



CITY COUNCIL RESOLUTION

Regular Council Meeting

Agenda Number: 11.1.5
Title: By-law 2021-197 Procurement Policies and Procedures 2021 Update
Date: Tuesday, October 12, 2021

Moved by: Councillor M. Bruni
Seconded by: Councillor D. Hilsinger

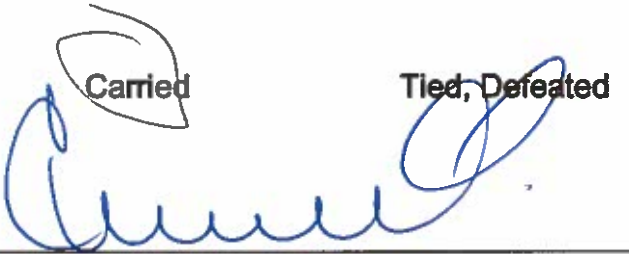
Resolved that By-law 2021-197 being a by-law that establishes the authority and sets out the methods by which Goods, Services or Construction will be purchased and disposed of for the purposes of the City of Sault Ste. Marie be passed in open Council this 12th day of October, 2021.

Carried

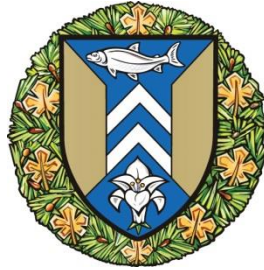
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Dealt With / Postponed



Christian Provenzano



THE CORPORATION OF THE CITY OF SAULT STE MARIE

**99 Foster Drive
Sault Ste. Marie, Ontario
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BY-LAW 2021-197

PROCUREMENT POLICIES & PROCEDURES

October 12, 2021

BY-LAW 2021-197

**A BY-LAW OF THE CITY OF SAULT STE MARIE
GOVERNING PROCUREMENT POLICIES AND PROCEDURES**

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BY-LAW 2021-197

A BY-LAW OF THE CITY OF SAULT STE MARIE GOVERNING PROCUREMENT POLICIES AND PROCEDURES

WHEREAS Section 270 of the *Municipal Act, 2001* imposes upon municipalities the obligation to adopt policies with respect to the procurement of Goods and Services;

AND WHEREAS this By-law establishes the authority and sets out the methods by which Goods, Services or Construction will be purchased and disposed of for the purposes of the City of Sault Ste. Marie subject to certain exceptions set out herein;

NOW THEREFORE the Council of the City of Sault Ste. Marie enacts as follows:

PART I – SHORT TITLE

1. This By-Law may be cited as the “Purchasing By-Law”.

PART II – PURPOSES, GOALS AND OBJECTIVES

2. The purposes, goals and objectives of this By-law and of each of the methods of procurement authorized are:
 - (a) to encourage fair and open competition among suppliers;
 - (b) to maximize savings for taxpayers;
 - (c) to ensure service and product delivery, quality, efficiency and effectiveness;
 - (d) to ensure fairness and objectivity to all bidders;
 - (e) to ensure openness, accountability and transparency while protecting the financial best interests of the City of Sault Ste. Marie;
 - (f) to have regard to the accessibility for persons with disabilities to the Goods, Services and Construction purchased by the City of Sault Ste. Marie in compliance with the ***Ontarians with Disabilities Act, 2001, S.O. 2001, c.32; and the Accessibility for Ontarians With Disabilities Act, 2005, S.O. 2005, c.11.***;
 - (g) to attempt to reduce the amount of solid waste requiring disposal through the purchase of environmentally responsible Goods and Services;
 - (h) to dispose of surplus and obsolete goods in the most cost effective and environmentally responsible manner.

- (i) In effort to minimize the impact on environment, departments will consider environmental factors within specifications of their procurements, in addition to the specific requirements of the good or service in a competitive process.

PART III – DEFINITIONS AND SCHEDULES

3. (1) The words and phrases listed below when used in this By-law shall have the following meanings ascribed to them:

“AGENT” means the Manager of Purchasing of the City of Sault Ste. Marie or designate;

“APPROVED INVOICE” means an original supplier’s invoice issued at the time of purchase of low dollar Goods or Services not exceeding \$5,000.00 and which bears both the signature of an appropriately authorized City employee and appropriate account number(s);

“AWARD”, “AWARDED” and **“AWARDING”** mean authorization to proceed with the purchase of Goods, Services or Construction from a chosen supplier;

“BID” means an offer or submission from a supplier in response to a Bid Solicitation;

“BID BOND” means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee that the successful bidder enters into a Contract with the City of Sault Ste. Marie, as required by Section 20 of this By-law;

“BID SOLICITATION” means a formal request for Bids that may be in the form of a Request for Tender or Request for Proposal;

“CHIEF ADMINISTRATIVE OFFICER (CAO)” means the Chief Administrative Officer of the City of Sault Ste. Marie;

“CITY CLERK” means the Municipal Clerk for the City of Sault Ste. Marie;

“CITY SOLICITOR” shall mean the City Solicitor of the City of Sault Ste. Marie;

