

## County of Essex Policy Manual

### Procurement Policy

<b>Policy Number:</b>	19-003
<b>Approved by:</b>	County Council
<b>Department:</b>	All Departments
<b>Date Approved:</b>	2019-06-19
<b>Effective Date:</b>	2019-06-20
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<b>Replaces Policy No:</b>	04-002

#### 1.0 Policy Purpose

The purpose of the policy is to ensure:

- 1.1 Publicly funded purchases of Goods and Services, by the Corporation of the County of Essex (the "County"), including construction, and information technology are acquired through a process that is compliant, open, fair and transparent;
- 1.2 Responsibilities of the County and staff throughout each stage of the procurement process and;
- 1.3 That procurement processes are managed consistently.

#### 2.0 Policy Statement

The procurement policy of the County of Essex is as follows:

- 2.1 To acquire and dispose of Goods and Services in an efficient and cost-effective manner having regard to the objectives of openness, fairness, transparency and accessibility in procurement while ensuring the County's operational requirements are always met;

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- 2.2 To ensure compliance with the Trade Agreements and applicable laws;
- 2.3 To procure Goods and Services with due regard to the preservation of the natural environment.
- 2.4 In this policy, all capitalized terms have the meaning assigned in Schedule "A" (Definitions).

### 3.0 Applications and Accountabilities

- 3.1 Application. This policy applies to all purchases of Goods and Services by the County except for the contracts and transactions listed in Schedule B (Exclusions from Policy Procurement Rules).
- 3.2 General Responsibilities. Anyone purchasing Goods and Services on behalf of the County must comply with this policy and related procedures.
- 3.3 Role of Council. As set out in s.224 of the Ontario *Municipal Act 2001*, S.O. 2001, c25, it is the role of Council to develop and evaluate the policies of the County and to ensure that policies, practices and procedures and controllership policies, practices and procedures are in place to implement decisions of Council. As permitted by s.23.1 of the Ontario *Municipal Act 2001*, S.O. 2001 c25 Council may delegate responsibilities to officers and employees of the County as Council deems appropriate, whether through policy or otherwise. Only Council is authorized to approve exceptions to this policy.
- 3.4 Chief Administrative Officer (CAO) Responsibilities and Authority. The CAO is the officer responsible for exercising general control over the activities contemplated by this policy, including ensuring Officers, employees and other persons conducting procurements on behalf of the County comply with the requirements of this policy.
- 3.5 Treasurer Responsibilities. The Treasurer is the officer delegated the responsibility for establishing procedures pursuant to this Policy. The Treasurer, directly or through their delegate(s), shall assist Department Heads, as appropriate, in the administration and compliance with this policy and related procedures.
- 3.6 Department Head Responsibilities. Department Heads shall:

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- (a) Be responsible for all procurement activities within their service areas and ensure compliance with this policy and related procedures.
  - (b) Make required reports to the Treasurer, CAO, Council or any other party regarding compliance with this policy and procedures.
  - (c) As necessary, delegate Approval Authority to appropriate staff while retaining the accountability for their delegates' actions.
  - (d) Maintain procurement-related records in accordance with the County's Record Retention Policy 13-002.
- 3.7 Prohibitions. In carrying out procurement activities for the County, a person must not:
- (a) Circumvent the requirements of this policy including, but not limited to, biasing Specifications or scheduling events to prevent Vendors from meeting requirements, dividing purchases to avoid the requirements of the Policy by any method, which includes purchases made using Purchasing Cards;
  - (b) Purchase any Goods and Services through County Contracts for personal use by or on behalf of any member of Council, employees of the County and their immediate families;
  - (c) Provide information to one Vendor to give that Vendor an advantage over other Vendors; (CFTA, CETA, OQTCA)
  - (d) For procurements with a Dollar Value of \$100,000 or more, the following are strictly prohibited (CFTA), unless otherwise approved by Council:
    - Imposing a condition that, in order for a Vendor to participate in the procurement, the Vendor must have previously been awarded one or more contracts by the County
    - Requiring prior experience where it is not essential to the procurement
    - Favouring Goods or Services of a province or region
    - Favouring Vendors of Goods or Services of a province or region

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For procurements with a Dollar Value of \$365,000 or more, the following are strictly prohibited (*CETA*), unless otherwise approved by Council:

- Favouring Goods or Services of Canada over those of the European Union.
- Favouring Vendors of Canada over those of the European Union.

3.8 Failure to Abide by the Policy Any person who fails to act in accordance with the provisions of the policy, may be subject to appropriate disciplinary action up to and including, for employees, termination of employment.

## 4.0 Procurement Approval Authority

4.1 Funds Must Be Available. Any person delegated Approval Authority shall ensure that, prior to engaging in any procurement activity, an approved budget exists to cover the Dollar Value of the proposed procurement and resulting Contract. In the case of multi-year Contracts involving operating funds, the funding for future years of the Contract can reasonably be expected to be made available if the funding is included in the current year's approved operating budget and is based on a multi-year forecast, subject to confirmation from the Financial Services Department.

4.2 Levels of Approval Authority. Procurement approvals must be obtained from the designated Approval Authority, or their duly appointed delegate, for the following: (i) for the procurement, prior to releasing an RFX or publishing a tender notice (whichever is earlier); (ii) for the Contract, prior to releasing the proposed contract or Purchase Order (PO) to any Vendor; and (iii) for any amendment to, or assignment of, a Contract. Only Council shall have the authority to approve terminating a Contract previously approved by Council and only the CAO or delegate may approve terminating any other Contract.

