



City Of Kingston

Ontario

By-Law Number 2022-154

A By-Law to Establish a Procurement Policy for the City of Kingston

Passed: October 4, 2022

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Whereas subsection 270(1) of the *Municipal Act* requires a municipality to adopt and maintain policies with respect to its Procurement of good and services; and

Whereas the Corporation of the City of Kingston deems it advantageous to establish comprehensive Procurement policies for risk management purposes and to preserve the overarching principles of competition, best value, fairness, objectivity, accountability and transparency;

Therefore be it resolved that the Council of The Corporation of the City of Kingston hereby enacts as follows:

By-Law Number 2022-154

A By-Law to Establish a Procurement Policy for the City of Kingston

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1. Definitions

1.1 For the purposes of this By-Law, capitalized terms are defined in Schedule A.

2. Purpose

2.1 The purpose of this By-law is to:

- (a) express the City's goals and objectives relating to its Procurement activities;
- (b) describe the roles and responsibilities and authority of Council and the City's officers and employees in carrying out the City's Procurement activities; and
- (c) comply with the requirements of subsection 270(1) of the *Municipal Act* and applicable trade treaties.

3. Goals and Objectives

3.1 The City's goals and objectives relating to its Procurement activities are to:

- (a) comply with applicable legislation, trade treaties, policies, protocols and procedures;
- (b) encourage open, fair and transparent processes that ensure equal access to all qualified Suppliers;
- (c) adhere to the highest standards of ethical conduct;
- (d) achieve an effective balance between accountability and efficiency;
- (e) achieve the best value through consideration of the full range of Procurement methods and the adoption of commercially reasonable business practices;
- (f) provide for reciprocal non-discrimination and geographic neutrality in accordance with applicable trade treaty obligations;
- (g) incorporate Environmental Procurement practices and consider environmental factors in the Procurement planning process wherever possible;
- (h) incorporate Social Procurement practices and consider inclusion and diversity factors in the Procurement planning process wherever possible; and

- (i) support effective business planning such that Deliverables will only be acquired after assessing need, alternatives, timing and when applicable, life cycle management & Sustainable Procurement practices.

4. Application and Scope

- 4.1 This By-law applies to all Procurements with the exception of the exclusions as set out in Schedule B.
- 4.2 The following schedules are attached to and form part of this By-law:
 - (a) Schedule A – Definitions;
 - (b) Schedule B - Exclusions;
 - (c) Schedule C - Authorization Schedule;
 - (d) Schedule D - Supplier Code of Conduct; and
 - (e) Schedule E – Supplier Suspension Protocol

5. Procurement Protocols and Supporting Documents

- 5.1 Procurement Services is responsible for developing and maintaining Procurement Protocols and other supporting documents to direct the City's Procurement activities in accordance with this By-law.
- 5.2 The City Treasurer is Delegated authority to approve Procurement Protocols and other supporting documents and shall ensure they are consistent with the purposes, goals and objectives of this By-law.

6. Ethical Conduct and Conflicts of Interest City Conduct and Conflicts of Interest

- 6.1 The City's Procurement activities will be conducted with integrity and all individuals involved in the City's Procurement activities, including any outside consultants or other service providers participating on behalf of the City, shall comply with this By-law and act in a manner that is consistent with the purposes, goals and objectives of this By-law and in accordance with the City's Employee Code of Conduct and the Code of Conduct for Council and Committee Members.
- 6.2 All participants in a Procurement process, including any outside consultants or other service providers participating on behalf of the City, shall declare in writing any perceived, possible or actual Conflicts of Interest to Procurement Services. Procurement Services may take appropriate steps to resolve reported Conflicts of Interest, as required.

- 6.3 **“Conflict of Interest”** when applied to the activities of the City and its consultants or service providers, means a conflict or tension between one’s private interests and one’s public or fiduciary duties.
- 6.4 The City will not Procure personal items of direct benefit to officers or employees of the City or any member of Council except where permitted by policy or under the auspices of a City-sponsored employee program.
- 6.5 The City will not Procure Deliverables from an employee or Council member of the City, or any associate or family member of an employee or Council member, unless the extent of the employee’s interest has been fully disclosed to and approved by Procurement Services.

Supplier Conduct and Conflicts of Interest

- 6.6 All Suppliers participating in a Procurement process or supplying Deliverables to the City shall immediately declare any perceived, possible or actual Conflict of Interest and shall conduct themselves in accordance with the Supplier Code of Conduct.
- 6.7 The City may refuse to do business with any Supplier that has engaged in illegal or unethical bidding practices, has a possible or actual Conflict of Interest, has an unfair advantage, or otherwise fails to conduct itself in accordance with the Supplier Code of Conduct.

7. Roles and Responsibilities of Council

- 7.1 It is the role of Council to establish policy and approve expenditures through the City’s Budget approval process.
- 7.2 Council Delegates authority to the City’s officers and employees to incur expenditures through Procurements in accordance with this By-law.

8. Roles and Responsibilities of Officers and Employees

- 8.1 General roles and responsibilities Delegated to the City’s officers and employees are set out below. In addition, specific responsibilities pertaining to all stages of the Procurement process are detailed in this By-law.

City Treasurer

- 8.2 The City Treasurer is ultimately responsible for overseeing Procurement Services and ensuring corporate compliance with this By-law.
- 8.3 The City Treasurer may assume some or all of the responsibilities of

Procurement Services

- 8.4 The role of Procurement Services is to manage and lead the City's Procurement activities. In fulfilling this role, Procurement Services is responsible for:
- (a) ensuring the consistent application of this By-law and the provision of Procurement Services efficiently and diligently;
 - (b) developing Procurement strategies and continually analyzing business requirements and spending patterns to identify opportunities for strategic sourcing;
 - (c) reviewing and approving Solicitation Documents to ensure suitability and protection of the City's interests;
 - (d) addressing any issues or concerns that arise in respect of a Procurement process and seeking guidance, support, and advice from Legal Services, as necessary to protect the City's interests;
 - (e) researching, developing, maintaining, updating and communicating Procurement Protocols and supporting documents; and
 - (f) providing appropriate orientation, training and tools to employees involved in Procurement activities.

