

The Corporation of the Town of Lakeshore

By-law 36-2020

A By-law to Amend By-law 58-2010 being a Comprehensive By-law Governing Procurement Policies and Procedures of the Town of Lakeshore to Remove the Requirement for Public Tender Openings

Whereas By-law 58-2010 was passed on July 13, 2010 pursuant to the *Municipal Act, 2001* for governing procurement policies and procedures;

And whereas section 270(1)(3) of the *Municipal Act, 2001* states that a municipality shall adopt and maintain policies with respect to its procurement of goods and services;

And whereas there is no requirement for municipal bids to be opened in a public tender opening but it is important to open bid submissions in a transparent manner while observing bid compliance regulations;

Now therefore, the Council of The Corporation of the Town of Lakeshore enacts as follows:

1. The Purchasing Policy, forming part of By-law 58-2010, is repealed and replaced with Schedule “A” to this by-law which shall form Schedule “C” to By-law 58-2010.
2. This By-law shall come into force and effect upon passage.

Read and passed in open session on April 28, 2020.

**Tom Bain
Mayor**

**Kristen Newman
Clerk**

Schedule “A” to By-law 36-2020

**Schedule “C” to By-law 58-2010 being a Comprehensive By-law
Governing Procurement Policies and Procedures of the Town of Lakeshore to
Remove the Requirement for Public Tender Openings**

PURCHASING POLICY

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PART I
INTERPRETATION

1.1 DEFINITIONS

In this policy, unless a contrary intention appears,

“accountability” means having responsibility to account for one’s conduct in an explicable and understandable manner;

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

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

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

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

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

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

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

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

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

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

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

- i the lowest responsive bid or proposal exceeds the estimated cost or budget allocation;
- ii for any reason the award of the contract to or the purchase from the lowest responsive bidder or proponent is procedurally inappropriate or not in the best interest of the Corporation;
- iii the specifications of a tender call or request for proposal cannot be met by two or more suppliers; or
- iv concurrence cannot be achieved between the Department Head and the Purchasing Coordinator

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

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

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

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

“negotiation” means conferring with one or more vendors to reach an agreement on needed goods or services under the conditions outlines in this policy;

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

“Purchasing Coordinator” is the Treasurer or his/her designate

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

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

“request for prequalification” means a formal Town solicitation for details on suppliers backgrounds, capabilities and resources, and the goods or services they are offering, such information shall be used to pre-qualify suppliers and/or their goods and services to be invited to submit bids;

“single source” means a supplier of particular goods or services that has been identified based on the criteria outlined herein;

“sole source” means the only supplier of particular goods or services;

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

“transparency” means the condition of being easily seen through, discerned, evident or obvious in a way that is understandable, frank and open to all persons;

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

“unsolicited offer” means an offer to supply goods or services to the Town which was not asked for and which may or may not represent a thing of value to the Town;

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

PART II
GENERAL PROCUREMENT POLICY

2.1 PROCUREMENT DOCUMENTATION

- a) In order to maintain consistency, guidelines shall be provided to Department Heads on procurement policies and procedures and on the structure, format and general content of procurement documentation.
- b) Procurement documentation shall avoid use of specific products or brand names.
- c) Municipal purchases will be made with the highest possible level of Canadian content available. Bidders are to identify the source of goods and services, and the overall Canadian content, where possible.
- d) Notwithstanding Subsection 2.1b) a Department Head may specify a specific product, brand name or approved equal for essential functionality purposes to avoid unacceptable risk or for some other valid purpose. In such instances, the Department Head and the Purchasing Coordinator shall manage the procurement to achieve a competitive situation if possible.
- e) Department Heads shall:
 - i) give consideration to the need for value analysis comparison of options or choices,
 - ii) ensure that adequate value analysis comparisons are conducted to provide assurance that the specification will provide best value, and
 - iii) include the value analysis documentation in the procurement file.
- f) The Department Heads shall issue tender documents for goods and services.

PART III
GENERAL PROCUREMENT PROCEDURES

3.1 OBJECTIVES

The Town’s overall purchasing objectives are as follows:

OBJECTIVE 1: Corporate Efficiency

Purchases must be for unique Departmental requirements such that corporate purchasing power or standardization is not a factor in costing. Requirements cannot be split in order to qualify for this process.

OBJECTIVE 2: Competitive Process

A competitive process is undertaken whereby the most open bidding process practicable for the acquisitions of goods and services is used. Care must be taken as to how bids are sought, bidder's lists are maintained and how competition is encouraged.

OBJECTIVE 3: Open Process

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

OBJECTIVE 4: Transparent Process and Accountability

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

OBJECTIVE 5: Fair Process

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

OBJECTIVE 6: Insurance and Risk Management

WSIB certificates of clearance, where required, must be obtained at the commencement of the project and periodically as the work is completed. The Town's standard Performance and Labour and Material Bonds are to be maintained and updated throughout the contract and released upon completion.

OBJECTIVE 7: Authorization of Capital Works

References to budget must be made to ensure that there are sufficient funds to pay for the contract and the project is part of the budget allocation.

