

Lac La Biche County *Policy*

TITLE: Procurement Policy

POLICY NO: FIN-10-004

RESOLUTION: 23.477

EFFECTIVE DATE: January 12, 2010

DEPARTMENT RESPONSIBLE: Finance

NEXT REVIEW DATE: June 27, 2024

POLICY STATEMENT:

Lac La Biche County hereby establishes a policy for consistent and fair purchasing practices while ensuring efficient allocation of available resources of both a financial and non-financial nature, in accordance with the Municipal Government Act (MGA), the Canadian Free Trade Agreement (CFTA) and the New West Partnership Trade Agreement (NWPTA).

DEFINITIONS:

“Canadian Free Trade Agreement (CFTA)” is an intergovernmental trade agreement signed by the Canadian Ministers that entered into force on July 1st, 2017. Its objective is to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investments within Canada and to establish an open efficient, and stable domestic market.

“Local Businesses” includes any, trade, profession, industry, occupation, employment or calling, providing goods and/or services operating in Lac La Biche County

“New West Partnership and Trade Agreement (NWPTA), formerly the Trade, Investment, and Labour Mobility Agreement (TILMA)”, is an agreement between Alberta, British Columbia, Saskatchewan and Manitoba. It prescribes financial thresholds where advertising of purchasing opportunities is required for goods and services of \$75,000 and over and construction projects of \$200,000 and over, with some exceptions as described in the agreement.”

PRINCIPLES:

Lac La Biche County’s procurement shall follow the following principles in descending priority:

- i. Procurement must follow all federal, provincial, and municipal statutes, regulations, and agreements, and specifically including the following:
 - a. Excise Tax Act
 - b. Canada Free Trade Agreement (CFTA)
 - c. Municipal Government Act (MGA)
 - d. New West Trade and Investment Agreement (NWPTA)
 - e. Freedom of Information and Protection of Privacy Act (FOIP)
- ii. Procurement shall follow best business practices for the County, as a business, namely,
 - a. Obtaining best value through competitive procurement practices, wherever possible
 - b. Including into the cost, items such as freight, installation, commissioning, engineering, disposal, etc.

- iii. Procurement to local business in a fair and equitable fashion shall be prioritized if principles 1 and 2 are followed.
- iv. Procurement shall follow best environmental practices, wherever possible, if principles 1, 2, and 3 are followed.

Authorization to Purchase

All purchases shall be included in the current year's budget or as otherwise approved by resolution or bylaw of County Council, or any policy adopted by Council.

- i. Any purchases exceeding the budgeted amount shall be dealt with in accordance with Transfers Between Budgeted Line Items Policy.
- ii. Any purchases in the amount of \$500,000 or more exceeding the budgeted amount by 10% must be brought back to Council prior to committing to the purchase.

Confidentiality of Information

- i. County employees or County councillors shall not release, to any potential supplier of goods or services, any information that is not intended to be made available to all potential suppliers.
- ii. Requests for information regarding submitted tenders and price quotes shall be handled in accordance with the Freedom of Information and Protection of Privacy Act ("FOIP").

Disqualification:

- i. For the purposes of this section, Contractor shall be deemed to include any related entity and any partner, principal, director or officer of such Contractor as well as any other legal entity with one or more of the same partner(s), principal(s), director(s) or officer(s).
- ii. A Contractor may be excluded or removed from the Registered List where the County determines, in its absolute sole discretion that one of the following circumstances has occurred:
 - a. the Contractor is or has been involved in litigation with the County, its elected officials, or employees;
 - b. the Contractor has failed to pay an amount owed to the County when due and owing;
 - c. there is documented evidence of poor performance, non-performance or default by the Contractor in relation to any contract with the County or goods, work or services otherwise provided to the County;
 - d. the Contractor or its personnel have demonstrated abusive behaviour or threatening conduct towards County employees, their agents or representatives;
 - e. the Contractor has been convicted of a criminal offence including but not limited to fraud or theft; or
 - f. the Contractor has been convicted of any quasi-criminal offence pursuant to applicable legislation or regulations including but not limited to the Occupational Health and Safety Act, where the circumstances of that conviction demonstrate a disregard on the part of the Contractor for the health and safety of its workers, County employees or the general public.

- iii. In arriving at a determination for the disqualification of a Contractor pursuant to this section, the County will consider whether the circumstances are likely to affect the Contractor's ability to work with the County, its consultants and representatives, and whether the County's experience with the Contractor indicates that the County is likely to incur increased staff time and/or legal costs in the administration of any dealings with the Contractor.
- iv. Based on the severity of the events leading to the disqualification, the County shall establish the duration of the period during which the disqualification shall be effective.
- v. In the event the County concludes that a Contractor should be disqualified pursuant to this section, it shall first provide written notice to the Contractor indicating the County's intention to disqualify the Contractor, its reasons for doing so, and the duration of the intended disqualification. Such notice shall indicate that the Contractor will have a period of at least fourteen (14) days to respond to such notice in writing, setting out (if the Contractor so chooses) any reasons it opposes or disputes either the disqualification or the duration of the disqualification.
- vi. Any notice of appeal from an affected Contractor received by the County within the time frame set out above shall be reviewed and considered by the CAO, who may either uphold, overturn, or vary the terms of disqualification. Any such decision will be final and not subject to further appeal, and will be communicated in writing to the Contractor.

“Original Signed”
Chief Administrative Officer

July 6, 2023
Date

“Original Signed”
Mayor

July 10, 2023
Date

SPECIAL NOTES/CROSS REFERENCE: CS-10-017 Transfer Between Budgeted Line Items; PI-30-012- Trucks and Equipment Day Policy; FIN-10-004 Procurement Procedure

AMENDMENT DATE: March 22, 2016, June 27, 2023



Procedure

TITLE: Procurement Procedure

PROCEDURE NO: FIN-10-004

DEPARTMENT RESPONSIBLE: Finance

EFFECTIVE DATE: June 27, 2023

NEXT REVIEW DATE: June 27, 2024

GENERAL GUIDELINES:

To establish procedures to consistently and fairly apply the guidelines established under the Procurement Policy of Lac La Biche County.

DEFINITIONS:

“**Associate Chief Administrative Officer**” shall mean the Associate CAO responsible for the tender/RFP/RFQ, or a person designated by the Associate CAO.

“**Chief Administrative Officer (CAO)**” is the person appointed as the Chief Administrative Officer according to the *Municipal Government Act*, or a person delegated responsibilities by the Chief Administrative Officer in this policy in accordance with the *Municipal Government Act*.

“**Canadian Free Trade Agreement (CFTA)**” is an intergovernmental trade agreement signed by the Canadian Ministers that entered into force on July 1st, 2017. Its objective is to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investments within Canada and to establish an open efficient, and stable domestic market.

