

CITY OF KINGSTON

Ontario

BY-LAW NO. 2000-134

A BY-LAW TO ESTABLISH PURCHASING POLICIES AND PROCEDURES

PASSED: December 14, 2004

UPDATED as of September 22, 2006

This By-Law no. 2000-134; passed December 14, 2004; supersedes the former original Purchasing Policies and Procedures By-Law which was passed originally on May 30, 2000

Amended by:

By-law No. 2006-21
By-law No. 2006-211

January 26, 2006
September 22, 2006

(Office Consolidation)

PURCHASING POLICIES AND PROCEDURES
By-law No. 2000-134

INDEX

Title	Section
Definitions	1.0
General	2.0
Approval Levels and Procurement Authorization.....	3.0
Offers to Procure – General.....	4.0
Requests for Proposal – General.....	5.0
Tendering - General	6.0
Tendering – Bid Submission Requirements	7.0
Tendering – Bid Withdrawal	8.0
Tendering – Opening and Award Process.....	9.0
Professional Consulting Services Procurement	10.0

BY-LAW NO. 2000-134

A By-Law To Amend By-Law No. 2000-134 “A By-Law To Establish Purchasing Policies And Procedures For The City Of Kingston”

PASSED: December 14, 2004

NOW THEREFORE BE IT RESOLVED that the Council for the Corporation of the City of Kingston enacts as follows:

1.0 Definitions

In this By-Law,

“**Agreement**” means a bargain made between the City and any Vendor upon an acceptance of an Offer to Procure Goods and Services entered into by a Buyer evidenced by a Contract, Purchase Order or as otherwise authorized hereunder.

“**Bid**” means submission in response to a Tender offering a specific price for specific Goods or Services provided by a Prospective Vendor on a Form.

“**Bid Bond**” means security required from Prospective Vendors described in Offers to Procure, which shall be in the form of a certified cheque, bank draft, money order and/or bonding documents issued by an approved Guarantee Company properly licensed in the Province of Ontario, on Canadian Construction Documents Committee (CCDC) bond forms or any other similar form of security acceptable to the City in its sole discretion.

“**Buyer(s)**” means a member or members of City staff who, in the normal course of their duties, are authorized to procure goods and services for the Corporation.

“**City**” and “**Corporation**” means the Corporation of the City of Kingston.

“**Clerk**” means the Clerk of the City appointed pursuant to the Municipal Act, 2001 (or the authorized designate of the Clerk) and is a Director.

(By-law No. 2000-134; 2006-211)

“**Commissioner**” means the member of the Corporate Management team responsible for a group of Departments.

(By-law No. 2000-134; 2006-211)

“**Contract**” means a written Agreement authorized or ratified by the appropriate authority pursuant to this By-law, acceptable to the Legal Services Department of the City in form and content and executed by the Mayor and the City Clerk or other delegated authority properly authorized by Council.

(By-law No. 2000-134; 2006-211)

“**Department**” means a section of a Group and may be comprised of Divisions.

(By-law No. 2000-134; 2006-211)

“**Director**” means the Head of one of the Departments or such other persons as designated.

(By-law No. 2000-134; 2006-211)

“**Emergency**” means a situation where serious delay may affect the life and health of the public, prevention of serious damage, and the restoring of essential service levels to a minimum level.

(By-law No. 2000-134; 2006-211)

1.0 Definitions cont'd:

"Expanded Works" means a change, including a change order, to an Agreement in which an unexpected requirement arises, which does not expand the scope of the project but is a necessary addition to the work in order to deliver the original approved work.

"Form" means a standard document as prepared and provided by the Purchasing Section as part of the purchasing guidelines for purchasing and contract administration purposes approved by the Finance Department.

(By-law No. 2000-134; 2006-211)

"Good(s)" means all tangible and intangible property including but not limited to supplies, materials, equipment, food, drugs and construction materials.

"Lease" means any procurement proceeded with pursuant to section 4.8

"Lobbying" means communication by a Prospective Vendor by oral or written means either directly or through its representatives, including a third party representative employed or retained by it, for the purpose of promoting its Offer to Procure or opposing any competing Offer to Procure but does not include a communication to the authorized City project contact person, as set out in the Offer to Procure.

(By-law No. 2000-134; 2006-211)

"Offer to Procure" means any Tender or Request for Proposal, which is issued by the City pursuant to this By-law to provide Goods and/or Services to the City on terms set out in the Offer to Procure.

"P-Card" means a corporate credit account issued to a Buyer administered through the Finance Department and authorized by the applicable Commissioner.

(By-law No. 2000-134; 2006-211)

"Professional Consulting Services" means a provision of an opinion or advice, including custom computer programming design services, which is intended to be relied upon by the City and is supportable by error and omission insurance or similarly recognized as a profession, distinct from the concurrent provision of a Good or Service.

(By-law No. 2000-134; 2006-211)

"Proposal" means a response to a Request for Proposal and must include upset price and all other particulars required by the Request for Proposal.

"Prospective Vendor" means any person under law, which responds to an Offer to Procure but has yet to be or was not selected to be the Vendor.

"Purchase Order" means a Contract to acquire Goods or Services issued by the Purchasing Section or a Buyer on a simplified Form or Forms acceptable to the Legal Services Department, provided by the Finance Department.

(By-law No. 2000-134; 2006-211)

"Purchasing Coordinator" means the individual responsible for providing professional procurement expertise to the Corporation in support of the application and compliance of this By-law and associated procurement guidelines. The Purchasing Coordinator is also a Buyer.

