

THE CORPORATION OF THE TOWNSHIP OF BROCK

BY-LAW NUMBER 1912-2004-FI AS AMENDED BY BY-LAW NUMBER 1964-2005-FI

BEING A BY-LAW TO DEFINE THE PROCUREMENT POLICIES AND PROCEDURES FOR THE CORPORATION OF THE TOWNSHIP OF BROCK

The Corporation of the Township of Brock, pursuant to Section 271 of the *Municipal Act*, S.O. 2001, as amended, hereby enacts as follows:

PURPOSES, GOALS AND OBJECTIVES OF THIS BY-LAW

1. The purposes, goals and objectives of this by-law and of each of the methods of procurement authorized herein are:
 - a. To encourage competition among suppliers;
 - b. To maximize savings for taxpayers;
 - c. To ensure service and product delivery efficiency and effectiveness;
 - d. To ensure service and product delivery quality;
 - e. To make service and product providers accountable to the municipality and the public;
 - f. To provide the highest level of government service at the least possible cost
 - g. To ensure fairness between bidders;
 - h. To ensure objectivity in the procurement process;
 - i. To the extent possible, to ensure openness, accountability and transparency while protecting the financial best interests of the municipality;
 - j. To obtain the best value for the municipality when procuring goods and services;
 - k. To avoid conflicts between the interests of the Corporation and those of the Corporation's employees and councillors;

DEFINITIONS

2. (1) In this by-law,

"Award" means authorization to proceed with the purchase of Goods, services and Construction from a chosen supplier;

"Bid" means an offer or submission from a supplier in response to a Request for Quotation, Tender, Request for Proposal, Request for Price Agreement, an In House Bid or a Two Phase Bid request, which is subject to acceptance or rejection by the Corporation;

"Bid Bond" means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee that the Successful Bidder enters into a Contract with the Corporation, as required by section 11 of this by-law;

"Bid Solicitation" means a formal request for Bids that may be in the form of a Request for Quotation, Request for Qualifications, Request for Tender, Request for Proposal, Request for Price Agreement, or a Two Phase Bid Request;

"Conflict of Interest" means a situation where a personal or business interest of a councillor, officer or employee of the Corporation is in conflict with the best interests of the Corporation, and includes:

- i. the giving or receiving of a direct or indirect personal gain or benefit, or a direct or indirect advantage or privilege, by any business or individual that provides advice, Goods, services or Construction to the Corporation or a family member of such business that provides Goods, services or Construction;
- ii. employment by the Corporation; and
- iii. a direct or indirect interest in any business that provides Goods, services or Construction to the Corporation;

"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, soil investigation, the supply of products and materials and 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 design or architectural work, but does not include professional services related to the construction contract unless they are included in the specifications for the procurement;

"Consulting and Professional Services" means those services requiring the skills of a professional for a defined service and includes architects, engineers, designers, surveyors, planners, accountants, auditors, management professionals, marketing professions, software and information technology experts, financial consultants, lawyers, law firms, real estate agents and brokers, planners, environmental planners and engineers, hydrogeologists, transportation planners and engineers, communications consultants and any other consulting of by the professional services which may be required by the Corporation;

"Contract" means a binding agreement between two or more parties that creates an obligation to do or provide a particular thing or service;

"Corporation" means The Corporation of the Township of Brock;

"Council" means the Council of the Corporation;

"Department" means any department of the Corporation, the operation of which a Department Head is responsible for;

"Department Head" means the person appointed by the Clerk-Administrator or Council to be responsible for the operation of a Department and includes the person appointed to the position of Clerk-Administrator;

"Employee-Employer Relationship" means a relationship that exists where persons for pay or other consideration enter into the service of others and devote their personal labour for any given period and the other person has the power or right to control or direct the person in the material details of how the work is to be performed;

"Expression of Interest" means a written detailed proposal submitted in response to a Request for Expression of Interest;

"Extraordinary Circumstance" means an event or circumstance where the immediate purchase of Goods or services or the entering into of a Construction Contract is essential or necessary to prevent or alleviate serious delay, a threat to public health, safety or welfare, the disruption of essential services or damage to public property or any expenditure that is necessary to respond to any emergency of the Corporation;

"Fair Market Value" means the price that would be paid, in an open and unrestricted market, by a knowledgeable and willing purchaser to a knowledgeable and willing vendor, both of whom are dealing at arm's length, are fully informed and are not under any compulsion to transact with one another;

"Financing Lease" means a lease which allows for the provision of Goods, services or Construction if the lease may or will require payment by the Corporation of financing, interest, bonuses, premiums or other charges or costs for the Goods, services or Construction over time and upon terms, whether or not the term of the lease extends beyond the term of the Council in which it was Awarded;

"Goods" means moveable property including,

- a. the costs of installing, operating, maintaining or manufacturing such moveable property, and
- b. raw materials, products, supplies, 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 Construction Contract;

"Holdback" means an amount withheld under the terms of a Contract to be used as security for the completion or performance of the Contract, and to avoid overpayment in relation to the progress of work;

"Low Value Purchase" means a purchase of Goods, services or Construction which is random in nature, is not included as part of a Price Agreement, is not available out of the Corporation's inventory and does not exceed a value of \$1,000.00;

"Lowest Compliant Bid" means the Bid that would provide the Corporation with the desired Goods, services and Construction at the lowest cost, meets all the specifications and contains no major irregularities or qualifications;

"Municipality" means the geographic limits of the Township of Brock;

"Online Tendering" means the use of a computer-based system authorized by the Corporation and directly accessible by suppliers, that provides suppliers with information related to Bid solicitations;

"Payment Security" means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee the payment of labour and materials to be supplied in connection with a Contract, as required by section 11 of this by-law;

"Performance Security" means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee the faithful performance of the Contract by a supplier, as required by section 11 of this by-law;

