



# Procurement Policy – CPM-01-03

## April 2018

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<b>NAME OF POLICY</b>	<b>POLICY NUMBER</b>	<b>RESPONSIBILITY</b>
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Original Signed \_\_\_\_\_  
**Janice Thomson**  
Chair

May 2, 2018 \_\_\_\_\_  
Date

Original Signed \_\_\_\_\_  
**Reegan McCullough**  
Chief Executive Officer

May 2, 2018 \_\_\_\_\_  
Date



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## Preamble

NPC is a self-funded agency of the Government of Ontario under the Ministry of Tourism, Culture & Sport and, as such, is governed as an “Other Included Entity” by the Procurement Directive. This Procurement Policy incorporates the mandatory requirements of the Procurement Directive.

It must be ensured that any subsequent modifications to this Procurement Policy do not conflict with the mandatory requirements of the Procurement Directive. It is the responsibility of NPC’s Director, Corporate Procurement, to ensure that this Procurement Policy remains in conformity with mandatory Government of Ontario requirements.

NPC places a high priority on annual Procurement training workshops for staff who participate in Procurements to ensure a thorough understanding of this Policy.

## 1.0 Purpose

The purpose of this Procurement Policy is to:

- simplify and clarify Procurement - related policies based on sound Procurement practices;
- ensure compliance with the mandatory elements of the Procurement Directive;
- ensure that Goods and/or Services procured by NPC are acquired through a process that is fair, open, transparent, geographically neutral and accessible to qualified vendors;
- specify the responsibilities of individuals and organizations in each stage of the Procurement process;
- obtain the best value for the NPC when procuring Goods and/or Services;
- contribute to a reduction in purchasing costs; and
- ensure consistency in the management of Procurement-related processes and decisions.

## 2.0 Application and Scope

This Procurement Policy applies to the Procurement of all Goods and/or Services including, but not limited to, consulting services, capital/infrastructure projects, communications services, advertising, public relations, and IT required to meet NPC’s needs. It also applies to:

- retail goods purchased for resale – see Section 4.3; and
- Revenue Generating Opportunities – see Section 4.5.

Adherence to this Procurement Policy is mandatory. The principles and requirements contained herein must be applied to all Procurements. Exemptions from this Procurement Policy requires Board approval and, if the exemption relates to a mandatory requirement of the Procurement Directive, also require prior MBC approval.

## **3.0 Principles**

### **3.1 Value for Money**

The overall objective of this Procurement Policy is to ensure that NPC acquires Goods and/or Services to meet its needs in the most economical and efficient manner. Goods and/or Services must be procured only after consideration of NPC business requirements, alternatives, timing, supply strategy, and Procurement method.

Value for money does not mean an exclusive focus on the lowest-cost solution. NPC will seek value-based Procurement, where appropriate, by focusing on outcomes and end-users (whether NPC's personnel or the public), by acting strategically and in an integrated fashion, and by engaging in problem-solving with vendors.

### **3.2 Vendor Access, Transparency, and Fairness**

Access for qualified vendors to compete for NPC business must be open and the Procurement process must be conducted in a fair and transparent manner, providing equal treatment to vendors.

Conflicts of interest, both real and perceived, must be avoided during the Procurement process and the ensuing Contract. NPC must avoid creating relationships that result in continuous reliance on a vendor for particular kinds of Goods and/or Services.

### **3.3 Responsible Management, Personal Integrity and Professionalism**

The Procurement of Goods and/or Services must be responsibly and effectively managed through appropriate organizational structures, systems, policies, processes, and procedures. All individuals involved with purchasing or other supply chain-related activities must act, and be seen to act, with integrity and professionalism. This includes the following:

- honesty and due diligence must be integral to all supply-chain activities within and between NPC, vendors and other stakeholders;
- respect must be demonstrated for NPC, its vendors and other stakeholders;
- respect must be demonstrated for the environment;
- confidential information must be safeguarded; and
- participants must not engage in any activity that may create, or appear to create, a conflict of interest, such as accepting gifts or favours, providing preferential treatment, or publicly endorsing vendors or products.

### **3.4 Geographic Neutrality and Reciprocal Non-Discrimination**

NPC is subject to Trade Agreements and must ensure that access for vendors to compete for government business is geographically neutral with respect to other jurisdictions that practice reciprocal non-discrimination with Province of Ontario.

### **3.5 Ethical Procurement**

If NPC procures Goods manufactured outside the boundaries of Canada, the vendor shall comply with all the laws of the jurisdiction in which the Goods are manufactured including those related to the export of the Goods from the jurisdiction and their import into Canada. If NPC procures directly from overseas markets, items shall be sourced from manufacturers who have received appropriate certification of product testing and social compliance.

### **3.6 Sustainable Procurement**

NPC will ensure operating decisions are made with consideration to sustainability. This involves considering impacts on human health and the environment, and evaluating purchases based on a variety of criteria, ranging from the necessity of the purchase to the options available for its eventual disposal.

NPC commits to working with its partners to leverage its combined influence to minimize the environmental footprint of the hospitality industry in Niagara region and globally. When all things are equal, NPC may favour vendors who demonstrate an environmental philosophy similar to the NPC's mandate NPC staff will consider incorporation of sustainable evaluation criteria in the RFX and assign an appropriate weighting.

### **3.7 Unbiased Specifications / Technical Requirements**

Specifications and technical requirements should be sufficiently detailed to ensure that NPC is able to properly compare vendors and select a vendor that can meet NPC's needs; however, they should not be overly-prescriptive or include unnecessary elements. Where possible, specifications and technical requirements should:

- focus on outcomes rather than how the outcome is achieved, or on design or descriptive characteristics; and
- be based on standards, if they exist.

Specifications and technical requirements should not be brand-specific (i.e. avoid the use of technical specifications that require or refer to a trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier). Unless the reference to a particular brand is appropriate and necessary, referring to brand names can be discriminatory or give an unfair advantage to certain vendors. If referring to a particular brand is deemed appropriate by the Director, Corporate Procurement, NPC must indicate that it will consider tenders of equivalent Goods and/or Services that demonstrably fulfil the requirement of the Procurement by including words such as "or equivalent" in the Procurement documentation.

The Procurement should not discriminate based on the origin of a vendor or Goods. If some form of origin discrimination is thought to be appropriate, it may be reviewed by legal counsel in advance reviewed by legal counsel in advance.

Any vendor that advises on the development of specifications or technical requirements must not be permitted to bid on the Procurement that uses them, as that vendor would have a perceived

unfair advantage, both in knowing the specifications and technical requirements in advance and in allegedly aligning them to its own capabilities or away from those of its competitors.

## 4.0 Procurement Planning

Planning is an integral part of the Procurement process. It involves identifying potential supply sources, selecting a suitable Procurement method, and determining and securing necessary approvals, all with a view to ensuring that sufficient time is allotted to effectively complete the Procurement process.

Annually, prior to the commencement of each fiscal year (and no later than March 31) and upon approval of the annual budget and business plan, the Director, Corporate Procurement, will request that each NPC business unit provide Procurement with that unit's:

- (i) annual budgeted capital and operating requirements; and
- (ii) its proposed Contract start date to meet each requirement by fiscal quarter (Q1: April – June; Q2: July – September; Q3 October – December; and, Q4: January – March),

for the purposes of developing the annual Procurement plan. The Director, Corporate Procurement, will assimilate all the information into one concise Procurement plan which maps out the project demands for the upcoming fiscal period.

By establishing the plan prior to Q1, the Procurement Division can optimize opportunities to aggregate spending, streamline process, avoid bottlenecks, and ensure availability of adequate resources.

If demand exceeds capacity, the Director, Corporate Procurement, will conduct proactive discussions with NPC business units to identify opportunities and shift or re-schedule projects to earlier or later quarters.

A Procurement activity report shall be submitted to the Finance and Audit Committee on a quarterly basis by the Director, Corporate Procurement. The report shall summarize active and planned Procurements, special Procurement projects, performance indicators, such as Procurement savings, and any unusual Procurement issues.

The Procurement Division will work with NPC business units in assessing the following Procurement planning considerations:

- early identification of business needs;
- clear definition of specifications and evaluation requirements;
- compatibility of Procurement needs with policy, program, and/or legislative and regulatory requirements;
- adequate timelines for Procurement approval, tender period and evaluation;
- vendor capacity to deliver requirements in the proposed timelines;
- accessibility requirements;



- deliverables from the successful vendor;
- reporting relationships and accountability mechanisms that will apply to the successful vendor(s);
- privacy, security and confidentiality requirements;
- ownership of deliverables and intellectual property rights;
- business continuity requirements;
- performance standards and service levels;
- performance management including remedies for non-performance;
- vendor compensation and payment;
- knowledge transfer and training, if applicable;
- risk allocation and liability;
- dispute resolution;
- early termination provisions;
- termination transition requirements;
- alternative Procurement methods (i.e. Joint Procurement, competitive dialogue, limited negotiation framework), as appropriate; and
- other requirements deemed necessary.

For IT Procurements, NPC must also consider, as appropriate:

- delivery, testing and acceptance requirements;
- any applicable technical architecture;
- design requirements and standards;
- contingency for anticipated changes in quantity requirements over the life of the Contract, such as future growth or changes in business need, (e.g. new locations);
- interface requirements; and
- Payment Card Industry Data Security Standard Compliance.

For all Procurements, NPC must also consider, as appropriate:

- accessibility requirements in accordance with AODA (see Section 10.3);
- privacy, security and confidentiality requirements in accordance with FIPPA (see Section 10.2); and
- compliance with Canadian immigration laws.

## **4.1 Procurement Planning for Services**

When planning for the Procurement of Services, it is important to distinguish between Procurements for Consulting Services and Procurements for Non-Consulting Services.

### **4.1.1 Non-Consulting Services**

All Non-Consulting Services with a Procurement Value of \$5,000 or more must be procured through a competitive process. Whether an open or invitational competitive process is used depends on the Procurement Value (see Section 5.0).

This requirement is subject to the exceptions for non-competitive Procurement described in Section 7.0.

### **4.1.2 Consulting Services**

All Consulting Services must be acquired through a competitive Procurement process, irrespective of Procurement Value. Whether an open or invitational competitive process is used depends on the Procurement Value (see Section 5.0).

This requirement is subject to the exceptions for non-competitive Procurement described in Section 7.0.

### **4.1.3 Establish Contract Ceiling Price**

To ensure that individual assignments under a given Services Contract do not, in the aggregate, exceed the Procurement Value identified in the approval for the related Procurement process, Services Contracts (for both Consulting Services and Non-Consulting Services) must specify a Contract Ceiling Price. The Contract Ceiling Price cannot exceed the Procurement Value identified in the approval for the related Procurement process.

Once established, NPC is not permitted to make changes to the Contract Ceiling Price unless allowed by contractual provisions. If NPC has established that a Contract Ceiling Price increase is required, prior written approval must be obtained from the appropriate NPC delegated authority here within Section 5.0 reflecting the new Procurement Value (i.e. the approval is sought based on the revised Procurement Value, not on the value of the change in Procurement Value).

While Contract Ceiling Price increases may be required over the term of a Contract, NPC is encouraged to avoid such increases through appropriate Procurement planning.

### **4.1.4 Terms of Reference for Services**

Clear terms of reference for Services should be established as part of the Procurement process and reflected in the RFX and Contract. Service Contracts may include, where applicable:

- objectives;
- background;
- scope;

- constraints;
- NPC staff responsibilities or other dependencies;
- tangible deliverables/results;
- timing;
- progress reporting;
- approval requirements; and
- knowledge transfer requirements.

Consultants and other Services providers must not prepare or access government confidential information without appropriate non-disclosure/confidentiality agreements being in place. Consultants and other Services providers must not collect, use or disclose personal information on behalf of NPC without appropriate privacy clauses in the Contract.

## **4.2 Procurement Planning for Construction Projects**

The undertaking of large Construction projects is normally a multi-year process. Prior to completing an RFX for large Construction projects, NPC staff will complete a needs analysis/business case approved by the Chief Executive Officer.

When undertaking Procurements related to large Construction projects, business units must also ensure that a Procurement plan is developed and implemented. The Procurement plan for large projects must be appropriate and aligned with the key business objectives of the project and provide sufficient detail of all required Procurements to successfully meet the key business objectives.

NPC may consider sub-dividing a project-related Procurement(s) into several smaller Procurements for the purposes of complexity, size, uncertainty, or improved management control but not to circumvent approval authorities or competitive Procurement requirements.

To maximize alignment with business objectives, project team members responsible for both project delivery and contract management should be involved in development of the Procurement documents and Contract award, led by Procurement staff.

NPC may consider the use of legal services and/or a Fairness Consultant on complex projects, or those with a value of \$1 million or greater, to provide oversight of Procurement processes. If NPC uses a Fairness Consultant, they must be engaged throughout the entire Procurement process.

### **4.2.1 Separation of Design and Build in the Procurement Process**

For Procurements that involve design and build phases, staff should separate these phases in the Procurement process. This can be accomplished by conducting a single Procurement with the build phase being subject to the successful completion of the design phase, or by conducting separate Procurements for the design phase and the build phase.

If NPC staff determine that it is appropriate to conduct a single Procurement, whereby the same vendor would provide both design and build Services, staff must validate the satisfactory completion of the design phase before proceeding with the build phase. Staff must also ensure that the RFX, especially the Contract, clearly outlines the criteria by which satisfactory completion will be measured. NPC staff should consult with legal counsel regarding the development and phasing of appropriate completion and approval criteria.