4.3 Authorization to Purchase – Delegation of Authority Bylaw. The County will maintain a list that controls signature authorization for all major financial transactions, including authority to commit funds and sign contracts ("**Delegation of Authority Bylaw**"). Only persons officially designated on the Delegation of Authority Bylaw, or their duly appointed delegates, shall have the authority to commit funds allocated to a budget in connection with their spending limits,

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- approve initiating a procurement process of Goods and Services and approve entering into a Contract for Goods or Services.
- 4.4 Delegation of Signing Authority. The CAO or a Department Head designates the person(s) within the Department who are authorized to sign-off on financial and procurement transactions on accounts attributed to the Department. The Financial Services Department will maintain the Delegation of Authority Bylaw.
- 4.5 Procurement and Contracting Approvals Based on Dollar Value. Unlike the authority to commit funds in a budget, the procurement Approval Authority is based on the Dollar Value of the procurement or Contract as determined in accordance with Part 5 (Determining the Dollar Value). If, after a procurement process is completed and actual prices are known, it is determined that the Dollar Value of the Contract is elevated into the higher level of Approval Authority, then higher level Approval Authority shall be the Approval Authority for subsequent approvals and signatures.
- 4.6 Delegation of Approval Authority. Delegation of an approver's Approval Authority may be made as deemed appropriate by the person with Approval Authority and in accordance with this policy. Department Heads, at their discretion, may delegate approval authority to a manager or supervisor up to a maximum Dollar Value of \$100,000. Approval Authority that has been delegated may not be further sub-delegated. All delegations must be made in writing and signed by the delegating Approval Authority. To be valid, copies of delegations must be forwarded to the Financial Services Department.
- 4.7 CAO Must Seek Council Approval. The CAO must seek Council approval prior to an award of Contract if: (a) the value of the Bid or the aggregate cost of a project is in excess of the Council approved budget; (b) there is a legislative or policy requirement for Council approval; (c) if there is an irregularity in a material procurement; or (d) for any other reason the CAO deems appropriate.
- 4.8 Limited Tendering Recommendations where Dollar Value > \$100,000. The applicable Department Head and Procurement must jointly submit a report to the Treasurer recommending a Direct Purchase of \$100,000 or greater where supported by a justification listed in Part 9 (Limited Tendering Procurements/Direct Purchase). If the Treasurer is the "applicable Department Head" for purposes of a procurement, the

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joint recommendation for a Direct Purchase must be made to the CAO.

- 4.9 Semi-Annual Report to CAO. The Treasurer shall prepare a semi-annual status report to the CAO on all RFX processes with Dollar Values of \$100,000 or more published or released during the applicable period. The report shall also list all Contracts valued at \$100,000 or more awarded to Vendors since the previous status report.
- 4.10 Annual Report to Council. Council will be provided a report summarizing the Procurement activities throughout the year.
- 4.11 Summary Table of Approval Authority. The following table indicates the Approval Authority for a procurement as well as the persons having the authority to approve and execute contracts and related documentation in accordance with this Policy.

### SUMMARY TABLE OF PROCUREMENT APPROVAL AUTHORITY

Type of Procurement	Dollar Value Canadian \$ exclusive of taxes	Procurement Strategy	Final RFX Document (1)(3)(6)	Contracts and Related documentation – (approval and signature) (1)
<b>Competitive</b> Informal Request for Quotations (RFQ-I)	\$10,000 up to \$50,000	Department Head or Delegate <i>See Note (2)</i>	Department Head or Delegate	Department Head <i>See Note (2)(4)</i>
<b>Competitive</b> Formal Request for Quotations (RFQ-F)	>\$50,000 up to \$100,000	Department Head or Delegate <i>See Note (2)</i>	Department Head or Delegate	Department Head <i>See Note (2)(4)</i>
<b>Competitive</b> Public Tendering (RFPQ, RFP, RFT, RFSO)	>\$100,000 up to \$300,000	Department Head and Procurement	Department Head and Treasurer	Co-signed by Department Head and Treasurer or CAO <i>See Note (4)</i>
<b>Competitive</b> Public Tendering (RFPQ, RFP, RFT, RFSO)	>\$300,000	Department Head and Procurement	Department Head and Treasurer or CAO	Co-signed by Warden and Clerk <i>See Note (4)</i>

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Type of Procurement	Dollar Value Canadian \$ exclusive of taxes	Procurement Strategy	Final RFx Document (1)(3)(6)	Contracts and Related documentation – (approval and signature) (1)
<b>Direct Purchase</b> Petty Cash	Under \$100	N/A	N/A	Department Head See Note (2)(5)
<b>Direct Purchase</b> Credit Card Purchase Order Contract	Under \$10,000	Department Head or Delegate See Note (2)	N/A	Department Head See Note (2)
<b>Direct Purchase</b> Purchase Order or Contract	\$10,000 up to \$100,000	Department Head and Treasurer See Note (2)	N/A	Co-signed by Department Head and Treasurer See Note (2)
<b>Direct Purchase</b> Contract	>\$100,000 up to \$300,000	Treasurer	N/A	Co-signed by Department Head and Treasurer or CAO
<b>Direct Purchase</b> Contract	>\$300,000	Treasurer	N/A	Co-signed by the Warden and Clerk

Notes:

- (1) Regardless of the Approval Authority set out in the summary table, the higher-level Approval Authority may either approve or sign documents in place of lower level staff, or override the decisions made by lower level Approval Authorities, if necessary.
- (2) The CAO, Treasurer and Department Heads may delegate their Approval Authority to a manager or supervisor level. To be valid, any delegation (permanent or temporary) must be documented in writing and communicated to the Financial Services Department. Approval Authorities may not be sub-delegated.
- (3) Competitive solicitation documents must be approved prior to public posting or releasing to bidders.
- (4) Contract must not be approved and signed by the same person that conducted the competitive solicitation process unless there is a co-signer. If the delegation designates that same person to approve and sign the contract, then to resolve the conflict, the contract should be approved by the higher-level Approval Authority. For example, if Department Head ran a RFQ-F procurement directly, then the CAO should approve and

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co-sign the final contract.

- (5) Department Heads do not need to approve petty cash expenses or PO's. the signing authority for such expenses shall be set out in the Delegation of Authority Bylaw.
- (6) The development of a procurement plan for any network interfaced hardware, software, photocopiers and telecommunications are subject to the prior consultation with the Information Technology Manager.