"Price Agreement" means an agreement between the Corporation and the supplier of a Good, service or Construction arrived at following a competitive tender or proposal process, whereby the supplier commits to the Corporation to provide Goods, services or Construction, as and when needed by the Corporation, at a pre-determined price, for a pre-determined period of time, upon pre-determined terms and conditions;

"Pre-qualification Submission" means a detailed written proposal submitted in response to a Request for Pre-qualification but which does not create any contractual obligation between the party submitting the Pre-qualification Submission and the Corporation, but which may be a pre-condition to further procurement Contracts with the Corporation;

"Progress Payment" means a payment made under the terms of a Contract after the performance of the part of the Contract in respect of which payment is made but before the performance of the whole contract;

"Proposal" means an offer submitted in response to a Request for Proposal, acceptance of which may be subject to further negotiation;

"Purchase" means to acquire Goods, services or Construction by purchase, rental, lease or trade;

"Purchase Order" means a written order to a supplier formally stating all terms and conditions for the purchase of Goods, services or Construction or a written acceptance of an offer received in accordance with this by-law;

"Treasurer" means the individual appointed pursuant to section 286 of the Municipal Act, S.O. 2001, as amended.

"Quotation" means a binding offer submitted in response to a Request for Quotation;

"Request for Expressions of Interest" means a request made by the Corporation to the market place for the purposes of compiling a list of persons or corporations who may be interested in providing Goods, services or Construction to the Corporation from time to time. Acceptance of an expression of interest by the Corporation does not create any contractual obligation between the party submitting the expression of interest and the Corporation, but may be a precondition to Pre-qualification or further procurement Contracts with the Corporation;

"Request for Pre-qualification" means a request for the detailed submission of the experience, financial strength, education, background and personnel of persons, firms or corporations who may, from time to time, qualify to supply Goods, services and Construction the Corporation;

"Request for Price Agreement" means a request for the submission of a Tender or Proposal to enter into a Price Agreement with the Corporation;

"Request for Proposal" means a request for proposals made pursuant to subsections 8(6) and (7) of this by-law, which may or may not result in further negotiation, or the creation of Contractual obligations between the parties, depending on the terms of the Request for Proposal;

"Request for Quotation" means a request for Quotations for the provisions of Goods, services or Construction to the Corporation made pursuant to subsections 8(4) and (5) of this by-law;

"Sole Source Purchase" means the purchase of a Good, service or Construction where there is only one available supplier of that Good, service or Construction that meets the needs or requirements of the Corporation;

"Substantive Objection" means a written objection provided to Treasurer or the Department Head by an interested party giving specific reasons for the objection;

"Successful Bid" means the Bid that would provide the Corporation with the best product or service as measured by the evaluation criteria and which is compliant;

"Tender" means a written detailed offer from a vendor or service provider, to supply Goods, services or Construction to the Corporation;

"Two Phase Bid" means a Proposal submitted in response to a Request for Proposals which requires the submission of the Proposal in phases, either in separate bid envelopes or at different times, whereby the proposal is evaluated in the first phase, and price is evaluated in the second.

- (2) To establish the definition of any other purchasing term not herein included, reference shall be made to the latest edition of the National Institute of Governmental Purchasing Inc's Dictionary of Purchasing Terms.
- (3) Schedules "A" and "B" attached hereto form part of this By-law.

GENERAL PROCUREMENT POLICIES AND PROCEDURES

APPLICATION

- 3.(1) The policies and procedures prescribed in this by-law, including all of the purposes, goals and objectives of section 1 hereof, shall be followed for the procurement of all Goods and services and for the awarding of any Construction Contract by the Corporation or any of its officers, servants and employees.
- (2) This by-law shall not apply to those procurement processes enumerated in Schedule "A".

RESPONSIBILITIES AND AUTHORITIES

- 4.(1) Department Heads shall be responsible for and shall have authority for all procurement activity and decisions within their Department (including the Awarding of any Contract), subject to all of the following:
 - a. all of the purposes, goals and objectives of section 1 of this by-law shall be complied with;
 - b. all procurement activities and decisions must be authorized by this by-law and must be carried out within the financial and other limits set out herein; and
 - c. no procurement activity or decision shall be contrary to any specific direction of the Clerk-Administrator, the Treasurer, or Council.
- (2) In addition, Department Heads shall be responsible for:
 - a. the calling, opening, checking of all Quotations, Tenders, Proposals and Bids;
 - b. the development of co-operative purchasing plans with other levels of government, other governments and local boards, agencies or commissions, where same is found to be in the financial best interest of the Corporation;
 - c. the disposal of Goods and salvage which has been declared surplus;

- d. monitoring all Contract expenditures and ensuring that all financial limitations have been complied with and that all accounts are paid within the times set out in the Contract; and
 - d. ensuring that all Goods, services and Construction contracted for, have in fact been received.
- (3) The Treasurer shall be responsible for:
- a. providing procurement advice and services, including all forms, Contracts, Bonds and all other Bid Solicitation documentation required by each department, the Clerk-Administrator and Council for the purposes of fulfilling the procurement needs of the Corporation;
 - b. attending the opening and assisting the Department Head(s) in the checking of all Quotations, Tenders, Proposals and Bids;
 - c. ensuring compliance with this by-law and advising Council when there has been non-compliance;
 - d. the development of co-operative purchasing plans with other levels of government, other governments and local boards, agencies or commissions, where same is found to be in the financial best interest of the Corporation;
 - e. the standardization of all Goods, services and Construction, where possible;
 - f. complying with all of the purposes, goals and objectives of section 1 of this by-law;
 - g. monitoring all Contract expenditures and ensuring that all financial limitations have been complied with and that all accounts are paid within the times set out in the Contract; and
 - h. ensuring that all Goods, services and Construction contracted for, have in fact been received.
- (4) The Clerk-Administrator has the authority to instruct Department Heads not to award Contracts and to submit recommendations to Council for approval and may provide additional restrictions concerning procurement where such action is considered necessary and in the best interest of the Corporation.
- (5) The exercise of all authority to award a Contract is subject to the identification and availability of sufficient funds in appropriate accounts within Council approved estimates or upon a determination being made by the Clerk-Administrator or Treasurer that the required funding can reasonably be expected to be made available in the current, or future years.

