

# THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE

## BY-LAW NO. 67/2022

*Being a By-law to Adopt a New Procurement Policy for the Corporation of the Municipality of Port Hope and Repeal By-law 20/2018*

WHEREAS the Municipal Act, 2001, S.O. 2001, Chapter 25, Section 270(1) provides that Municipalities adopt policies with respect to their procurement of goods and services and sets out requirements for such policies;

AND WHEREAS no purchase of goods, services and construction shall be authorized unless it is in compliance with the Procurement Policy. The Municipality reserves the right to not accept any goods, services and construction that are obtained without following the provisions of the Procurement Policy;

AND WHEREAS this Policy establishes the authority and sets out the methods by which the Municipality of Port Hope shall purchase goods and services and dispose of surplus goods;

AND WHEREAS Council at their Committee of the Whole meeting held on September 6, 2022 considered Staff Report FS-22-22 regarding Revised Procurement Policy;

AND WHEREAS the new Procurement Policy provides foundational principles from which the corporation can procure items in an open, fair, and transparent way;

IT IS THEREFORE ENACTED AS A BY-LAW OF THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE AS FOLLOWS:

1. THAT the Procurement Policy attached hereto as Schedule "A" is hereby authorized and approved.
2. That By-law 20/2018 is hereby repealed.
3. THAT this By-law shall come into force and effect on the date of passing.

READ a FIRST, SECOND and THIRD TIME and FINALLY PASSED this 20<sup>th</sup> day of September, 2022.

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Bob Sanderson, Mayor

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Brian Gilmer, Clerk

<b>Finance Policy</b>	Section: Procurement
Policy: <b>Procurement Policy</b>	Effective: Sept 20, 2022
Application: Council, Local Boards, Staff and Vendors	Approved: Sept 20, 2022
Exclusion(s): N/A	By-law: 67/2022
Supersedes: By-law 20/2018	Resolution: N/A

## Policy Statement

Pursuant to Section 270(1) of the Municipal Act, the Municipality is required to adopt policies with respect to the procurement of goods and services. The purpose and objective of this Policy is to define the approach to be used by the Municipality for the procurement of goods and services, including the nature of procurement activities to be undertaken and the levels of authority assigned to Municipal staff and Council for the initiation and approval of procurements.

## Purpose

The purpose and objective of this Policy is to ensure the Municipality acquires the right goods and services when needed while achieving best value through a transparent, fair and competitive process. In doing so, the Municipality's procurement practices shall, to the greatest extent possible:

- a. Obtain the best value for the Municipality when procuring goods, services and construction
- b. Acquire the necessary quality and quantity of goods, services and/or construction in an efficient, timely and cost-effective manner while maintaining the controls necessary over the use of public funds
- c. Minimize environmental impacts. Wherever possible utilize ecofriendly, cost-saving measures to benefit not only the Municipality but the environment as well
- d. Encourage the most open, transparent competitive bidding practical for the acquisition and disposal of goods, services and construction, with the objective and equitable treatment of all vendors
- e. Encourage effective business planning such that goods, services and construction will only be acquired after consideration of needs, alternatives, timing and appropriate life cycle
- f. Coordinate with other organizations in co-operative purchasing arrangements, when the best interests of the Municipality are served
- g. Promote and incorporate, whenever possible, the requirements of the Ontarians with Disabilities Act, 2001 (ODA) and the Accessibility for Ontarians with Disabilities Act, 2005 (AODA), specifically Ontario Regulation 429-07 and Ontario Regulation 191-11.
- h. Comply with all applicable trade agreements, laws, legislation and regulations

**Scope**

This policy applies to all employees of the Municipality, Council Members, Suppliers, Vendors, and any other Third Party who may have an interest in the Procurement activities including the disposition of assets regarding the Municipality of Port Hope. This policy applies to all other Municipal bodies, including but not limited to local Boards and Committees, unless an exclusion has been specifically approved by Council.

## Definitions

**Municipal Act.** Municipal Act, 2011, S.O. 2001 c. 25

**Chief Administrative Officer (CAO).** The individual appointed as Chief Administrative Officer (or “CAO”) under the Municipal Act, 2001, Section 229. For other Municipal bodies, this shall be the most senior employee, e.g. Chief of Police.

