



MUNICIPAL MODERNIZATION FUNDING

PROCUREMENT POLICY AND PROCEDURES REVIEW

Lise Patry, LXM LAW LLP
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TABLE OF CONTENTS

INTRODUCTION..... 3

EXECUTIVE SUMMARY 3

APPROACH TO PROJECT..... 4

 PART I REVIEW OF CURRENT STATE..... 4

 A. Kincardine Scope and Size 4

 B. Scan of Kincardine Procurement Activities 2020-2021 4

 C. Procurement Governance Framework (Policy, Procedures, etc.)..... 4

 D. Interviews with Staff and Council..... 5

 PART II ENVIRONMENTAL SCAN – LAWS AND BEST PRACTICES IN GOVERNANCE 7

 A. Ontario Municipal Act..... 7

 B. Governance Best Practices in Municipal Procurement in 2021 8

 C. 2017 CFTA/CETA Trade Agreements 10

 D. Benchmarking against Peer Municipalities 10

 PART III RECOMMENDATIONS 12

ANNEXES 17

 ANNEX A – COUNCIL BYLAWS RELATING TO CONTRACT APPROVALS 2020-2021..... 18

 ANNEX B – COLLINGWOOD INQUIRY RECOMMENDATIONS..... 20

 ANNEX C – SAMPLE PROVISIONS FROM TRADE AGREEMENTS (ILLUSTRATION)..... 27

 ANNEX D – BENCHMARKING AGAINST OTHER MUNICIPAL POLICIES 32

INTRODUCTION

LXM LAW LLP was engaged by the Municipality of Kincardine in October 2021 to conduct a Procurement Policy and Procedures Review. The goal of this review was to provide recommendations to modernize Kincardine's procurement framework and practices to help reduce costs, ensure compliance with legislative and trade treaty requirements, streamline administrative processes, and ensure a fair, transparent, and competitive procurement process for stakeholders.

EXECUTIVE SUMMARY

Kincardine's procurement policy framework presently consists of a Purchasing and Procurement Policy last updated in 2013. The 46-page policy document contains a blend of both procurement and budget and expenditure policy, procedures, templates, and checklists much of which does not reflect modern governance standards or applicable legal and trade agreement requirements. Further, Kincardine does not have consistent templates for its solicitations, nor does it have standard contract terms and conditions. Finally, Kincardine is relying on its website and newspapers to advertise its procurements, which may not maximize market reach and may result in lost opportunities to access the best suppliers and achieve best value for money in purchasing.

To modernize Kincardine's procurement function, achieve project goals and ensure the Municipality obtains best value for money in procurement, the following is recommended:

1. A new purchasing and procurement policy, procedures manual, templates and tools should be adopted that reflect 2021 governance standards and legislative changes affecting procurement since 2013, as further detailed in Part III Recommendations of this report.
2. The new policy should only come into effect after the procedures manual and templates are finalized, Council and staff have been trained on the basics of public procurement and the new policy and staff have been trained on the procedures.
3. To increase visibility of its procurement opportunities, increase the number of submissions and achieve better value for money in procurement, the Municipality should adopt the use of a commercial online tendering website for the posting of solicitation documents, such as Biddingo or BidsandTenders.

APPROACH TO PROJECT

This project was conducted in the following phases, each of which is summarized in this report:

- 1) Information Gathering: This phase involved the review of the current governance framework governing procurement at the Municipality, level of Councillor and staff satisfaction and gathering of feedback from Councillors and staff.
- 2) Environmental Scan of Municipal Laws and Best Practices: In this phase, we reviewed applicable laws, procurement governance best practices as contained in municipal judicial inquiry reports, the evolution of domestic and international trade agreements affecting municipal procurement and performed a benchmarking exercise.
- 3) Opportunities for Improvement and Recommendations: In this phase we assessed opportunities for improvement in Kincardine's current framework based on the information gathered in phases 1 and 2 and in Part 3 we provide recommendations for modernizing the procurement framework to achieve the stated objectives.

PART I REVIEW OF CURRENT STATE

The following summarizes the information gathered in phase 1 that helped inform the recommendations appearing in Part III.

A. Kincardine Scope and Size

Kincardine is a relatively small rural municipality in located in Bruce County with a reported population of close to 12,000 residents. The Municipality employs approximately 80 full staff, 50 part time/contract and 50 volunteer firefighters and an annual budget of close to \$30M.

B. Scan of Kincardine Procurement Activities 2020-2021

Attached as Annex A is a list of Council-approved contracts for the years 2020-2021 and the associated contract values. These lists suggest that, on average, the Municipality enters into between 30-40 contracts that exceed \$40,000 in any given year. The lists also suggests that Kincardine's more significant procurement activities relate to construction and equipment and that, except for consulting services, Kincardine typically selects suppliers based on a lowest price approach which is a relatively straightforward process from a procurement standpoint.

C. Procurement Governance Framework (Policy, Procedures, etc.)

Kincardine has a Council-approved Purchasing and Procurement Policy, policy G.G.2.17 last revised in 2013. The policy is 46-pages long and includes procedures, as well as templates and checklists that one

would typically expect to find in a procedures manual. One example of a template is the *Notice to All Contractors, Corporate Statement Occupational Health and Safety* setting out contractors' requirements to supply the Municipality with WSIB clearance certificates, insurance and a signed health and safety compliance form. While an important part of any procurement function, this is not an item one would expect to find in a Council-level policy. Rather, this should appear in the procedures and the RFX and contract templates as a standard requirement for appropriate contracts.

As discussed under environmental scan in Part 2, the bundling of procedures, templates and checklists within the policy manual is not surprising given the legislative requirement in 2002 to ensure municipal procurement policies addressed certain procedural matters. This is no longer required and modern governance principles expect to see such matters dealt with outside Council-level policies.

The procurement policy contains Council's delegation of spending authority to department heads, a delegation that is achieved through the annual budgeting process. Once the budget is approved, department heads are authorized to procure goods and services, provided they comply with the requirements of Kincardine's procurement policy.

RFTs and RFPs with an estimated value of \$40,000 or more must be advertised publicly.

Council must approve the award of contracts valued at \$40,000 or more and Department Heads have the authority to award contracts under this amount.

The policy permits "sole source" procurement up to \$40,000 with Treasurer's approval and of \$40,000 or more with Council approval when certain conditions are met.

D. Interviews with Staff and Council

Our review included 4 interview sessions with a selection of Council members and staff. In each interview we asked about the individuals' experience with procurement, their level of satisfaction and pain points with the current framework. Below is a high-level summary of what we heard.

(a) Council Interviews

- The councillors recognized the benefits to be gained by enhancing governance around the procurement function, including improved savings and value for money for rate payers.
- They welcomed a more corporate-wide strategic approach to procurement that could include bundling procurement to achieve better economies of scale and prequalifying suppliers to supply the same goods across the organization, such as computers or office supplies.

