors. The Town of Essex may permit the bidder to correct a minor irregularity.

“Bid Process” means a process which a bid document is issued by the Town of Essex up to and including the award of the contract or the withdrawal of the bid document by the Town of Essex.

“Bid Rigging” describes any collusive arrangement between two or more suppliers to compromise one or more competitive aspects of a Request for Quotation, Request for Tender, Request for Proposal, or any other form of bid document or any comparable or similar collusive arrangement between one or more suppliers and member(s) of the Town’s staff. The signs of possible bid rigging are provided in Information Document A attached to this Policy.

“Bid Solicitation” means a formal request for bids by the Town of Essex that may be in the form of a Request for Quotation, Request for Prequalification, Request for Tender, Request for Proposal, or any other form of bid solicitation issued by the Town of Essex.

“Blanket Purchase Order” means a document used to formalize a purchasing transaction requiring the vendor to hold firm the quoted price(s) for a designated period and is issued to a supplier for specific item(s) to be purchased over a specified period not to exceed one year. A Blanket Purchase Order is typically used in cases where goods and services are used by one or more departments repetitively throughout a year.

“CAO” means the Chief Administrative Officer of the Town of Essex.

“Change Order” means the Town’s, written order to the contractor issued after execution of a contract between the Town and a contractor that changes the scope, specifications, time, or amount of a project. A Change Order is valid only if it bears the signature of an authorized signing authority for the Town of Essex indicating approval to proceed.

“WSIB Clearance Certificate” means a document issued by the Workplace Safety and Insurance Board (“WSIB”) which provides assurance that a contractor or subcontractor: -

- is registered with the WSIB
- has filed all premium remittance forms and reconciliation forms, and
- has paid all premiums owing to the WSIB based on payroll reported.

“Clerk” means the Clerk of the Town of Essex.

“Conditional Bid” means a bid that introduces some condition(s) not authorized by the Town in the offer to supply.

“Construction” means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, soil investigation, the supply of products and materials and the supply of equipment and machinery if they are included in and incidental to the construction and the installation and repair of fixtures of a building, structure or other civil engineering design or architectural work, but does not include professional services related to the construction contract unless they are included in the specifications.

“Consulting and Professional Services” means those services requiring the skills of a professional for a defined service and may include, but is not limited to architects, engineers, designers, surveyors, planners, accountants, auditors, management professionals, marketing professionals, software and information technology experts, financial consultants, economists, insurance consultants, lawyers, law firms, real estate agents and brokers, environmental planners and engineers, hydro geologists, transportation planners and engineers, communications consultants and any other professional services which may be required by the Town of Essex.

“Contract” means a legally binding agreement, usually in writing, between two or more parties. For purposes of this Policy, contracts may be in the form of a

- a) Purchase Order, or
- b) Purchase Order incorporating a formal Agreement, or
- c) Formal agreement between two or more parties that creates an obligation to provide defined goods and/or perform defined services.

“Contractor” means an entity independent of the Town of Essex that agrees to provide goods, materials, equipment, personnel and/or services to the Town at a mutually agreed upon price, within a specified timeframe and under terms specified in a contract or Purchase Order.

“Council” means the Municipal Council of the Town of Essex.

“Councillor” means an individual elected to Municipal Council of the Town of Essex.

“Department” means any department within the Town of Essex and includes any Committee of Council.

“Department Head” means the C.A.O., Director, Corporate Services, Director, Community Services, Director, Infrastructure Services and Director, Development Services or their authorized designate.

"Deputy CAO" means the Deputy CAO of the Town of Essex.

"Deputy-Treasurer" means the Deputy-Treasurer of the Town of Essex.

"Designate" means any Town of Essex employee authorized in writing to act in the absence of a Department Head.

"Director" means a Town of Essex employee with responsibility for administering the activities of a Town department or sub-department.

"Disposal" means the transfer of ownership of goods from the Town of Essex by sale, exchange, trade-in, transfer, destruction, or gift.

"Emergency" means a situation where the purchase of goods and services requires immediate action as a result of the following situations: -

- a) An imminent or actual danger to the life, health, or safety of an official, the public or an employee while acting on behalf of the Town of Essex.
- b) An imminent or actual danger of injury to or destruction of real or personal property belonging to the Town of Essex, for which the Town would be liable.
- c) An unexpected interruption or threat of an interruption of an essential public service.
- d) An emergency as defined by the Emergency Management Act and the Emergency Response Plan formulated by the Town of Essex; or
- e) A spill of a pollutant or contaminant as contemplated by the Environmental Protection Act.

"Evaluation Committee" means a component of the Request for Proposal process whereby a committee is established to conduct the proposal review, evaluation, interview and/or presentation during the proposal evaluation for goods, The Evaluation Committee rates all proposals against established criteria and reaches consensus on the final rating results.

"Evaluation Criteria" means those elements of a proposal that are used to rate responses to a Request for Proposal and may include, but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency, expansion potential, proponent qualification and experience and sustainability.

"Executed Agreement" means a form of agreement, either incorporated in the bid documents or prepared by the Town of Essex or its agents, which has been executed by the successful bidder and the Town of Essex.

"Fair Market Value" means the price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arm's

length that are fully informed and not under any pressure or compulsion to transact.

“Finance Committee” means a Committee of Council which considers municipal matters of a financial nature.

“Goods” includes supplies, materials and equipment of every kind required to carry on the operations of the Town of Essex.

“Holdback” means an amount withheld under the terms of the contract to be used as security and to ensure the complete performance of the contract.

“Informal Quotation” means quotations obtained by telephone, fax, in writing or by any other method of communication. Informal Quotation is typically used as a Low Value Procurement method.

“Irrevocable Letter of Credit” means an irrevocable letter from a financial institution containing a request that the party to whom it is addressed pays the bearer or a person named therein money as a result of failure to perform or fulfill all the covenants, undertakings, terms, conditions and agreements contained in a contract.

“Labour and Materials Payment Bond” means a bond issued by a surety company licensed in the Province of Ontario or Letters of Credit to ensure that the contractor has paid his/her suppliers and thereby protects the Town of Essex against liens which might be granted to suppliers should the contractor not make proper payments.

“Life Cycle Costs” means the cost of a product or service throughout its life including, but not limited to, maintenance, staffing, training, waste disposal, disposal costs, etc.

“Letter of Agreement to Bond” means a letter or other form issued by a bonding agency licensed to operate by the Government of Canada or the Province of Ontario advising that if the bidder is successful the bonding agency will issue the required bonds.

“Local Supplier” means the supplier within the boundaries of the City of Windsor and the County of Essex.

“Lowest Compliant Bid” means the bid that would provide the Town of Essex with the desired goods and/or services at the lowest per unit or overall cost meets all the specifications and contains no major irregularity or qualifications.

“Mandatory Site Meeting” or “Pre-Bid/Pre-Proposal Meeting” means the bidder or proponent must attend a meeting to obtain information relating to the

bid solicitation and the information is of a nature that cannot practically be obtained by written means and which is needed to submit a bid or proposal. Failure to attend a mandatory meeting will result in bid disqualification.

“Mayor” means the elected Head of Council of the Town of Essex, or the Deputy-Mayor appointed by Council to act in the Mayor’s stead.

“Multi-Year Contracts” refer to commitments to purchase goods and services from a supplier over a period of more than one year. The Total Acquisition Cost for Multi-Year Contracts shall include the total costs over the term of the contract for purposes of determining the method of procurement and the approvals required.

“Negotiation” means the action or process of conferring with one or more vendors with the intent of settling the terms of an agreement for the acquisition of the required goods and services under the conditions outlined in this Policy.

“Officer” means any elected or appointed official or a head or chair of a board or committee of the Town of Essex.

“Performance Bond” means a bond issued by a surety company licensed in the Province of Ontario or Letters of Credit executed in connection with a contract and which secures the performance and fulfillment of the undertakings, covenants, terms, conditions, and agreements contained in the contract.

“Performance Maintenance Bond” means a Performance Bond as defined in this Section that relates purely to the performance of warranty obligations.

“Post-Consumer Waste” means material generated by households or by commercial, industrial, and institutional facilities in their role as end-users of the product, which can no longer be used for its intended purpose. This includes returns of material from the distribution chain.

“Pre-Consumer Waste” means material diverted from the waste stream during a manufacturing process. Excluded is reutilization of materials such as rework, regrind or scrap generated in a process and capable of being reclaimed within the same process that generated it.

“Progress Payment” means a payment made under the terms of a contract during its term and before its completion.

“Proposal” means a competitive offer, binding on the proponent and submitted in response to a Request for Proposal where proposal evaluation and contract award is based on criteria such as, but not limited to, proponent qualifications and experience, product features and characteristics, service quality and efficiency and conformance with specifications and requirements contained in the Request

for Proposal. Price may be an evaluation criterion for proposals but will not necessarily be the predominant criteria for contract award.

"Purchase Order" means a written offer to purchase goods and services or a written acceptance of an offer where such offer has been made on forms prescribed by the Town of Essex.

"Purchasing Administrator" means Purchasing Administrator of the Town of Essex who administers procurement process for all goods and services, required by the Town in accordance with this by-law, current regulations, competitive bidding law, and industry best practices.

"Quotation" means a bid received as a result of a written ("Request for Quotation") or verbal request ("Informal Request for Quotation") by the Town of Essex for the supply of goods and/or services.

"Recycled Content" means the proportion, by mass, of recycled material in a product or packaging. Only pre-consumer and post-consumer materials shall be considered as recycled content, usually expressed as a percentage of its total material content

"Request for Expression of Interest" means a request which will be used to determine the interest of the marketplace to provide Goods and/or Services which the Town is contemplating purchasing and may result in the determination of a short list of bidders to respond to a bid request.

"Request for Pre-Qualification" means a request with specific qualification criteria which will be used to identify and pre-select bidders, where the experience and qualifications of the bidders must be clearly established and verified prior to bidding.

"Request for Proposal" means a process where a need is identified, but the method by which it will be achieved is unknown or flexible at the outset. The RFP process allows vendors to propose solutions or methods to arrive at a desired result. The solicitation of written, competitive proposals will be used as a basis for entering a contract where specification and price are not necessarily the predominant award criteria. Requests for proposal may be formal or Informal, depending on the anticipated value of the goods or services to be purchased.

"Request for Quotation" means a formal bid solicitation process for the purchase of goods and services whose anticipated Total Acquisition Costs is not expected to exceed One Hundred and Twenty Thousand (\$120,000) and for which written quotes will be provided by suppliers in a prescribed format and must be submitted in a sealed envelope.

"Request for Tender" means a formal bid solicitation process for obtaining competitive bids for the purchase of goods and services that have precisely

defined requirements for which a clear or single solution exists and for which the anticipated Total Acquisition Cost of the purchase exceeds One Hundred and Twenty Thousand (\$120,000) Dollars.

“Reserve Price” means the minimum price that Town of Essex will accept on the sale of specific materials or equipment owned and declared surplus by the Town and offered for sale.

“Sealed Bid” means a formal sealed response received as part of a Request for Quotation, Request for Tender, Request for Proposal, or any other formal bid solicitation process.

“Senior Management Team” refers to the Chief Administrative Officer, the Director, Corporate Services, the Director, Infrastructure Services, the Director, Development Services and the Director, Community Services.

“Service” means all professional, consulting, construction or maintenance services including the delivery, installation, repair, restoration, demolition or removal of personal property and real property.

“Sole Source Procurement” is a non-competitive procurement process accomplished as a result of soliciting and negotiating the procurement of goods and services from the only one supplier.

“Single Source Procurement” is to waive the competitive bid process entirely and directly select a supplier, even if there are other suppliers capable of fulfilling the requested order for goods or services.

“Specification” means any description of the physical or functional characteristics, or of the nature of supply, service, and equipment or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, equipment, or construction item for delivery. It may also include drawings or samples.

“Surety Bond” means a form of a written promise under seal which commits its issuer (the “surety” to pay a named beneficiary - the “obligee”) a sum up to a stipulated amount, but subject to the proviso that the obligation of the issuer will cease if certain specified conditions are met.

“Sustainable Procurement” means procurement that considers the environmental impact, the economic and financial impact and the social impact of purchasing goods and services.

“Tender” means a written offer received from a supplier of goods and/or services in response to an advertised Request for Tender.

“Total Acquisition Cost” means the sum of all costs including, but not limited to, purchase price, all taxes, warranties, local service costs, life cycle costs, time of completion or delivery, inventory carrying costs, operating and disposal costs for purposes of determining the lowest compliant bid and the method of procurement required.

“Town of Essex” means the Corporation of the Town of Essex.

“Treasurer” means the Treasurer for the Town of Essex, or the Deputy Treasurer appointed by Council to act in the Treasurer’s stead.

“Two Envelope System” is a process whereby separate envelopes are submitted for a Formal RFP, with one envelope containing pricing information and another envelope containing the details of the proposal for purposes of evaluating the proposal based on all evaluation criteria, excluding price.

“Unbalanced Bid” means a bid in which the bidder places an unreasonably high value on certain items in a unit price contract and an unreasonably low price on other items within the same bid for purposes of front end loading progress payments under a contract (receiving large payments at the beginning of a contract) or for maximizing its profits on items that will be used in a contract in greater quantities than estimated in the tender document and under-pricing items it believes will be used in significantly lesser quantities.

“Vendor” means the person or company from whom the Town purchases commodities or services.

1.03 Attachments to this Policy

The following tables, appendices and information documents attached hereto form part of this Policy: -

Table I	Table of Contents
Table II	Procurement Methods
Table III	Use of Procurement Methods
Appendix A	Response to Irregularities Contained in Bids
Appendix B	Two-Envelope RFP Process

SECTION 2.00 – PROCUREMENT PRINCIPLES AND GOALS

The Procurement Policy: -

- 2.01 Provides guidance and direction for the expenditure of funds to complete all programs approved by Council in the annual Operating and Capital Budgets and any approved revisions thereto.
- 2.02 Establishes the minimum requirements to ensure that quotations are obtained, competitive purchasing is adhered to and that the Town of Essex obtains the best value of goods and/or services at the most economical cost.
- 2.03 Strives to ensure openness, accountability, transparency, efficiency, and consistency in purchasing activities while protecting the financial interests of the Town of Essex and respecting the competitive interests of those participating in the purchasing process.
- 2.04 Ensures that decisions related to purchases or disposals consider total acquisition or disposal costs, including lifecycle costs and that purchasing decisions are not based strictly on lowest bid price.
- 2.05 Promotes sustainable procurement best practices in the acquisition, use and disposition of goods, services, assets, and infrastructure with consideration to: -
 - a) Environmental Impact – Promotes goods and services that make lesser or reduced demands on non-sustainable resources and avoids those which adversely affect air, water, or terrestrial environments.
 - b) Economic and Financial Impact – Considers total cost of ownership over the entire life cycle of a product or service, taking into account not only upfront costs but also costs of maintenance, transportation, staffing, training and waste disposal.
 - c) Social Impact – Contributes to ethical and social well-being.
- 2.06 Clearly establishes accountability and authority for those employees responsible for administering the programs and services approved by Council for the Town of Essex.
- 2.07 Provides a system of financial control for purposes of safekeeping the funds and assets of the Town of Essex.
- 2.08 Provide equitable access to economic opportunities to people experiencing economic disadvantage, discrimination and/or barriers to equal opportunity,

including those from equity seeking communities protected by human rights legislation. These communities include, but are not limited to, women, aboriginal, people, racial minorities, persons with disabilities and newcomers.