**Contract.** Any formal or deliberate written agreement for the purchase of goods, services, equipment or construction including but not limited to Purchase Orders and contractual agreements that are used for the acquisition of goods and/or services for a specific requirement.

**Contract Number.** A number assigned by the Purchasing Coordinator or their delegate to procurement projects

**Council:** Elected by the residents of the Municipality of Port Hope, and includes two council representatives from the rural area, four council representatives from the urban area and one Mayor elected at large. For other Municipal bodies with a Board, this shall be the applicable Board, e.g. Port Hope Police Service Board

**Emergency.** An event or occurrence that the Chief Administrative Officer or their designate deem as an immediate threat to public health, the maintenance of essential Municipal services or the welfare and protection of persons, property or the environment, and the event or occurrence necessitates the immediate need for goods or services to mitigate the emergency and time does not permit for a competitive procurement process.

**Proposal.** A sealed written offer from any company or individual in response to a publicly advertised invitation to provide goods or services to the Municipality where the requirements cannot be definitely specified and may be subject to further negotiation.

**Purchasing Coordinator.** The designated contact within the Municipality responsible for overall administration and management of procurement processes.

**Quotation.** An offer or submission received from a vendor, contractor or consultant in response to a request for Quotation.

**Signing Authority.** The authority given to specific Municipality employees to approve invoices up to a specific dollar threshold.

**Single Source Procurement.** A procurement made where there is more than one source of supply in the open market, but only one source is recommended due to predetermined and approved specifications.

**Sole Source Procurement.** A procurement made where goods or services are only available from one supplier.

**Standing Offer.** A written offer from a pre-approved Supplier to supply Deliverables to the Municipality, upon request, through the use of an ordering process during a particular period of time, at a predetermined price or discount, generally within a predefined dollar limit. The Standing Offer does not create a contractual commitment from either party for a defined volume of business.

**Tender.** A sealed written offer submitted on a Municipal Tender form by any company or individual in response to a publicly advertised invitation to supply stipulated goods, services or construction at a particular price, which may be subject to acceptance or rejection.

**Treasurer.** The individual appointed by Council as the Municipal Treasurer under the Municipal Act, 2001, Section 286. For other Municipal bodies, this shall be the most senior finance employee, e.g. Manager responsible for Finance function. In the absence of this role, the Municipal Treasurer or their designate retains this role for the purpose of this policy.

## **Procurement Policy**

### **A. General Provisions**

1. The Purchasing Coordinator is responsible for ensuring that the Purchasing Policies and Procedures approved by Council are understood and used consistently by all Municipal Departments. The Purchasing Coordinator shall also, according to the aforementioned policies, direct the purchasing function and act as a resource during all aspects of purchasing decision making including Contract management.
2. No purchase of goods, services and construction shall be authorized unless it is in compliance with this Policy. The Municipality reserves the right to not accept any goods, services and construction that are obtained without following the provisions of this Policy, and any invoices received may not be processed for payment.
3. Subdividing, splitting or otherwise structuring procurement requirements or Contracts in order to reduce the procurement value or in any way circumvent the requirements or intent of this Policy is not permitted.
4. The Purchasing Coordinator is responsible for maintaining procedures, protocols, templates and forms for use during the procurement process. From time to time, the Purchasing Coordinator and Treasurer are authorized to revise these items, and establish new administrative policies, direction and procedures.
5. Upon the recommendation of the Purchasing Coordinator, the Municipality may enter into Standing Offers for goods and/or services which will be required frequently or repetitively but where the exact quantity of goods and/or services required may not be precisely known or the time period during which the goods and/or services are to be delivered may not be precisely determined.
6. Upon the recommendation of the Purchasing Coordinator, the Municipality may participate in cooperative purchasing agreements with any legitimate organization to leverage buying power and reduce workload in Contract issuance and administration. If the Municipality enters into such an agreement they may adhere to the policies of the entity conducting the purchasing process, provided they comply in spirit with this policy.
7. Goods or services required by more than one department are considered to be common items. The procurement of common items may be coordinated by the Purchasing Coordinator. At the discretion of the Purchasing

Coordinator, the procurement of common items may be delegated to a department within the Municipality. All Municipal departments shall participate in common item procurements unless the Chief Administrative Officer approves an exclusion.