- There was support for delegating accountability, authority, and responsibility to the CAO for procurement. The CAO would be responsible for ensuring corporate-wide compliance with the procurement policy and procedures, with an appropriate reporting mechanism back to Council to enable Council to monitor procurement and contracting activities while not involving itself in operations.
- A desire was expressed to include a mechanism for staff to provide status reports to Council on large capital projects to allow Council to receive early reports on potential slippage and cost overruns or other risks, something that has been built-into the draft policy.
- The councillors we interviewed support buying local but not at the expense of ensuring the Municipality gets the best value for money or lowest price.

(b) Staff Interviews

- During interviews we learned that each department has its own processes and protocols when planning and conducting procurements. All agreed that department staff, and on a more general level, the overall Municipality, would benefit from standardization of procedures and templates as it would provide clarity on what is expected in a RFX document and what is expected of staff when initiating and administering a procurement.
- We learned that the Municipality has recently made step towards a fully digital approach for advertising and receiving bids. Procurements are advertised on the Municipality's website and additional platforms may be used from time to time at the discretion of the department head. For example, a recent RFP was published on muniSERV and construction solicitations may be published on the Canadian Construction Association's tendering page in order to attract more attention to the Municipality's tendering opportunities when deemed appropriate.
- When discussing the investment in time in individual procurement transactions, and impact of having to advertise tenders and escalate contracts to Council for approval, we learned that the requirement to obtain council approvals and subsequent signatures always required the preparation of reports reviewed by several staff prior to submission to Council, and because of Council's contract approval schedule, this requirement to obtain Council approval prior to entering into a contract often delays the start of projects. A question was raised whether thresholds for this process could be increased to achieve a better balance between operational efficiencies and Council oversight.
- Staff also indicated there is room to improve record-keeping of procurement and contracting materials.
- Staff also felt it would be worthwhile to obtain recommendations on how to optimize supplier interest in bidding on Kincardine opportunities.

PART II ENVIRONMENTAL SCAN – LAWS AND BEST PRACTICES IN GOVERNANCE

Below is the result of the environmental scan of the legal landscape, procurement governance best practices and benchmarking exercise that also helped inform the recommendations in Part III Recommendations.

A. Ontario Municipal Act

The *Ontario Municipal Act, 2001* requires each municipality to adopt a policy with respect to its procurement. The original 2001 version of the Act required municipalities to include specific subject matter in the policy as indicated by this now-replaced provision:

2001 Provision

Procurement of goods

271. (1) 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.

What is notable about the above provision is its prescriptiveness as to the contents of the procurement policy and some of the prescribed content is procedural in nature, in particular with regard to the type of procurement processes that shall be used. In our view, some of this ought not necessarily be in a Council-level policy.

In 2006, the Act was amended to remove this prescribed list of policy content. It should however come as no surprise that many Ontario municipal policies today still include provisions reflecting the listed topics despite the fact that the Act has since been updated to be less prescriptive.

Today the Act says the following about adopting and maintaining a procurement policy at Section 270(2):

Policies of local boards

(2) A local board shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.
2. Its hiring of employees.
3. Its procurement of goods and services. 2006, c. 32, Sched. A, [s. 113](#).

As shown from the above provision, in 2021, council has the full discretion to decide on the contents of its procurement policy.

B. Governance Best Practices in Municipal Procurement in 2021

In recent years there have been many reports of municipal procurement scandals in Ontario, a few of which have been the subject of public inquiries. These inquiry reports have helped define what good governance looks like in municipal procurement.

The most notable of this past decade's judicial inquiries are the (a) 2005 City of Toronto's Computer Leasing and External Contracts Inquiry, which led to the release of what is known as the Bellamy Report and (b) the Collingwood Judicial Inquiry whose report, prepared by Justice Marocco, was released just last year in November 2020.

In both inquiries, the underlying fact pattern involved individual councillors interfering with procurement processes by, among other things, influencing supplier selections and directing contract awards to friends and family and generally ignoring public tendering rules. In each case councillor disregard for the rules caught the attention of auditors and media, which resulted in a loss of public trust in the municipality and necessitated the inquiries.

The purpose of each inquiry was to identify the root cause of the problems that had led to the loss of public trust. Both the Bellamy report and Marocco report contain hundreds of recommendations that touch on good governance as it applies to municipal procurement, including the expected role of councillors in procurement. Since the inquiries are thousands of pages long, a synopsis of the reports is outside the scope of this report however attached as [Annex B](#) is the list of procurement recommendations from the recent 2020 Collingwood Judicial Inquiry which we recommend be incorporated into Kincardine's updated procurement governance framework as noted in the Annex.

Importance Drawing a Boundary Between the Mayor's, Council and CAO Role

One of the principal flaws identified by Justice Marocco in his 2020 report was the lack of clarity around the role of the mayor vis a vis the CAO at the Town of Collingwood and how this lack of clarity contributed to the governance failures.

In that case the Town's mayor felt it appropriate to bypass the CAO in dealings with department heads on procurement matters, a practice the justice sharply criticized, and which ultimately led to the CAO's resignation. On the role of the mayor, the justice makes the following recommendation at page 19 of Volume 1 of his report:

2 Describing the mayor as both the head of Council and chief executive officer blurs the fact that the mayor is the head of Council and the chief administrative officer (CAO) is the head of staff. There must be a clear division of roles and responsibilities between the mayor and the CAO, a separation of the political from the administrative.²

The following extract from page 36 of Volume 1 of the report illustrates the tenor of the problem and justice's strong recommendation that the CAO's role vis a vis the mayor and Council be clear:

Chief Administrative Officer

It was apparent in the matters I examined in Parts One and Two of the Inquiry that the importance of the chief administrative officer (CAO) in the proper functioning of the Town was not appreciated. This lack of appreciation manifested itself in the manner that the role was treated publicly and in the approach to the role taken behind closed doors. This failure weakened a key pillar in the structure of the municipality, contributed to the blurring of the boundary between Council and staff, and made it easier to avoid proper procedure in the pursuit of Council's goals. It was also detrimental to the staff's confidence and morale and interfered with their efforts to provide objective information to Council.

The CAO is a full-time position that comes with significant responsibility. Someone with the education and experience required to maintain a culture of integrity and to provide the best information and advice to Council should always fill the CAO role. The CAO must operate independently, advising Council and carrying out Council's direction while remaining unaffected by political influence.

The recommendations that follow focus on providing a clear framework for the CAO role, including hiring, training, tenure, responsibilities, and a mechanism for addressing complaints about the CAO's conduct.

Drawing from the lessons learned from this inquiry and others, modernization of the Municipality's governance framework should include clarifying CAO's role vis a vis the mayor and Council so as to avoid running into the "role confusion" issues that plagued the Town of Collingwood.

The judge also encouraged clarifying council's role vis a vis Municipal staff to ensure staff could remain politically neutral in their role as employees of the municipality. The judge's recommendations are too numerous to reproduce in this report however one recommendation that touches on this concept is recommendation number 24 at page 27 of Volume 1:

24 The Code of Conduct should state that Council members at the Town of Collingwood must respect "the role of staff to provide advice based on political neutrality and objectivity and without the undue influence" of a Council member or group of Council members.¹⁹

C. 2017 CFTA/CETA Trade Agreements

Prior to 2017, Ontario municipalities were expected to comply with the requirements of the Agreement on Internal Trade (AIT), a domestic trade agreement. While the AIT had rules governing procurement, they were so high level as to offer little by way of guidance to municipalities. A further weakness of the AIT was suppliers' inability to hold municipalities accountable to comply with the rules. The only way a supplier could compel compliance was to have a provincial government manage the dispute on their behalf, which never happened. It should come as no surprise that the AIT was believed to be ineffective in promoting strong public procurement practices among municipalities.