- 2.09 Encourages departments to take advantage of purchasing power gained by consolidated purchasing when the same goods and services are used by more than one department.
- 2.10 Maintains the highest standard of integrity throughout the procurement process.
- 2.11 Promotes social value, including support the local economy, to the extent that it is legally permitted.

SECTION 3.00 – APPLICABILITY

- 3.01 The provisions of this Policy shall apply to the acquisition of all goods and services undertaken by or on behalf of Departments and Committees of Council of the Town of Essex with the exception of the following: -
 - a) Real estate including land, buildings, leasehold interests, easements, encroachments, licenses, etc.
 - b) Refundable Council, Employee and Committee Member Expenses including: -
 - i) Advances and meal allowances
 - ii) Travel
 - iii) Hotel accommodation and mileage
 - iv) Miscellaneous, non-travel expenses
 - b) Training and Education, including: -
 - i) Conferences, conventions, courses, workshops, and seminars
 - ii) Magazines, books, subscriptions, and periodicals
 - iii) Memberships
 - c) Utilities including water and sanitary sewer, hydro, natural gas, and telephone.
 - d) General Expenses limited to the following: -
 - i) Payroll deduction remittances
 - ii) Tax remittances
 - iii) Employee income and employee benefit payments and

- premiums
- iv) Licenses (vehicles, equipment, elevators, radios, etc.)
- iv) Debenture payments
- v) Grants to agencies
- vi) Postage
- vii) Replenishment of Petty Cash funds
- ix) Building Lease Payments
- x) Insurance claims, legal settlements, and arbitration awards
- xi) Charges to and from other government bodies, including Federal, Provincial or Municipal and School Boards

f) Professional and Other Services: -

- i) Committee fees
- ii) Legal fees for expert or professional legal services
- iv) Arbitrators
- iv) Court reporters
- v) Honoraria
- vi) Insurance premiums

- 3.02 No commitment shall be entered into, no debt shall be incurred, no expenditure shall be made, and no account shall be paid in respect of a commitment for goods and services except in accordance with the provisions of this Policy.
- 3.03 The acquisition of goods and services shall be conducted in accordance with all policies and procedures of the Town of Essex, including but not limited to policies and procedures on procurement or purchasing, employee conduct, sustainable procurement, financial matters, health and safety and records management.
- 3.04 Delegation of responsibility **and authority** under this Policy shall only occur as specifically provided.

SECTION 4.00 – ETHICS IN PURCHASING

- 4.01 The acquisition of goods and services undertaken by or on behalf of Departments and Committees of Council shall be made in accordance with the Code of Ethics of the Ontario Public Buyers Association (“OPBA”) which is based on the following tenets: -
- a) “Open and Honest Dealings with everyone who is Involved in the purchasing process”. This includes all businesses with which the Town of Essex contracts or from which it purchases goods and services.
 - b) “Fair and Impartial Award Recommendations for All Contracts and Tenders.” The Town of Essex shall 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 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 Agents. Absolutely no gifts or favours, including but not limited to, money, loans, credits, discounts, entertainment, etc. shall be accepted by anyone purchasing on behalf of the Town of Essex in return for business or consideration of business. The Town of Essex shall not publicly endorse one company in order to give that company an advantage over others.

- 4.02 The Town adheres to and insists upon adherence to a strict ethical standard in all Town acquisitions by all bidders and vendors. Bidders and vendors shall be required to become knowledgeable with and adhere to the Town's policies in this regard, as may be amended from time to time.

SECTION 5.00 – OFFICIAL CONTACT AND LOBBYING

- 5.01 The Official point of contact shall always be named in all bid documents and that person or his/her designate shall be the only person who communicates with **bidders** during **the bid process**.
- 5.02 In order to ensure fairness to all bidders, the Town of Essex shall endeavour to prevent unfair advantage created by **Lobbying**. The Town reserves the right to disqualify, at any time and at its sole discretion, any bidder engaging in lobbying in connection with a competitive bidding process.
- 5.03 Lobbying may include any activity that the Town, in its sole discretion, determines has or may give an unfair advantage to one bidder relative to other bidders and includes verbal or written approaches to -
 - a) Any Town of Essex staff other than those identified as contacts in a bid document,
 - b) Any Town of Essex Council member,
 - c) Members of Parliament, Members of Provincial Parliament or any related government ministries and their staff,
 - c) Any member of an Evaluation and Selection Committee of the Town of Essex,
 - d) Any expert or other advisor assisting the Town of Essex Evaluation and Selection Committee.

- 5.04 Members of Council or staff that are not named the contact person for a bid document that are contacted by a **bidder** related to a bid document from the point of posting a bid document to the award of the contract to a successful bidder shall tell such bidder to communicate with the contact person named in the bid document and shall cease further discussions related to a specific bid call with such **bidder**.
- 5.05 Members of Council or staff that are not named the contact person for a bid document shall advise the person named as the contact person of any contact by **bidders** related to such bid document and the nature of such contact.

SECTION 6.00 – LOCAL PREFERENCE

- 6.01 The Discriminatory Business Practices Act, R.S.O. 1990, c. D. 12 has been established to prevent discrimination in Ontario on the grounds of race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of persons employed or engaging in business.
- 6.02 As provided for in Section 5 of the Discriminatory Business Practices Act, R.S.O.1990, granting preference to local suppliers to supply goods and services to the Town of Essex is a discriminatory business practice.
- 6.03 **Both Canadian Free Trade Agreement and Comprehensive Economic and Trade Agreement prohibit the use of local preference or economic benefits criteria that are designed to favour the goods, services, or suppliers. This restriction includes construction contracts.**
- 6.03 The Town of Essex shall not engage in granting preference to local suppliers.

SECTION 7.00 - RESPONSIBILITIES AND AUTHORITIES

- 7.01 The Chief Administrative Officer (“C.A.O.”), the Treasurer and **the Purchasing Administrator** have the responsibility and authority to: -
- a) Provide purchasing advice to Departments,
 - b) **Approve Purchases in accordance with this Policy,**
 - c) Monitor adherence to the provisions of this Policy,
 - d) Notify Department Heads, in advance, if possible, of non-compliance with this Policy,

- e) Inform Council when non-compliance with this Policy has occurred,
- f) Provide ongoing training and education related to this Policy,
- g) Ensure the issuance of Purchase Orders and other Agreements/Contracts in a timely and efficient manner,
- h) Continuously monitor and evaluate the efficiency and effectiveness of this Policy,
- i) Instruct Department Heads to submit recommendations for the purchase of Goods and Services to Council for approval at any time or place additional restrictions on Department Heads related to purchasing where such action is considered necessary and in the best interests of the Town of Essex,
- j) Ensure that the purchase of all goods and services for the Town of Essex is made within the approved annual Operating and Capital Budgets or upon authority of a resolution of Council within the limits and conditions set out in such resolution, and
- k) Develop or review and approve standard forms and templates for all processes related to purchasing.

7.02 Department Heads have the responsibility and authority to: -

- a) Acquire all goods and services required to ensure the efficient operation of the respective Department(s) within the limitations of the annual Operating or Capital Budget adopted by Council or a resolution of Council,
- b) Oversee the purchasing activities below \$50,000.00 of the respective Department(s),
- c) Ensure that all provisions of this Policy have been met before purchasing any goods and services,

7.03 Purchasing Administrator has the responsibility and authority to: -

- a) Administer procurement process for all goods and services required to ensure the efficient operation of the respective Department(s) within the limitations of the annual Operating or Capital Budget adopted by Council or a resolution of Council,
- b) Oversee the purchasing activities of all Department(s),
- c) Ensure that all provisions of this Policy have been met before purchasing any goods and services,

- d) Ensure the issuance of Purchase Orders and other Agreements/Contracts within the respective Department(s) in a timely and efficient manner,
- e) Ensure proper authorizations are obtained prior to purchasing as set out in this Policy and summarized in Table "II", "Procurement Methods" attached hereto.
- f) Prepare or assist to prepare Reports to Council recommending the award of a tender, proposal or quotation as required and outlined in Table "III", "Use of Procurement Methods" attached to this Policy or as specifically directed by the C.A.O. or Treasurer.

7.04 Prescribed Council Approval

- a) Council approval for the award of a tender or proposal is required as set forth in Table "III", Use of Procurement Methods.
- b) Council approval is also required in cases where: -
 - i) in the opinion of the C.A.O. or Treasurer, it is felt purchases should be reviewed by Council;
 - ii) total Acquisition Costs for Capital purchases exceed budgetary allotments;
 - iii) the contract is not being awarded to the lowest bid that has met the specifications and terms and conditions of the Request for Quotation or Request for Tender; or,
 - iv) there is a requirement by a senior level of government (example: Federal, Provincial) for Council approval of a bid.
- c) A formal Report to Council recommending the award of a tender, quotation or proposal must be prepared in all cases where Council approval is required.

SECTION 8.00 – CONFLICT OF INTEREST

- 8.01 Where an elected official, officer or employee of the Town of Essex, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary or non-pecuniary interest, direct or indirect, in any purchasing matter and is present at any meeting at which the purchasing matter is the subject of discussion or consideration, the elected official, officer or employee of the Town -
 - a) Shall not take part, in any way, in the procurement process for which the conflict exists, including, but not limited to the securing of pricing or

preparation of bid documents, contact with **bidders** participating in the **bid** process, the official closing and recording of bids received, evaluation and discussion of bids, negotiation, authorization or approval of the contract, authorization or approval of payments under the contract, or any other matter related to the purchase;

- b) Shall, prior to any discussion or consideration of the matter at any meeting, disclose the interest and the general nature thereof;
- c) Shall not take part in the discussion of, or vote on any question in respect of the matter; and,
- d) Shall not attempt in any way whether before, during or after the meeting to influence the voting in respect of the matter.
- e) **Situations that may result in a conflict of interest include:**
 - **Being engaged in outside employment;**
 - **Having relationships that may affect or may be perceived as affecting an individual's objectivity in carrying out an official role;**
 - **Providing assistance or advice to a supplier participating in a competitive process;**
 - **Having an ownership, investment interest or compensation arrangement with any entity participating in a competitive or non-competitive process;**
 - **Having access to confidential information that may affect or may be perceived as affecting one's objectivity or judgement in carrying out an official role; and**
 - **Accepting favours or gratuities from those doing business with the Organization.**
- f) **Any elected official, officer or employee of the Town of Essex that believes he/she has an actual or potential conflict should follow the appropriate procedure for disclosure set out in the Code of Conduct for Members of Council and Local Boards/Committees or Code of Conduct for Employee, where appropriate.**

8.02 All **vendors** awarded a contract for the supply of goods and services to the Town of Essex shall disclose to the Town prior to accepting contract, any potential Conflict of Interest. If such a Conflict of Interest exists, the Town of Essex as directed by the Treasurer or CAO may, at its discretion, withhold the assignment of the contract until the matter is resolved.

8.03 If during the course of a contract to supply goods and services, a vendor is retained by another client giving rise to a potential conflict of interest, then the vendor shall so inform the Town of Essex.

8.04 At any time during a bid process beginning with preparation of a bid document

through to the award and commitment stage, no person shall accept, directly or indirectly, from any person or organization to which any acquisition is, or might be awarded, anything of any value including rebates, gifts, meals, money or special privileges.

- 8.05 No preference will be given to **bidders** who provide unsolicited products or samples to the **Town of Essex** or who demonstrate the operation of such products or samples.
- 8.06 A conflict of interest is created where a consultant retained to develop competitive procurement documents can fulfill the procurement need contemplated in the procurement documents. The terms of agreement must preclude any consultant retained to develop the competitive procurement documents from participating in the competition.
- 8.07 In addition to the situations that might result in a conflict of interest for all Members of an Organization and advisors, Tender evaluation team members must sign the conflict-of-interest declaration and non-disclosure agreement before each evaluation.

SECTION 9.00 – PROCUREMENT METHODS

- 9.01 The procurement methods used by the Town of Essex to purchase goods and services are outlined in Table “II”, “Procurement Methods”. The general conditions under which a specific procurement method is used is provided below and summarized in Table “III”, “Use of Procurement Methods”:
- 9.02 Informal Low Value Procurement (Purchases with a value of \$0 to \$50,000)
- a) An Informal Low Value **bid** process is undertaken in cases where all of the following criteria exist:-
- i) the requirements for goods and services can be precisely defined and for which a clear or single solution exists;
 - ii) the Total Acquisition Cost of the goods and services is no greater than **Fifty Thousand (\$50,000.00)** Dollars, including applicable taxes; and,
 - iii) sufficient funds are available in the approved Operating or Capital Budget to pay for the goods and services.
- b) For purchases under **\$10,000.00**, **only one quotation is required**. Departments are encouraged to consider the support to local economy apart from quality, price, delivery time and service level, etc. whenever making a purchase. The requirement to obtain more than one

quotation shall be at the discretion of the Department Head.

- c) Upon request, the C.A.O. or Treasurer shall assist in reviewing quotations obtained by departments. The requirement to obtain additional quotes for the purchase of goods and services shall be at the discretion of the Treasurer or C.A.O.
- d) The Town of Essex reserves the right to accept or reject any submission.
- e) A minimum of three informal written quotations/proposals shall be required for purchases exceeding \$10,000.00, including applicable taxes, of which at least one (1) is from a local supplier, where possible. Approval must be sought as per Table "III", "Use of Procurement Methods". A duly authorized Purchase Order prepared by the Purchasing Administrator should be issued. The quotations obtained shall be noted on the Purchase Order in the appropriate section and all written quotations shall be attached to the Purchase Order. A copy of the approved Purchase Order shall be retained by the Purchasing Administrator in accordance with Section 44.00, "Retention of Purchasing Documentation" of this Policy.