OBJECTIVE 8: Standardization

In order to assist in ensuring that legal and insurance risks are controlled, standard formats should be followed for Requests for Quotation, Tender and Proposal, where possible. These formats will be updated as appropriate.

OBJECTIVE 9: Environmental Considerations

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

OBJECTIVE 10: Total Cost Consideration

In evaluating quotations, tenders and proposals, consideration is to be given, wherever possible, to the total cost of acquisition, repair, staff training, operation and disposal rather than only the lowest invoice price to ensure the best value is being obtained for the price to be paid.

3.2 REQUESTS FOR QUOTATION

Request for Quotation procedures shall be used where:

- i the item is greater than \$5,000 but not greater than \$35,000
- ii the requirement can be fully defined; and,
- iii best value for the Town can be achieved by an award selection made on the basis of the lowest bid that meets specifications.

3.3 INFORMAL QUOTATION (Greater than \$5,000 but not greater than \$20,000)

- a) The Department Head, or designate, shall consider the relevant specifications, budget authorization, approval authority and terms and conditions for the purchase of goods, services or construction.
- b) The Department Head, or designate, shall obtain 3 bids either by way of phone, e-mail, fax or similar communication method, vendor advertisements or vendor catalogues. The award of the contract shall be to the lowest responsive quote subject to the specifications and contractor performance. Evidence of the informal quotation shall be attached to the purchase order/invoice.
- c) The Town reserves the right to accept or reject any submission.

3.4 FORMAL QUOTATION (Greater than \$20,000 up to \$35,000)

- a) The Department Head shall consider the relevant specifications, budget authorization, approval authority, and terms and conditions for the purchase of goods, services or construction.
- b) The Department Head shall obtain a minimum of 3 bids on a publicly advertised basis. The award of the contract shall be to the lowest quote subject to the specifications and contractor performance.
- c) The Department Head shall prepare a report to the Purchasing Coordinator outlining a summary of the bids and recommend the award of the contract to the lowest responsive quote subject to the specifications and contractor performance for those quotations over \$30,000 and up to \$75,000.
- d) The Town reserves the right to accept or reject any submission.

3.5 REQUEST FOR TENDER

- a) Request for Tender procedures shall be used where:

- i the item is greater than \$35,000;
- ii the requirement can be fully defined; and
- iii best value for the Town can be achieved by an award selection made on the basis of the lowest bid that meets specifications.

- b) The Department Head shall consider the relevant specifications, budget authorization, approval authority and terms and conditions for the purchase of goods, services or construction.
- c) The Department Head shall prepare a report to the Purchasing Coordinator outlining a summary of the bids and recommend the award of the contract to the

lowest responsive quote subject to the specifications and contractor performance where the value is under \$75,000. Where the value is greater than \$75,000, the Department Head shall prepare a report to Council outlining a summary of the bids and recommend the award of contract to the lowest responsive bidder, subject to the specifications and contractor performance.

- d) With respect to all reports initiated for tenders, there shall be a report on the sources of financing, allocation of revenues, and other financial commentary as considered appropriate.
- e) The Town reserves the right to accept or reject any submission.

3.6 REQUEST FOR PROPOSAL

- a) Request for Proposal procedures shall be used where:
 - i) the requirement is best described in a general performance specification;
 - ii) innovative solutions are sought; and
 - iii) to achieve best value, the award selection will be made on an evaluated point per item or other method involving a combination of mandatory and desirable requirements.
- b) The Request for Proposal method of purchase is a competitive method of purchase that may or may not include Vendor pre-qualification.
- c) A Request for Information may be issued in advance of a proposal to assist in the development of a more definitive set of terms and conditions, scope of work/service and the selection of qualified Vendors.
- d) Where the requirement is not straightforward or an excessive workload would be required to evaluate proposals, either due to their complexity, length, number of any combination thereof, a procedure may be used that would include a pre-qualification phase.
- e) A list of suggested evaluation criteria for assistance in formulating an evaluation scheme using a Request for Proposal shall be maintained. This may include factors such as qualifications and experience, strategy, approach, methodology, scheduling and past performance, facilities, equipment, and pricing.
- f) Department Heads and the Purchasing Coordinator or Chief Administrative Officer shall identify appropriate criteria, including the weighting, which will be included in the proposal, from the list maintained for use in a Request for Proposal but are not limited to criteria from the list. Cost will always be included as a factor, as best value includes both quality and cost.
- g) The Department Head shall consider budget authorization, approval authority, terms of reference and evaluation criteria to be applied in assessing the proposals submitted.
- h) A Selection Committee composed of a minimum of one representative from the Department and the Purchasing Coordinator shall review all proposals against the established criteria, reach consensus on the final rating results, and ensure that the final rating results, with supporting documents, are kept in the procurement file.
- i) During the proposal process all communications with bidders shall be through the Department Head or designate.
- j) The Department Head shall forward to Council an evaluation summary of the procurement for those \$75,000 or higher, as well as the Committee's recommendation for award of the contract to the supplier meeting all mandatory requirements and providing best value as stipulated in the Request for Proposal.