RESTRICTIONS

5. (1) No Contract for Goods, services or Construction may be divided into two or more parts to avoid the application of the provisions of this by-law.
- (2) No Contract for services shall be Awarded where the services could result in the establishment of an Employee - Employer Relationship unless it can be demonstrated, to the satisfaction of the Clerk-Administrator, that significant cost savings can be realized.
 - (3) No personal purchases shall be made by the Corporation for members of Council or any appointed member of a local board or commission or for Corporation employees or their families.
 - (4) An employee nor member of an employee's family shall not directly obtain any Goods that have been declared as surplus by the Corporation.
 - (5) No employee or Council member shall purchase, on behalf of the Corporation, any Goods, services or Construction, except in accordance with this By-law.
 - (6) No councillor, officer or employee or member of an employee's family of the Corporation shall accept, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is, or might be awarded, any rebate or gift or money, except:
 - i. gifts of a very small intrinsic value;
 - ii. gifts given for the use and benefit of the Corporation;

- iii. moderate hospitality during the normal course of business that would not significantly exceed what the Corporation would likely provide in return and would not be perceived by others as influencing the making of a business decision.
- (7) All councillors, officers and employees of the Corporation shall declare any Conflict of Interest to the Clerk-Administrator and such persons shall refrain from participating in the procurement process to which the Conflict of Interest relates.
- (8) All procurement undertaken by the Corporation shall be undertaken in accordance with the Corporation's code of conduct, policies and procedures manual and in accordance with the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50.
- (9) Where an applicable national or international trade agreement is in conflict with this by-law, the trade agreement shall take precedence.
- (10) The Corporation may only enter into a Financing Lease if:
- i. a by-law authorizing the Financing Lease is passed;
 - ii. before the by-law authorizing the Financing Lease is enacted, the Corporation has adopted a statement of the Corporation's lease financing policies and goals; and
 - iii. the Financing Lease includes a schedule of all fixed amounts of payment, if any, required under the lease and that may be required under any possible extensions or renewals of the lease.
- (11) The statement required by subsection 5(11)(ii), shall include, at a minimum, a discussion of the financial and other risks for the municipality of Financing Leases.
- (12) Before entering into a Financing Lease, the Treasurer shall:
- a. prepare a report to Council with a recommendation, assessing, in the opinion of the Treasurer, the costs and financial and other risks associated with the proposed Financing Lease, including,
 - i. a comparison between the fixed and estimated costs and the risks associated with the proposed Financing Lease, and those associated with other methods of financing;
 - ii. a statement summarizing the effective rate or rates of financing for the Financing Lease, the ability for lease payment amounts to vary, and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the Financing Lease;
 - iii. a statement summarizing any contingent payment obligations under the Financing Lease that in the opinion of the Treasurer would result in a material impact for the Corporation, including lease termination provisions, equipment loss, equipment replacement options, and guarantees and indemnities;
 - iv. a summary of the assumptions applicable to any possible variations in the Financing Lease payment and contingent payment obligations; and
 - v. any other matters the Treasurer or Council considers advisable;
 - b. obtain legal advice and financial advice with respect to the proposed Financing Lease and if the scope of the proposed transaction warrants it, ensure that the legal and financial advice is from a source independent from the advice ordinarily obtained by the Corporation for legal or financial matters;
 - c. provide an opinion about whether the costs of the financing for the proposed Financing Lease are lower than other methods of financing available to the Corporation, and whether the risks associated with the Financing Lease are reasonable.
- (13) The costs and risks associated with a proposed Financing Lease in a report made under subsection 5(13)(a) shall be assessed as of the date the report is made.
- (14) If at any time after a report under subsection 5(13)(a) is made, but before the financing Lease is executed, the Treasurer becomes of the opinion that a changed circumstance with respect to the proposed Financing Lease may result in a material impact for the Corporation, the Treasurer shall, as soon as is reasonably possible update the report and present it to Council.

- (15) A report made under subsection 5(13) shall summarize the information required by that subsection for the entire term of the Financing Lease, including any possible extensions or renewals.
- (16) Where applicable each of the procurement procedures set out in section 8 below shall be undertaken in compliance with the following steps:
- a. the scope of the Goods, services and Construction shall be clearly and extensively defined by the Bid Solicitation documentation;
 - b. the form of Bid Solicitation documentation shall be, to the extent possible, standardized using common forms and processes;
 - c. the Bid Solicitation documentation shall be circulated and advertised in as wide and extensive a manner as will ensure the best, most comprehensive and most competitive response to the Bid Solicitation;
 - d. all Bids shall be fairly and completely evaluated using as open, fair and transparent a process as may be possible in the circumstances of the particular Bid Solicitation. Evaluation criteria shall be established for each class of procurement undertaken by the Corporation;
 - e. the evaluation of each Bid shall be carefully recorded using a standardized form of evaluation record, such as a tally card or other method of point tabulation method. The evaluation record shall be stored and shall not be destroyed until three years following completion of the procurement Contract;
 - f. all Successful Bidders shall, where required by this by-law, be required to comply with the Contract negotiation, preparation and execution requirements of sections 11 and 13 of this by-law;
 - g. all Contracts shall be monitored to ensure that performance is in accordance with the requirements of the Contract and steps shall be taken to correct the performance of suppliers where it falls below the standard required by the Contract;
 - h. all Bids received by the Corporation shall be kept together in a secure place until the time for opening. All Bids shall remain sealed until the opening, which shall occur in public. Bid Solicitations requiring the submission of proprietary information or information containing intellectual property protected by law shall contain provisions providing for protecting the confidentiality of same, in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*;
 - i. all Bid Solicitation documentation shall clearly set out the requirements for the price element of the submission, specifying whether the Bid price is submitted on a unit price or total price basis and whether it is net of any taxes, early payment discounts, premiums, financing charges, administrative costs, cost of living or other escalations, contingencies or other deductions or additions and how any Contract extras shall be dealt with;
 - j. all Bid Solicitation documentation shall clearly specify how each of the following criteria shall be utilized in evaluating all Bids:
 - a. price
 - b. quality of Goods, services and Construction
 - c. experience and qualifications of Bidder(s)
 - d. risk
 - e. strategy
 - f. approach
 - g. methodology
 - h. scheduling of work
 - i. past performance
 - j. facilities and equipment to be utilized in Contract performance;
 - k. personnel to be used in Contract performance.