9.03 Request for Quotations (Purchases with a value of \$50,001 to \$120,000)

- a) A Request for Quotation ("RFQ") is undertaken in cases where all of the following criteria exist: -
 - i) the requirements for goods and services can be precisely defined and for which a clear or single solution exists;
 - ii) two or more sources are considered capable of supplying the required goods and services;
 - iii) the Total Acquisition Cost of the goods and services is greater than Fifty Thousand (\$50,000.00) Dollars and less than One Hundred and Twenty (\$120,000.00) Dollars, including applicable taxes; and,
 - iv) sufficient funds are available in the approved Operating or Capital Budget to pay for the goods and services.
- b) The Department Head shall: -
 - i) prepare the specifications and/or scope of work, terms, and conditions relevant to the acquisition of goods and services in accordance with this Policy
- c) The Purchasing Administrator shall: -
 - i) give notice of the RFQ by advertising such RFQ on the Town of Essex website and/or any other electronic tendering platform (such as

- ii) prepare and submit for posting any Addendums to the RFQ;
 - iii) arrange for the public opening of responses to RFQ's in accordance with Section 14.00, "Bid Closing and Public Opening of Bids" of this Policy, at the time and date specified in the RFQ;
 - iv) consider any irregularities in responses to an RFQ and act in accordance with Appendix "A", Response to Irregularities Contained in Bids" and Section 18.00, "Bid Irregularities" of this Policy;
 - iv) prepare or assist to prepare a Report to Council or Report to Finance Committee summarizing the bids received and recommending the award of the contract if the total value of the RFQ, including applicable taxes, is greater than \$120,000 for goods and services or is greater than \$300,000 for construction projects or is greater than the amount included in the approved budget;
 - v) prepare a Purchase Order for the purchase of goods and services under a RFQ with approval of such Purchase Order to be obtained from the Department Head and the Treasurer or CAO prior to the purchase of goods and services in accordance with Section 24.00, "Requirements for Purchase Orders and Contracts".
- d) Despite the foregoing the Department Head, C.A.O. or Treasurer may deem it more appropriate to solicit bids under \$120,000 by using a "Request for Tender" or "Request for Proposal".
- e) All RFQ's must be submitted in a sealed envelope clearly marked as to their contents on or before the deadline for submission of RFQ's. Faxed or emailed RFQ's submitted by any bidder will be a breach of the RFQ and will result in the total rejection of any and all quotations received, or to be received from such bidder any form under that RFQ.
- f) All RFQ's will be advertised on the Town of Essex website. The onus is on interested vendors to review the Town of Essex website from time to time for competitions that may be of interest to them. Department Heads may also notify businesses that are capable of supplying the required goods and services of the Request for Quotation.
- g) Advertisements, where no trade agreements applies, must appear with at least fifteen (15) calendar days before RFQ closing to permit a bidder to examine the advertisement, obtain the RFQ documents and complete and submit their bid.
- h) No work may commence or any commitment to the purchase of goods and/or services shall be entered into, until such time as a Purchase Order has been issued or a contract signed and all necessary documents have been received (for example, proof of insurance, WSIB Clearance Certificate).
- i) The Town of Essex is under no obligation to accept the lowest or any bid submitted in an RFQ process, and the Town of Essex will not accept any

responsibility, financial or otherwise, claimed by or resulting from, a proponent's response to a bid document.

- j) The Town of Essex reserves the right to evaluate bids submitted in an RFQ process based on factors other than total acquisition costs, including but not limited to:-
- Environmental impact;
 - Economic and financial impact; or,
 - Social impact.
- k) The Town of Essex is under no obligation to disclose the names of organizations that have expressed an interest in a RFQ or have otherwise communicated with the Town on the RFQ document until the time and date of the public opening of bids.

9.04 Request for Tenders (Purchases with a value exceeding \$120,000)

- a) A Request for Tender ("RFT") will be undertaken in cases where all of the following criteria exist: -
- i) the requirements for goods and services can be adequately defined to permit the evaluation of tenders against clearly stated criteria;
 - ii) the Total Acquisition Cost of the goods and services, including applicable taxes is greater than **One Hundred and Twenty Thousand (\$120,000) Dollars;**
 - iii) two or more sources are considered capable of supplying the required goods and services;
 - iv) the market conditions are such that tenders can be submitted on a common pricing basis; and,
 - iv) sufficient funds are available in the approved Operating or Capital Budget to pay for the goods and services.
- b) **The Department Head shall: -**
- i) **prepare, or direct a professional consultant working on the Town's behalf to prepare the specifications and/or scope of work, terms and conditions relevant to the acquisition of goods and services in an approved RFT format and in accordance with this Policy;**
- c) **The Purchasing Administrator shall: -**
- i) **give notice of the RFT by advertising such RFT on the Town of Essex website and/or any other electronic tendering platform (such as "MERX");**
 - ii) **prepare and submit for posting any Addendums to the RFT;**

- iii) arrange for the public opening of responses to RFT's in accordance with Section 14.00, "Bid Closing and Public Opening of Bids" of this Policy, at the time and date specified in the RFT;
 - iv) safe keep any bid bonds until the RFT is awarded;
 - iv) review responses to an RFT for irregularities and act in accordance with Appendix "A", Response to Irregularities Contained in Bids" and Section 18.00, "Bid Irregularities" of this Policy;
 - v) prepare or assist to prepare a Report to Council summarizing the bids received and recommending award of the contract if the total value of the RFT or multi-year contract, including applicable taxes, is greater than \$120,000 for goods and services or is greater than \$300,000 for construction projects or is greater than the amount included in the approved budget;
 - vi) once approved by Council, prepare a Purchase Order for the purchase of goods and services under a RFT with approval of such Purchase Order to be obtained from the Department Head and the Treasurer or the CAO prior to the purchase of goods and services in accordance with Section 24.00, "Requirements for Purchase Orders and Contracts";
 - vii) arrange for the execution of any contract documents by the Mayor or Deputy-Mayor and the Clerk, if applicable; and,
 - viii) return any bid bonds to the unsuccessful bidders after awarding the contract.

- d) All Requests for Tender will be advertised on the Town of Essex website and any other electronic tendering service deemed appropriate. The onus is on interested vendors to review the Town of Essex website or electronic tendering service from time to time for competitions that may be of interest to them. Department Heads may also notify businesses that are capable of supplying the required goods and services of the Request for Tender.

- e) Advertisements, where no trade agreements applies, must appear with at least fifteen (15) calendar days before RFT closing to permit bidders to examine the advertisement, obtain the RFT documents and complete and submit their bid.

- f) All RFT's must be submitted in a sealed envelope clearly marked as to their contents on or before the deadline for submission of RFT's. Faxed or emailed RFT's submitted by any bidders will be a breach of the RFT and will result in the total rejection of any and all quotations received, or to be received from such proponent in any form under that RFT.

- g) All Reports to Council or Reports which recommend the award of RFT must: -
 - i) disclose the sources of financing, the approved budget for the

- purchase, the allocation of any other sources of revenue and any other financial commentary considered appropriate by the Treasurer; and,
- ii) be reviewed by the Treasurer prior to being placed on an meeting agenda.
- h) No work may commence or any commitment to the purchase of goods and/or services shall be entered into, until such time as the award of the contract has been approved by Council and a Purchase Order has been issued or a contract signed and all necessary documents have been received (for example, proof of insurance, WSIB Clearance Certificate, performance bonds etc.).
 - i) The Town of Essex is under no obligation to accept the lowest or any bid submitted in an RFT process, and the Town of Essex will not accept any responsibility, financial or otherwise, claimed by or resulting from, a proponent's response to a bid document.
 - j) The Town of Essex reserves the right to evaluate bids submitted in an RFT process based on factors other than total acquisition costs, including but not limited to:-
 - Environmental impact;
 - Economic and financial impact; or,
 - Social impact.
 - k) The Town of Essex is under no obligation to disclose the names of organizations that have expressed an interest in a RFT or have otherwise communicated with the Town on the RFT document until the time and date of the public opening of bids.

9.05 Requests for Proposals

- a) A Request for Proposal "RFP" is used to solicit proposals from suppliers to propose solutions to a given problem or situation and is used when the requirements or services cannot be clearly specified, where there may be more than one approach to the problem or situation and where there is more than one possible outcome.
- b) RFP's are evaluated on criteria other than price that may include, but are not limited to, experience with similar projects, references, qualifications, overall impression of the proposal, etc.
- c) **Informal RFP Process - The Purchasing Administrator, the Department Head or the C.A.O. or designate may invite suppliers to participate in an informal RFP process where: -**
 - i) **The estimated total cost of the work does not exceed \$50,000, including applicable taxes; and,**

- ii) The cost of preparing a detailed proposal would likely deter suppliers from submitting proposals.

For purposes of an informal RFP process, the Department Head or Purchasing Administrator or designated will prepare an informal RFP in the approved format and invite three suppliers to participate in the informal RFP process.

- d) Formal RFP Process (Purchases with a value exceeding \$50,000)—A Department Head shall: -
 - i) prepare the specifications and/or scope of work, terms and conditions relevant to the acquisition of goods and services in an approved RFP format and in accordance with this Policy;
- e) Formal RFP Process (Purchases with a value exceeding \$50,000)—A Purchasing Administrator shall: -
 - i) develop and disclose in the bid document a list of evaluation criteria that will be used to assist in formulating an evaluation of RFP's submitted which may include, but is not limited to, factors such as approach, qualifications, experience, equipment, facilities, strategy, methodology, past performance, scheduling and price;
 - ii) give notice of the RFP by advertising such RFP on the Town of Essex website and/or any other electronic tendering platform (such as "MERX");
 - iii) and by inviting submissions from suppliers or service providers who are able to meet the provisions of the RFP;
 - iv) prepare and submit for posting any Addendums to the RFP;
 - iv) consider any irregularities in responses to an RFP and act in accordance with Appendix "A", Response to Irregularities contained in Bids" and Section 18.00, "Bid Irregularities" of this Policy;
 - v) form an evaluation committee which consists of a minimum of three people, as follows: -
 - the Department Head, Manager, Treasurer ,C.A.O or their designated and any number of Council members who may be invited to participate for RFP's whose value is less than or equal to \$120,000; or,
 - the Department Head, Manager and at least one other members of the Senior Management Team or their designated and any number of Council members who may be invited by the Department Head to participate in the evaluation process for RFP's whose value is greater than \$120,000.
 - vi) prepare or assist to prepare a Report to Council summarizing the results of the evaluation process and recommending award of the contract if the total value of the RFP or multi-year contract, including applicable taxes, is greater than \$120,000 or is greater than the

- amount included in the approved budget;
- vii) maintain a record of the evaluation process following the awarding of an RFP;
- ix) once approved by Council, prepare a Purchase Order for the purchase of goods and services under the RFP with approval of such Purchase Order to be obtained from the Department Head and the Treasurer or the C.A.O. prior to the purchase of the goods or services in accordance with Section 24.00, "Requirements for Purchase Orders and Contracts";
- x) arrange for the execution of any contract documents by the Mayor or the Deputy-Mayor and the Clerk, if applicable.

f) The Evaluation Committee shall: -

- i) review all proposals submitted and evaluate the proposals based on the evaluation criteria approved by the Committee;
- ii) meet with proponents as required to facilitate the selection process;
- iii) document the results of their evaluations; and,
- iv) reach consensus on the proposal to be recommended to Council.

g) All Requests for Proposal will be advertised on the Town of Essex website and any other electronic tendering service deemed appropriate. The onus is on interested vendors to review the Town of Essex website or electronic tendering service from time to time for competitions that may be of interest to them.

h) Advertisements, where applicable, must appear with at least fifteen (15) calendar days before RFP closing to permit bidders to examine the advertisement, obtain the RFP documents and complete and submit their proposal.

i) All RFP's must be submitted in a sealed envelope clearly marked as to their contents on or before the deadline for submission of RFP's. Faxed or emailed RFP's submitted by any Proponent will be a breach of the RFP and will result in the total rejection of any and all quotations received, or to be received from such proponent in any form under that RFP.

j) All Reports to Council or Reports to Finance Committee which recommend the award of RFP must: -

- i) disclose the sources of financing, the approved budget for the purchase, the allocation of any other sources of revenue and any other financial commentary considered appropriate by the Treasurer; and,
- ii) be reviewed by the Treasurer prior to being placed on an meeting agenda.

k) The Town of Essex reserves the right to accept or reject any submission and to

evaluate RFP's on criteria other than price, including but not limited to:-

- Environmental impact
- Economic and financial impact
- Social impact

- l) A public opening of submissions to an RFP will not be conducted by the Town.
- m) The "Two Envelope System" may be used for a Formal RFP when it is desirable to evaluate the technical and qualitative information of a given RFP without being influenced by pricing information. Appendix "B", "Two Envelope Approach to Requests for Proposal" outlines the process to be followed in a two-envelope process.

9.06 Requests for Expressions of Interest

- a) A Request for Expressions of Interest ("RFEI") is a process of soliciting information from vendors when one or more of the following conditions exist:-
 - i) The technical feasibility of certain goods or service specifications is unknown;
 - ii) The requirements of the Town are not clearly understood and documented;
 - iii) The market price or availability of certain goods or services is not certain; or,
 - iv) There is uncertainty if there are enough suppliers to justify a formal bid process.
- b) The publication of a RFEI represents a very early stage in the contract negotiation process and will not give rise to any contractual rights or obligations by the Town to any proponents responding to an RFEI.
- c) The Purchasing Administrator in consultation with the Department Head shall prepare the RFEI which will include a definition of the basic need and scope and will invite bidders to submit their qualifications and to offer general proposals of how to meet the identified needs.
- d) All RFEI's will be advertised on the Town of Essex website and/or any other electronic tendering platform. The onus is on interested vendors to review the Town of Essex website from time to time for competitions that may be of interest to them. The Purchasing Administrator may also send RFEI's directly to businesses that may be capable of supplying the required goods and services.

- e) Advertisements, where applicable, must appear with at least fifteen (15) calendar days before RFEI closing to permit proponents to examine the advertisement, obtain the RFEI documents and complete and submit their RFEI documents.