“DIRECTOR/EXECUTIVE DIRECTOR” means the person responsible for the operation of a Department and/or their designate;

“DEPUTY CHIEF ADMINISTRATIVE OFFICER” means the Deputy Chief Administrative Officer of the City of Sault Ste. Marie;

“CHIEF FINANCIAL OFFICER” means the Chief Financial Officer/Treasurer of the City of Sault Ste. Marie;

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

“CONSULTANT” and **“CONSULTING SERVICES”** means a person or entity that under agreement, other than an employment agreement, provides expert or strategic advice and related services. Consulting Services do not include “Professional Services” provided by licensed professionals;

“CONTRACT” means any agreement, regardless of form or title, for the lease, purchase or disposal of Goods, Services or Construction authorized in accordance with this By-law;

“COUNCIL” means the Council of the City of Sault Ste. Marie;

“COUNCIL APPROVED BUDGETS” means Council approved department budgets including authorized revisions, or where applicable, Council approved budgets of local boards to which this By-law applies;

“DEPARTMENT” means an organizational unit of the City of Sault Ste. Marie headed by a Director/Executive Director;

“ELECTRONIC ADVERTISING” means the use of a computer-based system directly accessible by suppliers irrespective of their location that provides suppliers with information related to Bid Solicitations;

“EMERGENCY” means a situation, or an impending situation, caused by the forces of nature, an accident, an intentional act or otherwise that constitutes a danger of major proportions to life or property.

“FAIR MARKET VALUE” means the price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arms-length who are fully informed and not under any compulsion to transact;

“GOODS” means moveable property and includes,

- (a) the cost of installing, operating, maintaining or manufacturing such moveable property;
- (b) raw materials, products, equipment and other physical objects of every kind and description;

“INFORMAL” means Bid Solicitation offers submitted which are incomplete, conditional, or obscure, or which contain additions not called for, erasures, alterations, errors, or irregularities of any kind;

“IN HOUSE BID” means a Bid made by a Department and authorized by the Director/Executive Director of that Department, submitted in response to a Bid Solicitation, where the provision of the Goods, Services or Construction will be provided entirely by the employees of the City of Sault Ste. Marie;

“LOWEST COMPLIANT BID” means the Bid that would provide the City of Sault Ste. Marie with the desired Goods, Services or Construction at the lowest Total Acquisition Cost, meets all the specifications and contains no irregularities requiring automatic rejection;

“PROFESSIONAL SERVICES” means services that by legislation or regulation are to be provided only by the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries;

“PROPOSAL” means an offer submitted in response to a Request for Proposal, acceptance of which may be subject to further negotiation;

“PURCHASE ORDER” means a Contract between the City of Sault Ste. Marie and a supplier to supply a specific quantity of Goods or specific set of Services or specific type of Construction defined by such things as time period, location(s) and price;

“PURCHASING CARD” means a card issued in accordance with the Purchasing Card Policy, to purchase Goods and Services;

“REQUEST FOR PROPOSAL” means a Bid Solicitation that is used to acquire Goods, Services or Construction, the suitability of which is

dependent upon non-price factors and which may result in further negotiation between the parties;

"ROUTINE PROFESSIONAL SERVICES" means performance of multiple and similar tasks by licensed professionals which do not require specific skills or qualifications not otherwise held by City staff;

"SCOPE OF WORK" means specifications as outlined within original project's approved Goods and Services;

"SINGLE SOURCE" means selection of a specific Supplier even though there may be more than one supplier capable of delivery of the Goods and Services;

"SOLE SOURCE" means there is only one Supplier capable of delivery of the Goods and Services that meet the requirements of the City;

"SPECIALIZED PROFESSIONAL SERVICES" means performance of non-routine tasks by licensed professionals;

"STANDING PURCHASE ORDER" means a Contract between the City of Sault Ste. Marie and a supplier for the supply of frequently ordered Goods or Services at specified unit prices where possible, maximum dollar limits, or discounts; but not specified quantities;

"SERVICES" includes all professional and consulting services, all services in relation to real property or personal property including without limiting the foregoing the delivery, installation, construction, maintenance, repair, restoration, demolition or removal of personal property and real property and all other services of any nature and kind save and except only services to be delivered by an officer or employee of the City of Sault Ste. Marie in accordance with terms of employment;

"TENDER" means a publicly advertised Bid Solicitation;

"TOTAL ACQUISITION COST" means an evaluation of quality and service in the assessment of a Bid and the sum of all costs including purchase price, all taxes, warranties, local service costs, life cycle costs, time of completion or delivery, inventory carrying costs, operating and disposal costs for determining the Lowest Compliant Bid;

- (2) Schedules "A", "B", and "C" attached hereto form part of this By-law.