TOTAL PROJECT COST

6. Where this by-law prescribes financial limits on Contracts that may be Awarded on the authority of a Department Head, or provides for financial limits on Contracts required to be reported to Council, for the purpose of determining whether a Contract falls within these prescribed limits, the Contract amount shall be the sum of all costs to be paid to the supplier under the contract plus all taxes and less any rebates.

PRESCRIBED COUNCIL APPROVAL

7. Despite any other provision of this by-law, the following Contracts are subject to Council approval:
 - b. any Contract requiring approval from the Ontario Municipal Board,
 - c. any Contract prescribed by statute to be made by Council,
 - d. where the cost amount proposed for acceptance is higher than the Council approved estimates and the necessary adjustments cannot be made,
 - e. where a Substantive Objection emanating from the Bid solicitation has been filed with the Department Head or with the Treasurer;
 - f. where a major irregularity precludes the Award of a Tender to the supplier submitting the Lowest Compliant Bid;
 - g. where authority to approve has not been expressly delegated; and
 - h. any contract having a value in excess of one hundred thousand dollars (\$100,000.00).

PROCUREMENT PROCEDURES

8. The following are hereby authorized as the acceptable procedures for all procurement undertaken by or on behalf of the Corporation. They may be utilized individually or in combination with one another, as may be appropriate in the circumstances:

- (1) REQUEST FOR EXPRESSIONS OF INTEREST

A Department Head or the Treasurer may conduct a Request for Expression of Interest for the purposes of determining the availability of suppliers of any Good, service or Construction and for the purposes of keeping a list of available suppliers (which shall be deemed to be the "goal" of the Request for Expression of Interest form of procurement). The submission of an Expression of Interest does not create any contractual obligation between the Corporation and the interested supplier. The submission of an Expression of Interest may be made a specific pre-condition of any other procurement procedure utilized by the Corporation.

- (2) REQUEST FOR PRE-QUALIFICATION

- a. A Department Head or the Treasurer may conduct a Request for Pre-qualification for any Good, services or Construction to select the number of acceptable Bidders that may Bid on the subsequent competitive sealed Bid process under the following circumstances:

- i. the work is considered "high risk" with respect to Regulations governed under *the Occupational Health and Safety Act*;
- ii. the work is such that Contract administration costs (work inspection, follow-up, extra fee negotiations) could result in a substantial cost to the Corporation if the work is not satisfactorily performed the first time;
- iii. the Goods or equipment to be purchased must meet national safety standards or has demonstrated an acceptable level of performance; or
- iv. the work involves complex, multi-disciplinary activities; which for the purposes of this section, shall also be deemed to be the "goal" of the Request for Pre-qualification form of procurement.

- b. When the Request for Pre-qualification is utilized, a Pre-qualification Proposal document shall be provided to the potential Bidders setting out the criteria for pre-qualification which may include:

- i. experience on similar work (firm and staff assigned);
- ii. references provided from other customers for similar work;
- iii. verification of applicable licences and certificates;
- iv. health and safety policies and staff training;
- v. financial capability.

- c. The selection of Bidders following a pre-qualification process does not create any contractual obligation between the Corporation and the pre-qualified bidder. Pre-qualification may be made a specific pre-condition of any other procurement procedure utilized by the Corporation.

(3) LOW VALUE PURCHASE (LESS THAN \$1,000.00)

A Low Value Purchase may be utilized for purchases involving Contracts which do not exceed one thousand dollars (\$1,000.00) (which shall be deemed to be the "goal" of the Low Value Purchase form of procurement). These purchases may be made utilizing a Purchase Order, petty cash, a cheque, or a Corporation credit card. These purchases are within the discretion of the Department Head, or designate. Only purchases which can be demonstrated to have been made at Fair Market Value shall be made.

(4) REQUEST FOR QUOTATION - INFORMAL (PURCHASES BETWEEN \$1,000.00 AND \$10,000.00)

For the procurement of Goods, services and Construction having a Contract value of one thousand dollars (\$1,000.00) or more but not exceeding ten thousand dollars (\$10,000.00), an informal Request for Quotation shall be utilized (which shall be deemed to be the "goal" of the Informal Request for Quotation form of procurement). Three Quotations, either by telephone or in writing, shall be solicited. These purchases do not require formal advertising nor the receipt of sealed Bids. The Quotations shall be reviewed, and the results tabulated to determine the Award of the Contract for same. Notwithstanding the requirement to solicit a minimum of three quotations, a Department Head, in consultation with the Clerk-Administrator, shall not be precluded from awarding the contract to a qualified bidder in the event that three quotations are not received provided that the "goals" of the by-law are maintained.