Commissioners and Directors

- 8.5 Commissioners and Directors are responsible for ensuring that their group or Department complies with this By-law, encouraging sound Procurement practices, and ensuring that appropriate education and training is provided to employees involved in Procurement activities.
- 8.6 Commissioners and Directors are responsible for the effective planning of procurement requirements and for ensuring that the preparation of Solicitation Documents, including all specifications, performance requirements, and the description of the scope of work, are made in consultation with Procurement Services.

Legal Services

- 8.7 It is the role of Legal Services to provide legal support and advice on the City's Procurement activities and relationships with Suppliers. In fulfilling this role, Legal Services is responsible for:
- (a) consulting with and providing advice to the City Treasurer and Procurement Services on legal issues arising from this By-law and the City's Procurement activities, as requested or as necessary to protect

- the City's interests;
- (b) reviewing and providing advice on Solicitation Documents and other Procurement-related documents, as requested by Procurement Services or as necessary to protect the City's interests;
 - (c) reviewing and approving Agreements, proposed changes to the City's Purchase Order terms and conditions, and Solicitation Document templates; and
 - (d) providing legal advice and representation in the event of a dispute or legal challenge arising from a Procurement process or Contract.

All Employees

- 8.8 All City employees are responsible for complying with this By-law. Individual employees involved in Procurement activities shall clearly understand their obligations and responsibilities under this By-law and shall consult with Procurement Services in respect of any questions regarding the application or interpretation thereof.

9. Procurement Review Panel

- 9.1 The City Treasurer shall establish a Procurement Review Panel, when necessary, for the purpose of making decisions and determinations on Supplier suspensions, Procurement Protests, and for considering and providing guidance on other Procurement matters referred to it by Procurement Services, a Director, or a Commissioner.
- 9.2 The Procurement Review Panel will consist of at least three individuals.
- 9.3 The Procurement Review Panel will include a representative from Procurement Services and one or more Directors or Commissioners, as appropriate.
- 9.4 The Procurement Review Panel will make decisions and determinations by a simple majority. In making decisions or determinations under this By-law, the Procurement Review Panel may seek and consider additional information it determines that it requires and may consult with other City employees and officers, Legal Services, other legal counsel or other advisors, as it considers necessary.

10. Procurement Planning

- 10.1 Procurement planning is essential in ensuring that the Procurement function serves as a conduit to achieving the City's objectives. Effective planning ensures the responsible management of corporate resources and the timely delivery of

goods and services as required. In planning for a Procurement process, Departments must ensure that they leave sufficient time to:

- (a) develop proper specifications and business requirements;
- (b) carry out internal reviews;
- (c) address any notice and other time requirements;
- (d) conduct a Competitive Process, as required; and
- (e) obtain necessary approvals.

11. Market Research

11.1 Where the City is uncertain about the required Deliverables or where there is insufficient internal knowledge about the market, the City will use a Request for Information to build Supplier interest and to obtain information about the availability of Deliverables in the marketplace and the level of interest from Suppliers able to supply the Deliverables. Requests for Information will be publicly posted.

11.2 Requests for Information will not be used to pre-qualify Suppliers.

12. Procurement Value

12.1 The Procurement Value must be appropriately estimated in accordance with the section below in order to determine the appropriate Procurement method and to ensure compliance with the requirements of this By-law.

12.2 In estimating Procurement Value, all forms of remuneration must be taken into account, including:

- (a) all estimated premiums, fees, commissions and interest;
- (b) all estimated costs to the City, including, if applicable, delivery, installation, training, operation, maintenance, replacement and disposal, but excluding sales taxes, and less applicable rebates or discounts; and
- (c) if the Procurement provides for the possibility of Contract Options, the total value of all such Contract Options.

13. Contract Splitting

- 13.1 Procurements or Contracts must not be subdivided, split or otherwise structured in order to reduce the Procurement Value or Contract Value or in any way circumvent the requirements of this By-law.

14. Cooperative Purchasing and Buying Groups

- 14.1 The City may participate in Cooperative Purchasing where Procurement Services determines it is in the interests of the City to do so.
- 14.2 If the City participates in Cooperative Purchasing, the City may rely on the Procurement policies of the entity or other entities leading the Cooperative Purchasing, provided that such Procurement policies comply with the purposes, goals, objectives of this By-law and with the City's obligations under applicable trade treaties.
- 14.3 If the City participates in Cooperative Purchasing, and the City is leading the Cooperative Purchasing, the City will follow this By-law.
- 14.4 Procurement Services is Delegated authority to approve Master Framework Agreements for the purposes of participating in Cooperative Purchasing and, when the requirement for Deliverables arises, to approve the award of Contracts in accordance with such Master Framework Agreements.

15. Establishment of Supply Arrangements

- 15.1 The City may establish Standing Offers and Qualified Supplier Rosters for Deliverables that it requires on a regular or recurring basis. Procurement Services is Delegated authority to establish Standing Offers and Qualified Supplier Rosters through an Open Competition.
- 15.2 The establishment of a Standing Offer or a Qualified Supplier Roster does not create a contractual commitment by the City to Procure Deliverables from a Supplier.

16. Standard Procurement Methods

- 16.1 The City may only conduct a Standard Procurement if authorized in accordance with the Authorization Schedule attached as Schedule C.
- 16.2 The City may use several different methods for the Standard Procurement of Deliverables. Depending on the Procurement Value and the type of Deliverables required, Standard Procurement methods may include:
- (a) ordering Deliverables from an established Standing Offer;

- (b) conducting a Roster Competition to solicit Bids from Suppliers on an established Qualified Supplier Roster;
 - (c) obtaining one or more informal quote(s) for Low-Value Procurements;
 - (d) conducting an Invitational Competition by soliciting Bids from a minimum of three Suppliers; or
 - (e) conducting an Open Competition by publicly advertising and posting a Solicitation Document.
- 16.3 Directors are responsible for determining whether there are established Standing Offers or Qualified Supplier Rosters available for the Procurement of required Deliverables. When available, the Deliverables must be purchased in accordance with the terms of the Standing Offer or the Qualified Supplier Roster.
- 16.4 Where this By-law permits the use of more than one Standard Procurement method for a particular Procurement, the City will use the Standard Procurement method that is in the best interests of the City, as determined by the respective Director in consultation with Procurement Services.
- 16.5 All Competitive Processes will be conducted in accordance with the respective Solicitation Document. Where provided for in the Solicitation Document, Competitive Processes may be based solely on price, may consider other evaluation criteria included in the Solicitation Document, and may include negotiation with one or more top-ranked Bidder(s).
- 16.6 The City may cancel, amend or assign a Competitive Process.