### 5.0 Determining the Dollar Value

The Dollar Value is the County's estimated value, in Canadian dollars, exclusive of taxes, of the requirement determined as set out in this Part. When estimating the Dollar Value of a procurement, the County must:

- 5.1 Include the estimated maximum total value of the procurement over the entire duration of the Contract(s), including options and renewal periods, whether awarded to one or more Vendors. *(CFTA, CETA)*
- 5.2 Include all forms of remuneration including premiums, disbursements, fees, commissions, and interest. For greater clarity, travel expenses and per diems are not a "form of remuneration" unless they are included in a fixed fee contract and not reimbursed separately. *(CFTA, CETA)*
- 5.3 Include associated costs of installation, operation, maintenance, or manufacture for Goods. *(CFTA, CETA)*
- 5.4 If an individual requirement for a procurement results in the award of more than one Contract, or in the award of Contracts in separate parts ("**Recurring Contracts**") the calculation of the estimated maximum total value shall be based on: (a) the value of Recurring Contracts of the same type of Good or Service awarded during the preceding 12 months, adjusted to take into account anticipated changes in the quantity or value of the Good or Service being procured over the following 12 months; or (b) the estimated value of Recurring Contracts of the same type of Good or Service to be awarded during the 12 months following the initial contract award. *(CETA, OQTCA)*
- 5.5 In the case of procurement by lease, rental or hire purchase of a Good or Service, or procurement for which a total price is not specified, the basis for valuation shall be: *(CETA, OQTCA)*

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in the case of a fixed-term contract:

- (i) if the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
- (ii) if the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

if the contract is for an indefinite period, the estimated monthly installment multiplied by 48; and

if it is not certain whether the contract is to be a fixed-term contract, subparagraph (ii) shall be used.

## 6.0 Preparing the Procurement Documents

- 6.1 Mandatory Use of Standard County Templates. Where the County has implemented approved standard procurement templates and related documents ("**Standard County Template**"), such templates must be used in County contracting activities, including to prepare County procurement documents. The use of other forms of solicitation documents, agreements, templates or documents is only permitted where approved in advance by the Treasurer.
- 6.2 No Changes to Standard County Templates Unless Pre-Approved. All proposed changes to the Standard County Templates and related documents shall be reviewed by legal and approved by the CAO, Treasurer and/or the County's solicitor.
- 6.3 Responsibility for Preparing RFx and Specifications. The preparation of the RFx, Deliverables and Specifications shall be the responsibility of the originating Department working with the support of the Financial Services Department and must be approved by the appropriate Approval Authority prior to being used in a procurement process.
- 6.4 Ontarians with Disabilities Act. When preparing the Specifications, the Originating Department shall be knowledgeable of the *Ontarians with Disabilities Act, 2001*, the *Accessibility for Ontarians with Disabilities Act, 2005* and their regulations thereunder, as amended, re-enacted or replaced from time to time, and apply those requirements with respect to procuring Goods and/or Services and in the development

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of the Specifications, or be prepared to provide alternative accommodation for viewing drawings or other complex Specifications.

### 7.0 Determining the Procurement Strategy

- 7.1 Procurement Strategy. The appropriate procurement strategy, including the procurement method and contract, for a procurement will depend on whether the requirement falls under a Limited Tendering exemption listed in Part 9 (Limited Tendering / Direct Purchase) or must be competitively tendered. If the requirement falls under a Limited Tendering exemption, a contract negotiation may be required prior to execution of the Contract as set out in Part 13 (Negotiation of Contracts).
- 7.2 Procurement Methods. The following table sets out the permitted procurement methods based on the Dollar Value of the procurement.

Dollar Value	Type of Procurement	Permitted Procurement Methods
Under \$10,000	Direct Purchase	<ul style="list-style-type: none"> <li>• Petty Cash (up to \$100)</li> <li>• Purchasing Card</li> <li>• Purchase Order</li> </ul> <u>Optional:</u> <ul style="list-style-type: none"> <li>• RFQ-I, RFQ-F</li> <li>• RFPQ, RFP, RFT, RFSO</li> </ul>
\$10,000 - \$50,000	Invitation Informal Process	<ul style="list-style-type: none"> <li>• RFQ-I (\$10,000-\$50,000)</li> </ul> <u>Optional:</u> <ul style="list-style-type: none"> <li>• RFPQ, RFP, RFT, RFSO</li> </ul>
\$50,000 - \$100,000	Competitive Process	<ul style="list-style-type: none"> <li>• RFQ-F (\$50,000-\$100,000)</li> </ul> <u>Optional:</u> <ul style="list-style-type: none"> <li>• RFPQ, RFP, RFT, RFSO</li> </ul>
>\$100,000	Open Competitive Process	<ul style="list-style-type: none"> <li>• RFPQ, RFP, RFT, RFSO</li> <li>• RFQ may be used with Department Head and Treasurer or delegate approval</li> </ul>

- 7.3 In selecting the appropriate procurement method, regard should be had to using the most efficient and effective method permitted in consideration for the time required to prepare the procurement document as compared to the Dollar Value. For example, if a Dollar Value is less than \$10,000, while not strictly prohibited, it is generally

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not efficient to spend resources preparing a detailed RFT; use of a purchasing card is more efficient and therefore more appropriate.

### 8.0 Procurement Methods

8.1 There are a variety of procurement methods that may be used for procuring Goods and Services for the County including but not limited to:

- (a) Low Dollar Value Procurements (under \$10,000)
- (b) Request for Quotations - Informal (up to \$50,000)
- (c) Request for Quotations - Formal (>\$50,000 up to \$100,000)
- (d) Request For Tenders (>\$100,000)
- (e) Request For Proposals (>\$100,000)
- (f) Request For Standing Offer (>\$100,000)
- (g) Request For Supplier Pre-Qualification (for selective tendering)
- (h) Sole Source / Direct Purchase (limited tendering)
- (i) Cooperative Purchasing

8.2 Procurements with a Dollar Value of over \$100,000 shall be conducted in accordance with applicable Trade Agreement requirements.

8.3 The Treasurer shall implement procedures and templates in support of the procurement methods described in this Part.

8.4 Low Dollar Value Procurements: Purchasing Card or PO (under \$10,000) or Petty Cash (under \$100)

8.4.1 A Purchasing Card, Purchase Order, or Petty Cash (Not to exceed \$100) may be used for Low Dollar Value Procurements.