(5) REQUEST FOR QUOTATION - FORMAL (PURCHASES BETWEEN \$10,000.00 AND \$50,000.00)

For the procurement of Goods, services and Construction having a Contract value of ten thousand dollars (\$10,000.00) or more but not exceeding fifty thousand dollars (\$50,000.00), a formal Request for Quotation shall be utilized (which shall be deemed to be the "goal" of the Formal Request for Quotation form of procurement). At least three Quotations shall be solicited, in writing. These purchases do not require formal advertising, nor the receipt of sealed Bids. The Quotations shall be reviewed and the results tabulated, to determine the Award of the Contract for same. Notwithstanding the requirement to solicit a minimum of three quotations, a Department Head, in consultation with the Clerk-Administrator, shall not be precluded from awarding the contract to a qualified bidder in the event that three quotations are not received provided that the "goals" of the by-law are maintained. In appropriate circumstances, the Request for Proposal or the Request for Tender processes may be utilized for Contracts in this value range, if the criteria for each procurement method is otherwise met.

(6) REQUEST FOR TENDER (PURCHASES EXCEEDING \$50,000)

a. For the procurement of Goods, services and Construction having a Contract value of fifty thousand dollars (\$50,000.00) or more, a Request for Tender shall be used where all of the following criteria apply:

- i. two or more sources are considered capable of supplying the Good, service or Construction;
- ii. the Good, service or Construction is adequately defined to permit the evaluation of Tenders against clearly stated criteria,
- iii. the market conditions are such that Tenders can be submitted on a common pricing basis, and
- iv. it is intended that the lowest priced Compliant Tender will be accepted without negotiations;

which for the purposes of this section, shall also be deemed to be the "goals" of the Request for Tender form of procurement.

- b. The Department Head shall prepare a purchase requisition containing the relevant specifications, terms and conditions for the acquisition.
- c. Notice of the Tender shall be given by formal advertising and, if appropriate, On-line Tendering may be utilized. Notice shall also be given to all Bidders who were required to be Pre-qualified and to all bidders who were required to submit an Expression of Interest.
- d. Sealed Tenders with a public opening shall be required.

- e. The Award shall be made to the Lowest Compliant Bidder.
- f. The Tender shall be opened and read out in public. All Bid amounts shall be recorded on a Summary of Bidders sheet.
- g. Any irregularities in the Tender shall be dealt with in accordance with Schedule "B" and section 12 of this by-law.
- h. The Tender documents shall require the Successful Bidder to execute those documents and take those steps set out in section 11 of this by-law.
- i. The Award of any Tender having a Contract value in excess of one hundred thousand dollars (\$100,000.00) requires Council approval.

(7) REQUEST FOR PROPOSAL - PURCHASES EXCEEDING \$50,000.00

- a. For the procurement of Goods, services and Construction having a Contract value of fifty thousand dollars (\$50,000.00) or more, a Request for Proposal shall be used where after applying the following criteria, it is determined that the Request for Proposal is a more appropriate form of procurement than Tender:
 - i. the procurement is required as a result of a peculiar problem, requirement or objective;
 - ii. the selection of the supplier depends more upon the effectiveness of the proposed solution, than the price alone;
 - iii. one or more of the criteria for issuing a Tender cannot be met;
 - iv. it is expected that negotiation with one or more Bidders may be required with respect to any aspect of the Contract;
 - v. the precise Good, service or Construction, or the specifications therefore are not known or are not definable and it is expected that Bidders will further define them;

which for the purposes of this section shall also be deemed to be the "goals" of the Request for Proposal form of procurement.

- b. The Department Head shall prepare a purchase requisition containing the relevant specifications, terms and conditions for the acquisition.
- c. Notice of the Request for Proposal shall be given by formal advertising and, if appropriate, by On-line Tendering. Notice shall also be given to all Bidders who were required to be Pre-qualified and to all bidders who were required to submit an Expression of Interest.
- d. The Award of any Request for Proposal having a Contract value in excess of one hundred thousand dollars (\$100,000.00) requires Council approval.
- e. Any irregularities in the Request for Proposal shall be dealt with in accordance with Schedule "B" and section 12 of this by-law.
- f. Where an Award may be made following an evaluation of the Proposals, without further negotiation, the successful Bidder shall be required to comply with the Contract requirements of section 11 of this by-law.

(8) REQUEST FOR PRICE AGREEMENT - ANY PRICE

- a. A Request for Price Agreement shall be used for the procurement of Goods, services and Construction of any Contract value when the following criteria apply:
 - i. where it is important that the Corporation be guaranteed a continuous supply of Goods, services or Construction;
 - ii. the volume of Goods, services and Construction over the course of a year is high;
 - iii. economies of scale can be achieved by eliminating multiple low-value Bids;
 - iv. demand is not known in advance;
 - v. the use of the Goods, services or Construction required is repetitive in nature;
 - vi. delivery of the Goods, services or Construction is Contracted for as the need arises;

which for the purposes of this section shall also be deemed to be the "goals" of the Request for Price Agreement form of procurement.

- b. The Department Head shall prepare a purchase requisition containing the relevant specifications, terms and conditions for the acquisition.

- c. Notice of the Request for Price Agreement shall be given by formal advertising and, if appropriate, by On-line Tendering. Notice shall also be given to all Bidders who were required to be Pre-qualified and to all bidders who were required to submit an Expression of Interest.
- d. The Award of any Price Agreement having a Contract value in excess of one hundred thousand dollars (\$100,000.00) requires Council approval.
- e. Any irregularities in a Price Agreement submission shall be dealt with in accordance with Schedule "B" and section 12 of this by-law.
- f. The Award shall be made to the Lowest Compliant Bidder.
- g. The Tender shall be opened and read out in public. All Bid amounts shall be recorded on a Summary of Bidders sheet.
- h. The Tender documents shall require the Lowest Compliant Bidder to execute those documents and take those steps set out in section 11 of this by-law.
- i. No Contractual obligation shall arise between a supplier and the Corporation who have executed a Price Agreement until the Goods, services or Construction are actually ordered.

