

TOWN OF COLLINGWOOD JUDICIAL INQUIRY

**BRIEF OF MUNICIPAL PROCUREMENT BY-LAW RESEARCH
(Prepared by the Town of Collingwood)**

November 26, 2019

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TAB 1

Table of Selected Municipal Procurement By-Laws in Ontario

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
Toronto	2,731,571	<p>The <i>Toronto Municipal Code Chapter 195, Purchasing</i> does not include provision with respect to a fairness commissioner, but does list 'Integrity Commissioner' under accountability definition.</p> <p>§ 195-2.1. Definitions.</p> <p>As used in this chapter, the following terms shall have the meanings indicated:</p> <p>ACCOUNTABILITY - The Auditor General, Integrity Commissioner, Lobbyist Registrar or Ombudsman appointed by Council under Part V, Accountability and Transparency, of the <i>City of Toronto Act, 2006</i>.¹</p>	<p>The <i>Toronto Municipal Code Chapter 195, Purchasing</i> includes lobbying of decision makers involved in procurement process within the definition of conflict of interest:</p> <p>§ 195-2.1. Definitions.</p> <p>As used in this chapter, the following terms shall have the meanings indicated: [...] CONFLICT OF INTEREST or UNFAIR ADVANTAGE:</p> <p>A. In relation to a procurement process, a supplier that has, or is seen to have, an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:</p> <p>(1) Having, or having access to, confidential information of the City in the preparation of its bid that is not available to other suppliers, or</p> <p>(2) Communicating with any person with a view to influencing preferred treatment in the procurement process</p>	<p>Yes. The <i>Toronto Municipal Code Chapter 140, Lobbying</i> governs the administration of the lobbyist registry.</p> <p>Section 140-9.1 creates a duty for employees involved in the purchasing process to report breaches of the Chapter to the lobbyist registry.</p> <p>§ 140-9.1. Duty to report for employees involved in a purchasing process.</p> <p>A. This section applies to any purchasing involved employee with respect to all activities occurring during the time period the purchasing involved employee is involved in or participates in a purchasing process.</p> <p>B. A purchasing involved employee upon having reasonable grounds to believe that a breach of this chapter has occurred or will occur, shall as soon as reasonably practicable:</p> <p>(1) report the breach to the Lobbyist Registrar for investigation and</p>	<p>The <i>Toronto Municipal Code Chapter 195, Purchasing</i> allows for disqualification of non-compliant suppliers from the bidding process, or suspension from future solicitations:</p> <p>§ 195-13.12. Disqualification of suppliers for non-compliance.</p> <p>A. Suppliers shall be required to certify compliance with the Supplier Code of Conduct as set out in Article 13 of this chapter with their bid and verify compliance prior to award. Any contravention of the Supplier Code of Conduct by a supplier, including any failure to disclose potential conflicts of interest or unfair advantages, may be grounds for the Chief Purchasing Officer to disqualify a supplier from being awarded a contract.</p> <p>B. The Chief Purchasing Officer, in consultation with the City Solicitor, may also disqualify any supplier who may otherwise have an unfair advantage or conflict of interest that cannot be resolved in relation to any procurement.</p> <p>C. A contravention of the Supplier Code of Conduct may also be grounds for the division head to</p>	<p>See Memorandum of Understanding of cooperation and collaboration of The Office of the Auditor General, The Office of the Integrity Commissioner, The Office of the Lobbyist Registrar, and The Office of the Ombudsman.⁷</p>	<p>Toronto Municipal Code, Chapter 195, Purchasing</p> <p>Toronto Municipal Code, Chapter 140, Lobbying</p>

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			<p>(including but not limited to the lobbying of decision makers involved in the procurement process), or</p> <p>(3) Engaging in conduct that compromises, or could be seen to compromise, the integrity of the procurement process; or [...]²</p> <p><i>Toronto Municipal Code Chapter 195, Purchasing</i> prohibits communication during solicitation, unless permitted by the Lobbying By-law:</p> <p>§ 195-13.9. Prohibited communication during the solicitation.</p> <p>No supplier, or affiliated person, may discuss or communicate either verbally, or in writing, with any employee, public office holder, or the media in relation to any solicitation between the time of the issuance of the solicitation to the award and execution of final form of contract, <u>unless such communication is expressly permitted in the solicitation and in compliance with Chapter 140, Lobbying.</u> All supplier communications shall be with the Chief Purchasing Officer or the</p>	<p>resolution, by providing the basis for the belief that a breach of this chapter has occurred, or may occur; and</p> <p>(2) provide the Lobbyist Registrar with any documents, information, or other evidence which the purchasing involved employee believes are or may be relevant to the breach.⁴</p>	<p>terminate any contract awarded to that supplier and require the return of any advance payments.⁵</p> <p>§ 195-13.13. Suspension of suppliers from future solicitations.</p> <p>A. Without limiting or restricting any other right or privilege of the City, Council may suspend a supplier's eligibility to bid for a period between one (1) and five (5) years based upon evidence that there has been a contravention of the Supplier Code of Conduct or for any other professional misconduct or omissions that adversely reflect on the commercial integrity of the supplier.</p> <p>B. Without limiting or restricting any other right or privilege of the City, the Chief Purchasing Officer, in consultation with the City Solicitor, may also temporarily suspend a supplier's eligibility to bid for up to six (6) months based upon evidence that there has been a contravention of the Supplier Code of Conduct or for any other professional misconduct or omissions that adversely reflect on the commercial integrity of the supplier. [...]⁶</p>		

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			employee specifically designated for that purpose in the solicitation. ³				
Peel (region)	1,381,739	<p>The Procurement By-law does not include provisions with respect to a fairness commissioner. There does appear to be an oversight avenue in the procurement By-law for regional council:</p> <p>PART IV - PROCUREMENT RESPONSIBILITIES AND PURCHASE CONTRACTS</p> <p>[...]</p> <p>4.6 Where in the opinion of the Director of Procurement circumstances give rise to an issue of adherence or non-adherence to the requirements of this By-law which cannot be resolved to his or her satisfaction, he or she shall report on such circumstances to the Regional Council and where such circumstances involve a purchase of goods or services required for police purposes, to the Police Services Board.⁸</p>	<p>The Procurement By-law contains the following restrictions on lobbying:</p> <p>PART IX - LOBBYING RESTRICTIONS</p> <p>9.1 Lobbying restrictions:</p> <p>9.1.1 Vendors, their employees, agents, and any others involved in a procurement process provided for in this By-law, shall not, during a Bid Solicitation process or any subsequent award, engage in any form of political or other lobbying whatsoever or seek to influence the outcome of the procurement process or subsequent Award. This restriction extends to all of the employees or appointed officers of the Region or of the Police Service, members of the Police Service and members of Regional Council.</p> <p>9.1.2 The Region may reject any Bid by a Vendor that engages in such lobbying, without further consideration, and may terminate that Vendor's right to continue in the procurement process.</p> <p>9.1.3 During a Bid Solicitation process or any subsequent award, all communications shall be made to the Region's designated official</p>	<p>The Peel Region Lobbyist Registry was established by By-law 47-2016, effective March 1, 2017 (the Lobbyist Registry Bylaw).¹⁰</p> <p>See also: Lobbyist Code of Conduct, Schedule "A" to By-law 47-2016.</p>	<p>The Procurement By-law contains the following consequences for vendors that breach the lobbying prohibition:</p> <p>9.1.2 The Region may reject any Bid by a Vendor that engages in such lobbying, without further consideration, and may terminate that Vendor's right to continue in the procurement process¹¹</p>	<p>The Procurement By-law also contains conflict of interest provisions which prohibit knowingly allowing anything to be done to cause a Vendor to have an unfair advantage in obtaining a contract:</p> <p>PART VIII - CONFLICT OF INTEREST</p> <p>[...]</p> <p>8.3 Members of Regional Council, appointed officers and employees of the Region or of the Police Service and members of the Police Service shall not knowingly cause or permit anything to be done or communicated to anyone which is likely to cause any potential Vendor or contractor to have an unfair advantage or disadvantage in obtaining a contract for the supply of goods and services to the Region or to the Police Service, or any other municipality, local board or public body involved in the procurement of goods and services either jointly or in co-operation with the Region.</p> <p>8.4 No member of Regional</p>	<p>Peel Region Procurement By-law</p> <p>Peel Region Lobbyist Registry By-law</p>

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			<p>point of contact as specified in the Bid Solicitation. No Vendor or person acting on behalf of a Vendor or group of Vendors, shall contact any member of Regional Council, Chair, Board or an appointed officer, consultant or any employee of the Region or of the Police Service, or member of the Police Service to attempt to seek information or to influence the Award.</p> <p>9.1.4 Members of Regional Council, the Board, appointed officers and employees of the Region or of the Police Service, or members of Police Service, shall refer any inquiries about a Bid Solicitation process to the Director of Procurement.⁹</p>			<p>Council, appointed officer, or employee of the Region or of the Police Service or member of the Police Service shall knowingly cause or permit anything to be done which will jeopardize the legal validity or fairness of any procurement of goods and services under this By-law or which is likely to subject the Region or the Police Service, to any claim, demand, action or proceeding as a result of such act or omission.¹²</p>	
Ottawa	934,243	<p>The procurement By-law contains a formal review process which may engage the fairness commissioner:</p> <p>46. COMPREHENSIVE COMPLAINTS PROCESS</p> <p>[...]</p> <p>(c) Phase Three: Formal Review:</p> <p>(i) Where the Chief Procurement Officer has received a complaint that discloses a reasonable</p>	<p>The procurement By-law does not appear to contain any specific reference to lobbying, or to the lobbyist registry; however, the Lobbyist Registry By-law includes prohibitions on certain types of lobbying, for example:</p> <p>Contingency Fees Prohibition</p> <p>5.</p> <p>1. No person, on whose behalf another person undertakes lobbying activities, shall make a payment for the lobbying activities that is in whole or in part contingent on the</p>	<p>The Lobbyist Registry came into effect on September 1, 2012.</p> <p>Lobbyists are required to register with the Lobbyist Registry and disclose lobbying activities within 15 business days of the communication taking place. The City's Integrity Commissioner is responsible for the enforcement and oversight of the Lobbyist Registry, and will annually review and report on its operations.¹⁷</p>	<p>Section 7 of the Procurement By-law states the director shall not award a contract if a vendor has breached the By-law:</p> <p>7. Restrictions:</p> <p>[...]</p> <p>(2) A Director shall not award a contract where Supply Services has determined that the provisions of this By-law have not been adhered to and has so advised the Director.¹⁸</p> <p>Additionally, s. 10 -12 of Lobbyist Registry By-law includes sanctions the</p>		<p>Ottawa Procurement By-law</p> <p>Ottawa Lobbyist Registry By-law</p>

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		<p>indication that the procurement at issue was not carried out in accordance with the City's procurement policies and/or the terms of the procurement process, it is to be considered by a Review Panel comprised of the Chief Procurement Officer, the City Clerk and Solicitor (or a designated lawyer from the Legal Services), a representative from the Auditor General's office and the Fairness Commissioner if applicable.¹³</p> <p>See Also: Integrity Commissioner oversight/enforcement of lobbyist registry contained in the Lobbyist Registry By-law.¹⁴</p>	<p>successful outcome of any lobbying activities.</p> <p>2. No person who lobbies a public office holder shall receive payment that is in whole or in part contingent on the successful outcome of any lobbying activities.¹⁵</p> <p>Appendix "A" Lobbyists' Code of Conduct</p> <p>[...]</p> <p>5.3: Lobbyists shall not lobby public office holders on a subject matter for which they also provide advice to the City.¹⁶</p>		<p>Integrity Commissioner can impose for breach of the By-law (including temporary ban on communication with public office holders):</p> <p>Part V Sanctions and Penalties</p> <p>Refusal to Accept or Suspend Registration or Return</p> <p>10.</p> <p>1. The Integrity Commissioner may impose a temporary ban on communication in accordance with the following scheme if the Integrity Commissioner finds that the requirements of this By-law have not been met:</p> <ul style="list-style-type: none"> a) First breach: the lobbyist is banned from communicating with public office holders for one month; b) Second breach: the lobbyist is banned from communicating with public office holders for three months; and c) Third breach: The Integrity Commissioner to determine an appropriate sanction. <p>2. If the Integrity Commissioner decides to impose a temporary ban on communication, the Integrity Commissioner shall inform the individual of the suspension and the reason for the suspension in the manner that the Integrity</p>		

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					<p>Commissioner determines.</p> <p>3. If the Integrity Commissioner imposes a temporary ban on communication, the Integrity Commissioner shall notify all Senior Public Office Holders and notice of the temporary ban shall be posted on the City's website.</p> <p>Removal from Registry 11. 1. The Integrity Commissioner may remove a registration or return from the Lobbyist Registry if the individual who filed the registration or return if the Integrity Commissioner finds that the lobbyist has not complied with the requirements of this By-law.</p> <p>2. When a registration or return is removed from the Lobbyist Registry, the individual who filed it shall be deemed, for the purposes of his or her existing and future obligations under this By-law, not to have filed the registration or return.</p> <p>Referral to Appropriate Authorities 12. Pursuant to subsection 223.12(7), should the Integrity Commissioner determine, when conducting an inquiry, that there are reasonable grounds to believe that an individual has contravened any other Act or the Criminal Code (Canada), the Integrity Commissioner shall immediately refer the matter to the appropriate</p>		

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					authorities and suspend the inquiry pending the outcome of any resulting police investigation. ¹⁹		
Mississauga	721,599	The Purchasing By-law does not include provisions with respect to a fairness commissioner.	<p>The Purchasing By-law does not include specific lobbying prohibition, but Section 16 does limit who vendors can communicate with during the bid process, and provides for disqualification of vendors who do not comply.</p> <p>SECTION 16 - POINT OF CONTACT</p> <p>16. (1) Contact for the purposes of this section relates to communications to and from City employees, consultants engaged by the City, elected officials or Council and Bidders during the time a Bid Request is in process.</p> <p>(2) For Medium Value Acquisitions, unless otherwise specified by the Buyer, the Departmental staff person delegated with process responsibility shall act as the official contact person and shall respond to all communications in respect of the Bid Request from the date of issuance, up to and including the announcement of an Award with the exception of Bidder complaints or protests which shall be forwarded to the Buyer.</p> <p>(3) For High Value Acquisitions the Manager or the Buyer shall act as</p>	See: Peel Region (above)	<p>The Purchasing By-law allows for temporary exclusion of non-compliant bidders:</p> <p>SECTION 23 - DISQUALIFICATION OF BIDDERS</p> <p>23. (1) The Purchasing Agent may exclude a Bidder from eligibility to submit a Bid for a period the later of two years or until after the next Bid opportunity has occurred where there is documented evidence of poor performance or non-performance in respect of the fulfillment of a Commitment, or there is documented evidence that the Bidder either violated a provision of this By-law or the Request or submitted an improper Bid, as determined by the purchasing Agent.</p> <p>(2) The Purchasing Agent may exclude a Bidder from a current Bid Request process if the Bidder is found to be in violation of section 16 (Point of Contact).</p> <p>(3) Prospective bidders shall be notified of their exclusion from eligibility and shall have the right to protest in accordance with applicable City policies and procedures.²¹</p>	<p>Section 4 of the Purchasing By-law requires staff compliance with National codes of purchasing ethics, and requires all vendors to become knowledgeable of the city's ethical policies:</p> <p>4. (1) The Purchasing Agent and Materiel Management staff shall comply with the codes of purchasing ethics established by the National Institute of Governmental Purchasing, Inc. and the Purchasing Management Association of Canada in respect of all Acquisition processes.</p> <p>(2) The City adheres to and insists upon adherence to a strict ethical standard in all City Acquisitions by all Bidders and Vendors. All Bidders and Vendors shall be required to become knowledgeable with and adhere to the City's policies in this regard, as may be amended from time to time.²²</p>	Mississauga Purchasing By-law

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			<p>the official contact person and shall respond to all communications. The Buyer may, if appropriate, consult with a Departmental staff person in order to obtain required information to be communicated.</p> <p>(4) If new information to a Bid Request is required, an addendum shall be issued by Departmental staff in the case of a Medium Value Acquisition, with notification to the Buyer, and by the Buyer in the case of a High Value Acquisition.</p> <p>(5) Any Bidder found to be in breach of this section is subject to disqualification from participating in the current Bid Request.²⁰</p>				
Brampton	603,346	<p>The Purchasing By-law contains an optional provision re: the utilization of a fairness monitor:</p> <p>9.0 FAIRNESS MONITOR The City may elect to utilize a fairness monitoring process for specific procurements, and may engage a fairness monitor as an independent third party to observe all or part of a Procurement Process, to provide related feedback on fairness issues to the Purchasing Agent and the requisitioning Department Head, or to Council for</p>	<p>The purchasing By-law does not use the term "lobbying", but does prohibit requisition of goods, services or construction where anything was done/communicated likely to cause any Bidder an unfair advantage (or disadvantage), or where anything was done likely to impact the fairness of the requisition:</p> <p>12.6 No goods, services or construction shall be requisitioned by any employee or the Mayor or Councillor unless: [...] d) No employee or the Mayor or Councillor shall knowingly cause or</p>	The Brampton By-law to establish and maintain a lobbyist registry came into force on January 1, 2016. ²⁵	---	---	<p>Brampton Purchasing By-law</p> <p>Brampton Lobbyist Registry By-law</p>

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		Procurements in excess of \$1,000,000 to provide an unbiased opinion on the fairness and transparency of the process. ²³	<p>permit anything to be done or communicated to anyone which is likely to cause any potential Bidder to have an unfair advantage or disadvantage in obtaining a Contract with the City, or any other municipality, local board or public body involved in the Procurement; and</p> <p>e) No employee or the Mayor or Councillor shall knowingly cause or permit anything to be done which will jeopardize the legal validity or fairness of any Procurement under this By-law which is likely to subject the City to any claim, demand, action or proceeding as a result of such act or omission.²⁴</p>				
Hamilton	536,917	The Procurement By-law does not include provisions with respect to a fairness commissioner.	<p>Section 9 of the Procurement By-law prohibits lobbying:</p> <p>(9) No Lobbying and Single Point of Contact</p> <p>a) A vendor and its representatives shall not,</p> <p>i. make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their qualifications, their service or product, or their interest in a RFQ/ RFP/ RFT/RFRC/Request for Prequalifications.</p> <p>ii. communicate with the City</p>	The City of Hamilton By-law to establish and maintain a lobbyist registry came into force on August 1, 2015. ²⁷	<p>There is a provision in Section 10 of the procurement By-law for imposing an interim ban on vendors – but it is unclear that lobbying would meet the criteria:</p> <p>(10) Where the Manager of Procurement has demonstrated and the Procurement Sub-Committee is satisfied that there is sufficient evidence of act(s) or omission(s) described in this Policy #1 on the part of a vendor, the Procurement Sub-Committee may impose an interim ban upon the vendor from competing or being awarded any City Contract, under the following circumstances:</p>		<p>Hamilton Procurement By-law</p> <p>Hamilton Lobbyist Registry By-law</p>

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			<p>regarding a RFQ/RFP /RFT /RFRC/Request for Prequalifications except through the Manager of Procurement or designate identified in the RFQ/RFP/RFT/RFRC/Request for Prequalifications, who shall be the single point of contact for that procurement document.</p> <p>iii. Having a single point of contact for the RFQ/RFP/RFT/RFRC/Request for Prequalifications is intended to allow all other persons involved with the RFQ/RFP/RFT/RFRC/Request for Prequalifications on behalf of the City to avoid any perception of a conflict of interest and to conduct the procurement set out in the RFQ/RFP/RFT/RFRC/Request for Prequalifications in as fair and objective a manner as possible.</p> <p>iv. make any attempt to contact, directly or indirectly, any of the following persons, with respect to a RFQ/RFP /RFT/RFRC/Request for Prequalifications,</p> <ol style="list-style-type: none"> 1. any member of an evaluation team; 2. any member of a costing team; 		<ol style="list-style-type: none"> a. while an investigation is being conducted by the Manager of Procurement; b. while there is documented poor performance or non-performance that has not been resolved to the City's satisfaction and which has impaired the commercial relationship between the City and the vendor such that the vendor ought to be precluded from submitting bids on other contracts until the vendor performance issues have been rectified; or c. when a vendor has been found to be in breach of a City Contract and which breach has impaired the commercial relationship between the City and the vendor such that an interim ban is necessary in order to preclude the vendor from submitting bids on other contracts pending litigation or a final ban. <p>The interim ban may be imposed for a period of up to 12 months. The Procurement Sub-Committee's decision shall be final with respect to the interim ban.²⁸</p>		

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			<p>3. any expert, independent consultant or other advisor assisting the City;</p> <p>4. any elected City official;</p> <p>5. any staff of the City of Hamilton or its advisors; or</p> <p>6. any other persons connected in any way with the procurement document until such time when the RFQ/RFP/RFT/RFRC/Request for Prequalifications is cancelled or awarded.²⁶</p>				
Niagara	447,888	The Procurement By-law does not include provisions with respect to a fairness commissioner.	<p>The procurement By-law contains a prohibition on lobbying within the bid solicitation process:</p> <p>“Lobbying” means the advocacy of an interest that is affected, actually or potentially by the Bid Solicitation process or individuals involved in the Bid Solicitation process including seeking to influence the outcome of the Bid Solicitation process or subsequent Award.²⁹</p> <p>[...]</p> <p>31. (a) Suppliers, their staff members, or anyone involved in preparing a Bid, shall not engage in any form of political or other Lobbying whatsoever or seek to influence the outcome of the Bid Solicitation process or subsequent Award. This restriction extends to all of the Corporation’s staff and anyone involved in preparing a Bid</p>	N/A	<p>The procurement By-law permits the rejection of bids by suppliers that engage in lobbying, as defined in the By-law:</p> <p>Lobbying Restrictions [...]</p> <p>31(b) The Corporation may reject any Bid by a Supplier that engages in such Lobbying, without further consideration, and may terminate that Supplier’s right to continue in the Bid Solicitation process.³¹</p>		<p>Niagara Region Procurement By-law</p>

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			Solicitation or participating in a Bid evaluation process, and members of Council. ³⁰				
Vaughan	306,233	<p>Section 7 of the Procurement Policy creates the option of electing to use a fairness monitor in procurement:</p> <p>7. Fairness Monitor</p> <p>7.1 The City may elect to utilize a fairness monitoring process for specific procurements that are complex or high profile or of a substantial dollar value. In such cases, the City may engage a Fairness Monitor as an independent third party to observe all or part of a procurement process, to provide related feedback on fairness issues to the Director of Procurement Services, and to provide an unbiased and impartial opinion on whether the procurement process was conducted in accordance with this Policy and the principles of openness, fairness, consistency and transparency. The decision to engage a Fairness Monitor is at the discretion of the Director of Procurement Services in consultation with the</p>	<p>Subsection 1.1.11 of the Procurement Policy prohibits lobbying:</p> <p>1.1.11 Lobbyists shall not communicate with a public office holder on behalf of a vendor in relation to procurement when it is not permitted by the policy or procurement documents.³³</p>	<p>The City of Vaughan By-law to establish a lobbyist registry came into force on January 1, 2018.³⁴</p> <p>See also: Lobbyist Code of Conduct.³⁵</p>		<p>Note 1: The Integrity commissioner of Vaughan is also the Lobbyist Registrar.³⁶</p> <p>Note 2: The Procurement Policy creates the following deemed warranty by vendors:</p> <p>1.1.17 Where a vendor is being awarded a contract from the City, it shall be deemed to have warranted that it has not employed or retained any person, other than a bona fide employee, agent or broker working for the vendor, to solicit or secure the proposed contract, and that it has not paid or agreed to pay any person, other than a bona fide employee, agent or broker working solely for the vendor, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of that proposed contract, or as an inducement to be awarded that contract. Without prejudice to any of its other rights, the City</p>	<p>Vaughan Procurement Policy</p> <p>Lobbyist Registry By-law</p> <p>Lobbyist Code of Conduct</p>

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		procuring Director, and will be executed in accordance with this Policy. ³²				<p>reserves the right to annul any contract or other arrangement entered into with a vendor where there is a breach of this warranty.³⁷</p> <p>Note 3: The Procurement Policy requires compliance with several ethical codes of conduct, and includes fairness requirement:</p> <p>Ethical Conduct</p> <p>1.9 Procurement Services strives for the highest standard of ethical practice in all business relationships with vendors and as such, complies with the ethical codes of the Ontario Public Buyers Association (OPBA), Supply Chain Management Association (SCMA) and the National Institute of Governmental Purchasing (NIGP). (See links to these documents at (https://www.vaughan.ca/city-hall/departments/ps/Pages/default.aspx).</p> <p>1.10 Fundamentally, it is expected that City employees and Members of Council shall not knowingly cause or permit anything to be done or communicated to anyone</p>	

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
						which is likely to result in any potential Vendor having an unfair advantage or be disadvantaged in obtaining a Contract for the supply of goods, services or construction to the City. ³⁸	
Richmond Hill	195,022	<p>The Procurement By-law does not include provisions with respect to a fairness commissioner.</p> <p>However, Richmond Hill is currently advertising to fill the position of Integrity Commissioner on a contract for services basis.³⁹</p>	<p>The procurement By-law prohibits lobbying during the blackout period:</p> <p>Appendix "A"</p> <p>"Lobby" means, in the context of this Policy, an attempt by a Supplier, or any representative of the Supplier, to influence the outcome of any decision related to a Procurement Process from its initial planning stages through to Award and Contract signing.⁴⁰</p> <p>[...]</p> <p>9.2 Communication Between Issuance of RFX and Award of Contract (Blackout Period)</p> <p>Between the time of the issuance of an RFX and the entry into of an Awarded Contract, no Supplier, or any representatives employed or retained by the Supplier, or any subcontractor or Supplier whom the Supplier has obtained pricing from, either verbally or in writing, may discuss or communicate with, or</p>	N/A	<p>Section 9 of the Procurement By-law permits disqualification of a supplier for prohibited conduct:</p> <p>9. Prohibited Supplier Conduct and Disqualification</p> <p>The Supplier conduct described below is prohibited. If any of the conduct below comes to the attention of the Procurement Section prior to Award or finalization of the Contract, the CPO or Project Lead may recommend disqualification of an otherwise compliant Supplier from the Procurement Process to the Commissioner of the Lead Department and the CAO, or where the Lead Department is the Department of the CAO, the CAO and the Commissioner of Corporate and Financial Services, who will determine whether or not to disqualify the Supplier.⁴²</p>		<p>Richmond Hill Procurement Bylaw</p>

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
			<p>attempt to Lobby, any of the following in relation to any Competitive Procurement with:</p> <p>(a) Town staff other than the Procurement Section staff named as the contact in the RFx;</p> <p>(b) Town consultants or sub-consultants retained in connection with the acquisition that is the subject of the Procurement Process;</p> <p>(c) any member of Council individually or by requesting to appear as a delegation in front of Council as a whole or any other committee in which members of Council participate⁴¹</p>				
Barrie	141,434	The Procurement By-law does not include provisions with respect to a fairness commissioner.	<p>Section 7.5 of the Procurement By-law prohibits illegal and unethical bidding practices, including lobbying:</p> <p>7.5 Illegal or unethical bidding practices include:</p> <p>a) bid-rigging, price-fixing, bribery or collusion or other behaviours or practices prohibited by federal or provincial statutes;</p> <p>b) attempting to gain favour or advantage by offering gifts or incentives to City officers and employees, members of Council or any other representative of the City;</p> <p>c) lobbying members of Council or City officers and employees or</p>	N/A		<p>Section 8 of the Procurement By-law includes several provisions emphasizing the separation of Council from municipal procurement:</p> <p>8. SEPARATION OF ROLES AND THE ROLE OF COUNCIL</p> <p>8.1. In accordance with best practices in municipal procurement, Council recognizes the need for a clear separation of political and administrative functions in relation to the City's procurement operations. It is the role of Council to</p>	Barrie Procurement By-law