8.4.2 Staff are encouraged to research or obtain prices from at least three (3) different Vendors prior to making purchases under \$10,000.

8.5 Informal Request for Quotations (RFQ-I) (\$10,000 up to \$50,000)

8.5.1 For procurements with a Dollar Value of \$10,000 and up to \$50,000, the originating Department may use an informal Request for Quotations ("**RFQ-I**") and conduct an Invitational Competitive Process by sending the RFQ-I to a select number of Vendors.

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- 8.5.2 Staff must seek a minimum three (3) written quotes to ensure a competitive process. Department Heads may waive the requirement for three (3) quotes but will only do so where the staff has demonstrated to the satisfaction of the Department Head that a minimum of three (3) quotes cannot be obtained.
- 8.6 Formal Request for Quotations (RFQ-F) (\$50,000 up to \$100,000)
  - 8.6.1 For procurements with a Dollar Value of \$50,000 and up to \$100,000, the originating Department may use a formal Request for Quotations (“**RFQ-F**”) and conduct an Invitational Competitive Process by sending the RFQ-F to a select number of Vendors. The RFQ-F is a short solicitation document and seeks a price quote from the bidder rather than a formal written proposal.
  - 8.6.2 Staff must seek a minimum three (3) written quotes to ensure a competitive process. Department Heads may waive the requirement for three (3) price quotes but will only do so where the staff has demonstrated to the satisfaction of the Department Head that a minimum of three (3) quotes cannot be obtained.
- 8.7 Request for Tenders (RFT) (>\$100,000)
  - 8.7.1 An RFT is used when the County is seeking the lowest cost proposal and the Specifications for Goods or Services is sufficiently detailed so as to allow a bidder to compete for the Contract based on price alone.
- 8.8 Request for Proposals (RFP) (>\$100,000)
  - 8.8.1 The RFP is the preferred method of procurement where: (a) the County is looking for the best value proposal, meaning the decision on preferred Vendor, Goods or Services is not based solely on the lowest priced Goods or Services; (b) the Specifications are not so detailed as to allow for an evaluation on price alone; (c) when solutions are being sought to perform a certain function or service.
- 8.9 Request for Standing Offer (RFSO) or Standing Arrangement (RFSA)

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- 8.9.1 The RFSO is a procurement method that results in a Standing Arrangement with the winning Vendors. A "**Standing Arrangement**" means an arrangement with a Vendor(s) under which a procuring entity may buy, but is not *committed* to buy, Goods or Services from the Vendor(s) over a period specified in the arrangement. Contrary to the RFPQ, the arrangement includes all terms applicable to the procurement, such as the cost of the Good or Service and delivery requirements.
- 8.9.2 An RFSO may be used where the anticipated need for Goods or Services is inconsistent but recurring (such as for office supplies or other consumables, services e.g. tree trimming, etc.) and the County wishes to consolidate all such recurring purchases under a single, or several Vendors, in order to secure the best prices over the term of the resulting Contract.
- 8.9.3 In each RFSO, the County must indicate how subsequent purchases will be made from a Vendor under a Standing Arrangement. *(CFTA)* For example, if three (3) Vendors will be awarded a Standing Arrangement, also called a "standing offer agreement", the RFSO must indicate if the Vendors will be called upon to supply the Goods or Services on a rotational basis, whether there will be quotes requested from each Vendor prior to a decision being made on who will supply the Goods or Services, whether a Vendor will be given the right of first refusal over all requirements over other Vendors or any other approach.
- 8.9.4 Purchase commitments under a standing offer agreement are only made upon the issuance of a Purchase Order or call-up made pursuant to the terms of the standing offer agreement.
- 8.10 Prequalification of Vendors (RFPQ)/Selective Tendering (Rostering)
- 8.10.1 The County may elect to maintain a list of prequalified Vendors of Goods or Services on a roster.
- 8.10.2 Rosters shall be maintained for a term not to exceed three (3) years at which the department shall issue a RFPQ to establish a new roster.

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8.10.3 Prequalification of Vendors should be considered in the following circumstances:

- (a) there is a business need to ensure Vendors have the capacity to perform the work as a condition of participating in a RFX process and there could be a substantial impact on County operations if the work is not satisfactorily performed the first time;
- (b) where the requirement for the specific Goods or Services often arise unexpectedly and efficiency in procurement is necessary to ensure the County's operational requirements are always met;
- (c) any other circumstances deemed appropriate by Department Head.

8.11 Once a roster of pre-qualified Vendors of specific Goods and Services is established, there is no further requirement to publish tender notices when a requirement for those Goods or Services arise. The competitive tenders may be submitted directly to the roster of qualified vendors without any requirement to publish tender notices.  
*(OQCTA, CFTA, CETA)*

## 9.0 Limited Tendering / Direct Purchase

The County may procure Goods and Services without a competitive process in the following circumstances:

- 9.1 No Compliant Bids Received: If (i) no Bids were submitted or no Vendors requested participation; (ii) no Bids that conform to the essential requirements of the RFX documentation were submitted; (iii) no Suppliers satisfied the conditions for participation; or (iv) the submitted tenders were collusive, provided that the requirements of the tender documentation are not substantially modified; *(OQCTA, CFTA, CETA)*
- 9.2 Only One Supplier: if the Goods or Services can be supplied only by a particular Supplier and no reasonable alternative or substitute Goods or Services exist for any of the following reasons: (i) the requirement is for a work of art; (ii) the protection of patents, copyrights, or other exclusive rights; (iii) due to an absence of competition for technical reasons; *(OQCTA, CFTA, CETA)* (iv) the supply of Goods or Services is controlled by a Supplier that is a statutory monopoly; (v) to ensure

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compatibility with existing Goods, or to maintain specialized Goods that must be maintained by the manufacturer of those Goods or its representative; (vi) work is to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work; (vii) work is to be performed on a leased building or related property, or portions thereof, that may be performed only by the lessor; or (viii) the procurement is for subscriptions to newspapers, magazines, or other periodicals; *(CFTA)*