“**Conflict of Interest**” means any situation or circumstance where there is a conflict or incompatibility between personal interest and professional responsibility. A Conflict of Interest can arise where: the personal interests of a person impair their impartiality in or ability to fulfil their professional responsibility; or the person would be able to pursue their personal interest based on information acquired while fulfilling their professional responsibility.

“**Construction Project**” includes roads and infrastructure construction (water, sewage, landfills, buildings, site improvements, etc.), which would result in a tangible capital asset. Examples include:

- Paving and construction of streets and roads; Intersection lighting;
- Gas and utility lines;
- Bridge construction.

“**Day Labour**” – Work being completed by equipment that is hired on at an hourly basis which is full compensation for provision of the equipment, skilled operators and all costs associated with operation of the equipment.

“**Emergency**” means a present or imminent event that requires prompt co-ordination of action or special regulation of persons or property to protect the health, safety or welfare of people or to limit damage to property.

“Goods and Services” shall mean all non-construction purchases including professional services and operational contracts. Examples include:

- Furniture and equipment
- Office supplies;
- Grader blades;
- Fuel;
- Tires;
- Computer hardware and software
- Janitorial services;
- Legal services;
- Engineering services;
- Maintenance agreements
- Vehicles and heavy equipment.

“Goods and Services Tax (GST)” means the Goods and Services Tax or Harmonized Sales Tax as described in the *Excise Tax Act*. All numbers in this policy exclude GST.

“Local Vendor” includes any, trade, profession, industry, occupation, employment or calling, providing goods and/or services operating in Lac La Biche County, this includes First Nations communities that are adjacent and neighboring to Lac La Biche County.

“New West Partnership and Trade Agreement (NWPTA), formerly the Trade, Investment, and Labour Mobility Agreement (TILMA)”, is an agreement between Alberta, British Columbia, Saskatchewan and Manitoba. It prescribes financial thresholds where advertising of purchasing opportunities is required for goods and services of \$75,000 and over and construction projects of \$200,000 and over, with some exceptions as described in the agreement.”

“Relative” shall be defined as per the definition of councillor’s family, under Section 169(b) of the *Municipal Government Act*, and shall apply to both relatives of County councillors and County employees. For further clarification, this is defined as the councillor’s or employee’s spouse or adult interdependent partner, the councillor’s or employee’s children, the parents of the councillor or employee and the parents of the councillor’s or employee’s spouse or adult interdependent partner.

“Request for Tender” shall mean a competitive method of purchase which may include supplier or contractor pre-qualification. The tender process follows the general procedures set out in this Procedure.

“Request for Proposal” shall mean a method of purchase which involves the solicitation of proposals. It may include prequalification. In this method of purchase, some or all of the specifications and contract terms may not be finally determined with sufficient certainty to form the basis of a final contract before proposals are solicited and submitted. It may be expected that there will be some variation in the final specification and contract terms among and between responsive proponents.

“Request for Quotes/Price Quote (RFQ)” shall mean a competitive method of purchase where the specifications for the goods and services and terms of purchase will be established with sufficient particularity to permit comparable quotations to be made by suppliers. A sufficient number of suppliers are requested to submit quotations on the specifications and terms of purchase. The procedures Request for Quotation process does not require advertising and the receipt of sealed bids.

“Sole Sourcing” shall mean the direct ordering and purchase of goods and services from a supplier with or without negotiation. This method of purchase will be used primarily for the purchase of low value goods where the cost and administrative burden of other methods of purchase may be equal to or greater than the price or value of the goods purchased. Employees are encouraged to use their own judgment to promote the principles of this policy in any direct purchase.

“**Total Acquisition Cost**” – includes but is not limited to such factors as repairs, fuel consumption, operating cost per hour (or other unit of measure), staff training, suitability, compatibility, warranty, trade-in values, recycling and disposal concerns.

“**Urgent**” are purchases that are not emergency in nature, but require prompt action.

PROCEDURE:

1. Roles and Responsibilities:

- i. Individual departments are responsible for:
 - a. Identifying specific needs for goods or services according to the approved budget once the operations and/or Capital budget is passed by Council, as per the Municipal Government Act.
 - b. Obtaining price quotes for goods or services per established guidelines; and
 - c. Following purchasing procedures for all procurement including but not limited to capital, construction or major cost purchase items.
- ii. Departments should conduct Competitive Procurement Processes:
 - a. Departments should conduct Competitive Processes when applicable in accordance with section 4.
- iii. In addition to the above section, Departments must ensure that:
 - a. if the purchase includes or pertains to security, CCTV systems, AV systems, the installation or maintenance of electrical, data, or low voltage systems in buildings or office furniture (which may also include the installation of such office furniture), then the deliverables of that purchase must be procured in consultation with Facility Services and Information Technology Services; and
 - b. if the purchase includes or pertains to computers, servers, digital equipment, software, has a geographic information systems component, or involves employee or County owned data, then the deliverables of that purchase must be procured in consultation with Information Technology Services.

2. Delegation of Purchasing Authority

The Chief Administrative Officer is responsible for delegations of purchasing and expenditure authority unless otherwise approved by Council, or a policy adopted by Council. For further clarity, the Chief Administrative Officer may delegate or revoke, in writing, purchasing and expenditure authority to Associate CAO’s, Managers, Supervisors, or other County employees in accordance with the *Municipal Government Act* and good procurement and internal control practices.

- i. Administration will maintain a registry of the delegations.

3. Acquisition via Purchase Order

A purchase order initiates the contractual obligation between the County and the supplier of goods or services to which it is addressed. A contract or service agreement may also accompany a purchase order to identify the details of the purchase.

- i. The purchase order authorizes the supplier to supply the specified goods and/or services, subject to the terms and conditions that are specified on the Purchase Order or any attachment thereto.
- ii. The purchase order shall be signed by the appropriate approval authority where applicable (see Section 4 and 5 below)
- iii. A purchase order shall only be issued if the purchase meets the limits and criteria established by this policy or any other policy of the County.
- iv. Purchase orders shall be issued for all purchases of goods or services \$5,000 or more.
- v. All tenders shall be confirmed by the issuing of a Purchase Order and confirmed by executed contract and/or letter of award.
- vi. Terms and Conditions must accompany a purchase order, refer to “Schedule B” of this Procurement Procedure.