8. No purchase of goods and services associated with computer software, hardware and/or telecommunications equipment will be authorized without the completion of an appropriate review by the Municipality's information technology function.
9. Where the Municipality has conducted a competitive procurement process, unsuccessful bidders may request a debriefing to be conducted by the Purchasing Coordinator and department leads.
10. The Municipality shall preclude a respondent from bidding if such respondent has made a formal demand or otherwise put the Municipality on notice of a pending action or is involved in any actual litigation proceedings (excluding construction lien demands, notices or proceedings) by or against or otherwise involving the Municipality, until a final decision is rendered and for three years afterwards.
11. Any unsolicited bids must comply with the provisions of this Policy, including the requirement for a competitive procurement process.
12. Notwithstanding any assistance in the preparation of specifications by a consultant the specifications shall be and remain the property of The Municipality of Port Hope.
13. This policy applies to all Municipal bodies, unless an exclusion was specifically approved by Council. For application purposes, equivalent roles have been identified within the definition section of this policy.
14. Where Electronic Bid submission is indicated, all bids must be submitted using the E bidding process. Electronic bids sent in any manner other than the prescribed solution will be rejected as invalid unless otherwise indicated.
15. The Municipality may at its discretion enter into multi-year agreements when it is beneficial to do, such as securing pricing for a set period of years to avoid price increases.

## **B. Separation of the Role of Council and Operational Decision-Making**

1. In accordance with best practices in Municipal procurement, there is a need for a clear separation of political and administrative functions in relation to the Municipality's procurement of goods, services and construction. It is the role of Council to establish Policy and approve expenditures through the Municipality's budget process. Through this Policy, Council delegates authority to Municipal employees to incur expenditures in accordance with approved budgets through the procurement of goods, services and construction in accordance with the rules and requirements set out herein.
2. To avoid the potential appearance of bias or political influence in procurement Contract award decisions, members of Council will have no involvement in competitive procurement processes from the time those procurement processes have been initiated through the advertisement or issuance of the solicitation document until a Contract has been entered into with the successful bidder, except where Council is required to approve the Contract award in accordance with the provisions of this Policy.

## **C. Delegated Authorities**

1. Delegated authorities to commence a procurement, award a Contract and execute a legal agreement or issue a Contract Number evidencing a Contract are set out in the table below. A Contract must be established by evidence of a legal agreement and/or the issuance of a Purchase Order before the delivery of goods, services or construction commences.
2. The delegated procurement authorities under this Policy are conditional upon:
  - a. The availability of approved funding in an amount sufficient to cover the procurement value including the unrecoverable portion of HST; and
  - b. The procurement process being conducted in accordance with this Policy

	<b>Procurement Approach</b>	<b>Threshold (based on budgeted amount)</b>	<b>Approval Authority (based on actual cost)</b>
<b>Procurement of goods, services and construction</b>	Non-competitive	Less than \$25,000	Based on Signing Authority
	Invitational (three written Quotations)	\$25,000 to \$100,000	Based on Signing Authority and Purchasing Coordinator
	Open competition (request for	Greater than \$100,000	Based on Signing Authority, Purchasing



	Tender or request for Proposal)		Coordinator, Treasurer (or designate)
<b>Sole Source and Single Source procurements</b>		\$25,000 to \$100,000	Department Head, Purchasing Coordinator, Treasurer (or designate)
		Greater than \$100,000	Department Head, Purchasing Coordinator, Treasurer (or designate), CAO

3. The dollar figures set out in the above thresholds include the non-refundable portion of HST and any other applicable costs (e.g. freight, installation, licensing fees). For multi-year Contract awards, the thresholds are determined based on the total value of the Contract and not the annual cost.
4. Notwithstanding any other provisions of this Policy, Council approval is required for the following procurements:
  - a. Any Contract prescribed by statute to be made by Council
  - b. Any Contract requiring approval from the Ontario Land Tribunal
  - c. Any procurements that are not compliant with the provisions of the Policy
  - d. Any Contracts not previously approved by Council during the budget process for which staff have not identified sufficient funding from other sources
  - e. Any recommendations to amend the total value of a Contract where:
    - i. The amount of the amendment is equal to or more than the greater of 20% of original procurement value or \$50,000; and
    - ii. In the opinion of the Treasurer, funds are not available for the additional expenditure

#### **D. Low Value Procurements**

1. Procurements up to \$25,000 shall be considered low value procurements.
2. No solicitation of competitive Quotations is required for low value procurements. However, due diligence must still be used to ensure that the goods or services provided are purchased in a manner that demonstrates professionalism, seeks to secure the lowest possible price, provides the best value to the taxpayers.