- 9.3 Additional Deliveries: for additional deliveries by the original Supplier of Goods or Services that were not included in the initial procurement, if a change of Supplier for such additional Goods or Services: (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, Services, or installations procured under the initial procurement; and (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity; *(CFTA, CETA)*
- 9.4 Commodity Market Goods: for Goods purchased on a commodity market such as electricity, postal services, postage, water, fuel, natural gas, furnace oil; *(OQTCA, CFTA, CETA)*
- 9.5 Prototypes: if the County procures a prototype or a first Good or Service that is developed in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first Good or Service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the Good or Service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs; *(OQTCA, CFTA, CETA)*
- 9.6 Exceptionally Advantageous Conditions: for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular Suppliers; *(OQTCA, CFTA, CETA)*
- 9.7 Winner of Design Contest: if a contract is awarded to a winner of a design contest provided that: (i) the contest has been organized in a manner that is consistent with this Policy, in particular relating to the

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publication of a tender notice; and (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner; (*OQTCA, CFTA, CETA*) OR

- 9.8 Confidential or Privileged Goods or Services: if Goods or consulting Services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to the public interest; (*CFTA*).
- (a) Emergency: if strictly necessary, and for reasons of urgency brought about by events unforeseeable by the County, the Goods or Services could not be obtained in time using an open competitive process. (*OQTCA, CFTA, CETA*) An Emergency is an exceptional situation that could include: An imminent or actual danger to the life, health or safety of any person,
  - (b) An imminent or actual danger of injury to or destruction of real or personal property,
  - (c) An imminent or actual unexpected interruption of a public service essential to the community,
  - (d) An emergency as defined by the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 and the emergency plan formulated thereunder by the County; and
  - (e) An imminent or actual spill of a pollutant as contemplated by Part X (Spills) of the *Environmental Protection Act*.
- 9.9 Dollar Value is Less than \$10,000. The Dollar Value of the procurement is less than ten thousand dollars (\$10,000).
- 9.10 Written Justification Required. All Direct Purchase procurements must be justified in writing based on one of the above exemptions and approved by the Approval Authority as set out in Part 4 (Approval Authority).

## 10.0 Cooperative Procurement (Buying Groups)

- 10.1 A Department may participate in a procurement process administered by a Buying Group provided appropriate approvals from the designated Approval Authority are obtained based on the anticipated Dollar Value.

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- 10.2 In participating in a Buying Group: *(CFTA)*
- 10.2.1 To the extent practicable, the County shall ensure that the procurement is carried out in a manner consistent with the Trade Agreements;
  - 10.2.2 The County shall publish a notice of its participation with the Buying Group at least annually on the tendering website normally used and the notice shall direct potential Suppliers to the buying group tender notices website if it is different from the County's tendering website or systems.
- 10.3 A Department may choose to work collectively with other local Municipalities to leverage the purchasing power. It is the responsibility of the Department to ensure the purchasing policy of the lead Municipality either meets or exceeds the County's policy.

## 11.0 Unsolicited Proposals

- 11.1 The County may, from time to time, be approached by proactive Vendors seeking to engage the County in a procurement or contract. For example, a proactive Vendor may offer to allow the County to test, or pilot, a Good or Service, or suggest that the County consider an innovative approach, or solution to an existing County problem.
- 11.2 Outside of any relevant RFX process, County staff may engage in discussions with potential Suppliers on opportunities that exist in the market as part of informing themselves of market changes and opportunities. Before engaging in any such discussions, however, the Vendor must always be advised that any procurement or contract can only be initiated pursuant to the County's policies.
- 11.3 If an unsolicited proposal (document) is received from any potential Supplier, the unsolicited proposal should be forwarded to the Treasurer, Procurement and the appropriate County Department Head. The Department Head shall first assess such proposals on the basis of whether they align with the County's strategic goals and objectives, do not circumvent the County's regular procurement processes, and the proposal's scale and scope align with the requirements and funding ability of the County.

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- 11.4 If it is determined that there is a legitimate need for the Goods or Services offered by way of an unsolicited proposal, then the procurement process shall be conducted in accordance with this policy.

## 12.0 Publishing Tender Notices / Advertising Opportunities

- 12.1 All RFPQ notices and Open Competitive Processes exceeding a Dollar Value of \$100,000 shall be advertised using a tender notice. (*OQTCA, CFTA, CETA*)
- 12.2 Each tender notice must be in the form prescribed by the Trade Agreements and advertised on the tendering website authorized by the CAO for posting tender notices, from the date that the RFX is issued up to and including the date on which the RFX closes.
- 12.3 Advertising opportunities are posted the County of Essex website.

## 13.0 Negotiation of contracts

### Negotiation as Part of a Competitive Process:

- 13.1 The County may only conduct negotiations with the successful bidder if the County has indicated its intent to conduct negotiations in the tender notice or the RFX. (*CFTA, CETA, OQTCA*). The process to be used is as stipulated in the Standard County Template.
- 13.2 The County shall ensure that any elimination of bidders participating in negotiations is carried out in accordance with the evaluation criteria set out in the RFX documentation, this Policy, and Standard County Template.
- 13.3 In the course of negotiations, the County shall not give an unfair advantage to, or discriminate against, a bidder.
- 13.4 Negotiation of Direct Purchase Contract:
- 13.4.1 Unless otherwise approved by the CAO, the County shall use the County's Standard County Template form of agreement as the basis of any contract negotiation of a Direct Purchase Contract.

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- 13.4.2 All Contracts must include a provision allowing the County to terminate the contract for any reason upon thirty (30) days prior notice unless otherwise approved by the CAO.
- 13.4.3 Only the CAO may authorize changes to the terms in the County's template agreements.

### 14.0 Authority to Execute Contracts and Related Documentation

- 14.1 Only the designated Approval Authority may execute Contracts and related contract documents on behalf of the County.
- 14.2 If an amendment to a Contract increases the Dollar Value and Approval Authority, then the higher level Approval Authority is required to approve and sign that amendment, and any further amendments and contract documents relating to that Contract.