PART IV – GENERAL PROCUREMENT POLICY

APPLICATION

4. (1) The procedures in this By-law shall be followed to Award a Contract or to recommend to Council that a Contract be Awarded.
- (2) Subject to section 31 and section 4(3), Goods, Services or Construction listed in Schedule “A” of this By-law may be procured without following the procedures set out in the by-law; in accordance with the Approvals for Financial Values as established in section 7.
- (3) The purchase of Goods and Services listed in Schedule “A” to this By-law may be made provided that sufficient funds are available and identified in appropriate accounts within Council Approved Budgets.

RESTRICTIONS

5. (1) No Contract for Goods, Services or Construction may be divided into two or more parts to avoid the application of the provisions of this By-law.
- (2) No Contract for Services shall be awarded where the services would result in the establishment of an employee - employer relationship.
- (3) No employee shall purchase, on behalf of the City of Sault Ste. Marie, any Goods, Services or Construction, except in accordance with this Bylaw.
- (4) Where an employee involved in the Award of any Contract, either on his or her own behalf or while acting for, by, with or through another person, has any pecuniary interest, direct or indirect, in the Contract, the employee,
 - (a) shall immediately disclose the interest to the Director/Executive Director involved in the Award of the Contract and shall describe the general nature thereof;
 - (b) shall not take part in the Award of the Contract; and
 - (c) shall not attempt in any way to influence the Award of the Contract.

- (5) An employee has an indirect pecuniary interest in any Contract in which the City of Sault Ste. Marie is concerned, if,
- (a) the employee or his or her spouse
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public that has a pecuniary interest in the Contract;
 - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public that has a pecuniary interest in the Contract; or
 - (iii) is a member of an unincorporated association or partnership, that has a pecuniary interest in the matter; or
 - (b) the employee or his or her spouse is in the employment of a person, unincorporated association or partnership that has a pecuniary interest in the Contract.

An employee found to be in conflict as per this section may be subject to disciplinary action by the Corporation.

- (6) There will be no local preference for purchases in compliance with the Discriminatory Business Practices Act, Revised Statutes of Ontario, 1990 Chapter D.12 and the Ontario Free Trade Agreement that does not allow for geographical preference as well in accordance with the updated Municipal Act requiring that a competitive bid process be open, fair and transparent.

TOTAL ACQUISITION COST

6. Where this By-law prescribes dollar limits, the Contract amount shall be the estimated Total Acquisition Cost less any rebates; not including sales taxes.

APPROVALS FOR FINANCIAL VALUES

7. (1) The following approvals must be secured based on the listed Financial Values:
- (a) any Contract for a Good, Service or Construction for a Financial Value of \$10,000.00 or less may be approved by a Director; or their designate;
 - (b) any Contract for a Good, Service or Construction for a Financial Value of \$15,000.00 or less may be approved by an Executive Director; or their designate;
 - (c) any Contract for a Good, Service or Construction for a Financial Value of \$30,000.00 or less may be approved by a Deputy Chief Administrative Officer; or their designate;

- (d) any Contract for a Good, Service or Construction for a Financial Value of \$125,000.00 or less may be approved by the Chief Administrative Officer;
 - (e) any Contract for a Good, Service or Construction for a Financial Value exceeding \$125,000.00 requires Council approval.
- (2) Despite any other provisions of this By-law, the following Contracts are subject to Council approval:
- (a) any Contract requiring approval from the Ontario Municipal Board;
 - (b) any Contract where an irregularity precludes the Award of a Contract to the supplier submitting the lowest compliant bid.
- (3) The following approvals must be secured for Change Orders to approved Contracts:
- (a) Scope of Work Change Orders are subject to identified available funding and require approval from originating approver up to his Approval Limit for Financial Values.

Where originating approver was Council the Chief Administrative Officer may additionally approve; where the Cost in total for all Change Orders is no greater than 20% of the original value, and does not exceed \$125,000.00.
 - (b) All other Change Orders, a tolerance of 20% of the approved Project Cost in total for all Change Orders applies. Approval is subject to identified funding and may be secured from the Chief Administrative Officer up to his Approval Limit for Financial Values.

RESPONSIBILITIES AND AUTHORITIES

8. (1) Directors/Executive Directors shall be responsible for and shall have authority for all procurement activity and decisions within their Departments and are accountable for achieving the specific objectives of the procurement project.
- (2) Directors/Executive Directors have the authority to award contracts in the circumstances specified in this by-law provided that the delegated authority is exercised within the limits prescribed in this by-law, and the requirements of this by-law are met.

- (3) Directors/Executive Directors may delegate their authority, to suitably qualified and approved individuals, where appropriate. Directors/Executive Directors in conjunction with the Agent shall provide evidence that the contract pricing represents fair market value.
- (4) The Agent is responsible for:
 - (a) providing professional procurement advice and services to the Directors/Executive Directors;
 - (b) monitoring compliance with this by-law;
 - (c) notifying Directors/Executive Directors, in advance if possible, of non-compliance;
 - (d) informing Council that non-compliance with this by-law has occurred;
 - (e) determining if Goods, Service or Construction less than \$125,000.00, that have been restricted to single or sole source supply because of standardization, compatibility, cost effectiveness or similar justification is the overriding consideration and on any anniversary of the renewal of that restriction; and
 - (f) scheduling the public tender openings and ensuring a member of Council or the City Clerk or designate is present at opening.
- (5) The Agent may award a contract on behalf of a Director/Executive Director provided that the Agent is in receipt of a funded requisition and the requirements of this by-law are met.
- (6) The Chief Administrative Officer has the authority to instruct Directors/Executive Directors not to award contracts and to submit recommendations to Council for approval and may provide additional restrictions concerning procurement where such action is considered necessary and in the best interest of the City.