9.07 Request for Prequalification

- a) A Request for Prequalification (“RFPQ”) involves an open competition for prequalification where potential suppliers provide background information for purposes of the Town short-listing suppliers for subsequent calls for bids. An RFPQ provides the Town with an opportunity to:-
 - i) Ensure bidders demonstrate that they have the ability to provide the necessary expertise and resources to satisfactorily complete the work required;
 - ii) To determine the extent of supplier interest;
 - iii) To ascertain whether there are enough suppliers to justify a full Request for Proposal, Request for Tender or Request for Quotation.
- b) A RFPQ will be used in situations where: -
 - i) The work involves complex, multi-disciplinary activities; specialized expertise, equipment, materials, or financial requirements
 - ii) The work is such that contract administration costs (work inspection, follow-up, extra fee negotiations) could result in a substantial cost to the Town of Essex if the work is not satisfactorily performed the first time;
 - iii) The goods or equipment to be purchased must meet national safety standards, or if no standard has been established, has required a demonstrated acceptable level of performance;
 - iv) The work is considered high risk with respect to regulations governed under the Occupational Health and Safety Act;
- c) An RFPQ typically requires suppliers to provide information relating to the one or more of the following: -
 - i) Years in business;
 - ii) Experience in similar projects;
 - iii) References provided by other customers for similar work;
 - iv) General range of business covered;
 - v) Key personnel, their training and experience;
 - vi) Financial strength of the business;
 - vii) General reputation of the business (e.g., references);
 - viii) Location of operations;
 - ix) Health and safety policies and staff training;
 - x) Size of operations;

- xii) Diversity of operations; and,
 - xiii) Public sector experience.
- d) The Purchasing Administrator in consultation with the Department Head shall: -
 - i) Prepare, or direct a professional service provider or consultant working on the Town's behalf to prepare the RFPQ document outlining the information required from each supplier in an RFPQ format and in accordance with this Policy;
 - ii) develop and disclose in the document a list of evaluation criteria that will be used to assist in formulating an evaluation of RFPQ's submitted which may include, but is not limited to, factors such as approach, qualifications, experience, equipment, facilities, strategy, methodology, past performance but excluding price;
 - iii) give notice of the RFPQ by advertising such RFPQ on the Town of Essex website, and/or any other electronic tendering platform, and by inviting submissions from suppliers or service providers who are able to meet the provisions of the RFPQ;
 - iv) prepare and submit for posting any Addendums to the RFPQ;
 - v) evaluate according to the disclosed evaluation criteria in consultation with the Treasurer, CAO or their designated, or direct a professional service provider or consultant working on the Town's behalf to evaluate, the responses to the RFPQ for purposes of short-listing the suppliers that will be invited to participate in the subsequent call for bids.
- e) All RFPQ's will be advertised on the Town of Essex website and/or any other electronic tendering platform. The onus is on interested vendors to review the Town of Essex website from time to time for competitions that may be of interest to them. Department Heads may also send RFPQ's directly to businesses that may be capable of supplying the required goods and services.
- f) Advertisements, where no trade agreements applies, must appear with at least fifteen (15) calendar days before RFPQ closing to permit proponents to examine the advertisement, obtain the RFPQ documents and complete and submit their RFPQ documents.
- g) Alternatively, the Town of Essex may issue a Request for Information. A Request for Information can be used to build supplier interest and to see if there are enough suppliers to justify a full bid competition. The Request for Information may request detailed information such as, but not limited to, company background, who the interested parties are, what they can offer and what they can do for the Town of Essex.

9.08 Sole or Single Source Procurement

Sole or Single Source Procurement shall not be permitted unless one or more of the following conditions exist: -

- a) Competition is precluded due to one or more of the following: -
 - i) the application of any Act or legislation;
 - ii) as a result of a market-based monopoly;
 - iii) the existence of patent rights, copyrights, technical secrets; and/or,
 - iv) control of raw materials.
- b) No bids were received in a competitive bid process;
- c) Due to market conditions, the goods and services required are in short supply;
- d) It is necessary to ensure compatibility with existing products to avoid violating warranty/guarantee requirements when service is required;
- e) In the opinion of the Department Head, acting in consultation with the Treasurer and CAO, the compatibility of a purchase with existing equipment or service is a paramount consideration;
- f) There is only one source of supply which would be acceptable and cost effective;
- g) Goods are being purchased for testing or trial use;
- h) An existing rental contract contains a purchase option and the exercise of such purchase option is deemed beneficial to the Town;
- i) The goods and services purchased are exempt from this Policy as outlined in Section 3.00, "Applicability";
- j) Compatibility between existing products, such as computer software, is necessary in order to maintain consistency within the Town of Essex;
- k) Sources of supply are restricted due to the following:-
 - i) There are no substitutes for components or replacement parts; or,
 - ii) Council has adopted specific standards.

- l) One bid/proposal is received through a procurement process and it is impractical to proceed with another call for bids or proposals as determined by the Department Head in consultation with the Treasurer or the CAO; or,
- m) The total purchase price of the goods and services, including applicable taxes is less than \$10,000.00.

SECTION 10.00 – BLANKET PURCHASE ORDERS

10.01 A blanket purchase order is used in situations where: -

- a) a need is anticipated for a range of goods and services of the same or similar type by one or more departments repetitively throughout a time period that exceeds three months but does not span more than one calendar year; and,
- b) the total demand for the goods and services over the period to be covered by a Blanket Purchase Order is not known with certainty but can be reasonably estimated based on past experience.

10.02 The procurement method (refer to Section 9.00, "Procurement Methods" of this Policy) used to obtain pricing related to a Blanket Purchase Order will be based on the total estimated value of the purchases during the time period covered by the Blanket Purchase Order. The total estimated value of the purchases is calculated by multiplying the estimated usage throughout the time period covered by the Blanket Purchase Order by an estimated price per unit.

10.03 The expected quantity of the goods and services to be purchased over the period covered by a Blanket Purchase Order shall be as accurate an estimate as is practical and shall be based on the previous years' usage adjusted for any known factors that may affect usage.

10.04 The approvals required for a Blanket Purchase Order will be based on the total estimated value of the Blanket Purchase Order and will be calculated by multiplying the estimated quantities to be purchased by the actual price bid by a supplier.

10.05 **The Purchasing Administrator shall: -**

- a) Obtain pricing for goods and services to be covered by a Blanket Purchase Order using the appropriate procurement method based on the total estimated value of the purchases during the time period to be covered by the Blanket Purchase Order;
- b) Prepare a Blanket Purchase Order based on anticipated quantities and the

actual bid prices;

- c) Obtain the necessary approvals for the Blanket Purchase Order;
- d) Verify that the prices charged by the supplier of goods and services is consistent with the bid price throughout the period covered by the Blanket Purchase Order; and,
- e) Ensure that, during the period covered by a Blanket Purchase Order, the goods or services covered by a Blanket Purchase Order are purchased from the supplier listed in the Blanket Purchase Order.

10.06 The Town of Essex will assume no liability for discrepancies between actual and estimated purchases of goods and services covered by a Blanket Purchase Order.

SECTION 11.00 – EMERGENCY PURCHASES

11.01 For purposes of this section, “Emergency” shall be as defined in Section 1.01, “Definitions”.

11.02 The following policies shall apply when purchasing goods and services as a result of an emergency: -

- a) Purchases with a total value, including applicable taxes, between \$10,001.00 and \$120,000.00.

A Department Head initiating the purchases shall obtain the prior approval before ordering from either the Treasurer or CAO in an emergency. Immediately following such purchase, the Department Head will notify the CAO, Treasurer and Purchasing Administrator in writing of the purchase with full details concerning the circumstances under which the purchase was made. Purchases of this nature will require that a Purchase Order be prepared as soon as possible following the purchasing commitment and that as many comparative quotes as practicable under the circumstances be obtained.

- b) Purchases with a total value, including applicable taxes, exceeding \$120,000.00.

The Department Head initiating the purchases shall obtain the prior approval of the CAO or, in the absence of the CAO, the Treasurer in consultation with the Mayor or Deputy-Mayor for the Town of Essex. As soon as reasonably possible following the purchase, the Department Head shall submit an information report to the Council with full details concerning the circumstances under

which the purchase was made. Purchases of this nature will require that a Purchase Order be prepared by the Purchasing Administrator as soon as possible following the purchasing commitment and that as many comparative quotes as practicable under the circumstances be obtained.

SECTION 12.00 – LEASE AND LONG-TERM FINANCING REQUIREMENTS

- 12.01 Department Heads wishing to acquire or use goods and services through an external third-party financing lease beyond one operating year shall receive approval of Council before entering into a lease or financing arrangement.
- 12.02 Before entering into a lease or financing arrangement, the Treasurer shall prepare a report to Council with a recommendation, assessing, in the opinion of the Treasurer, the costs and financial and other risks associated with the proposed lease or financing arrangement, including but not limited to: -
- a) A comparison between the fixed and estimated costs and the risks associated with the proposed financing lease, and those associated with other methods of financing;
 - b) A statement summarizing the effective rate or rates of financing for the financing lease, the ability for lease payment amounts to vary, and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the financing lease;
 - c) A statement summarizing any contingent payment obligations under the financing lease that in the opinion of the Treasurer would result in a material impact for the Town, including lease termination provisions, equipment loss, equipment replacement options, and guarantees and indemnities;
 - d) An opinion about whether the costs of the financing for the proposed financing lease are lower than other methods of financing available to the Town of Essex, and whether the risks associated with the financing lease are reasonable;
 - e) A summary of the assumptions applicable to any possible variations in the financing lease payment and contingent payment obligations; and,
 - f) Any other information the Treasurer considers relevant.
- 12.03 All bid documents issued for the purpose of acquiring goods or services under a third-party financing lease shall require that submissions include original equipment cost, length of lease, effective rate of interest, residual value and terms, lease buyout price if applicable, amount and date of payment.

- 12.04 The Treasurer shall initiate and prepare a Report to Council making recommendations with respect to the sale of debentures to finance the purchase of goods and services for the Town or on behalf of benefitting property owners.

SECTION 13.00 – BID SUBMISSIONS

- 13.01 Bids for a Town of Essex RFT, RFQ, RFP, RFEI, RFPQ, or any other form of bid document shall be submitted and received in the manner prescribed in the bid document. Any bid documents that are submitted or received in a manner contrary to that prescribed in the bid document will be deemed an Irregular Bid and will be dealt with by the Town of Essex in accordance with Appendix "A", "Response to Irregularities in Bid Documents."
- 13.02 Where a Mandatory Site Meeting is specified in a bid document, only those **bidders** attending the Mandatory Site Meeting shall be permitted to submit a bid for that bid document. Bids from **bidders** who did not attend the Mandatory Site Meeting will be immediately disqualified in accordance with Appendix "A", "Response to Irregularities in Bid Documents".
- 13.03 **All bid documents submitted to the Town in a RFQ, RFT, RFP, RFEI, RFPQ or other formal bid process shall be submitted to the Town in a sealed envelope. Any bids which are received in an unsealed envelope shall be immediately disqualified in accordance with Appendix "A", "Response to Irregularities in Bid Documents."**
- 13.04 Faxed or e-mailed bids provided by any **bidder** shall be a breach of the formal bid process and will result in the total rejection of any and all bids received, or to be received from such **bidder** in any form, under that bid document.
- 13.05 Bids submitted by a **bidder** to the Town shall include all of the mandatory information specified in a bid document. Missing or incomplete mandatory information shall cause a bid to be immediately disqualified in accordance with Appendix "A", "Response to Irregularities in Bid Documents".
- 13.06 A **bidder** may submit more than one bid up to the official closing time for a RFQ, RFT, RFP, RFEI, RFPQ or other formal bid process. The last bid document received from a **bidder** who submits more than one bid shall supersede and invalidate all bids previously submitted by that **bidder**.
- 13.07 **Bid submissions which contain more than one pricing page for purposes of providing optional pricing in the bid document will be immediately disqualified in accordance with Appendix "A", "Response to Irregularities in Bid Documents". However, bidder can submit multiple offers presenting alternative terms**

and conditions, service levels or commercial items with different models for satisfying the requirements of the solicitation. Each offer must be submitted in different sealed envelope and will be evaluated separately.

- 13.08 Bidders may withdraw their bid documents at any time up to the official closing date and time in a bid process. A request to withdraw a bid document shall be made in writing on company letterhead and shall be signed by a signatory of the bidder who has the authority to bind the bidder organization. All bid documents submitted to the Town are irrevocable after the official closing date and time of the bid process.
- 13.09 Bids received by the Town of Essex after the specified closing date and time shall be immediately disqualified and returned unopened to the bidder.
- 13.10 Where a bid document requires a bidder to supply a list of all subcontractors to be employed by them on a project, any proposed changes to or deletion of subcontractors following the public opening of bids shall require the prior approval of the Department Head responsible for the bid process.
- 13.11 An unbalanced bid, as defined in Section 1.00, "Definitions", submitted by any proponent shall be disqualified in accordance with Appendix "A", "Response to Irregularities in Bid Documents". The Town of Essex reserves the right to determine and declare a bid to be unbalanced.
- 13.12 The Town of Essex is under no obligation to accept the lowest or any bid under an RFQ, RFT or RFP process and the Town of Essex will not accept any responsibility, financial or otherwise, claimed by or resulting from, a proponent's response to a bid document.
- 13.13 The Town of Essex reserves the right to withdraw or change the scope of any bid document without providing any reason for such withdrawal or change at any time during the bid process up to contract award and will not accept responsibility, financial or otherwise, for any proponent responding to such withdrawn or changed bid document.
- 13.14 Advertisements, where no trade agreement applies, must appear with at least fifteen (15) calendar days before closing of an RFQ, RFT or RFP process to permit a bidder to examine the advertisement, obtain the bid documents and complete and submit their bid.
- 13.15 According to the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), more lead time for bidding process must be allowed for the purchase of:-

Goods with value:	above CAD\$366,800.00
Services with value	above CAD\$366,800.00

Construction Project with value: above CAD\$9,100,000.00

The above amount is effective from January 01, 2022, and will be indexed to inflation for future adjustments every two years per the issuance of CETA.

Pre-qualifications or Selective Solicitations – Advertisements with minimum of 25 days from the date of being posted publicly to closing must appear.

Pre-qualification (once qualified) – Advertisements with minimum of 40 days from date of being posted publicly to closing must appear.

Open competitive (RFQ, RFT or RFP) – Advertisements with minimum of 40 days from date of being posted publicly to closing must appear.

- 13.16 The Town of Essex reserves the right to issue addendums to a bid document at any time up to at less the twenty-four (24) hours prior to the closing date and time of the bid document. **If addenda are issued prior to three calendar days of the closing time, the closing date of the respective bids may be adjusted.** It is the full and complete responsibility of **bidders** to check for addendums on the Town of Essex website up to the closing date and time of the bid document.
- 13.17 The Town of Essex reserves the right to accept or reject any bid document at any time during the bid process and will not accept responsibility, financial or otherwise, for any **bidder** responding to such call for bids.
- 13.18 **Bidders** responding to a call for bids by the Town of Essex are responsible for reviewing the bid documents, in their entirety, in conjunction with this Policy and shall be responsible for responding to a call for bids in the manner prescribed in the bid document and this Policy.