Where the lowest bid is not accepted, the Department Head is responsible for documenting the determination of best value, in a confidential report to the Town Treasurer prior to award of contract.

- k) With respect to all reports initiated for Request for Proposals, a report on the sources of financing, allocation of revenues, and other financial commentary as considered appropriate, shall be prepared.
- l) Reporting will not include summaries of bids, as this information will remain confidential. Any disclosure of information shall be made by the appropriate officer in accordance with the provisions of the Municipal Freedom on Information and Protection of Privacy Act, R.S.O. 1990.
- m) Unsuccessful proponents may, upon their request, attend a debriefing session with the Department Head to review their bid submission. Discussions relating to any bid submissions other than that of the proponent present will be strictly prohibited.
- n) The Town reserves the right to accept or reject any submission.

3.7 PRE-QUALIFICATION PROCESS

- a) A Request for Pre-qualification may be used where:
 - i construction work is required under Sections 4, 74 and 78 of the Drainage Act having a value up to \$75,000;
 - ii construction work is required for road paving and padding having a value up to \$75,000;
 - iii best value for the Town can be achieved by an award selection made on the basis of the lowest bid that meets specifications.
- b) Suppliers and contractors will be invited to submit information as outlined in Appendix B to pre-qualify for the invitation of quotations and tenders on an annual basis.
- c) The Department Head will undertake such investigations to ensure that the applicant is a bonafide registered company or business and will undertake other searches and enquiries to ensure that the applicant has the technical and financial capacity appropriate to the pre-qualification class being sought. Searches will not necessarily be confined to references proposed by the applicant and may include information gathered from other agencies.
- d) To be considered for pre-qualification, the applicant must demonstrate the criteria as outlined in Appendix B. Applicants will provide updated information on insurance coverage and WSIB annually.
- e) Applicants may apply for pre-qualification in one or more categories, with a separate application required for each category, as outlined in Appendix B.
- f) The project will not be publicly tendered where costs are less than \$75,000.
- g) Prequalified contractors that have not submitted a bid in a two year period will be removed from the list.
- h) Prequalified contractors who have received an unsatisfactory performance will be removed from the prequalified list in accordance with section 4.12.
- i) Failure to supply all of the information requested in the application form shall result in the application being rejected. Applicants who are unable to demonstrate that they meet the requirements listed for the class and level applied for shall be rejected. Applicants will receive written notice of the outcome of the assessment

within four (4) weeks from the date of receipt of the application and related documentation.

- j) Applicants may file an appeal of the decision of pre-qualification or a suspension in pre-qualification to Town Council within fourteen (14) days of being advised of the outcome of the application or review. The applicant/contractor shall have the right of appearance before council if they desire. The decision of Town Council will be final and will be forwarded to the applicant within five (5) days of their review.
- k) An approved pre-qualification will lapse after three (3) years. The contractor will be advised prior to the pre-qualification lapsing and may reapply for a further three (3) year term.

3.8 BLANKET CONTRACT PURCHASES

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

3.9 NON-COMPETITIVE PURCHASES

- a) The requirement for competitive bid solicitation for goods, services and construction may be waived under joint authority of the appropriate Department Head and the Purchasing Coordinator and replaced with negotiations by the Department Head under the following circumstances:
 - i where competition is precluded due to the application of any Act or legislation or because of the existence of patent rights, copyrights, technical secrets or controls or raw material;
 - ii where due to abnormal market condition, the goods, services or construction required are in short supply;
 - iii where only one source of supply would be acceptable and cost effective;
 - iv where there is an absence of competition for technical or other reasons and the goods, services or construction can only be supplied by a particular supplier and no alternative exists;
 - v where the nature of the requirement is such that it would not be in the public interest to solicit competitive bids as in the case of security or confidentiality matters;

- vi where in the event of an “Emergency” as defined by this Policy, a requirement exists;
 - vii where the requirement is for a utility for which there exists a monopoly.
 - viii where the landowner will be assessed 100% of all costs for works under the Drainage Act and the landowner wishes to choose a contractor from the prequalified list of contractors created pursuant to section 3.7. Notwithstanding 3.9 b) Council approval will not be required.
- b) When a Department Head intends to select a supplier to provide goods, services or construction pursuant to subsection 3.9 a), a written report indicating the compelling rationale that warrants a non-competitive selection will be submitted by the Department Head to Town Council for approval.

3.10 PROCUREMENT IN EMERGENCIES

Where, in the opinion of the Chief Administrative Officer, or two Department Heads, an emergency has occurred requiring the immediate procurement of goods, services or construction,

- i) the Department Head, with authorization by the Chief Administrative Officer, or two Department Heads, may initiate a purchase in excess of the preauthorized expenditure limit by the most expedient and economical means; and
- ii) any purchase under such conditions together with a source of financing shall be justified and reported to the next meeting of the Town Council following the date of the purchase.