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
			<p><u>engaging in any prohibited communications during a procurement process;</u> d) submitting inaccurate or misleading information in response to a procurement opportunity; and e) engaging in any other activity that compromises the City's ability to run a fair procurement process.⁴³</p>			<p>establish policy and to approve expenditures through the City's budget approval process. Through this By-law, Council delegates to the City's officers and employees the authority to incur expenditures in accordance with approved budgets through the procurement of goods, services and construction in accordance with the rules and processes set out in this By-law.</p> <p>8.2. To facilitate Council's oversight role in respect of significant projects, Council may require Departments to obtain Council's authority to initiate specific procurements by identifying procurement projects of interest, such as procurements that are of a high value or involve significant risk, security concerns or significant community interest.</p> <p>8.3. To avoid the potential appearance of bias or political influence in procurement contract award decisions, members of Council will have no involvement in competitive procurement</p>	

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
						processes from the time those procurement process have been initiated through the advertisement or issuance of the solicitation document until a contract has been entered into with the successful bidder, except where Council is required to approve the contract award in accordance with Section 15 of this By-law. ⁴⁴	
Thunder Bay	107,909	<p>The Procurement By-law does not include provisions with respect to a fairness commissioner.</p> <p>However, under the Procurement By-law the Manager of Supply Management does have a role in ensuring fairness in determining method and scope of solicitation for purchasing:</p> <p>10.03 Role of Manager Supply Management</p> <p>The Manager Supply Management is responsible for:</p> <p>(a) providing professional procurement advice, including assistance in business decisions based</p>	<p>Section 9.06 of the Procurement By-law creates a single point of contact, and prohibits bidders, or persons acting for bidders, from other contact:</p> <p>9.06 Official Point of Purchasing Contact</p> <p>The official point of purchasing contact is the Manager Supply Management, or a member of his or her staff. Should it be necessary or desirable to have a contact person to respond to technical issues, that person shall be named in the competitive Bid documents. All communications will be made by these individuals and, during the procurement process, no Bidder or person acting on behalf of a Bidder, shall contact any member of Council, any consultant engaged by the Corporation with respect to the particular purchase in question, or</p>	N/A	<p>Section 9.06 subjects bidders in breach of the "Official Point of Purchasing Contact" section to be immediately disqualified and prohibited from future bidding opportunities:</p> <p>S. 9.06 [...] Any Bidder found to be in breach of this Section shall be subject to immediate disqualification from the procurement process and may be prohibited from future bidding opportunities at the discretion of Manager Supply Management.⁴⁷</p>		Thunder Bay Purchasing By-law

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
		<p>on market place knowledge, market timing or other professional supply opinions;</p> <p>(b) soliciting for the purchase of Goods and Services;</p> <p>(c) determining the method and scope of solicitation, including reviewing statements of work and specifications as prepared by the requisitioning department, for objectivity, transparency and fairness; [...]⁴⁵</p>	<p>any employee of the Corporation to attempt to seek information or to influence the award of the Contract. Any activity that will or will appear to influence the decision process, including the contact prohibited in this Section, and including contact purporting to be meetings of introduction, social events, meals or meetings related to the selection process, shall result in disqualification of the Bidder for the project to which the influential activity is directed. This prohibition does not apply to meetings specifically scheduled by the Manager Supply Management for presentations or negotiations. Any Bidder found to be in breach of this Section shall be subject to immediate disqualification from the procurement process and may be prohibited from future bidding opportunities at the discretion of Manager Supply Management.</p> <p>In addition, no Contractor shall engage in any contact or activities in an attempt to influence any Corporate employee or member of the Council with respect to the purchase of additional enhancements, options, or modules. However, a Contractor may communicate with the Manager Supply Management or an appropriate member of his or her</p>				

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
			<p>staff, for purposes of administration of the Contract during the term of the Contract.</p> <p>The determination of what constitutes influential activity is in the sole discretion of the Manager Supply Management, acting reasonably, and not subject to appeal.⁴⁶</p> <p>Any employee who is approached by a potential supplier should refer the supplier to the Supply Management Division of the Finance and Corporate Services Department.</p>				
Newmarket	84,224	The Procurement By-law does not include provisions with respect to a fairness commissioner.	<p>Section 25 of the procurement By-law prohibits lobbying:</p> <p>25. LOBBYING PROHIBITED</p> <p>If any director, officer, employee, agent or other representative of a Respondent or Bidder, including any other parties that may be involved in a joint venture, consortium or similar business relationship with the Respondent or Bidder, makes, from the time the Bid Call Document is released, any representation or solicitation to any elected representative or employee or agent of the Owner including project consultants, or to the media, with respect to the Bidder's</p>	N/A	<p>Section 22 of the Procurement By-law allows for rejection of bids and/or termination of existing contracts. The list in s. 22 does not include lobbying as a reason for bid rejection, but the list is non-exhaustive.</p> <p>22. CONTRACTOR INTEGRITY</p> <p>The Owner may reject Bids and/or terminate existing Contracts for reasons including but not limited to circumstances where a Contractor:</p> <p>(a) has been suspected or convicted of; corruption, collusion, bid-rigging any other anticompetitive activity or any other offence under the Criminal Code;</p> <p>(b) the Owner is likely to incur</p>		Newmarket Procurement By-law

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			Bid, the Owner will be entitled to reject the Bid. This requirement does not extend to any public deputations. ⁴⁸		<p>increased staff legal costs in the administration of the Contract if it is awarded to the Bidder;</p> <p>(c) has failed to satisfy an outstanding debt to the Owner or one of its local boards or corporations; or</p> <p>(d) There are reasonable grounds to believe it would not be in the Best Interests of the Owner to enter into a contract with the Bidder.⁴⁹</p>		
Caledon	66,502	The Procurement By-law does not include provisions with respect to a fairness commissioner.	<p>The s. 3.2 Vendor Conduct and Conflict of Interest provisions of the Procurement By-law contains a prohibition on lobbying:</p> <p>3.2 Vendor Conduct and Conflicts of Interest</p> <p>The Town requires its vendors and suppliers to act with integrity and conduct business in an ethical manner. All suppliers participating in a procurement process or providing deliverables to the Town must declare any perceived, possible or actual conflicts of interest and must conduct themselves in accordance with the Town's Vendor Code of Conduct.</p> <p>The term "Conflict of Interest," when applied to suppliers, includes any situation or circumstance where:</p> <p>(a) in the context of a</p>	N/A	<p>Section 7.7 of the Procurement By-law allows for suspension of vendors:</p> <p>7.7 Vendor Suspension</p> <p>Vendors can be suspended from participating in future procurement processes in accordance with the Vendor Suspension Protocol.</p> <p>The only copy of the "Vendor Suspension Protocol "for Caledon I was able to find is marked "Draft for Public Comment",⁵¹</p> <p>The Draft Vendor Suspension protocol would allow lobbying as a reason for suspension under s. 3(d):</p> <p>(d) Professional Misconduct or Lack of Commercial Integrity</p> <p>Town may suspend a Vendor for professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Vendor.</p>	<p>See also: Staff Report re: potential Lobbyist Registry, recommending:</p> <ul style="list-style-type: none"> That Staff Report 2016-132 regarding a Lobbyist Registry, be received; and that establishing a Lobbyist Registry not be pursued by the Town at that time 	<p>Caledon purchasing Bylaw</p> <p>Draft Vendor Suspension Protocol</p>

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
			procurement process, the supplier has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the Town that is not available to other suppliers; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process (including but not limited to the lobbying of decision makers involved in the procurement process); or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of an open and competitive procurement process or render that process non-competitive or unfair; or [...] ⁵⁰		Such conduct includes, but is not limited to: <ul style="list-style-type: none"> ▪ unethical bidding practices, such as inappropriate offers of gifts to the Town's officials, officers, employees or agents and inappropriate in-process lobbying or prohibited communications during a procurement process; [...] <p>The Draft Vendor Suspension Protocol also includes a process for review of suspended vendors under s. 5, and proscribes the requirements for the maintenance of a suspended vendors list under s. 6.</p>		
Aurora	55,445	The Procurement By-law does not include provisions with respect to a fairness commissioner.	The procurement By-law prohibits lobbying only in "Black-Out period", meaning the time period between the posting of the Bid by the Town up to and including the date the Award is made: Lobbying 26.1 During the Black-Out Period, no solicitations or lobbying may be made to any Town staff member,	N/A	The Procurement By-law does not appear to include specific provisions with consequences for bidders who breach the By-law.		Aurora Procurement By-law

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			Council member, Town consultant, or to the news media by any director, officer, principal, employee, agent, family relation, or other representative of a Bidder (including any other parties that may be involved in a business relationship with the Bidder) with respect to the merits or value of the Bidder's Bid. Any such communication in violation of this section will entitle the Procurement Manager to disqualify the offending Bidder from consideration for Award. This section does not apply to presentations or delegations expressly requested by Town staff or by Council, whether in the Bid Documents or otherwise. This section does not apply to information provided in the context of a reference check initiated by the Procurement Services Division. ⁵²				
Welland	52,293	The Procurement By-law does not include provisions with respect to a fairness commissioner.	Sections 35-36 of the purchasing By-law prohibits lobbying: LOBBYING 35. No bidder shall contact any member of Council or any employee of the City of Welland to attempt to influence the award of the contract. Any activity designed to influence the decision process, including, but not limited to, contacting any member of Council or employee of the City of Welland for such	N/A	The Welland purchasing By-law appears to envision allowing the procurement process to be suspended for doubts about integrity of the process, in addition to having forward-looking prohibitions for violations. The preamble to the Core Values And Guiding Principle of the By-law states: INTEGRITY: If there are any doubts that what is being done or asked by the client Division to be done might bring	See also: PART XX - ETHICS IN PURCHASING 103. The code of purchasing ethics established by the Ontario Public Buyers Association (OPBA) shall apply to all staff involved in the procurement process . The Ontario Public Buyers Association's Code of Ethics is based upon the following	Welland Purchasing By-law OPBA Code of Conduct

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
			<p>purposes as meetings of introduction, social events, meals or meetings related to the selection process, will result in disqualification of the bidder for the project to which the influential activity is deemed to be directed.</p> <p>Notwithstanding the above, this prohibition does not apply to meetings specifically scheduled by the City of Welland for presentations or negotiations, or to questions of staff of the City Divisions for clarification of the City's requirements.</p> <p>36. In addition, no bidder who has been awarded the contract shall engage in any contract or activities in an attempt to influence any member of Council or any employee of the City of Welland with respect to the purchase of additional enhancements, options, or modules. However, a contractor may communicate with the Purchasing Services Division or the General Manager Corporate Services / Treasurer for purposes of administration of the contract during the term of the contract.</p> <p>37. The determination of what constitutes influential activity is in the sole discretion of the City's Purchasing Services Division, acting</p>		<p>the integrity of the process into question, the procurement process should be suspended until the issue is resolved. Issues that cannot be resolved satisfactorily will be referred to a higher authority.</p> <p>Subordinate to this are six (6) principles which provide the framework for all City of Welland Procurement activities. Whenever a City of Welland employee must act in a way not clearly set out in this Policy, integrity and its supporting principles will provide the necessary guidance.[...] ⁵⁴</p> <p>Section 38 of the purchasing policy gives the purchasing division discretion to prohibit a non-compliant bidder from further solicitation opportunities for up to 3 years:</p> <p>38. At the Discretion of the Purchasing Division, any Bidder who violates any provisions of this Procurement By-law may be prohibited from further bid solicitation opportunities for up to 3 years as determined by the Purchasing Division. ⁵⁵</p>	<p>tenets and all employees who are authorized to purchase supplies and/or services on behalf of the City are to adhere to the following: [...] ⁵⁶</p>	

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
			reasonably, and not subject to appeal. ⁵³				
North Bay	51,553	The Procurement By-law does not include provisions with respect to a fairness commissioner.	The Procurement By-law does not appear to include provisions prohibiting lobbying.	N/A	The Procurement By-law does not appear to include specific provisions with consequences for bidders who breach the By-law.		North Bay Procurement By-law
Cornwall	46,589	The Procurement policy does not include provisions with respect to a fairness commissioner.	S. 6.8 'Prohibited Communication during the Bid Solicitation' of the Procurement policy prohibits communication with employees or public office holders during the bid solicitation ⁵⁷	N/A	<p>Section 6.11: Disqualification of Suppliers for Non-Compliance of the Procurement Policy allows for disqualification of suppliers in certain circumstances.</p> <p>Under 6.11(a) a Supplier or its affiliates can be disqualified from being awarded a contract, or existing contract can be terminated, if they contravene Section 6.0, including failing to disclose potential conflict of interest</p> <p>Under 6.11(b) Even if disclosed, a Supplier can be disqualified for conflict of interest that cannot be resolved.⁵⁸</p> <p>See also: Supplier Discipline Policy, which allows exclusion of bidders from Cornwall bidding opportunities:</p> <p>Section 8.2-8.3 of the Supplier Discipline Policy allow for exclusion of Suppliers from procurement opportunities for illegal or unethical bidding practices.</p> <p>Note: Definition of Supplier can include an individual person or group</p> <p>Section 8.3 allows analysis of unethical</p>	<p>The Procurement Policy contains a proactive declaration of conflict of interest from suppliers.</p> <p>Section 6.3 requires suppliers to declare and fully disclose any potential conflict of interest in the performance of the contract.⁶⁰</p> <p>Section 6.4 of the policy requires disclosure of subcontracting relationships that could compromise fair competition:</p> <p>6.4 Unethical Bidding Practices [...] Suppliers shall disclose to the Purchasing Supervisor any affiliations or other relationships with other Suppliers that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.⁶¹</p>	Cornwall Procurement Policy Supplier Discipline Policy

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
					practice in question to determine if supplier should be rejected from current bid, or if exclusion from future bidding opportunities is warranted. ⁵⁹		
Whitchurch-Stouffville	45,837	The Procurement By-law does not include provisions with respect to a fairness commissioner.	Section 4.3.6 of the Procurement By-law prohibits lobbying: 4.3.6 Vendors shall not engage directly or indirectly in any form of political or other lobbying whatsoever to influence the outcome of a procurement process. ⁶²	N/A	Under s. 4.3.3 of the Procurement By-law, the Town can refuse a Vendor if they, or their sub contractor, have an unfair advantage in the procurement process 4.3.3 The Town expects its Vendors to act with integrity and the Town, based upon recommendations of the BRP, may refuse to do business, including accepting any Bid submissions, with any Vendor or Sub Contractor/ Sub-Consultant that: (a) has an actual or potential conflict of interest; (b) has an unfair advantage in the procurement process; or (c) has engaged in illegal or unethical bidding practices, whether or not such illegal or unethical bidding practices occurred in relation to a Town procurement. ⁶³ Unethical bidding practices for the purpose of a s. 4.3.3. refusal to do business includes lobbying: 4.3.4 Illegal or unethical bidding practices include: (a) bid-rigging, price-fixing, bribery or collusion or other behaviours or practices prohibited by federal or	The Procurement By-law requires a proactive declaration of any perceived conflict of interest: 4.3.1 All Vendors participating in a Bid Call process shall declare any perceived, possible or actual conflicts of interest. ⁶⁵ https://www.yorkregion.com/news-story/8077951-whitchurch-stouffville-integrity-commissioner-suzanne-craig-resigns/	WS Procurement By-law

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
					provincial statutes; (b) attempting to gain favour or advantage by offering gifts or incentives to Town officers and employees, members of Council or any other representative of the Town; (c) lobbying members of Council or Town officers and employees or engaging in any prohibited communications during a procurement process; (d) submitting inaccurate or misleading information in response to a procurement opportunity; and (e) engaging in any other activity that compromises the Town's ability to run a fair procurement process. ⁶⁴		
Haldimand	45,608	The Procurement policy does not include provisions with respect to a fairness commissioner.	Section 5.09 of the Procurement Policy prohibits lobbying: 5.09 Lobbying Prohibited The County will be entitled to reject a bid submission if any representative of a Bidder, including any other parties that may be involved in a joint venture, consortium, subcontractor or Supplier relationship, makes any representation or solicitation to any elected official, employee or agent of Haldimand County during the blackout period. This requirement does not extend to any public deputations that may be made to	N/A	Section 5.09 of the Procurement Policy permits the county to reject a bid if the bidder or a representative engages in lobbying. (See lobbying prohibition).	--	Haldimand Procurement By-law

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
			Council in accordance with the Procedural By-law. ⁶⁶				
Quinte West	43,577	The Procurement By-law does not include provisions with respect to a fairness commissioner.	<p>Section 10.5 of Schedule "B" of the Procurement By-law prohibits lobbying:</p> <p>10.5 Lobbying of staff or politicians are unacceptable. In order to ensure fairness to all Proponents, the City must endeavor to prevent unfair advantage created by lobbying. Therefore, the City reserves the right to disqualify, at any time and at its sole discretion, any Proponent engaging in lobbying in connection with a competitive process between the date the document is issued and the signing of a contract between the City and the successful Proponent(s). Lobbying may include any activity that the City, at its sole discretion determines has or may give an unfair advantage to one Proponent relative to other Proponents. Without limiting the foregoing, lobbying may include:</p> <ul style="list-style-type: none"> • Verbal or written approached to any City staff other than those identified as contacts in the document. • Verbal or written approaches to any Council member. • Verbal or written approaches to the Ministry of Municipal 	N/A	Section 10.5 of Schedule "B" of the Procurement By-law permits the city to disqualify proponents engaged in lobbying at its sole discretion (See lobbying prohibition). .	--	Quinte West Purchasing Bylaw

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
			<p>Affairs and Housing, Minister of Municipal Affairs and Housing, or Members of Provincial Parliament.</p> <ul style="list-style-type: none"> • Verbal or written approaches to any expert or other advisor assisting the Evaluation and Selection Committee. • Verbal or written approaches to any member of an Evaluation or Selection Committee. • Requests by the Proponent to any organization or group for a letter of support or to provide verbal expression of support to any member of the Evaluation and Selection Team or Council • Verbal or written communication with media organizations regarding the project.⁶⁷ 				
Innisfil	36,566	The Procurement By-law does not include provisions with respect to a fairness commissioner.	<p>Section 4.12 of the Procurement By-law restricts lobbying:</p> <p>4.12 – Lobbying Restrictions</p> <p>4.12.1 Vendors, their staff or anyone involved in preparing a Bid shall not engage in any form of political or other lobbying whatsoever or seek to influence the outcome of the purchasing process or subsequent Award. This restriction extends to all of the Town's elected officials, committee</p>	N/A	<p>Section 4.12.3 of the Procurement By-law permits the Town to reject bids or terminate right to continue in purchasing process forbidders that engage in lobbying:</p> <p>4.12.3: The Town may reject any Bid by any Bidder/Proponent that engages in lobbying, without further consideration, and may terminate that Bidder's/Proponent's right to continue in the purchasing process.⁶⁹</p>	<p>Note 1: All employees authorized to purchase goods for Town must adhere to code of ethics:</p> <p>Section 2.6: Public purchasing code of ethics</p> <p>All employees authorized to purchase goods, services and/or construction on behalf of the Town must adhere to principles of Ontario Public Buyer Association's Code of</p>	<p>Innisfil Procurement By-law</p>

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
			members and staff. [...] 4.12.4 – During a Call for Bid process, all communications shall be made through purchasing services. No Vendor or person acting on behalf of a Vendor or group of Vendors shall contact any elected official... ⁶⁸			Ethics ⁷⁰ Note 2: The Procurement By-law prohibits elected officials and employees from sharing information re: a specific procurement need where it could prejudice prospective vendors: 4.12.2: No Town's elected officials, committee members, or employees shall provide information regarding the Town's need for a specific Good, Service, or Construction to prospective Vendors where the provision of the knowledge could provide an unfair advantage whether perceived or actual to that Vendor. ⁷¹	
Orangeville	28,900	The Procurement policy does not include provisions with respect to a fairness commissioner.	The Procurement policy does not appear to include provisions prohibiting lobbying.	N/A	The Procurement policy does not appear to include specific provisions with consequences for bidders who breach the By-law.		Orangeville Procurement Policy
Clarence-Rockland	24,512	The Procurement Bylaw does not include provisions with respect to a fairness commissioner. However, the Bylaw appears to contemplate the CAO or a delegate will be involved in procurement process have a	Section 45 of the Procurement Bylaw prohibits lobbying: 45. NO LOBBYING 45.1 No bidder or potential bidder shall contact any member of Council or any City employee to attempt to influence the award of a bid. Any activity designed to influence the	N/A	Section 45.4 gives the Manager of Supply discretion to prohibit non-compliant bidders from further bids for up to 3 years: 45.4 At the discretion of the Manager of Supply, any bidder who violates any provisions of this Procurement By-law may be prohibited from further bid		Clarence Rockland Procurement By-law

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
		<p>role to ensure fairness and integrity.</p> <p>42.7 Member of Council shall separate themselves from the procurement process and have no involvement whatsoever in specific procurements. Members of Council should not see any documents or receive any information related to a particular procurement while the procurement process is ongoing. Members of Council who receive inquiries from bidders related to any specific procurement shall immediately direct those inquiries to the Manager of Supply.</p> <p>The only exception to Article 42.7 will be at the discretion of the Chief Administrative Officer or the delegate actively involved in the procurement process to ensure fairness and integrity of the process⁷²</p>	<p>decision making process of a bid solicitation, including, but not limited to, contacting any member of Council or registering as a delegate to a Committee of Council meeting or Council meeting prior to an award of a contract or contacting City employees for such purposes as meetings of introduction, social events, meals or meetings related to a bid solicitation may result in disqualification of the bidder for the bid solicitation to which the influential activity is deemed to be directed.</p> <p>45.2 Notwithstanding the above, this prohibition does not apply to meetings specifically scheduled by the City for presentations or negotiations, or to questions which employees of the Supply Department may pose from time to time for clarification of the City's requirements.</p> <p>45.3 The Manager of Supply's sole discretion will determine what constitutes influential activity acting reasonably, and not subject to appeal.⁷³</p>		<p>solicitation opportunities for up to three (3) years as determined by the Manager of Supply.⁷⁴</p> <p>Section 48 gives the City discretion to disqualify bidders for up to 3 years, in circumstances including where a bidder engaged in lobbying:</p> <p>48. SUSPENSION OF BIDDERS The City may, in its sole discretion, disqualify a supplier from bidding for up to three (3) years on any bid solicitation or reject a bid if a supplier: [...] 48.4 Has engaged in lobbying; [...] 48.8 Is found to have colluded as a result of bidding or providing of goods or services to any municipal, provincial, or federal government or any of their agencies or corporations or legally related entities; [...] 48.10 Has engaged in conduct that leads the Corporation to determine that it would not be in the Corporation's best interests to accept the bid.⁷⁵</p>		
Tecumseh	23,229	The Procurement By-law does not include provisions with respect to a fairness commissioner.	The Procurement By-law does not appear to include provisions prohibiting lobbying.	N/A	<p>The Procurement By-law provides that contracts are voidable for conflict of interest:</p> <p>3.10 Any contract with the Town, or</p>	Note 1: Section 2.3 provides that Elected Officials shall not approve or acquire any goods and services. ⁷⁷	Tecumseh Procurement Bylaw

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
					with any person acting for the Town, and any contract for the supply of goods, materials or services to a contractor for work for which the Town pays or is liable, directly or indirectly, to pay in which a member of Council or any employee of the Town has an undeclared pecuniary interest, directly or indirectly may be voided. ⁷⁶	<p>Note 2: The Procurement By-law requires <u>all staff</u> to disclose conflict of interest prior to evaluation process.</p> <p>3.11 All staff and others participating in the evaluation of proposals shall disclose any conflict of interest prior to the evaluation process and shall not be permitted to influence or participate in the evaluation.⁷⁸</p>	
Amherstburg	21,936	The Procurement policy does not include provisions with respect to a fairness commissioner.	<p>Section 7.8 of the Procurement policy provides that vendors have a responsibility not to engage in conduct that could be construed as lobbying:</p> <p>7.8. Vendors and Service Providers have the responsibility to:</p> <p>7.8.1. Disclose any and all conflicts of interest to the Town prior to or during the bid process.</p> <p>7.8.2. Not engage in any form of bid rigging or collusion of any nature.</p> <p>7.8.3. Not participate in any conduct which is or could be reasonably construed as any form of political or other lobbying, or as an attempt to influence the outcome of any procurement process during the currency of any process prior to the award of contract.⁷⁹</p>	N/A	The Procurement policy does not appear to include specific provisions with consequences for bidders who breach the By-law.		Amherstburg Procurement Policy

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
Scugog	21,617	The Procurement By-law does not include provisions with respect to a fairness commissioner.	Section 6.7 of the Procurement By-law prohibits lobbying: 6. 7. Any form of communication, lobbying or any other attempt at influencing the results of the procurement processes by a Bidder with an employee and/ or Council of the Township will result in disqualification of that Bidder. ⁸⁰	N/A	Section 6.7 of the Procurement By-law provides that any form of lobbying will result in disqualification of that Bidder (See lobbying prohibition).		Scugog Procurement By-law
Brockville	21,346	The Procurement By-law does not include provisions with respect to a fairness commissioner. The Procurement By-law does include an oversight panel under s. 10, titled the Procurement Review Panel. The Procurement Review Panel is composed of City representatives, and makes decisions on issues of contractor integrity, among other matters. ⁸¹	Section 30 the Procurement By-law prohibits lobbying from the time the Bid Call Document is released. ⁸²	N/A	Under s. 26, the 'Contractor Integrity' Provision of the Procurement By-law, the City may reject bids or terminate existing contracts where contractor has breached the City's Supplier Code of Conduct (Appendix G). ⁸³ Under s. 30, the 'Lobbying Prohibited' provision of the Procurement By-law, the City will be entitled to reject the bid if any representative of the Bidder (or a party involved in a business relationship with the Bidder) engages in lobbying. ⁸⁴	Section 31 of the Procurement By-law sets out the clear separation between political and administrative functions... "To avoid the potential appearance of bias or political influence in Procurement Contract Award decisions, members of Council will have no involvement in competitive Procurement processes...." ⁸⁵	Brockville Procurement By-law
Owen Sound	21,341	The Purchasing By-law does not include provisions with respect to a fairness commissioner.	The Purchasing By-law does not appear to include provisions prohibiting lobbying.	N/A	The Purchasing By-law does not appear to include specific provisions with consequences for bidders who breach the By-law.		Owen Sound Purchasing By-law
Essa	21,083	The Procurement By-law does not include provisions with respect to a fairness commissioner.	The Procurement By-law does not appear to include provisions prohibiting lobbying.	N/A	The Procurement By-law permits the town to withhold a contract, or disqualify as a vendor where a conflict of interest exists:		Essa Procurement By-law