**E. Invitational Procurements**

1. Procurements greater than \$25,000 but not exceeding \$100,000 that are not related to the procurement of exempt items or non-standard procurements are eligible to be completed through an invitational Quotational process.
2. All invitational procurements require the receipt of three Quotations. Where three Quotations are requested but not received, appropriate document shall be maintained on file to evidence the requests for Quotations.
3. All invitational procurements shall require the issuance of a Contract Number by the Purchasing Coordinator or their delegate.
4. When obtaining three quotes due diligence must be used to ensure that they are purchased in a manner that demonstrates professionalism, seeks to sure the lowest price possible, provides the best value to taxpayers.
5. Once the departments have selected the successful bidder, they will complete the necessary paperwork and submit to the Purchasing Coordinator who will, upon satisfactory review, issue an award letter

**F. Requests for Proposals**

1. Request for Proposal procedures shall be used for procurements in excess of \$100,000 that are not related to the procurement of exempt items or non-standard procurements where:
  - a. The requirement is best described in a general performance specification;
  - b. Innovation solutions are sought; and
  - c. To achieve best value, the award selection will be made on an evaluated point per item or other method involving a combination of mandatory and desirable requirements.
2. In certain circumstances, it is advantageous to conduct a pre-qualification process. In this process, Vendors respond to a request or an advertisement and submit an application to pre-qualify for the right to bid on a future project.
3. All requests for Proposals shall require the issuance of a Contract Number by the Purchasing Coordinator or their delegate.
4. The Purchasing Coordinator shall be the lead for the request for Proposal process and will have overall responsibility for coordinating the technical aspects of the request for Proposal process.

5. A selection committee will be formed with a minimum of three evaluators and be comprised of at least one representative from the department and the Purchasing Coordinator or their designate. The evaluators shall review all compliant Proposals against the established criteria, reach consensus on the final rating results, and ensure that the final rating results with supporting documents, are kept in the procurement file.
6. During the request for Proposal process all communication with the proponents shall be through the Municipality's Purchasing Coordinator or Bidding Platform.
7. The Municipality reserves the right in its absolute sole discretion to accept or reject any submission.
8. Once the departments have selected the successful bidder, they will complete the necessary paperwork and submit to the Purchasing Coordinator who will, upon satisfactory review, issue an award letter

#### **G. Requests for Tenders**

1. Request for Tender procedures shall be used for procurements in excess of \$100,000 that are not related to the procurement of exempt items or non-standard procurements where:
  - a. The requirement can be fully defined; and
  - b. Best value for the Municipality can be achieved by an award selection made on the basis of the lowest bid that meets all terms, conditions and specifications.
2. The Purchasing Coordinator shall be the lead for the request for Tender process and will have overall responsibility for coordinating the technical aspects of the request for Tender process, including arranging for the public disclosure of bid submissions at the date and time specified in the bid document.
3. The Municipality reserves the right in its absolute sole discretion to accept or reject any submission.
4. All requests for Tenders shall require the issuance of a Contract Number by the Purchasing Coordinator or their delegate.
5. Once the departments have selected the successful bidder, they will complete the necessary paperwork and submit to the Purchasing Coordinator who will, upon satisfactory review, issue an award letter

**H. Emergency Procurements**

1. In the event of an Emergency as defined by this Policy, the Chief Administrative Officer, Department Heads and their designates are authorized to enter into purchase agreements without the requirement for a formal competitive process.
2. Emergency procurements in excess of \$100,000 must be reported to Council at the next scheduled meeting following the Emergency.
3. The Department Head (or designate) responsible for the Emergency procurement is required to forward an appropriate purchase requestion and documents to the Purchasing Coordinator within five business days after the date of the purchase agreement.
4. All Emergency procurements shall require the issuance of a Contract Number by the Purchasing Coordinator or their delegate.