A paradigm shift occurred in 2017, which is the year municipalities became subject to both the Canadian Free Trade Agreement (CFTA), which replaced the AIT, and the Canada-EU Trade Agreement (CETA).

The CFTA and CETA contain detailed rules governing government and municipal procurement and, contrary to the AIT, provide suppliers with easy-access remedies, including compensation for lost profit, if a municipality breaches the rules. A sample of the trade agreement rules is provided in [Annex C](#) which we have included in this report to illustrate the level of procedural rules affecting procurement that are found in the trade agreements.

The trade agreement regime applies to municipal procurement requirements valued at approximately \$105,000 or more for the CFTA. The CETA rules are layered on top of the CFTA rules for contracts of \$365,000 or more. These thresholds are indexed and increase slightly every year.

D. Benchmarking against Peer Municipalities

The Municipality asked us to perform a benchmarking analysis of neighbouring municipalities as part of this review. The table attached as [Annex D](#) compares procurement policies of a selection of peer municipalities to Kincardine's current policy. We strongly caution against relying on these benchmarks as

a reflection of best practices when considering changes to Kincardine’s procurement policy for the reasons set out below.

1. Most benchmarks have not been modernized. Most of the policies in Annex D are outdated and do not reflect the requirements of the trade agreements or governance best practices discussed above.
2. Low thresholds for advertising solicitations not consistent with 2021 standards and we suggest creates inefficiencies in procurement. A second observation is that some municipalities have remarkably low thresholds for advertising tenders. While transparency in procurement is an important goal, advertising solicitations adds a level of administration, legal and reputational risk and delays to the process that may not, when administrative costs are factored into the equation, always translate into cost savings for the municipality, especially at lower dollar values. The 2017 trade agreements have introduced a public standard for thresholds to advertise solicitations which, for municipalities, is approximately \$105,000.
3. Low thresholds for council approvals not reflective of 2021 standards or governance best practices. It is widely accepted today that governing bodies such as boards of directors and councils are expected to play a policy making and oversight role, and to delegate day-to-day operations to management.¹ Setting contract approval thresholds too low could suggest council is not trusting management to properly manage the procurement and contracting process and to manage the day-to-day operations of procurement and contracting activities. In addition, involving council in low-dollar value contract approvals (which are likely to be numerous as the threshold is lowered) represents an administrative investment in time for both council and management to process approval materials and bylaws/resolutions and may lead to operational delays that are not proportional to the dollar value or risks associated with such contracts. As discussed in our recommendations below, rather than have council approve lower dollar value contracts, we suggest delegating the responsibility and accountability to the CAO or Treasurer for lower dollar value contracts to ensure there are proper controls in place to ensure compliance and manage risks in procurement and contracting and provide these officers with delegated authority to sign contracts up to a certain threshold.

In light of the foregoing flaws in the benchmarks, we caution against relying on the information in Annex D to shape the municipality’s updated policy and instead draw from recent advances in public procurement as reflected in the trade agreements and inquiry reports.

¹ This notion of council being a policymaking and oversight body is covered in the Ontario Municipal Councillors Guide. <https://www.ontario.ca/document/ontario-municipal-councillors-guide/1-role-council-councillor-and-staff> It is also consistent with the principle applicable to for-profit and not-for-profit boards generally that boards should adopt a “nose in, fingers out” philosophy when working with management; letting management run operations under a strong policy framework and exercising a monitoring and oversight role.

PART III RECOMMENDATIONS

In this phase of the review, we identified opportunities for improvement in Kincardine's current framework based on the information gathered in phases 1 and 2 and developed recommendations for modernizing the procurement framework to achieve the stated objectives. The recommendations are listed below.

1. **Modernize the Kincardine Procurement Policy.** The current policy should be updated to align the policy with applicable laws, the 2017 trade agreements and changes in good governance as articulated in the Bellamy and Collingwood judicial inquiry reports. Updates to the policy should include the high level changes listed below.
 - 1.1. Assign accountability for policy compliance to the CAO. The current policy directs department heads to submit directly to Council, bypassing the CAO's role in procurement. A lack of clarity in the CAO's role is an issue identified as problematic by Justice Marocco in the Collingwood Inquiry report that contributed significantly to the governance failures in Collingwood's procurement function. Consistent with Justice Marocco's comments, modern governance best practices promote implementing clear delegations of authorities from the governing body to officers, in this case the CAO, in municipal policies. We recommend that the updated policy clearly delegate accountability and authority to the CAO to enable the CAO to perform their role as head of day-to-day operations.
 - 1.2. Delineate individual Councillors' role in procurement from the role of staff. The involvement of individual councillors in the procurement process, such as having individual councillors involved in tender openings for example, may inadvertently engage individual councillors in operations which is not considered a best practice. To ensure a clear delineation between Council's policy role and staff's responsibility for municipal operations, it is recommended that councillors not be involved in any aspect of the procurement process such as tender openings. Tender openings can effectively be managed by staff following a process to be articulated in the procurement procedures manual.
 - 1.3. Increase thresholds for Council Contract approvals from \$40,000 to \$100,000. The current policy sets approval thresholds to award contracts at \$40,000 which is a low dollar value for Council engagement by modern day standards. As indicated earlier in this report, there is a tangible administrative cost and time component leading to operational delays associated with processing matters for Council approval that impact the Municipality's operational efficiency from time to time. With the introduction of a robust set of procedures, templates, tools and internal control framework to govern procurement, and an accountable CAO who is responsible to Council for compliance and who regularly reports to Council on procurement and contracting activities, this should offer the comfort necessary for Council to accept to increase its contract award approval role from \$40,000 to \$100,000 and delegate authorities to the CAO and Treasurer for approvals and signatures of lower dollar value contracts.