NPC staff must ensure that appropriate design review and approval by the project governance structure occurs prior to proceeding to the build stage.

If NPC conducts separate Procurements for the design phase and the build phase of a project, NPC staff must determine whether the successful vendor(s) at the design phase will be permitted to participate in the build stage, and clearly indicate this in the design phase Procurement documents.

NPC must provide full disclosure of the design and the name of the design vendor(s) in the build phase Procurement documents, including whether the design vendor(s) are permitted to bid.

NPC must also ensure that all interested vendors have access to the same information made available to the successful design vendor(s) either through the Procurement documents or other mechanisms such as a reading room accessible to all vendors interested in responding to the Procurement.

### **4.3 Procurement Planning – Retail Goods for Resale**

Acquisition of Goods for resale is specialized and may involve products unique to a particular vendor. Goods procured for resale in retail operations are segregated into two distinct categories: “generic” Goods and “specialty” Goods.

“Generic” Goods are:

- distinguished by the absence of a prominent, well-known brand name;
- products initiated, developed and designed exclusively by NPC where the finished good may be available from multiple vendors; and/or
- products that do not infringe upon exclusive vendor patents, designs, brands, proprietary or distribution rights.

Examples of Generic Goods are:

- raw materials used in the primary production or manufacturing of a finished good including such items as blank shirts, blank mugs, etc.;
- products developed in-house where NPC provides the specifications, artwork, and/or custom designs; and
- staple items with broad customer appeal that may be available through multiple vendors.

Generic Goods for resale are procured through a competitive Procurement process, and subject to approval thresholds and Procurement methods identified in Section 5.0.

“Specialty” Goods are:

- products with brand identification or unique characteristics;
- selected specifically to respond to customer demands and preferences; and/or
- available through one vendor due to exclusive brands, patents, licences, proprietary rights, artwork / photography or vendor distribution rights.

Examples of Specialty Goods are:

- brand name items such as Disney, Roots, etc.;
- fashion / trendy Goods with a short product life cycle;
- finished Goods where artwork has been provided by the vendor; and
- Canadian-made products.

**Note:** Commercial Goods and/or Services for resale are not subject to the Procurement requirements under relevant trade treaties, and NPC is permitted to adopt its own policy (consistent with the principles of the Procurement Directive) regarding the Procurement of Goods and/or Services and Non-Consulting Services.

NPC may utilize one of the following Procurement methods for the Procurement of Specialty Goods for resale:

- comparative sourcing (as discussed in Section 4.3.1)
- retail business strategy requirements to support profitable retail operations;
- criteria for product and vendor selection; and
- appropriate profitability and performance targets and measures.

These methods are also subject to the approvals and values set out in the table in Section 5.0.

#### **4.3.1 Comparative Sourcing of Specialty Goods for Resale – Form A (Retail)**

Comparative sourcing of Specialty Goods for resale in NPC retail outlets is undertaken by NPC buyers responsible for vendor selection and negotiation, product development, product selection, merchandising, implementation and execution of the retail strategy, and achievement of financial performance targets.

Comparative sourcing of Specialty Goods for resale may use the following methods:

- trade shows – an exhibition featuring industry vendors where new retail products are showcased;
- trade magazines – publications specifically marketed to the retail industry;

- open houses – held quarterly on NPC property providing all interested vendors the opportunity to showcase their products;
- internet – provides a diverse spectrum of insight and information to research new products;
- competitive market research – an assessment of a competitor’s product mix, pricing merchandising etc. to identify threats and opportunities from local competition;
- written quotations from three or more vendors; and
- direct import channels – large volume staple products are sourced directly from overseas vendors and through International Trade Shows, avoiding a distributor and additional costs.

Specialty Goods by their nature are similar, but not identical. Buyers will list the comparative criteria used in evaluating vendor and product selection. Such criteria might include:

- pre-ticketing and barcoding;
- packaging;
- delivery time;
- availability; and
- pricing.

Buyers are required to document, on Form A – Retail, the details regarding the method and alternative vendors/products they have researched, and the rationale for selection.

#### **4.3.2 Retail Business and Merchandising Plan**

In support of comparative sourcing of Specialty Goods for resale, on an annual basis, Retail Management will present to the Chief Executive Officer the retail business and merchandise plan accompanied with the business unit’s sales and operating budget. At a minimum, the plan submission will include:

- internal strengths and weaknesses analysis;
- external threats and opportunities analysis;
- objectives, strategy and tactics for the upcoming year;
- product mix strategy (by store and department);
- profitability and key performance indicators;
- consultation with front-line retail managers;
- competitive analysis;
- annual strategy on clearance and obsolete merchandise including the strategy to deplete dead stock inventory; and

- a preliminary listing of vendors for Specialty Goods purchases greater than \$100,000 on an annual basis.

The following profitability measures and performance indicators will be incorporated into the annual Retail Business and Merchandising Plan:

- gross sales by venue;
- turnover;
- gross profit margin analysis; and
- average transaction value, by venue.

#### **4.3.3 Retail Vendor and Product Selection – Establishing Criteria**

Retail vendors are selected based on product mix needs to satisfy the objectives and support the strategy outlined in the Retail Business and Merchandising Plan. As vendor selection has a critical impact on the success and profitability of a retail business, the following criteria represent the minimum mandatory vendor requirements:

- adherence to NPC corporate policies and agreements (including but not limited to such items as Code of Conduct, Health and Safety standards, and Standard Retail Vendor Contract);
- selection of product(s) or product lines relevant and complimentary to a venue's store concept and site-specific theme;
- supply and accurate replenishment of Goods on specified delivery dates;
- proven business sustainability and financial stability;
- competitive wholesale pricing of Goods for resale;
- customer service; and
- references and testimonials.

#### **4.3.4 Ethical Apparel Procurement Requirements**

For all Apparel Procurements estimated at or above \$5,000, NPC must require that vendors provide Responsible Manufacturers Information (RMI), including the name and address of all factories and production facilities used in the manufacture and assembly of the product, prior to the signing of the Contract.

When submitting RMI, the vendor will also confirm that, to the best of its knowledge, the manufacturer and any subcontractors for the item(s) offered comply with all local, regional and national laws, by-laws, regulations and employment and safety standards (e.g. wages, benefits and hours of work) that apply in the location of manufacture and assembly, and that they will continue to do so throughout the duration of any resulting Contract(s).

The Director, Corporate Procurement, shall provide Supply Chain Ontario (SCO) with the vendor supplied RMI details, which will then be made available for public disclosure by SCO.

#### **4.3.5 Retail Vendor Performance Evaluation**

Retail vendors are reviewed on an ongoing basis, using the following methods:

- annual vendor contract;
- retail price comparison form;
- vendor evaluation form;
- open house vendor criteria checklist; and
- reports generated through retail software (percentage fill and margin analysis)

#### **4.4 Procurement Planning –Food Purchases**

For food, beverage and/or food-related Procurements with a Procurement Value under \$25,000, NPC must consider Local Food, as available. This requirement does not apply to food Procurements undertaken using a VOR Arrangement or employee travel meals.

NPC may also choose to consider Local Food, as available, from amongst the products on any VOR Arrangements.

#### **4.5 Revenue Generating Opportunities (RGOs)**

RGOs must be subject to a competitive process which is fair, open and transparent. If an Unsolicited Proposal for an RGO is received, it must follow the process outlined in Section 4.6.

##### **4.5.1 RGO Plan**

New RGOs that are being contemplated and RGOs due for renewal shall be identified in NPC's Three-Year Business Plan, which is approved by the Board and submitted annually to the Ministry.

Once included in the Business Plan, individual business cases are to be prepared for each RGO. Revenue generating activity with the minimum content outlined in this Section, documented on Form D and approved through the Finance and Audit Committee. Specific approval must be provided for each business case before the competitive process commences.

Once an RGO has completed the competitive process, the Chief Executive Officer has authority to award RGOs with a value of less than \$500,000, and the Board Chair shall approve RGOs with a value of \$500,000 or greater.

For an RGO delivered through an external organization, the total value of a Services or opportunity is not only the value that is recognized as revenue in NPC's financial report but is the total value implicit in the Contract. For example, if a vendor will earn \$600,000 in revenues from an RGO and pay the NPC \$80,000 for the RGO, the imputed value of the Contract for Procurement purposes is \$600,000, even though only \$80,000 is recorded as revenue to NPC.

The Procurement Value of an RGO delivered directly by the NPC will be based upon the total resources associated with the activity or the revenue generated by the opportunity, whichever is



greater. For example: if the NPC will require \$350,000 of salary, non-salary, and overhead funds in terms of total resources to generate \$500,000 in revenue, the Procurement Value will be \$500,000.

An RGO delivered in partnership with a private or public sector organization will be based upon the total of the *imputed value* and the NPC's *total resources* associated with the activity.

#### **4.5.2 Key Principles in the Evaluation of RGOs**

The following are required when reviewing revisions to existing and proposed RGOs:

- a. RGOs must be assessed based upon NPC's core mission, vision and desired brand;
- b. Review of RGOs will be based upon operational efficiencies, effectiveness, and financial return and compared to industry standards and benchmarks, where applicable;
- c. Existing and proposed RGOs must enhance visitor experience and have a customer focus and provide a financial return to NPC;
- d. The review of RGOs will not be based upon a pre-determined decision to outsource operations, but instead will recognize that there is value in NPC's workforce and its ability to provide a quality visitor experience; and
- e. A business plan is a prerequisite to embarking upon any new RGO.
- f. At a minimum, the following elements must be documented on Form D:
  - i. Compliance with NPC's mission and vision;
  - ii. Financial evaluation of life cycle costs/revenues, including review by NPC's finance staff;
  - iii. Market assessment based upon anticipated demand for the recommended option including a sensitivity analysis outlining high/low and expected demand specifically identifying any break-even threshold;
  - iv. Capital/infrastructure investment assessment including any recurring maintenance costs associated with the recommended option;
  - v. Impact on staffing plans where new RGOs affect job descriptions or organizational structure;
  - vi. Evaluation of the "make" or "buy" alternative (i.e. whether the RGO is to be operated directly by NPC or all or a part of the RGO is to be offered to the private sector through a competitive process). The make or buy decision is based upon resource requirements, technical competency, business acumen, return on investment, operational capacity and support;

- vii. In the event of any IT requirements, the RGO must include an assessment of the associated IT operational and financial costs. Due consideration must be given to integration with NPC's existing systems and maintenance/support resource demands; and
- viii. A risk assessment that, at a minimum, identifies any risks and prioritizes these risks based upon impact and likelihood to occur. Appropriate mitigation strategies must be identified for each risk based upon the likelihood of occurrence and, if the risk were to occur, the degree of impact.

## **4.6 Unsolicited Proposals**

This Procurement Policy applies to NPC's receipt, consideration and adoption (in whole or in part) of any Unsolicited Proposals. This Section does not apply to unsolicited events or to the disposition of land as these are governed by separate NPC policies.

Unsolicited Proposals may involve Goods and/or Services that would generate revenue to NPC and/or offer improvements, reduced costs, cost avoidance, or other benefits.

Unsolicited Proposals shall not circumvent this Procurement Policy.

When considering and acting on Unsolicited Proposals, NPC must ensure that it acts in a manner that accords with the principles of this Procurement Policy (see Section 3.0) and that it only proceeds with an Unsolicited Proposal that is in the best interests of NPC.

As budget allocations are not established for the funding of Unsolicited Proposals, Unsolicited Proposals will inevitably compete with other NPC priorities. For this reason, NPC should caution any person who intends to submit or submits an Unsolicited Proposal that, notwithstanding any apparent benefit or utility, NPC may not proceed with an Unsolicited Proposal due to budgetary or other considerations.

In most instances, Unsolicited Proposals will be subject to an eventual competitive process. A non-competitive process can only be used to proceed with an Unsolicited Proposal if it meets one of the exceptions for non-competitive Procurement set out in Section 7.0.

### **4.6.1 Submission Requirements for Unsolicited Proposals**

Unsolicited Proposals must be:

- submitted to the Director, Corporate Procurement, in an envelope; and
- accompanied by a waiver document in the form attached as Schedule 1 to this Procurement Policy, signed by an authorized officer legally authorized to represent the proponent, and submitted in a separate envelope clearly marked as "waiver".

Unsolicited Proposals that are received without an authorized, signed waiver will be returned to the proponent and no further action taken until the proponent submits such a signed waiver in respect of the Unsolicited Proposal.

The following information is to be included in the Unsolicited Proposal:

- a. proponent's name and contact information;
- b. proponent's type of organization (e.g. for-profit corporation, non-profit corporation, partnership);
- c. a summary that describes the initiative, key objectives, methods, intended outcomes;
- d. a profile of the proponent (and its consortium, if applicable), highlighting technical, commercial, managerial and financial capacity and capabilities, and identifying all key team members;
- e. an overview of the Goods and/or Services to be provided, the potential revenues and/or deliverable to be achieved, or the improvement to be made to an existing undertaking;
- f. a clear definition of the proposed benefit to be realized by the NPC;
- g. the business principles used in developing the proposal, including the proposed financial relationship and responsibilities of both the NPC and the proponent, as well as the respective risk-sharing allocations;
- h. funding sources (if applicable) and/or any NPC financial investment (if required);
- i. preliminary pricing, cost estimates and pro-forma financial forecasts;
- j. other supporting documentation (i.e. biographical information of key personnel, relevant experience, references, etc.);
- k. a description of whether (and if so, how) the proposal meets one or more of the non-competitive Procurement exceptions identified in Section 7.0; and
- l. confirmation that the proposal and proposed activities comply with the Niagara Parks Act and other legal obligations imposed on NPC.

