

FI 270 PURCHASING POLICY

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BEING A BY-LAW TO REGULATE THE ACQUISITION OF GOODS AND SERVICES AND THE DISPOSAL OF PROPERTY FOR THE CORPORATION OF THE COUNTY OF PRINCE EDWARD

THE CORPORATION OF THE COUNTY OF PRINCE EDWARD, pursuant to Section 271 of the **Municipal Act, 2001**, as amended, hereby enacts as follows:

1. PURPOSES, GOALS AND OBJECTIVES OF THIS BY-LAW

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 quality, efficiency and effectiveness;
- d. To make Service and product providers accountable to the Municipality and the public;
- e. To provide the highest level of government Service at the least possible cost;
- f. To ensure fairness between bidders;
- g. To ensure objectivity in the procurement process;
- h. To the extent possible, ensure openness, accountability and transparency while protecting the financial best interests of the Municipality;
- i. To obtain the best value for the Municipality when procuring Goods and Services;
- j. To avoid conflicts between the interests of the Corporation and those of the Corporation's employees and members of Council;
- k. To minimize risk to the Corporation.

2. DEFINITIONS

(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;

"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;

"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, Request for In House Bid or a Two Phase Bid Request;

"Chief Administrative Officer" means the County's appointed Chief Administrative Officer, or designate;

"Commissioner" means the person appointed by the Municipality to the position of a Commissioner to be responsible for the operation of a Department, or designate;

"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:

- (a) 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;
- (b) employment by the Corporation; and
- (c) a direct or indirect interest in any business that provides Goods, Services or Construction to the Corporation;

"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 COUNTY OF PRINCE EDWARD;

"Council" means the Council of the Corporation;

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

“Department Head” means the position appointed as head of a County Department;

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

"Emergency” means a situation where the immediate purchase of goods and/or Services is essential to prevent serious delays when there is a threat to health, welfare, safety of people or any further damage to property, or to restore minimum Service.

"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;

"In House Bid" means a Bid made by a Department and authorized by the Commissioner of that Department, submitted in response to a Bid Solicitation, where the provision of the Good, Service or Construction will be provided entirely by the employees of the Corporation;

"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 Municipality of The County of Prince Edward;

"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;

"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;

"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;

"Purchasing Division" means the Corporation's Department responsible for purchasing Goods, Services and Construction for the Corporation in accordance with the requirements of this by-law;

"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;

"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 for 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 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;

"Substantive Objection" means a written objection provided to the Purchasing Division or the Commissioner 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" "B" and "C" attached hereto form part of this By-law.

3. GENERAL PROCUREMENT POLICIES AND PROCEDURES APPLICATION

- (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 or Service Contract by the Corporation or any of its officers, servants and employees.

- (2) All staff directly involved with making acquisitions on behalf of the Corporation shall whenever possible and economical, ensure that acquisitions are made in order to provide for expanded use of environmentally friendly products and services, and also products that contain post-consumer recyclable waste and/or recyclable content to the maximum level allowable, without specifically affecting the intended use or performance of the product or service. It is recognized that in carrying out this policy, those responsible will commit to actions designed to conserve and protect the environment while complying with policies, financial controls, and conflicts of interest.
- (3) This by-law shall not apply to those procurement processes enumerated in Schedule "A".

4. RESPONSIBILITIES AND AUTHORITIES

- (1) The Commissioner of Corporate Services/Treasurer or designated official is hereby given the responsibility of operating a Purchasing Division on behalf of the Corporation of the County of Prince Edward in accordance with the requirements of this by-law including ensuring compliance with this by-law. The Commissioner of Corporate Services/Treasurer will be responsible for conducting periodic internal audits to ensure compliance.
- (2) Commissioners shall be responsible for and shall have authority for all procurement activity and decisions within their Department, 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 Chief Administrative Officer, the Commissioner of Corporate Services/Treasurer, or Council.
- (3) The Purchasing Division, under the direction of the Commissioner of Corporate Services, 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 Chief Administrative Officer and Council for the purposes of fulfilling the procurement needs of the Corporation;
 - 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 standardization of all Goods, Services and Construction, where possible;

- d. the disposal of Goods and salvage which has been declared surplus by a Commissioner or Department Head.
- (4) Periodically, due to the nature of the proposed project, a consultant may be retained to facilitate the procurement process. Notwithstanding the foregoing, it shall be the responsibility of the appropriate Commissioner, in concert with the Purchasing Division, to ensure that the provisions of this by-law are adhered to by the consultant.
- (5) The Chief Administrative Officer has the authority to instruct Commissioners 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.
- (6) This purchasing policy may be overridden through specific direction by Council in the event Council determines it to be appropriate and in the best interests of the County.
- (7) 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.