(9) NEGOTIATION - ANY PRICE

- a. Negotiation may be used for the procurement of Goods, services or Construction for Contracts of any Contract value when any of the following criteria apply:
 - i. due to abnormal market conditions, the Goods, services or Construction required are in short supply;
 - ii. where competition is precluded due to the existence of any patent rights, copyright, technical secret or control of raw material;
 - iii. where there is only one source of the Goods, services or Construction which would be acceptable and cost effective;
 - iv. where two or more identical Bids are received;
 - v. where all Bids received are not acceptable or exceed the amount budgeted for the procurement;
 - vi. where the extension or reinstatement of an existing Contract would be more cost effective or beneficial to the Corporation;
 - vii. where Extraordinary Circumstances exist;
 - viii. where for security or confidentiality reasons it is in the public interest; or
 - ix. where authorized by Council so to do;
- which for the purposes of this section shall also be deemed to be the "goals" of the Negotiation form of procurement.
- b. The Award of any negotiated Contract having a Contract Value in excess of one hundred thousand dollars (\$100,000.00) requires Council approval.
 - c. The Award of any negotiated Contract shall comply with section 11 of this by-law.

(10) EXTRAORDINARY CIRCUMSTANCE PURCHASES

- a. When a Department Head is of the opinion that an Extraordinary Circumstance exists, the Department Head may authorize the purchase of such Goods, services and Construction as is considered necessary to remedy the situation without regard to the requirement for a Bid solicitation and may award the necessary Contract provided that the Contract does not exceed \$100,000 (which for the purposes of this section, shall also be deemed to be the "goal" of the Extraordinary Circumstance Purchase).
- b. The relevant details surrounding an Extraordinary Circumstance Award shall be reported to Council at the next possible meeting following the Award.

(11) SOLE SOURCE PURCHASE

- a. A Sole Source Purchase may be used for the procurement of Goods, services or Construction for Contracts of any Contract value, in the following circumstances:

- i. where the compatibility of a purchase with existing equipment, facilities or service is a paramount consideration and the purchase must be made from a sole source;
- ii. where a Good is purchased for testing or trial use;
- iii. where the Corporation purchases supplies for resale;
- iv. where the Corporation has a rental contract with a purchase option and such purchase option could be beneficial to the Corporation;
- v. notwithstanding anything in this policy, where a purchase is determined by Council to be fair and reasonable and is made from a non-profit corporation supported by the Corporation, the Corporation may make such a purchase as a Sole Source Purchase;
- vi. where Goods are offered for sale by tender, auction or negotiation such purchase will be deemed to be a Sole Source Purchase and the Clerk-Administrator may authorize the submission of a Bid or the conduct of negotiations where the Clerk-Administrator determines the purchase to be clearly in the best interest of the Corporation;
- vii. for matters involving security, police matters, or confidential issues, a purchase may be made in a manner that protects the confidentiality of the contractor or the Corporation. Such purchases may be made as a Sole Source Purchase;

which for the purposes of this section shall also be deemed to be the "goals" of the Sole Source Purchase form of procurement.

- b. The Award of any Sole Source Purchase Contract having a Contract Value in excess of one hundred thousand dollars (\$100,000.00) requires Council approval.
- c. The Award of any Sole Source Purchase Contract shall comply with section 11 of this by-law.

(12) TWO PHASE BID

- a. A Request for Proposal may require the submission of the Proposal in two phases. Phase 1 would assess the Proposal and Phase 2 would assess the price.
- b. The Two Phase bid may require one submission containing two sealed envelopes, the first containing the Proposal and the second the Price. In the case of a two envelope submission, the first envelope shall be opened first and assessed. Only the second envelopes of those Bids meeting the specifications of the Request for Proposal shall be opened. The unsuccessful Bidders' price envelopes shall be returned unopened. The Price envelopes of successful Phase 1 Bids shall be treated as Tenders pursuant to subsection 8(6). The Proposal envelopes shall be treated as Proposals pursuant to subsection 8(7).
- c. The Two Phase Bid may require two separate submissions. The first submission shall contain the Proposal, without price. It shall be evaluated and only those Bidders meeting the Request for Proposal specifications would be asked to submit a Phase 2 price Bid envelope. The Phase 1 envelopes shall be treated as Proposals pursuant to subsection 8(7) and the Phase 2 envelopes shall be treated as Tenderers pursuant to subsection 8(6).
- d. The goal of the Two Phase Bid form of procurement shall be to deal with procurement situations that require the combined advantages of the Proposal and the Tender forms of procurement.

BID AND CONTRACT ADMINISTRATION

SUBMISSION OF BIDS

- 9. (1) Bids shall be accepted in paper form or where provided, as an On-line Tender.
- (2) If two equal Bids are received, a means of breaking the tie consistent with the provisions of the solicitation shall be employed.
- (3) Factors to be considered in breaking the tie include:

- a. whether a prompt payment discount has been offered,
 - b. when delivery is an important factor, the Bidder offering the best delivery date shall be given preference,
 - c. a Bidder in a position to provide better after sales service, with a good record in this regard, shall be given preference,
 - d. a Bidder with an overall satisfactory performance record shall be given preference over a Bidder known to have an unsatisfactory performance record.
- (4) Following the closing of a Bid Solicitation, there shall be no informal contact between any Bidder and any elected official or staff member of the Corporation relating to the Tender. Any contact shall only occur in a formal manner, to the extent permitted by the Bid Solicitation documentation.
 - (5) Prior to the closing of a Bid Solicitation, clarification about the Bid Solicitation documentation may be obtained by the Bidder, either in writing or verbally from the Corporation.
 - (6) Should the Corporation determine that an addenda to the Bid Solicitation documentation is to be issued, it shall be issued, in writing, to all Bidders at the same time.
 - (7) The Corporation reserves the right to reject any or all quotations/bids and to reject the lowest or any quotation/bid if deemed to be in the best interests of the Corporation. Acceptance of a quotation/bid shall be at the sole discretion of the Corporation based upon examinations of quotations/bids received.