Existing Supply Arrangements

- 16.7 Where a requirement for Deliverables arises and a Standing Offer is available, the City will use the Standing Offer to Procure the required Deliverables.
- 16.8 Where a requirement for Deliverables arises and a Qualified Supplier Roster is available, the City will use a Roster Competition to Procure the required Deliverables. Roster Competitions will be conducted by Procurement Services in accordance with the respective Master Framework Agreement.
- 16.9 To Procure from the Standing Offer, the City will issue a Purchase Order to the Supplier.

Low-Value Procurements

- 16.10 Where the Procurement Value does not exceed \$15,000, the City may

Procure by obtaining one or more informal quote(s) from Suppliers. Quotes may be obtained through several informal methods, including public advertisements, Supplier catalogs, or by contacting Suppliers directly. Departments will conduct Low-Value Procurements.

Invitational Competitions

- 16.11 Where the Procurement Value does not exceed \$100,000 and the Deliverables are not covered under an existing Standing Offer or Qualified Supplier Roster, Departments will conduct an Invitational Competition. The Director is responsible and accountable for Invitational Competitions.
- 16.12 An Open Competition may be conducted in lieu of an Invitational Competition, where the Director, in consultation with Procurement Services, determines that it would be in the best interests of the City.

Open Competitions

- 16.13 Where the Procurement Value exceeds \$100,000, the City will Procure by an Open Competition.
- 16.14 Open Competitions may include two-stage Procurement processes in which a pre-qualification process is conducted by soliciting and evaluating submissions from interested Suppliers to establish a shortlist of pre-qualified Suppliers that may be eligible to submit a Bid in response to a second-stage Solicitation Document.
- 16.15 When conducting an Open Competition, the City will publicly post the Solicitation Document or otherwise publicly advertise the Open Competition, as determined by Procurement Services.
- 16.16 Procurement Services will conduct Open Competitions in accordance with the Solicitation Document.

Bid Rejection

- 16.17 In any Competitive Process, the City will reject Bids which:
- (a) are submitted late;
 - (b) are part Bids, unless the Solicitation Document clearly states that a Contract may be awarded for individual items;
 - (c) are made conditional by a statement added to a Bid form or by a covering letter, or which has alterations made to a Bid form, unless such alterations were requested by the City in the Solicitation Document or by an addendum;

- (d) are not properly Signed or sealed, or are not accompanied by a statement that the officer Signing the Bid is authorized to bind the corporation, as required by the Solicitation Document;
- (e) are not accompanied by a bid bond where required by the Solicitation Document;
- (f) are not typed or, where the Solicitation Document permits Bids to be submitted in hard copy, are not in ink;
- (g) include erasures, overwriting or strikeouts which have not been initialed;
- (h) deviate from a mandatory requirement of the Solicitation Document where the deviation affects the substance of the Bid, is material to the award of the Contract or could provide the Supplier with an unfair advantage;
- (i) deviate from any requirements of the Solicitation Document which the Solicitation Document identifies as warranting the rejection of Bids; or
- (j) are submitted by a Supplier who is suspended from participating in the City's Procurement processes.

16.18 In any Competitive Process, the City may, in its sole and absolute discretion, reject Bids from a Supplier where:

- (a) the Supplier has committed a breach of the Supplier Code of Conduct during the Procurement process;
- (b) the Supplier has deviated from the requirements of the Solicitation Document;
- (c) the Supplier has pursued or threatened to pursue Litigation within the five years preceding the initiation of the Procurement process;
- (d) the City is pursuing Litigation against the Supplier;
- (e) the City has made a claim against the Supplier under a surety bond or security deposit submitted by the Supplier, including a bid bond, bid deposit, or performance bond, within the five years preceding the initiation of the Procurement process;
- (f) the Supplier, including any person affiliated or associated with the Supplier, has been convicted of an offense under the *Criminal Code*, R.S.C., 1985, c. C-46, the *Environmental Protection Act*, R.S.O. 1990, c. E.19, the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), *MFIPPA*, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, or the *Securities Act*, R.S.O. 1990, c. S.5; or
- (g) the Supplier, including any person who is affiliated or associated with the

Supplier, is indebted to the City.

17. Non-Standard Procurement

17.1 Non-Standard Procurement of Deliverables may include:

- (a) Procuring Deliverables directly from a particular Supplier without conducting a Competitive Process when an Invitational Competition or an Open Competition would normally be required; or
- (b) soliciting Bids from a limited number of Suppliers when an Invitational Competition or an Open Competition would normally be required, unless an open pre-qualification process was conducted through an Open Competition.

17.2 The City may only conduct a Non-Standard Procurement if authorized in accordance with the Authorization Schedule attached as Schedule C.

17.3 A Non-Standard Procurement may only be authorized in the following circumstances:

- (a) where an Open Competition conducted for the required Deliverables has not resulted in the receipt of any valid Bids;
- (b) the Procurement is for:
 - (i) goods intended for resale to the public;
 - (ii) goods purchased on a commodity market; or
 - (iii) social and health services;
- (c) where the required Deliverables can only be provided by a particular Supplier and no alternative or substitute exists because:
 - (i) competition is absent for technical reasons;
 - (ii) the need to protect patent, copyrights or other exclusive rights; or
 - (iii) the required Deliverables are a work of art;
- (d) the Procurement is for provision of additional Deliverables by the original Supplier that were not included in the initial Procurement if a change of Supplier for such additional Deliverables:
 - (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
 - (ii) would cause significant inconvenience or substantial duplication of

- costs for the City;
- (e) the Procurement is for goods or consulting services regarding matters of a confidential or privileged nature and the disclosure of those matters through a Competitive Process could reasonably be expected to compromise the confidentiality, resulting in the waiver of privilege, cause economic disruption, or be contrary to the public interest;
 - (f) the Procurement is for:
 - (i) an innovative prototype or a first good or service to be developed in the course of and for a particular Contract for research, experiment, study or original development, but not for any subsequent Procurements;
 - (ii) goods available under exceptionally advantageous circumstances that only arise in the very short term, such as liquidation, bankruptcy or receivership; or
 - (iii) a Contract to be awarded to the winner of a design contest and the design contest was organized in a fair and transparent manner and was advertised by publicly posted notice and participants were judged by an independent jury; or
 - (g) the Procurement is exempt from the requirements to conduct an Open Competition under all applicable trade treaties and it is in the best interests of the City to proceed with a Non-Standard Procurement.