- 1.4. Delegate Limited Signing Authority to CAO, Treasurer and Department Heads under \$100,000. To achieve a balance between risk and operational efficiency, it is recommended that Department Heads be provided with the authority to issue and sign purchase orders incorporating Kincardine's standard terms and conditions for requirements up to \$25,000. The Department Heads should not have the authority to amend the Kincardine standard terms and conditions; changes would need the approval of either the Treasurer or the CAO. It is also recommended that the Treasurer and CAO be delegated authority to sign, using a dual-signature approach, contracts valued at \$25,000-\$100,000. Above \$100,000, the Mayor and CAO would co-sign, as is the case today for contracts over \$40,000.
- 1.5. Increase thresholds for the mandatory advertising of procurements from \$40,000 to \$100,000. Thresholds for advertising procurement requirements at Kincardine are presently triggered at relatively low dollar values by 2021 standards and may not represent an appropriate balance between administrative costs invested in the process by both bidders and staff vs. cost saving and transparency benefits gained from advertised processes. In other words, at \$40,000 the Municipality may be incurring more administrative costs than it is saving in conducting competitive procurements. This will be especially true under the new policy as the trade agreement standards for advertising procurements become integrated into the procedures framework at Kincardine. For this reason, we are recommending aligning to the thresholds of the trade agreements in the updated policy. The policy should permit staff to run an invitational competitive process under \$100,000 and make advertising optional. An added value to increasing the threshold for advertisement to \$100,000 is it will provide staff with greater flexibility and opportunity to, through an invitational process, invite local vendors to participate at higher values than today, which should go a long way towards supporting local business, all without violating the rules of the trade agreements.
- 1.6. List the exemptions to competitive procurement. The list of exemptions to competitive procurement should reflect the permitted exemptions in the trade agreements. This will be of interest to the supplier community which is why we are recommending putting it in the policy rather than the procedures, which are not expected to be published.
- 1.7. Include a bidder right to be debriefed and process for complaints. The trade agreements provide suppliers with a right to a debriefing if unsuccessful in a competitive procurement process and procuring entities are also required to have a complaints process. We are recommending incorporating this in the policy rather than the procedures as the procedures are not expected to be published.
- 1.8. Permit the municipality to participate in cooperative purchasing. As reflected in the trade agreements, it is acceptable to procure goods and services as a member of a buying group. We recommend the policy recognize this as participating in a group buying arrangement can provide both efficiencies through delegating the procurement process to another organization and secondly can offer better pricing through bundling of purchases with other organizations.

- 1.9. List bases for which suppliers may be declared ineligible to participate in procurement opportunities. As reflected in the trade agreements, there are specific reasons a supplier may be judged to be ineligible to bid on a Kincardine RFX process which we recommend be reflected in the policy. This will be of interest to the supplier community and helps manage supplier expectations, which is why we are recommending putting it in the policy rather than the procedures, which are not expected to be published.
- 1.10. Expand on obligations of ethical conduct for employees, suppliers and Council members. As reflected in the Collingwood report, the policy should set out clearly the expectations around ethical conduct in procurement, including for employees, suppliers, and council members to clarify, and emphasize the importance of, ethical conduct in procurement.
- 1.11. List goods and services excluded from the policy. The policy should reflect the goods and services that are excluded from the public procurement rules, including those goods and services expressly excluded from the trade agreements. The list in the proposed policy is derived from both the trade agreements and items that are typically listed as exclusions in municipal policies.
- 1.12. Remain silent on the influence of local preference on procurement decisions. The provisions permitting the municipality to choose a local supplier over another supplier in the current policy contradict the requirements of the new trade agreements which are predicated on the principle that geography should not influence supplier selection. Some have argued that a local preference policy may also violate the Ontario *Discriminatory Business Practices Act*. Further, these types of policies can invite a debate around who is local. For example: what if a business owner lives in the municipality but operates a business outside the municipality? Applying such a preference may invite backlash from neighbouring municipalities who may not appreciate having their constituents' denied opportunities in Kincardine on this basis. While we do see local preference in the benchmark policies, at this point in time, it is widely accepted that local preference policies have no place in a public procurement. Reserving a right to apply a local preference carries the danger of politicizing what is supposed to be an apolitical activity and so we recommend removing this from the procurement policy and instead, rely on providing staff with greater opportunities to undertake invitational processes for competitive procurement per recommendation #1.5.
- 1.13. Omit the *Statement of Lease Financing Policies and Goals* from the policy and revisit the need for such a policy. The current policy includes a Statement of Lease Financing Policies and Goals which we understand has not been used or referred to in recent years, possibly due to the infrequency of leasing at Kincardine. The reason and need to have this statement was unclear to staff. Rather than attach it to a new policy, it is recommended that the Municipality revalidate the need to have this statement. If a decision is made to retain it, the Municipality should consider where it should be situated in the updated governance framework. Once this is considered, if the statement is retained it could be either appended to the policy, adopted as a separate policy or included in the procurement procedures.

2. **Adopt a Comprehensive Procedures Manual.** The existing policy contains elements of procedures, but they are not comprehensive. We believe the lack of comprehensiveness contributes to the staff uncertainty around the steps to follow when conducting a procurement. Improved clarity on the public procurement process and procedures will ensure consistency, help minimize the risk of error, enhance legal and policy compliance. It should also lower administrative costs as staff will have ready access to templates, checklists and sample bidder communications, all of which will save staff time. The procedures manual should explain the procurement process as a cycle, beginning with approval of the budget and ending with procurement and contracting record-keeping requirements. As discussed with the councillors during this project, following budget approval, it should provide for an annual procurement planning exercise requiring staff to take a holistic view of the procurement requirements for the year and to establish procurement strategies designed to maximize value for money in procurement.
3. **Adopt Standard RFX Templates for the more commonly used RFX processes.** The use of procurement templates would improve the efficiency and consistency of procurement processes, enhance compliance with the rules, lower administrative costs and enhance contractual legal protections for the municipality. We recommend the municipality develop templates for Request for Tenders, Requests for Quotations and Request for Proposals at minimum.
4. **Establish Standard Contract Terms for Procurement.** Formal and consistent contract terms for purchase contracts would help streamline procurement by limiting the need for negotiations, improve consistency, legal risk management and lower administrative costs.
5. **Prior to adopting a new policy, Council and staff should be trained on the basics of public procurement and policy requirements. Staff should also be trained on the procedures and how to use the templates.** Once the new policy is approved but prior to its coming into force, both staff and council should be trained on the changes and on the basics of public procurement to ensure all understand the requirements of the new framework. Particularly important for staff is training on the procurement procedures and how to work with the new templates to ensure compliance and to facilitate staff adoption of the new requirements.
6. **Implement the use of a commercial tendering website for advertising procurements.** The trade agreements require municipalities to adopt a tendering website to post tender notices. Tender “notices” are essentially 1-page advertisements summarizing the procurement opportunity. Tender notices must be available to potential bidders at no charge. We heard from staff that the municipality posts opportunities on the municipal website and beyond that its publishing practices have been inconsistent and may depend on whether it is a construction tender or not. To attract more bidders and better align to the goals of the trade agreements, it is recommended that the municipality consider using a commercial tendering website such as Biddingo.com or BidsandTenders.ca (both available for free to the municipality) to advertise its solicitations. Both these commercial tendering sites are widely used by Ontario municipalities and other public sector

organizations across Canada. Each provides the added benefit of “pushing” relevant opportunities to registered suppliers, thus guaranteeing greater exposure for the municipality’s procurement opportunities than the current approach and increasing bidder responses and ideally providing better value for money for the municipality. It is recommended that the CAO be delegated authority to select the most appropriate commercial tendering website for the advertising of Municipality procurements and that this be addressed in the procurement procedures manual.

ANNEXES

ANNEX A – COUNCIL BYLAWS RELATING TO CONTRACT APPROVALS 2020-2021

Below is the list of Council-approved contracts over \$40,000 over the last 2 years. Kincardine’s Council has passed by-laws for 33 contracts in 2020 and 27 so far in 2021 suggesting the average annual number of “above 40,000” contracts at the Municipality is between 30-40.