#### **4.6.2 Preliminary Review of Unsolicited Proposals**

An Unsolicited Proposal should not be considered if, in the opinion of the Director, Corporate Procurement:

- it is similar in scope or nature to a current or planned competitive Procurement;
- it requires substantial assistance from NPC to develop (i.e. to complete the proposal for NPC's consideration);
- the Goods or Services are readily available from other sources; or
- it is deemed to be of insufficient value to NPC.

If an Unsolicited Proposal is rejected because it is similar in scope or nature to a current or planned competitive Procurement, NPC must ensure that it does not give the proponent an unfair

advantage (e.g. knowing about an upcoming Procurement before other prospective proponents therefore, having a head-start in preparing a proposal). For this reason, NPC must not provide any details about a planned Procurement to that proponent, and the proponent should be informed of only the following:

- NPC will not be awarding a Contract to the proponent based on the Unsolicited Proposal;
- NPC may be reviewing other Unsolicited Proposals that may be similar to the one proposed by the proponent; and
- NPC may use the information from the Unsolicited Proposal in a potential open, competitive Procurement in the future.

In developing a competitive Procurement that is based on an Unsolicited Proposal, NPC should conduct independent market research. The competitive Procurement must only use requirements and evaluation criteria that are neutral and do not give the proponent who submitted the Unsolicited Proposal an unfair advantage.

If, in the opinion of the Director, Corporate Procurement, the Unsolicited Proposal falls within one of the exceptions for non-competitive Procurement set out in Section 7.0, the Unsolicited Proposal will be referred to the Chief Executive Officer. The Chief Executive Officer will consult with NPC staff as appropriate, to determine the estimated NPC resources and key considerations required to further evaluate the Unsolicited Proposal.

If the Chief Executive Officer determines that it is not in the best interests of the NPC to proceed with further evaluation of the proposal:

- the proponent shall be so notified by the Director, Corporate Procurement; and
- the Chief Executive Officer shall advise the Board through the confidential operational highlights report that shall include any rejected Unsolicited Proposals received since the last quarter.

If the Chief Executive Officer determines that it is in the best interests of the NPC to commit NPC resources to further evaluate an Unsolicited Proposal, the Chief Executive Officer shall forward a report of the Unsolicited Proposal to the Finance and Audit Committee, recommending that a staff review team be assembled to review the Unsolicited Proposal in more detail. If the Finance and Audit Committee approves further exploration of the Unsolicited Proposal, the Procurement Manager shall respond to the proponent that the proposal will be undergoing further evaluation by NPC and request the proponent to provide any additional information identified as necessary in the preliminary investigation.

#### **4.6.3 Evaluation Process for Unsolicited Proposals**

Upon approval of the further exploration of Unsolicited Proposal by the Finance and Audit Committee, the Chief Executive Officer shall appoint an evaluation team to lead a more detailed evaluation process. The evaluation team will include a representative from the Procurement Division who will expedite the review and provide oversight to ensure the integrity of the evaluation process. The evaluation team will:

- a. evaluate the proponent's product(s), technical, commercial, managerial and financial experience/capacity to determine whether the proponent's capabilities are adequate for undertaking the project;
- b. weigh the various aspects and merits of the Unsolicited Proposal and the business and Contract principles to determine if the scale and scope of the project adds value to NPC, with respect to return on investment, alternative service delivery models, life cycle cost implications, transfer of risk, and accelerating the timely achievement of NPC's strategies priorities;
- c. determine whether any sharing of risk as proposed in the Unsolicited Proposal is acceptable to the NPC;
- d. consider the level of effort required of the NPC's staff in relation to any proposed benefit, and the degree to which the project conforms to the long-term objectives of the NPC;
- e. determine if the Unsolicited Proposal complies with the Niagara Parks Act, other legal obligations, and NPC's mission and vision statements; and
- f. determine if the duration (term) of the initiative is reasonable within the context of the investment and return, or if it introduces unreasonable restrictions on the NPC.

Based upon the outcome of this detailed evaluation, a staff report will be forwarded to the Finance and Audit Committee, recommending acceptance, amendment or rejection of the Unsolicited Proposal. The Finance and Audit Committee will consider the staff report and make a report and recommendation to the Board. That report shall include business case information required in Section 7.3.

If the Board approves to proceeding with the Unsolicited Proposal, the Director, Corporate Procurement, will notify the proponent that the NPC intends to proceed with the Unsolicited Proposal, which will necessitate that the proponent and NPC enter into a Contract.

NPC will then prepare the form of Contract, with the assistance of the NPC's legal counsel, for the Board's consideration. If the proponent requires substantive changes to the form of Contract (for example, return on investment or commitment of NPC resources), the Board must approve the amendments. If the proponent's required amendments or substantive changes to the form of Contract are not approved by the Board, the proponent will be advised that the NPC will not be proceeding with the Contract.

## **4.7 Alternative Procurement Planning Considerations**

In developing Procurement plans, NPC staff may consider using alternative Procurement methods, including competitive dialogue and/or a competitive process with negotiation.

### **4.7.1 Competitive Dialogue / Best and Final Offer Process**

Competitive dialogue is a Procurement process that is used when NPC has identified an outcome to be achieved but has not established a means by which to achieve it. A competitive dialogue



Procurement involves one or more dialogue phases in which NPC may formally discuss, in confidence, possible solutions with qualified proponents. These dialogue phases may occur before or after the submission of some form of proposal. The dialogue phase(s) culminate in NPC finalizing its requirements, and then calling for proponents to submit final proposals that address those finalized requirements.

This process is often used for complex projects or solutions when technical requirements cannot be defined with sufficient precision at the outset of the Procurement process. It is also used when both vendors and NPC would benefit from sharing information so that vendors can better understand NPC's needs and NPC can better understand how to frame its needs as part of the Procurement process.

Although NPC will disclose its refined requirements to proponents so that those proponents can respond to them in their proposals, NPC must take steps to ensure that it respects the confidentiality of proponents' solutions.

A competitive dialogue Procurement process could involve a variety of forms such as:

- inviting participants to initially submit a solution outline for discussion with NPC, with one or more subsequent rounds involving the submission of progressively more detailed solutions;
- inviting participants to submit a solution, then, through the dialogue phase, develop refined requirements, specifications and/or evaluation methodology based on a hybrid of the best features;
- conducting a competitive dialogue on the technical/operational aspects of the solution, then on financial aspects; or
- framing a possible solution, then asking participants to comment on it or propose improvements as the basis of the dialogue.

It may also include a best and final offer Procurement process is an example of a competitive dialogue Procurement process.

If NPC utilizes a competitive dialogue Procurement process then it Procurement business case:

- rationale for using competitive dialogue;
- format and anticipated number of rounds of competitive dialogue; and
- strategy to ensure an open, fair and transparent process.

In any RFX that includes competitive dialogue, NPC staff must clearly detail how the competitive dialogue process will proceed, including:

- who is eligible to participate in each round of competitive dialogue;
- how NPC will share information with proponents between the submission of their original proposal and the competitive dialogue;

- if any components of the original proposal must not change in subsequent proposals (e.g. if a proponent was qualified because of a specific element then that element would need to continue to be part of subsequent proposal rounds);
- how many rounds of dialogue are anticipated before the requirements are finalized and the final proposals are to be submitted; and`
- how the evaluation process will occur.

#### **4.7.2 Competitive Process with Negotiation**

NPC may consider using limited negotiations for projects that involve significant business transformation. NPC may negotiate specific topics as part of the Procurement process, providing the following conditions are met:

- The NPC staff must indicate their intent to use the limited negotiation framework as part of the requisition. The requisition must include: an outline of the specific topics that will be subject to negotiation; the reasons for including negotiation in the Procurement process; any anticipated benefit(s) to NPC, including possible reduction in prices or rates; and, the framework and rules that will apply to the negotiation process.
- NPC must state in the RFX that it intends to permit negotiation, the specific topics that may be negotiated and the framework and rules that will apply to the negotiation process (including the time periods for negotiation and the circumstances in which NPC may discontinue negotiation).
- Negotiation must be limited to those topics which have been listed as subject to negotiation in the RFX.
- Negotiation must comply with the framework and rules that will apply to the negotiation process as stated in the RFX.
- If the Procurement process is to result in a Contract award to only one vendor, using consecutive negotiation as set out in the RFX, any negotiation must be limited to the eligible proponent that has obtained the highest ranking in the evaluation process. If NPC terminates negotiations with a proponent according to the rules set out in the RFX, NPC may commence negotiation with the next highest-ranked, eligible proponent. As an exception to the foregoing, NPC may permit concurrent negotiations with multiple proponents only on the prior recommendation of legal counsel and/or the Fairness Consultant, if any, regarding both conducting concurrent negotiations generally and to the RFX phrasing that describes the purpose of those concurrent negotiations.
- If the Procurement process is to result in Contract awards to multiple vendors, the RFX must indicate the maximum number of vendors that are to be awarded Contracts. Any negotiation must be limited to that number of eligible proponents that have obtained the highest ranking in the evaluation process. If NPC terminates negotiations with a proponent according to the rules set out in the RFX, NPC may commence negotiation with the next highest-ranked, eligible proponent not already involved in negotiation.



## 5.0 Summary of Procurement Methods and Approval Limits

The chart below summarizes the Procurement method, applicable forms and approval thresholds to be used in proceeding with the acquisition of Goods and/or Services (if a VOR Arrangement has not been established, see Section 6.0). For exceptions for non-competitive Procurement, see Section 7.2. If a Procurement entails mixed Goods and/or Services, then the approval limits and all other requirements for Goods and/or Services must be applied.

Value (\$)	Type	Method*	Form	Authority
<b>Goods (including Generic Retail Goods for Resale)</b>				
Up to \$4,999	Competitive/ Non-competitive	Direct invoice or purchasing card	Tracking Requisition	Director
\$5,000 - \$24,999	Competitive	Minimum of three quotations	A	Chief Executive Officer or Staff Designate
\$25,000 - \$499,999	Competitive	Open	B	Chief Executive Officer or Staff Designate
\$500,000 and over	Competitive	Open	B	NPC Chair
\$5,000 - \$24,999	Non-competitive	Exception	C	Chief Executive Officer or Staff Designate
\$25,000 and over	Non-competitive	Exception	C	Board Chair
<b>Specialty Retail Goods for Resale</b>				
Up to \$4,999	Competitive/ Non-competitive	Direct invoice or purchasing card	Tracking Requisition	Chief Executive Officer or Staff Designate
\$5,000 - \$499,999	Competitive	Comparative Sourcing	A	Chief Executive Officer or Staff Designate
\$500,000 and over	Competitive	Comparative Sourcing	A	NPC Chair
\$5,000 - \$24,999	Non-competitive	Exception	C	Chief Executive Officer or Staff Designate
\$25,000* and over	Non-competitive	Exception	C	NPC Chair
*Based on total purchase amount defined as the total sum of purchases from one (1) vendor over a twelve (12) month period.				
<b>Non-Consulting Services</b>				
Up to \$4,999	Competitive/ Non-competitive	Direct invoice or purchasing card	A	Director
\$5,000 - \$24,999	Competitive	Minimum of three qualified vendors invited	A or B	Chief Executive Officer or Staff Designate
\$25,000 - \$99,999	Competitive	Minimum of three qualified vendors invited	B	Chief Executive Officer or Staff Designate
\$100,000 - \$499,999	Competitive	Open	B	Chief Executive Officer or Staff Designate
\$500,000 and over	Competitive	Open	B	Board Chair
\$5,000 - \$24,999	Non-competitive	Exception	C	Chief Executive Officer or Staff Designate
\$25,000 and over	Non-competitive	Exception	C	NPC Chair
<b>Consulting Services</b>				
Up to \$99,999	Competitive	Minimum of three qualified vendors invited*	A or B	Chief Executive Officer or Staff Designate
\$100,000 - \$999,999	Competitive	Open	B	NPC Chair
\$1 million and over	Competitive	Open	B	Minister & Treasury Board/MBC
\$0 - \$24,999	Non-competitive	Exception	C	Chief Executive Officer or Staff Designate
\$25,000 - \$99,999	Non-competitive	Exception	C	NPC Chair
\$100,000 - \$999,999	Non-competitive	Exception	C	NPC Chair and Minister
\$1 million and over	Non-competitive	Exception	C	Minister & Treasury Board/MBC





### Revenue Generating Opportunities

Up to \$499,999	Competitive	Open	D	Chief Executive Office or Staff Designate
\$500,000 and over	Competitive	Open	D	NPC Chair

\* Open competitive method is permitted at any dollar value.

## 5.1 Purchases Less Than \$5,000

Purchases must not be divided into smaller dollar values to avoid competitive Procurement. While competitive pricing is always encouraged, Goods and Non-Consulting Services less than \$5,000 (if a VOR Arrangement is not in place), may be acquired without a competitive process and do not require a purchase order. If business units require a tracking number for small purchases, the tracking requisition form should be used.

If a VOR Arrangement is in place, the purchase will be through the pre-selected vendor. If there are multiple vendors in the VOR arrangement, award shall be made through the process established in the vendor agreements. Approval to access Joint Procurement and VOR Arrangements that have been pre-established is documented on Form "VOR Requisition". A VOR requisition must be completed and sent to the Procurement Division. The Procurement Division will issue a purchase order to the selected vendor for record purposes.