(By-law No. 2000-134; 2006-211)

1.0 Definitions cont'd:

"Request for Information" means a request for pricing or other information in relation to procurement, which does not include the expectation of formation of an Agreement.

"Request for Proposal" means a written request issued by the City on a Form detailing a supply of goods or services, which cannot be fully defined or specified at the time of the request.

"Service(s)" means the procurement of non-Goods including construction, professional, maintenance, computer programming or other Services.

"Single Source" means either:

- i. there is more than one source in the open market but for reasons of function, service, unique technology or proprietary interest only one Vendor is recommended for consideration of the particular goods and/or services; or
- ii. there is only one known source of supply of particular goods or services.

(By-law No. 2000-134; 2006-211)

"Standing Purchase Order" means a procurement, approved by the Finance Department and the Director of the issuing Department, which establishes prices or methods for determining prices, terms and conditions and the period of time during which a Vendor agrees to provide specified Goods or Services to the City upon demand. Standing Purchase Orders may only be issued for a period not exceeding two (2) years except where Council has approved a longer term.

(By-law No. 2000-134; 2006-211)

"Tender" means an Offer to Procure, which specifies characteristics required and which solicits Bids.

"Time-Sensitive Works" means an Offer to Procure, which is not an Emergency and for which the timing to initiate and/or complete the works is paramount but the time available to follow normal procedures is insufficient, including to ensure a sequence of contracts meets an overall timetable.

(By-law No. 2000-134; 2006-211)

"Vendor" means any party selected to supply Goods or Services to the City.

2.0 General

2.1. All purchases of Goods and Services for the City are subject to the provisions of this By-Law.

2.2. Prices and authority levels as stated herein are before tax amounts.

2.3. Where a Department chooses to engage Professional Consulting Services as a project manager instead of a Buyer to administer Offers to Procure, then it shall be the responsibility of the respective Director to ensure that all conditions of this By-law are adhered to by the project manager and in any event shall not exceed levels fixed by the City from time to time in its sole discretion.

(By-law No. 2000-134; 2006-211)

2.4. All Vendors responding to an Offer to Procure must provide valid evidence of the required insurance, active Workmen's Safety Insurance Board status, bonding or other forms of insurance and security as required by the City. All evidence of the required insurance will have to be set out on a form provided by the City and shall set out deductible levels which are acceptable to the City

2.4 cont'd:

of Kingston and in any event shall not exceed levels fixed by the City from time to time in its sole discretion. Prospective suppliers of Goods and Services who will be required to be physically present on City property must provide with each proposal or Bid tendered in response to an Offer to Procure all required evidence of appropriate insurance and active Workmen's Safety Insurance Board status. **No contract shall be entered into and no work or supply under any procurement shall commence until all required security, insurance and WSIB documentation are provided.**

(By-law No. 2000-134; 2006-211)

2.5 Any specific reference herein to the male or the female gender shall include the other gender as applicable.

2.6 Commissioners or Directors may delegate designates for purposes of this By-law by doing so in writing with notice to the Finance Department.

(By-law No. 2000-134; 2006-211)

2.7 The form, content and timing of any advertising required hereunder shall be defined by the Finance Department.

(By-law No. 2000-134; 2006-211)

2.8 Each Department may establish inventories as an efficient method of managing the delivery of goods. Minimum and maximum inventory levels shall be established by the Director or designate. Purchasing practices for inventories are otherwise subject to the provisions of this By-Law and must include consideration of procurement through Standing Purchase Orders.

(By-law No. 2000-134; 2006-211)

2.9 Request for Information is not an Offer to Procure but may be coordinated with any Offer to Procure if deemed necessary. Requests for Information may be issued by a Director and shall be issued as required under this By-law in accordance with the following:

- i) they shall be issued on Forms provided or approved by the Purchasing Coordinator;
- ii) they shall include a statement that no procurement is to be implied or required as a result of the Request for Information being issued;
- iii) they shall be used as an investigatory tool to determine the state of the marketplace
- iv) they may be advertised when and through such media as deemed appropriate.

(By-law No. 2000-134; 2006-211)

2.10 Buyers, in consultation with and the approval of the Finance Department, shall consider the opportunity to take advantage of in-house supply of services before issuing any Offer to Procure.

(By-law No. 2000-134; 2006-211)

2.11 Buyers shall satisfy themselves that no Offer to Procure replicates any Standing Offer or any other procurement already in existence between the City and a Vendor or Vendors.

2.12 All submissions and related materials provided to the City pursuant to any Offer to Procure shall be retained by the City and subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act or any otherwise applicable or successor legislation.

(By-law No. 2000-134; 2006-211)