Municipality	Population	Fairness Commissioner?	Lobbying Prohibitions?	Lobbyist Registry?	Consequences for Breaching Procurement By-law	Additional Notes	Link to By-Law (s)
					3.6 All consultants retained by the Township of Essa shall disclose to the Township prior to accepting a contract any potential conflict of interest. Any potential Conflict of Interest shall be referred to the Chief Administrative Officer for review prior to the awarding of a contract. If the Chief Administrative Officer determines that a Conflict of Interest does exist, the Chief Administrative Officer may award the contract with conditions, disqualify the consultant as a vendor, or may withhold the assignment from the consultant. ⁸⁶		
Oro-Medonte	21,036	-	-	N/A	-	Resident has been advocating for lobbyist registry but Mayor says "the resources that are required to deal with it are horrendous" (July 2019) https://www.barrietoday.com/local-news/fight-for-council-transparency-not-over-for-oro-medonte-resident-1590679	Was not able to access Bylaw online
Strathroy-Caradoc	20,867	The Procurement policy does not include provisions with respect to a fairness commissioner.	The Procurement policy does not appear to include provisions prohibiting lobbying	N/A	The Procurement policy does not appear to include specific provisions with consequences for bidders who breach the By-law.		Strathroy-Caradoc Procurement Policy
Wasaga Beach	20,675	The Procurement policy does not include provisions with respect to a fairness commissioner.	The Procurement policy does not appear to include provisions prohibiting lobbying.	N/A	The Procurement policy does not appear to include specific provisions with consequences for bidders who breach the By-law.		Wasaga Beach Purchasing Policy

Endnotes with hyperlinks

- ¹ City of Toronto, *Toronto Municipal Code, Chapter 195, Purchasing*, § 195-2.1. Online: <https://www.toronto.ca/legdocs/municode/1184_195.pdf>.
 Note: City of Toronto, By-law 960-2016, *To amend City of Toronto Municipal Code Chapter 195, Purchasing* (7 Oct 2016) repealed and replaced Chapter 195 in its entirety, effective January 1, 2017.
- ² City of Toronto, *Toronto Municipal Code, Chapter 195, Purchasing*, § 195-2.1. Online: <https://www.toronto.ca/legdocs/municode/1184_195.pdf>.
- ³ City of Toronto, *Toronto Municipal Code, Chapter 195, Purchasing*, § 195-13.9. Online: <https://www.toronto.ca/legdocs/municode/1184_195.pdf>.
- ⁴ City of Toronto, *Toronto Municipal Code, Chapter 140, Lobbying*, § 140-9.1. Online: <https://www.toronto.ca/legdocs/municode/1184_140.pdf>.
 Note: this provision was added by City of Toronto, By-law 1008-2014, *To amend City of Toronto Municipal Code Chapter 140, Lobbying, to require City employees involved in the City's procurement processes to report breaches of the Lobbying By-law to the Lobbyist Registrar for investigation and resolution*. (28 Aug 2014).
- ⁵ City of Toronto, *Toronto Municipal Code, Chapter 195, Purchasing*, § 195-13.12. Online: <https://www.toronto.ca/legdocs/municode/1184_195.pdf>.
- ⁶ City of Toronto, *Toronto Municipal Code, Chapter 195, Purchasing*, § 195-13.12. Online: <https://www.toronto.ca/legdocs/municode/1184_195.pdf>. Note: Section Amended 2018-03-27 by By-law 271-2018.
- ⁷ Memorandum of Understanding: Four Accountability Offices, dated October 19, 2005. Online: <<https://www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/memorandum-of-understanding-four-accountability-offices-2/>>.
- ⁸ The Regional Municipality of Peel, By-law No 30-2018, *A By-law to govern the procurement and disposal of goods and services and to repeal By-law 113-2013*, s. 4.6. Online: <<https://www.peelregion.ca/council/Bylaws/2010s/2018/bl-30-2018.pdf>>.
- ⁹ The Regional Municipality of Peel, By-law No 30-2018, *A By-law to govern the procurement and disposal of goods and services and to repeal By-law 113-2013*, ss. 9.1.1-9.1.4.
- ¹⁰ The Regional Municipality of Peel, By-law No 47-2016, *A By-law to establish a Lobby Registry and Registration System and establish the position and duties of the Lobbyist Registrar of The Regional Municipality of Peel*. Online: <<https://www.peelregion.ca/council/Bylaws/2010s/2016/bl-47-2016.pdf>>.
- ¹¹ The Regional Municipality of Peel, By-law No 30-2018, *A By-law to govern the procurement and disposal of goods and services and to repeal By-law 113-2013*, s. 9.1.2. Online: <<https://www.peelregion.ca/council/Bylaws/2010s/2018/bl-30-2018.pdf>>.
- ¹² The Regional Municipality of Peel, By-law No 30-2018, *A By-law to govern the procurement and disposal of goods and services and to repeal By-law 113-2013*, ss. 8.3, 8.4. Online: <<https://www.peelregion.ca/council/Bylaws/2010s/2018/bl-30-2018.pdf>>.
- ¹³ City of Ottawa, By-law No 50 of 2000, *A By-Law of the City of Ottawa Respecting The Procurement Of Goods, Services and Construction*, s. 46. Online: <https://documents.ottawa.ca/sites/documents/files/Procurement_By-law_50-2000%20Nov%202017_ENG.pdf>.
- ¹⁴ City of Ottawa, By-law No 2012-309, *A By-law of the City of Ottawa to establish a lobbyist registry and establish the position and duties of the Lobbyist Registrar of the City of Ottawa*, s. 46. Online: <<https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/lobbyist-registry/bulletins-and-reports#lobbyist-registry-By-law#lobbyist-registry-By-law>>.
- ¹⁵ City of Ottawa, By-law No 2012-309, *A By-law of the City of Ottawa to establish a lobbyist registry and establish the position and duties of the Lobbyist Registrar of the City of Ottawa*, s. 5. Online: <<https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/lobbyist-registry/bulletins-and-reports#lobbyist-registry-By-law#lobbyist-registry-By-law>>.
- ¹⁶ City of Ottawa, By-law No 2012-309, *A By-law of the City of Ottawa to establish a lobbyist registry and establish the position and duties of the Lobbyist Registrar of the City of Ottawa*, Appendix A, s. 5.3. Online: <<https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/lobbyist-registry/bulletins-and-reports#lobbyist-registry-By-law#lobbyist-registry-By-law>>.
- ¹⁷ City of Ottawa, By-law No 2012-309, *A By-law of the City of Ottawa to establish a lobbyist registry and establish the position and duties of the Lobbyist Registrar of the City of Ottawa*, Appendix A, ss. 6(1), 9. Online: <<https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/lobbyist-registry/bulletins-and-reports#lobbyist-registry-By-law#lobbyist-registry-By-law>>.
- ¹⁸ City of Ottawa, By-law No 50 of 2000, *A By-Law of the City of Ottawa Respecting The Procurement Of Goods, Services and Construction*, s. 7(2). Online: <https://documents.ottawa.ca/sites/documents/files/Procurement_By-law_50-2000%20Nov%202017_ENG.pdf>.
- ¹⁹ City of Ottawa, By-law No 2012-309, *A By-law of the City of Ottawa to establish a lobbyist registry and establish the position and duties of the Lobbyist Registrar of the City of Ottawa*, ss. 10-12. Online: <<https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/lobbyist-registry/bulletins-and-reports#lobbyist-registry-By-law#lobbyist-registry-By-law>>.
- ²⁰ The Corporation of The City of Mississauga, By-law No 374-06, *Purchasing By-law* (13 Sep 2016), s. 16. Online: <http://www7.mississauga.ca/documents/Bylaws/purchasing_By-law_2013.pdf>.
- ²¹ The Corporation of The City of Mississauga, By-law No 374-06, *Purchasing By-law* (13 Sep 2016), s. 23. Online: <http://www7.mississauga.ca/documents/Bylaws/purchasing_By-law_2013.pdf>

- ²² The Corporation of The City of Mississauga, By-law No 374-06, *Purchasing By-law* (13 Sep 2016), s. 4. Online: <http://www7.mississauga.ca/documents/Bylaws/purchasing_By-law_2013.pdf>
- ²³ The Corporation of the City of Brampton, By-law No 19-2018, *Purchasing By-law* (21 Feb 2018), s. 9. Online: <<https://www.brampton.ca/EN/City-Hall/Bylaws/All%20Bylaws/Purchasing.pdf>>.
- ²⁴ The Corporation of the City of Brampton, By-law No 19-2018, *Purchasing By-law* (21 Feb 2018), s. 12.6. Online: <<https://www.brampton.ca/EN/City-Hall/Bylaws/All%20Bylaws/Purchasing.pdf>>.
- ²⁵ The Corporation of the City of Brampton, By-law No 149-2015, *A By-law to establish and maintain a Lobbyist Registry in the City of Brampton*, (8 Jul 2015). Online: <https://www.brampton.ca/EN/City-Hall/Bylaws/2015_/149-2015.pdf>.
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- ²⁹ The Regional Municipality of Niagara, revised By-law No 2019-06, *A By-Law To Define The Procurement Policies And Procedures for The Regional Municipality of Niagara, And To Repeal By-Law 95-2014*, (12-Nov 2015), s. 2(a). Online: <<https://www.niagararegion.ca/government/Bylaws/pdf/procurement-By-law.pdf>>.
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- ³³ City of Vaughan, Policy No. PS-003, *Corporate Procurement Policy* (30 Oct 2012), s. 1.1.11. Online: <<https://www.vaughan.ca/cityhall/departments/ps/General%20Documents/PS%20-%20003%20Corporate%20Procurement%20Policy.pdf>>.
- ³⁴ City of Vaughan, By-law No. 165-2017, *A By-law to permit the establishment of a Lobbyist Registry* (11 Dec 2017). Online: <<http://www.vaughan.ca/cityhall/lobbyistregistry/General%20Documents/By-law%20165-2017%20-%20Lobbyist%20Registry%20By-law.pdf>>.
- ³⁵ City of Vaughan, *Lobbyist Code of Conduct*. Online: <<http://www.vaughan.ca/cityhall/lobbyistregistry/General%20Documents/Lobbyist%20Code%20of%20Conduct.pdf>>.
- ³⁶ See: <https://www.niagarathisweek.com/news-story/7397364-vaughan-integrity-commissioner-will-also-oversee-new-lobbyist-registry/>
- ³⁷ City of Vaughan, Policy No. PS-003, *Corporate Procurement Policy* (30 Oct 2012), s. 1.1.17. Online: <<https://www.vaughan.ca/cityhall/departments/ps/General%20Documents/PS%20-%20003%20Corporate%20Procurement%20Policy.pdf>>.
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- ³⁹ See: “Municipal Integrity Commissioner Appointment Application”, Application deadline: Thursday, November 28, 2019 at 4:30 p.m., Online: <<https://www.richmondhill.ca/en/find-or-learn-about/Integrity-Commissioner.aspx>>. (Online as of November 25, 2019)
- ⁴⁰ The Corporation of the Town of Richmond Hill, By-law No. 113-16, *A By-Law to Adopt and Maintain a Procurement Policy For the Corporation of the Town of Richmond Hill* (12 Dec 2016), Appendix “A”. Online: <<https://www.richmondhill.ca/en/invest-and-do-business/resources/Procurement-Policy-Bylaw-113-16.pdf>>.
- ⁴¹ The Corporation of the Town of Richmond Hill, By-law No. 113-16, *A By-Law to Adopt and Maintain a Procurement Policy For the Corporation of the Town of Richmond Hill* (12 Dec 2016),s. 9.2. Online: <<https://www.richmondhill.ca/en/invest-and-do-business/resources/Procurement-Policy-Bylaw-113-16.pdf>>.
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- ⁴³ The Corporation of the City of Barrie, By-law No. 2019-015, *A By-law of The Corporation of the City of Barrie to repeal and replace By-law 2016-035 as amended, being a By-law to*

establish and maintain a policy concerning the procurement of goods and services (4 Mar 2019), s. 7.5. Online: <<https://www.barrie.ca/City%20Hall/ByLaws/BylawDocs/By-law%202019-015%20Procurement%20CONSOLIDATED%20NEW.pdf>>.

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⁴⁵ The Corporation of the City of Thunder Bay, By-law No. 113-2011, *A By-law to govern the way the Corporation purchases supplies, services and equipment, to be known as the "Supply Management By-law", and to repeal By-law Number 220-1993 and Chapter 187 of the Thunder Bay Municipal Code, both as amended* (19 Dec 2011), s.10.03. Online: <<https://www.thunderbay.ca/en/business/resources/Documents/Supply-By-law-113-2011.pdf>>.

⁴⁶ The Corporation of the City of Thunder Bay, By-law No. 113-2011, *A By-law to govern the way the Corporation purchases supplies, services and equipment, to be known as the "Supply Management By-law", and to repeal By-law Number 220-1993 and Chapter 187 of the Thunder Bay Municipal Code, both as amended* (19 Dec 2011), s. 9.06. Online: <<https://www.thunderbay.ca/en/business/resources/Documents/Supply-By-law-113-2011.pdf>>.

⁴⁷ The Corporation of the City of Thunder Bay, By-law No. 113-2011, *A By-law to govern the way the Corporation purchases supplies, services and equipment, to be known as the "Supply Management By-law", and to repeal By-law Number 220-1993 and Chapter 187 of the Thunder Bay Municipal Code, both as amended* (19 Dec 2011), s. 9.06. Online: <<https://www.thunderbay.ca/en/business/resources/Documents/Supply-By-law-113-2011.pdf>>.

⁴⁸ The Corporation Of The Town Of Newmarket, By-law No. 2014-27, *A By-Law to Define the Procurement Policies for the Corporation of the Town of Newmarket* (5 May 2014), s. 25. Online: <<https://www.newmarket.ca/TownGovernment/Documents/ProcurementBylaw2014-27.pdf>>.

⁴⁹ The Corporation Of The Town Of Newmarket, By-law No. 2014-27, *A By-Law to Define the Procurement Policies for the Corporation of the Town of Newmarket* (5 May 2014), s. 22. Online: <<https://www.newmarket.ca/TownGovernment/Documents/ProcurementBylaw2014-27.pdf>>.

⁵⁰ The Corporation of the Town of Caledon, By-law No. 2019-24, *A By-law to enact a Purchasing By-law and repeal By-law 2013-107 and any amendments thereto* (30 Apr 2019), s. 3.2. Online: <https://www.caledon.ca/uploads/5/Doc_636930905492941194.pdf>.

⁵¹ The Corporation of the Town of Caledon, *Draft Vendor Suspension Protocol*. Online: <<https://www.caledon.ca/en/townhall/resources/purchasing/Supplier-Suspension-Protocol.pdf>>.

⁵² The Corporation of the Town of Aurora, By-law No. 6076-18, *Being a By-law to define the Procurement policies and procedures for The Corporation of the Town of Aurora* (8 May 2018), s. 26. Online: <<https://www.aurora.ca/eServices/Documents/6076-18%20Procurement%20By-law%20FINAL.pdf>>.

⁵³ The Corporation of the City of Welland, By-law No. 2015-1, *A By-Law To Establish And Adopt A Purchasing Policy; And To Repeal By-Law 2009-181* (20 Jan 2015), ss. 35-37. Online: <https://www.welland.ca/Finance/pdf/PurchasingBylaw_Policy.pdf>.

⁵⁴ The Corporation of the City of Welland, By-law No. 2015-1, *A By-Law To Establish And Adopt A Purchasing Policy; And To Repeal By-Law 2009-181* (20 Jan 2015), Preamble to "Core Values And Guiding Principles", page 2. Online: <https://www.welland.ca/Finance/pdf/PurchasingBylaw_Policy.pdf>.

⁵⁵ The Corporation of the City of Welland, By-law No. 2015-1, *A By-Law To Establish And Adopt A Purchasing Policy; And To Repeal By-Law 2009-181* (20 Jan 2015), s. 38. Online: <https://www.welland.ca/Finance/pdf/PurchasingBylaw_Policy.pdf>.

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⁵⁷ The Corporation of the City of Cornwall, Policy No. FI-2019-09-09-2, *Procurement of Goods/Services Policy* (9 Sep 2019), s. 6.8. Online: <<https://www.cornwall.ca/en/city-hall/resources/Finance/Cornwall-Procurement-of-Good-and-or-Services-Policy-FI-2019-09-09-2.pdf>>.

⁵⁸ The Corporation of the City of Cornwall, Policy No. FI-2019-09-09-2, *Procurement of Goods/Services Policy* (9 Sep 2019), s. 6.11. Online: <<https://www.cornwall.ca/en/city-hall/resources/Finance/Cornwall-Procurement-of-Good-and-or-Services-Policy-FI-2019-09-09-2.pdf>>.

⁵⁹ The Corporation of the City of Cornwall, Policy No. FI-2019-09-09-3, *Supplier Discipline Policy* (9 Sep 2019), ss. 8.2-8.3. Online: <<https://www.cornwall.ca/en/city-hall/resources/Finance/Cornwall-Supplier-Discipline-Policy-FI-2019-09-09-3.pdf>>.

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⁶² The Corporation Of The Town Of Whitchurch-Stouffville, By-law No. 2017-084-FI, *By-law to define policies with respect to the procurement of goods and services and to repeal By-law 2013-136-FI* (21 Nov 2017), s. 4.3.6. Online: <<http://www.townofws.ca/en/business/resources/Documents/2017-084-FI.pdf>>.

⁶³ The Corporation Of The Town Of Whitchurch-Stouffville, By-law No. 2017-084-FI, *By-law to define policies with respect to the procurement of goods and services and to repeal By-law 2013-136-FI* (21 Nov 2017), s. 4.3.3. Online: <<http://www.townofws.ca/en/business/resources/Documents/2017-084-FI.pdf>>.

⁶⁴ The Corporation Of The Town Of Whitchurch-Stouffville, By-law No. 2017-084-FI, *By-law to define policies with respect to the procurement of goods and services and to repeal By-law 2013-136-FI* (21 Nov 2017), s. 4.3.4. Online: <<http://www.townofws.ca/en/business/resources/Documents/2017-084-FI.pdf>>.

⁶⁵ The Corporation Of The Town Of Whitchurch-Stouffville, By-law No. 2017-084-FI, *By-law to define policies with respect to the procurement of goods and services and to repeal By-law 2013-136-FI* (21 Nov 2017), s. 4.3.1. Online: <<http://www.townofws.ca/en/business/resources/Documents/2017-084-FI.pdf>>.

⁶⁶ Haldimand County, Policy No. 2013-02, *Procurement Policy* (11 Feb 2013), s. 5.09. Online: <<https://www.haldimandcounty.ca/wp-content/uploads/2018/03/Procurement-Policy-Policy-2013-02.pdf>>.

⁶⁷ The Corporation Of The City Of Quinte West, By-law No. 16-058, *Being A By-Law To Adopt A Purchasing Policy for the City of Quinte West* (2 May 2016), s. 10.5, Schedule “B”. Online: <https://www.quintewest.ca/en/Modules/documents/documentuploads/Bylaws/doc_636306979424519144.pdf>.

⁶⁸ The Corporation of the Town of Innisfil, By-law No. 032-17, A By-Law of the Corporation of the Town of Innisfil to establish and maintain a By-Law concerning the procurement of goods, services and construction (5 Apr 2017), s. 4.12. Online: <https://innisfil.ca/wp-content/uploads/2019/05/032_17PurchasingBylaw.pdf>.

⁶⁹ The Corporation of the Town of Innisfil, By-law No. 032-17, A By-Law of the Corporation of the Town of Innisfil to establish and maintain a By-Law concerning the procurement of goods, services and construction (5 Apr 2017), s. 4.12. Online: <https://innisfil.ca/wp-content/uploads/2019/05/032_17PurchasingBylaw.pdf>.

⁷⁰ The Corporation of the Town of Innisfil, By-law No. 032-17, A By-Law of the Corporation of the Town of Innisfil to establish and maintain a By-Law concerning the procurement of goods, services and construction (5 Apr 2017), s. 2.6. Online: <https://innisfil.ca/wp-content/uploads/2019/05/032_17PurchasingBylaw.pdf>.

⁷¹ The Corporation of the Town of Innisfil, By-law No. 032-17, A By-Law of the Corporation of the Town of Innisfil to establish and maintain a By-Law concerning the procurement of goods, services and construction (5 Apr 2017), s. 4.12.2. Online: <https://innisfil.ca/wp-content/uploads/2019/05/032_17PurchasingBylaw.pdf>.

⁷² The Corporation Of The City Of Clarence-Rockland, By-law 2016-60, *Being A By-Law To Establish Procurement Policy And Procedures For The Corporation Of The City Of Clarence-Rockland And To Repeal Law Policy No. Fin2007-01* (20 Jun 2016), s. 42.7. Online: <<http://www.clarence-rockland.com/images/ProcurementBylawcompressed.pdf>>

⁷³ The Corporation Of The City Of Clarence-Rockland, By-law 2016-60, *Being A By-Law To Establish Procurement Policy And Procedures For The Corporation Of The City Of Clarence-Rockland And To Repeal Law Policy No. Fin2007-01* (20 Jun 2016), s. 45. Online: <<http://www.clarence-rockland.com/images/ProcurementBylawcompressed.pdf>>

⁷⁴ The Corporation Of The City Of Clarence-Rockland, By-law 2016-60, *Being A By-Law To Establish Procurement Policy And Procedures For The Corporation Of The City Of Clarence-Rockland And To Repeal Law Policy No. Fin2007-01* (20 Jun 2016), s. 45.4. Online: <<http://www.clarence-rockland.com/images/ProcurementBylawcompressed.pdf>>

⁷⁵ The Corporation Of The City Of Clarence-Rockland, By-law 2016-60, *Being A By-Law To Establish Procurement Policy And Procedures For The Corporation Of The City Of Clarence-Rockland And To Repeal Law Policy No. Fin2007-01* (20 Jun 2016), s. 48. Online: <<http://www.clarence-rockland.com/images/ProcurementBylawcompressed.pdf>>

⁷⁶ The Corporation of The Town Of Tecumseh. By-law No. 2017-6, *Being a By-law to govern procurement policies and procedures* (12 Sep 2017), s. 3.10. Online: <https://www.tecumseh.ca/en/town-hall/resources/Documents/Bylaw-2017-63_Amend-Purchasing-Policy_17Sept12-sw-edits.pdf>.

⁷⁷ The Corporation of The Town Of Tecumseh. By-law No. 2017-6, *Being a By-law to govern procurement policies and procedures* (12 Sep 2017), s. 2.3. Online: <https://www.tecumseh.ca/en/town-hall/resources/Documents/Bylaw-2017-63_Amend-Purchasing-Policy_17Sept12-sw-edits.pdf>.

⁷⁸ The Corporation of The Town Of Tecumseh. By-law No. 2017-6, *Being a By-law to govern procurement policies and procedures* (12 Sep 2017), s. 3.11. Online: <https://www.tecumseh.ca/en/town-hall/resources/Documents/Bylaw-2017-63_Amend-Purchasing-Policy_17Sept12-sw-edits.pdf>.

⁷⁹ City of Amherstburg, By-law No. 2015-69, *Procurement Policy* (1 Jun 2015), s. 7.8. Online: <<https://www.amherstburg.ca/en/town-hall/resources/policies/Procurement-Policy.pdf>>.

⁸⁰ The Corporation Of The Township Of Scugog, By-law No. 51-18, *A By-Law To Provide For The Procurement Of Goods And/Or Services*, (25 Jun 2018), s. 6.7. Online: <<https://www.scugog.ca/en/township-office/resources/By-Law/51-18-Procurement-By-Law.pdf>>.

⁸¹ City of Brockville, By-law No. 029-2019, *A By-law of the Corporation of the City of Brockville to establish and maintain a policy concerning the procurement of goods and services* (9 Apr 2019), s. 10. Online: <<https://brockville.com/index.cfm?ID=239&Download=%291%5B%2257B%26%2CS%5D%21A%0A&f=1972>>.

⁸² City of Brockville, By-law No. 029-2019, *A By-law of the Corporation of the City of Brockville to establish and maintain a policy concerning the procurement of goods and services* (9 Apr 2019), s. 30. Online: <<https://brockville.com/index.cfm?ID=239&Download=%291%5B%2257B%26%2CS%5D%21A%0A&f=1972>>.

⁸³ City of Brockville, By-law No. 029-2019, *A By-law of the Corporation of the City of Brockville to establish and maintain a policy concerning the procurement of goods and services* (9 Apr 2019), s. 26. Online: <<https://brockville.com/index.cfm?ID=239&Download=%291%5B%2257B%26%2CS%5D%21A%0A&f=1972>>.

⁸⁴ City of Brockville, By-law No. 029-2019, *A By-law of the Corporation of the City of Brockville to establish and maintain a policy concerning the procurement of goods and services* (9 Apr 2019), s. 30. Online: <<https://brockville.com/index.cfm?ID=239&Download=%291%5B%2257B%26%2CS%5D%21A%0A&f=1972>>.

⁸⁵ City of Brockville, By-law No. 029-2019, *A By-law of the Corporation of the City of Brockville to establish and maintain a policy concerning the procurement of goods and services* (9 Apr 2019), s. 31. Online: <<https://brockville.com/index.cfm?ID=239&Download=%291%5B%2257B%26%2CS%5D%21A%0A&f=1972>>.

⁸⁶ The Corporation Of The Township Of Essa, By-law No. 2017-24, *A By-law to adopt a policy governing procurement and acquisition by the Township of Essa* (3 May 2017), s. 3.6. Online: <<https://www.essatownship.on.ca/Shared%20Documents/By-laws/2017-24%20Procurement%20and%20Acquisition%20Policy.pdf>>.

TAB 2

Staff Report 2016-132

Meeting Date: November 22, 2016
Subject: Lobbyist Registry
Submitted By: Devan Lobo, Legislative Assistant, Corporate Services

RECOMMENDATIONS

That Staff Report 2016-132 regarding a Lobbyist Registry, be received; and

That establishing a Lobbyist Registry not be pursued by the Town at this time; and

That a copy of this report be provided to the Region of Peel, the City of Mississauga and the City of Brampton for information.

EXECUTIVE SUMMARY

- Section 223.9-12 of the Municipal Act, 2001, provides municipalities with the authority to establish and maintain a registry of persons who lobby public office holders and to appoint an independent lobbyist registrar
- Staff were directed to investigate and report back regarding establishing a lobbyist registry at the Town
- A review of other municipalities suggests that most Ontario municipalities have not pursued a lobbyist registry
- The Town currently has accountability and transparency measures in place, such as Council Code of Conduct, Employee Code of Conduct, Partnership Policy, Procedural By-Law, Purchasing By-Law, an appointed Integrity Commissioner and a formal public complaints policy which act as mechanisms for governing Council and staff behavior when dealing with third parties
- There are a number of resources required to establish a lobbyist registry and potential costs are significant
- Staff is not recommending the establishment of a lobbyist registry for the Town at this time

DISCUSSION

At a Council Meeting on May 24, 2016, staff were directed to investigate and report back regarding establishing a lobbyist registry at the Town of Caledon in accordance with section 223.9 of the Municipal Act, 2001. The purpose of this report is to share staffs findings and to provide information about a lobbyist registry.

What is a Lobbyist Registry?

A lobbyist registry is a publically accessible accountability and transparency tool that generally involves recording and regulating the activities of those who try to influence public office holders, such as members of Council and may include municipal staff.



Staff Report 2016-132

Section 223.9 of the Municipal Act, 2001, as amended provides municipalities with discretion and authority to establish a lobbyist registry. Should a municipality establish a Lobbyist Registry, they are authorized to do the following:

- define lobbying and what activities constitute exemptions from registering;
- define lobbyist and what activities or persons are exempt from having to register;
- require lobbyists to register information within in a specified period of time;
- develop a lobbyist code of conduct;
- appoint a lobbyist registrar whose functions are assigned by the municipality;
- introduce provisions for registration, refusal, prohibition of lobbying, suspension and revocation of a registration; and
- prohibit persons from receiving payment contingent upon successful lobbying activities.