18. Emergency Procurements

- 18.1 Notwithstanding any other provisions of this By-law, where an emergency exists, a Commissioner, or his or her Delegate, may authorize an employee to Procure required Deliverables in an expedited manner.
- 18.2 For the purposes of this By-law, an emergency exists when an unforeseeable situation or event occurs that is a threat to any of the following:
 - (a) public health or safety;
 - (b) the maintenance of essential services;
 - (c) the welfare of persons and wildlife, including species at risk; or
 - (d) the security of the City's interests, including public property.
- 18.3 Situations of urgency resulting from the failure to properly plan for a Procurement do not constitute an emergency.
- 18.4 After authorizing an expedited Procurement in an emergency, the Commissioner shall promptly report to Procurement Services, in writing, to provide the details of

the expedited Procurement, including a description of how the Deliverables were Procured, the reasons the Procurement of the Deliverables were required to address the emergency, and the reason why the expedited Procurement was required.

19. Delegated Approval Authorities

- 19.1 The Authorization Schedule attached as Schedule C sets out the authorities for:
- (a) initiating a Procurement;
 - (b) conducting a Procurement process and approving the award of a Contract;
 - (c) issuing Purchase Orders; and
 - (d) approving Contract Amendments.
- 19.2 All Procurements must be authorized in accordance with the Authorization Schedule attached as Schedule C.
- 19.3 Before the supply of the Deliverables, a Contract must be established by the signing of an Agreement, as reviewed and approved by Legal Services, or the issuance of a Purchase Order.
- 19.4 Where the Procurement Value exceeds \$100,000, an Agreement is required. If the Procurement Value does not exceed \$100,000, an Agreement may be required if determined by Procurement Services or Legal Services to be required in order to protect the City's interests.

20. Council Approval

- 20.1 Formal approval of a Budget by Council constitutes financial approval to initiate Procurements, subject to the requirements of this By-law, and any scheduling or priority considerations determined necessary by Council or the City Treasurer.
- 20.2 Prior to the passing of the annual operating Budget, each Department will be allowed an interim appropriation of fifty percent (50%) of the previous year's operating Budget, and such interim appropriation will be deemed to be for routine operating and recurring expenditures or statutory purposes unless otherwise directed by Council.
- 20.3 A Contract may not be awarded to a Supplier without prior approval by Council in any of the following circumstances:
- (a) Council approval is required in accordance with the Authorization Schedule attached as Schedule C;

- (b) any of the conditions of Approval Authority, as set out in the Authorization Schedule attached as Schedule C, are not met;
- (c) there is applicable legislation or orders of government or granting agencies which require Council approval; or
- (d) there is an irregularity or unresolved challenge related to the Procurement process and, in the opinion of the City Treasurer, in consultation with Procurement Services and Legal Services, the award of the Contract is likely to expose the City to significant legal, financial or reputational risk.

21. Reporting Requirements

- 21.1 The City Treasurer shall prepare a monthly information report to Council which details:
- (a) all Contracts with a Contract Value exceeding \$100,000 that were awarded pursuant to an Approval Authority; and
 - (b) the circumstances of any emergency Procurement.

22. Supplier Relations and Contract Management

Debriefings

- 22.1 Where the City has conducted an Open Competition, Suppliers may request a debriefing from the City.
- 22.2 The purpose of a debriefing is to assist the Supplier to understand how it may improve its future Bids.
- 22.3 The City will not discuss or disclose information about other Bids or other Suppliers during a debriefing.

Procurement Protests

- 22.4 The purpose of the Procurement Protest process is to provide Suppliers with an opportunity to communicate concerns about Procurement processes and to assist the City in identifying opportunities for improvement in its future Procurement activities.
- 22.5 A Supplier may make a Procurement Protest by submitting a request for review to Procurement Services, provided that:
- (a) it has first requested and attended a debriefing related to the Procurement process;
 - (b) it has not commenced legal proceedings against the City related to the Procurement process;

- (c) it submits a request for review of the Procurement process to Procurement Services within twenty Business Days of the City's formal announcement of the outcome of the Procurement process; and
 - (d) its request for review includes the following:
 - (i) a clear statement as to which Procurement process the Supplier wishes to be reviewed;
 - (ii) a clear and specific explanation, including supporting documentation, of the Supplier's concerns with the Procurement process;
 - (iii) the Supplier's contact information, including name, telephone number and email address.
- 22.6 The Procurement Review Panel will meet to consider the Supplier's request for review and any relevant documents and information submitted by Procurement Services.
- 22.7 Upon making its determination, the Procurement Review Panel will issue a written response to the Supplier indicating its proposed resolution to the matter, if any, and indicating any changes that will be made to the City's policies and practices to help prevent similar issues arising in future Procurement processes. All such responses from the Procurement Review Panel to a Supplier will be on a "without prejudice" basis. The Procurement Review Panel will not disclose information about other Bids or other Suppliers in its response to a Supplier.
- 22.8 If the Supplier is not satisfied with the response of the Procurement Review Panel, the Supplier may consider its other options, including challenges under the applicable trade treaties or governing laws.
- 22.9 The Procurement Protest process will not resolve disputes over facts or legal rights and obligations.

Contract Management and Supplier Performance

- 22.10 The City will manage Contracts and the performance of Suppliers under such Contracts in accordance with the purposes, goals and objectives of this By-law.

Contract Options and Amendments

- 22.11 During the course of a Contract, work may arise that was anticipated during the Procurement planning process. Contract Options that are part of the original value of the contract may be approved if it was explicitly defined in the initial solicitation document.

- 22.12 During the course of a Contract, expanded work may arise that could not be anticipated during the procurement planning process. Contract Amendments for adjustments to the value of the Contract may be approved if the adjustment is for work that is considered part of the Contract scope.
- 22.13 Contract Amendments must not be used to circumvent the need to Procure additional Deliverables through a Competitive Process or be used to expand a Contract beyond the scope contemplated as part of the original Procurement process and Contract award.
- 22.14 Contract scope changes may only be authorized in the Non-Standard Procurement circumstances set out in s.17.3 of this By-law.
- 22.15 Contract Options and Contract Amendments must be authorized in accordance with the Authorization Schedule attached as Schedule C.