- 2.13 i) Any unsolicited proposal not arising from an Offer to Procure received by the City shall be reviewed by the Purchasing Coordinator in conjunction with the Buyer of the Department receiving the unsolicited proposal.
(By-law No. 2000-134; 2006-211)
- ii) Any procurement activity resulting from the receipt of an unsolicited proposal shall be in accordance with the provisions of this By-law.
(By-law No. 2000-134; 2006-211)
- 2.14 i) Where the term of contract concludes and a successor contract has not been entered into, the Buyer administering the Contract shall issue an Offer to Procure and give notice to the current Vendor that the term shall be extended pending the completion of the procurement process.
(By-law No. 2000-134; 2006-211)
- ii) An Offer to Procure may only offer an option to renew where the value of the original term and the renewal term is within the authorization level of the Buyer or with Council approval.
(By-law No. 2000-134; 2006-211)
- 2.15 i) All Prospective Vendors are prohibited from Lobbying any member of Council, City staff and consultants, appointed members and staff of any City Boards, agency, commission, task force or related organization, including the Kingston Economic Development Corporation, during the period commencing at the City's issuing the Offer to Procure and ending at the time of the award of the contract.
(By-law No. 2000-134; 2006-211)
- (ii) Where an Offer to Procure must be awarded by Council, Prospective Vendors may request that they be allowed to attend before Council as a delegation. Any such request shall be made to the Clerk and shall be dealt with pursuant to the Procedural By-Law.
(By-law No. 2000-134; 2006-211)
- (iii) Any successful Vendor shall certify in writing that it has complied with s. 2.15(1) as a precondition to the award becoming final and binding.
(By-law No. 2000-134; 2006-211)
- (iv) Where a Prospective Vendor contravenes section 2.15(1), the City may at its sole and absolute discretion disqualify the Prospective Vendor from further consideration under the Offer to Procure. In addition to the foregoing, a Prospective Vendor, in the sole and absolute discretion of the City, may be prohibited from participation in any further Offers to Procure for a period of one year from the time the contravention came to the attention of the City.
(By-law No. 2000-134; 2006-211)
- (v) The determination as to whether a Prospective Vendor has contravened section 2.15(1) and, if so, whether that Prospective Vendor shall be disqualified for that contravention is delegated to the Chief Administrative Officer who in making a determination shall consult with the Commissioner of the Group which initiated the procurement, the City Solicitor and the City Treasurer.
(By-law No. 2000-134; 2006-211)
- (vi) City staff shall report any contravention of this section to the Treasurer.
(By-law No. 2000-134; 2006-211)
- (vii) Information in relation to any offer to procure shall be available on a view only basis in the office of the appropriate Commissioner upon a formal request in writing using a form in

- 2.15 (vii) which the Councillor declares that he or she requires the information in his or her capacity as a member of Council, that the Councillor does not have a conflict of interest and that the information will be treated as confidential and will not be disclosed.
Cont'd: (By-law No. 2000-134; 2006-211)
- (viii) A semi-annual report shall be prepared by the Legal Services Department and provided to Council on the extent of individual Councillor requests that are made pursuant to section 2.15 (vii)
(By-law No. 2000-134; 2006-211)

3.0 Approval Levels and Procurement Authorization

- 3.1 i) The Purchasing Coordinator and Buyers are authorized to place orders on behalf of Departments for Goods, Services and Professional Consulting Services from such suppliers and upon such terms and conditions as deemed appropriate in accordance with the provisions of this Bylaw.
(By-law No. 2000-134; 2006-211)
- ii) In the awarding of any procurement, Buyers shall not be bound to accept the lowest price and may award to another Prospective Vendor if, in their discretion, having regard to delivery time, service and quality of goods, past history of dealings or outstanding claims that would be in the best interests of the City.
(By-law No. 2000-134; 2006-211)
- iii) Where all other factors are equal, lowest price shall govern. Where all factors are equal, including price, the Buyer shall select the successful Vendor based on a coin toss, which shall be conducted in the presence of the tied Prospective Vendors should they wish to attend.
(By-law No. 2000-134; 2006-211)
- iv) Formal approval of the annual budget constitutes financial approval to proceed with the purchases subject to any scheduling or priority considerations as may be deemed necessary by Council and as outlined by the Purchasing Policies.
(By-law No. 2000-134; 2006-211)
- 3.2 Prior to the passing of the annual operating budget, each Department shall be allowed an interim appropriation of fifty percent (50%) of the previous year's approved operating budget, and such interim appropriation shall be deemed to be for routine operating and recurring expenditures or statutory purposes unless otherwise directed by Council.
(By-law No. 2000-134; 2006-211)
- 3.3 The following Buyers have authority to issue Offers to Procure and authorize payments as follows:
- i) up to \$ 5,000: administrative assistants and others as designated by Managers; and
ii) up to \$ 100,000: Managers and others as designated by Directors; and
iii) up to \$ 250,000: Directors and others as designated by Commissioners and
iv) over \$ 250,000: Commissioners and others as designated.
(By-law No. 2000-134; 2006-211)
- 3.4 Commissioners and Directors are delegated the authority to approve the award of Contracts valued over \$50,000 when all of the following conditions have been satisfied:
- i) When there is a sufficient approved budget;
ii) When all procedures for the establishment of prices in Section 4 of this by-law have been followed;
iii) When the lowest Bid or Proposal is accepted; and

3.4 cont'd:

- iv) When at least three valid responses from Vendors have been received.

Where each of the above four, criteria are present, the procurement shall be reported to Council under section 3.5. Where any one of the criteria is not present, the procurement must be approved by separate report to Council.

- i) That circumstances where the Purchasing By-Law provides for Council to award a Request for Proposal or Tender or where staff refer the decision to award to Council, it is recommended that upon request by Council, the proponents scores by criteria, price comparisons (if part of the evaluation) and a staff analysis of the results be presented to Council for awards of greater than \$50,000.

(By-law No. 2000-134; 2006-21; 2006-211)

3.5 An Information Report to Council shall be prepared by the Finance Department, on a monthly basis which details the circumstances of all procurements by delegated authority under section 3.4.