## 5.2 Invitational Competitive Procurement (Form A)

An invitational competitive Procurement is achieved by requesting a minimum of three qualified vendors to submit a written proposal in response to NPC's requirements. The written proposals attached to Form A must be submitted to the Procurement Division. A purchase order will be issued by the Procurement Division upon approval of the completed Form A.

## 5.3 Open Competitive Procurement (Form B)

An open competitive Procurement is achieved by issuing an RFx posted on a public tendering website.

## 5.4 Non-Competitive Procurement (Form C)

A non-competitive Procurement that may qualify for exemption in Section 7.2. If so, Form C must be completed and submitted in accordance with Section 7.0.

## 5.5 Open Competitive Procurement Revenue Generating Opportunities (Form D)

An open competitive Procurement pertaining to an RGO is achieved by issuing an RFx posted on a public tendering website. See Section 4.5 for the process for RGOs.

## 5.6 Consulting Services

Consulting Services must be acquired through a pre-established VOR or competitive process.

Consulting Services Contracts must have a start and end date. Any change to a Consulting Services Contract, including the end date of the Contract, may affect the Procurement Value. NPC staff must ensure that they have prior appropriate budget approval authority in this regard.

## **5.7 Types of Open Competitive Procurements**

Several open competitive Procurement processes are available to select or short list vendors for Goods and/or Services such as Request for Information, Request for Proposal, Request for Qualifications, Request for Tender, and, in the case of VOR Arrangements, Request for Services or Request for Solution.

## **6.0 Creating a VOR Arrangement**

A VOR Arrangement means a Procurement arrangement that authorizes one or more qualified vendors to provide Goods and/or Services for a defined period on terms and conditions, including pricing, as set out in the particular VOR Contract. VOR Arrangements provide efficient access to Goods and/or Services that are frequently required by NPC and/or other agencies.

NPC may use VOR Arrangements negotiated by NPC directly, or through Joint Procurement with other public sector entities, as provided in this Section.

To maximize value of the VOR Arrangement through volume discounts, and to reduce administrative effort in the Procurement process, NPC staff shall use VOR Arrangements whenever possible.

The Procurement Division will maintain a current listing of VOR Arrangements in its public file directory.

## **6.1 VOR Arrangements and Joint Procurement with Public Sector Entities**

NPC has authorized participation in Joint Procurement with the following agencies:

- Ministry of Government and Consumer Services
- Ontario Education Collaborative Marketplace
- Niagara Public Purchasing Committee
- Police Cooperative Purchasing Group
- Regional and local municipalities in Niagara region

From time to time, other public agencies may be considered for Joint Procurement projects upon approval of the Board, and this Procurement Policy shall so be amended to incorporate these agencies.

For VOR Arrangements through MGS the procedures are stipulated in Section 6.2 below. All other VOR Arrangements through Joint Procurement with public sector entities must be documented in an agreement between NPC and the public sector entity, as recommended by the

Director, Corporate Procurement, reviewed by NPC's legal counsel as necessary, and signed by the Chief Executive Officer.

For NPC to be able to participate in a VOR Arrangement established by another public sector entity, the Procurement Division must advise the other public sector entity that NPC wishes to participate in the VOR Arrangements. In most cases NPC has agreed to be a part of the VOR Arrangement by giving estimated yearly requirements. NPC is responsible for its second stage competitive processes and Contract award decisions made in reliance on another public- sector entity's VOR Arrangement.

## **6.2 Ministry of Government and Consumer Services (MGS) VOR Arrangements**

VOR Arrangements have been established by MGS to reduce Procurement costs by providing NPC and other provincial government agencies with access to one or more contracted vendors of Goods and/or Services common to more than one ministry or agency.

In relying on any MGS VOR Arrangements, NPC will refer to the VOR user guide, which is on the MGS procurement portal website (<https://www.doingbusiness.mgs.gov.on.ca/>) to confirm NPC's mandatory use requirements and form of Contract. The term of any Contract awarded to an MGS VOR cannot exceed six months past the expiry date of the MGS VOR Arrangement.

For MGS VOR Arrangements in which there are multiple vendors, and the Procurement is \$25,000 or greater, a further second stage selection process is required to ensure NPC is receiving the best value for money. NPC must not take any actions to reduce the value of a Procurement to avoid second stage-selection process requirements.

### **6.2.1 Second Stage Selection Process for MGS VORs**

If NPC is involved in a second stage selection process in connection with an MGS VOR Arrangement, the RFX is to be documented on Form B (unless another format is required by the MGS VOR Arrangement). Form B must include appropriate selection criteria, an evaluation process, any other applicable VOR Arrangement instructions and the form of Contract to be signed.

The RFX must be sent to the required number of vendors pursuant to Section 4.3.3.2 (Conducting a Second Stage Selection Process) of the Procurement Directive, provided that:

- if there are fewer vendors on a VOR Arrangement than the minimum number of vendors that are required to be invited, NPC must invite all listed vendors; and
- if the estimated Procurement Value exceeds the approved VOR Ceiling Price, NPC must conduct an open competitive Procurement or seek appropriate approval to exceed the VOR Ceiling Price. As VOR Ceiling Prices can vary, NPC should verify the VOR Ceiling Price in the VOR User Guide.



### 6.3 NPC VOR Arrangements

VOR Arrangements are pre-established through a competitive process to secure qualified vendors, and as Goods and/or Services are required, often involve a second stage competitive process to which only those qualified vendors are invited to bid.

To establish a VOR Arrangement, NPC Procurement must conduct a competitive process using Form B and must include (at a minimum) appropriate deliverables/specifications, selection criteria, an evaluation process, any other applicable VOR Arrangement instructions (including the format of any second stage or requisition process), and the form of Contract.

The form of Contract should include the Contract (if any) that is to govern the VOR Arrangement, and the form of Contract that is to govern a Contract award under a second stage selection process.

#### 6.3.1 Second Stage Selection Process for NPC VOR Arrangements

All Procurements relying on an NPC VOR Arrangement with multiple pre-qualified vendors must involve a second stage competitive process, unless the Procurement process that created the NPC VOR Arrangement clearly documented an alternative approach (e.g. that one vendor would be the primary vendor or that Goods and/or Services would be purchased in certain ratios among pre-qualified vendors).

All VORs should be eligible to participate in any second stage selection process unless the RFX that established the VOR Arrangement specified limits or the criteria for selecting a limited number of VORs for any second stage.

It is recommended that the RFX that established the VOR Arrangement state the following limits regarding the number of VORs invited to participate in any second stage selection process:

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<b>Procurement Value</b>	<b>Minimum Second Stage Requirement</b>
Less than \$25,000	At least 1 eligible vendor
\$25,000 up to but not including \$250,000	At least 3 eligible vendors
\$250,000 and greater	NPC must use an open competitive Procurement process or seek an exemption from this Procurement Policy

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If there are fewer VORs on a VOR Arrangement than required under the above-noted requirements, NPC must invite all VORs. If a VOR Arrangement has fewer than three qualified VORs, any Procurements exceeding \$25,000 may be subject to an open competitive process.

If the estimated Procurement Value of the second stage Procurement exceeds the approved VOR Ceiling Price, NPC must conduct an open competitive Procurement or seek appropriate approval to exceed the VOR Ceiling Price.

## **6.4 VOR Notices**

If NPC intends a VOR Arrangement to be valid for more than three years, then, in each year, NPC must issue a request for prequalification in a Procurement notice on the public tendering system. That notice must include:

- the criteria that will be used to qualify VORs, unless those requirements are included in the prequalification documentation;
- a statement that only VORs will receive further notices of second stage Procurements covered by the VOR Arrangement; and
- the period of validity of the VOR Arrangement, or if the period of validity is not provided, how notice will be given of the termination of the VOR Arrangement.

If NPC intends that a VOR Arrangement will be valid for three years or less, NPC may instead publish the request for pre-qualification only once (i.e. at the outset) containing the above information and specifying the period of validity along with a statement that no further requests will be published regarding that VOR Arrangement.

## **7.0 Non-Competitive Procurements-Allowable Exceptions (Form C)**

Non-Competitive Procurements are Procurements to acquire Goods and/or Services from a specific vendor:

- even though there may be more than one vendor capable of delivering the same Goods or Services (known as “single source”);
- because there are no other vendors available or able to provide the required Goods and/or Services (known as “sole source”); or
- because the Procurement is not subject to competitive Procurement obligations as it is excluded from the Procurement Directive and Trade Commitments.

NPC may, subject to appropriate Procurement approval authority, use a non-competitive Procurement process if any of the exceptions set out below apply.

The use of these exceptions must comply with the Procurement Directive as well as Ontario’s Trade Commitments.

### **7.1 Approval for Non-competitive Procurement**

NPC staff must complete Form C and secure the appropriate Procurement approvals, in writing, prior to conducting a non-competitive Procurement.

If approval is being sought for a non-competitive Procurement to extend a Contract with an existing vendor, NPC staff must seek appropriate approvals prior to the Contract end date and in sufficient time to permit an alternative Procurement method.

The exception to the requirement for prior approval is for unforeseen situations of urgency (e.g. caused by the forces of nature), pursuant to subsection 7.2 (a) that cannot wait for appropriate Procurement approvals. In such unforeseen situations of urgency, Form C must be completed, and appropriate Procurement approvals must be secured as soon as practically possible.

## **7.2 Allowable Exceptions for Non-Competitive Procurement**

Non-competitive Procurements of Goods and/or Services are only allowed in the following circumstances, subject to appropriate Procurement approvals.

- a. An unforeseen situation of urgency exists, and the Goods, Services or Construction cannot be obtained by means of competitive Procurement (and not because the situation of urgency was brought about by a failure of NPC to allow sufficient time to conduct a competitive process).
- b. The Goods and/or Services involve matters of a confidential or privileged nature, and the disclosure of those matters through a competitive Procurement process could reasonably be expected to compromise NPC's confidentiality, cause economic disruption or otherwise be contrary to the public interest.
- c. A competitive Procurement process could interfere with NPC's ability to maintain security or order or to protect human, animal or plant life or health.
- d. There is an absence of any bids in response to a competitive Procurement process that has been conducted in compliance with this Procurement Policy.
- e. The Procurement is in support of Indigenous Peoples.
- f. The Procurement is with a public body (see also Section 10.6 - Contracts with Colleges and Universities).
- g. Only one vendor can meet the requirements of a Procurement due to the following circumstances:
  - i. to ensure compatibility with existing products – compatibility with existing products may not be allowable if the reason for compatibility is the result of one or more previous non-competitive Procurements. Note: NPC may issue an ACAN if it relies on the exception for non-competitive Procurement noted in subsection 7.2 g (i) and the Procurement is subject to the World Trade Organization's Agreement on Government Procurement - see subsection 9.2.1 (s) and Section 4.4.4.1 of the Procurement Directive. This includes posting the ACAN at least 15 days prior to the proposed Contract award on the public tendering system.

- ii. to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representatives; or
- iii. for the Procurement of Goods and/or Services the supply of which is controlled by a vendor that has a statutory monopoly.

In addition to the above, non-competitive Procurement of Goods and Non-Consulting Services are allowed, subject to appropriate Procurement approvals, in the following circumstances:

- h. A Contract award is made under a co-operation agreement that is financed, in whole or in part, by an international organization and the co-operation agreement includes different rules for awarding Contracts.
- i. Construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and pre-mixed concrete for use in the Construction or repair of roads.
- j. Only one vendor can meet the requirements of a Procurement in the following circumstances:
  - i. for the purchase of Goods on a commodity market;
  - ii. for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
  - iii. for work to be performed on property by a Contractor according to provisions of a warranty or guarantee held in respect to the property or original work;
  - iv. for a Contract to be awarded to the winner of a design contest;
  - v. for the Procurement of a prototype or a first Goods and/or Services to be developed during research, experiment, study, or original development but not for any subsequent purchases;
  - vi. for the purchase of Goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
  - vii. for the Procurement of original works of art;
  - viii. for the Procurement of subscriptions to newspapers, magazines or other periodicals; or
  - ix. for the purchase of real property.



### 7.3 Non-Competitive Procurements Business Case Requirements

Written documentation for non-competitive Procurements on or accompanying Form C must include:

- a. a description of the business requirements;
- b. a description of the proposed non-competitive Procurement process including the approximate value and the estimated Contract start and end dates;
- c. the exception in Section 7.2 which has been identified to support the non-competitive Procurement (for Allowable Exceptions where only one vendor is able to meet the requirements, document the evidence supporting this exception) or, if no exception at Section 7.2 applies, it must be noted in the business case that NPC will need to seek a general exemption from the Procurement Directive. The business case must identify the requirement(s) from which it seeks to be exempted, and Provincial approval will be required;
- d. the results of any ACAN process, if used;
- e. the rationale for using a non-competitive Procurement process including the circumstances that prevent the use of a competitive Procurement process (which must support the Allowable Exception or exemption being requested);
- f. a statement as to whether the selected vendor has previously been awarded a Contract with the NPC within the past five years for the same or closely related requirements, and the type of Procurement process(es) used;
- g. a description of the potential pool of vendors that might have responded to a competitive Procurement, where appropriate, and an assessment of reasonably contemplated potential vendor complaints and how the NPC would respond and manage these complaints;
- h. a description of how the NPC will ensure it will comply with the principles of this Procurement Policy, particularly value for money;
- i. any alternatives considered;
- j. the impact on the business requirements if the non-competitive Procurement is not approved;
- k. if appropriate, a description of how the NPC will meet these business requirements in the future using a competitive Procurement process; and
- l. any other matters considered relevant.