**I. Non-Standard Procurement**

1. A Sole Source Procurement may be conducted if the goods and/or services are available from only one supplier by reason of:
  - a. Statutory or market based monopoly;
  - b. Competition is precluded due to the application of any Act or legislation or because of the existence of patent rights, copyrights, license, technical secrets or controls of raw material;
  - c. The complete item, service, or system is unique to one supplier and no alternative or substitute exists
2. A Single Source Procurement may be conducted if the goods and/or services are available from more than one source, but there are valid and sufficient reasons for selecting one supplier in particular, including but not limited to the following:
  - a. An attempt to acquire the required goods and/or services by soliciting competitive bids has been made in good faith, but has failed to identify more than one willing and compliant supplier;
  - b. The confidential nature of the requirement is such that it would not be in the public interest to solicit competitive bids;
  - c. Construction, renovations, repairs, maintenance etc. in respect of a building leased by the Municipality may only be done by the lessor of the building, in accordance with a lease agreement;
  - d. There is a need for compatibility with goods and/or services previously acquired or the required goods and/or services will be additional to similar

- goods and/or services being supplied under an existing Contract (i.e. Contract extension or renewal);
- e. The required goods and/or services are to be supplied by a particular supplier(s) having special knowledge, skills, expertise or experience;
  - f. The goods are purchased under circumstances which are exceptionally advantageous to the Municipality, such as in the case of a bankruptcy or receivership;
  - g. It is advantageous to the Municipality to acquire the goods or services from a supplier pursuant to the procurement process conducted by another organization;
  - h. It is advantageous to the Municipality to acquire the goods or services directly from another public body or public service body;
  - i. Another organization is funding or substantially funding the acquisition and has determined the supplier, and the terms and conditions of the commitment into which the Municipality will enter are acceptable to the Municipality;
  - j. The acquisition is for a particular brand of goods or services that are intended solely for resale to the public and no other brand is desirable and the brand is not available from any other source; or.
  - k. Where due to abnormal market conditions, the goods, services or construction required are in short supply.
3. Where a Sole Source Procurement or Single Source Procurement is undertaken, the Department Head (or designate) responsible for the procurement, in conjunction with the Purchasing Coordinator, are required to document the rationale for the use of a non-standard procurement.
4. Shall require the issuance of a Contract Number by the Purchasing Coordinator or their delegate
5. Once the departments have selected the successful bidder they will complete the necessary paperwork and submit to the Procurement department and they will issue them an award letter

#### **J. Exempt Procurement**

1. This Policy does not apply to the acquisition of the goods, services and construction listed in Schedule A.

#### **K. Records Retention and Disclosure**

1. The maintenance, release, and management of all Procurement records must be in accordance with the Municipality's policies and procedures on document management and access to information.

2. Disclosure of information relating to the Municipality's procurement processes must be made in accordance with applicable procurement procedures and protocols and the Municipality's policies with respect to disclosure and protection of information in accordance with the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and the Personal Health Information Protection Act (PHIPA).

#### **L. Dispute Resolution**

1. Disputes shall be addressed by the Purchasing Coordinator on an as needed basis.

#### **M. Municipality's Code of Conduct and Conflict of Interest**

1. Municipal employees and Council members shall not use their authority or office for personal gain, and shall seek to uphold and enhance the standing of the Municipality by:
  - a. Maintaining a standard of integrity in all their business relationships both inside and outside the organization;
  - b. Fostering professional competence amongst those for whom they are responsible;
  - c. Optimizing the use of resources for which they are responsible so as to provide the maximum benefit to the Municipality;
  - d. Complying with the letter and spirit of:
    - i. The Municipal Conflict of Interest Act, R.S.O. 1990, c.M.50, as applicable;
    - ii. Relevant policies implemented by the Municipality, including but not limited to the Municipality's Code of Conduct;
    - iii. Relevant trade agreements;
    - iv. Existing contractual obligations; and
    - v. Other relevant legislation or regulation as may be applicable in the circumstances.
2. All participants in a procurement process, including external consultants or other service providers acting on the Municipality's behalf, must declare any perceived, possible or actual conflicts of interest.
3. No Municipal employees or Council member shall:
  - i. Purchase or offer to purchase, on behalf the Municipality, any goods or services except in accordance with this Policy.
  - ii. Bid on the Municipality's purchases of goods, services or construction.
  - iii. Purchase surplus assets except by public auction, or similar process, unless expressly authorized by the CAO.