(By-law No. 2000-134; 2006-21; 2006-211)

3.6 Buyers are authorized to procure Goods and Services from such suppliers and upon such terms and conditions as deemed appropriate and approved by the Legal Services Department, subject to the authority levels listed in section 3.3 and the processes set out in this By-law.

(By-law No. 2000-134; 2006-211)

3.7 In the awarding of a contract, the Buyer(s) shall abide by the evaluation criteria and terms and conditions as stated in the Offer to Procure

(By-law No. 2000-134; 2006-211)

3.8 Two or more Offers to Procure shall not be issued for portions of any single items if the total amount of the purchase orders exceeds the amount authorized pursuant to section 3.3.

(By-law No. 2000-134; 2006-211)

3.9 Deleted by By-law No. 2006-211.

(By-law No. 2000-134; 2006-211)

4.0 Offers to Procure – General

4.1 The City shall issue Offers to Procure Goods and Services as follows:

- i) under \$5,000 pursuant to section 4.2.
- ii) \$5,000 to \$50,000 pursuant to section 4.3.
- iii) over \$50,000 pursuant to section 4.4
- iv) all vehicles pursuant to section 4.4.

(By-law No. 2000-134; 2006-211)

4.2 All Offers to Procure valued under \$5,000, unless on any existing Standing Purchase Order and subject to the other provisions of this section and this By-law:

- i) Buyers shall be required to obtain prices from more than one supplier, or, they may purchase directly from catalogues, suppliers' lists or through negotiations, upon assuring themselves that all prices offered are fair and equitable.

4.2 cont'd

- ii) prices and suppliers reviewed prior to selection shall be documented by the Buyer for reference; and
- iii) the procurement shall be evidenced by receipt or invoice or P-card documentation.
(By-law No. 2000-134; 2006-211)

4.3 All Offers to Procure valued between \$5,000 and \$50,000, unless on any existing Standing Purchase Order and subject to the other provisions of this section and this By-law.

- i) shall be pursuant to this section unless the procurement is for Professional Consulting Services in which case the procedures pursuant to section 10 shall apply.
- ii) shall be initiated by selection of at least three Prospective Vendors from lists of Prospective Vendors maintained by Buyers and the Purchasing Coordinator. Prospective Vendors may also be selected from market research, upon assuring themselves that terms offered by such Prospective Vendors are fair and equitable. Previously unidentified Prospective Vendors identified through market research shall be added to the lists of Prospective Vendors.
- iii) shall be issued on Forms:
 - a) by Request for Proposal, which may be issued on a simplified Form approved by the Purchasing Coordinator or,
 - b) by Tender, where required by the Purchasing Coordinator for procurements identified in which the qualitative difference between potential vendors is limited;
- iv) must include an evaluation criteria grid and scoring for each criterion, unless by Tender. Where price is the primary factor in evaluation, the maximum percentage of 75% for evaluation shall be used.
- v) may be advertised, subject to any direction that may be given by the Purchasing Coordinator, and must be advertised if no Prospective Vendors for the particular procurement can be identified,
- vi) may not be opened publicly unless required by the Purchasing Coordinator,
- vii) must be evidenced either by Purchase Order, which shall be issued on a Form or Contract acceptable to the Legal Services Department.
- viii) must be recorded by retention of :
 - a) the Form as issued by the Buyer,
 - b) all responses received from Prospective Vendors, and
 - c) a written record of the evaluation of responses by the Buyer.
(By-law No. 2000-134; 2006-211)

4.4 All Offers to Procure valued over \$50,000 and for all vehicles unless on any existing Standing Purchase Order and subject to the other provisions of this section and this By-law:

- i) shall follow the tendering procedures set out in sections 6 to 9 except:

4.4 cont'd:

- a. where authorization to use a Request for Proposal is given by the Director in accordance with this By-law, the procedures set out in section 4.3 may be used except that a Contract shall be used to evidence the procurement;
 - b. for procurements of Professional Consulting Services the procedures pursuant to section 10 shall apply.
(By-law No. 2000-134; 2006-211)
- ii) shall be evidenced in Contracts including as schedules:
- a. the procurement documents as issued by the City as well as the successful Bid or proposal; or,
 - b. if required by appropriate authorization, Request for Proposal as well as the submissions of the successful Vendor.
- iii) All contracts arising under section 4.4 shall be in a form satisfactory to the Legal Services Department.
(By-law No. 2000-134; 2006-211)

4.5 All Single Source procurements shall be governed by the following procedures:

- i) No Offer to Procure by Single Source valued between \$5,000 and \$50,000 shall be issued without authorization in writing by the Director.
- ii) No Offer to Procure by Single Source valued over \$50,000 shall be issued without resolution of Council.
- iii) All Single Source procurements over \$5,000:
 - a) shall be preceded by a Request for Information or other inquiry into the marketplace or shall be in relation to a previous procurement related to unique property interest of the Vendor; and
 - b) shall be supported by a Statement of Authority memo prepared by the Buyer confirmed by the Director or by resolution of Council confirming that the procurement meets the requirements of a Single Source procurement.
- iv) Where possible, any written authorization permission of the Director provided for under this section will specify the means of making the Single Source procurement as well as the Good or Service to be obtained as well as the budget
(By-law No. 2000-134; 2006-211)