3.11 DIRECT NEGOTIATION

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

- i the required goods and services are reasonably available from only one source by reason of the scarcity of supply in the market or the existence of exclusive rights held by any supplier or the need for compatibility with goods and services previously acquired and there are no reasonable alternatives or substitutes;
- ii the required goods and services will be additional to similar goods and services being supplied under an existing contract (i.e. contract extension or renewal);
- iii an attempt to purchase the required goods and services has been made in good faith using a method other than Direct Negotiation under Section 3.2 through 3.7 of this policy which has failed to identify a successful supplier and it is not reasonable or desirable that a further attempt to purchase the goods and services be made using a method other than Direct Negotiation;
- iv the goods and services are required as a result of an emergency, which would not reasonably permit the use of a method other than Direct Negotiation;
- v the required goods and services are to be supplied by a particular vendor or supplier having special knowledge, skills, expertise or experience.

3.12 COOPERATIVE PURCHASING

- a) The Town may participate with other government agencies or public authorities in cooperative purchasing where it is in the best interests of the Town to do so and where the purposes, goals and objectives of this policy are complied with by such government agencies and public authorities.
- b) The policies of the government agencies or public authorities calling the cooperative Bid Solicitation are to be the accepted policy for that particular purchase.

3.13 TENDER CALL BEFORE AND AFTER APPROVALS RECEIVED

- a) Following the adoption of the capital budget by Council, the Department Head is authorized to call tenders for municipal construction projects and the acquisition of equipment.
- b) Notwithstanding a) above, the Department Head may call tenders for municipal construction projects and the acquisition of equipment prior to the adoption of the capital budget by Council provided the call and award of such tenders are specifically subject to receipt of such approvals.
- c) The Department Head is authorized to obtain, prior to the adoption of the capital budget by Council, sealed bids for additional and replacement equipment, provided that the documents include a clause specifically stating that the acceptance of a bid and placing of the order is subject to budget approval by Council and the items specified may be subject to change in quantity and/or deletion.

PART IV

BID AND CONTRACT ADMINISTRATION

4.1 CHANGES TO CONTRACT UNDER CALL

- a) A list of the name, mailing address, e-mail address, telephone number and fax number is to be maintained of all prospective bidders to facilitate distribution of addendums and when necessary to extend or cancel a contract under call.
- b) Interpretations will be made in reply to queries from bidders only in the form of written addendum. When it becomes necessary to revise, delete, substitute or add to any tendering material or contract under call, the Department Head shall forward by fax to each Contractor/Supplier who obtained tender forms for the contract a copy of the addendum. A copy of the addendum shall be stapled to each tender form not yet distributed.
- c) When it is advisable to cancel a contract under call, each Contractor/Supplier who received tender documents shall be notified by telephone and followed by fax that the contract has been cancelled and will have any tenders, if submitted, returned unopened by hand, courier or registered mail.
- d) When it is advisable to extend a closing date each Contractor/Supplier who received a tender document shall be notified of the extension by fax. If a tender has already been received before the notification of the extension of time the Contractor/Supplier shall be advised by fax that his submission will be returned, unopened, upon request.

4.2 SUBMISSION OF BIDS

- a) Bids shall be accepted in paper form to the Purchasing Coordinator at the time and date specified by the tender call.
- b) A locked drawer shall be provided for the safekeeping of tenders.
- c) When a tender is received, the envelope shall be time and date stamped. The computer time is the recognized time piece for the purpose of submissions. Receipt of each tender shall be recorded on a list of tenders received and the tender shall be deposited unopened, in the tender drawer. The number of bids received and the names of bidders are confidential and shall not be divulged prior to the tender opening. A bidder who has already submitted a tender bid may submit a further tender bid at any time up to the official closing time and date specified by the tender call. The last tender bid received shall supersede and invalidate all bids previously submitted by that bidder.

- d) A bidder may withdraw his or her tender bid at any time up to the official closing time by letter bearing his or her signature as in his or her bid submitted to the Department Head. Telephone requests will not be considered. When the withdrawal is made in person and the person is other than a senior official of the company, and for letter withdrawals, the authenticity of the request must be confirmed by telephoning a responsible official of the company.
- e) The closing time for receiving tender bids shall be 12.00 PM noon on Fridays. If the tender is received late, it shall be returned unopened to the bidder by mail. If a late bid is received without a return address on the envelope it shall be opened, address obtained and then returned. The covering letter should state why the envelope could not be returned unopened.
- f) Bids shall be opened prior to close of business on the date that the tender call closes. The Purchasing Coordinator shall be responsible for arranging for the opening of the tender bids and the following shall be in attendance at that time:
 - i) the Department Head or his/her designate;
 - ii) the Purchasing Coordinator or his/her designate
- g) Each tender shall be stapled to the applicable tender envelope and the bid deposit clipped to the tender form.
- h) If correspondence is found enclosed with a tender in the tender envelope, that tender shall be considered to be an improper bid and shall be so noted in the record of tenders opened. The correspondence and the tenders shall be referred to the solicitor for recommendation as to acceptance or rejection.
- i) When tenders have been opened, the Purchasing Coordinator shall check the listing of tenders received, and the number of tenders opened to ensure that all tenders received are accounted for. If a discrepancy occurs, the tender opening proceedings shall be delayed until all tenders have been accounted for or the discrepancy resolved.
- j) Intentionally blank.
- k) The Department Head shall have a list prepared (Record of Tenders) in order of bid amount from low to high recording the name of each bidder and the amount of the tender. At this time the Department Head shall close the tender by drawing a diagonal line in the unused space in the listing and signing the form, together with the Purchasing Coordinator.
- l) The checking of tenders shall be completed as soon as possible following the opening of each tender. Any tender that has been rejected or is improper shall be so noted on the Record of Tenders opened. For a rejected bid the amount shall not be listed.
- m) Upon completion of the checking of tenders, the unofficial bid results of all qualified bids shall be posted to the Town's electronic bids and tenders website.