4. Purchase Guidelines and Approval Process

- i. The following table outlines the process generally required for each type and/or value of purchase:

Table 1 – Summary of Procurement Process based on Procurement value, for Goods or Services:

Procurement Threshold	Process	Process Required
\$0 - \$9,999	Direct Purchase or Competitive Process	<ul style="list-style-type: none"> • Sole Sourcing should be made locally whenever a local vendor is available and competitive to ensure best value for the County.
\$10,000 - \$74,999	Written Quotation process	<ul style="list-style-type: none"> • Minimum three written quotes are required.
Equal to or greater than \$75,000	Formal Competitive Bidding Process	<ul style="list-style-type: none"> • Fully open competition • Involves sealed bids or proposals • May involve prequalification process • Must be posted on Alberta Purchasing Connection

Table 2 – Summary of Procurement Process based on Procurement value, for Construction:

Procurement Threshold	Process	Process Required
\$0 - \$9,999	Direct Purchase or Competitive Process	<ul style="list-style-type: none"> Sole Sourcing should be made locally whenever a local vendor is available and competitive to ensure best value for the County.
\$10,000 - \$199,999	Written Quotation Process	<ul style="list-style-type: none"> Three written quotes are required.
Equal to or greater than \$200,000	Formal Competitive Bidding Process	<ul style="list-style-type: none"> Fully open competition Involves sealed bids or proposals May involve prequalification process Must be posted on Alberta Purchasing Connection

- ii. Where practical, purchases shall be collectively tendered to obtain the best purchase price. If quote, RFP or tender is being issued collectively for the purchase of several goods or services, the estimated value of the total purchase shall prevail in applying these guidelines versus individual cost estimates. For goods and services being supplied over a number of years, the estimated value of the total purchases over the entire term (including renewals) shall prevail in applying these guidelines. These guidelines refer to purchases within budget.
- iii. The CAO may approve variations to the process when warranted, in accordance with the CFTA and the NWPTA.

5. Budget Authority and Spending Limits

- i. All spending limits are excluding GST
- ii. Spending limit does not authorize spending above budget
- iii. The CAO may delegate additional spending limit for specific purposes, refer to delegation of authority register for details.

Employee	Maximum Spending Limit
Supervisors	\$5,000
Managers and Directors	\$25,000
Associate CAO	\$75,000
Chief Administrative Officer	Over \$75,000

6. Conflict of Interest

- i. No requisition, purchase order, voucher, petty cash funds or any other order, written or verbal, shall be issued for personal goods and/or services for employees of the County, a member of County Council, or the public, unless approved by Council or a policy adopted by Council.
- ii. If a purchase or contract for goods or services is to be placed with:
 - a. An employee of the County,
 - b. Any company in which an employee of the County has an interest, or
 - c. A relative of an employee of the County,

the employee shall declare an interest and that employee shall not be placed in a position to approve the purchase.

7. Sole Sourcing

- i. Sole source purchases may be used when there is only one available supplier of a required good or service that meets the needs of the County, subject to regular review. Negotiation should be used to complete the terms and conditions for this purchase. A single source purchase may occur:
 - a. Where the compatibility of a purchase with existing equipment, facilities or services is a paramount consideration and the purchase must be made from a single source;
 - b. Where an item is purchased for testing or trial use;
 - c. Where the County purchases supplies for resale;
 - d. For direct purchases under \$9,999;
 - e. Where the County has a rental contract with a purchase option and such purchase option could be beneficial to the County;
 - f. Where purchase from another vendor would violate warranties and guarantees where service is required;
 - g. For matters involving security or confidential issues a purchase may be made in a manner that protects the confidentiality of the contractor of the County.
 - h. When, due to market conditions, goods are in short supply;
 - i. When all acceptable bids exceed the amount budgeted and re-tendering would not be beneficial;
 - j. When the extension or reinstatement of the existing contract would be the most cost effective or beneficial method and is in the best interest of the County;
 - k. When an emergency occurs where goods and services are deemed necessary and time and safety and other urgent concerns reasonably limit the use of any other prescribed procurement process;
 - l. When no bids are received on a request for quotation, tender or request for proposal;
 - m. For work to be performed on or about a leased building or portions thereof that may only be performed by the lessor;
 - n. For work to be performed on a property by a contractor according to the provisions of a warranty or guarantee held in respect of the property or original work;
 - o. For a contract to be awarded to the winner of a design contest, or for the procurement of original works of art;
 - p. For procurement contracts with a public body or a non-profit organization;
 - q. For the purchase of real property; or
 - r. Where otherwise permitted by the NWPTA and CFTA.
- ii. The authority to incur an expenditure of County funds through a sole source negotiation shall be subject to the same spending approval levels as outlined in section 5.

- iii. When proceeding with a sole source purchase in accordance with this section, the requirements for inviting tenders and quotations will be waived. The methods of negotiation shall be those accepted as standard negotiating procedures that employ fair and ethical practices.
- iv. Notwithstanding the above, all exceptions for formal tender or sole supplier procurement, must comply with the CFTA and the NWPTA.

8. Tender, Request for Quotes and Request for Proposals Guidelines

- i. Requests for Quotes:
 - a. All requests for quotations should be in writing and from a minimum of three suppliers unless noted otherwise in the purchasing guidelines. If a written quote is not obtainable, verbal quotes must be fully documented with any supporting documentation attached. The Associate CAO may approve purchasing goods and services with less than three quotes on a case – by – case basis. The rationale shall be documented on the Purchase Order.
 - b. Requestors are encouraged to maximize the number of quotes requested to ensure the greatest value for the County has been obtained.
 - c. The processes for Requests for Quotes are detailed in Section 9.
- ii. Request for Tender / Request for Proposal (RFP):
 - a. The formal tendering process is intended to ensure that all interested individuals and organizations are given an equal opportunity of providing goods and services in response to the identified needs of the County.
 - b. The process for issuing Tenders/RFPs will be governed by the procedures detailed in Section 10 and 11.
 - c. Responsibility for the preparation of the required specifications, tender/RFP documents and advertising rests with the department requiring the goods and/or services;
 - d. The lowest bid tender/proposal will not necessarily be accepted, depending on the goods and services being tendered/requested. Bid evaluation and selection may be based upon quantitative and qualitative criteria, which is to be identified and documented prior to the close of the tender/proposal call. The nature of the evaluation and selection criteria, but not the specific factors or weights, where applicable, can be made known to prospective suppliers to assist in the preparation of bids.
 - e. Adequate documentation, to record the evaluation and selection process, will be created and retained.
 - f. All Tenders, RFPs, or Requests for Quotes (RFQs) will have the following clause attached (variations may be made at the discretion of the Chief Administrative Officer):

Lac La Biche County reserves the right to accept or reject any and all Tenders/Proposals, and to waive irregularities, informalities and non-compliance at its discretion. The County reserves the right to award a Tender (Proposal) other than the lowest Tender (Proposal) without stating reasons and, without limiting the generality of the foregoing, the County may consider any other factor(s), besides price,

capability to perform the work and proposed specifications, in its sole and unfettered discretion. By submitting its Tender (Proposal), the Bidder/Proponent waives any right to claim, in any proceeding or court action, for loss of anticipated profit or for any other damages in excess of the reasonable costs incurred by the Bidder/Proponent in preparing its Tender.