4.6 All Emergency or Time Sensitive procurements shall be governed by the following procedures:

- i) No Offer to Procure by Emergency or Time Sensitive procurement shall be issued without the prior specific written authorization permission of the Director or, in the case of Emergency, the designate of the Director.
- ii) Where the need to proceed by Emergency procurement arises in circumstances where the prior specific written authorization permission of the Director or designate is not possible, such authorization shall be obtained from the Director or designate as soon as possible thereafter.
- iii) Where possible, any written authorization permission of the Director provided for under this section will specify the means of making the Emergency or Time Sensitive procurement as well as the Good or Service to be obtained as well as the budget.
(By-law No. 2000-134; 2006-211)

4.7 All Expanded Works procurements shall be governed by the following procedures:

- i) No Offer to Procure by Expanded Works procurement shall be issued without the prior specific written authorization of the Director, which shall include confirmation that the Expanded Work remains within the scope of the original Offer to Procure.
- ii) No Offer to Procure by Expanded Works procurement shall be issued unless:
 - a. there is more than one source in the open market but for reasons of function or service only one Vendor is recommended for consideration of the particular goods and/or services, including the continuity with the scope of the original Offer to Procure;
 - b. there is only one known source of supply of particular goods or services; or
 - c. time restrictions in relation to the procurement require that the additional procurement not proceed by way of separate Offer to Procure.
- iii) Where possible, any written authorization permission of the Director provided for under this section will specify the means of making the Expanded Works procurement as well as the Good or Service to be obtained as well as the budget.

(By-law No. 2000-134; 2006-211)

4.8 All procurements by Lease over \$5,000 shall be governed by the following procedures:

- i) No Offer to Procure by Lease shall be issued without the written permission of the Treasurer or the designate and the Director of the Department issuing the Offer to Procure in accordance with Council policy;

(By-law No. 2000-134; 2006-211)

4.9 All procurements by Standing Order shall be administered by the Purchasing Coordinator in consultation with any affected Department. Standing Orders shall be issued where economies of scale provide a cost savings for centralized procurement. The Purchasing Coordinator shall maintain a list of all procurements by Standing Order. No procurement for items on an existing Standing Order shall be made other than through that Standing Order without the consent of the Purchasing Coordinator. Buyers shall procure items on a Standing Order only from that Standing Order except pursuant to section 4.6. Standing Orders shall be issued according to the rules set out in section 4.1 and other application provisions set out herein.

(By-law No. 2000-134; 2006-211)

4.10 No work under any procurement shall begin until:

- i) **the Contract is executed or documented, including by Purchase Order, and**
- ii) **any required security, insurance and WSIB are provided to the City.**

(By-Law No.2000-134)

5.0 Requests for Proposals – General

5.1 Offers to Procure by Request for Proposal shall be issued by Buyers upon Forms, which shall not be amended without the consent of the Purchasing Coordinator or designate.

(By-law No. 2000-134; 2006-211)

5.2 Buyers must co-ordinate each Request for Proposal over \$50,000 with the Purchasing Coordinator and may coordinate each Request for Proposal under \$50,000 with the Purchasing Coordinator, for:

- i) use of proper Forms and processes
- ii) completeness of documentation;

5.2 cont'd:

- iii) compliance with any advertisement arrangements;
- iv) identification of evaluation criteria and milestones;
- v) identification of Prospective Vendor contacts and maintenance of Prospective Vendor lists for specified classes of tenders; and
- vi) compliance with this By-law. (By-law No. 2000-134; 2006-211)

5.3 All Requests for Proposals shall include a weighting form of evaluation, which shall include:

- i) Price evaluation percentages between a minimum 20% of and a maximum of 75%;
- ii) Scoring methodology for each element; and
- iii) Any statutory requirements as indicated by the Finance Department or the Legal Services Department. (By-law No. 2000-134; 2006-211)

5.4 Where any Request for Proposals has an estimated value over \$50,000, it shall be:

- i) publicly advertised
- ii) opened publicly with the announcement of only the name of the submitter of the proposal; and (By-law No. 2000-134; 2006-211)
- iii) further evaluated in accordance with all weighting criteria.

5.5 Where any Prospective Vendor requests a clarification, response shall only be made in the form of a written addendum. When it becomes necessary to revise, delete, substitute or add to specifications for a Request for Proposal to a substantial degree, the Purchasing Coordinator and the Buyer involved shall coordinate the issuance of an addendum or cancel the Request for Proposal if deemed necessary. Every addendum shall include the question to which the addendum is a response, shall not identify the party which raised the question, shall be circulated to all Prospective Vendors, and, where necessary, advertised.

(By-law No. 2000-134; 2006-211)

6.0 Tendering – General

6.1 The procedures set out in this section apply to all procurements by Tender.

6.2 Buyers shall coordinate each Tender with the Purchasing Coordinator for:

- i) use of proper forms and processes
- ii) completeness of documentation;
- iii) compliance with required advertisement arrangements;
- iv) identification of closing and opening dates as well as other milestones;
- v) identification of Prospective Vendor contacts and maintenance of Prospective Vendor lists for specified classes of tenders; and
- vi) compliance with this By-law.

(By-law No. 2000-134; 2006-211)

6.3 Prospective Vendor pre-qualification in the form of a Request for Information may be used in any Tender upon the direction of the responsible Director and in co-ordination with the Purchasing Coordinator. When pre-qualification is used, all responses received from Prospective Vendors shall be submitted on Forms.