GUARANTEES OF CONTRACT EXECUTION AND PERFORMANCE

- 10.(1) The Treasurer may require that a Bid be accompanied by a Bid Bond or other similar security to guarantee entry into a Contract.
- (2) In addition to the security referred to in Subsection 10(1), the Successful Bidder may be required to provide,
 - i. a Performance Bond to guarantee the faithful performance of a Contract, and
 - ii. a Payment Bond to guarantee the payment for labour and materials to be supplied in connection with a Contract.
- (3) The Department Head shall select the appropriate means to guarantee execution and performance of the Contract. Means may include one or more of, but are not limited to, financial bonds or other forms of security deposits, provisions for liquidated damages, progress payments, and Holdbacks.
- (4) Prior to the commencement of work and where deemed appropriate, evidence of Liability Insurance Coverage satisfactory to the Treasurer must be obtained, ensuring indemnification of the Corporation from any and all claims, demands, losses, costs or damages resulting from the performance of a Bidder's obligations under the Contract and from any other risk determined by the Treasurer as requiring coverage.
- (5) Prior to payment to a supplier, a Certificate of Clearance from the Workplace Safety and Insurance Board shall be obtained ensuring all premiums or levies have been paid to the Board to date.
- (6) The Treasurer shall ensure that the guarantee means selected will:
 - a. not be excessive but sufficient to cover financial risks to the Corporation,
 - b. provide flexibility in applying leverage on a supplier so that the penalty is proportional to the deficiencies, and
 - c. comply with provincial statutes and regulations.
- (7) Financial bonds for Contract performance shall only be required where the Corporation will be exposed to costs if the supplier does not complete the requirements of the Contract.
- (8) If the risk to the Corporation is not adequately limited by the progress payment provisions of the Contract, a minimum payment Holdback of 10% shall be mandatory on all Contracts exceeding \$25,000.
- (9) The Treasurer may release the Holdback funds on construction contracts upon:

- a. the contractor submitting a statutory declaration that all accounts have been paid and that all documents have been received for all damage claims,
 - b. receipt of clearance from the Workplace Safety and Insurance Board for any arrears of Workplace Safety and Insurance Board assessment,
 - c. all the requirements of the *Construction Liens Act* being satisfied,
 - d. receipt of certification from the Corporation's Solicitor, where applicable, that liens have not been registered, and
 - e. certification from the Department Head, under whom the work has been performed, that the conditions of the Contract have been satisfied.
- (10) The conditions for release of Holdback funds provided in Subsection 10(9) apply to other Goods or services Contracts with necessary modifications.
- (11) The conditions for release of Holdback funds provided in subsection 10(9) apply to either Goods or services Contracts, with necessary modifications.

BID IRREGULARITIES

- 11.(1) The process for administering irregularities contained in Bids pertaining to all Contracts shall be as set out in Schedule "B".
- (2) For an irregularity listed in the first column of Schedule "B", the response applicable to it is set out opposite to it in the second column of Schedule "B".

FORM OF CONTRACT

- 12.(1) The Award of a Contract may be made by way of an agreement, or as a Purchase Order.
- (2) A Purchase Order is to be used when the resulting Contract is straightforward and will contain the Corporation's standard terms and conditions.
- (3) A formal agreement is to be used when the resulting Contract is complex and will contain terms and conditions other than the Corporation's standard terms and conditions.
- (4) It shall be the responsibility of the Department Head to determine if it is in the best interest of the Corporation to establish a formal agreement with the supplier.
- (5) Where it is determined that Subsection 12(4) is to apply, the formal agreement may be reviewed by the Corporation's Solicitor.
- (6) Where a formal agreement is not required, the Department Head shall issue a Purchase Order incorporating the terms and conditions relevant to the Award of Contract.

CO-OPERATIVE PURCHASING

- 13.(1) The Corporation may participate with other government agencies or public authorities in Co-operative Purchasing where it is in the best interests of the Corporation to do so.
- (2) The policies of the government agencies or public authorities calling the co-operative Tender are to be the accepted policy for that particular Tender.

SUPPLIER PERFORMANCE

- 14.(1) The Department Head shall monitor the performance of all procurement Contracts and shall document evidence related to same and shall advise the Treasurer in writing where the performance of a supplier has been unsatisfactory in terms of failure to meet Contract specifications, terms and conditions or for Health and Safety, environmental or other violations.
- (2) The Treasurer may, in consultation with the Department Head and Corporation's Solicitor, prohibit an unsatisfactory supplier from bidding on future contracts.
- (3) Where it is found that a supplier has performed poorly or below Contract requirements, the Department Head shall make recommendations to Council about ways to deal with such performance.

RECEIPT OF GOODS

- 15.(1) The Department Head shall,
- a. arrange for the prompt inspection of Goods on receipt to confirm conformance with the terms of the Contract, and
 - b. inform the Treasurer of discrepancies immediately.
- (2) The Treasurer shall coordinate an appropriate course of action with the Department Head for any non-performance or discrepancies.

ACCESS TO INFORMATION

16. The disclosure of information received relevant to the issue of Bid solicitations or the Award of Contracts emanating from Bid Solicitations shall be made by the appropriate officers in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, as amended.