## 8.0 Procurement Value

To determine the appropriate approval authority and method for a given Procurement, NPC must determine its Procurement Value. To determine the Procurement Value, all costs and benefits associated with entering a contractual relationship with a third party must be considered.

Costs and benefits may include, but are not limited to:

- price/cost of the Goods and/or Services;
- one-time costs such as site preparation, delivery, installation and documentation;
- ongoing operating costs including training, accommodation, support and maintenance;
- applicable duties;
- disposition costs;
- premiums, fees, commissions, and interest;
- options to renew or extend the term;
- options to expand the scope;
- direct payments by NPC to the successful vendor(s);
- indirect payments by third parties to the successful vendor(s); and
- any conferred value by NPC to the successful vendor(s).

Procurement Value for the purpose of approvals in Section 5.0 does not include sales taxes.

Examples of conferred value include, but are not limited to, the exchange of Goods and/or Services in return for other Goods and/or Services, revenue generating opportunities and partnership agreements.

Actions to reduce the Procurement Value to avoid any requirements of this Procurement Policy are not permitted. Such actions could include subdividing projects, Procurements, or Contracts and awarding multiple consecutive Contracts to the same vendor.

### 8.1 Procurement Value Increases (Change Orders)

Procurement Value increases may be caused by, but are not limited to, price increases, volume demand, expansion of scope, extension of the term, or other unforeseen circumstances.

If the Procurement Value increases for a given Procurement, NPC must use the approval authority and Procurement method applicable to the revised Procurement Value (i.e. original Procurement Value + increase = revised Procurement Value). This may require the Procurement to be approved by a person with a higher approval authority threshold than the original approver.

Approval for Procurement Value increases must be sought prior to proceeding with or continuing the Procurement.

NPC may permit certain commodities, such as fuel and food, to be subject to Contract provisions that permit price variation due to commodity price fluctuation. When determining the Procurement Value for such a Procurement, NPC must anticipate such increases and ensure that the appropriate Procurement approval authority provides the approval. NPC will also ensure that the RFX, including the Contract, identifies the framework under which price increases will be permitted, including, but not limited to:

- the frequency of price increases;
- the allowable amount of increase (e.g. a limit); and
- any benchmarks that will be used to validate the price increase.

NPC may also describe the potential for price decreases in a similar way (although this will not affect the Procurement approval authority or method of Procurement).

## **9.0 Procurement Process**

### **9.1 Research and Consultation**

NPC may decide to engage in a vendor consultation process, informally or through issuing a Request for Information, or draft Request for Proposal, prior to initiating a competitive Procurement process. The vendor consultation process must be conducted solely for gathering information or to market test a proposed Procurement scope, approach and process. NPC must not make vendor participation in the research and consultation process a mandatory condition for future bidding and must not solicit formal bids from vendors, or award Contracts during or directly because of the vendor consultation process.

### **9.2 Procurement Documents**

#### **9.2.1 Preparing an RFX**

To enable fair comparison of vendor bids, an RFX must be in writing and include sufficient details concerning the bid requirements. NPC must include the following information in each RFX:

- a. A description of the required Goods and/or Services in generic and/or functional terms specific to the business needs that the Goods and/or Services will serve, as well as any optional components that are being priced separately. When the use of non-generic and/or non-functional terms is appropriate, the specifications must deal with performance requirements and exclude all features that could unfairly confer an advantage to one or more vendors. If the quantity of the Goods and/or Services is unknown, the estimated quantity should be included (but clearly framed as an estimate and not a volume commitment).
  - i. For Consulting Services, the RFX must include the terms of referencenoted in Section 4.1.4.
  - ii. Specifications must be based on technical standards (if they exist). Also, where appropriate, specifications must be based on performance and

functional requirements rather than design or descriptive characteristics. In addition, NPC must ensure that the technical standards do not create an unnecessary barrier to trade and must state in the RFX that NPC will consider any equivalent proposals submitted by vendors for solutions that meet performance requirements but are based on standards other than those expressed in the Procurement document.

- iii. For food, beverage and/or food related Procurements (e.g. event service catering) with a Procurement Value under \$25,000 where NPC has chosen a Local Food option, then NPC may include the Local Food specification(s), as appropriate (see Section 4.4)
- iv. For Apparel Procurements at or above \$5,000, NPC must include ethical Apparel Procurement requirements where appropriate (see Section 4.3.4)
- b. The form of Contract that the successful vendor(s) is expected to sign (and that complies with Section 9.10.2).
- c. Full disclosure of the evaluation criteria and process to be used in assessing bids. NPC must pay attention to apply the maximum justifiable weighting to price/cost as part of the evaluation process but may also consider other criteria directly related to the Procurement including quality, delivery, servicing, experience, financial capacity of the vendor, and any other criteria directly related to the Procurement. For IT Procurements, NPC must assess conversion costs, if appropriate. In establishing the evaluation criteria and weighting of conversion costs, NPC must not unduly favour an incumbent vendor or unduly disadvantage non-incumbent vendors.
- d. The name, telephone number and location of the person to contact for additional information on the Procurement documents.
- e. Conditions that must be met before obtaining Procurement documents such as confidentiality agreements, if appropriate.
- f. The address, date and time limit for submitting responses to the Procurement documents. Responses received after the closing date and time must be returned unopened.
- g. The time and place of the opening of the responses in the event of a public opening.
- h. NPC's mandate and vision statements.
- i. That the Contract is non-exclusive with respect to the Goods or Services being procured.
- j. Health and Safety – NPC's standard Contractor's Checklist for maintenance and capital infrastructure projects only.

- k. NPC's commitment to environmental sensitivity.
- l. NPC's Supplier's Code of Conduct.
- m. Procurement Principles of NPC.
- n. Notice that any confidential information supplied to NPC may be disclosed by NPC where it is obliged to do so under FIPPA, by an order of a court or tribunal or otherwise by law.
- o. Conflict of interest provisions that:
  - i. define conflict of interest to include:
    - (A) situations or circumstances that could give a vendor an unfair advantage during a Procurement process or compromise the ability of a vendor to perform its obligations under the Contract;
    - (B) the offer or giving of a benefit of any kind, by or on behalf of a vendor to anyone employed by, or otherwise connected with, the NPC;
  - ii. reserve the right to solely determine whether any situation or circumstance constitutes a conflict of interest;
  - iii. reserve the right to disqualify prospective vendors from a Procurement process due to conflict of interest;
  - iv. require prospective vendors participating in a Procurement process to declare any actual or potential conflicts of interest, including a requirement that the vendor declare that the vendor has not given, directly or indirectly, a benefit of any kind to anyone employed by, or otherwise connected with, NPC for the purpose of receiving favourable treatment or otherwise obtaining an advantage in connection with a Procurement activity;
  - v. require vendors to avoid any conflict of interest during the performance of their contractual obligations for NPC;
  - vi. require vendors to disclose any actual or potential conflict of interest arising during the performance of a Contract;
  - vii. reserve the right to prescribe the manner in which a vendor should resolve a conflict of interest;
  - viii. allow NPC to terminate a Contract where a vendor fails to disclose any actual or potential conflict of interest or fails to resolve its conflict of interest as directed by NPC;
  - ix. allow the Contract to be terminated where a conflict of interest cannot be resolved.

- p. That NPC may reject any vendor's bid under the following circumstances (provided that NPC has supporting evidence):
- i. vendor or its principals have commenced or are engaged in legal claims or litigation against the NPC at any time in the current and preceding three years;
  - ii. vendor or its principals have previously provided Goods and/or Services to the NPC in an unsatisfactory manner, as documented through NPC's vendor performance process (see Section 9.14);
  - iii. vendor or its principals have failed to satisfy an outstanding debt to the NPC;
  - iv. bankruptcy or insolvency;
  - v. vendor or its principals have made false declarations to NPC;
  - vi. final judgments in respect of serious crimes or other serious offences committed by the vendor, its principals or key personnel named in the vendor's bid;
  - vii. professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the vendor;
  - viii. vendor's failure to pay taxes;
  - ix. depending on the approach to evaluating references described in an RFX, vendor provides incomplete, unrepresentative or unsatisfactory references; or
  - x. vendor, its principals or key personnel named in the bid are, or have been, notified that it is or they are in contravention of the Supplier's Code of Conduct.
- q. For Goods valued at \$25,000 or more and Services valued at \$100,000 or more, a statement that "The procurement is subject to the Canadian Free Trade Agreement and the Ontario-Quebec Trade and Co-operation Agreement."
- r. For Goods, Services or Construction valued at the CETA Threshold Value or more, an additional statement that "The procurement is subject to the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States." Such a statement is required unless the Procurement involves Services not subject to that treaty (i.e. only specified Services are covered).
- s. For Goods, Services, or Construction valued at the World Trade Organization (WTO) threshold value or more, an additional statement that "The procurement is subject to the World Trade Organization's Agreement on Government Procurement."

### 9.2.2 Procurement Notice

Procurement notices are publicly-posted summaries containing key details of a Procurement. All Procurement notices must be available to vendors free of charge.

Each Procurement notice must state:

- a. NPC's name and address, and any other information necessary to contact NPC to obtain all relevant documents relating to the Procurement, and their cost and terms of payment, if any;
- b. a brief description of the Procurement;
- c. the nature and the quantity, or estimated quantity, of the Goods and/or Services to be procured unless those requirements are included in the RFx;
- d. the address and final date for the submission of bids;
- e. a statement that the Procurement is subject to Chapter 5 of the Canadian Free Trade Agreement;
- f. the time frame for delivery of Goods or Services, or the duration of the Contract;
- g. the Procurement method that will be used and whether it will involve negotiation; and
- h. if a pre-qualification process is used (such as a VOR Arrangement), the criteria that will be used to pre-qualify vendors and, if applicable, any limitation on the number of vendors that will be permitted to bid (unless the criteria for limiting the number of vendors is included in the RFx).

### 9.3 Electronic Tendering

NPC will use electronic tendering through the public tendering system for open competitive Procurements, as follows:

- for open competitive Procurement of Services with a Procurement Value at or above \$100,000;
- for open competitive Procurement of Goods with a Procurement Value at or above \$25,000; and
- for open competitive Procurement of both Goods and/or Services with a Procurement Value at or above \$25,000.

Notwithstanding the above, where practical, NPC will use electronic tendering through the public tendering system for open competitive Procurement for Services with a Procurement Value at or above \$25,000.

In addition to the electronic tendering system, NPC may advertise on the NPC website, in a national newspaper accessible to all Canadian vendors or in the Daily Commercial News for Construction-related Procurements.

#### **9.4 Restricted Communications (Black Out Period)**

To avoid any perception of bias or unfair advantage, communication with proponents and prospective proponents must be restricted during any competitive Procurement process – this is referred to as a black out period.

The black out period must:

- begin no later than the date and time that the RFx (or Procurement notice) is issued; and
- end no earlier than the Contract award notice.

During the black out period, all communications from prospective proponents to NPC, and from NPC to prospective proponents, that are related to the Procurement process must be directed exclusively to or sent from the Bid Administrator. NPC staff receiving communications that are subject to the black-out period must not reply to them and must forward them to the Bid Administrator, who will reply.

**Note:** The black-out period is not intended to restrict dialogue during an oral presentation, information sessions or Contract negotiation sessions as part of the Procurement process.

During the black out period, NPC staff may communicate with third parties (including proponents and prospective proponents) about existing engagements (e.g. performance under current Contracts), or about matters that have no connection to the Procurement process. NPC staff should limit their communications to what is necessary and avoid unnecessary interaction about matters that may be construed as having some bearing on an ongoing Procurement process.

#### **9.5 Bid Response Time**

NPC must provide sufficient time for vendors to prepare and submit bid responses in view of all relevant factors such as, but not limited to, time needed by the vendor to properly receive and assess necessary information, complexity, risk, seasonality, and best practices within the relevant industry.



NPC will use the following minimum bid response times but may provide more time, considering the above, or if legally required:

<b>Procurement Value</b>	<b>Minimum Notice</b>
Less than \$100,000	At least 5 calendar days
\$100,000 or more (but below the CETA Threshold Value)	At least 15 calendar days
CETA Threshold Value or more	Will adhere to CETA requirements as per the website <a href="https://www.canada.ca/en/treasury-board-secretariat/services/policy-notice/2017-6.html">https://www.canada.ca/en/treasury-board-secretariat/services/policy-notice/2017-6.html</a>

## 9.6 Additional Information

Any additional information, clarification or modification of the RFx must be provided in the same manner as the Procurement document via an amendment or addendum. This amendment or addendum must be released prior to the bid submission deadline to allow proponents sufficient time to submit a responsive bid. Otherwise, the bid submission deadline must be extended to ensure sufficient time is provided to proponents.

## 9.7 Evaluation Process

NPC must evaluate the bid responses received consistently and in accordance with the evaluation criteria, rating and methodology set out in the RFx.

NPC must require individuals participating in the evaluation of bid responses to immediately declare any potential conflict of interest and immediately address any declarations.

An evaluation process is composed of three stages in the following order:

- review of compliance with mandatory requirements;
- review and evaluation of rated requirements; and
- evaluation of price/cost.

If a vendor is disqualified for non-compliance with a mandatory requirement or fails to meet a minimum-rated requirement score, as identified in the Procurement document, no further evaluation of that vendor's bid will take place.