(By-law No. 2000-134; 2006-211)

- 6.4 Upon the request of a Prospective Vendor, the Purchasing Coordinator or Buyer shall supply one copy of the official Tender documents.
(By-law No. 2000-134; 2006-211)
- 6.5 When a fee for submission materials/documents is required, it shall be paid by each Prospective Vendor to the City. When a fee is refundable it will be returned when submission materials/documents are returned in good order.
- 6.6 Names and addresses of each Prospective Vendor must be recorded by the Buyer when Tender documents are released. This information shall be used to facilitate distribution of addenda and, when necessary, to extend or cancel a Tender.
- 6.7 The City shall issue clarification in relation to any Tender only in reply to queries from Prospective Vendors and in the form of a written addendum. Other than in response to a query from a Prospective Vendor the Purchasing Coordinator and the Buyer involved shall coordinate the issuance of an addendum to revise, delete, substitute or add to specifications for a Tender.
(By-law No. 2000-134; 2006-211)
- 6.8 Each addendum:
i) shall be forwarded to each Prospective Vendor that has received the Tender documents; and
ii) shall be stapled to each set of Tender documents distributed after the addendum is issued.
- 6.9 Upon notice to the Purchasing Coordinator, the Buyer shall notify each Prospective Vendor who received the Tender documents of any cancellation of a Tender.
(By-law No. 2000-134; 2006-211)
- 6.10 When a Tender is cancelled, no Bids will be accepted. Any submissions inadvertently received shall be returned unopened to the Prospective Vendor by mail, with a covering letter.
(By-law No. 2000-134; 2006-211)
- 6.11 Each Prospective Vendor who received documents shall be notified of any extension of time granted by way of addendum.
- 6.12 When the closing date for receiving Bids has been extended, Bids already received shall be handled as follows:
i) if the extension of time is four weeks or less, Prospective Vendors shall be advised by the Buyer that Bids will be returned upon request unopened.
ii) if the extension of time is more than four weeks, the City Clerk will be notified immediately and all Bids shall be immediately returned unopened.
iii) any existing contract for the supply of the item being procured shall be deemed extended to the closing date to ensure no gap in supply. The Purchasing Coordinator shall notify the existing Vendor of this requirement immediately upon the identification of a extension of a closing date.
(By-law No. 2000-134; 2006-211)
- 6.13 All communications with Prospective Vendors by the Buyer shall be issued in writing by fax, email or by registered postal mail and a paper record of such communications shall be retained by either the Buyer or the Purchasing Coordinator.
(By-law No. 2000-134; 2006-211)

7.0 Tendering – Bid Submission Requirements

7.1 All Bids in response to a Tender shall either be mailed or delivered to the Clerk at the exact location identified in the Tender documents.

7.2 Bids are required to conform to the conditions listed below:

- i) The correct and completed Form, as supplied by the City, must be used and in the possession of the Clerk on or before the closing date and time. Bids received after the closing date and time will not be considered. Facsimile submissions will not be considered.
- ii) Bids must be complete, legible, written in ink or typed, with the unit price for each item and other entries clearly shown, unless the Tender specifically permits otherwise.
- iii) Bids must not be restricted by a statement added to the Form or a covering letter, or must not have alterations to the Forms, unless the Tender specifically permits otherwise.
- iv) The Bid must be properly labeled indicating the Tender number, closing date and return address provided on the face of the Tender package in a sealed envelope without any extra exterior covering. The name and address of the Prospective Vendor shall be clearly indicated on the envelope.

(By-law No. 2000-134; 2006-211)

- v) Bids must be signed and initialed in the space(s) provided on the form, with the signature of the Prospective Vendor, or of a responsible official of the Prospective Vendor. If a Bid is submitted jointly by more than one person, it must be signed on behalf of each of the joint parties to the Bid, and if the signing authority for both Prospective Vendor is vested in one individual, he shall sign separately on behalf of each. Where the person submitting a Bid is an incorporated company, the corporate seal must be affixed to the Bid and/or the Bid shall confirm that the officer signing the Bid is authorized to bind that corporation. Where pre-qualification is used, the Bid must be submitted under the same name of the Prospective Vendor or group of Prospective Vendors that have been approved through pre-qualification.

(By-law No. 2000-134; 2006-211)

- vi) Attempts to make adjustments by telephone, facsimile or letter for a Bid already received will not be received, considered or included in the competition in any way. A Prospective Vendor desiring to make adjustments to a Bid must withdraw the submission and supersede it with another Bid.

(By-law No. 2000-134; 2006-211)

- vii) Each erasure, over-writing or strike-out must be initialed by the individual with authority to sign on behalf of the Prospective Vendor.

- viii) Bids must be accompanied by a Bid Bond, when requested, enclosed in the same sealed envelope, which is in the form of a certified cheque, bank draft, money order and/or bonding documents issued by an approved Guarantee Company properly licensed in the Province of Ontario, on Canadian Construction Documents Committee (CCDC) bond forms or similar recognized form of agreement acceptable to the City, made payable to the Corporation of the City of Kingston, equal to or greater than the amount specified in the submission.

(By-law No. 2000-134; 2006-211)

- ix) Proof of bonding, other than the Bid Bond, must be furnished before a contract is awarded, no later than 10 days following the award of the Tender.

7.3 Unless otherwise specified, the Bid Bond requirements for submissions shall be as follows:

<u>TOTAL AMOUNT OF BID</u>	<u>MINIMUM BID BOND REQUIRED</u>
\$50,000 or less	5%
over \$50,000	10%

7.4 If any of the Bid requirements set out in section 7 have not been met, the Bid shall be deemed improper and dealt with as set out in Section 9.