23. Supplier Suspension

- 23.1 The City may suspend Suppliers from participating in its future Procurement processes for prescribed periods to protect the public or the City's interests.
- 23.2 The Procurement Review Panel is Delegated authority to suspend a Supplier from participating in the City's future Procurement processes. A decision to suspend a Supplier will be based on evidence and will be made in accordance with the Supplier Suspension Protocol attached as Schedule E.

24. Supplier Information

- 24.1 The City will retain Bids and other information received in response to Solicitation Documents for inspection by the City's auditors, Legal Services, and other City employees, as appropriate, in accordance with the Records Retention By-Law.
- 24.2 The City will disclose information contained in a Bid or Contract in accordance with the provisions of *MFIPPA*, any other applicable legislation, or otherwise as required by law.
- 24.3 If a Bidder considers any part of its Bid proprietary or confidential, the Bidder shall clearly mark such a page or section of its Bid as confidential in order to assist the City in making a determination on disclosure if a request is made under *MIFPPA*.

25. Procurement Records

- 25.1 The Clerk, in consultation with Procurement Services, shall ensure that the retention, maintenance, disposal, release and management of all records

relating to Procurements are in accordance with the Records Retention By-Law, *MFIPPA*, and the City's policies and procedures on document management and access to information.

26. Unsolicited Proposals

- 26.1 Any Procurement activity resulting from the receipt of an unsolicited proposal must be referred to Procurement Services and must comply with the provisions of this By-law.

27. Revenue and Disposal of Surplus Goods

- 27.1 Where a Commissioner determines that goods owned by the City are surplus, the Commissioner shall dispose of the surplus goods in accordance with the City's best interest.

Given Third Reading and Passed October 4, 2022

Schedules A, B, C, D and E attached

Schedule A – Definitions

For the purposes of this By-Law:

“Agreement” means a formal Signed Agreement evidencing a Contract between the City and a Supplier, and includes any necessary ancillary documents and Agreements, as reviewed and approved by Legal Services;

“Approval Authority” means the authority Delegated by this By-law to a City officer or employee to initiate a Procurement, conduct a Procurement process, approve the award of a Contract, issue a Purchase Order, or approve a Contract Amendment, subject to the terms and conditions specified in this By-law;

“Bid” means a submission in response to a Solicitation Document, and includes proposals, quotations, or responses;

“Bidder” means a Supplier that submits a Bid, and includes proponents and respondents;

“Budget” means a Budget approved by Council, in an annual Budget document or by specific Council resolution to acquire a Deliverable, including pre-commitments and any subsequent change to such a Budget either by Council or by Delegated authority;

“Business Day” means any day other than a Saturday, Sunday or a day on which the City’s administrative offices are closed;

“Chief Administrative Officer” means the person appointed pursuant to the *Municipal Act* responsible for exercising general control and management of the affairs of the City to ensure the efficient and effective operation of the City, and includes his or her Delegate;

“City” means the Corporation of the City of Kingston;

“City Treasurer” means the person appointed pursuant to the *Municipal Act* to handle all of the financial affairs of the City on behalf of and in the manner directed by Council and includes his or her Delegate.

“Clerk” means the person appointed pursuant to the *Municipal Act* to perform the duties of a Clerk required or assigned under the *Municipal Act*, is a Director and includes his or her Delegate;

“Commissioner” means a position as defined by the City’s organizational chart and a member of the City’s corporate management team, and includes his or her Delegate;

“Competitive Process” means the Solicitation of Bids through more than one Supplier;

“Contract” means a commitment by the City for the Procurement of Deliverables from a Supplier, which may be evidenced by an Agreement or a Purchase Order;

“Contract Administrator” means the City employee assigned to the management of a Contract;

“Contract Amendment” means a change to an existing Contract, including an extension, renewal or change in scope of the Contract not provided for in the Contract, but does not include the exercise of a Contract Option;

“Contract Option” means authority in an existing Contract for the City to extend the initial term of the Contract, renew the Contract, or to purchase additional Deliverables under the Contract, or any combination thereof;

“Contract Value” means the estimated maximum total value of the initial term of the Contract, including all estimated costs to the City, but not including the value or costs of any Contract Options, less applicable rebates or discounts, and exclusive of sales taxes;

“Cooperative Purchasing” means City participation in a cooperative or joint purchasing initiative with other Public Bodies or participation as a member of a Public Body buying group which administers Procurements for its members;

“Council” means the City Council;

“Deliverables” means any goods, services or construction, or a combination thereof;

“Department” means a Department of the City;

“Delegate” means a person Delegated by a person identified in this By-law as having certain Approval Authority;

“Director” means the position as defined by the City’s organizational chart, and includes his or her Delegate;

“Electronic Commerce Act” means the *Electronic Commerce Act, 2000*, S.O. 2000, c. 17;

“Environmental Procurement” is aimed at maximizing environmental value from suppliers by adding an environmental consideration to the evaluation process.

“Invitational Competition” means a Competitive Process in which the City issues an invitation to submit Bids to at least three Suppliers;

“Legal Services” means the City’s Legal Services Department;

“Litigation” includes civil actions, applications, arbitrations, or other judicial, quasi-judicial or administrative proceedings;

“Low-Value Procurement” means any Procurement of Deliverables with a Procurement Value that does not exceed \$15,000, but does not include Procurements made through an existing Standing Offer or Qualified Supplier Roster;

“Manager” means a position as defined by the City’s organizational chart, and includes his or her Delegate;

“Master Framework Agreement” means a master Agreement entered into between the City and a pre-qualified Supplier for the purposes of establishing a Qualified Supplier Roster or master Agreement entered into between the City and an entity or entities conducting a Procurement process for the purposes of participating in Cooperative Purchasing;

“MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56;

“Municipal Act” means the *Municipal Act, 2001*, S.O. 2001, c. 25;

“Non-Standard Procurement” means the Procurement of Deliverables through a process other than the standard method required for the type and value of the Deliverables;

“Open Competition” means the solicitation of Bids through a publicly posted Solicitation Document;

“Procurement” means the acquisition of Deliverables by purchase, rental or lease, and **“Procure”** has a corresponding meaning;