SECTION 14.00 – BID CLOSING AND PUBLIC OPENING OF BIDS

- 14.01 The closing time for all bid documents, including but not limited to RFT's, RFQ's, RFP's, RFEI's and RFPQ's will be at 3:00 p.m. local time during regular business hours, Monday to Friday, excluding statutory holidays unless otherwise determined by the Department Head, in consultation with the Treasurer or CAO, and duly noted in the bid document.
- 14.02 **The Purchasing Administrator** shall provide notification of the closing time and date by email for all bid documents upon posting the bid document on the website. Such notification shall be provided to the Clerk, Treasurer, CAO, Council Members, and any professional consultant involved in the bid process.
- 14.03 All Requests for Quotations and Requests for Tender shall be opened in full view of bidders and any members of the public or Council who wish to attend and

shall take place within fifteen (15) minutes of the close of bidding and shall take place in the Council Chambers located at the Town's Municipal Offices unless otherwise determined by the Department Head in consultation with the Treasurer or CAO and duly noted in the bid document.

- 14.04 At a minimum, the public opening of bid documents shall be attended by the Treasurer or Treasurer's designate the Clerk or the Clerk's designate and the **Purchasing Administrator**.
- 14.05 During a public opening of bid documents the following information shall be orally announced at a public opening of bid documents: -
- a) Bidder name;
 - b) If a bid bond was required as part of the bid document, its presence shall be acknowledged;
 - c) Total amount of the bid, including applicable taxes; and,
 - d) Where more than one option for pricing was requested in the bid document, the bid pricing for all options shall be announced.

The following information shall be recorded on the "Public Opening – Bid Documents" form at the bid opening: -

- a) Reference to the subject of the bid document;
 - b) Date of bid closing;
 - c) Name and signature of the person recording the bid information;
 - d) Bid information announced at the public meeting as noted above; and,
 - e) Name(s) of all staff or Council of the Town of Essex in attendance at the bid opening.
- 14.06 Upon completion of the "Public Opening – Bid Documents" form and within twenty-four (24) hours of the bid opening, the form shall be scanned and posted on the Town of Essex website by the Purchasing Administrator. The results of bid openings will remain on the Town's website for a period not less than three (3) business days from the date of posting.
- 14.07 Verification of the total amount of each bid announced and recorded at the bid opening shall be subject to correction following a review of bid documents for irregularities.
- 14.08 All bids submitted in a bid process shall be reviewed by the **Purchasing Administrator** for irregularities in accordance with Appendix "A", Response to Irregularities Contained in Bids" and Section 18.00, "Bid Irregularities" of this Policy prior to awarding a contract or making a recommendation to Council on the award of the contract.

SECTION 15.00 – NO ACCEPTABLE BIDS RECEIVED

15.01 Where, before the award of a contract, in the opinion of the Department Head acting in consultation with the Treasurer or the CAO, the bids received in response to a bid solicitation: -

- a) exceed the Town's budget for that purchase;
- b) the specifications are determined to be inadequate or ambiguous, or otherwise in need of revision;
- c) the goods or services forming the subject of the bid are no longer required;
- d) it is realized that the terms and conditions of the bid do not allow for consideration of all cost factors in relation to the supply;
- e) the needs of the Town can be satisfied by a less expensive article differing from that for which the bids were invited; or,
- f) are not responsive to the intent or requirement of the bid document; do not represent Fair Market Value.

It will be deemed by the Town that no acceptable bids were received. At the sole discretion of the Town, a revised solicitation may be issued in an effort to obtain an acceptable bid unless Section 15.02 of this Policy applies.

The Town will not accept responsibility, financial or otherwise, for any proponent who responded to a bid process for which the Town has deemed that no acceptable bids were received.

15.02 The Department Head, in consultation with the Treasurer or CAO may jointly waive the need for a revised bid solicitation and enter into negotiations with the lowest compliant bidder, or the highest compliant bidder for a revenue-driven bid, under the following circumstances: -

- a) The total cost of the lowest compliant bid is in excess of the funds appropriated for that purchase in the approved budget of the Town of Essex or the total revenue of the highest compliant bid is less than the revenue appropriate for the revenue in the approved budget of the Town of Essex; and,
- b) The Department Head, in consultation with the Treasurer or CAO agree that the changes required to achieve an acceptable bid will not change the general nature of the requirement described in the bid solicitation.

Negotiations entered into with compliant bidders under this Section will be conducted in accordance with Section 23.00, "Negotiation" of this Policy. The Town of Essex reserves the right to discontinue negotiations at any time and reject any offer provided by a compliant bidder.

SECTION 16.00 – ONLY ONE BID RECEIVED

- 16.01 In the event that only one bid is received in response to a bid document, the Department Head may return the unopened bid to the bidder when, in the opinion of the Department Head, acting in consultation with the Treasurer or CAO, additional bids could be secured. When returning the unopened bid, the Department Head shall inform the bidder that the Town of Essex may recall for bids at a later date.
- 16.02 In the event that only one bid is received in response to a bid document, the bid may be opened and evaluated in accordance with this Policy when, in the opinion of the Department Head, in consultation with the Treasurer or CAO, the bid should be considered by the Town. If after evaluation by the Department Head in consultation with the Treasurer or CAO, the bid is deemed unacceptable the process set out in Section 15.00, "No Acceptable Bids Received" shall be followed.

SECTION 17.00 – EQUAL BIDS RECEIVED

- 17.01 If identical low bids are received, the Department Head, acting in consultation with the Treasurer or CAO, shall evaluate the two or more tied bids giving consideration to other factors, including but not limited to: -
- a) Where delivery is an important factor, which bidder can offer the best delivery date;
 - b) The sales service record of the tied bidders and which bidder is, in the opinion of the Town in a position to offer the best service;
 - c) The overall performance record of the tied bidders relative to their past business dealings, if any, with the Town of Essex; and/or,
 - d) Where the impact on the environment can be measured with certainty (for example, percentage of recycled content), which bidder's goods or services will have the least impact on the environment.
- 17.02 If, after consideration of all factors, the Department Head, acting in consultation with the Treasurer or CAO, cannot make a determination that will break the tied bid, then the names of the tied bidders shall be written on paper and placed into a container and one piece of paper shall be drawn randomly from the container by the Department Head, in the presence of the Treasurer or CAO and the tied bidders or their representatives, should they choose to attend, and the contract shall be awarded to the bidder whose name appears on the piece of paper drawn.

- 17.03 The Department Head shall set the time, date and location for the draw of a tied bid and the tied bidders shall be advised in writing a minimum of seven business days preceding the draw date in order that they may be present at the draw if they so choose. Bidders must provide written confirmation of receipt of the notice by hand delivery, mail, courier service or email within two business days of the draw date. Should any bidder elect not to attend the draw or send a representative to the draw, the draw will proceed regardless.

SECTION 18.00 – BID IRREGULARITIES

- 18.01 All bids submitted in a bid process will be reviewed by the Purchasing Administrator or a professional consultant acting on the Town's behalf, for minor and major irregularities as set forth in Appendix A, "Response to Irregularities Contained in Bids" and shall take all necessary actions as so prescribed.
- 18.02 The Town of Essex reserves the right to waive minor irregularities or deem an irregularity not listed in Appendix A, "Response to Irregularities Contained in Bids" as a Major or Minor Irregularity at its sole discretion.

SECTION 19.00 – IN-HOUSE BIDDING

- 19.01 A determination to supply goods or services in-house will be made prior to issuing a bid document or following the close of a bid document.
- 19.02 In-house bidding will not be permitted during a call for bids, up to the official closing date and time of the bid document.
- 19.03 The foregoing does not preclude the Town of Essex from concluding after the close of a bid document that it is in the best interests of the Town to have the goods and services that were previously the subject of a bid document, supplied in-house.

SECTION 20.00 – BID DOCUMENTS

- 20.01 A call for bids for purposes of purchasing any goods and services by employees and elected officials on behalf of the Town of Essex shall be made in accordance with the provisions of this Policy and shall be included in a budget that has been adopted by Council of the Town of Essex.
- 20.02 Where a requirement exists to initiate a project for which goods and services are required and funds for such requirement has not be appropriated in the budget

adopted by Council, a Department Head shall prepare a Report to Council or a Report to Finance Committee prior to the commencement of the bid process and which includes: -

- a) Background information regarding the requirement to purchase;
 - b) Information on the availability of funds as follows: -
 - i) Funds within existing budgets which were originally approved by Council for other purposes; and/or,
 - ii) The requirement for additional funds not contained in the approved budget; and,
 - c) A recommendation, in consultation with the Treasurer, for the reallocation of existing budgets or the source of additional funds to fund the requirement to purchase.
- 20.03 Bid documents will be prepared in accordance with templates prepared by the Finance and Business Services, the wording, and requirements of which may be revised from time to time.
- 20.04 Department Heads, or their designate, shall prepare the necessary specifications and or scope of work for the bid documents. The Purchasing Administrator shall be responsible for the preparation of bid documents for purchases under the budgetary control.
- 20.05 The Purchasing Administrator will post the bid documents on the Town of Essex website or other electronic tendering platform. The Treasurer or CAO shall, in consultation with the Department Head, have the authority to recommend improvements or changes to the specifications or scope of work, as well as other wording in the bid document.
- 20.06 The use of bid documents provided by organizations that supply the same or similar services to be covered by a bid document and that will or are likely to respond to the call for bids, is strictly prohibited.
- 20.07 A vendor shall not be requested to expend time, money, or effort to assist in designing or in developing specifications or to otherwise help to define the scope of work for a bid document beyond the normal level of service expected from such vendor, unless all of the following conditions are met: -
- a) The Treasurer or the CAO are advised of the request;
 - b) The vendor assisting in the design or in the development of specifications or otherwise helping to define the scope of work for a bid document is considered a consultant and is fully aware that they will be unable to

participate in the bid process for such goods and services when the bid document is issued;

- c) The vendor is paid a reasonable fee to assist in the design or in the development of specifications or otherwise helping to define the scope of work for a bid document;
- d) The design, specifications or scope of work developed with the assistance of a vendor are generic enough in nature so as not to exclude bids from more than one eligible vendors; and,
- e) The design, specifications or scope of work prepared in consultation with a vendor assisting in the design, specifications, or scope of work for a bid document become the property of the Town of Essex.

Fees for services to develop specifications or to otherwise help define the scope of work for purposes of a bid document which exceed \$10,000.00 will require the issuance of a Formal/Informal Request for Proposal by the Town of Essex.

Notwithstanding the forgoing a site meeting with more than one vendor for the purpose of obtaining input for purposes of preparing the scope of work or specifications for a bid document shall be permitted and shall not exclude such vendors from participating in a bid process.

- 20.08 Specifications for any bid document shall be detailed but not brand specific such that they leave room for bidders to bid equivalent or better products or methods. The specifications in a bid document shall not deter the competitive process.
- 20.09 Where, in the opinion of the **Purchasing Administrator**, the Treasurer or CAO, it is not possible to prepare precise specifications in order to issue a Request for Quotation or a Request for Tender for the provision of goods and services, a Request for Proposal shall be issued in accordance with Section 9.05, "Requests for Proposals" of this Policy.
- 20.10 In cases where the specifications will result in Sole Source Procurement, the Treasurer or CAO may, at their sole discretion, require the Department Head **in consultation with the Purchasing Administrator** to prepare a Report to Council for approval of such purchase.
- 20.11 **In accordance with Article 503.5 of the Canadian Free Trade Agreement, bid documents shall not include the following activities: -**
 - a) **accorded a preference for local goods, services, or suppliers;**
 - b) **scheduling events in the tendering process in order to prevent suppliers from submitting tenders;**

- c) specifying quantities of, or delivery schedules for, the goods or services to be supplied in order to prevent suppliers from meeting the requirements of the procurement;
- d) using price discounts or preferential margins in order to favour particular suppliers;
- e) limiting participation in a procurement only to suppliers that have previously been awarded one or more contracts by a procuring entity;
- f) requiring prior experience if not essential to meet the requirements of the procurement;
- g) providing information to one supplier in order to give that supplier an advantage over other suppliers; and
- h) adopting or applying any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of any other Party in its procurement.

SECTION 21.00 – ADDENDUMS AND QUERIES TO BID DOCUMENTS

21.01 The Town of Essex reserves the right at any time prior to the award of a contract to: -

- a) Modify the instructions, the bid notice, the form of bid, the description of a project, work or supply, the specifications, the scope of work, special provisions or the description of the project, services or goods;
- b) Change the project or contract documents; and,
- c) To extend the time for the submission of bids

by the publication of an Addendum or other notice on the Town of Essex website at www.essex.ca or any other electronic tendering service that was used to advertise the bid document.

21.02 In publishing such Addendum or other notice, the Town shall not be liable for any expense, cost, loss or damage incurred or suffered by any bidder, or any other person in responding to a bid document.

21.03 The sole responsibility for periodically checking the Town's website for the publication of Addendum or other notices related to a bid process shall be the

sole and exclusive responsibility of prospective bidders.

21.04 Prospective bidders who wish to submit queries with respect to any bid document issued by the Town of Essex shall do so by submitting such query in writing to the person named as the official contact in the bid document in the following manner and according to the following conditions: -

- a) Any requests for clarification of the instructions, the bid notice, the form of bid, the description of a project, work or supply, the specifications, the scope of work, special provisions or the description of the project, services or goods shall be submitted in writing and shall allow sufficient time for written answers or clarification to be issued by email or Addendum.
- b) Normally, any requests submitted within three (3) business days before the official closing date for bids that are likely to require the issuance of an Addendum will not be answered.
- c) The submission of requests in conjunction with Section 21.04 and before the official closing date and time of bid submissions shall not necessarily cause the time for the official closing date and time for bid submissions to be extended; and,
- d) If requests by a bidder for the approval of changes or substitutes are not approved through the subsequent publication of an Addendum related to such changes or substitutes, such non-publication shall mean that the changes or substitutes asked for were not approved by the Town.
- e) The official contact named in a bid document shall acknowledge receipt of all written queries in writing. In the event that acknowledgement of receipt of a written query is not received by a prospective bidder after two or more attempts to contact the official contact in writing, the prospective bidder shall contact the CAO or Treasurer for purposes of requesting clarification on a bid document.

21.05 **The Purchasing Administrator** shall be responsible for determining if queries made by a bidder require changes or alterations to the intent of the original bid document, provide additional information that may be integral to all bid responses or are informational in nature and should have no impact on a bidder's submission in a bid process.