7.5 The requirements of Sections 7.2 and 7.3 shall be included as part of the Form issued for each Tender.

8.0 Tendering – Bid Withdrawal

8.1 Any Prospective Vendor who has submitted a Bid may request that it be withdrawn. Adjustments or corrections to a Bid will not be allowed. Withdrawal shall be allowed if the request is made prior to closing. Withdrawal requests must be directed to the Clerk by letter. A telephone or facsimile request to withdraw a Bid shall not be considered. The withdrawal of a Bid prior to closing does not disqualify that Prospective Vendor from submitting another Bid on the same Tender.

(By-law No. 2000-134; 2006-211)

8.2 Withdrawal requests received after closing will not be allowed. The Prospective Vendor concerned shall be informed that the withdrawal request arrived too late for consideration. However, when the Bids are read out at the Bid opening, and if it is the lowest Bid, the Prospective Vendor making that low Bid may then proceed in accordance with Section 8.4.

8.3 At the conclusion of the reading out of all Bids, a Prospective Vendor which has made the low Bid in a set of related Tenders may withdraw any of his remaining Bids on other related Tenders. Withdrawn Bids under this procedure cannot be reinstated.

8.4 Any Prospective Vendor proceeding under 8.3, shall attest in writing to his identity and identify the Bids to be withdrawn. The notice of withdrawal must be signed by that Prospective Vendor. This notice must be handed to the Clerk before the reading out of the first Bid on the next related Tender to be opened. The Clerk shall attach it to the applicable submission.

8.5 Any Prospective Vendor proceeding under 8.3 cannot reinstate the withdrawn Bid if subsequent review proves that the low Bid was not, in fact, the low Bid.

8.6 When, during the opening of Bids, the Clerk receives a Bid that has a notice or other correspondence requesting withdrawal attached, the Clerk shall read out the Bid number and the name of the Prospective Vendor and indicate to those in attendance that the Bid previously announced will be withdrawn at the request of that Prospective Vendor. The Prospective Vendor's name for each withdrawn Bid shall be recorded immediately following the names of the other Prospective Vendor whose submissions will be considered, noting the method and date of withdrawal.

9.0 Tendering – Opening and Award Process

9.1 Bids submitted in response to a Tender shall be received in accordance with the following practice:

- i) A secure facility shall be maintained under the control of the Clerk for the reception and safekeeping of Bids.

9.1 cont'd:

- ii) Late Bids shall not be received. When a Bid is received, the envelope shall be time and date stamped. If a time stamp is not available, the time received shall be noted in ink and initialed by the Clerk or designate. Bids shall be deemed received when the envelope has been stamped with the time and date of receipt by the Clerk or designate. Bids shall be placed unopened in the secure facility after they are stamped.

(By-law No. 2000-134; 2006-211)

- iii) Regardless of the time a Bid is received, the envelope shall be time and date stamped. Bid submitted after closing shall be returned unopened to the Prospective Vendor. Each Bid to be returned by mail shall be accompanied by a covering letter.
- iv) If a late Bid is received without a return address on the envelope, the envelope shall be opened, address obtained, the envelope resealed and then returned accompanied by a covering letter stating why the envelope could not be returned unopened.
- v) Any correspondence, pertaining to adjustments, corrections or restrictions to a Bid, which is received with a Bid, but outside the submission envelope, or is received after a Bid has been submitted, but prior to closing, shall not be considered.

9.2 The following provisions apply to the opening and awarding of all Tenders:

- i) All Bid openings shall be public.
- ii) Any Bid that does not have the Tender number on the envelope shall be opened and placed with its appropriate Tender if the Tender number is identified in the Bid documents.
- iii) If correspondence is found enclosed with a Bid within the sealed envelope which, in the sole opinion of the Clerk, could make the Bid conditional in any way, that submission shall be considered improper and shall be so noted in the record.
- iv) When Bids are opened, and identified, the Clerk shall announce, the Tender number, and the number of Bids received, the name of each Prospective Vendor and total amount of each Bid, and confirmation of inclusion of bid bond and/or cheque simultaneously recording the name of each Prospective Vendor, the Bid amount and the Bid Bond amount on a Bid opening Form.

(By-law No. 2000-134; 2006-211)

- v) During the reading out of Bids, the Clerk shall check for more than one Bid from the same Prospective Vendor. Where no notice of withdrawal to a multiple Bid from one Prospective Vendor is found, each Bid shall be documented and referenced in a manner as "A", "B", "C", etc., and shall be dealt with as normal Bids.

9.3 After opening, each Bid shall be reviewed by the Buyer to determine whether,

- i) all requirements of the Tender have been met
- ii) all unit prices have been correctly extended,
- iii) the extensions have been correctly totaled

9.4 Bids which fall within the following categories must be rejected and will not be considered:

- i) late Bids
- ii) Bids not completed in ink or typed.
- iii) part Bids, except when the instructions clearly state that an award may be made for individual items.

9.4 cont'd:

- iv) When Bids are opened, and identified, the Clerk shall announce, the Tender number, and the number of Bids received, the name of each Prospective Vendor and total amount of each Bid, and confirmation of inclusion of bid bond and/or cheque simultaneously recording the name of each Prospective Vendor, the Bid amount and the Bid Bond amount on a Bid opening Form.
- v) Bids that are not properly signed and sealed or signed and accompanied by a statement that the officer signing the Bid is authorized to bind the corporation.
- vi) Bids where erasures, overwriting or strikeouts have not been initialed.
- vii) If the Bid Bond is not submitted.