“Procurement Protocols” means the City’s protocols and procedures, as developed and maintained by Procurement Services, to direct the City’s Procurement activities in accordance with this By-law;

“Procurement Protest” means a formal request for review submitted by a Supplier relating to the Supplier’s concerns with a specific Procurement process;

“Procurement Review Panel” means the panel established by the City under this By-law for the purposes of considering and making decisions and determinations on Procurement-related matters;

“Procurement Services” means the Manager of Procurement or Delegate;

“Procurement Value” means the estimated maximum total value of the Deliverables being Procured over the term of the Contract, taking into account all forms of remuneration;

“Public Body” means a government entity, a broader public sector entity, or a corporation or entity owned or controlled by the City, another government entity, or a broader public sector entity;

“Purchase Order” means the City’s written document issued by a duly authorized employee of the City to a Supplier formalizing all the terms and conditions of the acquisition and supply of the Deliverables identified on the face of the Purchase Order;

“Qualified Supplier Roster” means a list of Suppliers that have been pre-qualified to perform discrete work assignments involving the supply of a particular type of Deliverable and will be eligible to participate in Roster Competitions, as and when the Deliverables are required by the City;

“Records Retention By-Law” means the City’s By-law Number 2020-8, a By-law to Adopt the Records Retention Schedule for the City of Kingston, or a successor by-law;

“Request for Information” means a request to Suppliers for market information which does not include a commitment to Procure or an expectation to form a Contract;

“Roster Competition” means a competition between Suppliers that have been included on a Qualified Supplier Roster for the selection of a Supplier to perform a discrete work assignment involving the supply of a particular type of Deliverable;

“Signature” includes an electronic Signature, as defined in the *Electronic Commerce Act*, and to **“Sign”** includes to Sign by way of electronic Signature, provided that the electronic Signature complies with all requirements and standards of the *Electronic Commerce Act*, the City’s information technology standards, and the City’s requirements as to method and reliability of electronic Signatures;

“Social Procurement” is aimed at maximizing social value from Suppliers by adding social consideration to the evaluation process.

“Solicitation Document” means the document issued by the City to solicit Bids from Bidders;

“Standard Procurement” means Procurement in accordance with the Standard Procurement method for the type and value of the Deliverables, as determined in accordance with this By-law;

“Standing Offer” means a written offer from a pre-approved Supplier to supply

Deliverables to the City, upon request, through the use of an ordering process during a particular period of time, at a predetermined price or discount, generally within a pre-defined dollar limit;

“Supplier” means a person carrying on the business of supplying Deliverables;

“Supplier Code of Conduct” means the Supplier Code of Conduct attached as Schedule D to this By-law; and

“Sustainable Procurement” is aimed at maximizing value for money on a lifecycle basis that not only benefits the Procuring organization but the society at large by considering social, environmental, and economical factors in the evaluation process.

Schedule B – Exclusions

1. Excluded Acquisitions and Expenditures

- 1.1 This By-law does not apply to Contracts or Agreements for the sale, purchase, lease or license of real property.
- 1.2 This By-law does not apply to Contracts or Agreements relating to hiring City employees or City employee compensation or reimbursement of City employee expenses.
- 1.3 This By-law does not apply to the acquisition of the following Deliverables:
 - (a) Services provided by licensed lawyers or notaries;
 - (b) Services of expert witnesses or factual witnesses to be used in Litigation;
 - (c) Services provided by medical professionals;
 - (d) Services provided by entertainers, producers or partners for theatre or special events;
 - (f) Selling of sponsorships or advertising opportunities; and
 - (g) Conferences, conventions, courses, seminars or other employee training or professional development.
- 1.4 This By-law does not apply to the payment of the City's general expenses, such as:
 - (a) Workplace Safety and Insurance Board payments;
 - (b) Medical and dental fees;
 - (c) Debenture payments;
 - (d) HST remittances;
 - (e) Grants to agencies;
 - (f) Damage claims;
 - (g) Legal settlements;
 - (h) Arbitration awards;
 - (i) Witness fees;
 - (j) Honorariums;
 - (k) Petty cash replenishment;
 - (l) Tax and payroll remittances;

- (m) Utility services;
- (n) Payments to government bodies, Utilities Kingston, or funding to local boards or agencies provided for in a Budget; and
- (o) Funding to social services providers, including childcare providers and social housing providers.

Schedule C – Authorization Schedule

1. Standard Procurement

1.1 Table of Authority

The following delegations of Approval Authorities apply to Standard Procurements:

Procurement Method	Procurement Value	Approval Authority
Low-Value Procurement	Does not exceed \$15,000	Manager or as Delegated
Order from Standing Offer	Any value	Manager or as Delegated by the Director
Invitational Competition	Does not exceed \$100,000	Manager or as Delegated by the Director
Open Competition	Does not exceed \$500,000	Director, or as Delegated by the Commissioner, and Procurement Services
Open Competition	Exceeds \$500,000	Commissioner and Procurement Services
Roster Competition	Does not exceed \$100,000	Manager, or as Delegated by the Director, and Procurement Services
Roster Competition	Exceeds \$100,000	Director, or as Delegated by the Commissioner, and Procurement Services

1.2 Delegated Approval Authority

The delegation of Approval Authority includes the authority to:

- (a) initiate the Procurement process in accordance with this By-law;
- (b) approve the Solicitation Document(s) for a Competitive Process;
- (c) approve the selection of pre-qualified Bidders in a multi-stage Open Competition; and
- (d) approve the award of the Contract.

1.3 Conditions of Delegated Authority to Procure

Delegated Approval Authority to Procure is subject to the following conditions:

- (a) No Procurement may be initiated unless sufficient funding for the Procurement Value is available in a Budget.
- (b) The total length of the Contract term, including any Contract Options, must not exceed five (5) years.
- (c) No award of Contract may be approved unless:
 - sufficient funding is available in an approved Budget;
 - the selection of the Standard Procurement method is determined in accordance with this By-law;
 - the Procurement process was conducted in accordance with this By-law;
 - in the case of a Competitive Process, the Contract is awarded in accordance with the Solicitation Document.

Where an Approval Authority to Procure is Delegated to multiple individuals, all such individuals must be satisfied that the above conditions of Delegated Approval Authority are met.