iii. Purchasing Involving other Partners:

- a. The County supports and encourages joint tenders or price quotes with other municipalities, local Indigenous governments, and municipal organizations (examples are: Rural Municipalities of Alberta/ CANOE , Alberta Municipalities, Federation of Alberta Gas Co-ops, Gas Alberta, etc.), senior governments or other government organizations if there is an opportunity for obtaining goods and/or services at a more cost effective price. Purchasing involving other partners must comply with CFTA and NWPTA. Any involvement in joint tendering or price quotes shall be approved in accordance purchasing process thresholds.

iv. Request for Tender vs. Request for Proposal:

- a. A Request for Tender shall be issued as per the Purchasing Guidelines and where all of the following criteria apply:
 - i. Two or more sources are considered capable of supplying the requirements;
 - ii. The requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria;
 - iii. The market conditions are such that tenders can be submitted on a common pricing basis; and
 - iv. It is intended to accept the lowest priced compliant bid without negotiations.
- b. A Request for Proposal should be issued where one or more of the criteria for issuing a Request for Tender cannot be met, such as:
 - i. Owing to the nature of the requirements, suppliers are invited to propose a solution to a problem, requirement or objective and the selection of the supplier is based on the effectiveness of the proposed solution, including price, rather than on price alone; or
 - ii. It is expected that negotiations with one or more bidders/proponents may be required with respect to any aspect of the requirement. In general, the Request for Proposals process encourages different solutions from vendors and actively searches for better and more creative ideas for supply of goods and services. It provides a process whereby the negotiation and award is based on demonstrated competence, qualifications and the technical merits of the Proposal at a fair price.

v. Award Considerations:

- a. In addition to price, consideration may be given to the following factors in determining the successful bidder/proponent:
 - i. The ability and skill of the bidder/proponent to provide the goods or services requested;

- ii. The ability of the bidder/proponent to perform the contract or provide the services promptly or at the time specified without delay or interference;
 - iii. The character, integrity, reputation, judgment, experience and efficiency of the bidder/proponent;
 - iv. The quality and performance of previous contracts, goods or services, provided by the bidder/proponent;
 - v. The sufficiency of the financial resources and the ability of the bidder/proponent to perform the contract or provide the goods or services (this includes reviewing the bidder's/proponent's payment history with the County if necessary);
 - vi. The quality, availability and adaptability of the goods or contractual services to the particular use required, and ability to best meet the County's operational needs;
 - vii. The ability of the bidder/proponent to provide future maintenance and services for the items acquired;
 - viii. The number and scope of conditions attached to the bid/proposal; and
 - ix. Any litigation between the bidder/proponent and affiliated individuals and corporations and the County whether pending, past, threatened or suggested.
 - x. The Total Acquisition Cost of the goods and/or services covered by the bid or proposal.
- vi. Documentation:
- a. All documentation will be filed in accordance with the corporate records structure to ensure legal retention timelines are met.
 - b. A Notice of Awards shall be published no later than 72 days after the award of a contract arising from a competitive procurement process on the tendering website and/or the County Website which will include the following:
 - i. a description of the goods or services procured;
 - ii. the name and address of the procuring entity;
 - iii. the name and address of the successful supplier;
 - iv. the value of the successful tender;
 - v. the date of award; and
 - vi. if limited tendering was used, the conditions and circumstances described that justified its use.

9. Request for Quotes

- i. This method of purchase is a competitive method. The specifications for the goods and services and terms of purchase will be established with sufficient particularity to permit comparable quotations to be made by suppliers.

- ii. The department requiring the goods and/or services (requisitioning department) shall develop the relevant specifications, terms and conditions for the purchase.
- iii. The requisitioning department shall then prepare a Quotation document which provides parties with clear instructions, specifications, terms and conditions. The Quotation document may include a quotation form on which a bidder can make his/her quotation.
- iv. The requisitioning department may give notice of the Request for Quotation in one local newspaper, the County website, or send notice directly to approved vendors. If applicable, the Request for Quotation shall also comply with the CFTA and NWTP national tendering provisions.
- v. The Quotation document shall clearly indicate the final time and place for the receipt of quotations. The quotations will be received in the requisitioning department. There will be NO formal or public opening of the quotations.
- vi. All quotations received will be evaluated by the requisitioning department. At least three quotations should be presented, unless otherwise stated in this Procurement Procedure, or if purchase by negotiation applies or if a variation is approved by the Associate CAO. The quotation will be awarded consistent with the purchasing principles stated in the Procurement Policy.
- vii. A summary or report indicating the selected vendor will be prepared. This report will require approval in accordance with the Purchasing Authority limits found in Section 5 of this Procurement Procedure.

10. Requests for Proposals

- i. A Request for Proposal is issued in cases where the exact specifications are not predetermined. See section 8(iv) for the criteria to choose between the issuance of a Request for Tender or the issuance of a Request for Proposal.
- ii. Requests for Proposals will follow the general procedures found in section 11 Request for Tender. This includes the overseeing of the process by the requisitioning department.
- iii. The procedures will differ from the Request for Tender procedure as set out in below
 - a. Specifications
 - i. Exact specifications are not predetermined but the outcomes expected are reasonably stated. By issuance of a Request for Proposal, the County is soliciting creative input and inviting suppliers to propose a solution to a problem, requirement, or objective.
 - b. Form of Proposal
 - i. Since the exact specifications are not predetermined, the form of proposal will also be less specific. However, the form of proposal should clearly indicate those needs which have been determined and which will have to be fulfilled by the successful proponent.
 - c. Opening of Proposal Submissions

- i. Request for proposals are to be opened internally by the requisitioning department. The department may choose to open the proposals publicly. If the proposals are to be opened publicly then the opening follows the general procedures for the opening of tenders, except that no prices will be read out. The receipt of the submissions and by whom they were submitted will be read aloud and recorded. Potential suppliers wishing to attend shall be advised of the time and location of the meeting.
- d. Evaluation Process
- i. The selection of the successful proponent is based on the effectiveness of the proposed solution rather than on the price alone. As the evaluation process will be more complex, the process should be clearly outlined in the Request for Proposal documents. All criteria used to evaluate proposals should be listed.
 - ii. A selection committee shall be established by the requisitioning department and shall comprise regular staff with the relevant expertise. The committee will always include an Associate CAO or their designate. The committee will review proposals against the established criteria and reach consensus on the final rating results and ensure that the final rating results with supporting documents are kept in the procurement file.
 - iii. In some instances, where the workload to evaluate proposals may be excessive due to their complexity, length, number or any combination thereof, a multi-step procedure may be used that would include a reducing of the proposals to a 'short list'. It is this 'short list' of proposals which would receive the in depth evaluation and rating by the selection committee. The process could then include requests for further clarification or presentations from the short listed proponents. The initial Request for Proposal should indicate the possibility of this multi-step process. It is usual that the evaluation process will encompass a longer time frame than the evaluation process for a tender. For this reason, the Request for Proposal documents should indicate the expected time frame for completion of the process.
 - iv. It is expected that negotiations with one or more proponents may be required with respect to any aspect of the requirements. This differs significantly from Request for Tenders where the Form of Tender of the successful bidder becomes the basis of the eventual contract for goods and/or services.