Following the opening of all Bids, the Clerk shall return all Bid Bonds other than the low and second low Bids, to the relevant Prospective Vendors by regular mail upon notification by the Buyer. Otherwise, Bids shall be retained on file.

- 9.5 Following the opening of all Bids, the initiating Department shall inform the successful Vendor that its Bid has been accepted, and notify all other Prospective Vendors of the award and the name of the successful Vendor.

- 9.6 The Buyer shall coordinate the preparation of the terms of the Contract in a form acceptable to the Legal Services Department. The Vendor shall be allowed ten (10) working days between the date of mailing the unsigned Contract, and the date the executed Contract must be returned to the Legal Services Department. Copies of the executed Contract will be distributed to the Buyer and the Clerk.

(By-law No. 2000-134; 2006-211)

- 9.7 When copies of the Contract executed by the Vendor are returned and are acceptable to the Legal Services Department, the Tender Bid Deposit(s) of the second low Bidder shall be returned by registered mail.

(By-law No. 2000-134; 2006-211)

- 9.8 Unless stated otherwise in the Tender documents, the City shall require both a Performance Bond and a Labour and Material Payment Bond each equal to 50% of the Bid, or other amounts when conditions warrant, issued by an approved Guarantee Company properly licensed in the Province of Ontario, on Canadian Construction Documents Committee (CCDC) bond forms acceptable to the City. The City will accept 100% of the amount of the Bid in the form of cash, certified cheque or an irrevocable standby letter of credit in the approved format from a chartered bank, or a Letter of Guarantee acceptable to the City Treasurer issued by a trust company. There may be instances where it is desirable to obtain bonding to the extent of 100% of the Bid amount to be determined on the recommendation of the Buyer in consultation with the Finance Services Department. These securities must be furnished by the contractor before the Contract can be executed.

(By-law No. 2000-134; 2006-211)

- 9.9 Where a Vendor fails to sign the Contract or to provide the necessary security within the specified time pursuant to section 9.6, the Purchasing Coordinator or Buyer in consultation with the Legal Services Department may grant additional time to fulfill the necessary requirements or may recommend to Council, in consultation with the Buyer, that the Contract be awarded to the next lowest Bid or the offer of award be revoked. In either case, the Bid Bond of the low Bidder shall be forfeited and deposited by the City.

(By-law No. 2000-134; 2006-211)

10.0 Professional Consulting Services Procurement

10.1 Professional Consultant Services may be procured through the following methods:

- i) by direct appointment from a pre-selected roster of qualified consultants where the total cost of the consultancy is under \$50,000 unless provided for otherwise herein. Professional Consulting Services shall be made by direct appointment only where the Buyer confirms in writing that circumstances under s.10.1(ii) are not present. Selection from the roster shall be equitable and take into account allocation of projects throughout the pre-selected group over time matching particular consultants' capacities and skill sets to specific project needs; or
- ii) through a more formal procedure in accordance with section 10.4 in one of the following circumstances:
 - a) when City staff cannot identify a suitable consultant from the pre-selected roster,
 - b) when City staff need additional information to make a selection, or
 - c) when the total cost of the consultancy is over \$50,000.

10.2 The following weighting criteria shall be used to select Professional Consultant Services:

- i) ability,
- ii) experience in similar type projects,
- iii) personnel available for the project,
- iv) reputation and prior experience with the City,
- v) price,
- vi) familiarity with the project, and
- vii) such other weighting requirements established by the Buyer in consultation with the Purchasing Coordinator.

(By-law No. 2000-134; 2006-211)

10.3 The following requirements shall be followed in creating and maintaining each roster for the pre-selecting Professional Consultant Services by direct appointment:

- i) Buyers shall issue a Request for Information for appointment to the roster setting out the required Professional Consulting Services characteristics
- ii) Buyers shall reissue the Request for Information no later than every three years
- iii) Buyers may update the roster between reissuing the Request for Information as information relevant to the marketplace become available.

10.4 Under a formal selection procedure, except where the consultancy is budgeted over \$50,000 when sections 4.4(i)(a) and 5.4 shall be followed, the Buyer shall:

- i) prepare a list of at least six consultants, where it is possible to identify six, drawn from a Request for Information, personal knowledge and/or experience of the City, from recommendations of other municipalities, or obtain names of consultants from professional associations.
- ii) issue a Request for Proposal to the listed Consultants.

10.4 cont'd:

- iii) from the proposals received, prepare a short list of three to five consulting firms, where possible, from the responses received.
- iv) interview the short listed consultants to assess the capabilities of the consultant's senior staff and how they interact with City staff.
- v) select, based on the weighting criteria set out in the Request for Proposal, including but not limited to the factors of ability, qualifications and experience in similar projects, personnel assigned to the project, reputation, location, knowledge, work load and fees.

10.5 Buyers of Professional Consulting Services shall use and issue Forms provided by the Purchasing Coordinator.

(By-law No. 2000-134; 2006-211)

10.6 Procurements for Professional Consultant Services relating to confidential matters under legal privilege may be made pursuant to the following process:

- i) the CAO or a Commissioner shall authorize the procurement in consultation with and on instruction to the Director of Legal Services;
- ii) the Director of Legal Services Department shall be delegated authorization to negotiate, enter into and administer the Contract as advisor to the CAO or Commissioner;
- iii) the consultants shall be selected:
 - a) from a roster of consultants maintained and updated by the Legal Services Department; or
 - b) where the estimated value of the consultancy exceeds \$50,000 by confidential Request for Proposal.

(By-law No. 2000-134; 2006-211)