Under a proposed approval and signature framework, where management is delegated the authority to approve and sign contracts under \$100,000, Council would have been presented with approximately half of the contracts for approval and for the rest the CAO and Treasurer would have been responsible for approvals. We are recommending in the updated policy that Council receive a monthly report from management reporting on the award and execution of all contracts above 50,000 which would ensure Council continues to have visibility over the Municipality’s contracting activities.

1	2020	Rfx	Good/Service	Company	Contract Value
2	Huron Terrace Forcemain	RFT	Construction	Birnam Excavating	8,300,000
3	Queen Street Bridge Reconstruction	RFT	Construction	Finnbilt General Contracting	2,646,000
4	Goderich Street Erosion Project	RFT	Construction	J-AAR Excavating	1,400,000
5	Booster Station Rehabilitation	RFT	Construction	Finnbilt General Contracting	1,200,000
6	Hot Mix Paving	RFT	Construction	Harold Sutherland Construction	765,000
7	BEC UV Upgrade	RFT	Equipment	Finnbilt General Contracting	472,000
8	Ammonia Refrigeration System	RFT	Equipment	Ammonia Reprigeration	403,000
9	Renovation of Center for the Arts	RFT	Construction	Allen-Hastings	321,000
10	Plow / Sander Truck	RFP	Equipment	Highway Western Star	317,000
11	Insurance Risk Management	RFP	Consulting Services	Frank Cowan	280,000
12	Rubber Tired Loader	RFP	Equipment	Brandt Tractor Ltd.	273,000
13	Gravel Supply / Placement	RFT	Commodity Goods	Johnston Bros. (Bothwell) Ltd.	260,000
14	Cab and Chassis	RFT	Equipment	Lewis Motors	129,000
15	Automated Weather Observation System	RFP	Equipment	Approach Navigation Systems	126,000
16	UV Disinfection Equipment	RFQ	Equipment	Calgon Carbon UV Technologies	111,000
17	2x one-tonne trucks	RFT	Equipment	Jim Wilson Chevrolet	99,720
18	Gen sets for Water Towers	RFQ	Equipment	Cummins Canada ULC	90,000
19	Dunsmoor Park Retaining Wall	RFT	Construction	Ackert Construction	78,000
20	Winter Sand Supply	RFT	Commodity Goods	Johnston Bros. (Bothwell) Ltd.	70,000
21	Crack Sealing Runway	RFT	Services	ALK Asphalt Maintenance	70,000
22	StreetScan Canada	Neg	Services	Streetscan Canada	70,000
23	Diesel Generator Pre-selection	RFQ	Equipment	Sommers Generator Systems	62,000
24	Digital Transformation Strategy	RFP	Consulting Services	Perry Group Consulting	60,000
25	Calcium Chloride for Roads	RFQ	Commodity Goods	552976 Ontario Ltd / Cliff Holland	59,200
26	Sidewalk replacements	RFT	Construction	Nicholson Concrete	58,000
27	HVAC Unit for Davidson Ctr	RFT	Equipment	Ken Robinson Refrigeration	49,650
28	Heritage Conservation Plan	RFP	Consulting Services	Stantec	48,500
29	Tanker Rebody	RFQ	Services	Cottrill Heavy Equipment	47,000
30	2x dump bodies	RFT	Equipment	Commander Industries	41,600
31	Sealing Cracks in Hot Mix Asphalt	RFT	Services	RanN Maintenance	39,520
32	Asphalt Repairs	RFT	Services	Armstrong Paving and Materials	38,000
33	Breakwall Impact Assessment	RFP	Consulting Services	WSP Canada	30,000

1	2021 (to October 8)	Rfx	Good/Service	Company	Contract Value
2	Street Reconstruction	RFT	Construction	Omega Contractors	3,079,000
3	Sunset Drive Lakeshore Protection	RFT	Construction	Lavis Contracting	3,000,000
4	OPP Services	Neg	Service	OPP	2,300,000
5	Hot Mix Paving	RFT	Construction	Murray Group	439,000
6	Bervie Sideroad Culvert Replacement	RFT	Construction	Kurtis Smith Excavating	364,000
7	Tandem Plow Truck	RFT	Equipment	Team Truck	320,000
8	Huron Terrace Pumping Stn pumps	RFQ	Equipment	Xylem Canada	298,000
9	Gravel Supply / Placement	RFT	Commodity	Johnston Bros.	275,000
10	Stage 2B Cell Reconstruction	RFT	Construction	Kempton Construction	267,000
11	Generator	RFT	Equipment	Pfaff Electric	255,000
12	Huron Terrace Pumping Stn rake screen	RFQ	Equipment	ENV Treatment Systems	213,000
13	S and N. Pier Repair	RFT	Construction	VandDriel Excavating	188,000
14	Municipal Tractor	RFT	Equipment	Work Equipment	175,000
15	Huron Terrace Pumping Stn generator	RFQ	Equipment	Cummins	141,000
16	Aeration Equipment	RFQ	Equipment	Triplepoint Environmental	110,000
17	Half Ton Pick Ups	RFT	Equipment	Montgomery Ford	93,000
18	Winter Sand	RFT	Commodity	Johnston Bros.	83,000
19	Harbour Retaining Wall	RFT	Construction	VandDriel Excavating	76,000
20	3/4 Ton Pick up	RFT	Equipment	Montgomery Ford	73,000
21	Council Chamber AV Upgrades	RFQ	Equipment	Applied Electronics	72,200
22	Sidewalk Removal and Replacement	RFT	Construction	Nicholson Concrete	69,000
23	Procurement Policy Review	RFP	Consulting Services	LXM Law LLP	47,000
24	Asphalt Repairs	RFT	Service	Multiple Enterprises	37,000
25	Sweeper Attachment	RFT	Equipment	Wave Equipment	34,000
26	Utility Tractor	RFT	Equipment	Connect Equipment	27,000

ANNEX B – COLLINGWOOD INQUIRY RECOMMENDATIONS

The following is a list of the key recommendations made by Justice Marocco in the 2020 Town of Collingwood inquiry report and where we recommend these be dealt with.