4.3 AWARDING OF CONTRACT

- a) Upon completion of the checking of tenders, the Purchasing Coordinator shall send a notification of acceptance to the successful bidder advising him that his tender has been accepted and advising that the contract documents will follow for execution.

- b) Following review of the tenders, all deposit cheques other than the low and second low bidders shall be returned to the applicable bidders by mail or picked up by the bidder. The tender certified deposit cheques that are retained shall not be cashed.
- c) The successful bidder, if requested in the tender document shall submit the following documentation in a form satisfactory to the Town within ten working days from the date of mailing of the notice by the Town to the tenderer to do so by the Town:
 - i executed performance bonds and labour and material bonds;
 - ii executed agreement;
 - iii insurance documents in compliance with the tender documents;
 - iv declarations respecting the Workplace Safety and Insurance Board;
 - v certificate of clearance from the Workplace Safety and Insurance Board; and
 - vi any other documentation requested to facilitate the execution of the contract.
- d) When copies of the executed contract are returned and found acceptable to the Municipality, the deposit cheques of the successful bidder and the second low bidder shall be returned by certified mail or be picked up by the bidder.
- n) If a contract has been awarded and the successful low bidder fails to sign the contract or provide the necessary documents as outlined within the specified time, the Town may grant additional time to fill the necessary requirements or may recommend to either award the contract to the next lowest bidder or cancel the contract. If additional time is not granted, the deposit of the low bidder shall be forfeited. If the contract is to be awarded to the second low bidder, his deposit cheque shall be retained until he has actually signed the contract. If the second low bidder fails, or declines, to execute the contract if awarded to him his deposit shall be forfeited.

4.4 NO ACCEPTABLE BID OR EQUAL BIDS RECEIVED

- a) Where bids are received in response to a bid solicitation but exceed budget, are not responsive to the requirement, or do not represent fair market value, a revised solicitation shall be issued in an effort to obtain an acceptable bid unless Subsection 4.4 b) applies.
- b) The Department Head and the Purchasing Coordinator jointly may waive the need for a revised bid solicitation and enter into negotiations with the lowest responsive bidder under the following circumstances:
 - i The total cost of the lowest responsive bid is in excess of the funds appropriated by Town Council for the project and
 - ii The Department Head and the Purchasing Coordinator agree that the changes required to achieve an acceptable bid will not change the general nature of the requirement described in the bid solicitation.
- c) The method of negotiation shall be that accepted as standard negotiating procedures that employ ethical public procurement practices.
- d) The Town of Lakeshore has the right to cease negotiations and reject any offer.
- e) If two equal bids are received the bidders shall be advised that the tender to be accepted will be decided by means of a draw. The names of the tied bidders shall be placed in a container and the tender to be accepted shall be drawn by the Purchasing Coordinator or his designate. The time and location of the draw shall be set by the Purchasing Coordinator or his designate and the bidder shall be so advised in order that they may be present. Should any bidder elect not to be represented at the draw, the draw will proceed regardless.

4.5 ONLY ONE BID RECEIVED

- a) In the event only one bid is received in response to a request for tender, the Department Head may return the unopened bid to the bidder when, in the opinion of the Department Head and the Purchasing Coordinator, using criteria, based on the number of bids which might reasonably be expected on a given type of bid, additional bids could be secured. In returning the unopened bid the Department Head shall inform the bidder that the Town may be recalling the tender at a later date.
- c) In the event that only one bid is received in response to a request for tender, the bid may be opened and evaluated in accordance with the Town's usual procedures when, in the opinion of the Department Head and Purchasing Coordinator, the bid should be considered by the Town. If, after evaluation by the Department Head and Purchasing Coordinator, the bid is found not to be acceptable, they may follow the procedures set out in Subsection 4.4 a) to d).
- d) In the event that the bid received is found acceptable, it will be awarded as an Irregular result under Schedule "A" of the Purchasing By-law.