### 15.0 Bidder Debriefing (>\$100,000)

- 15.1 The County shall offer debriefs to unsuccessful bidders of a competitive process providing bidders with an explanation of the reasons why the procuring entity did not select its tender. *(CFTA, CETA, OQTCA)* The debriefing shall include the Department Head or manager and procurement. The debrief session may be held in person, by telephone or by other electronic means available.

### 16.0 Bidder complaint resolution

- 16.1 The County encourages the use of open and competitive procurement processes and the objective and equitable treatment of all Vendors.
- 16.2 Any Vendor that wishes to challenge or is otherwise aggrieved by a decision made by the County, its staff or Council under this Policy is required to provide a written complaint to the Procurement/Compliance Supervisor, within five (5) business days of the date of the award or other decision.
- 16.3 Jointly the Procurement/Compliance Supervisor and applicable Department Head shall respond to the complaint within ten (10) business days.

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- 16.4 In the event the Vendor is not satisfied with the response provided, they can request a meeting with the Procurement/Compliance Supervisor. The Vendor's request shall be in writing and shall provide a detailed statement of the grounds of the complaint, including copies of relevant documents, and identify the form of relief requested.
- 16.5 If no resolution satisfactory to both parties has been achieved, the Vendor will have three (3) business days from the date of the meeting with the County to make a formal written request to meet with the Procurement/Compliance Supervisor, the Department Head, the Treasurer or the CAO regarding the Vendor's complaint. The Department Head, Treasurer and CAO will make the final decision regarding the Vendor's complaint in writing.
- 16.6 In the event that the Vendor remains dissatisfied with the resolution, the Vendor may submit a bid protest to the County's solicitor.

## 17.0 Contract management

### 17.1 Responsibility for Managing the Contract

- 17.1.1 Each Department Head or their delegate (the "**Contract Manager**") is responsible for ensuring all Contract requirements are satisfied by the Vendor throughout the term, including ensuring bonds and insurance certificates, WSIB, or any specified license requirements, are provided as required by the Contract.
- 17.1.2 The Contract Manager must ensure proper oversight of the Vendor and proper inspection of Goods and Services throughout the Contract term, promptly report and address deficiencies in performance and keep records of Vendor performance.
- 17.1.3 All Contract documentation must be maintained in a central location in accordance with the County's records management and retention policies.
- 17.1.4 As a condition of paying for Goods and Services: (a) Department Heads or their delegate must ensure and certify that Goods and Services supplied by a Vendor conform with

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the requirement of the Contract; and (b) that invoices are made in accordance with provisions of the Contract

#### 17.2 Vendor Performance Evaluation

- 17.2.1 At the completion of every Contract where the tender documents identified a performance evaluation review will be performed for Goods or Services, the Project Manager or applicable Department Head should complete a Vendor performance evaluation ("**Vendor Performance Evaluation**"). Such evaluation must be kept in accordance with the County's records management and retention policies and be available for review.
- 17.2.2 Documented poor performance or non-performance on any County Contract should be reported to the Procurement Compliance Supervisor and may be used to determine the eligibility of a Vendor to (a) continue to provide Goods or Services to the County on a current Contract; (b) remain a qualified Vendor; and (c) participate in future procurements as set out in Part 19 (Bidder Eligibility).

## 18.0 Disposal of surplus assets

- 18.1 Department Heads may submit to the Financial Services Department from time to time and upon request, a list of furniture, vehicles, equipment, stocks and other assets, which are obsolete, damaged, available for trade-in or surplus to that Department's needs ("**Surplus Assets**").
- 18.2 All Surplus Assets shall first be offered to other Departments within the Corporation. Upon this first step, surplus assets to be offered outside the Corporation must be approved by the Director of Financial Services.
- 18.3 All Surplus Assets not required by any Department may then be offered to public sector agencies and charitable organizations within the County prior to any public disposal procedure, donation or sale to area municipalities.

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- 18.4 Surplus assets may be donated to non-profit agencies or non-profit institutions for educational or teaching purposes only. Donated items shall not be re-sold.
- 18.5 Department Heads shall have the authority to sell or dispose of all Surplus Assets, by sealed bid or public auction through the municipal website or any other online classified site(s).
- 18.6 The respective Department shall be credited with the net proceeds, if any, from the disposal of its Surplus Assets unless otherwise agreed.
- 18.7 Surplus Assets shall not be sold directly to an employee or to a member of Council, although this does not prohibit any employee or member of Council from purchasing Surplus Assets being sold through a public process.

### 19.0 Bidder eligibility

- 19.1 Without limiting or restricting any other right or privilege of the County and regardless of whether or not a Bid otherwise satisfies the requirements of an RFX, the County may bar a Vendor, refuse any Bid from a Vendor, or remove the Vendor from a prequalified Vendor list where:
- 19.1.1 There is supporting evidence that the commercial integrity of the Vendor has been impaired by the act(s) or omission(s) of such Vendor (*OQTC*, *CFTA*, *CETA*) including but not limited to any one or more of the following having occurred within the five (5) year period immediately preceding either the date on which the RFX is released or while the Vendor is on the prequalified Vendor list:
- i. the County commenced litigation against the Vendor for wrongdoing;
  - ii. act(s) or omission(s) resulting in a claim by the County under any security submitted by the Vendor on a RFX, including but not limited to a Bid bond, a performance bond, or warranty bond;
  - iii. the failure of the Vendor to pay, in full, all outstanding payments (and, where applicable, interest and costs) owing to the County by such Vendor, after the County has made