11. Request for Tender (Formal Tender)

The following is the procedure for issuing, receiving and awarding tenders as issued by the department.

- i. Tender Limits
 - a. The criteria for determining which process to use are contained in section 8(iv).

ii. General Process

- a. In all cases, tenders shall be coordinated by the requisitioning department, which will ensure:
 - i. Completeness of documentation;
 - ii. Advertisements are arranged;
 - iii. Closing dates and tender opening are scheduled;
- b. In some cases external engineering firms may be engaged to design and oversee the tendering process (i.e. construction projects). The tender process may change slightly from these procedures, based on the standards of the engineering firm, at the discretion of the Chief Administrative Officer.

iii. Tender Document Preparation

- a. Specifications contained within the tender documents are the responsibility of the requisitioning department. If necessary, outside consultants, (i.e. engineers) will be used as a resource for development of specifications.
- b. Standard construction industry bidding documents will be employed whenever possible.

iv. Contents of the Tender Document

- a. The tender document will consist of a number of sections as described below. When considered in its entirety, the document must contain the appropriate information so that staff evaluating the bids can determine that:
 - i. The bidder understands the full scope of the tender for which bids have been invited;
 - ii. The bidder is capable and willing to perform all of the required work or provide all of the required goods/services;
 - iii. The bidder is capable and willing to enter into a legal agreement with the County, if required, for the provision of the required goods/services;
 - iv. The bidder satisfies County requirements regarding liability insurance, worker's compensation, and occupational health and safety for the bidder and its subcontractors, and
- b. The bidder offers financial guarantees that a formal agreement will be executed (if required by the County), and that all goods/services will be provided following the terms of the executed agreement.
- c. Tender documents will contain at least the following:
 - i. A cover sheet with the name of the tender, the closing date and time, and the issuer or contact person within the requisitioning department;

- ii. Information to Bidders. This document contains non-technical information that advises the bidder of the general terms and conditions that apply to the tender of goods and/or services. Included as well, will be information related to the *Freedom of Information and Protection of Privacy Act*;
 - d. A Performance Guarantee/Finance Guarantee - To ensure proper execution of the work, a performance guarantee in the form of cash, certified cheque, irrevocable letter of credit, or bond (performance and/or labour, and material) may be required. All requirements must be clearly outlined in the Information to Bidders;
 - i. Specifications. The specification section will provide details to describe accurately and precisely the nature, scope and extent of the goods and/or services required. As outlined in the policy, specifications may not be structured to exclude certain vendors or manufacturers unless there is justification to warrant exclusion;
 - e. A form of Tender. The tender form when properly completed and signed is a legal offer by the bidder to carry out the tendered work. The tender form should include an acknowledgement from the bidder that he has reviewed and understands all of the tender documents, and that he is prepared and capable of carrying out the contemplated work. Proper and clear identification of the bidder as well as clear bid prices must appear on the completed tender form;
 - i. A Tender envelope. A standardized tender envelope or envelopes are provided to all bidders where appropriate; and
 - f. Tender documents, advertisements and calls for tender, shall indicate that the County Procurement Policy and related procedures will apply to this tender.
- v. Advertising
 - a. The requisitioning department will give notice of the Tender in the newspaper and on the County's website. Electronic tendering networks (like Alberta Purchasing Connection and COOLNet), will also be employed if required as described below. All tenders shall be open for bid by vendors for a minimum period of two weeks unless critical or exceptional time constraints limit the period available for bidding. Advertising of contracts for goods and services valued at \$75,000 or greater, and construction valued at \$200,000 or greater shall comply with the Canadian Free Trade Agreement and the New West Trade Partnership Agreement unless the type of goods, service, or project falls within the exceptions to these agreements. Advertising of opportunities below the thresholds, although not required, are encouraged when such advertising would benefit the County.
- vi. Pre-qualification
 - a. Pre-qualification of bidders may be desirable to ensure that prospective bidders have the necessary knowledge, experience, and financial resources to complete the work. If pre-qualification is required for a particular tender, no Form of Tender or Tender Envelope is to be issued to any prospective bidder until he has pre-qualified. However, during the prequalification process, certain of the documents (i.e. specifications)

may be made available. A bidder is limited to be pre-qualified for three years, after three years the bidder must undergo the pre-qualification process as outlined in the CFTA to remain on the list.

vii. Release of Information to Prospective Bidders

- a. Upon the request of a prospective bidder, the Associate CAO or designate shall supply the following material for each contract:
 - i. One copy of the official tender form;
 - ii. One standard tender envelope, if applicable; and
 - iii. Tendering materials, including specifications, plans etc.
- b. In the case of tender documents for Public Works construction contracts the documents will be distributed by the Public Works Department or designated engineering firm.
- c. A fee may be charged for the specifications. This fee shall be non-refundable.
- d. A list of prospective bidders shall be maintained by the requisitioning department or designate. Names and addresses shall be recorded when tender documents are released to facilitate distribution of addenda and when necessary to extend or cancel a request for tender under call. However, where a pre-qualification requirement exists and the prequalification process is complete, the release of the Tender documents will be to qualified bidders only.

viii. Changes to Tenders under Call

- a. Addenda will be issued under the following circumstances:
 - i. Interpretation of tender documents as a result of queries from prospective bidders;
 - ii. Revisions, deletions, additions or substitutions to any portion of the tender documents are required. The requisitioning department or designate shall approve the issuance of any addenda.
- b. A copy of all addenda shall be sent by the same method as the initial Request for Tender when appropriate, to each prospective bidder who obtained tender documents. The addenda shall also be posted on APC/COOLNet if the opportunity was posted there. All remaining tender documents not yet distributed shall have the addenda appended.
- c. Where an addendum must be issued later than two days prior to the specified closing date, the closing date may be extended to allow four working days between the issuance of the addendum and the revised closing date. This extension is optional and shall be used as required.