SURPLUS STOCK

- 17.(1) Department Heads shall identify any furniture, vehicles, equipment, stocks of all supplies, and other Goods and material, which are no longer, used or which have become obsolete, worn out, or incapable of being used.
- (2) The Department Head shall have the authority to transfer furniture, vehicles, equipment, surplus stock, and other Goods and material from one department to other departments.
- (3) The Department Head shall have the authority to sell or dispose of all furniture, vehicles, equipment, surplus stock, supplies, or other Goods and material which have become unsuitable for use by the Corporation or to exchange or trade the same for new furniture, vehicle, equipment, surplus stock, supplies, or other goods and material.
- (4) Sale of surplus furniture, vehicles, equipment, stock, supplies and other Goods and material shall be made to the highest responsive Bidder and the sale shall be made in accordance with the provisions of this by-law where applicable. Notwithstanding the foregoing, Department Heads, with the approval of Council, may donate surplus materials to non-profit community groups provided the articles serve to promote and preserve the Municipality's culture and heritage for the enjoyment of future generations.

BY-LAW REVIEW

- 18.(1) The Procurement By-law shall be reviewed prior to the end of each Council term and any amendment thereto shall be made prior to the inaugural meeting of the next Council.
- (2) The review shall determine how effective the Procurement By-law has been in achieving the objectives set out in section 1 of the by-law as well as the requirements of the *Municipal Act, 2001*, as amended.

SHORT TITLE

19. The short title of this by-law shall be the "Procurement By-law".
BY-LAW NUMBER 1912-2004-FI READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 20TH DAY OF SEPTEMBER, A.D., 2004.

"Keith Shier"
Mayor

"George S. Graham"
Clerk-Administrator

BY-LAW NUMBER 1964-2005-FI READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 17TH DAY OF OCTOBER, A.D., 2005.

"Keith Shier"
Mayor

"George S. Graham"
Clerk-Administrator

SCHEDULE "A"

The acquisition methods describe in this by-law do not apply to the following items:

1. Training and Education
 1. Conferences, conventions, courses and seminars
 2. Magazines, books, periodicals
 3. Memberships

2. Refundable Employees Expenses
 1. Advances
 2. Meal Allowances
 3. Travel and Entertainment
 4. Miscellaneous - Non-Travel

3. Employer's General Expenses
 1. Payroll Deductions Remittances
 2. Medical
 3. Licenses (Vehicle, Firearms, etc.)
 4. Debenture Payments & Tile Drainage Payments
 5. Insurance Premiums
 6. Grants to Agencies
 7. Damage Claims
 8. Petty Cash Replenishment
 9. Payments to Real Property
 10. Tax Remittances
 11. Regional charges to and from other government bodies
 12. Sinking Fund Payments
 13. Payments for employment

4. Professional and Special Services
 1. Committee Fees
 2. Medical, Laboratory, and Pharmacy Services
 3. Legal fees for expert or professional legal services for all Insurance Matters
 4. Professional Fees for Engineering, Legal, Planning, Auditing Consulting Services
 5. Medical and Dental fees
 6. Funeral and Burial expenses
 7. Appraisal Fees
 8. Witness fees
 9. Honorariums

5. Utilities (monthly charges and utility relocations)
 1. Postage
 2. Water and Sewer
 3. Hydro
 4. Gas
 5. Telecommunications services
 6. Waste Disposal Fees (inclusive of recycling)

SCHEDULE "B"

	IRREGULARITY	RESPONSE
1.	Late Bids.	Automatic rejection and not opened or read publicly.
2.	Unsealed Envelopes.	Automatic rejection.
3.	Insufficient Financial Security (No Bid Security or agreement to bond or insufficient Bid bond or agreement to bond).	Automatic rejection.
4.	Bids not Completed in non-erasable medium and signed in ink.	Automatic rejection.
5.	Incomplete Bids (Part bids - all items not bid).	Automatic rejection unless, in the opinion of the Department Head and the Treasurer, the incomplete nature is trivial or insignificant.
6.	Qualified Bids (Bids qualified or restricted by an attached statement).	Automatic rejection unless, in the opinion of the Department Head and the Treasurer, the qualification or restriction is trivial or not significant.
7.	Bids received on documents other than those provided by the Corporation.	Automatic rejection unless, in the opinion of the Department Head and the Treasurer, the matter is trivial or insignificant.
8.	Bids Containing Minor Obvious Clerical Errors.	48 hours to correct and initial errors.
9.	Failure to execute Agreement to Bond (Performance Security) or Bonding company corporate seal or signature missing from agreement to bond.	Automatic rejection.
10.	Failure to execute Bid Security (Financial Security).	Automatic rejection.
(a)	Corporate seal or signature or both of the Bidder, missing.	48 hours to correct.
(b)	Corporate seal or signature of bonding company missing.	Automatic rejection.
11.	Other Bid Security - Uncertified Cheques.	Automatic rejection.
12.	Documents - Execution	
(a)	Corporate seal or signature missing.	48 hours to rectify situation.
(b)	Corporate seal and signature missing.	Automatic rejection.
13.	Erasures, Overwriting or Strike-Outs which are not Initialed:	
(a)	uninitialed changes to the Tender documents which are minor (example: the tenderer's address is amended by overwriting but not initialed);	48 hours to initial.
(b)	unit prices in the Schedule of Prices have been changed but not initialed and the Contract totals are consistent with the price as amended;	48 hours to initial.

	IRREGULARITY	RESPONSE
(c)	unit prices in the Schedule of Prices which have been changed but not initialed and the Contract totals are not consistent with the price as amended;	Automatic rejection.
(d)	other mathematical errors, which are not consistent with the unit prices.	48 hours to initial corrections as made by the Treasurer.
14.	Documents, in which all necessary Addenda, which have financial implication, have not been acknowledged.	Automatic rejection.
15.	Other Minor Irregularities.	The Treasurer and Department Heads shall have authority to waive irregularities, which they jointly consider to be minor.
16.	Any Irregularity.	Despite the provisions herein contained, Council may waive any irregularity where it considers it to be in the best interest of the City.