Approaches Used by Other Municipalities

Lobbyist registries typically exist at the federal and provincial levels of government. Currently, not many municipalities in Ontario have chosen to establish a lobbyist registry. To date, four municipalities have registries in place: City of Ottawa, City of Hamilton, City of Brampton and the City of Toronto. The City of Toronto is the only municipality statutorily required to have a registry as per the City of Toronto Act. The City of Vaughan is in the process of developing a registry. The Region of Peel recently received approval of a Lobby Registry and Registration System By-law, and to appoint a Lobbyist Registrar. It is important to note that the communities with an active registry are significantly larger than Caledon; Toronto and Ottawa being centres for provincial and federal governments respectively.

The four abovementioned municipalities established a Lobbyist Registry By-law with a Lobbyist Code of Conduct attached. Generally, lobbyists register information about the date of lobbying, individual name, lobbyist type (eg. consultant, in-house or voluntary), person(s) lobbied, subject matter, and topic of discussion, within a certain amount of days of any lobbying communications. Lobbyist Registrars may maintain and enforce the registry, investigate complaints, impose sanctions and report back to Council. A framework option is for Council members to review the lobbyist registry and notify the registrar of any known contravention by a lobbyist. Administration and operation of a registry is usually undertaken by the Clerk's Office or a Lobbyist Registrar's Office.

Depending on the parameters of the by-law and registry model, municipalities have costs for staff, technological resources, education and awareness, and retaining a Registrar. Lobbyist registries in Ontario municipalities are fairly new and therefore, benefits and drawbacks have not been assessed in great detail.

Staff found that a majority of Ontario municipalities have not established lobbyist registries. However, a number of municipalities have investigated establishing a lobbyist registry, but decided not to pursue a registry, including: City of Mississauga, Region of Halton, Town of Milton, City of Burlington, Town of Oakville, Town of Newmarket, City of Waterloo, City of Kitchener, and the City of Oshawa. These municipalities tended to cite the following reasons: lobbying as a non-issue, ethically sound behavior and compliance

Staff Report 2016-132

with other accountability and transparency measures, costs and resource requirements, unclear impact on staff and Council, and local lobbying activity does not warrant it.

Caledon Approach

Staff is not recommending that the Town establish a local lobbyist registry at this time. Establishing a lobbyist registry would require significant staffing and financial resources to ensure the program is accurate and accountable. Furthermore, there are new and existing accountability and transparency measures in place, and staff is not aware of any significant issues or concerns related to lobbying.

Currently, members of Council and staff adhere to provisions in the Council Code of Conduct and Employee Code of Conduct. In addition, the Town recently introduced a Partnership Policy, Procedural By-Law and has an existing Purchasing By-Law; all of which provide guidelines that govern Council and staff behavior when dealing with third parties. Furthermore, elected officials take a Declaration of Office in which they promise and declare they will exercise their office with impartiality and integrity, and disclose any pecuniary interests in accordance with the Municipal Conflict of Interest Act.

The Town has additional accountability and transparency mechanisms in place such as an appointed Integrity Commissioner who advises members of Council on Code of Conduct requirements, offers advice regarding Councils' obligations and compliance, conducts investigations into complaints of alleged contraventions of the Code and determines penalties in the event of a breach, and annually reports on complaints filed. In 2016, the Town recently established a new formal public complaints policy as an added measure for the public. Additionally, staff is currently reviewing the Accountability and Transparency Policy, and will be bringing forward recommended changes at an upcoming meeting.

FINANCIAL IMPLICATIONS

There are no immediate financial implications associated with this report. Should Council decide on establishing a Lobbyist Registry, there are initial costs that must be considered, including establishing an online registry system. It is estimated that these initial costs range from \$50,000 to \$100,000. In addition to the initial costs, there are annual expenses associated with the registry, such as obtaining a lobbyist registrar, administrative/policy support staff, and annual registry maintenance and enhancements. Annual costs depend on municipal size, number of complaints and inquiries, and by-law provisions. The potential annual cost, based on research of Ontario municipalities with active registries, ranges from \$55,000 to \$130,000.

COUNCIL WORK PLAN

The matter contained in this report is not relative to the Council Work Plan.

ATTACHMENTS

None



TAB 3



42
ONTARIO MUNICIPAL
Knowledge Network
Sharing information to improve services

Leading Practices in Municipal Procurement

Key findings of the leading practices
assessment template

Introduction

- To coincide with the increased attention in Broader Public Sector procurement from policy-makers and the media, the Ontario Municipal Knowledge Network (“OMKN”) partnered with PPI Consulting Limited (“PPI”) to research and document leading practices in municipal procurement. This work is consistent with the OMKN’s goal of promoting best practices among municipalities, thereby improving taxpayer accountability and transparency.
- The objectives of the project include:
 - to learn what municipalities are doing in terms of leading procurement practices
 - to facilitate the sharing of information to assist other municipalities adopt leading procurement practices
 - to allow municipalities to easily identify any gaps in their existing policies and procedures
 - to inform municipalities of any new, more effective methods of procurement

Methodology

- Ontario municipalities were invited to participate in the project by completing the leading practices assessment template which contained 103 questions covering the following 6 broad categories:
 1. Governance
 2. Resource, Training and Support
 3. Process Efficiency
 4. Opportunities for Cost Savings
 5. Contracting
 6. Opportunities for Joint Procurement
- Each question was presented in a yes or no format with a space available for additional comments.
- Municipalities were canvassed via the AMO Watch File (AWF), the OMKN Twitter account, direct phone contact and an email sent out to OPBA members requesting their participation.
- The assessment template was completed by 22 municipalities from across the province which included lower, upper and single tier municipalities.
- The following is a summary of the results of the assessment template by category.

Results Format

Key Findings/Discussion

- Highlights the general trends for the referenced category, including where leading practices have been widely adopted, and/or areas for improvement.

Sample Calculation

Question 1.12: Does the procurement policy include a section for Single and Sole Sourcing procurements that includes the conditions under which such a procurement method may be considered?

- 19 of 22 of assessment respondents indicated "Yes".
- $19/22 * 100 = 86.3\%$
- Result above 50%, therefore listed as "Practice mostly adopted".

Category 1: Governance-Elements of the Procurement Policy/By-Law

Key Findings/Discussion

- The majority of respondents indicated the procurement policy include conditions to determine the best type of competitive procurement method to use to achieve the desired business outcome. The most common types of competitive procurement methods mentioned include RFT, RFQ, RFP and Pre-Qualification.
- More municipalities could include a section on the disclosure of the pro forma agreement in the bid document in their procurement policy such as for contracts that use the municipality's standard terms and conditions versus more complex contracts.
- Municipalities indicated that the "two envelope system" where qualitative and pricing proposals are received and types of costs that may or may not be included in the financial or pricing evaluation is typically dealt with on a case by case basis and details outlined in the bid document. The above items are typically not addressed in the procurement policy.

Practices mostly adopted

- 86% of respondents indicated the procurement policy include a section for Single and Sole Sourcing procurements.
- 77% of respondents indicated the procurement policy include conditions to determine the best type of competitive procurement method to use to achieve the desired business outcome.
- 77% of respondents indicated the policy addresses the potential for in-house bids and the conditions for considering such a proposal.

Practices mostly not adopted

- 5% of respondents indicated the procurement policy includes a section on the disclosure of the pro forma agreement in the procurement document.
- 41% of respondents indicated the policy addresses the requirement for a "two envelope system" where qualitative and pricing proposals are received.
- 14% of respondents indicated the procurement policy deal with types of costs that may (or may not) be included in any financial or pricing evaluation.

CPPI

n = 22 7

Practices mostly adopted

- Indicates leading practice has been adopted by greater than 50% of participating municipalities.

Practices mostly not adopted

- Indicates leading practice has been adopted by 50% or less of participating municipalities.
- Practice should be considered for policy inclusion by non-adopters.

Category 1: Governance-*Elements of the Procurement Policy/By-Law*

Key Findings/Discussion

- All responding municipalities have a documented and approved procurement policy or purchasing by-law.
- The majority of respondents indicated the policy is easy to read and understand for the lay-person with 32% indicating the intended audience are city council and staff.
- Common goods and services among municipalities that the procurement policy specify different requirements for include: real estate, leasing and consulting services.
- Although most municipalities indicated the procurement policy does not include procurement planning requirements, municipalities indicated this is typically done through the budget process.

Practices mostly adopted

- 100% of respondents have a documented and approved procurement policy.
- 91% of respondents indicated that the policy is easy to read and understand for the lay-person.
- 95% of respondents indicated the procurement policy outlines which municipal departments or corporations must comply with the policy.
- 68% of respondents indicated the procurement policy specifies different requirements for different types of goods and services.
- 95% of respondents indicated the procurement policy addresses purchases that are exempt from the policy.

Practices mostly not adopted

- 5% of respondents indicated the procurement policy includes procurement planning requirements by the municipality.

Category 1: Governance-*Elements of the Procurement Policy/By-Law*

Key Findings/Discussion

- The majority of municipalities indicated the procurement policy sets out delegation of authority schedules that detail which level (e.g. Director, Manager, Council, etc.) must approve different procurement value thresholds.
 - Those municipalities that did not have a delegation of authority schedule are working towards developing one.
- More municipalities could introduce additional control procedures within the purchasing process by including a policy for the segregation of duties for activities such as requisition, budgeting, commitment, receipt, and payment.

Practices mostly adopted

- 73% of respondents indicated the procurement policy include a Code of Ethics.
- 91% of respondents indicated the procurement policy sets out delegation of authority schedules that detail which level must approve different procurement value thresholds.
- 91% of respondents indicated the procurement policy sets out a schedule for different means of acquisition at different procurement values.
- 77% of respondents indicated the procurement policy include a section for assessing whether competitive versus non-competitive procurement processes may be used.

Practices mostly not adopted

- 41% of respondents indicated the procurement policy include a section for segregation of duties.

Category 1: Governance-*Elements of the Procurement Policy/By-Law*

Key Findings/Discussion

- The majority of respondents indicated the procurement policy include conditions to determine the best type of competitive procurement method to use to achieve the desired business outcome. The most common types of competitive procurement methods mentioned include RFT, RFQ, RFP and Pre-Qualification.
- More municipalities could include a section on the disclosure of the pro forma agreement in the bid document in their procurement policy such as for contracts that use the municipality's standard terms and conditions versus more complex contracts.
- Municipalities indicated that the "two envelope system" where qualitative and pricing proposals are received and types of costs that may or may not be included in the financial or pricing evaluation is typically dealt with on a case by case basis and details outlined in the bid document. The above items are typically not addressed in the procurement policy.

Practices mostly adopted

- 86% of respondents indicated the procurement policy include a section for Single and Sole Sourcing procurements.
- 77% of respondents indicated the procurement policy include conditions to determine the best type of competitive procurement method to use to achieve the desired business outcome.
- 77% of respondents indicated the policy addresses the potential for in-house bids and the conditions for considering such a proposal.

Practices mostly not adopted

- 5% of respondents indicated the procurement policy includes a section on the disclosure of the pro forma agreement in the procurement document.
- 41% of respondents indicated the policy addresses the requirement for a "two envelope system" where qualitative and pricing proposals are received.
- 14% of respondents indicated the procurement policy deal with types of costs that may (or may not) be included in any financial or pricing evaluation.

Category 1: Governance-*Elements of the Procurement Policy/By-Law*

Practices mostly adopted (continued)

- 64% of respondents indicated the policy addresses the potential for a negotiated contract.
- 55% of respondents indicated the policy addressed the potential for unsolicited bids and the conditions for considering such a proposal.

Category 1: Governance-*Elements of the Procurement Policy/By-Law*

Key Findings/Discussion

- All municipalities indicated they publish opportunities on their websites, however, more municipalities could increase market awareness by specifying requirements for the use of Electronic Tendering Systems in their procurement policy.
- Respondents that indicated the municipality's procurement policy does not include a section on access to information legislation and the requirement for vendors to be compliant with paying their taxes indicated it is typically addressed in the municipalities procedures or the bid document.

Practices mostly adopted

- 82% of respondents indicated the procurement policy include a section on (or reference to) the applicable legislation.
- 68% indicated the procurement policy includes a section for environmental considerations.
- 55% of respondents indicated for situations where outside vendors are hired to develop specifications for a future procurement requirement, the policy details the conditions under which the outside vendor would be permitted to propose on the future requirement.
- 55% of respondents indicated the procurement policy includes a section on (or reference to) access to information legislation.

Practices mostly not adopted

- 41% of respondents indicated the procurement policy specify requirements for the use of Electronic Tendering Systems.
- 23% of respondents indicate the procurement policy include a section on the requirement for vendors to be compliant with paying their taxes.

Category 1: Governance-*Elements of the Procurement Policy/By-Law*

Key Findings/Discussion

- Municipalities indicated the following information is typically specified in the bid document and part of the municipality's standard templates:
 - minimum insurance requirements;
 - items to be included in procurement documents (i.e. contact person information, description of goods or services, time and place of closing); and
 - the disclosure of the evaluation process.
- Of the 41% of respondents that indicated the procurement policy addresses the composition of evaluation teams, the majority indicated a minimum of 3 evaluators is required to evaluate proposals.

Practices mostly adopted

- 73% of respondents indicated the procurement policy include a section for bid deposits, guarantees or other such mechanisms.
- 55% of respondents indicated the procurement policy include a section for the disclosure of evaluation criteria contained in procurement documents.

Practices mostly not adopted

- 50% of respondents indicated the procurement policy include a section for minimum insurance requirements.
- 27 % of respondents indicated the procurement policy include a section on items to be included in procurement documents.
- 41% of respondents indicated the procurement policy addresses the composition of evaluation teams.
- 41% of respondents indicated the procurement policy has a section for the disclosure of the evaluation process contained in procurement documents.

Category 1: Governance-*Elements of the Procurement Policy/By-Law*

Key Findings/Discussion

- The majority of municipalities have worked to streamline the procurement process by identifying common irregularities in procurement processes and the actions taken to deal with the irregularity.
- Municipalities indicated the following information is typically specified in the bid document and included in the municipality's procedures:
 - timelines for procurements;
 - process for receiving bid submissions; and
 - requirements for a public opening.

Practices mostly adopted

- 73% of respondents indicated the procurement policy includes a section for identifying and dealing with common irregularities in procurement processes.
- 59% of respondents indicated the procurement policy specifies the requirements for a public opening.

Practices mostly not adopted

- 36% of respondents indicated the procurement policy specifies timelines / schedules for procurements.
- 50% of respondents indicated the procurement policy specifies a process for receiving bid submissions.
- 50% of respondents indicated the procurement policy identifies which individuals participate in bid openings.
- 23% of respondents indicated the procurement policy addresses the composition of the evaluation team (e.g. number of individuals evaluating proposals, minimum number of evaluators needed to reach quorum).

Category 1: Governance-*Elements of the Procurement Policy/By-Law*

Key Findings/Discussion

- To ensure the fair and consistent treatment of proposals, more municipalities could require evaluation team members to sign a code of conduct which may include sections on conflict of interest declaration, confidentiality/non-disclosure and roles and responsibilities.
- More municipalities could streamline the evaluation process and ensure it has a defensible auditable position, by providing evaluators standardized evaluation scoring booklet.

Practices mostly adopted

- 68% of respondents indicated the procurement policy address how to resolve a tie score.

Practices mostly not adopted

- 27% of respondents indicated the policy requires the evaluation team members to sign a conflict of interest declaration form.
- 14% of respondents indicated the policy require the evaluation team members to sign a confidentiality agreement (non-disclosure or equivalent) form.
- 36% of respondents indicated the policy require the evaluation team to record their scores and rationale for their scores in a "scoring booklet" or equivalent.
- 23% of respondents indicated the policy include a section on the evaluation process to be used in assessing submissions for each type of procurement.
- 27% of respondents indicated the policy requires use of a facilitator to conduct consensus scoring sessions.

Category 1: Governance-*Elements of the Procurement Policy/By-Law*

Key Findings/Discussion

- The majority of respondents indicated the municipality reviews the procurement policy every 5 years.
- More municipalities could assist vendors in improving future submissions by developing a policy on proponent debriefings including number of days vendors could request a debriefing after the results of the procurement and topics to be covered during debriefings.
- More municipalities could develop policies regarding record retention including the list of procurement documents, number of years and storage location.

Practices mostly adopted

- 95% of respondents have a process to review, update and make changes to its procurement policy.

Practices mostly not adopted

- 32% of respondents indicated the policy includes a section on the process to notify all proponents of the results of the procurement.
- 32% of respondents indicated the policy includes a section on proponent debriefings.
- 23% of respondents indicated the policy includes a section on details to be included on invoices.
- 32% of respondents indicated the policy addresses whether non-compliant proposals are to be returned to the proponents.
- 50% of respondents indicated the policy includes a section for the cancellation of procurements.
- 41% of respondents indicated the policy references the municipality's policy for record retention.

Category 1: Governance - *Ensuring Compliance to the Policy*

Key Findings/Discussion

- All municipalities indicated their procurement policy is publicly available to all stakeholders such as being posted on the municipality's website.
- Processes and controls that municipalities have in place to ensure compliance with the procurement policy include:
 - regular communication with employees (weekly/monthly meetings, intranet, newsletters);
 - required documentation for invoices/purchase orders; and
 - internal audit,

Practices mostly adopted

- All respondents indicated the municipality's procurement policy publicly available to vendors, employees and other external stakeholders.
- 77% of respondents have processes and controls in place to ensure compliance with the procurement policy.
- 82% of respondents have a department or team responsible for ensuring compliance with the procurement policy.

Practices mostly not adopted

- 32% of respondents have a protocol for disciplinary action for non-compliance with the procurement policy.

Category 2: Resource, Training and Support

Key Findings/Discussion

- The majority of municipalities have a procurement (purchasing) department that provides training and support to all staff involved on procurements.
- Although the majority of respondents indicated training is provided to all staff, not all municipalities have a formal training program in place which includes re-training and the frequency of re-training.
- The municipality's procurement staff typically oversee all procurements over \$10,000 to \$25,000, with some exceptions such as engineering contracts and smaller de-centralized municipalities.
- To ensure the integrity of the evaluation process, more municipalities could offer evaluation teams a formal evaluator training session on the process, evaluation handbook/materials and method of scoring.
- None of the municipalities surveyed had a policy, formal or informal, for the use of Fairness Commissioners for procurements.
- For additional information on the use of Fairness Commissioners in procurement processes, please see **Appendix A: An Introduction to Fairness Advisory**.

Category 2: Resource, Training and Support

Practices mostly adopted

- 86% of respondents have a procurement / purchasing department.
- 77% of the respondents indicated the procurement / purchasing department reports directly to someone on the senior executive team or have its own representative on the senior executive team.
- 77% of the respondents procurement templates and forms are easily accessible to all staff.
- 82% of respondents offer training sessions to all staff that are involved in the procurement process on the procurement policy and templates.
- 64% of respondents indicated the municipality's procurement staff offer training sessions to individuals that participate on evaluation teams.
- 86% of respondents use subject matter experts within their procurement processes for complex or specialized projects.
- 91% of respondents have access to legal counsel during all phases of the procurement.
- 82% of respondents indicated their municipality provides funding for professional development for all staff involved in the procurement process.

Practices mostly not adopted

- 32% of respondents indicated the municipality's procurement staff oversee all procurements.
 - 45% of respondents indicated the municipality's procurement staff oversee all procurements over a certain dollar threshold.
- None of the respondents have a policy for the use of Fairness Commissioners for procurements.

Category 3: Process Efficiency

Key Findings/Discussion

- The majority of municipalities utilize templates for bid documents such as RFTs and RFPs with standard Terms and Conditions.
- Although municipalities utilize templates, more municipalities could improve process efficiency by developing a documented and approved procurement process workflow (e.g. including key steps, decisions, documents to be developed and staff involved).
- The majority of respondents indicated the municipality has a process for updating or revising the standard Terms and Conditions based on outcomes from procurement policies that the municipalities experiences, however, some municipalities indicated that the process was informal and adjustments are made as suggestions are brought forward.
- Most municipalities use Information Sessions (vendor briefings or bidders' conference) in procurement processes.
- More municipalities can develop standard templates and processes for activities that may occur after the awarding of contracts, specifically the
 - development of debriefing templates;
 - implementing processes for lessons learned to improve procurement processes and documents; and
 - development of a documented and approved bid protest procedure in case the situation arises.

Category 3: Process Efficiency

Practices mostly adopted

- 68% of respondents have a template procurement approval authority form.
- 91% of respondents utilize templates for RFT, 86% for RFP, 73% for RFQ, and 55% for RFEOI.
- 86% of respondents have sample common evaluation criteria to assist with the development of RFPs.
- 82% of respondents have template procurement documents that have standard Terms and Conditions that have been reviewed and approved by a procurement lawyer.
- 68% of respondents have a process for updating or revising the standard Terms and Conditions based on outcomes from procurement policies that the municipality experiences.
- 82% of respondents Information Sessions (vendor briefings or bidders' conference) in procurement processes.
- 82% of respondents have template award notification letters for successful and unsuccessful proponents.
- 64% of respondents utilize e-procurement.
- 55% of respondents have a documented and approved procurement process workflow.
- 55% of respondents have defined approvals workflows to support efficient and repeatable procurement processes.

Practices mostly not adopted

- 50% of respondents utilize templates for Request for Information.
- 27% of respondents use Commercially Confidential Meetings in procurement processes.
- 14% of respondents have a proponent debriefing template.
- 45% of respondents have a documented and approved bid protest procedure.
- 18% of respondents have a process for lessons learned workshops.

Category 4: Opportunities for Cost Savings

Key Findings/Discussion

- All municipalities advertise their procurement opportunities in multiple media (e.g. electronic tendering boards, municipality website, trade associations, etc.)
- All municipalities assess opportunities to issue procurement documents with long-term contracts as an opportunity to receive more favourable pricing.
- In addition to saving resources required to issue a separate competitive procurement for commonly used goods and services, more municipalities can set up preferred vendor lists that can potentially achieve significant cost savings.
 - The goods and services that would be good candidates for preferred vendor lists could be easily identified as the majority of municipalities identify opportunities to combine purchasing needs across departments.
- More municipalities could have standard metrics by which to measure the results of the procurement.
 - Metrics could be compared to the original desired business outcome of the procurement.
- More municipalities could use reverse auctions for goods and services where price is the primary consideration.

Category 4: Opportunities for Cost Savings

Practices mostly adopted

- 86% of respondents identify opportunities to combine purchasing needs across departments.
- All respondents assess opportunities to issue procurement documents with long-term contracts as an opportunity to receive more favourable pricing.
- 68% of respondents use out-bound telephone calling or e-mail to prospective proponents to generate interest in a procurement opportunity.
- All respondents advertise their procurement opportunities in multiple media.
- 73% of respondents utilize Purchasing Cards (P-Cards) for low dollar value purchases.
- 95% of respondents have a policy for the sale or disposal of surplus goods.

Practices mostly not adopted

- 50% of respondents have standard metrics by which to measure the results of a procurement.
- 41% of respondents have a process to set up preferred vendor lists, where applicable.
- 14% of respondents use Reverse Auctions.

Category 5: Contracting

Key Findings/Discussion

- The majority of municipalities have a process for approving contracts with the proponents that are successful through the procurement process.
 - Some municipalities indicated the process is procedural and not formally documented in the procurement policy.
- Although not included in the formal procurement policy, many of the municipalities indicated they disclose the contract extension details in the procurement document.
- More municipalities could develop a vendor performance monitoring policy to ensure contract compliance and assist in identifying vendors that may be excluded from future competitions based on poor performance.
- More municipalities could develop policies regarding the use of dispute resolution processes and termination clauses in all contracts.

Practices mostly adopted

- 91% of respondents have a process for approving contracts with the successful proponents.
- 64% of respondents indicated the municipality details the conditions under which contract extension/renewal options will be considered.
- 64% of respondents have a policy or protocol for excluding bidders from competitions based on poor past performance with the municipality or if the proponent is currently in litigation regarding a similar project.
- 55% of respondents have a vendor performance monitoring policy.

Practices mostly not adopted

- 27% of the respondents have a policy that requires the disclosure of extension options in all contracts and limitations on extensions.
- 36% of respondents have a policy that requires contracts to include a dispute resolution process and termination clauses.

Category 6: Opportunities for Joint Procurement

Key Findings/Discussion

- Joint procurement occurs for goods and services that are standardized such as commodities.
- Municipalities are members of co-operative purchasing groups which consists of various agencies that receive funding from tax dollars that are close in proximity.
 - Members could more pro-actively work to identify other municipalities that can benefit from joint procurement.
- Municipalities and their associated co-operative purchasing groups can pro-actively identify other goods and services for joint procurements where there is less product standardization and where price is not the primary consideration (e.g. IT resources, insurance, benefits).
 - Some existing co-operative purchasing groups include the cooperative purchasing group of Waterloo Region (CPGWR), Guelph (GCPG) and Halton.

Practices mostly adopted

- 64% of respondents have a documented and approved procurement procedure for joint procurement with other municipalities.
- 55% of respondents have an example of a successful joint procurement with other municipalities.

Practices mostly not adopted

- 36% of respondents have set out what goods and services would be good candidates to benefit from joint procurement.
- 36% of respondents have a process to identify possible municipalities with which to partner for a joint procurement.

Overall Key Findings/Discussion

- **Municipalities are continually changing procurement policies to reflect best practices.** Some responding municipalities indicated that they are currently revising and including items identified in the leading practices assessment template in their procurement policies.
- **There is always room for improvement.** Although respondent municipalities indicated their procurement policy addressed a specific leading practice, some indicated they felt there was insufficient information or the section could be developed further.
- **Formalizing existing best practices.** Participating municipalities that answered “no” to a leading procurement practice in many instances indicated the municipality is consistently using the leading practice or procedure, but did not have the practice formally documented in their procurement / purchasing policy or by-law.

Appendix A: An introduction to Fairness Advisory

Importance of Fairness in Public Procurement

- **Increased attention to ethics and accountability** in public sector procurement practices and management.
- **New forms of service delivery** lead to new forms of contractual relationships between the public and private sectors that differ from traditional procurement practices, for example:
 - Leasing, licensing, competitive vs. collaborative processes, and public-private [P3] arrangements for risk and reward sharing
 - Multi-year contracts that need to respond to and reflect change over time
 - Recognition of competitive commercial-confidential considerations
 - Value for money assessment and audit
- **Greater media scrutiny** of public procurement, particularly public-private partnering initiatives or innovative financing arrangements.
- **Increased demands from vendors** for fair, open and transparent procurement processes.
- **Significant costs for bidders** to formulate and submit responses to Requests for Proposals (RFPs).
- **Need for confidence** that responses will be assessed in an objective manner and in accordance with published evaluation criteria.
- **Avoidance of legal challenge** to the procurement process which can be costly, cause projects delays and undermine supplier confidence.

Appendix A: An introduction to Fairness Advisory

The Fairness Commissioner Role

- **The Role of Fairness Commissioners or Advisors** is to provide unbiased, third party oversight, ideally over the full procurement lifecycle, to assist in achieving the desired business outcome.
- **Often used in large-scale, complex, and/or highly political procurements**, Fairness Commissioners assist in risk mitigation; providing recommendations on the process and documentation, attending key meetings and preparing a final report describing activities, appropriateness of the process, and degree of fairness compliance.
- **Fairness Commissioners abide by a duty of fairness**, and therefore provide guidance to a Client on what constitutes fair practice. If, however, the Client opts not to follow the recommendation, the Fairness representative has a duty to include this information in their final report / attestation.
- **As external procurement experts** Fairness Commissioners have the advantage of providing arms-length advice and recommendations without undue influence of existing internal processes and people.
- **Fairness Commissioners do not replace or duplicate the Procurement Team's responsibilities** for managing a procurement process, inclusive of due diligence. Fairness advice should supplement in-house due diligence, except that the internal Team will not prepare an attest statement or report specifically on the integrity of the process.
- **Ideally engaged at the planning stage of a procurement process**, Fairness advisors can also be involved at any stage in a procurement process to assist in overcoming unanticipated challenges as the need arises.
 - Typically engaged by senior management as the result of a competitive process, the expectations of a Fairness Commissioner on a given procurement project are set out contractually and usually include provisions for periodic progress reports to senior management and presentation of the final report to Council as applicable.