4. No personal purchases shall be made by the Municipality for Members of Council, any appointed member of a Board or Committee or for any employees, except for items purchased as service awards or for the general recognition of the individual's contribution to the Municipality.

#### **N. Supplier Code of Conduct**

1. The Municipality expects its suppliers to act with integrity and conduct business in an ethical manner.
2. The Municipality may refuse to do business with any supplier that:
  - a. Has engaged in illegal or unethical bidding practices;
  - b. Has an actual or potential conflict of interest;
  - c. Had demonstrated inadequate performance under a previous Contract with the Municipality; or
  - d. Fails to adhere to ethical business practices.
3. All suppliers participating in a procurement process must declare any perceived, possible or actual conflicts of interest.
4. Illegal or unethical bidding practices include, but are not limited to:
  - a. Bid-rigging, price fixing, bribery or collusion or other behaviours or practices prohibited by Federal or Provincial statutes;
  - b. Attempt to gain favour or advantage by offering gifts or incentives to Municipal officers and employees, members of Council or any other representative of the Municipality;
  - c. Knowingly submitting inaccurate or misleading information in response to a procurement opportunity; and
  - d. Engaging in any other activity that compromises the Municipality's ability to run a fair procurement process.
5. In providing goods, services or construction to the Municipality, suppliers are expected to adhere to ethical business practices, including but not limited to:
  - a. Performing all work in a professional and competent manner and in accordance with the terms and conditions of the Contract;
  - b. Complying with all applicable laws, including safety and labour legislation;
  - c. Ensuring that fair wages are paid to their employees;
  - d. Providing workplaces that are free from harassment or discrimination of any kind; and
  - e. Minimizing the environmental impacts of their products or services.

**O. Policy Review**

1. This Policy will be reviewed every five years or earlier at the recommendation of the Purchasing Coordinator.

**P. Disposition of Assets**

1. In conjunction with Finance, departments should undertake reviews of assets from time to time to determine which are no longer used, which have become obsolete or otherwise approaching end of useful life, in order to determine which can be deemed surplus.
2. In conjunction with Finance, departments will identify surplus assets should be disposed of in one of the following manners in order to provide best value to the Municipality:
  - a. Used as a trade-in for the replacement of a new asset;
  - b. Offered to other departments for use. The value of the surplus asset transferred to another department should be calculated as its net book value for financial reporting purposes;
  - c. Identified surplus assets not required by other departments may be made available through a public auction, tendering process or other means that are consistent with the provisions of this Policy.
3. Proceeds on disposition of surplus assets should be allocated to Capital reserves.



**Schedule A****Exempt Procurements**

This Policy does not apply to the acquisition of the following goods, services and construction:

1. The following goods or services related to training and education
  - a. Conferences, conventions, courses and seminars
  - b. Newspapers, magazines, books and periodicals
  - c. Memberships
2. Services provided by the following licensed professionals:
  - a. Medical doctors
  - b. Dentists
  - c. Nurses
  - d. Pharmacists
  - e. Lawyers
  - f. Notaries
  - g. Services of expert witnesses or factual witnesses used in court of legal proceedings
3. Goods and services related to cultural and artistic fields such as:
  - a. Events supporting local non-profit organizations
  - b. Entertainers for theatre or specific events
  - c. Original art works
  - d. A Contract to be awarded to the winner of a design contest
4. Payments related to the following:
  - a. Payroll deduction remittances
  - b. WSIB premiums
  - c. Health benefits
  - d. Union Contract or employee agreement expenses
  - e. Honorariums
  - f. Expert witnesses
  - g. Arbitrators
  - h. Employee expense reports
  - i. Debenture payments
  - j. Damage claims
  - k. Legal settlements
  - l. Arbitration awards
  - m. Petty cash replenishment
  - n. Charges from other government bodies
  - o. Council approved grants

- p. Refunds for Municipal services
- q. Licensing fees
- r. Utilities and Internet Services
- s. Insurance
- t. Contracts or agreements for the sale, purchase, lease, or license of land or existing buildings
- u. Professional fees of professional service provider appointed by council, for consultants, external auditors, Ontario Land Surveyors and property appraisers
- v. goods intended for resale to the public