4.6 GUARANTEES OF CONTRACT EXECUTION AND PERFORMANCE

- a) The Department Head may require that a bid be accompanied by a Bid Deposit or a Bid Bond to guarantee entry into a contract.
- b) In addition to the security referred to in Subsection 4.6 a), the successful supplier may be required to provide:
 - i A Performance Bond to guarantee the faithful performance of the contract and;
 - ii A Labour & Material Bond to guarantee the payment for labour and materials to be supplied in connection with the contract
- c) The Department Head shall select the appropriate means to guarantee execution and performance of the contract. Means may include one or more of, but are not limited to, financial bonds or other forms of security deposits, provisions for liquidated damages, progress payments, and holdbacks.
- d) A bid deposit shall be required to accompany and be included in the envelope containing the bid documents in the following circumstances:
 - i All bids for municipal constructions projects greater than \$50,000;
 - ii Special maintenance contracts, except for those contracts, whose price in the opinion of the Purchasing Coordinator is disproportionate to the cost to the contractor of obtaining a bid deposit.
- e) When a bid deposit is required the amount of the bid deposit shall be 10 percent of the total bid submitted. If the tender is for a large construction project, the bid deposit may be reduced from the 10% minimum to a number more in line with the estimated cost of the project with the concurrence of the Department Head and the Purchasing Coordinator.
- f) Prior to commencement of work and where deemed appropriate, evidence of Insurance Coverage satisfactory to the Department Head must be obtained, ensuring indemnification of the Town of Lakeshore from any and all claims, demands, losses, costs or damages resulting from the performance of a supplier's obligations under the contract. The Town shall be added as an additional insured.
- g) Prior to payment to a supplier, a Certificate of Clearance from the Workplace Safety and Insurance Board shall be obtained ensuring all premiums or levies have been paid to the Board to date.
- h) The Department Head shall ensure that the guarantee methods selected will:

- i) not be excessive but sufficient to cover financial risks to the Town;
 - ii) provide flexibility in applying leverage on a supplier so that the penalty is proportional to the deficiencies, and
 - iii) comply with provincial statutes and regulations.
- i) All bidders shall include in the tender/sealed bid envelope the following:
 - i) the tender/bid form issued by the Town or its agents;
 - ii) the statutory declaration, if applicable;
 - iii) the tender bid deposit; and
 - iv) the addenda/acknowledgement, if applicable.
- j) When a performance bond or labour and material bond is required, the amount of the bond shall be 100 percent of the amount of the tender bid, unless the Department Head recommends and the Purchasing Coordinator approves a lower level of bonding.
- k) A minimum payment holdback of 10 percent shall be mandatory on all construction contracts for costs greater than \$20,000 and where the project covers a period of time where progress billings are received. Where payment is made at the end of the project, any holdback will be limited to a minimum of any deficiencies and/or any incomplete portions of the work.
- l) The responsible Department Head may release the holdback funds on construction contracts upon:
 - i) the contractor submitting a statutory declaration that all accounts have been paid and that all documents have been received for all damage claims;
 - ii) receipt of clearance from the Workplace Safety and Insurance Board for any arrears of Workplace Safety and Insurance Board assessment;
 - iii) all the requirements of the Construction Lien Act, R.S.O. 1990, being satisfied;
 - iv) receipt of certification, where applicable, that liens have not been registered and substantial performance.
- m) Treasury is authorized to cash and deposit any bid deposit cheques in the Town's possession that are forfeited as a result of non-compliance with the terms, conditions and/or specifications of a sealed bid.

4.7 CONTRACTUAL AGREEMENT

- a) The award of contract may be made by way of a formal agreement, Contract Record or Purchase Order.
- b) A Purchase Order or Contract Record is to be used when the resulting contract is straightforward. A formal agreement is to be used when the resulting contract is complex.
- c) It shall be the responsibility of the Department Head and/or the Town Solicitor to determine if it is in the best interest of the Town to establish a formal agreement with the supplier.
- d) Where it is determined that Subsection 4.7 c) is to apply, the formal agreement shall be reviewed and approved for execution by the Town Solicitor.
- e) Where a formal agreement is required, as a result of the award of a contract, the Mayor and Town Clerk shall execute the agreement in the name of the Town of Lakeshore.
- f) Where a formal agreement is not required, the Department Head shall issue a Purchase Order or Contract Record incorporating the terms and conditions relevant to the award of contract.

4.8 EXERCISE OF CONTRACT RENEWAL OPTIONS

- a) Where a contract contains an option for renewal, the Department Head may exercise such option provided that all of the following apply:
 - i the supplier's performance in supplying the goods, services or construction is considered to have met the requirements of the contract;
 - ii The Department Head and the Purchasing Coordinator agree that the exercise of the option is in the best interest of the Town;
 - iii funds are available in appropriate accounts within Town Council approved budget including authorized revisions to meet the proposed expenditure; and
 - iv a valid business case has been completed.
- b) Where a contract does not contain an option for renewal, the Department Head may consider an extension for no more than the term of the original contract provided that all of the criteria as outlined in 4.8 a) apply. The extension in this case is to be approved by Council.
- c) The business case shall be authorized by the Department Head and shall include written explanation as to why the renewal is in the best interest of the Town and include comment on the market situation and trend.