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- demand for payment of same;
- iv. the Vendor's refusal to follow reasonable directions of the County or to cure a default under any Contract with the County as and when required by the County;
- v. the Vendor's refusal to enter into a Contract with the County after the Vendor's Bid has been accepted by the County;
- vi. poor performance of a Vendor, including the Vendor's refusal to perform or to complete performance of a Contract with the County;
- vii. the Vendor having unlawfully or unreasonably threatened, intimidated, harassed, or otherwise interfered with an attempt by any other prospective Vendor to Bid for a County Contract or to perform any Contract awarded by the County to that Vendor;
- viii. the Vendor having discussed or communicated, directly or indirectly, with any other Vendor or their agent or representative about the preparation of the Vendor's Bid including, but not limited to, any connection, comparison of figures or arrangements with, or knowledge of any other Vendor making a Bid for the same work except in the instance of a joint venture Bid where one is permitted;
- ix. the Vendor having unlawfully or unreasonably threatened, intimidated, harassed, assaulted or committed battery against, or otherwise interfered with an official, employee, representative, agent or independent consultant or contractor of the County in the performance of his or her duties or in any way attempted to influence such persons;
- x. the Vendor having on one or more occasions, in the performance of a Contract with the County, deliberately, with willful blindness or negligence, save and except an inadvertent error corrected to the satisfaction of the County within a reasonable time, as determined by the County:
  - 1. over-billed, double-billed and/or retained a known over-payment, or has failed to notify the County of an over-payment or duplicate payment;
  - 2. billed for items not supplied;
  - 3. billed for items of one grade, while supplying items of an inferior grade;

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4. made a misrepresentation as to the quality or origin of Goods, their functionality or suitability for a purpose, or their performance characteristics;
  5. submitted false or misleading information to the County;
  6. acted in conflict with the County's interests;
  7. misappropriated any property or right of the County, in any form; or
  8. committed any other form of deceptive practice
- xi. any other act or omission by the Vendor that the County deems to impair the commercial relationship between the County and the Vendor.
- 19.2 There is supporting evidence that it would not be in the best interests of the County to enter into a Contract with the Vendor, including but not limited to:
- (a) the conviction of that Vendor or any person with whom that Vendor is not at arm's length within the meaning of the *Income Tax Act* (Canada) of an offence under any taxation statute in Canada;
  - (b) the conviction or finding of liability of that Vendor under the *Criminal Code* or other Legislation or law, whether in Canada or elsewhere and whether of a civil, quasi-criminal or criminal nature, of moral turpitude including but not limited to fraud, theft, extortion, threatening, influence peddling and fraudulent misrepresentation;
  - (c) the conviction or finding of liability of that Vendor under any environmental Legislation, whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that Vendor for the environmental well-being of the communities in which it carries on business;
  - (d) the conviction or finding of liability of that Vendor relating to product liability or occupational health or safety, whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that Vendor for the health and safety of its workers or customers;
  - (e) the conviction or finding of liability of that Vendor under the financial securities Legislation whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross

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disregard on the part of that Vendor for its stakeholders.

19.2.1 There is supporting evidence that the Vendor has been declared bankrupt (*OQTCA, CFTA, CETA*) or is insolvent. (*OQTCA, CFTA*)

19.3 For the purposes of this Part, a reference to a Vendor shall also include: an officer, a director, a majority or controlling shareholder, or a member of the Vendor, if a corporation; a partner of the Vendor, if a partnership; any corporation to which the Vendor is an affiliate of or successor to, or an officer, a director or a majority or controlling shareholder of such corporation; and any person with whom that the Vendor is not at arm's length within the meaning of the *Income Tax Act* (Canada).

## 20.0 Employee Conflicts of Interest

20.1 Employees of the County shall not have an interest, either directly or indirectly, in any County Contract unless such interest has been declared and such employee is excluded from involvement with the procurement decisions related to the Contract.

20.2 Employees must declare any pecuniary interest, either direct or indirect, in writing to their Department Head, Treasurer or CAO (CAO declares to Warden) indicating the specific nature of the conflict and shall be excluded from any involvement with the procurement of such Goods and/or Services.

## 21.0 Statement of Ethics for Public Procurement

21.1 The following ethical principles **shall** govern the conduct of every County employee delegated with the authority to procure.

21.1.1 The County's employees must conduct themselves with the utmost integrity in carrying out their duties as public servants including avoiding any apparent, potential and actual conflicts of interest.

21.1.2 Every County employee shall abide by the highest ideals of honour and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.

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#### 21.2 Employee's responsibility to the County:

- 21.2.1 Follow the lawful instructions, by-law, policies and procedures of the County.
- 21.2.2 Understand the limits of the authority granted by the County.
- 21.2.3 Avoid activities which would compromise or give the perception of compromising the best interest of the County and the public.
- 21.2.4 Obtain the maximum benefit for funds spent as agents for the County.

#### 21.3 Employees' relationship with Vendors:

- 21.3.1 Maintain and practice, to the highest degree possible, business ethics, professional courtesy and competence in all transactions.
- 21.3.2 Undertake all purchasing activities without positive or negative bias.
- 21.3.3 Strive to obtain the maximum value for each dollar of expenditure.
- 21.3.4 Consistently reject any offer of favours, gifts, gratuities, loans regardless of the Dollar Value.
- 21.3.5 Adhere to and protect Vendors' business and legal rights to confidentiality over pricing information, trade secrets, and other proprietary information.

## 22.0 Procurement policy and reviews

- 22.1 The Treasurer shall from time to time and not less than once per year consult with the Department Heads to obtain feedback on this Policy.
- 22.2 Based on the consultation with Department Heads, the Treasurer shall prepare an annual report to the CAO recommending any changes to this policy to meet the needs and requirements of the County.

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- 22.3 All changes to this Policy require the approval of Council to take effect.
- 22.4 A formal policy review shall take place every five (5) years or sooner should it be legislatively required.

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## Schedule "A" – Definitions

Words and phrases used in this Policy and related procedures have the following meanings, unless expressly stated otherwise:

**"Approval Authority"** means the authority to approve: (i) procurements; and (ii) contract award decisions and/or the signing of contracts, including any changes to such procurements or contracts.

**"Bid"** means a response to a competitive Bid issued by the County.

**"Buying Group"** means a cooperative arrangement in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the Buying Group administers procurement for group members. Buying groups may consist of a variety of entities, including any combination of procuring entities, private sector entities, or not-for-profit organizations.

**"Contract"** means a written agreement for the purchase of Goods, Services, equipment or construction and includes a Purchase Order.

**"Contract Manager"** has the meaning assigned in Part 17 (Contract Management).

**"Cooperative Procurement"** means the purchase of Goods or Services as part of a Buying Group.

**"Council"** means the Council of the Corporation of the County of Essex.

**"County"** or **"Corporation"** means the Corporation of the County of Essex.

**"Department"** or **"Originating Department"** means the County department initiating the acquisition of the Goods or Services.