Collingwood Inquiry Recommendations	Recommended placement for Kincardine (Policy, Procedure, Template)
145 Procurement at the Town of Collingwood should be open, fair, ethical, and transparent.	POLICY
<p>146 The goals and objectives of the procurement bylaw and related policies and codes of conduct at the Town of Collingwood should:</p> <ul style="list-style-type: none"> a) promote openness, honesty, fairness, integrity, accountability, and transparency in the procurement process; b) encourage competition in the procurement process; c) prevent conflicts of interest – real, apparent, and potential – between suppliers and the Town’s elected officials and staff; d) ensure that goods and services are acquired at the best value for money; e) require that suppliers are treated equitably, consistently, and without discrimination throughout the entire procurement process; f) clearly identify the roles, responsibilities, and accountability of individuals involved in the procurement process, including the purchasing officer, the treasurer, procurement staff, department heads, consultants, senior staff, and the Town solicitor; and g) instill confidence in the public and in participants in the procurement process. 	POLICY
<p>Competitive Procurement Processes</p> <p>147 There should be a strong presumption in favour of mandatory competitive tendering for all procurements at the Town of Collingwood. Criteria for exemption from competitive tendering should be strictly defined in the purchasing bylaw. A competitive procurement process should be used for procurements at the Town of Collingwood unless the conditions are met for a non-competitive procurement process.</p>	POLICY
149 Exceptions to a competitive process, such as sole sourcing and single sourcing, should be delineated in the purchasing bylaw. Emergencies and monopolies are examples of situations in which a non-competitive procurement process may be appropriate. Other examples are lack of response to a competitive process, and a	POLICY

Collingwood Inquiry Recommendations	Recommended placement for Kincardine (Policy, Procedure, Template)
single supplier in the marketplace for the particular goods or services required by the Town.	
150 Lack of planning or insufficient time to conduct a competitive procurement, except in an emergency situation, should not be an allowable exception.	PROCEDURES
151 A high level of scrutiny is necessary for non-competitive procurements. The approval of the treasurer must be obtained to proceed with a non-competitive procurement.	POLICY (Council approval to be obtained over 100k)
Unsolicited Proposals 152 The procurement bylaw should specify the conditions for unsolicited proposals.	PROCEDURES
153 The procurement bylaw should state that there must be one point of contact within Town staff for unsolicited proposals.	PROCEDURES
155 The treasurer should submit a report on the non-competitive and competitive procurement transactions annually to Council in an open session. This promotes openness, integrity, accountability, and transparency in the procurement process.	POLICY
Council 160 Council is responsible for requiring and enforcing a fair, transparent, honest, and objective procurement process.	POLICY
161 Council has a minimal role in procurements, and the separation between the role of Council and staff in procurements at the Town must be clear. Council's role is to set the budget and approve the overall procurement plan. In addition, Council must be satisfied that the procurement process is fair, honest, impartial, and equitable before it accepts staff's recommendation of the supplier who is to be awarded the contract with the Town.	POLICY
162 Council should be asked to approve the award of contracts where: a) the purchase is over budget or the "approved funding is insufficient for the award"; b) "the contract is not being awarded to the lowest bid that has met the specifications and terms and conditions of the quotation, tender, or proposal"; c) "the award is for a single source contract" or other contract in a non-competitive procurement process in which the total value "of the contract exceeds \$100,000"; d) the purchasing officer has recommended an award to a supplier whose response does not meet the specifications and qualification requirements set out in	POLICY

Collingwood Inquiry Recommendations	Recommended placement for Kincardine (Policy, Procedure, Template)
<p>the solicitation or whose response may not represent the best value to the Town based on the evaluation criteria set out in the solicitation;</p> <p>e) “a major irregularity precludes the award of a tender to” a “supplier submitting the lowest responsive bid”;</p> <p>f) the chief administrative officer or treasurer recommends Council approval;</p> <p>g) the term of the contract exceeds five years;</p> <p>h) Council approval is mandated by statute.</p>	
<p>163 Council members must remain at arm’s length from staff and suppliers in the procurement process. Elected officials should be prohibited from involvement in the selection of the procurement process, evaluation of the bids, or selection of the successful supplier.</p>	POLICY
<p>164 Council members should not receive or review any information or documents related to a particular procurement during the procurement process.</p>	POLICY
<p>166 Role of Staff The procurement bylaw should clearly define the roles, responsibilities, and accountability of staff involved in the procurement process.</p>	POLICY, generally
<p>167 Procurement staff are responsible for recommending the most appropriate procurement method, overseeing all stages of the procurement process, and interacting with department staff to assess the business needs of the Town.</p>	POLICY
<p>168 Procurement staff should identify additional resources, such as a fairness monitor, consultants, or professionals (for example, architects or engineers) to assist in the development or oversight of the procurement.</p>	PROCEDURES
<p>Fairness Monitor</p> <p>170 The Town should retain a fairness monitor for procurements that are complex, high-risk, controversial, or of a substantial dollar value. The fairness monitor promotes the integrity of the procurement process and protects against bias or discriminatory practices.</p>	PROCEDURES
<p>171 A fairness monitor should be an independent third party who monitors the procurement process and provides feedback to Council on fairness issues. The fairness monitor should provide an objective, unbiased, and impartial opinion to Council as to whether the procurement process is conducted following the principles of openness, fairness, transparency, honesty, and consistency and in accordance with the procurement bylaw, codes of conduct, and other related policies at the Town. The fairness monitor can also provide guidance and advice on best practices in the procurement process to the Town.</p>	PROCEDURES

Collingwood Inquiry Recommendations	Recommended placement for Kincardine (Policy, Procedure, Template)
172 The Town should be satisfied that the fairness monitor has the expertise and specialized knowledge necessary to provide an informed opinion on the particular procurement.	PROCEDURES
173 The decision to retain a fairness monitor is at the discretion of the chief administrative officer.	PROCEDURES
<p>Conflict of Interest</p> <p>193 Suppliers must ensure that all apparent, real, or potential conflicts of interest are appropriately addressed.</p>	RFX TEMPLATES
<p>194 “Suppliers must declare and fully disclose any” apparent, real, or potential conflicts of interest or unfair advantage concerning “the preparation of their bid” or “in the performance of” their contract. Examples of such conflicts include:</p> <ul style="list-style-type: none"> a. engaging family members, friends, or “business associates of any public office holder” at the Town “which may have, or appear to have, any influence on the procurement process, or subsequent performance of the contract”; b. “communicating with any person” to obtain “preferred treatment in the procurement process”; c. engaging current staff or public office holders at the Town to take part “in the preparation of the bid or the performance of the contract, if awarded”; d. engaging former Town staff or former “public office holders to take any part in the” development “of the bid or the performance of the contract, if awarded, any time within” one year of such person “having left the employ or public office” at the Town; e. “prior involvement by the supplier or affiliated persons in developing the” “specifications or other evaluative criteria for the solicitation”; f. access to related confidential information “by the supplier, or affiliated persons” that is not readily available “to other prospective suppliers”; g. “conduct that compromises, or could be seen to compromise, the integrity of the procurement process.” 	RFX TEMPLATES
<p>Collusion and Other Unethical Practices</p> <p>195 No supplier shall communicate, “directly or indirectly, with any other supplier” or their affiliates, regarding the supplier’s submission.</p>	RFX TEMPLATE
196 A supplier must “disclose any previous convictions” “for collusion, bid-rigging, price-fixing, bribery, fraud, or other similar” conduct “prohibited under the Criminal	RFX TEMPLATE