- d. Closing Date Extension or Tender Cancellation - when it becomes necessary to extend the closing date or to cancel the tender, all prospective bidders who received tender documents shall be notified of the extension using the method for notification of addenda detailed above. When the closing date for receiving tenders has been extended, tenders already received shall be handled as follows:
 - i. If the extension of time is two weeks or more, the bidder shall be advised that his tender will be returned upon request.
- e. When a tender is cancelled, no bids will be accepted. All bids received shall be left unopened and will be returned to bidders upon request.

ix. Submission Requirements

- a. All tenders shall be received by the front desk reception. They will be time and date stamped and placed in a secure location until after the closing time. Any tenders received after the closing time and date will not be received and will be returned unopened to the submitting vendor. Subject to the discretion granted to the County in the tender documents to waive any irregularities at its option, tenders are required to conform to the conditions listed below:
 - i. The correct Tender Form, as supplied by the County, must be used and received by the County at the designated location , on or before the tender closing date and time;
 - ii. The tender must be legible, completed in a non-erasable medium and all items must be bid, unless the tender specifically permits otherwise, with the unit price on every item and other entries clearly shown;
 - iii. Adjustments by telephone, letter, fax, or electronic correspondence to a tender already submitted will not be considered. A bidder desiring to make adjustments to a tender must withdraw the tender and resubmit.
 - iv. The Tender Form shall be signed in the space provided on the form. All specified signatures and company seals or specified signatures duly witnessed must be provided. A seal need not be provided if the signer indicates authority to bind the County in writing and the signature must be witnessed. If a joint bid is submitted, it must be signed on behalf of each of the bidders and if the signing authority for both bidders is vested in one individual, he shall sign separately on behalf of each bidder;
 - v. Erasures, overwriting or strike-outs must be initialed by the person signing on behalf of the bidder; and
 - vi. Agreement to bonding and/or bid deposits may be required at the discretion of the requisitioning department and the appropriate Associate CAO or his designate. If any of the tender requirements have not been met, the tender shall be considered to be an “Improper Bid” and dealt with as set out in Schedule “A” attached hereto.

x. Receiving of Tender Bids

- a. It is the responsibility of the Associate CAO's office that all tenders placed in the secure location are clearly identified as to contents and contract number. Should a submission be received without proper contract identification, it will be returned unopened. In the case where the submission was not hand delivered, reasonable efforts will be made to inform the bidder of their error. The tender opening will not be delayed by these efforts as it is the responsibility of the bidder to correctly identify their submission. Fax or electronic submission will not be accepted. Tender shall only be accepted where received at the designated location specified in the Tender.

xi. Time and Date Stamping and Recording of Tenders

- a. When a tender is received, the sealed envelope shall be stamped or marked with the time and date of receipt and initialed by the person receiving the tender. Receipt of the tender shall be recorded on a list of tenders received and tenders shall be deposited unopened in a secure location.
- b. Regardless of the time a bid is received, the envelope shall be time and date stamped or marked. If the bid is received after the time of closing, according to the time stamped or marked on the envelope, it shall be refused and returned unopened to the bidder. If a tender is to be returned by mail, it shall be accompanied by a covering letter stating that the tender could not be accepted due to late arrival. If a late bid is received without a return address on the envelope, it shall be opened and initialed by the requisitioning department and witnessed by any member of staff, address obtained and then returned.
- c. The covering letter should state why the envelope could not be returned unopened.
- d. Unless specifically allowed in the tender document, any correspondence pertaining to an adjustment, correction or restriction to a tender, which is received with a tender but outside the tender envelope or is received after a tender has been submitted but prior to closing time, shall not be considered, and the bidder shall be advised by mail or phone of the withdrawal procedures if possible and practical.

xii. Withdrawal of Tender Bids

- a. Prior to opening, the withdrawal shall be allowed if the request is made before the closing time for the tender. Withdrawal request must be directed to the Associate CAO by letter, fax or electronically. Telephone requests shall not be considered. Tenders confirmed as withdrawn prior to being placed in a secure location shall be returned unopened to the bidder. The withdrawal of a tender does not disqualify a bidder from submitting another tender for the proposed contract. Withdrawal requests received after the tender closing time will not be allowed. The bidder shall be informed that the withdrawal request arrived too late for consideration. However, when the bids are read out at the bid opening, and if it is the lowest bid on a proposed contract, the bidder may then proceed in accordance with the following section titled "During the Opening".
- b. During the opening, at the conclusion of the reading out of bids on a proposed contract, the successful bidder may withdraw any of his remaining tenders on other contracts prior to the opening of bids thereon. He shall attest in writing to his identity and state the contract or contracts on which he desires to withdraw. The Notice

of Withdrawal of Tender must be signed by the bidder. This Notice must be handed to the Associate CAO before the opening of the first tender on the proposed contract to which it applies. The Associate CAO shall attach it to the applicable tender. The Associate CAO shall read out the bidder's name and announce that the tender has been withdrawn in accordance with established procedure.

- c. Withdrawn tenders shall not be opened. Tenders withdrawn under this procedure shall not be reinstated. If more than one tender is read out under the same name for the same contract and no withdrawal notice has been received, the tender contained in the envelope bearing the latest date and time stamp shall be considered the intended bid, or at the option of the County, both tenders may be rejected where the required withdrawal process was not followed. The first tender received shall be considered withdrawn and returned to the bidder in the usual manner.

xiii. Opening of Tenders

- a. Opening of Tenders, must be scheduled immediately after the time of closing open to all members of the public. Notice of the time and place of tender openings must be provided to the public and posted on the County website at least 48 hours beforehand.
- b. Staff should endeavor make all public tenders openings in an online broadcast capable facilities.
- c. Tenders will be opened and recorded publicly by a minimum of two employees of the County, one must be a Manager or higher level.
- d. If correspondence is found enclosed with a tender which, in the opinion of the Manager or designate, could qualify the bid in any way, the tender shall initially be considered as an "Improper Bid" and shall be so noted in the record of tenders opened and the tender read out in the normal manner, this correspondence and the tender shall be referred to the appropriate Manager for decision as to acceptance or rejection.
- e. When tenders have been opened and sorted, the Manager shall check the Listing of Tenders received, and the number of tenders opened to ensure that all tenders received, are accounted for. If a discrepancy occurs, the tender opening proceeding shall be delayed until all tenders have been accounted for.
- f. Every tender received within the specified time shall be opened in full view of those attending and each bidder's names and the total tendered amount read aloud by the Manager or designate, and recorded by an employee of the requisitioning department.
- g. Should the reading aloud of all prices be impractical due to a large number of individual prices or options or for reasons where a total price is not stated on the Form of Tender, only the company names of the bidders will be read out at the time of the tender opening.
- h. During the reading out of tenders, staff shall check for more than one tender under the same name (without a notice of withdrawal). If this situation occurs, it shall be dealt with as detailed in subsection xii above. If two tenders for the same contract are received in the same tender envelope, the signed copy or, if both are properly executed and prices differ, the lower price shall be considered the intended bid.