NOTIFICATION OF PROCUREMENT OPPORTUNITIES

9. (1) Notification of procurement opportunities for Goods, Services or Construction exceeding a Total Acquisition Cost of \$125,000.00 shall be made by Public Advertising, which advertising may include newspaper, web site listings and other forms of electronic advertising, and may be used for any other purchase.
- (2) Notification of procurement opportunities for Goods, Services or Construction may be supplemented by other means of notification where appropriate.

ACCESSIBILITY

10. (1) All Bidders, Suppliers and Contractors who provide Goods, Services or Construction to the City shall comply with the Accessibility for Ontarians Act, 2005, and all Regulations emanating therefrom.

PART V – PROCUREMENT PROCEDURES

PURCHASING PROCEDURES

11. (1) The Agent shall establish purchasing procedures consistent with the Purposes, Goals and Objectives set out in this By-law relating to:
- (a) the form, content and use of forms, whether electronic or printed, including purchase requisitions, purchase orders, bonds, letters of credit and other forms of guarantee or surety, tender, proposal and other contract documents;
 - (b) the identification of those Goods, Services or Construction which, are more effectively acquired through cooperative purchasing;
 - (c) the process to be followed in the issuing, receipt and evaluation of Tenders, Quotations and Requests for Proposals including the option of submitting documentation, payment or signature by electronic means pursuant to the *Electronic Commerce Act*, S.O. 2000, c.17, as amended;
 - (d) any other aspect of process or procedure not specifically provided for in this By-Law.
- (2) Where, in the opinion of the Agent, circumstances giving rise to an issue of adherence or non-adherence to the requirements of this By-law which cannot be resolved to the satisfaction of the Agent, the Agent shall advise the Chief Financial Officer/Treasurer who shall determine the issue and appropriate action.

PURCHASING CARDS

12. The Chief Financial Officer/Treasurer is responsible for the Purchasing Card program outlined in the City of Sault Ste. Marie's Purchasing Card Policy. The Purchasing Card Policy shall adhere to this Purchasing By-law.

STANDING PURCHASE ORDERS

13. (1) A Standing Purchase Order may be used where:
- (a) one or more Departments repetitively order the same Goods, Services or Construction and the actual demand is not known in advance; or
 - (b) a need is anticipated for a range of Goods, Services or Construction for a specific purpose and for which convenience and location are major factors but the actual demand is not known at the outset.
- (2) The Agent shall establish and maintain Standing Purchase Orders.
- (3) To establish prices and select sources, the Agent shall employ the provisions contained in this by-law for the acquisition of Goods, Services or Construction.
- (4) More than one supplier may be selected where it is in the best interests of the City of Sault Ste. Marie and the Bid Solicitation allows for more than one.
- (5) The expected quantity of the specified Goods, Services or Construction to be purchased over the time period of the agreement will be as accurate an estimate as practical and be based, to the greatest extent possible, on previous usage adjusted for any known factors.

REQUEST FOR EXPRESSIONS OF INTEREST

14. A Director/Executive Director or the Agent may conduct a request for expression of interest for the purposes of determining the availability of suppliers of any Goods, Services or Construction and for the purposes of keeping a list of available suppliers.

ENGAGEMENT OF CONSULTANTS

15. Consultant procurement shall follow the regular procurement policies outlined within the by-law.

ENGAGEMENT OF LICENSED PROFESSIONALS

16. (1) The following process shall be employed for engagement of licensed professionals for the performance of Routine Professional Services:
- (a) a request for Expressions of Interest shall be advertised every three (3) years in order to establish a Vendors of Record List. Notwithstanding this advertisement for EOI's, Suppliers may apply for inclusion on the Vendors of Record List at any time during the period;
 - (b) Staff shall pre-qualify Suppliers based on necessary Professional qualifications, past performance evaluations, and capacity to complete work; prior to acceptance on the Vendors of Record List;
 - (c) Procurement for Routine Professional Services will be drawn from Suppliers on the Vendors of Record List;
 - (d) informal written quotes will be obtained for assignments. Assignments will be recommended based upon fees, and pre-qualifications based on Section 16 (1) (b) above;
 - (e) approvals are subject to the approval limits stated within the by-law.
- (2) The regular procurement policies outlined within the by-law shall apply for engagement of Suppliers to perform Specialized Professional Services.