4.9 CONTRACT AMENDMENTS AND REVISIONS

- a) No amendment or revision to a contract shall be made unless the amendment is in the best interest of the Town.
- b) No amendment that changes the price of a contract shall be agreed to without a corresponding change in requirement or scope of work.
- c) Amendments to contracts are subject to the identification and availability of sufficient funds in appropriate accounts within Town Council approved budget including authorized revisions.
- d) Department Heads may authorize amendments to contracts provided that the total amended value of the contract is within the approval authority as noted in Schedule "A".
- e) Where expenditures for the proposed amendment combined with the price of the original contract exceeds Town Council approved budget for the project, a report prepared by the Department Head shall be submitted to Town Council recommending the amendment, and proposing the source of financing.

4.10 EXECUTION AND CUSTODY OF DOCUMENTS

- a) The Mayor and Town Clerk are authorized to execute formal agreements in the name of the Town of Lakeshore for which the award was made.
- b) Department Heads shall have the authority to execute Purchase Orders and/or Contract Records issued in accordance with these provisions.
- c) The Clerk shall be responsible for the safeguarding of original purchasing and contract documentation for the contracting of goods, services or construction for which the award is made.

4.11 EXCLUSION OF BIDDERS IN LITIGATION

- a) The Town may, in its absolute discretion, reject a Tender or Proposal submitted by the bidder if the bidder, or any officer or director of the bidder is or has been engaged, either directly or indirectly through another corporation, in a legal action against the Town, its elected or appointed officers and employees in relation to:

- i any other contract or services; or
 - ii any matter arising from the Town's exercise of its powers, duties, or functions.
- b) In determining whether or not to reject a quotation, tender or proposal under this clause, the Town will consider whether the litigation is likely to affect the bidder's ability to work with the Town, its consultants and representatives, and whether the Town's experience with the bidder indicated that the Town is likely to incur increased staff and legal costs in the administration of the contract if it is awarded to the bidder.

4.12 EXCLUSION OF BIDDERS DUE TO POOR PERFORMANCE

- a) The Department Head shall document evidence and advise the Purchasing Coordinator in writing where the performance of a supplier has been unsatisfactory in terms of failure to meet contract specifications, terms and conditions or for Health and Safety violations.
- b) The pre-qualification of a contractor shall be reviewed and suspended by the Department Head where he/she becomes aware of:
- i unsatisfactory performance on Town contracted works;
 - ii material adverse change in a contractor's technical, financial, managerial or organizational capability.
- c) The Purchasing Coordinator may, in consultation with the Town Solicitor, prohibit an unsatisfactory supplier/existing pre-qualified contractor from bidding on future Contracts for a period of up to three years.

4.13 ACCESS TO INFORMATION

The disclosure of information received relevant to the issue of bid solicitations or the award of contracts emanating from bid solicitations shall be made by the appropriate officers in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, as amended.

PART V GENERAL

5.1 DIRECT SOLICITATION OF DEPARTMENTS

- a) Unsolicited Proposals received by the Town shall be reviewed by the Department Head.
- b) Any procurement activity resulting from the receipt of an Unsolicited Proposal shall comply with the provisions of the By-law.
- c) A contract resulting from an Unsolicited Proposal shall be awarded on a non-competitive basis only when the procurement complies with the requirements of a non-competitive procurement.

5.2 ETHICS IN PURCHASING

The code of purchasing ethics established by the Ontario Public Buyers Association shall apply to all staff involved in the procurement policy.

5.3 RESOLUTION OF QUESTIONS OF POLICY

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

5.4 AMENDMENT OR RESCINDING OF POLICY

The Chief Administrative Officer and the Purchasing Coordinator from time to time, at his/her discretion, may make recommendations regarding the rescinding, remaking or amending this policy or any provision.

PART VI **DISPOSAL OF SURPLUS OR SCRAP MATERIALS AND EQUIPMENT**

6.1 ITEMS CONSIDERED OBSOLETE OR SURPLUS BY DEPARTMENTS

- a) All departments shall notify the Purchasing Coordinator when items become obsolete or surplus to their requirements to ascertain if the items can be of use by another department rather than disposed of.
- b) Items that are not claimed for use by another department may be offered for sealed bids, public auction or other public sale, depending in the opinion of the Purchasing Coordinator on which method is most suitable for the equipment or material involved.
- c) Donations of unclaimed items will only be made to non profit agencies/institutions for their own purposes. Donated items are not to be resold.
- d) The revenue from the sale of obsolete material shall be credited to the appropriate account.

6.2 DISPOSAL OF SCRAP MATERIAL

- a) Where scrap material is available for disposal, the relevant Department Head will advise the Purchasing Coordinator who shall be responsible for its disposal.
- b) The Purchasing Coordinator, after determining the value and possible alternate use of the scrap material, may dispose of the material by:
 - i. general advertising to secure sealed bids;
 - ii. direct contact with the appropriate dealers to view the scrap and submit offers to purchase;
 - iii. public auction; or
 - iv. other methods as deemed appropriate.
- c) The revenue from the sale of scrap material shall be credited to the appropriate account.