xiv. Checking Tenders

- a. The tenders will be checked by the Manager or designate as soon as possible following the public tender opening in order to determine that:
 - i. All tender requirements have been met as stated in the tender documents and this policy; and
 - ii. All unit prices have been correctly extended and totaled.
- b. Tenders which do not conform to the tender requirements or which require mathematical corrections shall be deemed “Improper Bids” and shall be dealt with as set out in Schedule “A” attached hereto.

xv. Improper Bids

- a. Following completion of the checking procedures any bids deemed “Improper bids” shall be so noted on the Record of Tenders Opened. This notation shall clearly state the reason the bid has been considered improper. The appropriate Manager shall then decide on the acceptance or rejection of all tenders noted as improper pursuant to the provisions in Schedule “A” attached hereto. Evaluation of the bids will be made by the Manager or designate.

xvi. Recommendation to Award

- a. Any recommendation to award will be in favor of a bidder meeting specifications, terms and conditions, whose tender or offer or bid offers the lowest cost considering Total Acquisition Cost as defined herein, and who, in the County’s absolute discretion, best fulfils the County’s expectations and requirements having regard to those factors specified in section 8 of these procedures. Approvals to award will be in accordance with section 5 of these procedures. If the lowest bid is not accepted the report must clearly so state, with reasons or explanation.

xvii. Award

- a. When the necessary approvals have been received, the Manager or his designate may use the appropriate documents to contract for the supply of the tendered goods and/or services.

xviii. Disposition of Deposit Cheques

- a. Following the recommendation to award of the contract to a specific bidder, bid deposits of all bidders other than the successful bidder and the next lowest bidder shall be returned to the applicable bidders by registered mail to the last known place of business. The bid deposit cheque of the successful bidder and the next lowest bidder shall be held until the contract is executed.

- xix. Action when Successful Bidder does not finalize Contract
 - a. If a contract has been awarded and the successful bidder fails to sign the contract or provide the necessary security within the time specified in the tender documents, the requisitioning department may grant additional time to fulfill the necessary requirement or may recommend one of the following:
 - i. That the contract shall be awarded to the next qualified bidder as determined by the requisitioning Manager or designate; or
 - ii. That the contract shall be cancelled.
 - b. In either case, the Tender Bid Deposit of the successful bidder shall be forfeited.

“Original Signed”
Chief Administrative Officer

July 6, 2023
Date

SPECIAL NOTES/CROSS REFERENCE: CS-10-017 Transfer Between Budgeted Line Items; PI-30-012- Trucks and Equipment Day Policy; FIN-10-004 Procurement Policy

AMENDMENT DATE: Not applicable.

SCHEDULE “A”

Acceptance or Rejection of Improper Bids

1. Extreme care shall be exercised to ensure that Improper Bids are handled in a manner which is fair to other bidders as well as the public.
2. The decision as to whether an improper bid shall be accepted or rejected shall be based upon the following general considerations:
 - a) Is the intention of the bidder clear; and
 - b) Has the bidder made a conscientious attempt to comply with the submission requirements?
3. The following are guidelines only, intended to illustrate some of the discretion allowed. The requisitioning department will review each case.

	Irregularity	Response
1	Late bids	Rejection
2	Unsealed Envelopes	Rejection
3	Not completed in non-erasable medium	Rejection
4	Incomplete/partial bids or item not bid	Rejection except where the tender form clearly states that an award may be made for individual items or in the opinion of the Associate CAO, the incomplete nature is insignificant
5	Qualified bids / qualified or restricted by an attached statement	Rejection except where the change is requested by the County and where in the opinion of the Associate CAO, the change is insignificant

	Irregularity	Response
6	Financial Security, if required, not submitted or insufficient	Rejection
7	Bid not properly signed	Rejection
8	Mathematical errors	May be accepted if corrected in the checking procedure. Unit prices shall ordinarily be used to correct extensions
9	Agreement to bond, if required, not submitted or insignificant	Rejection
10	Bids received on documents other than those provided by the County	Rejection unless, in the opinion of the Associate CAO, the breach is trivial or insignificant
11	<p>Erasures, Overwriting or Strikeout not initialed:</p> <p>a) Changes which are minor, i.e., clerical error in address:</p> <p>b) Unit prices have been changed but not initialed and the contract totals are consistent with the price as amended</p> <p>c) Unit prices have been changed but not initialed and the contract totals are not consistent with the price as amended</p>	<p>a) May be accepted, if in the opinion of the Associate CAO, the breach is trivial or insignificant</p> <p>b) May be accepted, with time limit to initial specified by the Associate CAO</p> <p>c) Rejection</p>

	Irregularity	Response
12	Minor clerical errors	May be accepted, if in the opinion of the Associate CAO, the breach is trivial or insignificant
13	Documents which have financial implications, and in which all necessary addenda have not been acknowledged	May be accepted only if omission of the acknowledgment is insignificant, as determined by the Associate CAO
14	Other minor irregularities	May be accepted. The Associate CAO shall have the authority to waive.
15	Correspondence related to an adjustment, correction or restriction to a tender outside of a tender envelope or received after a tender is submitted	Rejection, however may be accepted if specifically allowed in the tender document or addenda and received prior to tender deadline.

“Schedule B” Terms & Conditions

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“**Conflict of Interest**” includes, but is not limited to, any situation or circumstance where the Supplier’s other commitments, relationships or financial interests (i) could or could be seen to exercise an 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 obligations under the Contract;

“**Contract**” means the purchase order for the Deliverables issued by the Purchaser to the Supplier (the “**Purchase Order**”), including these Purchase Order Terms and Conditions;

“**Deliverables**” means the goods and/or services as described in the Purchaser Order;

“**Indemnified Parties**” means the Purchaser, its elected officials, directors, officers, agents, employees and volunteers;

“**Industry Standards**” include, but are not limited to: (a) the provision of all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by parties providing goods or services similar to the Deliverables in similar situations in Alberta and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the Purchaser;

“**Purchaser**” means Lac La Biche County;

“**Rates**” means the price, in Canadian funds, to be charged for the Deliverables, as set out in the Contract,

representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes; (b) all labour and material costs; (c) all travel costs; (d) all costs associated with insuring, transporting and delivering the Deliverables to the Purchaser at its address specified on the Purchase Order; (e) all insurance costs; and (f) all other overhead, including any fees or other charges required by law;

“**Related Entities**” include directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors.

“**Requirements of Law**” means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them; and

“**Supplier**” means the supplier identified on the face of the Purchase Order.