**"Department Head"** means an employee of the Corporation of the County of Essex in charge of a Department or his/her designate.

**"Delegation of Authority Bylaw"** has the meaning assigned in Part 4 (Approval Authority)

**"Direct Purchase"** means acquiring a good or service directly from a Supplier without a competitive process.

**"Dollar Value"** has the meaning assigned in Part 5 (Determining the Dollar

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Value).

**"Emergency"** has the meaning assigned in Part 9.8 (Limited Tendering Procurements/Direct Purchase).

**"Goods"** includes supplies, equipment, materials, products, software, furniture, structures and fixtures to be delivered, installed or constructed.

**"Invitational Competitive Process"** means a general process where the County acquires Goods or Services by inviting a select number of Suppliers to submit a Bid.

**"Legislation"** means all applicable laws, regulations, by-laws, policies and trade treaties/agreements.

**"Low Dollar Value Procurements"** has the meaning assigned in Part 8.1 (Low Dollar Value Procurements)

**"Officer"** is a high-level management official of The Corporation of the County of Essex.

**"Open Competitive Process"** means a general process where the County acquires Goods or Services by publicly advertising an invitation to Suppliers to submit a Bid.

**"Petty Cash"** means an accessible store of money kept by the County for expenditure on Low Dollar Value items.

**"Policy"** means this procurement policy.

**"Purchase Order"** or **"PO"** means a written offer to procure Goods and/or Services or a written acceptance of an offer.

**"Purchasing Card"** means a credit card provided by the County's Financial Services Department and its use is bound by the provisions of the Policy.

**"Recurring Contracts"** has the meaning assigned in Part 5 (Determining the Dollar Value).

**"Request for Prequalification"** or **"RFPQ"** means a Request for Information about Vendors to determine whether the Vendor has the capability to perform the contract requirements. The Request for Prequalification process is undertaken with a view to establishing a list of bidders eligible to Bid on future opportunities.

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**“Request for Proposals”** or **“RFP”** means a request for Bids comprised of a technical and financial proposals that involves an evaluation of the elements in the technical proposal as well as prices.

**“Request for Quotations”** or **“RFQ”** means a request to a select class of Vendors for prices on specified Goods and/or Services and refers to a RFQ-I or RFQ-F as the context permits.

**“Request for Standing Offers”** or **“RFSO”** means a procurement document issued by the County requesting pricing and details to provide certain Goods or Services on an as-required basis, during a particular period of time, at a predetermined price or discount, generally within a predefined dollar limit. There is no obligation on the part of the County to access the Goods or Services.

**“Request for Tenders”** or **“RFT”** means a request for Bids comprised of proposed prices for Goods and/or Services from Vendors, where the Goods and/or Services are specified in detail in the RFT.

**“RFX”** means any process inviting potential Vendors to submit Bids or information to the County.

**“Services”** means all Services, including Construction Services, unless otherwise specified.

**“Specifications”** means the detailed description of, and written requirements and standards for, Goods and/or Services contained in a RFX to the extent known or available to the Department, and includes any drawings, designs and models.

**“Standing Arrangement”** or **“RFSO”** has the meaning assigned in Part 8.9 (Request for Standing Offer “RFSO”)

**“Supplier”** or **“Vendor”** means a person who submits a response to a County solicitation for Goods or Services.

**“Trade Agreements”** means the Canadian Free Trade Agreement (CFTA), the Canadian and European Union Comprehensive Economic and Trade Agreement (CETA), and the Trade and Cooperation Agreement between Ontario and Quebec (OQTCA), as applicable.

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## SCHEDULE B – Exclusions from Policy Procurement Rules

Contracts for, or payment of, the expenses, Goods or Services listed below are not subject to the competitive procurement requirements in this Policy, save and except for Part 4 (Procurement Approval Authority) and Part 20 (Employee Conflicts of Interest).

Note: Best practice ensures services are acquired through a compliant, open, fair and transparent process. The County continues to encourage competition to acquire the services assuring value for money.

- (1) **General Exclusions:** The following are excluded procurements: *(CFTA and aligned with CETA)*
  - (a) Goods or Services financed primarily from donations that require the procurement to be conducted in a manner inconsistent with this Policy;
  - (b) Procurements by the County on behalf of an entity not covered by this Policy;
  - (c) Procurements under a commercial agreement between the County which operates sporting or convention facilities and an entity not covered by this Policy that contains provisions inconsistent with Policy.
  - (d) Acquisition of Goods for the purpose of commercial sale or re-sale by the County.
  
- (2) **Excluded Professional Services** *(CFTA and aligned with CETA)*
  - (a) Health or social Services.
  - (b) Services that may, under applicable law, only be provided by licensed lawyers or notaries.
  - (c) Services of expert witnesses or factual witnesses used in court or legal proceedings
  - (d) Financial Services respecting the management of government financial assets and liabilities (*i.e.* treasury operations), including ancillary advisory and information Services, whether or not delivered by a financial institution.
  
- (3) **Non-Procurement Transactions**
  - (a) Insurance premiums however the purchase of insurance advisory Services is not excluded.

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- (b) Payments of debts. *(CFTA, CETA)*
- (c) Procurement or acquisition of fiscal agency or depository Services (banking Services). *(CFTA, CETA)*
- (d) Any form of financial assistance, such as grants, loans, equity infusions, guarantees, and fiscal incentives. *(CFTA, CETA)*
- (e) Agreements with a governmental authority or agent of government.
- (f) Acquisition or rental of land, real property payments including land, buildings, leasehold interests, easements, encroachments and licenses, or the like. *(CFTA, CETA)*
- (g) Insurance claims, legal settlements and grievance settlements.
- (h) Binding orders, judgments or decisions of an arbitrator, tribunal or court.
- (i) Refundable travel expenses.
- (j) Other County and employee related expenses, such as: memberships in professional organizations (professional dues), staff attendance at seminars, testing or examination fees, and registrations for workshops, courses, training, trade shows or conferences.