Appendix A: An introduction to Fairness Advisory

Primary Elements of Fairness Advisor Project

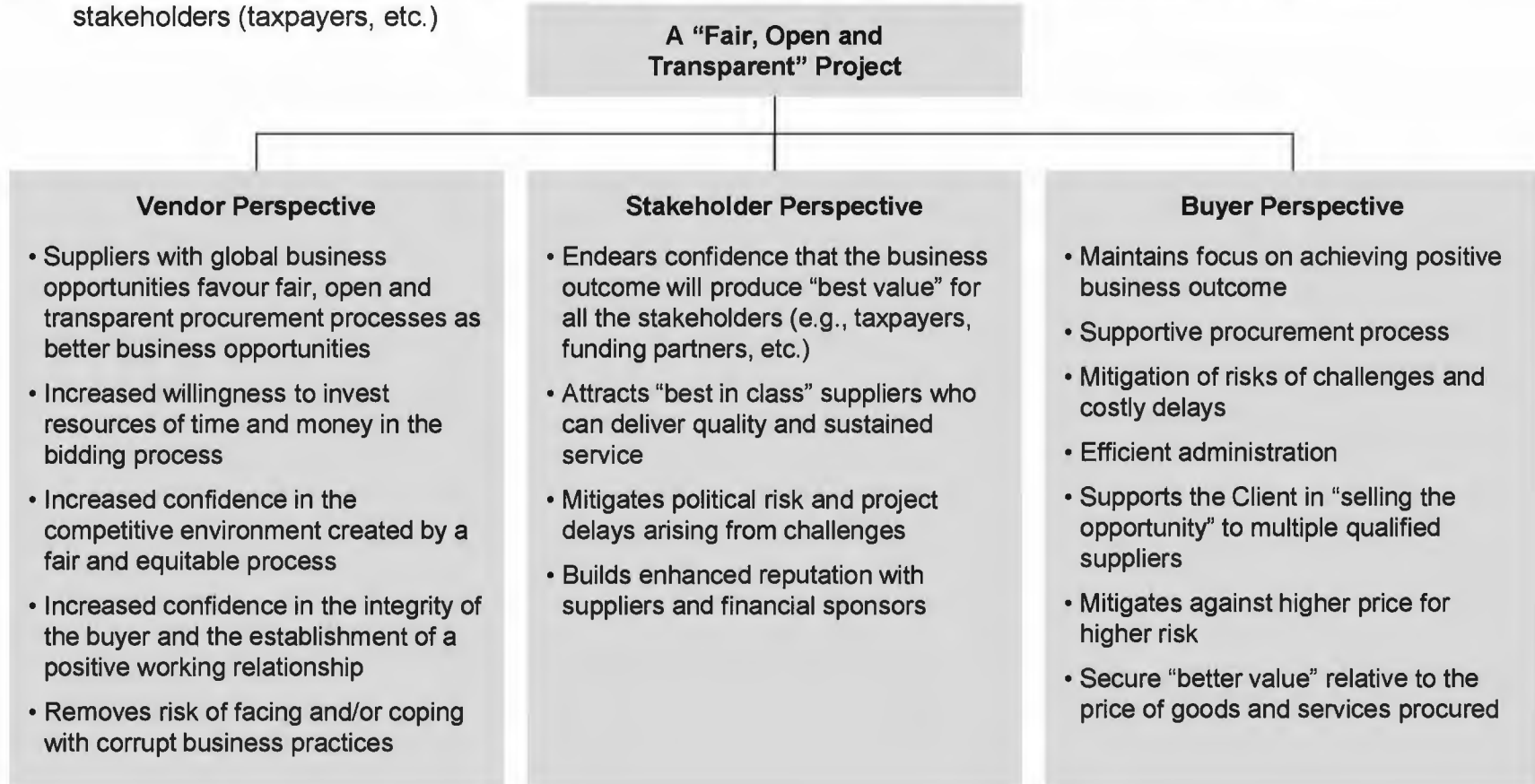
- Ensuring no conflict of interests (perceived, potential or actual);
- Providing independent, third-party recommendations and advice related to process and documentation;
- Managing political interference and /or lobbying;
- Ensuring the conduct of the procurement process is free of favouritism or bias;
- Ensuring demonstrated clarity in evaluation criteria and the assessment and scoring process;
- Ability to demonstrate value for money;
- Ensuring there is no material change in the process, documents and contacting conditions; and
- Maintaining confidentiality of bidder documents and commercial sensitive information (intellectual property).

Prior to RFP Issuance	RFP Issuance to Proposal Receipt	Evaluation and Selection
Intended business outcome	Use of Fairness Advisor – Vendor Awareness	Mandatory requirements
Sourcing strategy	Distribution of documents	Consistency with selection methodology and criteria
Procedural protocols	Communications / Meetings / Site Visits	Scoring , Financial evaluation and Clarification Questions
Contract / Form of Agreement	Amendments	Maintenance of procedural protocols
Q&A	Evaluation Training, Team and Assessment tool	Influence of observers
Use of Fairness Advisor - Instruction	Receipt of Proposals	Vendor award and Debriefings

Appendix A: An introduction to Fairness Advisory

Fairness Advisors meet the needs of all 3 Stakeholder Groups

- Although hired by the Buyer, the Fairness Advisor must meet the needs of the Vendors, Buyers and broader stakeholders (taxpayers, etc.)



Appendix B: Assessment Form



Assessment Form
Final_Word

Appendix C: Glossary of Terms

- "**Accountability**" means the obligation of an employee, agent or other person to answer for or be accountable for, work, action or failure to act following delegated authority.
- "**Agreement**" means the formal written document that will be entered into at the end of the procurement process.
- "**Approval Authority**" means the authority delegated by the Organization to a person designated to occupy a position to approve on its behalf one or more procurement functions within the plan-to-pay cycle up to specified dollar limits subject to the applicable legislation, regulations and procedures in effect at such time.
- "**Award**" means the notification to a proponent of acceptance of a proposal, quotation or tender that brings a contract into existence.
- "**Bid**" means a proposal, quotation or tender submitted in response to a solicitation from a contracting authority. A bid covers the response to any of the three principal methods of soliciting bids, i.e., Request for Proposal, Request for Tender and Request for Quotation.
- "**Bid Protest**" means a dispute raised against the methods employed or decisions made by a contracting authority in the administration of a proposal, tender, or quotation process.
- "**Competitive Procurement**" means a set of procedures for developing a procurement contract through a bidding or proposal process. The intent is to solicit fair, impartial, competitive bids.
- "**Conflict of Interest**" means a situation in which financial or other personal considerations have the potential to compromise or bias professional judgment and objectivity. An apparent conflict of interest is one in which a reasonable person would think that the professional's judgment is likely to be compromised.
- "**Consulting Services**" means the provision of expertise or strategic advice that is presented for consideration and decision-making.

Appendix C: Glossary of Terms cont.

- "**Contract**" means an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. It is essential to the creation of a contract that the parties intend that their agreement shall have legal consequences and be legally enforceable. The essential elements of a contract are an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent or consensus ad idem; legality of purpose; and sufficient certainty of terms.
- "**Electronic Tendering System**" means a computer-based system that provides suppliers with access to information related to open competitive procurements.
- "**Evaluation Criteria**" means a benchmark, standard or yardstick against which accomplishment, conformance, performance and suitability of an individual, alternative, activity, product or plan is measured to select the best supplier through a competitive process. Criteria may be qualitative or quantitative in nature.
- "**Evaluation Team**" means a group of individuals designated/responsible to make award recommendation. The evaluation team would typically include representatives from the Organization and subject matter expert(s). Each member participates to provide business, legal, technical and financial input.
- "**Goods**" means moveable property (including the costs of installing, operating, maintaining or manufacturing such moveable property) including raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract.
- "**Procurement**" means acquisition by any means, including by purchase, rental, lease or conditional sale, of goods or services.
- "**Procurement Value**" means the estimated total financial commitment resulting from procurement, taking into account optional extensions.
- "**Purchase Order (PO)**" means a written offer made by a purchaser to a supplier formally stating the terms and conditions of a proposed transaction.

Appendix C: Glossary of Terms cont.

- "**Request for Proposal (RFP)**" means a document used to request suppliers to supply solutions for the delivery of complex products or services or to provide alternative options or solutions. It is a process that uses predefined evaluation criteria in which price is not the only factor.
- "**Reverse Auction**" means a type of process in which the roles of buyers and sellers are reversed. In a reverse auction, sellers compete to obtain business, and prices typically decrease over the period of competition. It is used when the goods/services are well-defined and price is the primary factor.
- "**Segregation of Duties**" means a method of process control to manage conflict of interest, the appearance of conflict of interest, and errors or fraud. It restricts the amount of power held by any one individual. It puts a barrier in place to prevent errors or fraud that may be perpetrated by one individual.
- "**Services**" means intangible products that do not have a physical presence. No transfer of possession or ownership takes place when services are sold, and they (1) cannot be stored or transported, (2) are instantly perishable, and (3) come into existence at the time they are bought and consumed.
- "**Supplier/Vendor**" means any person or organization that, based on an assessment of that person's or organization's financial, technical and commercial capacity, is capable of fulfilling the requirements of procurement.
- "**Supplier Debriefing**" means a practice of informing a supplier why their bid was not selected upon completion of the contract award process.
- "**Two envelope system**" means the protocol of requiring suppliers to submit their RFP response in two separate sealed envelopes; one for the technical rated requirements, and one for their financial. This allows for review of the technical criteria by the Evaluation Team without the bias of pricing knowledge. Suppliers who do not meet the technical rated thresholds as set out in the RFP will not proceed to subsequent stages of the process and their financial submissions should be returned unopened.

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TAB 4

A GUIDE TO DEVELOPING PROCUREMENT BYLAWS

Meeting the requirements of the
Municipal Act, 2001

July 2003

This is a guide, not a directive. The guide outlines the steps that can be taken to develop bylaws/resolutions for procuring goods and services. ***The guide does not provide directions on how to procure goods and services.*** Since the guide is advisory in nature, it should not be relied on as a substitute for legal or professional advice. The Ministry of Municipal Affairs and Housing is not liable for any damages that may result as a result of the municipality or local board relying on the information presented in the guide. A municipal/local board solicitor should be consulted before passing a procurement bylaw/resolution.

THE LEGISLATION AND GUIDE AT A GLANCE

How to Ensure Compliance with Procurement Requirements of [Section 271](#) of the *Municipal Act, 2001*, S.O. 2001, Chapter 25 (the Act)

What are the requirements for the procurement policies?

Before January 1, 2005, a municipality and a local board shall adopt policies with respect to its procurement of goods and services, including policies with respect to,

- (a) the types of procurement processes that shall be used;
- (b) the goals to be achieved by using each type of procurement process;
- (c) the circumstances under which each type of procurement process shall be used;
- (d) the circumstances under which a tendering process is not required;
- (e) the circumstances under which in-house bids will be encouraged as part of a tendering process;
- (f) how the integrity of each procurement process will be maintained;
- (g) how the interests of the municipality or local board, as the case may be, the public and persons participating in a procurement process will be protected;
- (h) how and when the procurement processes will be reviewed to evaluate their effectiveness; and
- (i) any other prescribed matter.

(Refer to [Chapter 1: Introduction](#) for further detail)

Who should be responsible for developing your municipality's/local board's procurement bylaw/resolution?

Individuals involved in the development of the procurement bylaw/resolution will vary from one municipality/local board to another. The municipality/local board should consider involving the staff that is most familiar with purchasing and has an understanding of policy making. It is also recommended that you consult your municipal/local board solicitor before passing a procurement bylaw/resolution.

(Refer to [Chapter 2: Getting Started](#) for further detail)

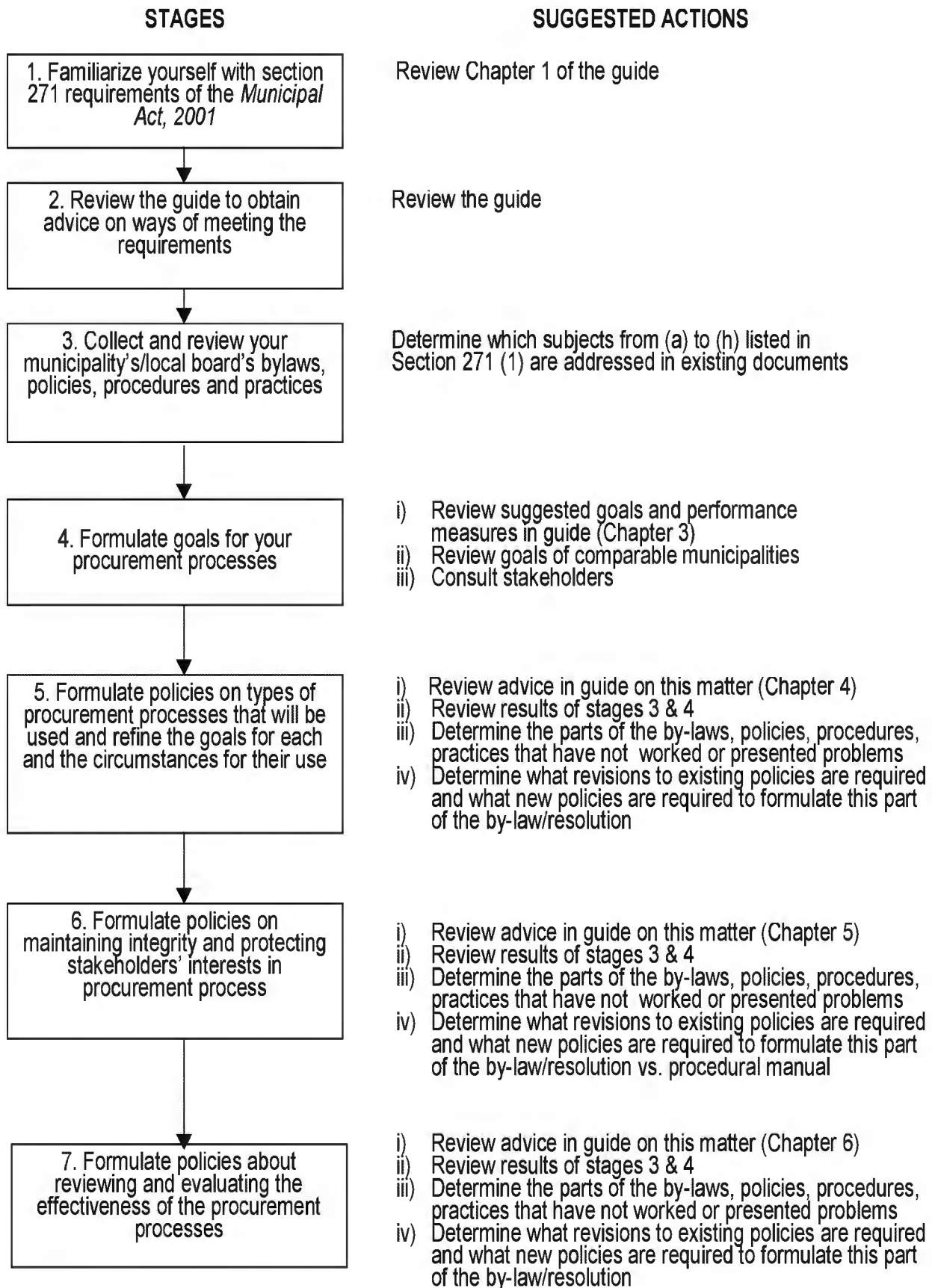
When should the procurement policy review begin? How long will it take?

The municipality/local board can only determine the time frame required for the policy review once it has a clear understanding of what is required by the legislation and how the requirement compares with its current procurement bylaw/resolution. It is suggested that the municipality/local board conduct this assessment as soon as possible as the Act requires the council/local board to adopt procurement policies before January 2005. In developing its time frame, the municipality/local board should be mindful of the municipal election scheduled for November 2003 and the time required to implement the bylaw/resolution, to communicate the changes to suppliers and to educate and train the municipal/local board staff.

Where can I go for further information?

The guide is available on the Ministry Web site at <http://www.mah.gov.on.ca/>. You may also wish to contact any of the ministry offices listed in the back of the guide.

A Process to Developing Your Procurement Bylaw



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1. INTRODUCTION

Purpose of guide

In December 2001, a new Municipal Act (*Municipal Act, 2001*, S.O. 2001, Chapter 25, hereinafter referred to as the “Act”) was passed by the Ontario Legislature. The Act gives municipalities a broad new flexibility to deal with local circumstances, and to react quickly to local economic, environmental or social changes. A new feature of the Act is the transparency/accountability provisions aimed at ensuring taxpayers can easily understand how their municipality operates. **As part of this requirement, before January 2005, municipalities and local boards must develop policies – adopted by bylaw or in the case of local boards by resolutions – that will be used for procuring goods and services.** This procurement guide will help municipalities and local boards fulfil this requirement. Please let us know whether we have helped you do this by completing the survey in [Chapter 7](#).

This is a guide, not a directive. The guide outlines the steps that can be taken to develop bylaws/resolutions for procuring goods and services. **The guide does not provide directions on how to procure goods and services.** Since the guide is advisory in nature, it should not be relied on as a substitute for legal or professional advice. The Ministry of Municipal Affairs and Housing is not liable for any damages that may result as a result of the municipality or local board relying on the information presented in the guide. A municipal/local board solicitor should be consulted before passing a procurement bylaw/resolution.

Some municipalities have already developed procurement bylaws under the new requirements of the Act. The Ministry of Municipal Affairs and Housing is working with municipal associations to make these bylaws, once passed, available on links to the Municipal Act e-guide Web site (http://www.mah.gov.on.ca/userfiles/HTML/nts_1_7746_1.html). Stay posted to section 271 of the e-guide for [links to these bylaws](#).

Who developed the guide?

The guide was developed by the Ministry of Municipal Affairs and Housing (MAH). The ministry had the advantage of the advice of municipal and business representatives who worked with the province to develop the guide. Additionally, a group of outside reviewers commented on the draft guide and provided further feedback. The ministry is indebted to the members of this working group and the outside reviewers who gave willingly of their time and expertise to develop this product. [Appendix 6](#) lists the working group members.

What does the **legislation** about procurement require?

Before January 1, 2005, a municipality and a local board shall adopt policies with respect to its procurement of goods and services, including policies with respect to,

- (a) the types of procurement processes that shall be used;
- (b) the goals to be achieved by using each type of procurement process;
- (c) the circumstances under which each type of procurement process shall be used;
- (d) the circumstances under which a tendering process is not required;
- (e) the circumstances under which in-house bids will be encouraged as part of a tendering process;
- (f) how the integrity of each procurement process will be maintained;
- (g) how the interests of the municipality or local board, as the case may be, the public and persons participating in a procurement process will be protected;
- (h) how and when the procurement processes will be reviewed to evaluate their effectiveness; and
- (i) any other prescribed matter.

For municipalities, the policies must take the form of a bylaw. Section 271 of the Act needs to be read in conjunction with section 5, which requires the powers of a municipality be exercised by its council through the enactment of bylaws. **Local boards usually exercise their powers by resolution.** Some municipalities currently have procurement “policies,” but they may not form part of a bylaw. Generally, this can continue, as long as policies dealing with issues set out in (a) to (h) are incorporated into a bylaw.

Is your local board covered by this legislation?

This legislation applies to the following local boards:

- municipal service boards
- transportation commissions
- public library boards
- boards of health
- planning boards
- area service boards
- local services boards
- local roads boards
- district social services administration boards (DSSABs)
- a local housing corporation described in section 23 of the *Social Housing Reform Act, 2000*
- any other board, commission, committee, body or local authority exercising any power (a) under any Act with respect to the affairs or purposes of one or more municipalities, or (b) with respect to municipal affairs or purposes in unorganized territory
- municipal corporations established under section 203 of the *Municipal Act, 2001*
- other bodies prescribed by the Minister (to date, no other bodies have been prescribed).

Excluded from the requirements are the following local boards*:

- school boards
- conservation authorities
- police services boards
- hospital boards

Note that some municipalities provide a procurement function for these local boards that are excluded from the requirements. This practice can certainly continue and municipal officials should discuss with the relevant local board whether all or some of the municipality's purchasing policies will apply when procuring goods and services for the local board.

There is the opportunity for improved efficiency and clarity for both the municipality/local board and vendors if the local board and the municipality develop similar policies.

Who is the intended audience for the guide?

The guide has been written to serve a range of audiences. It is assumed that the intended user already has a good understanding of municipal administration and is comfortable working with legislation. In particular the guide has been written for the municipal or local board staff persons who will be developing the procurement bylaw or resolution. These individuals would typically include the municipal clerk, municipal treasurer and local board secretary. In a larger municipality these individuals could be the purchasing manager/agent or a policy officer in the chief administrator office.

* Note that although not specifically enunciated in the Act, municipal hydro corporations incorporated under the *Business Corporation Act, 1990* are deemed not to be local boards of the municipality for the purposes of any Act. See section 142(6) of the *Electricity Act, 1998*.

Why is it important to have policies on procurement?

Aside from the accountability and efficiency benefits that flow from having policies in place about procurement, there are several other important reasons to establish these policies:

First, the policies provide a context for addressing the current key issues in procurement. These include how to put reasonable non-financial conditions in place, when sole sourcing is appropriate, protecting proprietary information, modern effective procurement practices like the “two-envelope” system and conflict of interest issues.

Second, in the absence of municipal/local board policies, case law may set the policy for you. Much of the litigation in the area of public procurement arises where the governmental entities starts using practices not set out in (or anticipated by) its policies. Similarly, if the agency bases a decision on criteria other than those specified at the outset, then it runs a risk of legal challenge. Unlike private sector buyers, public sector buyers do not have the same ability to “**refuse bids at discretion**” and decisions must be based on supportable rationale.

Use and organization of the guide

The guide is not a procurement procedural manual. Rather, the guide is organized so it leads you through the steps you’ll need to take to develop your bylaw/resolution. The key steps to the policy development process are explained in Chapters 2 through 6 of the guide.

The **second chapter**, “Getting Started,” will help you determine where you are now. You are unlikely to be starting with nothing, but rather working from an existing procurement bylaw/resolution and procurement procedures. Here, you’ll also find some guidance on council’s role in approving the procurement bylaw/resolution and how to gain the input of key stakeholders in formulating your bylaw/resolution.

The **third chapter** examines the goals to consider in formulating your bylaw/resolution. To provide clarity about the goals and to assess whether they are being met, the guide provides ways of measuring success such as performance measures for procurement.

Once you have established your goals, the **fourth chapter** will help you move from your current reality to what you envision as your new bylaw/resolution. Chapters **five** and **six** will lead you through the key steps in formulating each of the components of the policies required by the legislation:

- how to develop the policies about the types of procurement processes that will be used, their goals and the circumstances in which they will be used
- how to create policies on maintaining integrity and protecting the range of interests in procurement
- how to formulate policies on evaluating procurement processes.

The operating context for municipal/local board procurement

In the municipal/local board sector, procurement is a dynamic, sometimes complex process. It is governed by contract law as well as statutes including the Act, ***Discriminatory Business Practices Act, R.S.O. 1990, Chapter D.12, Municipal Business Corporations O. Reg. 168/03, Fairness is a Two Way Street Act (Construction Mobility) 1999, S.O. 1999, Chapter 4*** and the ***Labour Relations Act, 1995, S.O. 1995, Chapter 1 Schedule A***, as amended, provisions dealing with the industrial, commercial and institutional (ICI) sector of the construction industry. Interprovincial trade agreements (see **Appendix 4** of the guide for more information) and decisions of the Information and Privacy Commissioner may also apply to municipal/local board procurement. Where procurement involves financing leases, certain requirements such as a statement of financing policies and goals adopted by council and reporting to council on leasing need to be in place. **Regulation 46/94** of the Act provides details of these and other requirements.

Developing procurement procedures requires this knowledge as well as an understanding of how the marketplace operates, skills in problem solving and negotiation and knowledge of management control systems. Given the complexity of the process, municipal and local board officials are encouraged to take training in procurement. Training and advice on procurement is widely available from several sources. **Appendix 2** provides a listing of these sources.

2. GETTING STARTED

This chapter will help you determine the preparatory steps that need to be taken before you start developing your procurement bylaw/resolution.

What do you currently have in place about procurement?

To get started in developing your procurement bylaw/resolution, you will want to ensure you have a good understanding of your existing bylaws, policies, procedures and practices. **For purposes of the guide, policies refer to matters that council has adopted by bylaw, or in the case of a local board by resolution.** Procedures are built from the policies, indicating expectations of how the policies will be implemented. Practices refer to the actual activities undertaken in the procurement process.

In this evaluation you will find that some of the most common problems with your existing policies, procedures and practices may include the following:

- procurement procedures may be decentralized with procedures differing from one organizational unit to another within the municipality or local board
- policies and procedures may not have kept up with new, more effective methods of procurement
- the procurement practices set out in policies and procedures are being used, but the circumstances in which they are being used are not those that were intended by the policy.

Determining the gaps

Once you are familiar with your policies, procedures and practices, you will be able to determine the parts that can be used for the new bylaw/resolution. You will also be able to determine where they have not worked well or have presented problems. Keep in mind the key issues your policies need to deal with:

- the types of procurement processes that will be used
- the goals for each type
- when each type will be used
- when you will not tender (i.e. competitive procurement)
- when you will encourage in-house bids
- how you'll ensure integrity and protect the interests of the affected parties
- how and when you'll evaluate your processes.

Prior to reviewing your policies, procedures and practices, it may be helpful to read through this document in its entirety so that you will have a clear understanding of what to look for when reviewing your existing policies, procedures and practices.

After completing this step you should have a good understanding of where the gaps are between the subjects you need to address in your bylaw/resolution and your current policies, practices and procedures. Closing this gap is not the same as determining what your policies ought to be. You may find that while you have information for properly addressing the required subjects of section 271 of the Act, you do not have in place the policies that you need given your new goals and the associated risks (see risk management discussion in [Chapter 5](#)). The following chapters of the guide will assist you in formulating these new goals and closing these latter gaps.

How is your new procurement bylaw/resolution likely to be different from what you currently have?

As noted earlier, the procurement policies required by the Act must take the form of a bylaw or resolution. You will likely find that your existing bylaw/resolution addresses some but not all of the issues that you must address. For example, your bylaw/resolution will likely indicate the types of processes that will be used but is unlikely to state the goals or how integrity will be maintained and, how interests will be protected. You will probably

have to look at your procedures and practices (or “policies” that aren’t currently part of your bylaw/resolution) to answer these other questions. In other words, the new procurement bylaw/resolution that you need to develop is likely to be a cross between what you currently have in your bylaw/resolution and what you have in a procedural manual and unwritten practices. You may choose to create an entirely new bylaw/resolution or just amend your existing bylaw/resolution to address the new requirements.

The requirements set out in the legislation are the minimum list of subjects that your bylaw/resolution needs to deal with. You may find that your bylaw/resolution addresses a range of other issues as well.