PROCUREMENT METHODS

17. The following procurement methods are to be used for the purchase of Goods, Services or Construction at the listed Financial Values:

LOW DOLLAR VALUE PURCHASES (Not exceeding \$5,000.00)

18. (1) Department requirements for Goods, Services or Construction having a low dollar value may be purchased with or without negotiation. This method of purchase will be used primarily for the purchase of low value goods where the cost and administrative burden of other methods of purchase may be equal to or greater than the price or value of the goods purchased. Employees are encouraged to use their own judgment to promote the principles of this policy in any direct purchase. The following procurement methods may be used:
- (a) Purchasing Cards to a value of \$5,000.00.
 - (b) Purchase Order.
 - (c) Direct Purchase/Approved Invoice.

REQUEST FOR QUOTATION
(Acquisition costs between \$5,001.00 and \$125,000.00)

19. (1) Purchasing requirements for Goods, Services or Construction having an estimated Total Acquisition Cost between:
- (a) \$5,001.00 and \$30,000.00 may be made by an informal Request for Quotation where written specifications are presented to the vendors by an authorized person and a written quotation is returned that is to be filed or forwarded to Purchasing, if required;
 - (b) \$30,000.00 and \$125,000.00 may be made by formal Request for Quotation where Purchasing will distribute a full written Quotation to be signed and sealed and returned by the vendor to Purchasing.
- (2) In appropriate circumstances, the Request for Proposal or the Request for Tender processes may be utilized for the purchase of Goods, Services or Construction in this Total Acquisition Cost range.
- (3) The competitive method of purchase used to purchase the Goods, Services or Construction in this Total Acquisition Cost range shall demonstrate that Fair Market Value was achieved. The specifications for the goods and services and terms of purchase will be established with sufficient particularity to permit comparable quotations to be made by suppliers. A sufficient number of suppliers shall be requested to submit quotations on the specifications and terms of purchase so that at least three responsive quotations are received, where practical.

REQUEST FOR TENDER
(Acquisitions exceeding \$125,000.00)

20. (1) A Request for Tender shall be used for purchases exceeding \$125,000.00 where all of the following criteria apply:
- (a) two or more sources are considered capable of supplying the requirement;
 - (b) the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria; and
 - (c) it is intended that the Lowest Compliant Bid will be accepted without negotiations.

- (2) The Director/Executive Director in charge of the Bid Solicitation or the Agent, on behalf of such Director/Executive Director, may Award Contracts emanating from a Request for Tender provided that:
 - (a) the Award is to the Lowest Compliant Bidder;
 - (b) the estimated Total Acquisition Cost of Goods or Service does not exceed \$125,000.00; and
 - (c) the provisions of this By-law are complied with.
- (3) The Director/Executive Director or Agent shall follow the provisions of Section 31 of this By-law regarding the form of contract required to complete the purchase.
- (4) This is a competitive method of purchase, which may include supplier or contractor pre-qualification. The tender process follows the general procedures set out below:
 - (a) Contractor and Supplier Qualification (if applicable);
 - (b) Development of Specifications and Contract Terms;
 - (c) Publication and Solicitation of Tenders;
 - (d) Receiving and Opening of Bids;
 - (e) Bid Evaluation and Selection.

The specifications and contract terms are detailed within the tender documents in such a degree that there is no prospect of negotiations between the parties. It is intended to accept the lowest priced compliant bid, as the bidders must meet all the terms, conditions and specifications.

REQUEST FOR PROPOSAL

21. (1) A Request for Proposal shall be used where:
 - (a) the requirement is best described in a general performance specification. In this competitive method of purchase, some or all of the specifications and contract terms may not be finally determined with sufficient certainty to form the basis of a final contract before proposals are solicited and submitted. It may be expected that there will be some variation in the final specification and contract terms among and between responsive proponents;

- (b) owing to the nature of the requirement, suppliers are invited to propose innovative solutions to a problem, requirement or objective and the selection of the supplier is based on the effectiveness of the proposed solution rather than on price alone; or
 - (c) to achieve best value, the award selection will be made on an evaluated point per criterion or other method involving a combination of mandatory and desirable requirements or it is expected that negotiations with one or more proponents may be required with respect to any aspect of the requirement.
- (2) Where the Contract price is anticipated to be \$15,000.00 or greater and the Request for Proposal method of procurement is utilized, the Agent, at their discretion, may be a member of the committee formed to evaluate the response to the Request for Proposal.
- (3) The Agent shall maintain a list of suggested evaluation criteria for assistance in formulating an evaluation grid, which criteria may include, but are not limited to, factors such as approach, equipment and facilities, experience and qualifications, methodology, past performance and scheduling, price and strategy.
- (4) The Director/Executive Director in charge of the particular Solicitation or the Agent, on behalf of such Director/Executive Director, may award Contracts emanating from a Request for Proposal provided that:
 - (a) the estimated Total Acquisition Cost of the Goods, Services or Construction does not exceed \$125,000.00;
 - (b) the award is to be made to the supplier meeting all mandatory requirements and determined, by reference to an evaluation grid, as providing best value;
 - (c) sufficient funds are available and identified in appropriate accounts within Council Approved Budgets; and
 - (d) the provisions of this By-law are complied with.
- (5) The Director/Executive Director and Agent shall follow the provisions of Section 31 of this By-law regarding the form of contract required to complete the purchase.