The evaluation of price/cost must only be undertaken after the completion of the evaluation of the mandatory requirements and any other rated criteria.



Following the evaluation process, NPC may select only the highest ranked bid(s) that have met all mandatory requirements (and minimum rated requirements and shortlist requirements) set out in the RFX.

## **9.8 Evaluation Methodology**

The evaluation process to be used in assessing a vendor's bid must be fully disclosed in the RFX. A full disclosure of the evaluation methodology and process includes, but is not limited to:

- a clear articulation of all mandatory requirements;
- which requirements will be assessed on a pass/fail basis and if so, indicate how vendors can achieve a passing grade and what is the consequence of a failing grade (e.g. potential or certain disqualification);
- all scoring weights, including sub-weights, for rated requirements;
- description of any short-listing processes, including any minimum-rated score requirements;
- the role and weighting, if applicable, of reference checks, oral interviews, demonstrations and site visits;
- a description of the price/cost evaluation methodology, which may involve the use of scenarios to determine costs for specific volumes and/or service levels; and
- the method of breaking a tied score.

If an RFX states that NPC will consider any equivalent proposals submitted by vendors for solutions that meet performance requirements but are based on standards other than those expressed in the RFX, the assessment of these proposals must be undertaken as part of, and according to, the evaluation process stated in the RFX.

In responding to an RFX, and without being requested to do so by NPC, vendors may propose alternative strategies or solutions to the business needs or apply conditions to their responses. Alternative strategies or solutions proposed by a vendor must not be considered by NPC as part of the evaluation process unless:

- NPC expressly states that it will consider alternative strategies or solutions in the RFX; and
- the RFX describes how alternative strategies or solutions will be evaluated or otherwise considered as part of the evaluation process.

## **9.9 Bid Irregularities**

### **9.9.1 Irregularities and Substantial Compliance**

A bid irregularity is a deviation between the requirements of an RFX, and the conduct of a proponent or the information provided in a bid. Bid irregularities could include activities in contravention of the Competition Act and provisions relating to bid-rigging, price-fixing and illegal vendor Contracts.

Any bid that fails to meet a rated requirement set out in the RFX may receive a lower score, according to the evaluation methodology.

Any proponent or bid that fails to meet a mandatory requirement set out in the RFX must be disqualified unless NPC elects to deem the proponent or bid to be substantially compliant. A determination of substantial compliance is not to be made lightly and should only be made after consulting with NPC legal counsel. A determination of substantial compliance may occur if the failure to meet the mandatory requirement:

- does not impact NPC's ability to enter into the Contract;
- does not impact on the fairness of the Procurement process;
- is due to a simple omission or irregularity;
- is not due to missing material facts or unclear meanings; and
- is not, to the best of NPC's knowledge, the result of any mischief or any bid-rigging, price-fixing and market allocation schemes.

This determination is separate from any rectification process described in the RFX (see Section 9.9.2).

### **9.9.2 Rectification Period / Process**

NPC may permit proponents to rectify their bids within a specified period, but only if this rectification period is clearly stated in the RFX, along with the process to rectify bids. NPC may restrict the rectification process to certain types of irregularities and must not permit the process to rectify a late bid or a failure to attend a mandatory site visit, as these are fundamental irregularities that cannot be rectified.

### **9.10 Development and Management of Contracts and Issuance of Purchase Orders**

The Procurement of Goods and/or Services, and the resulting purchase orders and Contracts, must be responsibly and effectively managed. Following the Procurement process, the responsibilities of both NPC and the successful vendor are formally defined through:

- a signed purchase order for all purchases of \$5,000 or greater; or
- a written Contract when
  - the Procurement commitment is arising from an RFP or RFT process, or
  - the value of the Goods and/or Services exceeds \$25,000 and it is recommended by the Director, Corporate Procurement, or NPC legal counsel.

The purchase order and/or written Contract must be signed by the authorized NPC representative before the provision of the Goods and/or Services commences.

When executing the Contract, NPC must obtain the vendor's signature before (or at the same time as) obtaining the designated NPC signature.

### **9.10.1 Authority to Issue Purchase Orders**

Purchase orders for retail Goods for resale are issued by specific NPC buyers who have been delegated authority in writing by the Chief Executive Officer.

Purchase orders for all other Goods and/or Services are issued by Procurement Division staff who have been delegated authority in writing by the Chief Executive Officer.

Purchases of less than \$5,000 shall be by direct invoice or credit card, without the requirement of a purchase order, unless required by a vendor.

In lieu of a purchase order, NPC may enter into a Contract that contemplates a standing arrangement (and otherwise complies with Section 9.10.2). A standing arrangement may be used where one or more business units repetitively order the same Goods, Services or Construction that have been competitively procured. A standing arrangement is established for a specified period and for a specific Contract Ceiling Price (representing the maximum total value of the Contract). The standing arrangement authorizes multiple orders during that specified period if the total dollars spent does not exceed the Contract Ceiling Price.

### **9.10.2 Contracts**

All Contracts may address the main Section 4.0.

All Contracts must include or address the following matters:

- a. A start date and an end date or term and any options to extend the Contract. As changes to the term of the Contract may change the Procurement Value, prior written approval by the appropriate approval authority is necessary before changing Contract start and end dates. Extensions to the term of the Contract beyond what is set out in the RFX are considered non-competitive Procurements and appropriate approval authority must be obtained prior to proceeding.
- b. Appropriate cancellation or termination clauses (including termination for material breach where performance issues have not been remedied following notice of same). For Goods and/or Services procured as part of an IT project, the use of Contract clauses that permit cancellation or termination at critical project life cycle stages must be considered.
- c. Insurance requirements, if any.
- d. Appropriate indemnities.
- e. That the Contract prohibits the vendor from promoting itself in association with NPC or advertising its association with NPC because of its selection as the successful vendor, unless prior approval has been granted.

Legal advice should be sought regarding the matters noted above.

The Contract should be finalized using the form of Contract that was released with the RFx. Any substantive changes from what was released with the RFx must be reviewed and approved by the Director, Corporate Procurement, and NPC legal counsel.

### **9.11 Contract Award Notification**

Any statement or notice about a Contract award is only to be made or published after the Contract is signed by all parties.

NPC must inform all vendors that participated in a Procurement process of Contract award decisions resulting from that process. If requested by a vendor, NPC must give that vendor an explanation of the reasons why it was not selected (see Section 9.12).

For any Procurement that is required under this Procurement Policy to be conducted via an open competitive process (and any Procurement that was conducted in reliance upon a non-competitive exception pursuant to Section 7.2), NPC must post a Contract award notification.

**Note:** Contract awards resulting from a second stage Procurement process in a VOR Arrangement are subject to the Contract award notification requirement if the Goods, Services or Construction that are the subject of the Contract award meets or exceeds the open competitive Procurement thresholds.

The Contract award notification must be posted in NPC's name on the public tendering system within 72 days of the award decision and must include the following information:

- the name(s) of the successful vendor(s);
- the name(s) and address(es) of the procuring entity and of the successful vendor(s);
- the Procurement method used;
- the date of the Contract award;
- the Contract start and end dates, including any options for extension;
- the total Contract value upon completion of the evaluation process and after execution of the Contract with the successful vendor(s);
- a description of the Goods and/or Services procured; and
- if an open competitive Procurement method was not used (but would otherwise have been required given the value of the Procurement), a justification for the method selected.

The above notice must be posted on the public tendering system for a reasonable period.

### **9.12 Vendor Debriefings**

For all open competitive Procurement processes, NPC must ensure that all unsuccessful vendors who participated in the Procurement process are offered an opportunity to request a debriefing,

provided that the request is made within sixty 60 calendar days following the date of the Contract award.

### **9.12.1 Scheduling Vendor Debriefings**

If a debriefing is requested by a vendor, NPC must:

- confirm the date and time of the debriefing session in writing;
- conduct vendor debriefings with individual vendors;
- ensure that the same NPC participant(s) participate(s) in every debriefing conducted and, if NPC used a Fairness Consultant in the Procurement process, that the Fairness Consultant may be invited to participate in, but must not conduct, the debriefings; and
- retain all correspondence and documentation relevant to the debriefing session as part of the RFX (see Section 9.13).

### **9.12.2 Conducting Vendor Debriefings**

In conducting vendor debriefing meetings, NPC must:

- provide a general overview of the evaluation process set out in the RFX;
- provide the name, address, and total bid price, where applicable, of the successful vendor as well as the Contract award notice information (see Section 9.11);
- discuss the strengths and weaknesses of the vendor's bid in relation to the specific evaluation criteria and the vendor's evaluated score and, if requested, provide an explanation of the reasons why NPC did not select the vendor's bid;
- if more than price was evaluated, NPC may provide the vendor's evaluation scores and its ranking relative to other vendors;
- provide suggestions on how the vendor may improve future bids;
- receive feedback from the vendor on the Procurement process;
- address specific questions and issues raised by the vendor in relation to its bid; and
- where a complaint has been filed regarding the award decision and the vendor is not satisfied with the outcome of the debriefing session, inform the vendor of the steps to proceed with a formal bid dispute (see Section 9.15).

If the Procurement was subject to CETA, NPC must also provide, in the debriefing, if not in some other manner:

- any information necessary to determine whether a Procurement was conducted fairly, impartially and in accordance with the CETA Trade Agreement; and
- information on the characteristics and relative advantages of the successful bid (subject to protecting the successful vendor's confidential information). It is

advisable that any such discussion be subject to a pre-determined script that is reviewed by legal counsel and the Director, Corporate Procurement.

In conducting vendor debriefings, NPC must not disclose information concerning other vendors, other than as specified above, as it may contain confidential third party proprietary information subject to the mandatory third party exemption under FIPPA. If a vendor requests information about other vendors (aside from the information noted above), it must be advised that a formal freedom of information request can be submitted to NPC's Freedom of Information and Privacy Department. Questions unrelated to the Procurement process must not be responded to during the debriefing and must be noted as out of scope based on the debriefing process agreed to in the RfX.

### **9.13 Documentation and Record Retention**

NPC must manage Procurement Contracts and documentation to ensure that NPC is able to respond to any requests for information, vendor inquiries, debriefing requests, audits and/or legal challenges in a relevant, reliable, comprehensive and timely fashion.

Procurement process documentation includes, but is not limited to, the following:

- a. a copy of the Procurement justification or business case;
- b. information regarding all vendor consultations, including any requests for information, undertaken in the development of the Procurement business case and/or RfX;
- c. evidence that all required approvals were obtained;
- d. copies of all Procurement documents used to qualify and select the vendor;
- e. if the Procurement was conducted through a VOR Arrangement, information regarding the second stage selection process used to select the successful vendor(s);
- f. copies of all advertisements of the RfX;
- g. information relating to compliance with the Ontarians with Disabilities Act, 2001 and the AODA where applicable;
- h. copies of all responses, submissions, and bids received in response to the RfX including the conflict of interest declaration, the tax compliance declaration and Ministry of Revenue tax compliance verification;
- i. information regarding any issues that arose during the Procurement process, including all correspondence related to a bid dispute;
- j. information regarding all evaluations of bids received in response to the RfX;

- k. information regarding all vendor debriefings including written documentation of the offer of vendor debriefing, where applicable;
- l. copies of all award letters, notices, and posted announcements;
- m. copies of the Contract(s);
- n. information regarding all changes to the terms and conditions of the Contract, including any changes that resulted in an increase in the Contract price;
- o. information regarding the management of the vendor, including how the vendor's performance was monitored and managed and, where applicable, mechanisms used to transfer knowledge from the vendor to staff;
- p. risk assessment information and recommendations, where applicable;
- q. security screening decisions, where applicable;
- r. information regarding all disputes or vendor complaints regarding the Procurement, including any Contract disputes;
- s. evidence of receipt of deliverables; and
- t. for food, beverage and /or food related Procurements with a Procurement Value under \$25,000, any written vendor documentation or confirmation of Local Food received during the Procurement process.

### **9.14 Vendor Performance**

The business unit lead responsible for the Procurement shall:

- monitor vendor performance under all Contracts resulting from that Procurement;
- document evidence related to that vendor-monitoring; and
- advise the department director and Director, Corporate Procurement, in writing if the performance of a vendor has been unsatisfactory in any manner.

If the performance of a vendor has been unsatisfactory, the Director, Corporate Procurement, will then advise that vendor of its unsatisfactory performance with a view to giving the vendor an opportunity to remedy its performance, if reasonably feasible.

In monitoring vendor performance, attention should be paid to the following:

- all payments must be in accordance with the provisions of the Contract;
- all payments for applicable expenses must be in accordance with the TMH Directive;



- all required approvals must be obtained (in advance) for any Procurement Value increases or Contract Ceiling Price increases or other changes in terms and conditions of the Contract; and
- knowledge transfer to NPC staff must take place, where applicable;
- quality of service performance, quality of goods, and/or adherence delivery, performance or other specifications, as applicable.

### 9.15 Bid Dispute Process

**Note:** This Section is subject to review and revision once the Province of Ontario has established its approach to bid disputes and rapid interim measures under the CFTA.

A vendor has an opportunity to raise concerns in connection with a Procurement process through the question and answer period of that process, or through a debriefing meeting after the Contract award. Before initiating the bid dispute process, vendors should be strongly encouraged to raise their concerns with the designated Procurement Division staff contact as part of the question and answer period or debriefing.

If the vendor is not satisfied with the outcome of the debriefing meeting, and wishes to initiate a formal bid dispute, the vendor must follow the steps set out in this Section.