5. RESTRICTIONS

- (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 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 immediate families.
- (3) An employee who has the responsibility of declaring Goods surplus, members of their immediate family, or member of Council, shall not bid or personally obtain any Goods that that employee has declared as surplus.
- (4) No employee of the Corporation having responsibility for sending items to a public auction, members of their immediate family, or member of Council may bid on any of the Corporation's Goods.
- (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:

- a. gifts of a very small intrinsic value not over the value of \$100.00;
 - b. gifts given for the use and benefit of the Corporation;
 - c. moderate hospitality during the normal course of business that would not significantly exceed what the Corporation, through the employee's expense account, 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 Chief Administrative Officer 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:
- a. a by-law authorizing the Financing Lease is passed; and
 - b. 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) 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 if the scope of the proposed transaction warrants it with respect to the proposed Financing Lease and, 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.
- (12) If at any time after a report 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. A report made shall summarize the information required by that subsection for the entire term of the Financing Lease, including any possible extensions or renewals.
- (13) Where applicable each of the procurement procedures set out in section 8 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;

6. TOTAL PROJECT COST

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

7. PRESCRIBED PURCHASING/COUNCIL APPROVAL

(1)Transitional Budget – Pending Approval – Prior to passing of the annual operating budget, each department shall be allowed an interim appropriation of fifty percent (50%) of the previous year's approved operating budget, and such interim appropriation shall be deemed to be for routine operating and recurring expenditures or statutory purposes unless otherwise directed by Council.

(2)Approved Budget – Formal approval of the annual budget constitutes financial approval to proceed with purchases subject to any scheduling or priority considerations as may be deemed necessary by Council and as outlined by the Purchasing Policies. For requirements that were not included in the budget or

exceed the original budgeted amount, the Department Head will prepare a written report, to be signed off by the Treasurer, and recommendation to the Committee for Council approval to move forward for capital purchase tenders and/or operating purchase tenders.

(3) Despite any other provision of this by-law, the following acquisitions are subject to Council approval:

- a. any acquisition or contract requiring approval from the Ontario Municipal Board,
- b. any acquisition or Contract prescribed by statute to be made by Council,
- c. where the cost amount proposed for acceptance is higher than the Council approved estimates and the necessary adjustments cannot be made.
- d. where a Substantive Objection emanating from the Bid solicitation has been filed with the Commissioner or with the Purchasing Division;
- e. where a major irregularity precludes the Award of a Tender to the supplier submitting the Lowest Compliant Bid; and
- f. where authority to approve has not been expressly delegated
- g. any acquisition over \$100,000.00 in value.

8. PROCUREMENT PROCEDURES

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:

REQUEST FOR EXPRESSIONS OF INTEREST

A Commissioner, Department Head or the Purchasing Division 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. Expression of Interests (verbal and/or written) should be documented for recording, auditing and filing, and to be used for reference purposes.

REQUEST FOR PROPOSAL

- a. For the procurement of Goods, Services and Construction, a Request for Proposal shall be used by a Commissioner, Department Head or the Purchasing Division, 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, are not definable, or are proprietary, 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. Notice of the Request for Proposal shall be given by formal advertising . 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.
- c. The Award of any Request for Proposal having a Contract value in excess of one hundred thousand dollars (\$100,000.00) requires Council approval.
- d. Any irregularities in the Request for Proposal shall be dealt with in accordance with Schedule "B" of this by-law.
- e. 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 this by-law.
- f. Expression of interests should be documented for recording, auditing and filing, and to be used for reference purposes.

REQUEST FOR PRE-QUALIFICATION

- a. A Commissioner, Department Head or the Purchasing Division 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.
- d. Request for Pre-qualifications (verbal and/or written) should be documented and forwarded to the Purchasing Division for recording and filing and to be used for reference purposes.

BLANKET PURCHASE ORDERS

Blanket Purchase Orders shall be utilized throughout the County for common purchases across all departments. The following is a list of common items that may be purchased on an annual blanket purchase order:

- Photocopier paper, office supplies, envelopes, printed matter
- Custodial supplies, cleaning detergents and garbage bags
- Safety items – gloves, harnesses, earplugs etc.
- Paper products – toilet paper, paper towels, etc.
- Printers and cartridges
- Cellular phones
- Office Furniture
- Computer (hardware/software)
- Photocopiers
- Coffee/beverages
- Water for coolers

- Mat/rug rentals
- Uniforms/coveralls
- Consumables

The Purchasing Division will gather annual volumes, specifications, delivery dates in order to establish the municipalities annual requirements throughout all departments in order to take advantage of volume discounting opportunities, standardization and enhanced terms and conditions.

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

A Low Value Purchase may be utilized for purchases 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,

(b) petty cash- (maximum \$50.00 per purchase), Petty cash funds shall only be established and utilized as may be authorized and approved by the Commissioner of Corporate Services/Treasurer. The Commissioner of Corporate Services/Treasurer has the sole authority to discontinue any petty cash fund at any time.

(c) Department Store Credit Accounts -Upon receipt of goods the packing slip and/or receipt must be forwarded to the Accounts Payable Department for audit purposes. The Manager of the area is responsible for determining the designated staff to make purchases on credit accounts. The Purchasing Division will maintain and monitor all credit applications and will forward to the Commissioner of Corporate Services for authorization.