If any of the applicable conditions of Delegated Approval Authority are not met, Council approval must be obtained before proceeding with any Procurement activity.

2. Non-Standard Procurement

2.1 Table of Authority

The following delegations of Approval Authority apply to Non-Standard Procurements:

Procurement Value	Approval Authority
Does not exceed \$100,000	Director or as delegated by the Commissioner
Does not exceed \$500,000	Commissioner and Procurement Services
Exceeds \$500,000	Council

2.2 Authorization Process

- (a) The Director reviews and approves a form requesting a Non-Standard Procurement;
- (b) If the Procurement Value does not exceed \$100,000 the Director may authorize the Non-Standard Procurement and, if so approved, shall send the form requesting a Non-Standard Procurement to Procurement Services;
- (c) If the Procurement Value is between \$100,000 and \$500,000, the Director submits the form requesting a Non-Standard Procurement to Procurement Services and the Commissioner for review and approval;
- (d) If the Procurement Value exceeds \$500,000, the Commissioner shall submit a report to Council seeking authority to proceed with the Non-Standard Procurement; and
- (e) No Non-Standard Procurement may be approved and no Contract may be awarded unless sufficient funding is available in a Budget.

3. Contract Issuance or Execution

3.1 Authorized Signatories

Procurement Services is Delegated Approval Authority to issue Purchase Orders on behalf of the City.

Agreements may only be Signed on behalf of the City by the Mayor and the Clerk unless Council has expressly Delegated the authority to Sign the Agreement to another officer or employee of the City.

3.2 Review and Signing Process

- (a) In accordance with the delegation of Approval Authority, the authorized individual(s) shall:
 - confirm all pre-conditions of award of the Contract, including those pre-conditions set out in this By-law, the Purchasing Procedures, the Solicitation Document, and the Contract, are met;
 - approve the award of the Contract;
 - assemble and provide to Legal Services all relevant documents; and
 - draft and provide to Legal Services a written memorandum

confirming the approvals required under this By-law.

- (b) If the Contract is to be evidenced by an Agreement, Legal Services will review the Agreement, and if it approves, will send the Agreement to the authorized Signatories for Signature. No Agreement may be Signed by the City unless it has been reviewed and approved by Legal Services.
- (c) If the Contract is evidenced by a Purchase Order only, Procurement Services will issue the Purchase Order.

4. Contract Options and Amendments

4.1 Contract Options

Where an existing Contract includes Contract Options, the Director may exercise a Contract Option, provided that:

- (a) the Contract was awarded in accordance with this By-law based on the Procurement Value;
- (b) exercise of the Contract Option is, in the opinion of the Commissioner, in the best interests of the City; and
- (c) sufficient funding for the exercise of the Contract Option is available in an approved Budget.

If the above conditions of Delegated Approval Authority are not met, Council approval must be obtained for the authority to exercise the Contract Option.

4.2 Contract Change Orders

Where any Contract has been authorized pursuant to this By-law, disbursement of additional funds required to complete works that are necessary as part of the original scope of the Contract must be approved in accordance with the Standard Procurement Table of Authority set out in Part 1 of this Schedule, provided that the additional funds do not expand the scope of work contemplated under the original Contract.

Where sufficient contingency funding is not available in a Budget, Council approval must be obtained for the additional expenditure.

4.3 Contract Scope Changes

Any expansion or extension of a Contract to Procure Deliverables that were not contemplated in the original Procurement is considered a Non-Standard Procurement and must be approved in accordance with the Non-Standard

Procurement Table of Authority set out in Part 2 of this Schedule and may only be authorized in the Non-Standard Procurement circumstances set out in s.17.3 of this By-law.

Where sufficient funding is not available in a Budget, Council approval must be obtained for the additional expenditure.

Schedule D – Supplier Code of Conduct

The City requires its Suppliers to act with integrity and conduct business in an ethical manner. The City may refuse to do business with any Supplier that has engaged in illegal or unethical bidding practices, has an actual or potential Conflict of Interest or an unfair advantage or fails to adhere to ethical business practices.

Suppliers are responsible for ensuring that any employees, representatives, agents or subcontractors acting on their behalf conduct themselves in accordance with this Code of Conduct. The City may require the immediate removal and replacement of any individual or entity acting on behalf of a Supplier that conducts themselves in a manner inconsistent with this Code of Conduct. The City may refuse to do business with any Supplier that is unwilling or unable to comply with such requirement.

(a) Illegal or Unethical Bidding Practices

Illegal or unethical bidding practices include:

- Bid-rigging, price-fixing, bribery or collusion or other behaviours or practices prohibited by federal or provincial statutes;
- offering gifts or favours to the City's officers, employees, appointed or elected officials or any other representative of the City;
- engaging in any prohibited communications during a Procurement process;
- submitting inaccurate or misleading information in a Procurement process; and
- engaging in any other activity that compromises the City's ability to run a fair Procurement process.

The City may report any suspected cases of collusion, Bid-rigging or other offenses under the *Competition Act*, R.S.C., 1985, c. C-34, to the Competition Bureau or to other relevant authorities.

(b) Conflicts of Interest

All Suppliers participating in a Procurement process shall declare any perceived, possible or actual Conflicts of Interest.

The term "**Conflict of Interest**," when applied to Suppliers, includes any situation or circumstance where:

- in the context of a Procurement process, the Supplier has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:
 - (i) having, or having access to, confidential information of the City that

- is not available to other Suppliers;
- (ii) having been involved in the development of the Solicitation Document, including having provided advice or assistance in the development of the Solicitation Document;
- (iii) receiving advice or assistance in the preparation of its Bid from any individual or entity that was involved in the development of the Solicitation Document;
- (iv) communicating with any person with a view to influencing preferred treatment in the Procurement process (including but not limited to the lobbying of decision-makers involved in the Procurement process); or
- (v) engaging in conduct that compromises, or could be seen to compromise, the integrity of an open and competitive Procurement process or render that process non-competitive or unfair; or
- in the context of performance under a potential Contract, the Supplier's other commitments, relationships or financial interests:
 - (i) could, or could be seen to, exercise improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
 - (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

Where a Supplier is retained to participate in the development of a Solicitation Document or the specifications for inclusion in a Solicitation Document, that Supplier will not be allowed to respond, directly or indirectly, to that Solicitation Document.