**APPENDIX “A” TO PURCHASING POLICY
IRREGULARITIES CONTAINED IN BIDS**

IRREGULARITY	RESPONSE
1 Late bids	Automatic rejection, not read publicly and returned unopened to the bidder
2 Unsealed envelopes	Automatic rejection
3 Bid surety insufficient or not submitted with the bid when the bid request (or any addenda) indicated that such surety is required	Automatic rejection
4 Execution of Bid Bonds: <ul style="list-style-type: none"> Corporate seal or equivalent proof of authority to bind company or signature of the BIDDER or both missing Corporate seal or equivalent proof of authority to bind company or signature of BONDING company missing 	Automatic rejection
5 Other Bid Security: <ul style="list-style-type: none"> Cheque which has not been certified 	Automatic rejection
6 Documents, in which all necessary Addenda have not been acknowledged	Automatic rejection
7 Failure to attend mandatory site visit	Automatic rejection
8 Bids received on documents other than those provide by the Town of Lakeshore	Automatic rejection
9 Failure to insert the Bidder's business name in the Form of Tender	Automatic rejection
10 Signature page missing	Automatic rejection
11 Failure to complete document in ink or typed. Must be legible	Automatic rejection
12 Pricing page missing	Automatic rejection
13 Conditions placed by the Bidder on the Total Contract Price	Automatic rejection
14 Part bids (all items not bid)	Acceptable unless complete bid has been specified in the request
15 Bids containing minor clerical errors	2 working days to correct initial errors. Town reserves the right to waive initialing and accept bid
16 Alternate items bid in whole or in part	Available for further consideration unless specified otherwise in request
17 Unit prices in the schedule of prices have been changed but not initialed	2 working days to correct initial errors. Town reserves the right to waive initialing and accept bid
18 Mathematical errors which are not consistent with the unit prices	2 working days to initial corrections. Unit prices will govern.
19 Other mathematical errors	<ul style="list-style-type: none"> a) If both the unit price and the total price are left blank, then both shall be considered as zero b) If the unit price is left blank but a total price is shown for the item, the unit price shall be established by dividing the total price by the estimated quantity c) If the total price is left blank for a lump sum item, it shall be considered as zero d) If the tender contains an error in addition and/or subtraction and/or transcription in the approved tender documentation format requested (i.e. not the additional supporting documentation supplied), the error shall be corrected and the corrected total contract price shall govern
20 Bid documents which suggest that the bidder has made a major mistake in calculations or bid	Consultation with a Solicitor on a case-by-case basis

APPENDIX B TO PURCHASING POLICY

PRE-QUALIFICATION OF CONTRACTORS

1. To be considered for pre-qualification, the applicant must demonstrate the following criteria:
 - have the experience and the ability in the type of construction relevant to the pre-qualification class;
 - have a manager active in the construction operations;
 - have appropriate equipment to carry out the works;
 - have financial viability and where required, provide proof of the ability for bonding or surety to the Town;
 - be familiar with all applicable provisions of the Occupational Health and Safety Act and Regulations for construction projects. He shall have in place all Corporate Health and Safety Policies and Procedures as required under the legislation. Copies of said policies shall be provided to the municipality upon request;
 - provide, when required a certificate of good standing from the Workplace Safety and Insurance Board.
2. Applicants may apply for pre-qualification in one or more categories, with a separate application required for each category, as follows:
 - OD – open drain construction: Includes open channel construction and maintenance works including brush removal, erosion protection works and corrugated steel pipe culvert (bridge) installations.
 - CD – closed drainage works: Includes the installation or repair of tile drainage systems, catch basin, manholes, and mechanical pump stations.
 - R – road works – asphalt padding and paving only
 - B – bridge installations: Includes the installation and/or repair of corrugated steel pipe culverts, precast concrete box culverts and end treatment systems.

APPENDIX C TO PURCHASING POLICY

A STATEMENT OF ETHICS FOR PUBLIC PURCHASERS

The Ontario Public Buyers Association's Code of Ethics is based upon the following tenets and members of OPBA attempt to consistently practice their profession and deal with their day-to-day responsibilities according to these principles. Members are encouraged to display this statement in their departments as well as in other locations in their agencies.

Open and Honest dealings with everyone who is Involved in the Purchasing Process. This includes all businesses with which this agency contracts or from which it purchases goods and services, as well as all members of our staff and of the public who utilize the services of the purchasing department.

Fair and Impartial Award Recommendations for All Contracts and Tenders. This means that we do not extend preferential treatment to any vendor, including local companies. Not only is it against the law, it is not good business practice, since it limits fair and open competition for all vendors and is therefore a detriment to obtaining the best possible value for each tax dollar.

An Irreproachable Standard of Personal Integrity on the Part of All Those Designated as Purchasing Agents for this Agency. Absolutely no gifts or favours are accepted by the purchasing agents of this agency do not publicly endorse one company in order to give that company an advantage over others.

Cooperation With Other Public Agencies in Order to Obtain the Best Possible Value for Every Tax Dollar. This agency is a member of a cooperative purchasing group. Made up of several public agencies, this group pools its expertise and resources in order to practice good value analysis and to purchase goods and services in volume and save tax dollars.

Continuous Development of Purchasing Skills and Knowledge. All members of the purchasing department of this agency take advantage of the many opportunities provided by the Ontario Public Buyers Association to further their knowledge of good public purchasing.