Council’s/local board’s role in approving procurement policies

By this point you will begin to see that certain matters that may currently be at the discretion of staff – that is, are delegated to staff as procedural matters – are subjects that will have to form part of the bylaw/resolution.

Note also that section 224 of the Act provides that “...it is the role of council to represent the public and to consider the well-being and interests of the municipality, to develop and evaluate the policies and programs of the municipality, to ensure that administrative practices and procedures are in place to implement the decisions of council, ...to maintain the financial integrity of the municipality.”

The council/local board role in implementing the procurement bylaw/resolution is discussed in [Chapter 5](#).

Stakeholder consultation

In formulating your procurement policies, you will want to keep in mind council’s first role to represent the public and consider the well-being and interests of the municipality. There are many ways of representing and considering the public interest, but in the Ontario municipal tradition, almost all involve gaining input. Some methods may be simple whereas others may be formal and sophisticated (e.g. on-line surveys, focus groups). In some instances, the municipality/local board may choose to combine consultation processes. Below are some consultation methods to consider when developing your program. These are only suggestions. Stakeholder consultation is not required by the Act.

Public meetings are an excellent way to convey information to a large group. This provides everyone at the meeting with the opportunity to hear and discuss the issue. The Internet also gives an opportunity for e-discussion groups, and can help minimize travel time and inconvenience for those whose input you are seeking.

Open houses allow more detailed information to be presented. The public is invited to a location and given the opportunity to speak with staff and view information displays.

Public advisory committees consist of representatives from a particular community, region or interest group who perform a specific advisory function for the municipality. The group is intended to represent the broader community. Such a committee is usually organized to handle a specific situation and to promote community relations.

Focus group sessions are meetings of invited participants who discuss a proposed action or initiative. They are designed to provide detailed reactions to proposals and are structured to be informal to encourage open discussion. This method is useful when preliminary ideas have been developed and further refinements are needed.

Surveys including Internet-based surveys solicit information from a representative sample of citizens. The same questions are asked of every individual surveyed. This process can be beneficial; however, it is suited for circumstances where immediate results are not required.

Informal communication is necessary to support and connect all formal consultation methods. This could be facilitated through telephone calls, letters, word of mouth and face-to-face meetings. It is a way of ensuring open communication and good community relations.

During the development of the guide, the business community helped build understanding about what municipalities and local boards need to consider from the supplier's perspective in shaping procurement policies. They suggest greater use of competitive processes and that procurement policies should be examined to encourage small- and medium-size businesses to participate in municipal/local board procurement. Some municipalities make it a practice to meet with their supplier community regularly, for example, annually or semi-annually to gain their input on improving procurement processes.

While the focus of the guide is on assisting municipalities/local boards to develop bylaws/resolutions on those matters set out in the legislation, there are a number of considerations to take into account in developing procurement procedures and practices that would make a difference for small- and medium-size businesses. Examples suggested include making the municipality or local board processes more transparent for developing approved vendor or pre-qualification lists; developing tracking systems to determine access of small- and medium-size businesses to municipal contracts; providing prompt payment to avoid cash flow difficulties especially experienced by smaller firms; and explaining to unsuccessful bidders why the bid failed and how they could improve their chances in the future.

3. GOALS

This chapter will help you determine the goals that need to be considered in fulfilling the requirements of [section 271\(1\)\(b\)](#) of the *Municipal Act, 2001*, S.O. 2001 Chapter 25.

To build the procurement policies, you will want to consider what the overall goals are that the municipality/local board is seeking to promote with its policies. The working group has developed a suggested list of goals (and related definitions and measures). These are “good public administration” goals that will serve to maintain integrity and protect the interests of a range of stakeholders in the procurement process.

As well, each council/local board should assess whether there are additional goals that are appropriate. The approach taken could include reviewing the goals against the broader strategic goals and values of the municipality/local board, consulting stakeholders and the public or reviewing the goals against comparable organizations.

Imposing social or economic goals

Some municipalities impose social or economic goals (e.g., “fair wage” or “local content” requirements on suppliers) on their procurement policies. If this is the case, there are a few important considerations to keep in mind in reviewing these policies:

First, such goals can only be implemented in the context of certain restrictions (e.g., case law, statutes and trade restrictions) mentioned in [Chapter 1](#).

Second, it is important that these goals be transparent. Much of the litigation in the public procurement area arises from a government agency not specifying and translating its goals into explicit selection criteria before using them as criteria in making award decisions.

Third, the extent to which such goals restrict the number of bidders or increase bid prices needs to be carefully considered by the council/local board.

A review of these goals may also be helpful in addressing another accountability measure in the Act. One of the requirements of section 300 of the Act is that municipalities must provide notice to the public, at least annually, of barriers identified to achieving improvements in the efficiency and effectiveness of the delivery of services.

Suggested goals

The following goals should be considered in developing your procurement bylaw/resolution.

Effectiveness

Effectiveness refers to the extent to which the procurement process is achieving its intended results (i.e., the process delivered the goods and services required to meet the municipality's/local board's needs). The results here are the "substantive" or quality results as opposed to process results. Process results are the types of results that are described in the goals below.

Objectivity

Objectivity refers to approaching the procurement of goods and services in an unbiased way not influenced by personal preferences, prejudices or interpretations.

Fairness

Fairness refers to applying the policies equally to all bidders.

Openness and Transparency

Openness and transparency refer to clarity and disclosure about the process for arriving at procurement decisions. Municipal/local board procurement is undertaken within the context of legal considerations about confidentiality and the protection of privacy. Policies that promote openness and transparency need to be governed by these considerations.

Accountability

Accountability refers to the obligation to answer for procurement results and for the way that procurement responsibilities are delegated. Accountability, unlike responsibility, cannot be delegated.

Efficiency

Efficiency measures the quality, cost and amount of goods and services procured as compared to the time, money and effort to procure them.

Performance measures for the procurement process

To add some further clarity to these terms and to position your municipality/local board to review and evaluate the effectiveness of the procurement processes, please refer to [Appendix 3](#). Appendix 3 lists ways to measure these goals through the use of performance measures. The suggested performance measures discussed are recognized good practices rather than a legal obligation. As such, municipalities/local boards are not obligated to use them.

Additional context for goals

a) Legislative context

Along with these goals, the procurement policies you develop need to be set in the context of relevant legislation and trade agreements. The *Municipal Act, 2001* has been discussed above and will be referenced throughout this document. Other legislation, including the *Municipal Freedom of Information and Protection of Privacy Act*, also need to be considered in the procedures and practices of procurement, in addition to those mentioned in [Chapter 1](#). Case law also plays an important role in this subject. Detailed training of this nature is available from several sources listed in [Appendix 2](#).

b) Interprovincial trade agreements

i) Dollar thresholds

The Agreement on the Opening of Public Procurement for Ontario and Quebec and the Agreement on Internal Trade are interprovincial trade agreements, which under their terms, apply when “MASH entities” (municipalities, municipal organizations, school boards and publicly-funded academic, health and social services entities) engage in:

- goods and services procurement with an estimated value of \$100,000 or more
- construction procurement with an estimated value of \$100,000 or more (under the Agreement on the Opening of Public Procurement for Ontario and Quebec)
- construction procurement with an estimated value of \$250,000 or more (under the MASH Annex to the Agreement on Internal Trade).

“MASH entities” is a defined term in the agreements and include municipalities and municipal organizations. Under the agreements, for procurements at or above the above threshold levels, MASH entities are not to discriminate in their procurement practices against suppliers based on suppliers’ geographic location. For procurement below these thresholds, the agreements require MASH entities to respect the spirit and intent of the agreements. See [Appendix 4](#) of the guide for more information.

ii) Advertising requirements

One way that the agreements promote non-discrimination is by requiring MASH entities to advertise procurement opportunities valued at or above the set threshold levels. Under the agreements this can be done by using, at minimum, an electronic advertising/tendering system that provides equal access to potential vendors across the country (for additional advertising under the Agreement on the Opening of Public Procurement for Ontario and Quebec see [Appendix 4](#)). In consultation with the municipal and business representatives who worked with the province to develop the guide, it has been suggested that a MASH entity may be able to satisfy this requirement by posting procurement opportunities on its Web site. See [Appendix 4](#) for more information.

iii) Exceptions

The agreements provide for a number of exceptions to their application under special circumstances. For example:

- if guarantees on previous work require the use of a particular contractor, if there is a need to ensure compatibility with existing products or to protect exclusive rights
- if compliance with the open tendering provisions would interfere with the ability to maintain security or protect human, animal or plant life or health
- if goods and services are being purchased on behalf of a party not covered by the agreement.

A summary of these exceptions is provided in [Appendix 4](#).

iv) Dispute resolution between suppliers and MASH entities

The agreements require MASH entities to have a clearly established and documented complaint resolution process in place, and require a supplier to follow this protocol should a complaint arise with a MASH entity.

Under the agreements, if a complaint cannot be resolved between a supplier and a MASH entity, the supplier may ask its home province for help. If the home province determines that a complaint has merit or if there are recurring complaints against a particular MASH entity, the supplier's home province may try to resolve the issue with the MASH entity's home province. If no resolution is reached, a formal dispute resolution panel may be established to review the case. It is important to note that the dispute resolution procedures under the agreements are designed to deal only with interprovincial complaints (i.e., situations in which a supplier and a MASH entity are located in different provinces). See [Appendix 4](#) for more information.

4. TYPES OF PROCUREMENT PROCESSES AND WHEN TO USE THEM

This chapter will help you fulfil the requirements of [sections 271\(1\)\(a\)\(b\)\(c\)\(d\) and \(e\)](#) of the *Municipal Act, 2001*, S.O. 2001 Chapter 25.

As previously stated, the legislation requires policies to be adopted on the types of procurement processes that will be used, the goals of each, the circumstances under which each type will be used, and the circumstances where a tendering process is not required.

To help you develop these policies, three tables have been created outlining the goals, descriptive features, and circumstances for use for the types of procurement processes used by municipalities and local boards. These tables cover a variety of competitive and non-competitive procurement.

A high level of detail on non-competitive procurement has been provided in [Appendix 4](#).

Non-competitive procurement includes **sole sourcing** and **single sourcing**. **Sole sourcing** is the procurement of a good or service that is unique to a particular vendor and cannot be obtained from another source. **Single sourcing** is the procurement of a good or service from a particular vendor rather than through solicitation of bids from other vendors who can also provide the same item. Single sourcing may be the best course to take in some circumstances, but it is important to be transparent in the municipal/local board policies about what those circumstances will be.

Most likely, your municipality/local board already has a policy that refers directly or indirectly to the types of procurement that will be used – which may be different than the types set out here – and the circumstances where each type will be used. In this case, you will want to review these to ensure they are appropriate to your current environment.

While the types of procurement processes used and the circumstances where they will be used are likely to be documented in your policies or procedures, the goals for each type are less likely to be written down. [Table 1](#) offers guidance on this point, setting out suggested key goals that should be considered when using the different types of procurement processes.

You may wish to use the “descriptive features” contained in **Table 2** to ensure clarity on what the procurement processes mean in your procurement policy.

The typical circumstances where each procurement process is to be used are set out in **Table 3**. In confirming or formulating the policy about the circumstances for use of each type of procurement, you will want to advise your council/local board on what the dollar threshold will be for using each type of procurement process.

Table 1. Goals of Procurement Processes

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Key goals	<p>To implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining unique proposals designed to meet broad outcomes to a complex problem or need for which there is no clear or single solution.</p> <p>To select the proposal that earns the highest score and meets the requirements specified in the competition, based on qualitative, technical and pricing considerations.</p>	<p>To implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining competitive bids based on precisely defined requirements for which a clear or single solution exists.</p> <p>To accept the lowest bid meeting the requirements specified in the competition.</p>	<p>Same as for Request for Tender, except that bid solicitation is done primarily on an invitational basis from a pre-determined bidders list but may be supplemented with public advertising of the procurement opportunity.</p>	<p>To obtain competitive pricing for a one-time procurement in an expeditious and cost effective manner through phone, fax, e-mail, other similar communication method, vendor advertisements or vendor catalogues.</p>	<p>To allow for procurement in an efficient and timely manner without seeking competitive pricing.</p> <p>To provide for exceptions to the procurement requirements of interprovincial trade agreements.</p> <p>To also provide for any additional exceptions stipulated in the municipality's or local board's purchasing bylaw/resolution or policies, providing that they are not in contravention of the interprovincial trade agreements.</p>

Table 2. Descriptive Features of Procurement Processes

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Sealed bids or sealed proposals required	Always			Not Applicable	
Issue a Request for Information or a Request for Expressions of Interest/Pre-qualification prior to or in conjunction with a call for bids or proposals	Moderate to High Likelihood	Low to Moderate Likelihood		Not Applicable (needs statement may still be required)	
Call for bids or proposals advertised	Done in accordance with requirements of interprovincial trade agreements when estimated procurement value is \$100,000 or more; otherwise, done sometimes.	Always	Same as for Request for Proposal.	Not Applicable	
Formal process used to pre-qualify bidders/proponents (i.e. Request for Pre-qualification)	Moderate to High Likelihood		Low Likelihood	Not Applicable	
Seek bids or proposals from known bidders/proponents (Bidders List)	Always	Low to Moderate Likelihood	Always	Moderate to High Likelihood	

Table 2. Descriptive Features of Procurement Processes (Cont'd)

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Two-envelope ¹ or similar multi-stage approach used	Moderate to High Likelihood	Not Applicable			
Bids or proposals opened and announced at a public meeting (excluding proprietary information)	Low to Moderate Likelihood	Always	Moderate to High Likelihood	Not Applicable	
Type of agreement with supplier	Purchase order, legally executed agreement, or blanket contract (standing agreement/offer).			Purchase by cash, purchase order, or credit card.	Cash, purchase order, credit card, legally executed agreement, or blanket contract (standing agreement/offer).
May include In-house bidding in addition to external bidding	Yes			Not applicable	

¹ In the two-envelope approach, qualitative and technical information is evaluated first and pricing information in a separate envelope is evaluated thereafter only if the qualitative and technical information meet a minimum score requirement predetermined by the municipality/local board. For more details, see Appendix 5.

Table 3. Circumstances for Use of Procurement Processes

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Dollar value of procurement	Low to High Value	Medium to High Value	Low to Medium Value	Low Value	Any value, subject to proper authorization and to requirements of the interprovincial trade agreements
Purchaser has a clear or single solution in mind and precisely defines technical requirements for evaluating bids or proposals	Rarely	Always			
In evaluating bids/proposals from qualified bidders, price is the primary factor and is not negotiated	Low to Moderate Likelihood	Always			Not Applicable

Table 3a. Non-Competitive Procurement: Circumstances Where a Tendering Process is Not Used

Typically, non-competitive procurement is used in the following circumstances:

- when there is a statutory- or market-based monopoly on the item
- when no bids were received in a competitive process
- when the required item is covered by an exclusive right such as a patent, copyright or exclusive licence
- when the purchase is already covered by a lease-purchase agreement where payments are partially or totally credited to the purchase
- when it is necessary to ensure compatibility with existing products or to avoid violating warranty/guarantee requirements when service is required
- when the required item is in short supply due to market conditions
- when competitive sourcing for low value procurement would be uneconomical or would not attract bids
- when competitive procurement may be found to be impractical for such items as meal expenses, incidental travel expenses (e.g. taxi service, phone calls), and training and education expenses
- when an urgent procurement is necessary for fulfilling a statutory order issued by a federal or provincial authority, such as an environmental, public health, or workplace safety compliance order.

The Agreement on Internal Trade and the Ontario-Quebec Trade Agreement also specify exceptions to competitive sourcing. These exceptions and exclusions are summarized in [Appendix 4](#).

In addition to the types of procurement processes explained in the tables, there are two other commonly used procurement processes that, if used, should be documented in the procurement bylaw/resolution. These include the “two-envelope” procurement process and the Vendors of Record (VOR) process. Each is explained below.

The “Two-Envelope” procurement process

The two-envelope approach is used when the purchaser wants to evaluate the technical and qualitative information of a given proposal without being influenced by prior knowledge of the corresponding pricing information. The “two-envelope” process is used when a request for proposal (RFP) is issued. In this process, each bid is submitted in two envelopes with technical and qualitative information shown in the first envelope and the bid price in the second. The second envelope is opened only if the first envelope shows the bidder is qualified. This process has significant benefit and may be included in the municipal/local board procurement policy. More details about this process are found in [Appendix 5](#).

Vendors of record

VOR is a procurement process where the municipality/local board seeks out bids or proposals from a select group of vendors with which it has already established a satisfactory business relationship.

If your municipality or local board relies on a VOR system, then you will want to provide for that in your policies. The goals of this type of procurement and the circumstances where this type of procurement will be used should be clearly documented in your procurement policies.

A VOR may be used either directly to procure goods and services – that is without further competition – or indirectly as the basis for inviting proposals, tenders or bids from suppliers.

i) Using a VOR directly for procuring goods or services

If this type of procurement process is used directly for procuring goods or services, then a standing agreement/offer should be in place. The goals are to have a qualified, reliable, cost effective provider available when the need arises without facing the administrative costs of obtaining several quotes. The

typical circumstances for using a VOR procurement process include the following:

- there is a repetitive need for the good or service
- the actual quantity required cannot be precisely anticipated, but delivery is to be made when a requirement arises
- the criteria for evaluating the bids can be fully defined in advance and price is the primary factor.

ii) Using a VOR as the basis for inviting bids

Using a VOR system as the basis for inviting proposals, tenders or bids from two or more proponents from a preferred bidders list is typically done in circumstances where the municipality/local board needs to move quickly to fill a business need. In developing a VOR that will be used in this manner, the goals are similar to those for the type of procurement that the VOR is to be used for – as set out in [Table 1](#). However, the policies should make clear that placing proponents on a VOR does not mean automatic acceptance of their bids.

Some municipalities have moved away from a VOR system as the basis for inviting bids. There are concerns about the public cost of providing the bid documents to several potential suppliers, some of whom may be uninterested in bidding. As well, there are concerns about the time and money involved in keeping the VOR up to date to ensure it remains reliable. These municipalities have a policy of posting opportunities on their Web site and advising potential vendors that it is their responsibility to monitor the site.

iii) Developing a VOR

There are several routes to take to form a VOR. Sometimes a “[Request for Pre-Qualifications](#)” or “[Request for Expressions of Interest](#)” process will be used. These processes are also used outside or in the absence of a VOR system to determine qualified bidders for a specific purchase. Alternatively, the municipality/local board may simply have an advertisement on its Web site to inform potential suppliers how to apply for inclusion on the bidder’s list. In this situation, the municipality/local board will sometimes charge qualified applicants a fee to be notified of potential contracts. (If a VOR is to be used for directly procuring goods or services through a standing agreement/offer, then the municipality/local board needs to have in place one of the processes described above or a less formal process for pre-qualifying VOR candidates. If, however, the VOR is used as the basis for inviting bids, then pre-

qualification of bidders is optional as the municipality/local board will still be going through a competitive process to arrive at its procurement decision.)

Some municipalities have a policy of dropping vendors from the list who have not responded to invitations to submit bids for an extended period of time, usually 12 or 24 months. Reviewing and establishing a new VOR at least once every three years encourage competition and provide assurance that the municipal/local board is continuing to receive the best value.

Finally, there is no requirement to use a VOR system. However, if one is used, the route the municipality/local board takes to place and remove suppliers from the list should be consistent and transparent. This is a critical concern of the business community.

iv) Implications of interprovincial trade agreements on VOR

Special rules apply in the case of procurement that is subject to interprovincial trade agreements. In these circumstances, under the provisions of the agreements:

- if a MASH entity (see [Appendix 4](#) for more information) is pre-qualifying suppliers for a specific procurement, the call for bids or proposals require that they be advertised each time.
- If a MASH entity maintains a list of suppliers on an “on-going” basis, it must provide suppliers who are not on the list an opportunity to qualify. This opportunity must be advertised at least annually.
- Suppliers that have been placed on a pre-qualified list must be invited to bid on all contracts within the category of goods or services where they have been pre-qualified.

In-house bids

Section 271 of the Act also requires for municipal and local boards to have policies about the circumstances where **in-house bids** will be encouraged as part of a tendering process. In-house bids is a process that allows for internal staff to compete with external entities for procurement opportunities.

If in-house bids will be considered, municipalities/local boards should advise all potential suppliers in the bid documents that in-house departments will be permitted to submit bids.

Before developing a policy for in-house bids, the municipality/local board should carefully consider its existing collective agreements and their implications on implementing an in-house bid process. If the municipality/local board proceeds to have a policy that encourages in-house bids in certain circumstances (as opposed to no circumstances), then the following should be considered:

- The council/local board supports considering in-house bids.
- The direct and indirect costs (e.g., dollars, staffing, technology and equipment) required to produce the activities. This allows costs to be fairly attributed and in-house bids to be fairly evaluated against external bids.
- The municipality/local board is prepared to separate its role as purchaser of the service from its role as provider of the service. In-house bids need to be arms-length from all aspects of the procurement process. This includes defining the scope of the work, preparing and circulating the bid document, evaluating the bids, negotiating the contract and monitoring performance and addressing poor performance. This is to promote objectivity, avoid conflicts and challenges to the process.
- The municipality/local board has a contingency plan in place to deal with the scenario where the in-house bid is unsuccessful.
- There are clear policies in place about what municipal/local board support, if any, will be provided to the in-house bid proponents, what performance guarantees will be sought and how failure to perform to the contracted agreement will be dealt with.

In addition to the considerations above, the following steps should precede the decision to seek bids, including in-house bids, for any major service contract:

- review the service to determine if it continues to serve the needs of the municipality's/local board's residents and customers
- put the expected outcomes of the service in measurable terms (considering the performance outcomes of the best performing organizations)
- have the council/local board clearly establish service levels.

5. MAINTAINING INTEGRITY AND PROTECTING INTERESTS IN PROCUREMENT

This chapter will help you fulfil the requirements of [sections 271\(1\)\(f\) and \(g\)](#) of the *Municipal Act, 2001*, S.O. 2001, Chapter 25.

Section 271 of the Act, requires that policies be put in place about how the integrity of each procurement process will be maintained and how the interests of the municipality/local board, the public and persons participating in a procurement process will be protected. This section will assist you in formulating policies to deal with these matters.

Formulating policies on these matters provides an opportunity to address a number of key issues in procurement that were outlined earlier. Once again, these issues include putting reasonable non-financial conditions in place, sole sourcing, proprietary information, the two-envelope system and conflict of interest issues.

What do you currently have in place?

You may very well have a number of integrity measures in place, even though they are not categorized as “integrity measures.” Similarly, you may have a number of policies in place on protecting the interests of the municipality/local board, the public and persons participating in the procurement process, but again, they may not be named as such.

You could choose to construct a new bylaw/resolution organized by the legislative requirements, that is, setting out specific measures to maintain integrity and protect interests. Alternatively, you could choose to identify the specific policies in the existing bylaw/resolution that serve these ends and seek council’s/local board’s endorsement that these will constitute the municipality’s/local board’s procurement policies for purposes of the legislation. This approach will afford staff and the council/local board an opportunity to examine whether the existing measures are adequate. Even if no new directions are established but instead existing policy is classified according to the specific legislative requirements, council/local board

approval is still required. Your municipality's/local board's solicitor should be consulted if you consider this route.

A risk management approach

A helpful way to determine the measures you need to have to maintain integrity and protect stakeholder interests is to identify the possible threats to the goals of your procurement processes. As noted earlier, the guide suggests the following goals: effectiveness, objectivity, fairness, openness and transparency, accountability and efficiency. Your council's/local board's policy may have additional goals.

Regardless what the goals are, if they are threatened, then the integrity of the process and/or the protection of participants' interests in the process can be put at risk. The following tables identify the risks that can arise for each goal and the measures that can be taken to minimize or mitigate them.

The guide only suggests general risks and, where relevant risks that can arise at the various steps in the procurement process. While there are many ways to define the main steps in the process, there are five key elements involved:

- defining the scope of work
- preparing and circulating the bid document
- evaluating bids
- preparing and, where relevant, negotiating the contract
- monitoring performance and addressing poor performance of suppliers.

Risks to achieving any given procurement goal do not necessarily arise at every step of the process. Common and key risks for each step have been highlighted. You will want to consider your own processes and determine if there are other risks particular to your own procurement environment.

How to use the risk management charts

In identifying risks, you will want to consider both the likelihood of a risk arising as well as its potential impact. Not all risks can be avoided and even the cost of minimizing or mitigating some may not be justified. Circumstances will vary from one municipality/local board to another, depending on the following factors:

- the scope of the procurement activity
- scale and complexity of the municipality's/local board's business units
- whether procurement is centralized or decentralized
- the diversity and sophistication of the potential supplier base
- the municipality's/local board's organization and history of procurement issues
- the council's/local board's risk tolerance.

You will want to consider these factors when reviewing the risks noted in the following pages. **One approach would be to first review whether the risk identified in the first column is relevant to your municipality/local board. If it is, consider incorporating the suggested policy (in the second column) into your bylaw/resolution. If it is not, move to the next risk.**

Policy or procedure?

The next question to consider is whether the integrity and protection of interests measures should form part of the procedural manual or the bylaw/resolution. You may decide that some of the matters dealt with in the attached are not matters that directly affect the interests of the public and suppliers and hence do not belong in a bylaw/resolution. In that case, you may wish to recommend to your council/local board that it has a policy in place indicating that procedures will be in place to deal with the subject.

As noted earlier, in formulating advice, be mindful that in the absence of policies, case law may set the policy for you.

Good policies will only take you so far

An important consideration about risk: procurement is an important and often complex and expensive component of municipal/local board operations. The effort to establish strong policies may return few dividends if the municipal/local board staff are untrained in all aspects of the procurement processes or are unfamiliar with the ethics policies of the municipality/local board.