21.06 **The Purchasing Administrator** shall ensure that queries requiring changes or alterations to the intent of the original bid document or to provide additional information that may be integral to all bid response are made available to all potential bidders by way of Addendum or other form of notice posted on the Town of Essex website or any other electronic tendering service that was used to advertise the bid document.

21.07 A decision by the Town to extend the official closing date and time for any bid document will be posted on the Town's website and may be posted up to twenty-four (24) hours before the official closing date and time for bids.

SECTION 22.00 – CONSULTING AND PROFESSIONAL SERVICES

22.01 The acquisition process described in this Section is restricted to acquisitions that are predominantly or exclusively for consulting and professional services as defined in Section 1.00 – "Definitions" of this Policy.

22.02 Upon a written recommendation of a Department Head **in consultation with the Purchasing Administrator**, Council may waive the requirement for quotations or proposals and approve a consultant or professional service for a particular project without a competitive process when one or more of the following conditions exist:-

- a) The works are a continuation of a previous project;
- b) The firm has demonstrated unique qualifications to undertake the project such as:-
 - i) In-house expertise; or,
 - ii) Historical data on the municipality.
- c) Time constraints are such that to seek quotations or tenders would result in:-
 - i) Increased costs; or,
 - ii) Loss of provincial or federal funding

22.03 Section 22.02 shall apply if the recommendation is adopted by resolution of Council passed at a public meeting of Council.

SECTION 23.00 – NEGOTIATION

23.01 For purposes of this Section, the Department Head, in consultation with the Treasurer and CAO may enter into negotiations with a vendor for the supply of goods and services where any of the following conditions exist:-

- a) The goods or services being purchased meet the requirements for Sole Source Procurement, as set out in Section 9.08, "Sole Source Procurement";

- b) No bids are received in a RFQ, RFT or RFP process;
- c) Only one bid is received in a RFQ, RFT or RFP process;
- d) The lowest compliant bid meeting specifications substantially exceeds the amount budgeted for the purchase and it is impractical to reissue the RFQ, RFT or RFP;
- e) All the bids received fail to meet the specifications or terms and conditions of the RFQ, RFT or RFP and it is impractical to reissue the RFQ, RFT or RFP; or,
- f) The goods and services are required as a result of an emergency, which would not reasonably permit the use of a method other than direct negotiation.

23.02 If negotiation is undertaken as a result of a project exceeding the amount budgeted, negotiation shall only be permitted to the extent that the scope or specifications of the project are not reduced significantly such that a revised bid document should be reissued as determined the Treasurer or CAO, in consultation with the Department Head.

23.03 Negotiation by the Town of Essex shall employ fair and ethical practices.

23.04 Negotiations by the Town of Essex shall be conducted jointly by the CAO or Treasurer in conjunction with the Department Head and Purchasing Administrator. Negotiated purchases under \$120,000 shall be approved by the Department Head and the Treasurer or CAO or may be subject to Council approval if the CAO, in consultation with the Treasurer, deems it appropriate to do so. Negotiated purchases exceeding \$120,000 shall be subject to Council approval.

SECTION 24.00 – NOTICE OF AWARD, REQUIREMENTS FOR PURCHASE ORDERS AND CONTRACTS

24.01 Award Information, according to Article 516 of Canadian Free Trade Agreement, must be published within 72 days after award on a designated website, and must remain thereon for a reasonable period of time, and include at least the following information: -

- a) A description of the goods or services procured;
- b) The name and address of the Town of Essex;
- c) The name and address of the successful supplier;

- d) The value of the successful tender;
 - e) The date of award; and,
 - f) If limited tender was used, the conditions and circumstances described in Article 513 that justified its use.
- 24.02 All purchases exceeding \$10,000.00, including applicable taxes shall require the following:-
- a) A Purchase Order in a format approved by the Finance and Business Services of the Town; and,
 - b) The appropriate approvals as outlined in Table III, "Use of Procurement Methods" prior to entering into any commitment to purchase the goods or services.
- 24.03 A formal agreement shall be used when the resulting purchase is, in the opinion of the Treasurer or CAO, complex and contains various non-standard terms and conditions or when the Treasurer or CAO otherwise deem it appropriate.
- 24.04 Any formal agreements entered into as a result of a commitment to purchase shall be in a form satisfactory to the Town and shall be executed by authorized signing authorities who have the authority to bind the corporation for the Town of Essex and the successful bidder.
- 24.05 Purchase Orders issued in the name of the Town of Essex, as revised from time to time.
- 24.06 Prior to the commencement of any work or the supply of any goods and services, the successful bidder shall submit to the Town an executed copy of a contract, if applicable, as well as any of the following information or any other information as was specified in the bid document: -
- a) Executed Performance Bonds;
 - b) Executed Labour and Materials Payment Bond(s);
 - c) Executed Performance and Maintenance Bonds;
 - d) Insurance documents in compliance with the bid documents and this Policy; and/or,
 - e) Declarations with respect to the Workers' Safety and Insurance Act.
- 24.07 Where a contract may extend beyond the term of Council, the contract shall

contain provisions to minimize the financial liability of the Town of Essex should the subsequent Council not approve sufficient funds to complete the contract and the Town may terminate the contract.

SECTION 25.00 – CONTRACT AMENDMENTS AND REVISIONS

- 25.01 No amendment or revision to a Contract shall be made unless the amendment, in the opinion of the Department Head, in consultation with the Treasurer or CAO, is in the best interest of the Town of Essex.
- 25.02 No amendment that changes the original awarded price of a Contract shall be agreed to without a corresponding change in requirement or scope of work, and where applicable, Council approval is required.
- 25.03 Council approval for changes to the original awarded price of a Contract that increase the original awarded price of the Contract by more than \$50,000 shall be approved by Council.
- 25.04 All changes to a contract shall require the issue of a Change Order in a format acceptable to the Town and shall be executed by the Treasurer or CAO.
- 25.05 Where expenditures for the proposed amendment combined with the price of the original Contract exceeds the budget approved by Council for the project, a report prepared by the Department Head shall be submitted to Council recommending the amendment and proposing the source of financing. Such report and Council approval must be obtained prior to the execution of a Change Order by the Treasurer or CAO.

SECTION 26.00 – CONTRACT WITHOUT BUDGETARY APPROVAL

- 26.01 Where a requirement exists to initiate a project for which goods and/or services are required and funds are not contained within the Council approved budget to meet the proposed expenditure, the Department Head shall, prior to commencement of the purchasing process, submit a report to Council containing:-
 - a) Information surrounding the requirement to Contract; and,
 - b) Information on the availability of the funds within existing budgets, which were originally approved by Council for other purposes, or on the requirement of additional funds.
 - c) **Reports to Council relating to any financial impacts shall be reviewed by the Treasurer prior to being placed on the Council agenda.**

SECTION 27.00 – EXERCISE OF CONTRACT RENEWAL OPTIONS

27.01 Where a Contract contains an option for renewal, the Department Head may authorize the exercise of such option provided that all of the following conditions apply:-

- a) The supplier's performance in supplying the goods and/or services is, in the opinion of the respective Department Head, acting in consultation with the Treasurer or CAO, considered to have met the requirements of the Contract;
- b) The Department Head provides the Treasurer and CAO, with a written explanation as to why the renewal is in the best interest of the Town of Essex;
- c) The Department Head and the Treasurer and CAO agree that the exercise of the option is in the best interest of the Town of Essex; and,
- d) Funds are available in appropriate accounts within the Council approved budget, including any authorized revisions, to meet the proposed expenditure.

27.02 Notwithstanding the foregoing, in the absence of a Contract Renewal Option, a Department Head, acting in consultation with the Treasurer and CAO, may make a recommendation in writing to the Council that a contract be renewed for a defined term, if all of the conditions set forth in Section 27.01 apply and if, in the opinion of the Department Head, acting in consultation with the Treasurer and CAO, it is in the Town's best interest to do so. A recommendation under this Section shall include, but is not limited to, the following: -

- a) Evidence that the conditions outlined in Section 27.01 have been met;
- b) Detailed reasons for recommending the renewal of a contract which shall provide justification for why a formal bid process is not likely to produce significant differences in pricing or specifications; and,
- c) Confirmation of the availability of funds in appropriate accounts within the Council approved budget to meet the proposed expenditure.

27.03 All contract renewals as discussed in Section 27.01 and Section 27.02 that **exceed \$120,000** over the term of the renewed contract term shall require Council approval in the same manner as was required for the original contract.

SECTION 28.00 – INSURANCE AND RISK MANAGEMENT REQUIREMENTS

28.01 The minimum insurance requirements, expressed in Canadian Dollars, shall be required by the Town of Essex—

Item	Description	Insurance Requirements
a.	Encroachments	\$2,000,000 General Liability
b.	Subdivisions	\$5,000,000 General Liability \$5,000,000 Environmental Pollution Liability \$2,000,000 Auto Liability
c.	Consultants	\$2,000,000 General Liability \$2,000,000 Professional Errors or Omissions Liability
d.	Oversize or Overweight Liability	\$2,000,000 General Liability \$2,000,000 Auto Liability
e.	Contracts (value up to \$1 Million)	\$2,000,000 General Liability \$2,000,000 Auto Liability
f.	Contracts (value over \$1 Million)	\$5,000,000 General Liability \$5,000,000 Auto Liability
g.	Builder's Risk	The amount of the project cost
h.	Wrap Up Liability	The amount of the project cost
i.	Events Involving Alcohol or Fireworks	\$2,000,000 General Liability
J	Tenants of Municipal Property	\$2,000,000 General Liability Tenant Legal Liability ²

² Amount of Tenant Legal Liability shall reflect the replacement value of the building being occupied or the square footage occupied by a tenant

28.02 The Department Head, in consultation with the Treasurer or CAO, may increase the insurance requirements or may identify another risk requiring coverage for a project at any time provided the increased requirement is disclosed in the bid document.

28.03 The Town of Essex shall be: -

- a) Named as an additional insured in the policy of insurance and the policy shall contain a cross-liability/severability of interest clause; and,
- b) Indemnified from any and all claims, demands, losses, costs or damages resulting from the performance of a bidder's obligation under a contract.

28.04 Insurance policies shall not be altered, cancelled, or allowed to lapse. In case of cancellation of insurance policies, the contractor's Insurer shall provide a thirty (30) days written notice by registered mail to the Town of Essex.

28.05 Prior to commencing any work on behalf of the Town of Essex, contractors shall deliver a certificate of insurance evidencing the named coverages to the Town of

Essex.

- 28.06 Contractors shall maintain fire and theft insurance for their owned properties and equipment, including dishonesty of any employees or agents hired by the Contractor. Furthermore, the contractor shall maintain Employee Dishonesty and Crime insurance coverage with a third-party rider to ensure any loss caused by burglary or theft of any stock equipment, property of the Town of Essex by the contractor's employees, agents or subcontractors are covered through this insurance policy.
- 28.07 Contractors shall maintain commercial auto liability insurance to provide adequate coverage for bodily injury and property damage caused by vehicles owned, leased or maintained by the Contractor.
- 28.08 All bid documents shall clearly state the insurance requirements to be provided by the successful bidder.

SECTION 29.00 – BID DEPOSITS AND GUARANTEES OF CONTRACT EXECUTION

- 29.01 A Bid Bond guaranteeing entry into a contract shall be required to accompany and be included in an envelope containing the bid documents in the following circumstances: -
- a) All bids for municipal construction projects;
 - b) Special maintenance Contracts, except for those Contracts, whose price in the opinion of the Department Head, acting in consultation with the Treasurer or CAO, is disproportionate to the cost to the Contractor of obtaining a Bid Bond;
 - c) All demolition Contracts;
 - d) In circumstances not otherwise mentioned in Section 29.04 the Department Head, acting in consultation with the Treasurer or CAO shall be authorized to determine whether or not a bid deposit is required prior to issuing a bid document.
- 29.02 In addition to the security referred to in Section 29.01, the successful bidder may be required to provide the following: -
- a) A Performance Bond to guarantee the faithful performance of the Contract;
 - b) A Performance Maintenance Bond to guarantee performance of warranty obligations; and/or,

- c) A Labour and Materials Payment Bond to guarantee the payment for labour and materials to be supplied in connection with a Contract.
- 29.03 The Department Head, acting in consultation with the Treasurer or CAO shall select the appropriate means to guarantee execution and performance of the contract which may include, but is not limited to, the following: -
- a) Financial bonds for contract performance;
 - b) Certified cheque, bank draft or money order drawn on any bank named in Schedule I or II to the Bank Act (Canada), any trust or loan company registered under the Loan and Trust Company Act (Ontario), the Province of Ontario Savings Office, or a credit union as defined in the Credit Unions and Caisses Populaires Act (Ontario);
 - c) An Irrevocable Letter of Credit naming the Town of Essex as the beneficiary that permits draws to be made without inquiry by the issuer as to whether the Town has a right as between itself and the supplier to make a demand;
 - d) A Bid Bond issued by an approved guarantee company properly licensed in the Province of Ontario, on bond forms acceptable to the Town of Essex; and,
 - e) Other forms of security deposits, provisions for liquidated damages, Progress Payments, and Holdbacks.
- 29.04 The use of certified cheque, bank draft or money order to guarantee performance of a contract shall only be permitted for contracts that shall reasonably be completed within three months of the award of the contract;
- 29.05 When a Bid Bond is required, the Department Head, acting in consultation with the Treasurer or CAO, shall determine the amount of the Bid Bond.
- 29.06 When a Performance Bond, Performance Maintenance Bond or Labour and Material Payment Bond is required, the amount of the bond shall be determined by the Department Head, acting in consultation with the Treasurer or CAO, but will not be less than fifty (50) percent of the amount of the bid price.
- 29.07 All forms of security provided by bidders shall be turned over to **the Purchasing Administrator** immediately following bid closing for safekeeping until such time as the securities are returned to unsuccessful bidders or the contract has been executed and/or completed.
- 29.08 The Department Head, acting in consultation with the Treasurer or CAO,

shall ensure that the guarantee means selected will:-

- a) Not be excessive but will be sufficient to cover any financial risk to the Town of Essex;
- b) Provide flexibility in applying leverage on a supplier so that the penalty is proportional to any Contract deficiencies; and,
- c) Comply with provincial statutes and regulations.

29.09 If, in the opinion of the Department Head, acting in consultation with the Treasurer or CAO, the risk to the Town of Essex is not adequately limited by the Progress Payment provisions of the contract, an additional minimum Holdback of ten (10) percent may be required.