NON-COMPETITIVE METHOD

- 22. (1) The Non-Competitive Method refers to the negotiation of an agreement for the purchase of Goods, Services and Construction from a Supplier where there is no open competition. This may defined as the use of a Sole Source or Single Source as appropriate.
- (2) Non-competitive purchasing must be authorized by:

- (a) the Agent for Purchases between \$5,001.00 and \$30,000.00;
 - (b) the Agent with the approval of the CAO for Purchases between \$30,000.00 and \$125,000.00;
 - (c) City Council for Purchases of more than \$125,000.00.
- (3) Authorization of the use of the Non-Competitive Method may be considered upon receipt of written details and reasons by the requesting party; where one or more of the following factors are present:
- (a) to ensure compatibility with existing products or service, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
 - (b) a Good or Service is purchased for testing or trial use;
 - (c) there is an absence of competition for technical reasons and the Goods, Services and/or Construction can only be supplied by a particular Supplier;
 - (d) the City has a rental contract with a purchase option and such purchase option is beneficial to the City;
 - (e) no bids were received in response to a Bid Solicitation or Quotation Procedure;
 - (f) a good or service where the supply is controlled by a supplier that is a statutory monopoly;
 - (g) a Good or Service is a matter of a confidential or privileged nature and disclosure could reasonably be expected to cause vulnerability to the City; or,
 - (h) a business case can be made to establish that the purchase is in the best interests of the City.

IN HOUSE BIDS

23. In House Bids may be used for the procurement of Goods, Services or Construction in circumstances where the Chief Administrative Officer considers it appropriate to do so.

GUARANTEE OF CONTRACT EXECUTION AND PERFORMANCE

24. (1) The Agent may require that a Bid be accompanied by a Bid Bond or other similar security to guarantee entry into a Contract. Unless otherwise specified, in circumstances where a Bid Deposit is required, the refundable deposit requirements for Requests for Tenders/Quotations and Requests for Proposals shall be as follows:

<u>ESTIMATED ACQUISITION COST</u>	<u>TYPE OF SECURITY</u>	<u>MINIMUM DEPOSIT REQUIRED</u>
Less than 25,000.00	Bid Bond, Certified Cheque or Irrevocable Letter of Credit	5%
Greater than \$25,000.00	Bid Bond, Certified Cheque or Irrevocable Letter of Credit	10%

- (2) Prior to the commencement of the work, the successful bidder may be required to provide the following security in addition to the security referred to in Subsection 20.(1):
- (a) a Performance Bond to guarantee the performance of a Contract;
 - (b) a Labour and Material Payment Bond to guarantee the payment of labour and materials supplied in connection with a Contract;
 - (c) or an Irrevocable Letter of Credit.
- (3) The Director/Executive Director and Agent shall select the appropriate means to guarantee execution and performance of the Contract. Means may include one or more of, but are not limited to, surety bonds or other forms of security deposits, provisions for liquidated damages, progress payments and holdbacks.
- (4) Prior to the commencement of work on a City property or as required by the Director/Executive Director or Agent, a Contractor must be compliant with the requirements of the City's Contractor Pre-Qualification Program as established by the Human Resources Department.

CONTRACT WITHOUT BUDGETARY APPROPRIATION

- 25.** Where a requirement exists to initiate a project for which Goods, Services or Construction are required and funds are not contained within the Council Approved Budget to meet the proposed expenditure, the staff shall, prior to commencement of the purchasing process, submit a report to Council containing:
- (a) information surrounding the requirement to contract;
 - (b) the terms of reference to be provided in the Contract;
 - (c) information on the availability of the funds within existing estimates, which were originally approved by Council for other purposes, or on the requirement of additional funds.

BIDS IN EXCESS OF PROJECT ESTIMATES

26. (1) Where Bids are received in response to a Bid Solicitation but exceed project estimates, the staff in charge of the Bid Solicitation and the Agent, jointly, may enter negotiations with the Lowest Compliant Bidder to achieve an acceptable Bid within the project estimate.
- (2) Negotiations shall be conducted in accordance with the guidelines established by the Canadian Construction Documents Committee.

EMERGENCY PURCHASES

27. (1) Where an Emergency exists requiring the immediate procurement of Goods, Services or Construction, a Director/Executive Director or the Agent may purchase the required Goods, Services or Construction by the most expedient and economical means, notwithstanding any other provision of this By-Law. As soon as practicable thereafter, the Agent shall comply with Section 31 of this By-law.
- (2) For all Emergency purchases made by a Director/Executive Director, the Director/Executive Director shall as soon after the purchase as reasonably possible, notify the Agent with a written report detailing the circumstances of the Emergency. The Director/Executive Director and the Agent in all circumstances shall make a report to Council where the Emergency purchase exceeds \$125,000.00.