Collingwood Inquiry Recommendations	Recommended placement for Kincardine (Policy, Procedure, Template)
Code, Competition Act, or other applicable law, for which they have not received a pardon.”	
<p>Intimidation</p> <p>197 “No supplier may threaten, intimidate, harass, or otherwise interfere with any” Town staff or public office holders.</p>	POLICY
198 No supplier may “threaten, intimidate, harass, or otherwise interfere with an attempt by any other prospective supplier to bid for a” “contract or to perform any contract awarded by the” Town.	POLICY
<p>Gifts</p> <p>199 No supplier or potential supplier “shall offer gifts, favours, inducements of any kind to” Town staff “or public office holders, or otherwise attempt to influence or interfere with their duties” and responsibilities concerning the procurement or management of the process.</p>	POLICY
200 Town staff are prohibited from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from suppliers or potential suppliers in either the pre-procurement phase or during the procurement process.	POLICY
201 Council members are prohibited from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from suppliers or potential suppliers at any time during the pre-procurement phase or procurement phase of the process.	POLICY
<p>Sanctions</p> <p>202 The Code of Conduct should explicitly state that any material violation of the Code, “including any failure to disclose potential conflicts of interest or unfair advantages, may be grounds for” disqualifying the supplier or terminating the contract.</p>	RFX TEMPLATE
203 Suppliers who have violated the Code of Conduct may be prohibited from bidding on future contracts at the Town for a designated period.	POLICY
<p>Planning</p> <p>204 A procurement plan for the Town should be prepared annually and published. Procurement planning helps insulate the procurement process from political influence.</p>	PROCEDURES
205 Before initiating any procurement process for goods or services, the purchasing department shall, (a) prepare detailed specifications and quantity requirements for the particular goods or services, and (b) certify that the goods or services are required for the Town of Collingwood.	PROCEDURES

Collingwood Inquiry Recommendations	Recommended placement for Kincardine (Policy, Procedure, Template)
206 "A standard checklist should be prepared" and published "indicating all the elements that should be in place before the" Town issues a tender.	PROCEDURES
207 Procurement staff and senior staff should take measures to ensure that lobbying in the Town does not have any impact on the design of the tender so as to unfairly favour a bidder.	PROCEDURES
Designated Contact Person 208 The tender document should specify the name and contact information of the person whom prospective bidders can contact with questions. The tender document should make it clear that for the duration of the procurement process, only the Town staff member can be contacted by bidders regarding the tender.	RFX TEMPLATE
209 If a bidder requests information, the designated contact person should notify the bidder that the information requested and conveyed may be disclosed to other bidders.	PROCEDURES
Blackout Period 211 Every tender document should define the "blackout period" when communication between bidders and the Town is prohibited.	PROCEDURES
212 During the blackout period, suppliers must refrain from contacting anyone but the designated person at the Town of Collingwood.	PROCEDURES
Evaluation of Bids 214 No person "involved in evaluating the bids" at the Town "should have a pre-existing relationship with any of the bidders or be influenced" "by anyone else's pre-existing relationship with a bidder."	PROCEDURES
215 No person "involved in the pre-procurement phase or the bidding process should be involved in evaluating the proposals."	PROCEDURES
216 The Town "should have clear practices" for reading the bids.	PROCEDURES
217 Each member of the evaluation team "should sign a conflict-of-interest declaration disclosing any entertainment, gifts," meals, favours, or benefits of any kind "received from any of the proponents or their representatives."	PROCEDURES
218 Each member of the evaluation team should sign a declaration "that they will conduct the evaluation" fairly and objectively, "free from any conflict of interest or undue influence."	PROCEDURES
219 "The weight to be assigned to price in determining the winning bid should be carefully considered" and determined "in advance."	PROCEDURES
220 The Town "should maintain a record of when" and who tells a bidder that they have been successful.	PROCEDURES

Collingwood Inquiry Recommendations	Recommended placement for Kincardine (Policy, Procedure, Template)
<p>Debriefings</p> <p>221 Following a “decision to award a contract, unsuccessful bidders are entitled to a debriefing” that explains “the evaluation process that led to the” Town’s “selection of the successful bidder.”</p>	POLICY
<p>Supplier Complaint Process</p> <p>222 The Town should establish a comprehensive complaints process for suppliers and potential suppliers.</p>	COMPLAINTS POLICY
<p>223 A complaint process is essential to promote and maintain transparency and integrity in the procurement process and to ensure the objective and equitable treatment of all suppliers.</p>	COMPLAINTS POLICY
<p>224 All supplier disputes or complaints, whether sent to Council members or staff, shall be referred to the treasurer</p>	COMPLAINTS POLICY
<p>225 In no circumstances, should Council members or staff act as advocates for aggrieved or successful suppliers.</p>	COMPLAINTS POLICY
<p>226 Suppliers should try to resolve any pre-award disputes by communicating in writing directly to the treasurer as quickly as possible after the basis for the dispute becomes known to them. The treasurer should have the authority: (a) to dismiss the dispute; or (b) to accept the dispute and direct the Town’s purchasing officer to take appropriate remedial action, including, but not limited to, rescinding the award and any executed contract, as well as cancelling the solicitation.200 The treasurer may decline to delay the award or any interim step of a procurement if the complaint appears to the treasurer to have no merit or if the supplier has failed to notify the treasurer immediately after the disputed conduct came to the supplier’s attention.</p>	COMPLAINTS POLICY
<p>227 Any dispute of an award decision must be submitted in writing to the treasurer as soon as possible after the disputed conduct comes to the attention of the complainant</p>	COMPLAINTS POLICY

ANNEX C – SAMPLE PROVISIONS FROM TRADE AGREEMENTS (ILLUSTRATION)

The following is provided to illustrate the level of procedural detail contained in the 2017 trade agreements. The trade agreement requirements will be reflected in the Municipality’s new procedures manual.

Topic	CFTA / CETA (similar but not exactly the same)
Geographical non-discrimination	Each Party shall provide open, transparent, and non-discriminatory access to covered procurement by its procuring entities.
Establishing the Dollar Value of a Procurement	<p>In estimating the value of a procurement for the purpose of determining whether it is a covered procurement, a procuring entity shall:</p> <ul style="list-style-type: none"> (a) estimate what the value would be as of the date the tender notice will be published; and (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including: <ul style="list-style-type: none"> (i) premiums, fees, commissions, and interest; and (ii) the total value of options if the procurement provides for the possibility options.
Posting of Tender Notices on tendering website <i>(new since 2017)</i>	A procuring entity shall publish a tender notice for each covered procurement on one of the tendering websites or systems designated by its Party.
Tender Notice content	<p>Each tender notice shall include:</p> <ul style="list-style-type: none"> (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any (b) a brief description of the procurement; (c) the nature and the quantity, or estimated quantity, of the goods or services to be procured unless those requirements are included in tender documentation; (d) the address and final date for the submission of tenders; (e) the date, time, and place for any public opening of tenders; (f) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers, unless those requirements are included in tender documentation that is made available to all interested suppliers at the same time as the tender notice; (g) a statement that the procurement is subject to this Chapter; (h) the timeframe for delivery of goods or services, or the duration of the contract;