This bid dispute process ensures that Procurement complaints are addressed and resolved quickly and efficiently. All bid disputes will receive a formal review and all vendors who initiate a bid dispute in accordance with this Section will be provided with a formal response.

A bid dispute must be submitted to NPC within 30 days of completion of the debriefing meeting.

To submit a bid dispute, vendors must:

- Review NPC's Corporate/Procurement/Vendor webpage for the process;
- attach a detailed description of the bid dispute; and
- provide any additional relevant background information.

All documentation must be addressed to:

Attention: Director, Corporate Procurement  
Niagara Parks Commission  
7400 Portage Road  
Niagara Falls, ON L2E 6T2

Once a bid dispute has been received, the Director, Corporate Procurement, will initiate a review of the matter, and will consult with legal counsel where appropriate.

The Director, Corporate Procurement, is to complete that review as soon as reasonably possible, but generally within 30 days. The Director, Corporate Procurement, will then prepare a written



decision regarding the matter and will send a copy of that decision to the vendor that submitted the bid dispute.

Filing a bid dispute does not affect a proponent's ability to participate in ongoing or future Procurement opportunities with NPC which will be communicated in writing during the process by Director, Corporate Procurement.

## **10.0 Other Related Policies**

### **10.1 Ontario Trade Commitments**

Ontario has made commitments under certain trade agreements. NPC must conduct its Procurements in a manner that adheres to these agreements. Where requirements in the Trade Commitments differ from the Procurement Directive, NPC must comply with the Procurement Directive.

### **10.2 Protection of Personal and Sensitive Information**

Prior to undertaking any Procurement of Goods and/or Services that may result in the disclosure or transfer of personal or sensitive information (including the collection, use and/or storage of personal information by a vendor), NPC must conduct a risk assessment that includes a Privacy Impact Assessment and a Threat Risk Assessment. The collection, use and disclosure of any personal information must comply with applicable privacy legislation. Staff should consult with NPC's FIPPA Senior Manager for more details regarding these requirements.

### **10.3 Accessibility Obligations**

NPC must comply with the AODA and the standards mandated by it through enacted regulation(s). The AODA outlines new, mandatory accessibility standards in many areas, including the Integrated Accessibility Standards Regulation. The Government of Ontario must incorporate accessibility criteria and features into its Procurement processes so that Goods, Services, and facilities are more accessible to persons with disabilities, except where it is not practicable to do so. Where applicable, RFX should specify the desired accessibility standards to be met and provide guidelines for the evaluation of proposals with respect to those standards.

### **10.4 Environmental Considerations**

NPC should consider environmental reduction, re-use and recycling measures in the development of commodity specifications, terms and conditions, and award decisions. Where applicable, NPC requires vendors to submit a waste management plan for Procurements involving Goods and/or Services with designated waste materials under the Waste Diversion Act or high levels of residual waste. Designated materials include blue box waste (packaging and printed paper waste), used tires, hazardous waste and e-waste.

Where applicable, NPC should consider environmentally responsible alternatives such as, but not limited to, bio-based or Recycled Content alternatives, energy, fuel or water efficient alternatives, or reduced toxin alternatives.

Environmental considerations must also be given to paper and printed materials. All virgin paper (i.e. paper that is manufactured using new wood fibre harvested from forests and without any Recycled Content) purchased for office use should (where reasonably feasible) be certified by the Forest Stewardship Council, Sustainable Forestry Initiative (SFI) or the Canadian Standards Association (CSA), with a minimum of 30% being FSC certified and all plastics and glasses recycled.

NPC should also establish processes that minimize the need to procure paper through scanning and email of documents that might otherwise be printed. Printing or copying documents should be minimized to what is necessary and, where necessary, NPC must ensure that double-sided, black and white printing and copying is the standard.

### **10.5 Innovative Procurement**

Green innovation and technological leadership are the driving force behind the Government of Ontario's Green Focus on Innovation and Technology ("GreenFIT") strategy.

The Government of Ontario is committed to leveraging its buying power to make Ontario more competitive, innovative, and sustainable. Through its purchasing strategies, the government is creating opportunities for new green technology companies as they introduce innovative and sustainable solutions into the local and global marketplace. The GreenFIT strategy will enable companies to provide innovative and sustainable technologies and solutions that government can consider as alternatives to its traditional purchasing.

NPC may procure products and Non-Consulting Services from Unsolicited Proposals that have received positive evaluations from GreenFIT. These can be found in the GreenFIT directory on the MyOPS Procurement intranet site and may be procured as a prototype or a first Goods and/or Services for a pilot if the following parameters are met:

- a. use for a planned activity (e.g. a pilot or demonstration project) and not for wide-scale Procurement;
- b. planned for the purpose of trying a new or innovative solution;
- c. the planned activity will be followed by an evaluation of its effectiveness and suitability for continued/expanded use that will be shared with MGS Supply Chain Management Division; and
- d. all approvals required under this Procurement Policy (see Section 5.0) have been obtained.

### **10.6 Contracts with Universities and Colleges**

For research and development projects involving universities, colleges or their staff, Contracts must be made with, or with the written concurrence of, the university/college administration. Payments must be made to the administration or to another party only with the written agreement of the university/college administration. In addition, the terms of these Contracts must cover the full cost of the research, including appropriate allowances for indirect and overhead costs.

## 11.0 Corporate Card Programs

### 11.1 Purchasing Card Program

A purchasing card offers an efficient and cost-effective method to purchase and pay for Goods and/or Services of relatively low dollar value. This program is designed to serve as an alternative to the use of petty cash or where a regular purchase order is not accepted by a vendor. It is not intended to be a mechanism to avoid or bypass NPC policies and procedures.

The NPC purchasing card belongs to NPC. Only employees who have been delegated authority to purchase are eligible to request purchasing cards as a payment alternative. All employees granted a purchasing card are required to have a completed, signed and authorized approval form, prior to being given custody of a purchasing card. Issuance of a purchasing card requires written approval by the Chief Executive Officer.

The following are key principles of the NPC purchasing card program:

- The NPC purchasing card is to be utilized for appropriate and reasonable expenditures as specified in NPC Procurement policies and administrative procedures.
- Appropriate accounting procedures, reporting mechanisms and approvals must be in place to ensure purchasing card expenditures comply with NPC established policies and procedures.
- The responsibility for maintaining appropriate security of the purchasing card and appropriate documentation for expenditures rests with the cardholder and the cardholder's NPC business unit director.
- Cardholders must not use a purchasing card in the following circumstances:
  - for travel, meals and hospitality, which require use of the travel card;
  - for personal, or non-NPC use under any circumstances;
  - for alcohol, except for Culinary Services Division staff specifically charged with Procurement responsibilities for alcohol to be resold in NPC restaurants; and
  - for cash advances.
- When purchasing cards are to be used to pay for training and workshop registrations, or membership renewals expenditures, for the benefit of an NPC staff member who is also the cardholder, counter signature on the invoice is required by the cardholder's immediate supervisor prior to payment authorization.
- Cardholders are responsible for compliance with the "Purchasing Card Use Contract" and the "Program and Usage Guidelines, Corporate Purchasing Card"

## 11.2 Travel Card Program

The NPC travel card is a charge card that enables eligible NPC staff to pay for expenses incurred while travelling on approved business.

Employees granted a travel card are required to have a completed, signed and authorized approval form, and receive training on NPC Procurement related policies and travel meals and hospitality policies prior to being given custody of a travel card. Prior to the issuance of a travel card:

- the issuance of the travel card and the credit limit for that travel card must be approved in writing by the Chief Executive Officer; and
- a written acknowledgement of personal responsibility for expense charges to the travel card must be made by the intended travel cardholder.

Completed, reconciled statements of travel cardholders, including attached receipts are to be reviewed and signed by the applicable senior director (for departmental staff) or the Chief Executive Officer (for cards held by the senior directors).

The travel card is issued in the name of the applicable NPC employee. Cardholders are fully liable for all charges, interest, fees, cash advances or adjustments levied against their travel card account and are responsible for ensuring the statement is paid in full prior to the payment due date. Cardholders are also responsible for compliance with all terms and conditions as set out in the Cardholder Contract and the Travel Card Use Contract.

Cardholders must also be compliant with the TMH Directive and the NPC's Management Guidelines, Corporate Travel Card. These guidelines provide the travel card program usage information and outline the responsibilities of cardholders.

The following are key principles of the NPC travel card program:

- The NPC travel card is to be utilized for appropriate and reasonable travel expenditures of individual NPC employees as specified in NPC policies, administrative procedures, and the TMH Directive.
- Appropriate accounting procedures, reporting mechanisms and approvals must be in place to ensure travel card expenditures comply with NPC's established policies and procedures and applicable MBC directives.
- The responsibility for maintaining appropriate security of the travel card and appropriate documentation for expenditures rests with the cardholder.
- The travel card must be used in accordance with the limits as established in the TMH Directive and NPC policies and procedures.
- Cardholders must not use a travel card in the following circumstances:
  - for Procurement expenditures, which require use of the purchasing card;
  - for personal, or non-NPC use under any circumstances;

- for alcohol;
  - for cash advances; and
  - for any other purchases which are prohibited in NPC policies and procedures and applicable MBC directives.
- Use of the travel card for employees other than the cardholder are discouraged, but may be permitted in unusual circumstances, as approved by the Chief Executive Officer.

Corporate Services will exclude inappropriate transactions (i.e. non-travel related) by arranging with the credit card vendor to have inappropriate transactions excluded from the valid list of items that may be purchased on the card.

## **12.0 Roles and Responsibilities**

The Board has the following roles and responsibilities under this Procurement Policy:

- exercising the Board's authority to approve this Procurement Policy under the *Niagara Parks Act*;
- providing effective oversight and due diligence in reviewing reports and approving Procurements not delegated to the Chief Executive Officer;
- recommending approval from the Deputy Minister, Minister, Treasury Board/Management Board of Cabinet where prescribed in this Procurement Policy; and
- receiving and considering approval of amendments to this Procurement Policy as required.

The Chief Executive Officer has the following roles and responsibilities under this Procurement Policy:

- ensuring operational policies are developed that fulfill the requirements of this Procurement Policy and meet the business requirements of NPC;
- seeking approvals from the Board with respect to this Procurement Policy, when required;
- further delegating authorities, where permitted and consistent with the Delegation of Authority Procurement Policy;
- identifying and incorporating, in NPC's operating budget, adequate staffing and resource requirements to fulfill this Procurement Policy;
- identifying and recommending amendments to this Procurement Policy to the Board, as required; and
- tabling reports as specified in this Procurement Policy.

## 13.0 Reporting

The following reports, as a minimum, will be provided to the Board and/or Board Committees:

Report	Frequency
Procurement Planning and Activity Report	Quarterly report to Finance and Audit Committee
Annual RGO Plan	Annually to the Board through the Business Plan
Individual (pre) RGO business cases	As business cases arise, to the Finance and Audit Committee
Internal audit review of Procurement and travel cards	As per internal audit workplan
Retail Goods for resale - reporting on profitability measures and performance indicators	Annual reporting to the Chief Executive Officer

## 14.0 Definitions and Acronyms

For the purposes of this Procurement Policy the following definitions and acronyms apply:

“ACAN” means Advance Contract Award Notice in situations where NPC may survey the market to test if another supplier may be able to provide an equivalent Goods and/or Services.

“Allowable Exception” means specific situations where the use of a non-competitive Procurement process is allowable for the acquisition of Goods and/or Services, provided that prior approval is received from the prescribed approval authority.

“AODA” means the *Accessibility for Ontarians with Disabilities Act, 2005*.

“Apparel” means clothing, including personal attire, uniforms, outerwear and footwear.

“Bid Administrator” means the contact person at NPC that is responsible for the RFX who oversees the process.

“Board” means the Board of Commissioners for the corporation of The Niagara Parks Commission.

“CETA” means Canadian-European Union Comprehensive Economic and Trade Agreement

“CETA Threshold Value” means, Goods and/or Services valued at SDR (standard drawing right) 130,000 (approximately \$225,000 in 2017), and Construction services valued at SDR 5,000,000 (approximately \$8,755,000 in 2017). The value of an SDR fluctuates. NPC’s Director, Corporate



Procurement, must consider the current value of SDRs. See the International Monetary Fund website at [https://www.imf.org/external/np/fin/data/rms\\_five.aspx](https://www.imf.org/external/np/fin/data/rms_five.aspx)

“CFTA” means Canadian Free Trade Agreement

“Construction” means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work.

“Consulting Services” means the provision of expertise or strategic advice that is presented for consideration and decision-making and may include, among other types of advice, the following:

- management consulting (e.g. helping management improve their performance, primarily through the analysis of existing problems and development of plans for improvement);
- organizational change management assistance and strategy development;
- IT consulting (e.g. advisory Services that help assess different technology strategies, including aligning their technology strategy with their business or process strategy);
- policy consulting (e.g. advisory Services to provide policy options, analysis and evaluation); and
- communication consulting (e.g. the provision of strategy and advice in conveying information through various channels and media).

Consulting Services do not include:

- Services in which the physical component of an activity would predominate for example Services for the operation and maintenance of a facility or plant, water-testing Services, or exploratory drilling Services;
- surveying;
- temporary help Services;
- training/education instructors;
- employee/placement; and
- any licensed professional Services provided by medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, chartered accountants, lawyers and notaries in their regulated capacities.

“Contract” means the formal written document that will be entered into at the end of a Procurement process.