Risks to *General Procurement Goals*

Risks	How to maintain integrity and protect interests
Generally	
<p>... if the municipality/local board is unclear about its expected service outcomes and has not established clear evaluation criteria early in the procurement process, then there are risks to every goal of the process.</p>	<p>To minimize these risks, consider a policy of:</p> <ul style="list-style-type: none"> – ensuring needs are expressed in terms of outcomes – clearly establishing evaluation criteria early in the procurement process.
<p>... if there are no policies in place on how complaints with the procurement processes can be made and dealt with, then there is a lost opportunity to improve the process at several levels and address concerns about objectivity, fairness, openness and transparency.</p>	<p>Consider adopting a policy on how complaints can be registered and dealt with. This also may be part of a larger customer service/quality service policy.</p>
<p>...if it is difficult for municipal/local board staff to follow procurement procedures, then there are risks to many of the goals.</p>	<p>This type of risk can be addressed by having a policy of reviewing procurement procedures regularly. Asking each of the participants in the procurement process for their input can help ensure the procedures are clear and logical and that they support the goals. See Chapter 6.</p>

Risks to *General Procurement Goals* (Cont'd)

Risks	How to maintain integrity and protect interests
<p>Generally</p> <p>... if any elected or appointed officials participating in a procurement process have private interests that are in conflict with their interests as public officials, then there is a risk that they may not act in the best interests of the municipality/local board.</p>	<p>The procurement policy should reference a broader ethics and values policy that sets out expected behaviour of elected and appointed public officials and the consequences where they do not comply, (e.g., conflict of interest policy). Note also the provisions of the <i>Municipal Conflict of Interest Act, R.S.O. 1990, c. M. 50</i>, for elected officials. The policy can form part of any orientation, education and training of elected and appointed officials. This can serve to limit risks here and in areas other than procurement. Appendix 2 lists an information resource on these types of policies.</p>

Risks to *General Procurement Goals* (Cont'd)

Risks	How to maintain integrity and protect interests
<p>Throughout the procurement process</p> <p>... if there are no standard or template contracts and related documents for each category of procurement and for each step of the process, then there is risk of inefficient use of resources to carry on the procurement process (as well as risks to the perceived fairness and transparency of the processes).</p> <p>... if there are no definitions of key and frequently used terms by the municipality/local board in its policies and procedures, then misunderstandings about the policies and procedures can arise.</p> <p>... If there is no integration between the procurement processes and the financial system, then there are risks of overspending and delays in meeting payment dates.</p>	<p>A policy of using standard templates/formats for each category of procurement and for each step of the process and specifying the documentation required at each stage will minimize risks of this nature</p> <p>The bylaw/resolution should define key and frequently used terms. Note: some municipalities/local boards use the National Institute of Governmental Purchasing Inc.'s <i>Dictionary of Purchasing Terms</i>.</p> <p>Consider adopting policies that integrate procurement processes to the financial system (e.g., monitor/control contract expenditures and ensure that accounts are paid within the prescribed time line and payments are for goods and services received).</p>
<p>When evaluating the bids</p> <p>... if the municipality/local board is unclear about the process for evaluating bids, then there are serious risks to every goal of the process.</p>	<p>A policy of documenting the process for evaluating bids can address these risks.</p>

Risks to *General Procurement Goals* (Cont'd)

Risks	How to maintain integrity and protect interests
<p>When evaluating the bids</p> <p>...if municipal/local board elected or appointed officials are in contact with suppliers during the bid evaluation process, then integrity can suffer as several of the goals of the procurement process can be put at risk.</p>	<p>A policy of “no informal contact” between municipal/local board staff or elected officials involved in the procurement with potential suppliers during the evaluation period can minimize this risk. (A broader policy on contact at other stages of the procurement process, specifying who, when and how the contact may be made, can address risks that can arise at other stages of the process as well).</p>

Risks to *Effectiveness*

Risks	How to maintain integrity and protect interests
<p>Generally</p> <p>When determining the scope of work</p> <p>... if the work will be split into two or more parts to avoid the application of the procurement policy, i.e., to come in under a certain dollar threshold, then there can be a risk to the spirit and intent of the policy.</p>	<p>Consider examining whether spending thresholds are appropriate to the current environment, that is, require adjustment in dollar amount or need variation depending on the nature of procurement (e.g., construction vs. goods).</p> <p>Consider adopting clear policies about when work splitting will be permitted. Some municipalities do this to enable smaller businesses to gain a piece of the work - within trade agreement limits. These policies should set out any consequences for unwarranted splitting of work.</p>
<p>When preparing the bid documents</p> <p>... if it is unclear how bids will be kept secure, then risks to the effectiveness of the process can arise.</p>	<p>Consider adopting policies about how bids are to be kept secure, how proprietary information is to be handled and the confidentiality of bids maintained in accordance with provisions of the <i>Municipal Freedom of Information and Protection of Privacy Act</i>.</p>

Risks to Effectiveness (Cont'd)

Risks	How to maintain integrity and protect interests
When evaluating the bids	
<p>if a bid does not show total costs including taxes, there is a risk that the evaluation of comparable bids can be invalid.</p>	<p>⇒ Ensure a policy is in place on how bids are to be presented in terms of costs</p>
<p>if a bid does not show the net present value of goods or services that are to be received at a later date, then it may be difficult to evaluate the bid against other bids where all the goods or services are to be received up front</p>	<p>⇒ Policies about how net present value is to be calculated need to be clearly set out</p>
<p>if there are no common evaluation criteria in place that bids are usually subject to, regardless of the type of item procured, then there is a risk of missing an opportunity to advance an important corporate goal of the municipality/local board</p>	<p>⇒ Policies that set out common criteria for evaluation of bids, e.g. price, quality, risk, qualifications and experience, strategy, approach, methodology, scheduling, past performance, facilities and equipment</p>
When negotiating and preparing the contract	
<p>if the contract language is not carefully reviewed, then it may have unintended legal consequences, e.g., the effect of establishing an employee-employer relationship</p>	<p>⇒ A policy of having the municipal solicitor view significant contracts for these types of implications can reduce this risk</p>
<p>if the suppliers have unsatisfactory liability insurance coverage to indemnify the municipality/local board from any damage claims arising from the contract, then municipality/ local board may be at financial risk</p>	<p>⇒ A policy of requiring suppliers to provide evidence of satisfactory insurance coverage can reduce these risks</p>

Risks to Effectiveness (Cont'd)

Risks	How to maintain integrity and protect interests
When negotiating and preparing the contract	
<p>if the supplier has arrears of premiums owed to or levied by the Workplace Safety and Insurance Board, then the municipality faces potential for financial risks.</p>	<p>→ A policy of requiring suppliers to provide a Certificate of Clearance can mitigate this risk.</p>
<p>if there are no policies in place about how contracts will be terminated, then there can be risks to the overall effectiveness of the procurement process including risks of legal challenges.</p>	<p>→ A policy including "off ramp" provisions in contracts can help reduce this risk.</p>
When monitoring the performance and addressing poor performance	
<p>if the goods or services received are not inspected promptly to confirm compliance with the contract and any discrepancies quickly identified, then there is a risk of paying for something not wanted.</p>	<p>→ A policy of promptly inspecting goods or services on receipt and a process for following up on discrepancies can reduce these risks.</p>
<p>if the contract work is not completed or completed, but the contractor's suppliers or employees are left unpaid, then the municipality faces the financial risk of assuming these costs.</p>	<p>→ A policy about how these types of risks will be managed should be specified. This could take the form of financial bonds or other forms of security deposits, provisions in the contract for liquidated damages, progress payments and holdbacks and payment bonds to guarantee the payment of labour and material.</p>

Risks to Effectiveness (Cont'd)

Risks	How to maintain integrity and protect interests
<p>When monitoring the performance and addressing poor performance of suppliers</p> <p>If systems are not in place to monitor supplier performance, then poorly performing contractors may be awarded new contracts, increasing the risk to the effectiveness of the procurement processes</p>	<p>The policy on performance surety should be carefully considered given that some forms of surety can prove to be expensive for small and medium sized businesses to obtain and thus limit competition. Where surety is deemed to be required, it should not be excessive but sufficient to cover the financial risks to the municipality/local board.</p> <p>Policies can be put in place to address these issues, including</p> <ul style="list-style-type: none"> - randomly sampling contracts to ensure compliance with the set performance evaluation standards (and contract variation requirements) - monitoring the performance of the contract against performance criteria and milestone achievement - intervening early if contractor performance is unsatisfactory - ensuring that employees who are required to manage contracts have sufficient experience, training and support.
<p>If there is no policy to address repeated poor performance, then the municipality/local board is at risk of not realizing its procurement goals</p>	<p>To minimize the risk of repeated poor performance, a policy should be in place for documenting evidence of unsatisfactory performance (in terms of failure to meet contract specifications, terms and conditions or for health and safety violations). The policy should make clear that evidence must be presented to those in a position to decide on the award of future work to the supplier.</p>

Risks to *Objectivity*

Risks	How to maintain integrity and protect interests
<p>Generally</p> <p>... if persons involved in procurement accept gifts from suppliers or potential suppliers, then there is a risk that procurement decisions will not be objective</p>	<p>→ A policy of not accepting gifts can help address this risk.</p>
<p>When determining the scope of work</p> <p>... if needs are defined by the supplier, rather than the municipality/local board (through, as an example, procuring goods or services through unsolicited proposals), then the objectivity of the procurement function can be put at risk.</p>	<p>→ Ensure clear policies are in place about the circumstances under which unsolicited proposals will result in a procurement</p>
<p>When evaluating the bids</p> <p>... if bids are not comparable in terms of standards for product or services, then the objectivity of the evaluation of the bids can be put at risk.</p>	<p>→ Standards that have been certified, evaluated, qualified, registered or verified by independent nationally recognized and industry sponsored organizations (e.g., Standards Council of Canada) can be specified in the bid documents.</p> <p>→ Policies on evaluation methods for dissimilar products can be specified (e.g., weighting system).</p>

Risks to *Objectivity* (Cont'd)

Risks	How to maintain integrity and protect interests
<p>When evaluating the bids</p> <p>if bids are evaluated by a single department, then there is less likelihood of a variety of perspectives influencing the selection decision</p>	<p>To mitigate these kinds of risks, consider a policy of using:</p> <ul style="list-style-type: none">- a selection committee of individuals from more than one department in the case of mid level contracts- from more than one department and council/local board in the case of higher value contracts.



Risks to *Fairness*

Risks	How to maintain integrity and protect interests
Generally	
<p>... if persons who have recently left the employ of the municipality/local board are involved in the development of a proposal/bid to the municipality/local board, then there is risk to the perceived fairness of the procurement process. Similarly, if persons retained by the municipality/local board to assist in preparing the call for proposals/bids are subsequently involved in preparing a bid to respond to the request, risks can arise.</p>	<p>A policy of restricting persons who have recently left the employ of the municipality/local board from using the information gained from such employment in doing business with the municipality/local board can help address this issue. As well, requiring bidders to disclose whether they employ any such person can reduce these risks. Disclosing the names of any other persons who may have been involved in developing the call for proposals/bids who are engaged by the proponent/bidder can also address these risks.</p>
<p>... If it is unclear how the municipality/local board intends to promote competition for low value, infrequent procurement, then there are risks to the fairness of the process.</p>	<p>A policy of specifying how many verbal or written quotes will be sought for low value purchases can help address this risk.</p>
When monitoring performance and addressing poor performance of suppliers	
<p>... if there are no policies in place on how disputes over performance are to be resolved, then there is a risk that whatever mechanism is used will be perceived as arbitrary.</p>	<p>A policy of identifying how disputes over performance are to be resolved can address this risk.</p>

Risks to *Fairness* (Cont'd)

Risks	How to maintain integrity and protect interests
<p>When preparing the bid documents</p>	
<p>if it is unclear what the required format is for submitting bids, then fairness concerns can arise in the way the bids are evaluated.</p>	<p>➔ Policies about the required format for the bids can address this risk.</p>
<p>When evaluating the bids</p>	
<p>if there are no clear policies in place on how to respond to unsuccessful bidders' requests for information about how they might improve their chances of success next time, then there is a risk that the process will be perceived as unfair.</p>	<p>➔ A policy about how these types of requests will be responded to can minimize risks here.</p>
<p>if there are no clear policies in place about what to do if bids received exceed budget, are not responsive to the business needs or do not represent fair market value, then proceeding in the absence of such policies could be viewed as unfair.</p>	<p>➔ Policies that address how the municipality/local board will respond to these scenarios can help ensure fairness (e.g., by undertaking a revised solicitation).</p>
<p>if there are no clear policies in place about what to do in the event that two equal bids are received, then there is a risk that proceeding in the absence of such policies could be viewed as unfair.</p>	<p>➔ Policies that guide the municipality/local board in "breaking a tie" can avoid perceptions of unfairness. Considerations here could include selecting the bidder that offers prompt payment discounts, the best delivery date (if timeliness is a factor), best record for after sales service and best overall performance record.</p>

Risks to *Fairness* (Cont'd)

Risks	How to maintain integrity and protect interests
<p>When evaluating the bids</p> <p>If there are no clear policies in place about how irregularities in bids will be dealt with, then there is a risk that action taken will be viewed as unfair</p>	<p>Policies on irregularities can help address these issues. Fairness can be promoted by being clear about what types of irregularities will:</p> <ul style="list-style-type: none"> → automatically disqualify a bid (e.g., late bids, unsealed bids) - disqualify a bid unless the irregularity is trivial or insignificant (e.g., bids that are incomplete, qualified or provide insufficient financial security) - result in the bidder being offered a short time period to rectify the bid to enable it to be considered (e.g., bids missing the signature of the bidder, or containing minor clerical or mathematical errors).

Risks to Openness and Transparency

Risks	How to maintain integrity and protect interests
<p>Generally</p> <p>... if it is unclear how potential bidders can access information about the municipality's/local board's procurement process, bid opportunities and how to effectively participate in the procurement process, then there can be risks to the openness and transparency of the process.</p>	<p>➔ Policies about how potential suppliers will be informed of the policies and procedures, bid opportunities and how to participate in the process can reduce this risk.</p>
<p>When preparing the bid documents</p> <p>...if the method of notifying potential suppliers of procurement opportunities is unclear, then openness (and fairness) is put at risk.</p>	<p>➔ Policies should be in place on how suppliers will be notified of opportunities. Note there are special requirements about notice involving procurements affected by the trade agreements. These are discussed in Appendix 4.</p>
<p>When determining the scope of work</p> <p>...if products requested are too specific (e.g., refer to a brand name), then this can limit potential suppliers.</p>	<p>➔ A policy of using generic specifications in defining work/business needs can address this risk.</p>
<p>When evaluating the bids</p> <p>...if final rating results with supporting documents are not kept available for internal inspection, then how a decision was arrived at may not be transparent to senior management, council or an auditor.</p>	<p>➔ A policy of keeping final rating results and supporting documentation available for internal inspection can reduce this risk. (See also records retention policy discussion under Risks to Accountability.)</p>

Risks to Openness and Transparency (Cont'd)

Risks	How to maintain integrity and protect interests
<p>When evaluating the bids</p> <p>if there is a reasonable likelihood that on completion of a contract, a follow-up contract will be necessary and this is not made clear at the outset, there is a risk to the transparency of the procurement process.</p>	<p>→ A policy of ensuring that the original bid solicitation makes clear that a follow-up contract could be necessary can reduce this risk.</p>

Risks to Accountability

Risks	How to maintain integrity and protect interests
<p>Generally</p> <p>If the circumstances where contracts are not to be approved by the council/local board are unclear, then there are risks to accountability (and efficiency).</p>	<p>In developing policies consider what the circumstances would be for delegating to a staff member council's authority to approve contracts (e.g. the dollar thresholds below which council approval will not be required).</p> <p>As well, consider having the council/local board provide approval in circumstances like the following:</p> <ul style="list-style-type: none"> - the contract requires Ontario Municipal Board approval - the cost amount proposed for acceptance is higher than the budget approved by the council or the local board and the necessary re-allocations within budget cannot be made - a substantive objection has been raised by a bidder in the procurement process about a procurement of significant value - a major irregularity precludes the award to the vendor submitting the lowest bid - the officials involved in the procurement believe it in the best interests of the municipality/local board (e.g., a small dollar amount for an item of significant public profile) - an exception to the procurement policy, is sought based on a business case.

Risks to *Accountability* (Cont'd)

Risks	How to maintain integrity and protect interests
Generally	
<p>...if there is no regular, timely reporting to the council/local board on procurements that exceed a significant dollar threshold, (but are still within an official's authority) or that are to the same supplier and cumulatively exceed a certain dollar threshold, then there can be risks to accountability.</p>	<p>→ A policy of establishing thresholds for these situations and regular, timely reporting to the council/local board on procurements that exceed these thresholds can help ensure accountability.</p>
<p>...if it is unclear which staff will have responsibility where the procurement has corporate-wide application or applies to two or more departments of the municipality/local board, then accountability can become confused.</p>	<p>→ A policy of specifying how responsibility will be determined in the case of corporate-wide or multi-department procurements can help address this risk.</p>
<p>...if it is unclear what the spending/signing authority is for each level of management or type of position, then accountability is at risk.</p>	<p>→ Specify the dollar threshold for spending authority of each level of management or type of position within the organization.</p>
<p>...if there is no regular reporting to council/local board on non-competitive procurements of significant dollar amounts (where the procurement decision has been delegated to staff) and the rationale for such action, then accountability can be at risk.</p>	<p>→ A policy of regularly reporting to the council/local board on significant dollar value procurements that were not subject to a competitive process (with supporting rationale) can help address this risk. See Table 3a and the discussion of the circumstances for non-competitive procurement.</p>

Risks to *Accountability* (Cont'd)

Risks	How to maintain integrity and protect interests
<p>Throughout the procurement process</p> <p>...if it is unclear who is responsible for moving the procurement through each step of the process, then there is risk that no one will be accountable for procuring the goods or services.</p>	<p>→ A policy that states clearly the staff position, program area and council/local board responsibilities for each step of the procurement process can help address this risk.</p>
<p>...if it is unclear how, where and who is to keep records for each step of the procurement process, then there is a risk to the accountability of the process.</p>	<p>→ A records retention policy that addresses procurement records can minimize this risk.</p>
<p>...if contracts are renewed without the procuring official reporting on why a renewal is in the best interests of the municipality/local board, then there is a risk to accountability.</p>	<p>→ A policy of requiring such reports and comment on the continued need for the good or service, the market situation and trend for the goods or services affected assists to address concerns about accountability.</p>

Risks to Efficiency

Risks	How to maintain integrity and protect interests
<p>Generally</p> <p>...if distinctions are not made between the process and rules applicable to small purchases vs. large and routine vs. sensitive procurement, then there is risk that transaction costs of the procurement will be disproportionate to the benefits received/risks mitigated by the process.</p>	<p>⇒ A policy of distinguishing what rules will apply based on the materiality of the purchase and the sensitivity (e.g., low dollar value but high sensitivity or profile) can help address this risk.</p>
<p>When determining the scope of work</p> <p>...if a scope of work is too broad, then there is a risk of inefficiency in the later stages of procurement as the proposals cannot be easily evaluated (e.g., too complex or lengthy) and contracts cannot be easily developed to implement them.</p>	<p>⇒ A policy of using a multi-step procedure including a pre-qualification stage to ensure the workload is manageable can help address this risk.</p>

6. FORMULATING POLICIES ABOUT REVIEWING AND EVALUATING THE EFFECTIVENESS OF THE PROCUREMENT PROCESSES

This chapter will help you fulfil the requirements of [section 271\(1\)\(h\)](#) of the *Municipal Act, 2001*, S.O. 2001 Chapter 25.

Section 271 requires for municipalities and local boards to have policies in place about how and when the procurement processes will be reviewed to evaluate their effectiveness.

This section of the guide is meant to “close the loop” on developing procurement policies. If you have followed the advice in the earlier parts of the guide, then you will have essentially completed a review of your municipality’s/local board’s procurement policies.

The purpose of this section is to offer guidance on **what to consider in developing policies** about how and when the procurement processes will be reviewed and evaluated, not how to undertake and complete a review and evaluation.

A key question to ask in developing the review and evaluation policy is ‘what does your municipality/local board need to put in place to determine if it is meeting its policy goals?’

One starting point is to put some clear measures of policy success in place against which performance can be assessed (such assessment could take place as frequently as once or twice a year). [Chapter 3](#) and [Appendix 3](#) detail methods of measuring policy goals. Thresholds for variances from performance targets can be established and reviewed to identify root causes of performance that slips below these thresholds.

An alternative is a policy of reviewing and evaluating on a less formal basis. This could be in response to concerns of council/local board, internal clients of the municipality/local board, suppliers, the public and external or internal auditors. Some municipalities have a cross-department standing committee that works with the purchasing department to identify improvement

opportunities. Some, as noted earlier, meet with the supplier community regularly - every six months or 12 months – to discuss how they can improve procedures.

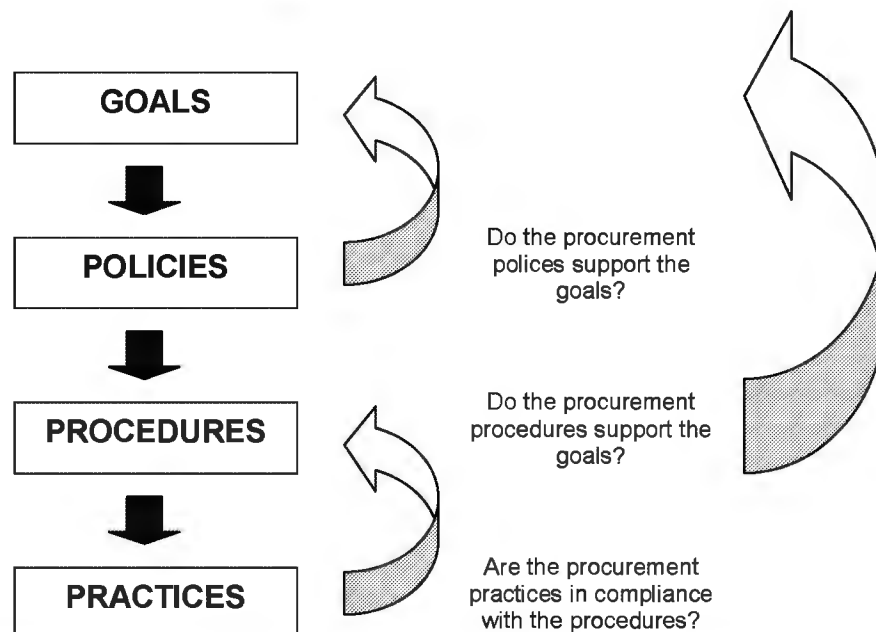
A policy of regularly reviewing the processes at least once every five years, regardless of performance, is also an option. The frequency of review is dependent on the complexity and volume of procurement activity and the strength of the internal controls. Any combination of review and evaluation methods is available.

Before beginning a review and evaluation of whether the policy goals are being met, you may want to consider whether the right goals are in place for the procurement policies. This type of review should be done as part of formulating the policies required by the new legislation. The guide suggests certain goals to build these policies, but each council/local board should assess whether these are the appropriate goals for them.

Once performance issues have been identified and determined to be significant, the next step is to determine *why* the goals are not being achieved.

There are three areas of inquiry that can be pursued and built into the review and evaluation policy:

- Do the procurement policies lead to the goals?
- Do the procurement procedures support the goals?
- Are procurement practices in compliance with your procedures?



Are the right policies in place to realize your goals?

The concern at this stage is that no policy is in place to address the goal or that the policy is unclear and hence may be contributing to the performance issue. A risk assessment, of the type described in [Chapter 5](#), can assist in determining whether the goal is at risk and will result in poor performance.

Instead of a risk assessment, you may choose a different approach or combination of approaches to review the policies. First, you can compare your municipal/local board policies against other organizations. The second option is to use a program logic model where you examine whether each policy can logically be expected to lead to the goal. This type of review should not occur frequently. The costs and time of the review and the need for certainty by the players in the process about the “rules of the game” mean the reviews should be limited to once every few years.

The municipality/local board should allow a policy to be in place for at least one year before it is reviewed. Of course, if significant problems with the policies are uncovered in the interim, they should be addressed immediately. Initial problems may be due to factors other than the soundness of the policies. These factors include the following:

- the absence of clear information, training and education (and, in some instances, marketing) on the policies
- inadequate or immature support structures to support the policies
- disparities between the policies and their implementation.

Are the right procedures in place to support your goals?

This type of review would assess the procedures to determine barriers to achieving the goals. Depending on the scope of the performance problem, you may want to focus on the procedures used in one of the five key steps of the procurement process. This strategy will help you determine where the performance problems may be rooted and what opportunities for improvement exist.

A procedure review could occur more frequently than a policy review as the changes do not affect as many people. However, the reviews can involve significant resources and be disruptive to suppliers and staff and should not occur more than once every few years. If significant problems are uncovered in the interim, they should be addressed immediately.

Are your practices in compliance with your procedures?

Procedures may in fact be sound and efficient. However, if they are not being followed, the result can be performance that is not meeting expectations. Underlying this type of problem could be factors such as the incentive system, confusion over roles, poorly communicated or constantly changing procedures or conflicting priorities.

(Note also that practices may very well develop that are not in compliance with the procedures because the procedures themselves are not serving the policy goals. Learning from a review of practices can serve as an important feedback loop to correct procedure problems – the review type two explained above.)

A review of practices against procedures typically takes the form of a compliance audit. Such an audit is not usually part of the regular annual audit of the financial statements. (In the latter, a few transactions may be audited, which would include following the transactions through the procurement process in order to form an opinion about whether the internal controls are such that the numbers in the financial statements can generally be relied upon. However, this type of audit is not aimed at reviewing the practices to check for compliance with the procedures.)

A compliance audit would generally be done once every one or two years, or again, in response to an issue.

7. What are your views on the guide?

This client satisfaction survey is intended to provide the Ministry of Municipal Affairs and Housing (MAH) with information that will assist us in better serving your needs. The information collected in this survey will be used by MAH to better understand your needs and help us make improvements to help you develop procurement by-laws under the requirements of section 271 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25.

Instructions:

This survey asks a number of questions about your experience with the guide. These include questions about the guide's usefulness, comprehensiveness and accessibility. The survey can be completed either by filling out the attached questionnaire or by completing the on-line questionnaire. You can access the on-line questionnaire, electronically, by going to <http://www.mah.gov.on.ca> and clicking on the procurement guide link.

Completed surveys (hard copy versions only) can be faxed or mailed to MAH:

Ministry of Municipal Affairs and Housing
Municipal Performance and Accountability Branch
13th Floor
777 Bay Street
Toronto, ON M5G 2E5
Fax: (416) 585-6161

If you have any questions about this survey and the use of this information, please contact us at (416) 585-6022.

Thank you for your participation.

For the following, please **circle** the response that *best* describes your experience in these areas.

1 = very dissatisfied
 2 = dissatisfied
 3 = neutral
 4 = satisfied
 5 = very satisfied
 N/A = not applicable

1. Please rate your OVERALL satisfaction with the guide

very dissatisfied	dissatisfied	neutral	satisfied	very satisfied	not applicable
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> N/A

2. Please rate your level of satisfaction with the following aspects of the guide:

a. As a primary resource to help you develop bylaws/resolutions as required by the legislation

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> N/A
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b. Clear discussion of the topics for helping you to develop your procurement bylaw/resolution

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> N/A
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c. The range of topics addressed in the guide

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> N/A
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d. Easy-to-understand language

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> N/A
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e. The organization of the guide (i.e., information is organized in a logical manner)

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> N/A
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f. The level of detail provided in the guide

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> N/A
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g. Accessibility of guide (electronically or otherwise)

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> N/A
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3. Has your municipality/local board drafted a bylaw/resolution under the requirements of section 271 of the *Municipal Act, 2001*?

YES

NO

4. What is your position in your municipality/local board?

Council/local board member

Municipal treasurer

Municipal clerk

Other municipal staff

Purchasing manager

Please specify _____

5. What is the population of your municipality?

<5,000

5,000 – 24,999

25,000 – 100,000

>100,000

6. Aside from the guide, what are your other preferred resources on procurement?

7. What chapters in the guide were the most useful to you?

8. What topics in the guide were the most useful to you?

9. Is there any information you feel should be added to the guide?

10. Please provide any other comments you have about the guide. Feel free to elaborate on questions from the survey or any other thoughts you wish to convey relating to the guide.

APPENDIX 1: GLOSSARY

For the purpose of the guide, the following terms are defined as set out in the manner below.

Bidders List - A list of names and addresses of vendors from whom bids, proposals and quotations might be expected. The list, which is maintained by the purchasing official, should include all vendors who have expressed interest in doing business with the municipality/local board.

In-House Bids - process that allows for internal staff to compete with external entities for procurement opportunities.

Interprovincial Trade Agreement - bi-lateral or multi-lateral agreement entered into by governments (federal, provincial, territorial) governing specific aspects of inter-jurisdictional trade. The intent of these agreements is to reduce barriers to the free movement of persons, goods and services and to establish open, efficient markets between signatory governments. For more information on the interprovincial agreements applicable to Ontario procurement, see [Appendix 4](#).

Net Present Value - (NPV) is the discounted value of expected future cash inflows and outflows. NPV accounts for the time value of money, considering cost of capital, interest rates and investment opportunity costs. It represents the net result of a multi-year investment expressed in current dollars.