(c) Ethical Business Practices

In providing Deliverables to the City, Suppliers shall adhere to ethical business practices, including but not limited to:

- performing all Contracts in a professional and competent manner and in accordance with the terms and conditions of the Contract and the duty of honest performance;
- complying with all applicable laws, including safety and labour codes (both domestic and international, as may be applicable); and
- providing workplaces that are free from harassment and discrimination.

Schedule E – Supplier Suspension Protocol

1. Purpose and Interpretation

The purpose of this protocol is to set out the process for suspending Suppliers from participation in the City’s Procurement processes. Defined terms used in this protocol have the meaning assigned in the City’s Procurement By-Law, Schedule A – Definitions.

2. Application

In order to ensure that the City is receiving quality Deliverables and value for public money, and is dealing with Suppliers that conduct business in a professional and ethical manner, the City may suspend Suppliers from participating in its Procurement processes for prescribed periods.

A decision to suspend a Supplier must be made in accordance with this protocol and the Supplier Code of Conduct, attached to the City’s Procurement By-Law as Exhibit C, and must be supported by evidence and based on the reasons and factors set out below.

Suppliers are responsible for any employees, representatives, agents or subcontractors that are acting on their behalf and all references to the actions or conduct of the Supplier under this protocol include the actions of any individual or entity acting on behalf of the Supplier.

3. Reasons for Suspension

The City may suspend Suppliers from participating in future Procurement processes for the following reasons:

Crimes or Offences

- (a) Where a Supplier, or any person affiliated or associated with the Supplier, has been convicted of a serious crime or other serious offence, including bid-rigging, price-fixing or collusion, fraud or other statutory offenses;

False Declarations

- (b) Where a Supplier includes false or misleading information in a Bid;
- (c) Where a Supplier failed to disclose a Conflict of Interest in connection with a Procurement process or during the performance of a Contract with the City, and the City subsequently discovered that such a Conflict of Interest existed;

Poor Performance

- (d) Where the Supplier does not perform adequately under a Contract with the City, the City may suspend that Supplier in any of the following circumstances:
- a. The deficiencies in performance were significant or persistent;
 - b. The Contract was terminated for performance issues prior to expiry;
 - c. There were unrectified performance issues on a Contract that resulted in extra costs to the City;
 - d. The Deliverables provided were defective or deficient, and were not replaced or repaired, or required multiple repairs; or
 - e. The City initiated Litigation against the Supplier in connection with performance or non-performance of the Supplier's contractual obligations.

Professional Misconduct or Lack of Commercial Integrity

- (e) Where the Supplier has committed professional misconduct or acts or omissions that adversely affect the commercial integrity of the Supplier, including:
- a. unethical bidding practices, such as inappropriate offers of gifts to the City's officials, officers, employees or agents, and inappropriate in-process lobbying or prohibited communications during a Procurement process;
 - b. failing to perform Contracts in a professional and competent manner in accordance with the duty of honest performance and all applicable laws, including safety and labour codes; and
 - c. engaging in litigious conduct or bringing frivolous or vexatious Litigation related to the City's Procurement processes or Contracts, including unreasonable cost or expense claims or unsubstantiated allegations impugning the integrity of the City, its officers, or its employees in relation to a Procurement process or Contract.

4. Process for Suspension

(a) Suspension Recommendation Report

A recommendation for suspension must be supported by a written Suspension Recommendation Report which recommends the length and scope of the suspension, the reasons the recommendation for suspension, and any supporting evidence.

The Suspension Recommendation Report will be prepared by the Contract Administrator with the support of Procurement Services.

(b) Length and Scope of Suspensions

The length of a suspension may not exceed ten (10) years.

The scope of the suspension can be either a blanket suspension for all Procurement processes or a suspension limited to Procurement processes for specific Deliverables.

The scope of the suspension can apply to both corporate entities as well as individuals.

(c) Review and Recommendation by Procurement Review Panel

The Suspension Recommendation Report will be reviewed and approved by the City's Procurement Review Panel ("PRP"). All decisions to suspend a Supplier must be approved in accordance with the City's Procurement By-law.

The PRP may seek any additional information it requires and may consult with other staff, legal counsel, or other advisors, as necessary.

(d) Supplier Notice and Opportunity to Respond

Procurement Services will send a notice of the decision to the Supplier, by way of a notification letter, confirming the decision to recommend suspension. The notice of decision will advise the Supplier of its opportunity to respond to the recommendation for suspension by sending a written submission to Procurement Services within 10 Business Days of the date of the notice.

(e) Notice of the decision to recommend suspension

The PRP has the authority to reject, modify and approve all recommendations for suspension. The Supplier must be notified, in writing, of the notice of the decision to recommend suspension made by the PRP. The notification letter must contain:

- the length of the suspension period and the scope of the suspension;
- full details as to the reasons for the suspension, including copies of any documents or correspondence to support such a suspension; and
- notice of the Supplier's right to apply for reinstatement within the prescribed period and the process for requesting such a reinstatement.

5. Supplier's Written Submission

The Supplier will have the ability to respond to the notice of the decision to recommend suspension. The Procurement Review Panel will consider the Supplier's written submission, the original Suspension Recommendation Report, and any other relevant documentation to determine if the recommended suspension should be rejected, modified or approved.

6. Final Notice of the Decision to Supplier

Procurement Services will send a final notice of the decision to the Supplier confirming the decision to recommend or withdraw the suspension; the notice will include the information noted in section 4(e) above.

7. Application for Reinstatement

A suspended Supplier may apply for reinstatement upon the completion of half of the original suspension period. For example, if the original suspension period was two years, the Supplier may apply for reinstatement after one year.

In order to apply for reinstatement, the Supplier must submit a written case for reinstatement, including supporting documentation if necessary, that provides reasons why the original reason for the suspension would no longer prove a risk for the City.

- Applications for reinstatement are to be reviewed by the PRP. If the PRP determines that allowing the Supplier the opportunity to participate in the City's Procurement processes would no longer expose the City to risk, then the application for reinstatement may be approved on such terms as the PRP deems appropriate.
- The Supplier must be notified, in writing, of the final reinstatement decision made by the PRP.

8. Suspended Supplier List

Procurement Services shall maintain an up-to-date list of all suspended Suppliers. Any Supplier that is owned or controlled by the same individual(s) that owned or controlled a suspended Supplier at the time it was suspended is also considered suspended.