COOPERATIVE PURCHASING

28. (1) The City of Sault Ste. Marie may participate with other government agencies or public authorities in cooperative purchasing where it is in the best interests of the City of Sault Ste. Marie to do so and where the purposes, goals and objectives of this By-law are complied with by such government agencies and public authorities.
- (2) The policies of the government agencies or public authorities calling the cooperative Bid Solicitation are to be the accepted policy for that particular purchase.

IDENTICAL TENDERS

29. (1) If the lowest Compliant Bids from two or more bidders are identical in Total Acquisition Cost or unit price, the Agent, with the consent of the Director/Executive Director in charge of the Bid Solicitation, is authorized to enter into negotiations with the bidders who have

submitted the identical prices in an attempt to obtain a lesser price and shall maintain a record in respect of such negotiations.

- (2) The Agent shall not reveal information pertaining to such negotiations or the manner in which the final price was determined to any of the bidders concerned. The Agent shall include as part of the record, a report concerning the results of such negotiations.
- (3) When negotiations are not successful in breaking the identical tenders, then the bidders involved will be so informed and advised that the tender to be accepted will be determined by means of a draw. The names of the tied bidders shall be placed in a container and the tender to be accepted shall be drawn by a Designated Official. The time and location of the draw shall be set by a Designated Official and the bidders shall be so advised in order that they may be present. The following shall be present:
 - (a) Designated Officials;
 - (b) The Agent; and
 - (c) Any of the bidders, or their authorized representative.

Should any bidder elect not to be represented at the draw, the draw will proceed regardless.

BID IRREGULARITIES

30. The process for administering irregularities contained in Bids pertaining to all Contracts shall be as set out in Schedule "B". For an irregularity listed in the first column of Schedule "B", the applicable response is set out opposite the irregularity in the second column of Schedule "B".

CONTRACTUAL AGREEMENT

31. (1) The Award of a Contract over \$5,000.00 shall be made by way of an agreement, or as a Purchase Order.
- (2) A Purchase Order is to be used when the resulting Contract requires only the City of Sault Ste. Marie's standard contractual terms and conditions.
- (3) A formal agreement is to be used when the resulting Contract is complex and will contain terms and conditions other than the City of Sault Ste. Marie's standard contractual terms and conditions.

- (4) It shall be the responsibility of the Director/Executive Director in charge of the particular Bid Solicitation, with the Agent or the City Solicitor, to determine if it is in the best interests of the City of Sault Ste. Marie to establish a formal agreement with the supplier.
- (5) Where it is determined that a formal agreement is required, the formal agreement shall be reviewed and approved for execution by the City Solicitor, or designate.
- (6) Where a formal agreement is required, the Mayor, or designate, shall execute the agreement in the name of City of Sault Ste. Marie.
 - (a) Except where delegated to CAO as per CAO By-Law
- (7) Where a formal agreement is issued, the Agent may issue a Purchase Order incorporating the formal agreement.
- (8) Where a formal agreement is not required, the Agent shall issue and execute a Purchase Order incorporating the relevant terms and conditions.

SURPLUS AND OBSOLETE GOODS

- 32.**
- (1) Disposal of surplus assets is the responsibility of the Purchasing Division. The Agent must dispose of all Goods for which a Department no longer has use and the Agent may use any method for disposal in the City of Sault Ste. Marie's best interests, including without limitation, transfer to another Department, public auction, public tender, trade, or negotiated sale.
 - (2) An employee who has the responsibility of declaring Goods surplus or obsolete, or for sending items to a public auction shall not bid on or personally obtain any Goods that the employee has declared as surplus.
 - (3) No one shall be permitted to purchase surplus or obsolete Goods except by purchase at public auction, public tender, trade or negotiated sale.
 - (4) If it is determined that the goods have no residual value, the Agent may dispose of them in an accredited landfill site or other environmentally responsible manner.

NOTWITHSTANDING

33. No provision of the By-Law precludes a Director/Executive Director or the Agent from recommending an award to City Council where in the opinion of a Director/Executive Director or the Agent, it is in the best interest of the City to do so.

PART VI – OTHER

ACCESS TO INFORMATION

34. The disclosure of information received relevant to the issue of Bid Solicitations or the Award of Contracts emanating from Bid Solicitations shall be made by the appropriate officers in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, as amended.

BY-LAW REVIEW

35. (1) This By-law shall be reviewed every five (5) years or where circumstances warrant a more frequent review. Any amendments resulting therefrom shall be submitted to Council for approval.
- (2) The review shall determine how effective this By-law has been in achieving the objectives set out in Section 2 of the By-law as well as the requirements of the *Municipal Act, 2001*, as amended.
- (3) The review may be undertaken by an inter-departmental committee, the final result of which shall be comprised of a report to Council, by the Agent.

SCHEDULES "A", "B", and "C"

36. Schedules "A", "B", and "C" hereto form part of this by-law.

EFFECTIVE DATE

37. This By-law shall come into force and take effect on the 12th day of October, 2021.

- 38.** By-law 2020-141 is hereby repealed and replaced with this new By-law 2021-197.