29.10 The Department Head, acting in consultation with the Treasurer or CAO, may release the Holdback funds on construction contracts upon: -

- a) The Contractor submitting a statutory declaration that all accounts have been paid and that all documents have been received for all damage claims;
- b) Receipt of clearance from the Workplace Safety and Insurance Board for any arrears of Workplace Safety and Insurance Board assessment;
- c) All the requirements of the Construction Liens Act being satisfied;
- d) Receipt of certification, where applicable, that liens have not been registered; and,
- e) Certification from the Department Head, under whom the work has been performed, that the conditions of the contract have been satisfied.

29.11 The conditions for release of Holdback funds provided in Section 29.09 apply to other goods and/or services contracts with necessary modifications.

SECTION 30.00 – OCCUPATIONAL HEALTH AND SAFETY

30.01 The successful bidder shall strictly comply with all conditions and regulations of the Occupational Health & Safety Act and all applicable regulations and amendments thereto, any other Federal or Provincial Statute or local By-Law concerning safety while performing any phase of the bidder's work under contract with the Town of Essex.

30.02 In order to avoid any misunderstanding as to the nature of the work to be performed herein, the Contractor, having submitted a bid to the Town of Essex

containing an executed Occupational Health and Safety Declaration Form for Construction Projects unequivocally acknowledges that they are the "Constructor" within the meaning of the Occupational Health & Safety Act.

- 30.03 The Contractor shall take full responsibility for any Health and Safety violations as well as the cost to defend such charges as a result of any violation, including the cost of legal defence on a solicitor and own client basis should the Town or any of its employees be charged with violating said Act or Regulations.
- 30.04 Prior to the commencement of any construction work on behalf of the Town of Essex, the contractor shall be required to notify the Ontario Ministry of Labour with a Notice of Project as required under the Occupational Health and Safety Act and Regulations and shall provide a copy of such Notice to the Town.
- 30.05 The Contractor shall at all times, pay or cause to be paid, any assessment or compensation required to be paid pursuant to the Workplace Safety and Insurance Act.
- 30.06 Contractors shall provide a Clearance Certificate or make a statutory declaration that all assessments and all compensation payable to the Workplace Safety and Insurance Board have been paid prior to commencing any work for the Town of Essex.
- 30.07 The Contractor shall provide a Clearance Certificate from the Workplace Safety and Insurance Board following commencement of work with each invoice or progress payment submitted to the Town of Essex.
- 30.08 In the event that a Contractor fails to provide a Clearance Certificate at the required times during the period in which the Contractor is performing work on behalf of the Town, the Town of Essex shall have the right to withhold payments of such sum or sums of money due to the Contractor that would be sufficient to cover their default and the Town of Essex shall have the right to pay same to the Workplace Safety and Insurance Board.
- 30.09 If the Contractor claims to be an Independent Operator, with no insurable workers and is otherwise unable to obtain a Clearance Certificate, it shall submit to the Town written confirmation from the Workplace Safety and Insurance Board of its status as an Independent Operator for the Contract within one business day following the award of the contract. Failure to provide such written confirmation from the Workplace Safety and Insurance Board shall make null and void any Purchase Order or agreement entered into with the Contractor by the Town for such work.

SECTION 31.00 – ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT (AODA)

31.01 Contractors, including their sub-contractors if applicable, that provide goods and services to the public or third parties on behalf of the Town of Essex will be required to confirm by way of a "Contractor Accessibility Agreement" that they have provided all employees working on their behalf with Accessible Customer Service training in compliance with Regulation 429/07 "Accessible Standards for Customer Service" under the Accessibility for Ontarians with Disabilities Act, 2005.

SECTION 32.00 – ACCESS TO INFORMATION

32.01 The disclosure of information received relevant to the issue of bid solicitations or the award of contracts resulting from bid solicitations shall be made by **the Purchasing Administrator, in consultation with the Department Head**, the Treasurer or CAO in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, as amended.

32.02 All records and information pertaining to Tenders, Proposals and other Sealed Bids, which reveal a trade secret or scientific, unit prices, technical, commercial, financial or other labour relations information, supplied in confidence implicitly or explicitly, shall remain confidential if the disclosure could reasonably be expected to: -

- a) Prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organizations;
- b) Result in similar information no longer being supplied to the Town of Essex where it is in the public interest that similar information continues to be so supplied;
- c) Result in undue loss or gain to any person, group, committee or financial institution or agency; or,
- d) Result in information whose disclosure could reasonably be expected to be injurious to the financial and/or security interests of the Town of Essex.

SECTION 33.00 – INVENTORY CONTROL

33.01 Department Heads shall be responsible for monitoring the prices of the

goods required in inventory and establishing the necessary Purchase Orders or Blanket Purchase Order in conjunction with an appropriate procurement method such that staff may maintain the inventory levels required to meet their short-term operational needs.

33.02 Department Heads shall review inventory levels from time to time in order to ensure that inventory levels do not exceed operational needs by more than three months except in cases where delivery of such goods cannot be reasonably made within a three-month period.

33.03 Physical inventories shall be taken periodically as designated by the Department Head or Treasurer, but must be taken on December 31st of every year, or within two (2) working days of December 31st if so directed by the Treasurer and shall be submitted to the Treasurer in the manner prescribed by the Treasurer.

SECTION 34.00 – RECEIPT AND INSPECTION OF GOODS

34.01 The Department Head shall: -

- a) Arrange for the prompt inspection of all goods on receipt to confirm that they conform to the terms of the Purchase Order or Blanket Purchase Order;
- b) Inform the supplier, **the Purchasing Administrator** and the Treasurer of any discrepancies immediately; and,
- c) Sign all delivery receipts to indicate that the goods and services have been received in good order and according to specifications and forward such delivery receipts **with the respective certified invoices** to the Accounts Payable section of the Treasury Department.

34.02 The Department Head, in consultation with **the Purchasing Administrator**, the Treasurer or CAO, shall coordinate the appropriate course of action for any non-performance or discrepancies related to goods or services received.

34.03 Department Heads shall report the purchase or acquisition of any item deemed to be a tangible capital asset to the Treasury Department immediately following such purchase or acquisition in the manner prescribed in the Tangible Capital Asset Policy as adopted by Council and amended from time to time.

SECTION 35.00 – SURPLUS AND OBSOLETE MATERIAL AND EQUIPMENT

35.01 Surplus and obsolete material and equipment of the Town of Essex shall be

disposed of in accordance with this Policy.

- 35.02 Each Department Head shall submit an annual report to the CAO identifying all furniture, vehicles, equipment, and surplus stock, which are no longer used or which have become obsolete, worn out, or incapable of being used.
- 35.03 The CAO, with the assistance of Department Heads, shall have the authority to sell, exchange, or otherwise dispose of material declared surplus or obsolete to the needs of the Town of Essex, and where it is cost effective and in the best interest of the Town of Essex to do so.
- 35.04 Notwithstanding the foregoing, where it is anticipated that the value to be realized on the sale of any one item declared surplus or obsolete may exceed \$50,000, Council approval shall be obtained to declare such material or equipment surplus and to approve the recommended method of sale.
- 35.05 The CAO, in conjunction with Department Heads shall be responsible for ascertaining if items to be disposed of may be of use to other departments and thereby retained by the Town.
- 35.06 The CAO shall have the authority to sell or dispose of the material by the following methods: -
- a) Offered for sale to other departments based on their Net Book Value or, if their Net Book Value is zero, a reasonable estimation of their Fair Market Value;
 - b) Offered for sale to public agencies;
 - c) Sold by external advertisement, including tender, quotation, public auction, or on-line auction;
 - d) Sold or traded to the original supplier or others in that line of business where it is determined that a higher net return will be obtained rather than following other procedures;
 - e) Donated to a charitable organization;
 - f) Recycled; or,
 - g) Other methods as deemed appropriate under the circumstances.
- 35.07 In the event that all efforts to dispose of surplus or obsolete material or equipment by sale are unsuccessful, the CAO shall have authority to scrap such material or equipment.

- 35.08 Where it is deemed appropriate, the CAO, in conjunction with the initiating department, may set a reserve price for an article that is to be sold and such reserve price shall not be disclosed.
- 35.09 The proceeds generated from the sale of surplus and obsolete material and equipment shall be credited to the department's approved operating or capital budget. If the disposal was not anticipated in an approved budget, such proceeds shall be transferred to a reserve for that Department.
- 35.10 Department Heads shall be responsible for the disposal of hazardous material related to their department and for disposal costs utilizing the appropriate procurement method.
- 35.11 No elected official, officer or employee of the Town of Essex, or their immediate family, shall be permitted to receive surplus and obsolete material and equipment except by purchase at a public auction or on-line auction or a sealed bid process
- 35.12 The CAO shall initiate a Report to Council for purposes of making recommendations related to the sale of Town-owned real property in accordance with Town's by-law related to the disposal of real property.
- 35.13 Department Heads shall report the disposal of any item deemed to be a tangible capital asset to the Treasury Department immediately following such disposal in the manner prescribed in the Tangible Capital Asset Policy as adopted by Council and amended from time to time.

SECTION 36.00 – VENDOR PERFORMANCE EVALUATIONS AND PREFERRED VENDORS' LIST

- 36.01 The Treasurer, acting in consultation with Department Heads and the CAO, may implement a vendor performance management program or a preferred vendors' list for the Town of Essex.
- 36.02 A vendor performance management program, if implemented, shall rate the performance of vendors that have provided goods and services to the Town of Essex based on criteria developed by the Treasurer, acting in consultation with Department Heads and the CAO that adequately reflect the level of performance provided by a vendor in fulfilling previous contracts for the Town and employs a series of measurable criteria for purposes of evaluation.
- 36.03 Documented poor performance or non-performance by a vendor may be used by the Town to determine the eligibility of a bidder to participate in future Town of Essex contracts in accordance with Section 37.00 "Exclusion of Bidder Due to Poor Performance."

36.04 A preferred vendor program, if implemented, shall require that vendors wishing to provide goods or services to the Town of Essex make application to the Town to be placed on the Town's Preferred Vendor's List. Such application and criteria for consideration for preferred vendor status shall be developed by the Treasurer, in consultation with Department Heads and the CAO. Any applications so submitted shall be reviewed and approved by the Treasurer, in consultation with Department Heads and the CAO based on the criteria defined for such application.

36.05 The Town of Essex reserves the right to use the information gathered as a result of Section 36.02 to determine the eligibility of a supplier of goods or services to participate in future procurement processes for the Town of Essex or a vendor's eligibility to be placed on a Preferred Vendor's List, should one or both be implemented.

SECTION 37.00 – EXCLUSION OF BIDDERS DUE TO POOR OR NON-PERFORMANCE

37.01 Poor performance or non-performance by a supplier of goods or services shall be documented by a Department Head and provided, in writing, to the Treasurer.

37.02 The documentation of poor or non-performance by a supplier shall fully disclose the details of poor or non-conformance more specifically as it relates to failure to meet the Town's specifications for goods and services, failure to meet the terms and conditions to supply goods and services to the Town and health and safety violations encountered while a vendor is acting on behalf of and supplying goods and services to the Town,

37.03 The Treasurer may, in consultation with the Town's legal counsel, disqualify an unsatisfactory supplier from bidding on future contracts for a period of up to three years or longer as deemed appropriate.

37.04 Any supplier disqualified from a bidding process due to poor performance will be reported to Council and will be notified in writing of their disqualification.

37.05 Suppliers who have been disqualified shall have the opportunity to respond to Council regarding a notification sent pursuant 37.04. The decision of Council regarding the exclusion of a supplier shall be final.

SECTION 38.00 – EXCLUSION OF BIDDERS IN LITIGATION

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

SECTION 39.00 – REPORTING TO COUNCIL

- 39.01 Where a supplier has invoiced the Town of Essex and the Town has made payments relative to such invoice, the Treasurer shall report such payment in the monthly cheque register for ratification by Council.

SECTION 40.00 – DISPUTE RESOLUTION

- 40.01 The procedures in this Section shall be used to resolve any question involving the meaning or application of this Policy. The Town of Essex encourages the most open, competitive bidding process for the purchase of goods and/or services and the equitable treatment of all vendors. Not later than sixty (60) days following the date of posting of a contract award notification, a bidder may contact the Purchasing Administrator in writing requesting a debriefing. In the event that disputes arise in the purchasing process or administration of a Contract that cannot be resolved by the Purchasing Administrator, the vendor shall: -
- a) Request a meeting with the Treasurer and CAO. This request shall be in writing and shall provide a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and shall identify the form of relief requested.
 - b) If, after a meeting with the Treasurer and CAO, the vendor is satisfied that his or her concerns have been addressed and that the process has been fair and equitable, no further action shall be required.

- c) If, after the meeting, the Treasurer and CAO are convinced that there was an error or oversight during the purchasing process, a Report to Council shall be issued by the Treasurer or CAO recommending a course of action for Council approval.
- d) If, after the meeting with the Treasurer and CAO, no resolution satisfactory to both parties has been achieved and the with the Treasurer and CAO are confident the process was fair and equitable, the vendor may, at its option, make a formal written submission to Council who will provide a final resolution to the conflict, subject to any litigation proceedings which may be commenced.
- e) If a vendor uses the above administrative review procedures, findings shall be issued to the vendor within 90 days after filing of its complaint, as per Canadian Free Trade Agreement, unless an extension of time is warranted due to extenuating circumstances, in which case the findings will be issued within 135 days after the filing of the complaint.

SECTION 41.00 – COMPLIANCE AND PROHIBITIONS

- 41.01 The public and the business community must have confidence in the integrity of the Town of Essex's elected officials, officers, and employees. Any officer or employee who intentionally and knowingly fails to act in accordance with this Policy shall be subject to appropriate disciplinary action up to and including termination of employment.
- 41.02 Any bidder and existing suppliers who intentionally and knowingly fail to act in accordance with the Purchasing Policy may be disqualified from bidding on future Contracts for a period of three years in accordance with Section 37.00, "Exclusion of Bidders Due to Poor or Non-Performance".
- 41.03 No acquisition of goods and/or services or disposal of surplus goods or equipment shall be made where the quantity or delivery is divided or in any manner arranged so that the price or value of the goods and/or services to be acquired or disposed of is artificially reduced to circumvent the prescribed purchasing or disposal method.
- 41.04 No elected official, officer or employee of the Town of Essex, or their immediate family, shall be permitted to receive surplus and obsolete material or equipment except by purchase at a public auction or on-line auction or sealed bid, but in no case if the duties of that elected official, officer, or employee include making decisions regarding the disposal of such material or equipment relating to the conduct of the disposal process.

41.05 Elected officials, officers, and employees shall not knowingly cause or permit anything to be done or communicated to anyone which is likely to cause any potential vendor to have an unfair advantage or disadvantage in obtaining a Contract for the supply of goods and/or services to the Town of Essex, or any other municipality, local board or public body involved in the purchase of goods and/or services either jointly or in cooperation with the Town of Essex.