“Contract Ceiling Price” means the total cost for specified Goods and/or Services as established in a contractual relationship with a third party.



“Fairness Consultant” means an independent and impartial third party who observes and monitors the Procurement process.

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*.

“Goods” means moveable property (including the costs of installing, operating, maintaining, or manufacturing such moveable property), including raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general Construction Contract.

“IT” means information technology, namely the equipment, software, services and processes used to create, store, process, communicate and manage information.

“Joint Procurement” means a Procurement process undertaken by multiple public sector organizations to achieve efficiencies and economies of scale, leverage their joint purchasing requirements and activities.

“Local Food” means: (a) food produced or harvested in Ontario, including forest or freshwater food; and, (b) subject to any limitations in the regulations, food and beverages made in Ontario if they include ingredients produced or harvested in Ontario.

“MBC” means the Management Board of Cabinet.

“MGS” means the Ministry of Government and Consumer Services.

“Non-Consulting Services” means Services that are not Consulting Services.

“NPC” means the corporation of The Niagara Parks Commission.

“Procurement” means any contractual or commercial arrangement involving the acquisition of a good or service through purchase, rental, lease or conditional sale; or where a value or benefit has been conferred by NPC to a successful vendor in exchange for good(s) or service(s) or revenue to the NPC (including a Revenue Generation Opportunity). For the purposes of this Procurement Policy, Procurement does not include any grant, entitlement agreement or shared cost agreement entered into by NPC for a public benefit or purpose.

“Procurement Directive” means the currently published MBC Ontario Public Service Procurement Directive (December 2014).

“Procurement Value” means all costs and conferred value associated with a contractual relationship with a third party. Where a project involves multiple related Procurements, the project’s Procurement Value would be determined by cumulative value of each related Procurement.

“RFx” means a Request for Proposal (RFP), Request for Qualification (RFQ), Request for Tender (RFT), or similar document that sets out a competitive Procurement process.

“Recycled Content” means the amount of recovered waste materials in a new product.



“RFI” means Request for Information is a market research Procurement document that is used to elicit industry information on Goods and/or Services from the vendor community.

“RFP” means Request for Proposal is a Procurement document that requests vendors to supply solutions for the delivery of complex Goods and/or Services or to provide alternative options or solutions. The RFP process uses predefined evaluation criteria where price is not the only factor.

“RFQ” means Request for Quote is a Procurement document used to request technical information and evidence of financial stability and product or service suitability from potential vendors to pre-qualify or short list vendors to bid on specific categories of work or provide specific types of Goods and/or Services, or to respond to a Request for Proposal or tenders.

“RFSe” means Request for Services means the document used during the second stage selection process to request bids from one or more vendors listed on a Services VOR Arrangement.

“RFSO” means Request for Solutions is a Procurement document used during the second stage selection process to request bids from one or more vendors listed on a software or hardware VOR Arrangement.

“RFT” means Request for Tender is a Procurement document that requests a vendor response to supply Goods and/or Services based on stated delivery requirements, performance specifications, terms, and conditions. The RFT process usually focuses the evaluation criteria predominantly on price and delivery requirements.

“RGO” means Revenue Generating Opportunities is any activity that generates revenue from business activities occurring on NPC’s premises, including but not limited to visitor experience activities, vending opportunities, retail activities, food Services, rental of facilities, property and equipment, tour opportunities, and visitor programs.

“Services” means the delivery of intangible products, such as professional services, and includes Consulting Services and Non-Consulting Services.

“TMH Directive” means the currently published MBC Travel, Meal and Hospitality Expenses Directive.

“Trade Agreements” means any applicable trade agreement to which Ontario is a signatory or pursuant to which Ontario has accepted obligations, including the Canadian Free Trade Agreement and Canada-European Economic and Trade Agreement

“Unsolicited Proposal” means a proposal received by NPC from a party that meets all the following criteria:

- (a) is independently originated and developed by the party;
- (b) is prepared without NPC supervision, endorsement, direction or involvement;
- (c) involves the use of NPC rights or property;

- (d) presents an innovative or unique idea that would not otherwise be eligible under a competitive Procurement process; and
- (e) is compliant with NPC's mandate and will aid in some or all of the following: delivery of Goods, efficient Services, reduction of cost/debt, provide desirable events and programs, attractions, generate revenue, increase visitor participation and interest, or contribute to the general economic well-being of NPC and its visitors' experiences.

"VOR" means a Vendor of Record and is a vendor that has been authorized to provide Goods and/or Services pursuant to a VOR Arrangement.

"VOR Arrangement" means a Procurement arrangement that authorizes one or more qualified vendors to provide Goods and/or Services for a defined period on terms and conditions, including pricing, as set out in the particular VOR Contract.

"VOR Ceiling Price" means the maximum value per assignment, or per multiple project-related assignments, under which NPC may use the VOR Arrangement.

"WTO" means World Trade Organization

"WTO Threshold Value" means Goods and/or Services valued at SDR (standard drawing right) 355,000 (approximately CAN \$620,000 in 2017), and Construction services valued at SDR 5,000,000 (approximately \$8,755,000 in 2017). The value of an SDR fluctuates. NPC's Director Corporate Procurement must consider the current value of SDRs. See the International Monetary Fund website at [https://www.imf.org/external/np/fin/data/rms\\_five.aspx](https://www.imf.org/external/np/fin/data/rms_five.aspx)

## **15.0 Associated Policies and Requirements**

- Delegation of Authority GPM-01-02
- Fiduciary Responsibility and Conflict of Interest MPM-05-04
- The Niagara Parks Commission Code of Conduct
- Supplier's Code of Conduct
- Sponsorships CPM-01-21
- Release of Information, NPC Privacy Policy CPM-02-04
- By-Law No. 2 on Fiduciary Responsibility and Conflict of Interest MPM-05-04



## **SCHEDULE 1– WAIVER TO ACCOMPANY ALL UNSOLICITED PROPOSAL SUBMISSIONS**

### **ACKNOWLEDGEMENT, DECLARATION AND AGREEMENT**

THIS ACKNOWLEDGEMENT, DECLARATION and AGREEMENT is given to The Niagara Parks Commission (the “NPC”) as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ (the “Party”).

The Party has elected to submit an Unsolicited Proposal (the “Proposal”) to the NPC in accordance with the NPC’s Procurement Policy, and in consideration of the NPC’s consideration of the proposal, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Party acknowledges, declares and agrees as follows:

#### **1. Incurred Costs**

The NPC shall not be liable for, nor reimburse the Party, for any costs, expenses or loss incurred in the preparation, submission or presentation of the Proposal, for interviews or any other activity that may be requested as part of the evaluation process or the process for the negotiation or execution of any agreement with NPC.

The rejection or non-acceptance of the Proposal shall not render the NPC liable for any costs, expenses, loss or damages incurred by the Party, either indirectly or directly, because of the rejection or non-acceptance of the Proposal.

#### **2. Prohibition Against Gratuities**

The Party and its employees, agents or representatives shall not offer or give any gratuity in the form of entertainment, participation in social events, gifts or otherwise to any officer, director, agent, appointee or employee of the NPC in connection with this process, whether for the purpose of securing an agreement or seeking favourable treatment in respect to the award of an agreement or expressing appreciation, or providing compensation, for the award of an agreement or for conferring favours or being lenient, or for any other purpose whatsoever. If the NPC determines that this article has been breached by or with respect to the Party, NPC may discontinue all consideration of the Proposal, or if an agreement has already been entered into, shall have the right to terminate the agreement without incurring any liability for any costs, expenses, loss or damages incurred by the Party, either directly or indirectly, as a result.

#### **3. Conflicts of Interest**

The Party declares that the Proposal was prepared, and submitted, without NPC supervision, endorsement, direction or involvement. In its Proposal, the Party shall disclose to the NPC any actual or potential conflict of interest that might exist in connection with the Proposal, including relating to the submission of the Proposal. If the NPC determines in its sole discretion that such a conflict of interest does exist, NPC may, at its sole discretion, refuse to consider the Proposal. The Party shall also disclose whether it is aware of any NPC employee, Board member, or procurement advisor having a personal or financial interest in the Party or the Proposal and the nature of that interest. If such an interest exists or arises during the evaluation process or the



negotiation of an agreement, NPC may, at its sole discretion, refuse to consider the Proposal or withhold the awarding of any agreement to the Party until the matter is resolved to the NPC's sole satisfaction. If the NPC at any time discovers that the Party has failed to disclose all actual or potential conflicts of interest, NPC may discontinue any consideration of the Proposal, or if an agreement has already been entered into, shall have the right to terminate such agreement without incurring any liability for any costs, expenses, loss or damages incurred by the Party either directly or indirectly as a result.

#### **4. Ownership and Disclosure of Proposal Documentation**

The documentation comprising the Proposal submitted to NPC, along with all correspondence, documentation and information provided to the NPC by the Party in connection with the Proposal, once received by the NPC:

- a. shall become the property of the NPC; and,
- b. shall be subject to the *Freedom of Information and Protection of Privacy Act*, and may be disclosed, pursuant to that Act.

#### **5. Treatment of the Proposal**

The NPC shall treat the Proposal submitted to the NPC as non-confidential and non-proprietary. The Proposal shall not be subject to any obligation of confidence on the part of NPC, and the NPC shall not be liable for any costs, expenses, loss or damages incurred by the Party, either directly or indirectly, resulting from any use or disclosure of the Proposal, including but not limited to indirect damages for lost profits or lost opportunity.

#### **6. Use of the Proposal**

The NPC may use the Proposal without restriction for any purpose whatsoever as determined by the NPC in its sole discretion, including, without limitation, reproduction, disclosure, transmission and publication. The NPC shall have and is hereby irrevocably granted the unlimited and royalty-free right, but not the obligation, to reproduce, modify, adapt, publish, license, sell, translate, incorporate, create derivative works from, exploit, distribute and otherwise use the Proposal in any and all media, now known or hereafter devised, throughout the world, in perpetuity, without having to accord to the Party any compensation or credit of any kind whatsoever. The Intellectual Property arising from any modification, improvement, development or adaptation of the Proposal by the NPC shall vest solely in NPC.

#### **7. Release**

The Party hereby irrevocably waives, releases and gives up any claim that any use, reproduction, alteration or disclosure of its Proposal by the NPC violates any of the Party's rights, including, without limitation, copyrights, moral rights, patent rights, trademarks, privacy rights, proprietary or other property rights, publicity rights, or rights to credit or compensation for the material or ideas contained within the Proposal.

#### **8. Intellectual Property Representations and Warranties and Indemnities**

The Party represents and warrants that the material and information contained in the Proposal:



- a. is an original work of the Party; and
- b. does not infringe any intellectual property right or right of privacy of any third party.

The Party shall indemnify and save harmless NPC, and its directors, officers, personnel, advisors and representatives, against all manner of claims, actions, suits and proceedings, brought by any person or entity in respect of the infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property right and/or rights of privacy in connection with the NPC's possession, use, disclosure or publication of the Proposal and/or this Acknowledgement, Declaration and Agreement, and all damages, loss, costs and expenses (including legal expenses) resulting from or relating thereto.

### **9. Party Not to Communicate with Media**

The Party agrees not to directly or indirectly communicate with the media at any time in relation to the submission of the Proposal to the NPC without first obtaining the written permission of NPC, which may be withheld by the NPC in its sole discretion.

### **10. Information Provided by NPC is Confidential**

During the consideration of the Proposal by NPC, the Party may be provided with information confidential to NPC. All information provided by or obtained from the NPC in any form in connection with the Proposal:

- a. is the sole property of the NPC and must be treated as strictly confidential;
- b. is not to be used for any purpose other than communicating with the NPC with respect to the consideration of the Proposal and the performance of any subsequent agreement;
- c. shall not be disclosed without prior written authorization of NPC, which may be withheld by the NPC in its sole discretion; and,
- d. shall be returned by the Party to the NPC immediately upon the request of NPC.

### **11. Relationship**

The Party hereby acknowledges and agrees that its relationship with the NPC is not a confidential, fiduciary, or other special relationship, and that the Party's decision to submit any material to the NPC does not place the NPC in a position that is any different from the position held by members of the public regarding the Proposal submitted.

### **12. The NPC's Code of Conduct**

The Party hereby acknowledges having read the Suppliers' Code of Conduct for The Niagara Parks Commission at <http://www.niagaraparks.com/files/supplier-code-of-conduct.pdf> and agrees to adhere to those provisions that apply.

**ON BEHALF OF THE PARTY, I HAVE READ THIS ENTIRE ACKNOWLEDGEMENT, DECLARATION AND AGREEMENT AND UNDERSTAND AND AGREE TO ITS TERMS AND CONDITIONS. I UNDERSTAND THAT BY SIGNING BELOW I AM WAIVING CERTAIN LEGAL**





**RIGHTS AND I AM SIGNING IT FREELY AND VOLUNTARILY AND HAVE FULL LEGAL AUTHORITY TO BIND THE PARTY.**

**IN WITNESS WHEREOF the Party executes this Acknowledgement, Declaration and Agreement**

**ON BEHALF OF**

\_\_\_\_\_

(Full Legal Name of the Party)

Signature:

\_\_\_\_\_

\_\_\_\_\_ Witness

Name:

\_\_\_\_\_

Position/Title:

\_\_\_\_\_

\_\_\_\_\_

Signature:

\_\_\_\_\_

\_\_\_\_\_ Witness

Name:

\_\_\_\_\_

Position/Title:

I/We have authority to bind the Corporation