ARTICLE 2– GENERAL TERMS

2.01 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

2.02 Entire Contract

The Contract, together with any additional documentation referenced in the Purchase Order, sets forth the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties. In the event of any ambiguity, conflict or inconsistency between these Purchaser Order Terms and Conditions and any terms and conditions contained in any acknowledgement, order or any other form issued by the Supplier, these Purchase Order Terms and Conditions shall prevail. Changes to the Contract shall only be made by the issuance of an amended Purchase Order by the Purchaser to the Supplier.

2.03 Notices

Notices shall be in writing and shall be delivered by mail, personal delivery or email and shall be addressed to the contact identified on the face of the Purchase Order.

2.04 Severability

If any term or condition of the Contract, or the application thereof, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition (except to the extent to which it is held invalid or unenforceable), shall not be affected.

2.05 No Indemnities from Purchaser

Nothing in the Contract, whether express or implied, will directly or indirectly increase the indebtedness or contingent liabilities of the Purchaser beyond the obligation to pay the Rates in respect of Deliverables accepted by the Purchaser.

2.06 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control, such as natural disasters, acts of war, insurrection and terrorism. If a party seeks to rely on a force majeure event, that party shall immediately notify the other party of the reason for and anticipated period of any delay.

2.07 Survival

This paragraph and paragraphs 2.01, 2.04, 2.05, 3.02, 3.04, 4.01, 6.02 shall survive the termination or expiry of the Contract, as shall any other provision which by its nature ought to reasonably survive such termination or expiry.

ARTICLE 3 – RELATIONSHIP BETWEEN PURCHASER AND SUPPLIER

3.01 Supplier’s Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other party that would in any way interfere with the rights of the Purchaser under this Contract.

3.02 Supplier Not a Partner, Agent or Employee

The Supplier shall have no power or authority to bind the Purchaser or to assume or create any obligation or responsibility, express or implied, on behalf of the Purchaser. The Supplier shall not hold itself out as an agent, partner or employee of the Purchaser. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Purchaser and the Supplier or any of the Supplier’s Related Entities.

3.03 Non-Exclusive Contract, Work Volumes

The Purchaser makes no representation regarding the volume of goods and services required under the Contract and reserves the right to contract with other parties for goods and services the same as or similar to the Deliverables.

3.04 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its Related Entities. The Supplier shall advise its Related Entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract.

3.05 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract without the prior written consent of the Purchaser. Such consent shall be in the sole discretion of the Purchaser and subject to the terms and conditions that may be imposed by the Purchaser. Nothing in the Contract, or in such consent, creates a contractual relationship between any subcontractor and the Purchaser.

3.06 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) give notice to the Purchaser without delay of any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Purchaser to resolve any Conflict of Interest.

3.07 Contract Binding

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY SUPPLIER

4.01 Deliverables Warranty

The Supplier represents and warrants that the Deliverables (i) shall be provided diligently in a professional and competent manner by persons qualified and skilled in their occupation in accordance with: (a) the Contract; (b) Industry Standards; and (c) the Requirements of Law; and (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title. The Supplier represents and warrants that the use or sale of the Deliverables purchased under this Contract will not infringe any patent, copyright or trademark.

4.02 Delivery and Risk

Unless otherwise stated on the face of the Purchase Order, all Deliverables shall be delivered F.O.B. Destination, Freight Prepaid. No transportation or delivery charges of any kind, including, without limitation, packing, storage, cartage or customs brokerage charges, shall be paid by the Purchaser, unless specifically provided for on the face of the Purchase Order. The Deliverables remain at the risk of the Supplier until the Deliverables are received by the Purchaser.

4.03 Inspection and Acceptance

Receipt of the Deliverables at the Purchaser’s location does not constitute acceptance of the Deliverables by the Purchaser. The Deliverables are subject to the Purchaser’s inspection and acceptance within a reasonable period of time after delivery or completion of services. If any of the Deliverables, in the opinion of the Purchaser, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the Purchaser in a rectification notice.

4.04 Time

Time is of the essence of this Contract.

ARTICLE 5 – PAYMENT FOR DELIVERABLES

5.01 Payment According to Contract Rates

The Purchaser shall pay the Supplier for the Deliverables in accordance with the Rates within thirty (30) days of receipt by the Purchaser of a satisfactory invoice from the Supplier requesting payment for Deliverables that have

been received and accepted by the Purchaser. Payment shall be subject to any holdbacks or requirements of any applicable laws in relation to the Deliverables.

All invoices submitted by the Supplier must include the amount invoiced, exclusive of GST, and the amount of GST shown separately.

The Purchase Order number must appear on all documentation relating to the Contract, including, but not limited to, invoices and delivery/packing slips in order to be processed by the Purchaser.

5.02 No Expenses or Additional Charges

The Supplier shall pay all applicable taxes and duties, including excise taxes, incurred by or on the Supplier's behalf with respect to the Contract. There shall be no charges payable by the Purchaser to the Supplier other than the Rates.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

6.01 Insurance

The Supplier shall put into effect commercial general liability insurance, in a form acceptable to the Purchaser, in an amount not less than \$5,000,000, with the Purchaser named as an additional insured. The Supplier will also put into effect such other additional insurances as required by the Purchaser. The Supplier shall provide the Purchaser with evidence of insurance upon request.

6.02 Supplier Indemnity

The Supplier agrees to indemnify and save harmless the Indemnified Parties from all losses, claims, damages, actions, causes of action, costs (including legal costs on a solicitor and his own client basis) and expenses that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including for infringement of third-party intellectual property rights or for third party bodily injury (including death), personal injury and property damage, arising or occurring, directly or indirectly, by reason of any act or omission of the Supplier or its Related Entities, except to the extent that such liability arises out of the independent acts or omissions of the Indemnified Parties.

ARTICLE 7 – TERMINATION

7.01 Default and Termination

In the event the Purchaser is in default of the Contract, the Purchaser may at its option take any steps necessary to remedy such default at the expense of the Supplier, and/or may terminate this Contract without in any way limiting the liability of the Supplier or any rights of remedies of the Purchaser under the Contract, at law or in equity.

7.02 Termination for Convenience

Notwithstanding section 7.01, the Purchaser may also terminate the Contract at any time without cause by providing written notice to the Supplier. In the event of a termination pursuant to his section 7.02, the Purchaser shall be liable to the Supplier only for payment of the Rates in respect of Deliverables accepted by the Purchaser up to the date of termination, plus any prepaid expenses or costs incurred by the Supplier directly arising from such early termination. The Purchaser shall have no liability for any other amounts, including for any loss of profit by the Supplier, and such termination shall not limit any liability of the Supplier for any obligations under the Contract arising prior to such termination.