SECTION 42.00 – ENVIRONMENTAL CONSIDERATIONS

42.01 This Section shall be read in conjunction with sustainable procurement which may be adopted by the Town of Essex and revised from time to time.

42.02 In order to contribute to waste reduction and to increase the development and awareness of environmentally sound purchasing, acquisitions of goods and/or services will ensure that, wherever possible, specifications are amended to provide for expanded use of durable products, reusable products and products (including those used in services) that contain the maximum level of post-consumer waste and/or recyclable content, without significantly affecting the intended use of the product or service.

42.03 Where possible the evaluation of bids for goods and services, which includes, but is not limited to the determination of the Total Acquisition Costs should take into consideration the sustainability of the goods and services being purchased.

SECTION 43.00 – CONSOLIDATED AND CO-OPERATIVE PURCHASING

43.01 Department Heads or **Purchasing Administrator** shall, wherever possible, consult with other Department Heads in the Town of Essex for the purpose of consolidating the purchase of like goods and services.

43.02 Department Heads or **Purchasing Administrator** shall be authorized to cooperate with local boards and commissions or such other organizations with respect to cooperative or bulk purchasing of goods and when it is deemed that such cooperative or bulk purchasing will provide a benefit to the Town **and the purchasing methods utilized are open, competitive and have no conflicts with this policy.**

SECTION 44.00 – RETENTION OF PURCHASING DOCUMENTATION

44.01 All background information, information submitted by vendors, analysis, purchase orders and other relevant information related to obtaining prices for goods and services in a procurement process shall be retained in compliance with the

SECTION 45.00 – GENERAL ADMINISTRATION OF POLICY

- 45.01 The Purchasing Policy shall be reviewed in its entirety and revised, as required, within five years of its adoption.
- 45.02 Notwithstanding the foregoing, the Treasurer, in consultation with Department Heads and the CAO may make recommendations for revisions to this Policy for Council approval at any time following its adoption.
- 45.03 The Appendices and Schedules attached to this Policy may be amended from time to time with Council approval and such amendments will not invalidate any other portion of this Policy.
- 45.04 The Treasurer, CAO or Department Head may randomly review a department's purchasing-related files at any time to determine effectiveness and integrity of purchasing processes and adherence to this Policy.
- 45.05 The Treasurer or the CAO, in consultation with Department Heads shall initiate a Report to Council for purposes of making recommendations with respect to awards for group benefits, insurance, auditor, and banking and investment services.
- 45.06 Department Heads shall review unsolicited proposals received by the Town of Essex. Any purchasing activity resulting from the receipt of an unsolicited proposal shall comply in all respects with the provisions of this Policy.
- 45.07 To ensure standardization of corporate computer, cell phone and telephone equipment and related software, the purchase of all such equipment shall be the responsibility of the **Manager, Information Technology** in consultation with Department Heads, **the Purchasing Administrator**, the Treasurer and/or the CAO.

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Table II
Procurement Methods
Procurement and Disposal of Goods and Services Policy

Procurement Method	Request for Proposal (RFP)	Request for Tender (RFT)	Request for Quotation (RFQ)	Informal, Low Value Procurement	Sole/Single Source Procurement
Definition	Process where a need is identified, but the method by which it will be achieved is unknown or flexible at the outset. The RFP process allows vendors to propose solutions or methods to arrive at a desired result and is for contracts where price is not the predominant award criteria.	A formal bid solicitation process for obtaining competitive bids for the purchase of goods and services that with adequately defined requirements for which a clear or single solution exists and for which the anticipated total acquisition cost of the purchase is expected to exceed \$120,000.	Same as a Request for Tender except it is used where the anticipated total acquisition cost of the purchase is not expected to exceed \$120,000.	Process for obtaining competitive pricing for goods and services by telephone, fax, in writing, or by any other method of communication.	Process for obtaining goods and services without seeking competitive pricing. Refer to Section 9.08 of the Procurement and Disposal of Goods and Services Policy for full details of when this process may be used.
Method of Advertising	Town of Essex website and/or any other electronic tendering service (example: MERX) that will provide a competitive proposal process.	Town of Essex website and any other electronic tendering service (example: MERX) that will provide a competitive bid process.	Town of Essex website and/or invitation to bidders to submit bids.	No advertising required.	No advertising required.
Goals	An objective, fair, open, transparent and accountable and efficient process. Proposals generally selected on the basis of the highest score where the proposal meets the requirements specified in the competition based on qualitative, technical and pricing considerations.	An objective, fair, open, transparent and accountable and efficient process. Tenders generally accepted on the basis of the lowest total acquisition cost that meets all of the requirements specified in the competition.	An objective, fair, open, transparent and accountable and efficient process. Tenders generally accepted on the basis of the lowest total acquisition cost that meets all of the requirements specified in the competition.	To obtain competitive pricing in an expeditious and cost effective manner.	To allow for procurement in an efficient and timely manner.

Table III
Use of Procurement Methods
Procurement and Disposal of Goods and Services Policy

Estimated Value of Goods or Services	Method of Procurement	Procurement Documentation Required	Authorization Required
\$0 to \$10,000	Informal Low Value Procurement Comparative pricing may be obtained at the discretion of the purchaser; the requirement for comparative pricing at purchasing values less than \$10,000 may be required on a departmental basis at the discretion of the Department Head.	None	Employee designated by a Department Head. Department Heads have the option to reduce maximum purchasing dollar levels requiring approval by the Department Head at their discretion.
\$10,001 to \$50,000	Informal Low Value Procurement Three written comparative quotes/proposals required. Informal Request for Quotation or Informal Request for Proposal.	Purchase Order Written quotes shall be attached.	Department Head and Treasurer or CAO
Purchases where requirements can be definitively specified or defined			
\$50,001 to 120,000	Request for Quotation or Request for Proposal	Purchase Order and Contract, if applicable	Department Head and Treasurer or CAO
Greater than \$120,000	Request for Tender or Request for Proposal	Purchase Order and Contract, if applicable	Goods and Services: >\$120,000 Construction: >\$300,000 Council based on recommendations provided by the Department Head in a Report to Council, to which the Treasurer or CAO concur.
Purchases which meet the criteria for Sole/Single Source Procurement			
\$10,001 to \$50,000	Non-competitive procurement	Purchase Order	Department Head and Treasurer or CAO
\$50,001 to \$120,000	Non-competitive procurement	Purchase Order and Contract, if applicable	Department Head and Treasurer or CAO
Greater than \$120,000	Non-competitive procurement	Purchase Order and Contract, if applicable	Council based on recommendations provided by the Department Head in a Report to Council, to which the Treasurer or CAO concur.

APPENDIX A
 RESPONSE TO IRREGULARITIES CONTAINED IN BIDS
 PROCUREMENT AND DISPOSAL OF GOODS AND SERVICES POLICY

	Description of Irregularity	Response to Irregularity
1.	Bid or proposal received after the official closing date/time.	Major - Automatic rejection. Bid returned to bidder unopened and bid not read in Public Opening of Bid Documents.
2.	Bid envelope received unsealed.	Major - Automatic rejection. Bid returned to bidder and bid not read in Public Opening of Bid Documents.
3.	Bid does not contain sufficient financial security as defined in the bid document.	Major - Automatic rejection.
4.	Bid has been completed and/or signed in an erasable medium (i.e., pencil).	Major - Automatic rejection.
5.	All mandatory sections of the bid document have not been completed or have not been submitted.	Major - Automatic rejection.
6.	Non-attendance at a mandatory site meeting.	Major – Automatic rejection
7.	The bid is conditional.	Major - Automatic rejection.
8.	In the opinion of the Town, the bid shows evidence of bid rigging.	Major - Automatic rejection.
9.	More than one pricing sheet has been provided in the bid document.	Major - Automatic rejection.
10.	The bid is unbalanced as defined in Section 1.01, "Definitions" of this Policy.	Major - Automatic rejection.
11.	Bids submission received on documents other than those provided by the Town in the bid document.	Major - Automatic rejection unless, in the opinion of the Treasurer and/or CAO, all the information required is present.
12.	Failure to execute Agreement to Bond or Bonding company's corporate seal or signature missing from Agreement to Bond.	Major - Automatic rejection.
13.	Corporate seal and/or signature of bidder	Major - Automatic rejection.
14.	Signatory does not have the authority to bind the corporation.	Major - Automatic rejection.
15.	Changes are made to the tender documents, other than unit prices, which in the opinion of the Treasurer and/or CAO are trivial and insignificant.	Minor - 48 hours to initial changes.
16.	Unit prices in the schedule of prices have been changed but not initialed and the bid totals are consistent with the unit prices as amended.	Minor - 48 hours to initial changes.
17.	Unit prices in the schedule of prices have been changed but not initialed and the bid totals are not consistent with the unit prices as amended.	Major - Automatic rejection.

	Description of Irregularity	Response to Irregularity
18.	The bid total is not consistent with the unit prices.	Minor - 48 hours to correct and initial changes.
19.	A bid is received by a bidder that has been disqualified from bidding by the Town.	Major - Automatic rejection.
20.	Any other irregularity.	The Treasurer and/or the CAO, in consultation with the Department Head shall have the authority to determine whether an irregularity is major or minor for any irregularities not contained in this Appendix. If an irregularity is determined to be minor in nature, the bidder will be provided 48 hours to correct and initial the changes.

APPENDIX B
 "TWO-ENVELOPE APPROACH" TO
 REQUESTS FOR PROPOSAL

A "two-envelope" approach may be used by the Town of Essex when the Town wishes to evaluate the technical and qualitative information of a given proposal without being influenced by pricing information. The Chief Administrative Officer of the Town of Essex will determine and approve instances when a "Two-Envelope Approach" should be used in a Request for Proposal process.

The following summarizes the key aspects of a "Two-Envelope Approach" for Requests for Proposal: -

- 1) The solicitation document should clearly specify the mandatory evaluation criteria and/or weighted evaluation criteria. Following is an example of a summary.

Criteria Score	Maximum Score
Mandatory Criteria	
Key Personnel has current PMI Certification Electrical Worker must be a licensed electrician	Yes/No Yes/No
Weighted Criteria	
Experience with Similar Projects, Qualifications of Key Personnel and Staff availability	15
Understanding of Project Scope and Proposal Quality	10
Project work plan, Schedule, Approach and Methodology	30
Ability to provide all services as outlined	5
Pricing	40
Total	100

- 2) Each proponent must submit qualitative and technical information in a sealed envelope ("Envelope One") and pricing information in a second sealed envelope ("Envelope Two").
- 3) The contents of Envelope One for each bidder submitting a bid shall be opened, evaluated, and assigned points by the Evaluation Committee according to the specified mandatory and weighted criteria.
- 4) After reviewing the contents of Envelope One for all bidders, the Treasurer or

Treasurer's designate, the Clerk or the Clerk's designate and the Purchasing Administrator will open and evaluate "Envelope Two" for only those bids that meet the mandatory criteria and specifications for the Request for Proposal in terms of technical and qualitative services.

- 5) In the event that a proposal is not eligible to proceed to price evaluation, the proponent shall be disqualified from further consideration and the second envelope will be returned to the proponent unopened, along with the contents of the first envelope.
- 6) A higher point rating of a top proponent is not deemed to be sufficient evidence for the decision to open one pricing envelope. The decision to open only one pricing envelope must be made after determination that only one proponent is qualified and capable of performing the project or service. This would only be expected to occur in unique situations where artistic merit, proven design capability or other unique, non-quantifiable characteristics exist.
- 7) Where only one pricing envelope is opened, the pricing envelopes of other proponents shall remain sealed and retained until such time as Council has reviewed and approved the award of the contract, after which time any sealed envelopes will be returned the proponents unopened.
- 8) **When awarding points for pricing, the Town of Essex will evaluate as follows:**
 - a) **Only those proposals that have met all mandatory requirements will be evaluated for price;**
 - b) **The lowest price proposed will receive all the points allocated to price; and**
 - c) **All other proposals will be scored using the following formula:**
$$\frac{\text{Lowest Prices Proposal} \times \text{Points Available}}{\text{This Proposal's Price}}$$
- 9) **Award should then be made to the highest scoring submission.**

INFORMATION DOCUMENT A SIGNS OF BID RIGGING3

The signs of possible bid-rigging, include but are not limited to the following: -

- Only one bid received in response to a bid document, despite numerous bidders requesting the package of bid documents; one of the most common forms of bid-rigging involves bidders agreeing not to bid or to withdraw their bid from a bid competition.
- Lowest bid price is substantially in excess of what other municipalities have recently paid to acquire similar goods or services.
- All bids received are suspiciously high (e.g., higher than manufacturer's suggested retail prices or other published price guides).
- The same firm always wins, or wins a disproportionately large number of times in a bid process.
- Discounts are not offered, although such discounts are generally available in the market.
- Bidders bring more than one bid to a tender closing and decide which bid to submit only when sure who else is submitting bids.
- Irregularities or unusual features in the manner in which bid form was complete (e.g. use of White-Out®, use of similar but unusual phrasing in bids purportedly submitted by different bidders).
- Suspicious statements or evasive answers given by bidder representatives in answer to relatively harmless or innocent questions.
- Two or more identical or nearly identical bids.
- Competing bidders appear to win contract competitions within the same geographic area on an apparent rotational basis - indicative of a market division arrangement.
- Failure by a strong bidder to submit a bid.
- One or more bidders continue to bid for municipal contracts, although never successfully. This situation is especially suspicious if they do not seem to care.
- Subcontracting I: Competitors who agree not to bid or to submit a losing bid frequently receive subcontracts or supply contracts in exchange from the successful low bidder.
- Subcontracting II: Paying kickbacks to subcontractors to get them to increase their bid prices.
- Complementary Bidding: Complementary bidding (also known as "cover" or "courtesy" bidding) occurs when some competitors agree to submit bids that are either too high to be accepted or contain special terms that will not be acceptable to the buyer. Complementary bidding schemes defraud purchasers by creating the appearance of competition to conceal secretly inflated prices.
- Delegating bidding: Suppliers agree that instead of sending in separate bids, the available contracts will be allocated among them and each will be able to submit bids on its own behalf and behalf of other members of the group. In the latter case, each bid is submitted separately and on the letterhead of the member to whom the bid purportedly relates. The other bids are at higher prices than those of the supplier that is submitting the bids for the contract competition concerned.

- Surcharge bidding: The bidders for a one-of-a-kind contract agree among themselves that bids will be arranged so that one of their numbers will win the tender, with that bidder including within its bid price an amount sufficient to allow it to pay an honorarium to the other bidders, in exchange for their agreeing to forego the contract.