This by-law takes effect on the day of its final passing.

MAYOR – CHRISTIAN PROVENZANO

CITY CLERK – RACHEL TYCZINSKI

PROCUREMENT POLICY & PROCEDURES

SCHEDULE "A"

To BY-LAW 2021-197 of the City of Sault Ste. Marie

The purchasing methods described in this by-law do not apply to the following Goods and Services, some of which are regulated by other policies or Council:

1. Employer's General Expenses including:
 - (1) Statutory Remittances
 - (2) Licenses, certificates & other approvals required (Vehicle, Firearms, etc.)
 - (4) Debt Payments
 - (5) Grants to Others
 - (6) Damage Claims
 - (7) Investments
2. Utilities/Communication
3. Miscellaneous
 - (1) Employee Computer Purchase Plan (as covered by the Employee Computer Purchase Plan Policy)
 - (2) Refunds and Overpayments
 - (3) Fees or Levies of other Boards and Agencies
 - (4) Real property purchases
4. Costs Associated with Public Events
 - (1) Event Payouts as specified in Contracts which authority is delegated to staff as per by-law
5. Advertising services required by the City on or in but not limited to radio, television, newspaper and magazines

PROCUREMENT POLICY & PROCEDURES

SCHEDULE "B"

To BY-LAW 2021-197 of the City of Sault Ste. Marie

POLICY FOR CONSIDERING IRREGULARITIES IN BIDS

Extreme care shall be exercised to ensure that Irregular Bids are handled in a manner which is fair to other bidders as well as the public.

The decision as to whether an improper bid shall be accepted or rejected, shall be based upon the following general considerations;

1. is the intention of the bidder clear?
2. has the bidder made a conscientious attempt to comply with the submission requirements?

The following are guidelines only, intended to illustrate some of the discretion allowed. The Manager of Purchasing will review each case.

	<u>IRREGULARITY</u>	<u>RESPONSE</u>
1.	Late Bids	Automatic rejection, not opened or read publicly and returned unopened to the bidder
2.	Unsealed Tender Envelopes	Automatic rejection
3.	Tenders received by Facsimile (FAX)	Automatic rejection
4.	Proper Tender Envelope Not Used	Acceptable if the envelope is properly sealed. Automatic rejection if the envelope is not sealed
5.	Insufficient financial security (no deposit or bid bond or insufficient deposit (includes deposit cheque not certified) or bid bond	Automatic rejection unless insufficiency is trivial or insignificant
6.	Bids not completed in ink or in type	Automatic rejection
7.	Incomplete bids (part bids - all items not bid)	Automatic rejection unless part bid specifically permitted by tender documents
8.	Illegible or obscure bids or bids which contain additions not called for, erasures, alterations, errors or irregularities of any kind	May be rejected as informal
9.	Qualified bids (bids qualified or restricted by an attached statement)	Automatic rejection

	<u>IRREGULARITY</u>	<u>RESPONSE</u>
10.	Bids received on documents other than those provided by the City	Automatic rejection
11.	Bids containing minor clerical errors	48 hours to correct and initial errors
12.	Execution of Agreements to Bond - Bonding company corporate seal or signature missing from agreement to bond	Automatic rejection
13.	Execution of Bid Bonds (a) Corporate seal or signature of the bidder, or both, missing (b) Corporate seal or signature of bonding company missing	48 hours to correct Automatic rejection
14.	Other Bid Security - Uncertified Cheques	Automatic rejection
15.	Tender Documents - Execution (a) Corporate seal or witness signature missing but Signing Officer signature present (b) Signing Officer signature missing (c) Corporate seal or witness affixed but Signing Officer signature missing	48 hours to affix Automatic rejection Automatic rejection
16.	Erasures, Overwriting or Strike-Outs which are not initialed: (a) Uninitialed changes to the tender documents which are minor (example: the tenderer's address is amended by over-writing but not initialed) (b) Unit prices in the Schedule of Prices have been changed but not initialed (c) Other mathematical errors which are not consistent with the unit prices	48 hours to initial 48 hours to initial 48 hours to initial corrections to be made by department
17.	Failure to attend <u>mandatory</u> pre-submission meeting or visit	Automatic rejection
18.	Tender documents which suggest that the tenderer has made a major mistake in calculations of tender	Consultation with the City Solicitor on a case by case basis and report to CAO

PROCUREMENT POLICY & PROCEDURES

SCHEDULE "C"

To BY-LAW 2021-197 of the City of Sault Ste. Marie

POLICY FOR INCORPORATING ACCESSIBILITY CRITERIA AND FEATURES IN PROCUREMENT

In accordance with Province of Ontario Statutes and Regulations, the City shall incorporate accessibility criteria and features in its procurement practices so that goods, services, and facilities are accessible to people with disabilities, unless it is not practicable to do so.

If the Director/Executive Director determines that it is not practicable to incorporate accessibility criteria and features when procuring a particular good, service or facility, the Director/Executive Director shall provide, upon request, an explanation.