Non-Competitive Procurement - Acquisition of goods and services without comparing pricing or product/service information from multiple vendors.

Policies - Matters that council has adopted by bylaw or that the local board has adopted by resolution.

Practices - The actual activities undertaken in the procurement process.

Procedures - A sequence of steps or actions establishing expectations of how the policies are to be implemented.

Procurement - For the purposes of this guide “procurement” is defined as:

A goods, services or construction contract involving a purchasing, leasing, renting or exchange transaction, arrived at by a competitive or non-competitive process. Procurement also includes material(s) management, contract management, advisory services and implementation and adherence to best practices.

This definition, developed by the procurement working group members, is provided strictly to give context for the material discussed in the guide. Ultimately, the definition of procurement is an issue for each municipality/local board to address in its procurement policy since section 271 of the *Municipal Act, 2001* requires municipalities/local boards to develop policies on the types of procurement that will be used.

Request for Expressions of Interest - A general market research tool to determine vendor interest in a proposed procurement. It is used prior to issuing a call for bids or proposals and is not intended to result in the award of a contract.

Request for Information - A general market research tool used to determine what products and services are available, scope out business requirements and/or estimate project costs. A Request for Information is used to provide vendors with a general or preliminary description of a problem or need and to request vendors to provide information or advice about how to better define the problem or need, or alternative solutions. It should not be used to pre-qualify or screen vendors. It is not intended to result in the award of a contract.

Request for Pre-Qualification - A procurement process used to pre-qualify vendors for subsequent participation in an invitational Request for Proposal. Responses from proponents are evaluated against selection criteria set out in the solicitation, and a short-list of pre-qualified proponents is created.

Request for Proposal - A competitive procurement process for obtaining unique proposals designed to meet broad outcomes to a complex problem or need for which there is no clear or single solution.

Request for Tender - A competitive procurement process for obtaining competitive bids based on precisely defined requirements for which a clear or single solution exists.

Risk Management - A systematic approach to setting the best course of action under uncertainty by identifying, assessing, understanding, acting on, monitoring and communicating risk issues.

Single Sourcing - The procurement of a good or service from a particular vendor rather than through the solicitation of bids from other vendors who can provide the same item.

Sole Sourcing - The procurement of a good or service that is unique to a particular vendor and cannot be obtained from another source.

Two-Envelope - A procurement process in which a bid is submitted into two envelopes. The technical and qualitative information are submitted in the first envelope and the price information is provided in the second envelope. The second envelope is opened only if the first envelope shows the bidder to be qualified.

Vendor of Record - A procurement process where the municipality/local board seeks out bids or proposals from a select group of vendors with which it has already established a satisfactory business relationship. A Vendor of Record (VOR) may be used either directly to procure goods and services – that is without further competition – or it may be used indirectly as the basis for inviting proposals, tenders or bids from suppliers.

APPENDIX 2: HELPFUL RESOURCES

The following resources are grouped into two categories: Web sites and books. These have been provided to help municipalities find information on procurement. The Ministry does not control the content of the Web sites and books and is not responsible for any damages arising out of their use.

WEB SITES

Ontario Public Buyers' Association

<http://www.vaxxine.com/opba/>

The mandate of the Ontario Public Buyers' Association (OPBA) promotes ethical and effective expenditure of public funds through the principles of public procurement. OPBA offers a databank of sample specifications for tenders, quotations, RFPs and other bid documents, an Internet bid document advertising service, a news group and distance learning opportunities.

Purchasing Management Association of Canada

<http://www.pmac.ca/>

The Purchasing Management Association of Canada (PMAG) is a national, non-profit association and training agency for procurement and supply chain professionals in Canada. The Web site has links to other purchasing associations.

National Institute of Government Purchasing

<http://www.nigp.org/>

The National Institute of Government Purchasing (NIGP) is an organization offering publication, education and certification programs and consulting services for public procurement professionals. *The Procurement Professional*, a trade journal, can be accessed through this site.

A searchable Internet-based Procurement Information Exchange library allows for research and downloading of sample solicitations, product/service descriptions, policy and procedures manuals and position descriptions. This automated library is backed up by a traditional library of over 30,000 documents on public purchasing. The procurement support staff can answer questions and provide sample documents on most purchasing issues. This service is available to NIGP members only.

NIGP also has an on-site training program for governments that have funds available for staff development but not for travel costs. Information on this program can be obtained by e-mailing NIGP at: education@nigp.org.

Canadian Public Procurement Council

<http://www.ccmp-cppc.qc.ca/ccmp/index.html>

The mandate of the Canadian Public Procurement Council (CPPC) supports the public procurement community across Canada by promoting dialogue, facilitating information exchange, developing approaches to common issues and providing leadership for the resolution of shared problems.

Canadian Association of University Business Officers

<http://www.caubo.ca/>

The mandate of the Canadian Association of University Business Officers (CAUBO) promotes professional and effective management of the administrative, financial and business affairs of higher education. Through publications, educational programs and a forum for the interchanging of ideas, CAUBO tries to enhance the professional standards of its members.

The National Procurement Committee (NPC) of CAUBO promotes and ensures the exchange of information on procurement activities at the national, regional and institutional levels in such areas as the following:

- contracting at the national level and, where appropriate, co-ordination of regional activities
- government relations (e.g. regarding the Agreement on Internal Trade)
- forming a national information bank, coordinating an information exchange, and networking
- coordinating price benchmarking
- identification of best practices and expertise
- organizing seminars and conference activities.

Universal Public Purchasing Certification Council (UPPCC)

<http://www.nigp.org/press/UPPCCFees.htm>

The Universal Public Purchasing Certification Council (UPPCC) is an organization composed of NIGP and National Association of State Procurement Officials (NASPO) members. UPPCC's mandate establishes, monitors and revises requirements for the Certified Professional Public Buyer (CPPB) and Certified Public Purchasing Officer (CPPO) professional designation programs. Training courses are offered.

Ontario University Purchasing Management Association

<http://www.oupma.on.ca/>

The Ontario University Purchasing Management Association (OUPMA) promotes co-operative procurement and exchange of information among its members and affiliates. OUPMA conducts research and provides education on purchasing best practices, legislation and technology.

BOOKS

O' Connor, M., et al. (1999). *Conduct Handbook for Municipal Employees and Officials*. Toronto: Butterworths Canada Ltd.

This book provides civic employees and officials with a guide to identifying and addressing conduct issues in the municipal workplace. It offers examples of inappropriate employee activities and discusses the consequences of such misconduct. Drawing from these examples, the book describes the policies local agencies should have in place to avoid adverse publicity or costly litigation arising from improper or illicit behaviour. Tips are also offered on how to handle some commonplace situations such as receipt of holiday gratuities.

A model Code of Conduct is included for use as a template by employers. Training and enforcement concerns, when a code is instituted, are also discussed. Chapters that focus on problems provide precedents or suggestions for dealing with them. Some issues covered include abuse and corruption, disclosure of interest, gifts and benefits, political activity, moonlighting, nepotism and post-service employment.

McGuinness, K et al. (2002). *Municipal Procurement Handbook*. Markham: Butterworths.

This book offers procurement officers, city financial managers, city councillors and others involved with municipal purchasing a guide on best practices. The book outlines how municipalities can develop a strategic and efficient procurement process with a commitment to corporate governance while minimizing their liability risks. It covers traditional and modern purchasing methods, risk management, and step-by-step guidance on bidding and tendering processes.

Pilachowski, M. (1996). *Purchasing Performance Measurements: A Roadmap for Excellence*. West Palm Beach: PT Publications, Inc.

This book discusses why and how to implement performance measures, what to measure, why and how to understand the relationships between measurement and Just-In-Time/Total Quality Control and how to gain management support.

Fearon, L. and Johnson, F. (2002). *Purchasing and Supply Management, 12th ed*. New York: McGraw-Hill.

This book discusses major supply challenges facing all organizations and their purchasing and supply management implications. It also covers basic tools and techniques of purchasing and supply management and poses questions to readers to test their comprehension of the material discussed.

Herman, J. et al. (1987). *Evaluator's Handbook*. Los Angeles: Sage Publications.

This book discusses program development and the procedures for conducting formative and summative evaluations. It also provides guides for a formative evaluation, a standard summative evaluation and a small experiment.

APPENDIX 3: PERFORMANCE MEASURES FOR THE PROCUREMENT PROCESS

Below are the key goals for procurement as outlined in [Chapter 3](#). Under each goal are suggested performance measures. **These are only suggestions and municipalities/local boards are not obligated to establish performance measures for procurement.**

Effectiveness - the extent to which the procurement process is achieving its intended results* (i.e., the process delivered the goods and services required to meet the municipality's/local board's needs):

- level of supplier satisfaction with the procurement process
- number of complaints** received from prospective and actual bidders
- ratio of number of annual change orders to total number of annual orders
- ratio of number of requisitions filled to number of requisitions initiated
- ratio of number of awards challenged to number of awards made
- ratio of number of suppliers canvassed per bid to number of suppliers who submitted bids (in invitational bid process for medium to large procurement)
- ratio of number of times that a bid call did not result in bid award to number of bid calls
- average time needed to move through the procurement process
- number of requisitions turned around under five days, under 10 days.

Objectivity - approaching the procurement of goods and services in an unbiased way, that is, not influenced by personal preferences, prejudices, or interpretations:

- ratio of number of complaints about objectivity to number of bid calls.

* The results here are the “substantive” or quality results, as opposed to process results. Process results are the types of results that are described in the bolded goals below.

** The Ministry's Municipal Performance Measurement Program defines complaint as: “When a municipality's determined level of service was not met.”

Fairness - applying the policies equally to all bidders:

- ratio of number of complaints about fairness to number of bid calls.

Openness and Transparency - clarity and disclosure about the process for arriving at procurement decisions:

Suppliers' satisfaction with the following:

- access to procurement opportunities
- clarity of bid documents and selection criteria
- communication and explanation of bid decisions.

Accountability - the obligation to answer for procurement results and for the manner in which procurement responsibilities are discharged:

- councillors' and senior management's satisfaction with clarity, timeliness, relevance, and frequency of variance reports about the procurement process
- ratio of number of contract renewals where no rationale provided to total number of contract renewals.

Efficiency - the quality, cost and amount of goods and services procured as compared to the time, money and effort to procure them:

- ratio of number of purchase orders issued to number of procurements initiated
- percentage of reconciliations completed within 30 days.

APPENDIX 4: INTERPROVINCIAL TRADE AGREEMENTS ON PROCUREMENT APPLICATION TO MUNICIPALITIES IN ONTARIO

The following trade agreement summary has been provided for information purposes only. It should not be relied on as a substitute for legal or professional advice. The Ministry is not responsible for any damages arising from a municipality or local board relying on this summary. Municipalities and local boards are urged to consult the full text of the interprovincial trade agreements.

To obtain full text copies of the MASH Annex to the Agreement on Internal Trade and the Agreement on the Opening of Public Procurement for Ontario and Quebec, refer to the Web site of the Management Board Secretariat, Office of the Corporate Chief Information Officer, Procurement Policy and IT Procurement Branch at <http://www.ppitpb.gov.on.ca/>.

The Agreement on Internal Trade (AIT) came into effect on July 1, 1995 and is designed to eliminate barriers to trade, investment and mobility within Canada. Annex 502.4 (the MASH Annex) of the AIT came into effect on July 1, 1999. Under its terms the MASH Annex, applies in all Canadian jurisdictions except the Yukon Territories and governs procurement for "MASH entities." MASH entities consist of:

- municipalities
- municipal organizations
- school boards
- publicly-funded academic, health and social service entities.

The Agreement on the Opening of Public Procurement for Ontario and Quebec covers MASH sector procurement between Ontario and Quebec. It came into effect for construction procurement in July 1995 and for goods and services procurement in May 1997.

Purpose of the agreements

The agreements are designed to:

- promote inter-provincial trade
- eliminate barriers to trade
- ensure that suppliers are treated fairly when competing for procurement opportunities regardless of their geographic location.

Principles of the agreements

The agreements are founded on the principles of reciprocal non-discrimination and transparency:

Reciprocal non-discrimination. The agreements require that:

- suppliers from provinces outside Ontario are to be treated the same way as suppliers from Ontario
- restrictions based on the origin of goods and services or on the location of a supplier, contractor or sub-contractor are prohibited
- tendering is to be based on the highest degree of competition, efficiency and effectiveness
- biased tendering policies or procedures such as price preference for local suppliers or local content are prohibited.

Transparency. The agreements require that:

- policies and procedures governing procurement are to be clear and readily accessible to suppliers upon request
- tendering documents are to disclose certain information to prospective suppliers.

Dollar thresholds

By their terms, each agreement applies when you acquire goods or services at above the following dollar thresholds:

Agreement	Estimated Value of Goods or Services Procurement	Estimated Value of Construction Procurement
MASH Annex of the AIT	≥ \$100,000	≥ \$250,000
The Agreement on the Opening of Public Procurement for Ontario and Quebec	≥ \$100,000	≥ \$100,000

Advertising procurement opportunities

For goods and services procurement estimated at \$100,000 or more and construction procurement estimated at \$250,000 or more, the agreements provide that MASH entities are required to use an electronic advertising/tendering system providing equal access to potential vendors across the country. Other methods of advertising may be used in addition to an electronic system.

For construction procurements estimated between \$100,000 and \$250,000, the agreements require that at least one of the following methods is to be used:

- an electronic advertising/tendering system providing equal access to potential vendors across the country
- a daily newspaper (e.g. local newspaper) designated by the MASH entity; or
- supplier lists, provided that the pre-qualification process is fair and open and allows other suppliers to qualify on an annual basis or each time if the qualification is for a specific project.

Under the agreements, procurement opportunities must be advertised for a minimum of 15 calendar days, irrespective of the advertising method used.

Under the agreements, a MASH entity may use any internet based electronic advertising/tendering system providing equal access to potential vendors across the country.

The MERX system is currently used by federal and some provincial governments to advertise procurements.

What information to include in the tender notice

The agreements require a tender notice to contain at least the following information:

- a brief description of the procurement contemplated
- the place where a person may obtain information and tender documents
- the conditions for obtaining the tender documents
- the place where the tenders are to be sent
- the closing date and time for tender submissions
- the time and place of the opening of the tenders in the event of a public opening
- a statement that the procurement is subject to the MASH Annex.

Exceptions to the interprovincial trade agreements

The agreements provide for certain circumstances where you are not required to follow the agreements. In the following list, the exceptions to the trade agreements have been summarized and re-organized under topical headings for greater clarity. This information has been presented in this form for ease of use only. **It should not be relied on as a substitute for legal or professional advice. The Ministry is not responsible for any damages arising from a municipality or local board relying on this summary. MASH entities are urged to consult the full text of the agreements.** For a precise description of these exceptions, see Sections “I” and “L” and Appendices “C” and “D” of the MASH Annex, or “Section 5” and Appendices “A”, “B”, and “E” of the Agreement on the Opening of Public Procurement for Ontario and Quebec.

You may exclude a procurement from certain or all requirements of the agreements (as provided for in the agreements) in the following instances:

Emergency, Protection, and Security Concerns

- where an unforeseeable situation of urgency exists and the goods or services cannot be obtained in time through a competitive process
- where goods or consulting services regarding matters of a confidential nature are to be purchased and the disclosure of those matters through an open competitive process would compromise government confidentiality, cause economic disruption, or otherwise be contrary to the public interest
- where competitive sourcing would compromise the ability to maintain security or order or to protect human, animal (MASH Annex only), or plant (MASH Annex only) life or health
- where the procurement is for health services or social services (MASH Annex only)

Special Financing Arrangements

- where a contract is to be awarded under a cooperation agreement that is financed by an international cooperation organization, only to the extent that such agreement includes different rules for awarding contracts
- where the procurement is for goods or services that are financed primarily from donations that are subject to conditions that are inconsistent with the trade agreement (MASH Annex only)

Interprovincial and Geographic Limitations

- where the procurement is for goods that are subject to interprovincial movement that is restricted by laws not inconsistent with the trade agreement (MASH Annex only)
- where it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base of sand, stone, gravel, asphalt, compound and pre-mixed concrete that need to be purchased for road construction or repair

Warranties/Guarantees, Exclusive Rights, and Lease Arrangements

- where it is necessary to ensure compatibility with existing products, recognize exclusive rights such as copyrights, patents, or exclusive licences, or maintain specialized products that must be maintained by the manufacturer or its representative
- where the carrying out of work by a contractor other than the contractor who did the original work would nullify the warranty or guarantee held

- where construction or renovation work on a leased building may be performed only by the lessor of the building
- where the purchase of goods is already covered by a lease-purchase agreement where payments are partially or totally credited to the purchase (The Agreement on the Opening of Public Procurement for Ontario and Quebec)

Sole Suppliers and Licensed Professionals

- where there is only one supplier available and no alternative or substitute exists
- where there is a statutory monopoly on the product or service
- where the products or services can be provided only by the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, chartered accountants, lawyers, and notaries

Public Agencies, Special Interest Groups, and Aboriginal Peoples

- where use of a central service is mandatory
- where the procurement is between public organizations or with a non-profit organization
- where the goods or services are purchased from philanthropic institutions (MASH Annex only), prison labour, or persons with disabilities
- where a procurement is made pursuant to an agreement with or a policy concerning Aboriginal Peoples

Miscellaneous Circumstances

- where goods or services are purchased on behalf of an entity not covered by the trade agreement
- where no bids were received in a competitive process
- where the procurement of goods is intended for resale to the public
- where the purchase of goods or services is related to cultural or artistic fields, as well as computer software (MASH Annex only) for educational purposes
- where the procurement is for original works of art (MASH Annex only)
- where goods are purchased under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases
- where the procurement involves research and development or production of a prototype or original concept and subsequent purchase of these products or services is to be made through a competitive process
- where the procurement is for the services of financial analysts or the management of financial assets by organizations who have such functions as a primary purpose (MASH Annex only)

- where the procurement is for financial services respecting the management of financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution (MASH Annex only)
- where a contract is to be awarded to the winner of a design contest (MASH Annex only)
- where goods are purchased on a commodity market
- where the procurement is for subscriptions to newspapers magazines, or other periodicals (MASH Annex only)
- where the procurement is for real property (MASH Annex only)

Conflict between interprovincial trade agreements

The agreements provide that in the event of any inconsistency between the Agreement on the Opening of Public Procurement for Ontario and Quebec, the MASH Annex or any additional agreements entered into by those provinces or territories which are signatories to the agreement, the agreement that is more conducive to trade liberalization prevails to the extent of the inconsistency.

APPENDIX 5: THE “TWO-ENVELOPE” PROCUREMENT PROCESS

The two-envelope approach is used when the purchaser wants to evaluate the technical and qualitative information of a given proposal without being influenced by prior knowledge of the corresponding pricing information. Proposal evaluation is done usually by a team of staff from possibly more than one department who have relevant expertise for making the evaluation.

In the two-envelope approach, each proponent must submit qualitative and technical information in a sealed envelope (envelope one) and pricing information in a second sealed envelope (envelope two). The contents of envelope one are evaluated and scored according to pre-determined criteria such as relevant firm experience, project team’s qualifications/experience, personnel time allocation, understanding of scope of work, methodology/thoroughness of approach, quality and completeness of proposal submission, etc.

When the scoring of envelope one is completed, then the pre-determined process for moving to envelope two is followed. In some procurement strategies, a minimum score threshold is in place at envelope one, and only proposals which meet or exceed that threshold are eligible to proceed to the opening of envelope two and subsequent price evaluation. If a proposal is not eligible to proceed to price evaluation, the proponent is disqualified from further consideration and the second envelope is returned to the proponent unopened.

For each proposal where envelope two is opened, the bid price(s) are scored according to the pre-determined process. The particular procurement and evaluation strategy will dictate the process for scoring the price and subsequently taking the scores from the envelope one and envelope two processes into account, resulting in a total evaluated score for the proposal. The total evaluated scores are ranked, and the proposal with the highest ranked score is considered the successful proposal, unless council or the local board, as applicable, decides otherwise. In the event of a tie, the pre-determined process for handling a tie is followed.

APPENDIX 6: PROCUREMENT GUIDE WORKING GROUP MEMBERS

Name	Title	Organization
Marlene Knight	Consultant, City Service Review Project	City of Mississauga
Lou Pagano	Director of Purchasing	City of Toronto
Andrea Mindenhall	Manager, Purchasing	Regional Municipality of Halton
Janet Powers	Revenue, Purchasing, Tendering Clerk	City of Quinte West
Dawn Hipwell	Corporate Manager: Purchasing Fleet and Property	County of Simcoe
Troy Speck	Chief Administrative Officer	City of Elliot Lake
Melody Couvillon	Manager, Purchasing	City of London
Tim Sheffield	Chief Administrative Officer	City of North Bay
Minali Prem	Policy Analyst	Canadian Federation of Independent Business
Atul Sharma	Vice President, Policy Development	Ontario Chamber of Commerce
Diane Sirois	Senior Policy Advisor	Management Board Secretariat
John Bech-Hansen	Executive Director	Municipal Finance Officers Association of Ontario
Jeff Fisher	Senior Policy Advisor	Association of Municipalities of Ontario

FOR MORE INFORMATION

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

Municipal Performance and Accountability Branch

777 Bay Street, 13th Floor, Toronto, ON M5G 2E5

General Inquiry: (416) 585-6022

Fax: (416) 585-6161

Municipal Services Offices

Central

777 Bay Street, 2nd Floor, Toronto, ON M5G 2E5

General Inquiry: (416) 585-6226

Toll Free: 1-800-668-0230 Fax: (416) 585-6483

East

8 Estate Lane, Rockwood House, Kingston, ON K7M 9A8

General Inquiry: (613) 548-4303 ext. 10

Toll Free: 1-800-267-9438 Fax: (613) 548-6822

Northeast

159 Cedar Street, Suite 401, Sudbury, ON P3E 6A5

General Inquiry: (705) 564-0120

Toll Free: 1-800-461-1193 Fax: (705) 564-6863

Northwest

435 James St. S. Suite 223, Thunder Bay, ON P7E 6S7

General Inquiry: (807) 475-1651

Toll Free: 1-800-465-5027 Fax: (705) 475-1196

Southwest

659 Exeter Road, 2nd Floor, London ON N6E 1L3

Toll Free: 1-800-265-4736 Fax: (519) 873-4018

MINISTRY OF NORTHERN DEVELOPMENT AND MINES

For local services boards, please contact your local office of the Ministry of Northern Development and Mines.

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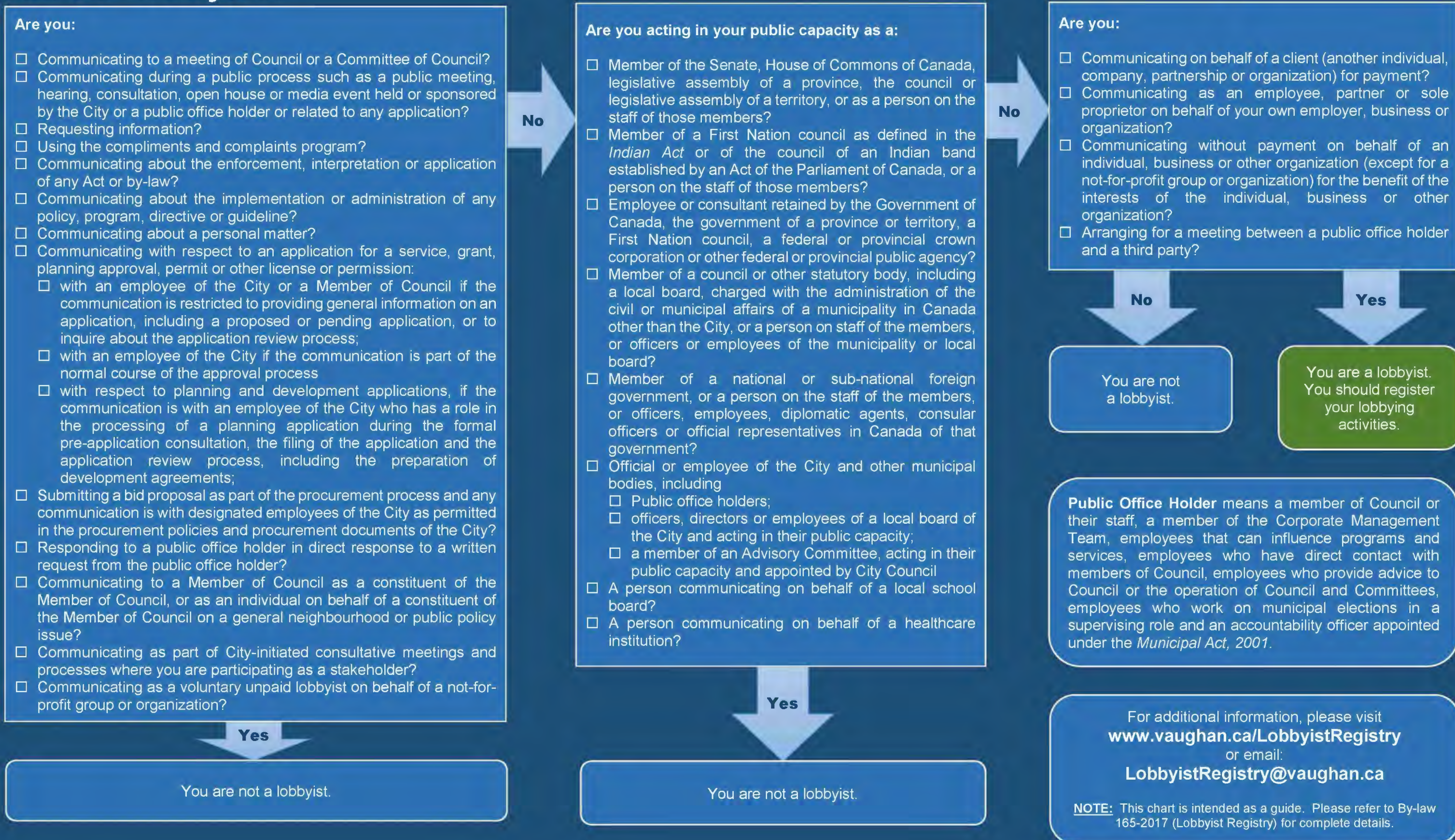
Disponible en français
Guide sur l'élaboration de règlements municipaux en matière
d'approvisionnement

TAB 5



City of Vaughan

Am I a Lobbyist?



TAB 6

Citations

Tab 1: Table of Selected Municipal Procurement By-Laws in Ontario as of November 25, 2019, prepared by the Town of Collingwood

Tab 2. Town of Caledon, Staff Report 2016-132, Lobbyist Registry (22 Nov 2016). Online: <<https://www.caledon.ca/en/townhall/resources/StaffReport2016-132.pdf>>.

Tab 3. PPI Consulting Limited & Ontario Municipal Knowledge Network, Leading Practices in Municipal Procurement (May 2011). Online: <http://www.omkn.ca/OMKN-Docs/Best-Practices/Beneficial-Reports/2011_Leading_Practices_Assessment_Results_final.aspx>.

Tab 4: Ontario Ministry of Municipal Affairs and Housing, A Guide to Developing Procurement Bylaw, 2003 (Toronto: Ministry of Municipal Affairs and Housing, July 2003). Online: <<http://www.mah.gov.on.ca/Asset1201.aspx>>.

Tab 5: City of Vaughan, Am I a Lobbyist? Flowchart. Online: <<https://www.vaughan.ca/cityhall/lobbyistregistry/General%20Documents/Am%20I%20a%20Lobbyist.pdf>>.