	<p>(i) a description of any options, unless those requirements are included in tender documentation;</p> <p>(j) the procurement method that will be used, and whether it will involve negotiation or electronic auction;</p> <p>(k) if, pursuant to Article 508, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender, unless the criteria and any limitations are included in tender documentation; and</p> <p>(l) the language or languages in which tenders or responses to requests for prequalification may be submitted if they may be submitted in a language other than that of the tender notice.</p>
<p>Do's and Don'ts of Drafting Solicitation Documents (reflects what was previously understood to be best practice or a Common Law requirement)</p>	<p>Technical Specifications</p> <ol style="list-style-type: none"> 1. A procuring entity shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade. 2. In prescribing technical specifications for the goods or services being procured, a procuring entity shall, if appropriate: <ol style="list-style-type: none"> (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and (b) base the technical specification on standards if they exist. 3. A procuring entity should avoid the use of technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier. If the technical specifications are used in that manner, a procuring entity shall indicate that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirement of the procurement by including words such as “or equivalent” in the tender documentation. 4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person who has a commercial interest in the procurement. 5. For greater certainty, a Party, including its procuring entities may, in accordance with this Article, prepare, adopt, or apply technical specifications to promote the conservation of natural resources or protect the environment. <p>Tender Documentation</p> <ol style="list-style-type: none"> 7. A procuring entity shall make available to suppliers’ tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Tender documentation shall include all pertinent details concerning:

	<p>(a) the evaluation criteria that will be used in the evaluation of tenders, including the methods of weighting and evaluation, unless price is the sole criterion; an</p> <p>(b) the requirements to be fulfilled by the supplier, and the terms or conditions applicable to the tender, including, if applicable:</p> <ul style="list-style-type: none"> (i) technical specifications; (ii) requirements for servicing or warranty; (iii) transition costs; (iv) applicable conformity assessment certification, plans, drawings, or instructional materials; and (v) requirements related to the submission of the tender. <p>8. In establishing the date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account factors such as the complexity of the procurement, the extent of subcontracting anticipated, and the realistic time required for production, de-stocking, and transport of goods from the point of supply or the realistic time.</p>
<p>Exemptions from competitive process (Sole/Single Sourcing)</p>	<p>Subject to paragraphs 2 and 3, and provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of any other Party or protects its own suppliers, a procuring entity may use limited tendering in the following circumstances:</p> <p>(a) if:</p> <ul style="list-style-type: none"> (i) no tenders were submitted, or no suppliers requested participation; (ii) no tenders that conform to the essential requirements of the tender documentation were submitted; (iii) no suppliers satisfied the conditions for participation; or (iv) the submitted tenders were collusive, provided that the requirements of the tender documentation are not substantially modified; <p>(b) if the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:</p> <ul style="list-style-type: none"> (i) the requirement is for a work of art; (ii) the protection of patents, copyrights, or other exclusive rights; (iii) due to an absence of competition for technical reasons; (iv) the supply of goods or services is controlled by a supplier that is a statutory monopoly; (v) to ensure compatibility with existing goods, or to maintain specialized goods that must be maintained by the manufacturer of those goods or its representative;

	<p>(vi) work is to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;</p> <p>(vii) work is to be performed on a leased building or related property, or portions thereof, that may be performed only by the lessor; or</p> <p>(viii) the procurement is for subscriptions to newspapers, magazines, or other periodicals;</p> <p>(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement, if a change of supplier for such additional goods or services:</p> <p>(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and</p> <p>(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;</p> <p>(d) if strictly necessary, and for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering;</p> <p>(e) for goods purchased on a commodity market;</p> <p>(f) if a procuring entity procures a prototype or a first good or service that is developed in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;</p> <p>(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers;</p> <p>(h) if a contract is awarded to a winner of a design contest provided that:</p> <p>(i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a tender notice; and</p> <p>(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner; or</p> <p>(i) if goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to</p>
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	compromise government confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest.
Bidder barring rules	<p>If there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:</p> <ul style="list-style-type: none"> (a) bankruptcy or insolvency; (b) false declarations; (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts; (d) final judgments in respect of serious crimes or other serious offences; (e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or (f) failure to pay taxes.
Supplier access to remedies for violations (New rights and remedies)	<p>Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a Canadian supplier may challenge:</p> <ul style="list-style-type: none"> (a) a breach of the Chapter...

ANNEX D – BENCHMARKING AGAINST OTHER MUNICIPAL POLICIES

The list below extracts, for ease of comparison, key elements of various Ontario municipal policies. As noted in the body of the report, there is little commonality among the policies, and most do not reflect modern day best practices. In most cases, the Council Approval Thresholds were likely set prior to the introduction of the trade agreements based on arbitrary dollar values. We suggest that, with an improved governance framework that includes procedures, templates and trained staff, there is no need for Council to directly involve itself in procurements that do not reach the levels covered by the trade agreements.

Municipality	Last Policy Update (from most recent to oldest)	Non-Competitive Threshold	RFx Publication Threshold	Council Approval Threshold	Local Preference Permitted?
Adelaide Metcalfe	2020	\$10,000	Greater than \$50,000	\$50,000	Not permitted
Grey	2020	Up to \$5,000	\$75,000	\$500,000	Not permitted
Brockton	2020	Up to \$10,000	\$75,000	\$75,000	Policy is silent
Wellington	2020	\$5,000	\$100,000	\$500,000	Not permitted
Meaford	2019	\$2,499.99	\$25,000	\$25,000	A local preference may be shown when the intrinsic nature of the acquisition necessitates a local preference, such as the solicitation by the Municipality for municipal office space or where construction materials are to be purchased at the source.
Bruce	2018	Up to \$25,000	\$75,000	Required when exceeds budget	Not permitted
Orangeville	2018	\$5,000	\$100,000	\$100,000	Policy is silent
Oxford	2017	\$25,000	\$50,000	\$1,000,000	Not permitted
Minto	2017	Up to \$10,000	\$50,000	\$50,000	Policy is silent

Municipality	Last Policy Update (from most recent to oldest)	Non-Competitive Threshold	RFx Publication Threshold	Council Approval Threshold	Local Preference Permitted?
West Grey	2017	\$2,000	\$2,000	\$30,000	All other things being equal; consideration where practical should be given to local suppliers;
Kincardine	2013	Up to \$5000	\$40,000	\$40,000	Purchasing principle: To ensure that local suppliers are included in the competitive bidding process. All things being equal, preference will be given, when appropriate, to local firms, Ontario firms and Canadian firms, in that order
Frontenac County	2013	Up to \$5,000	\$10,000	\$50,000	Subject to the provisions of the MASH Annex, the AOPPOQ and all other applicable law, and all else being equal, local Bidders may be given preference in the selection of a Supplier.
Saugeen Shores	2012	\$5,000	\$15,000	\$25,000	All things being equal, preference will be given, when appropriate, to local firms, Ontario firms and Canadian firms, in that order.
Arran-Elderslie	2009	\$500	\$20,000	\$20,000	When equivalent products or services are available at similar costs, preference shall be given to purchasing from a local supplier.
Huron East	2005	\$1,500	\$5,000	\$5,000	All else being equal, preference will be given to purchase goods/services firstly from Huron East based businesses, secondly from businesses located in the southwest region of Ontario, and thirdly from Canadian owned businesses.
Hanover	2004	\$10,000	Greater than \$50,000	\$50,000	Not allowed