(d) a cheque, or

(e) a Corporation Purchasing/credit card -Purchases of goods or Services which are not covered by an annual blanket purchase order may be made by using a purchasing card. Purchasing Card Employee Acknowledgement Terms and Conditions must be adhered to, executed and authorized prior to the issue of a Purchasing Card. The issuance of a Corporate Purchasing Card will be upon the approval of the Chief Administrative Officer and the Commissioner of Corporate Services. All purchases made through the use of this card must be logged on the appropriate log and filed with the credit card invoice for audit purposes.

The appropriate Commissioner shall appoint individuals within the Commissioner's department who have authority to make Low Value Purchases. These purchases are within the discretion of the Commissioner or the Commissioner's delegate. Only purchases which can be demonstrated to have been made at Fair Market Value shall be made. Prices (verbal and/or written) should be documented recording and filing and to be used for reference purposes.

(6) REQUEST FOR QUOTATION–INFORMAL (PURCHASES BETWEEN \$1,000.00 AND \$5,000.00)

The Commissioner, Department Head, either independently or through the Purchasing Division, shall have approval for the procurement of Goods, Services and Construction having a value of one thousand dollars (\$1,000.00) or more but not exceeding five thousand dollars (\$5,000.00), 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 obtained. These purchases require neither formal advertising nor the receipt of sealed Bids. The Quotations shall be reviewed, and the results tabulated to determine the purchase for same. Prices (verbal and/or written) should be documented for recording and filing and to be used for reference and audit purposes.

(7) REQUEST FOR QUOTATION - FORMAL (PURCHASES BETWEEN \$5,001.00 AND \$25,000.00)

The Commissioner, Department Head, either independently or through the Purchasing Division, shall have approval for the procurement of Goods, Services and Construction having a value of five thousand and one dollars (\$5,001.00) or more but not exceeding twenty five thousand dollars (\$25,000.00), using a Request for Quotation. At least three Quotations shall be obtained, 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. 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. Copies of quotations shall be recorded and filed to be used for reference and audit purposes.

(8) REQUEST FOR QUOTATION - FORMAL (PURCHASES BETWEEN \$25,001.00 AND \$50,000.00)

The Commissioner, **through the Purchasing Division**, shall have approval for the procurement of Goods, Services and Construction having a value of twenty five thousand and one dollars (\$25,001.00) or more but not exceeding fifty thousand dollars (\$50,000.00), using a formal Request for Quotation.

At least three Quotations shall be obtained, 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. 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. Copies of quotations shall be recorded and filed in the Purchasing Division to be used for reference and audit purposes.

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

- a. For the procurement of Goods, Services and Construction having a Contract value exceeding fifty thousand dollars (\$50,000.00), 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 Commissioner or Department Head shall provide to the Purchasing Division a purchase requisition containing the relevant specifications, terms and conditions for the acquisition.

Tendering Procedures are specifically outlined in Schedule "C"

(10) 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 Commissioner or Department Head shall provide to the Purchasing Services Division 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. 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" of this by-law.
- f. The Tender shall be opened and read out in public. All Bid amounts shall be recorded on a Summary of Bidders sheet.
- g. The Tender documents shall require the Lowest Compliant Bidder to execute those documents and take those steps set out in section 10 of this by-law.
- h. 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.

(11) 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 Commissioner or Department Head shall provide to the Purchasing Services Division a purchase requisition containing the relevant specifications, terms and conditions for the acquisition.
- c. The Award of any negotiated Contract having a Contract Value in excess of one hundred thousand dollars (\$100,000.00) requires Council approval.

(12) CO-OPERATIVE PURCHASING

- a. 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.
- b. The policies of the government agencies or public authorities calling the co-operative Tender are to be the accepted policy for that particular Tender.

(13) EMERGENCY PURCHASES

The purchasing policies as outlined in accordance with the provisions of this by-law shall not be intentionally circumvented. However, when in the best judgment of the appropriate department head or designated official that an immediate purchase of goods and/or Services is required in the event of an emergency, as outline in accordance with the provisions of this by-law, the following provisions shall apply.

- a. The appropriate department head shall determine the most feasible acquisition process to secure the lowest price obtainable for the goods and/or Services required and:
- b. For purchases of goods or Services with the estimated total acquisition cost not exceeding \$5,000.00 the appropriate department head shall have authorization to proceed as deemed appropriate and shall record on the applicable receipts and/or invoices for emergency purchase the nature of the emergency; for purchases of goods or Services with the estimated total acquisition cost exceeding \$5,000.00 the appropriate Department Head shall obtain the approval of their Commissioner.

In any event, the appropriate Commissioner shall, within two working days from the date of such purchase, submit a written report concerning the emergency purchase to the Chief Administrative Officer with a copy to the Commissioner of Corporate Services. Such report shall contain the nature of the emergency, the necessity of action taken, and recommendation on how such an emergency will be prevented in the future.

(14) SINGLE SOURCE PURCHASING

Departments may request that goods be bought from a specific supplier or that a specific contractor be used for Service or construction work for these reasons:

Technical: There is only one supplier or contract who can meet the specifications.

Market Conditions: Only one supplier or contractor can provide the goods or Services by the specified date required or, because of the nature of the good or Service, it is preferable to negotiate with one supplier or contractor.

Standardization: There are existing goods in place and, to maintain standardization of spare parts, single source bidding is recommended.

Unique Skills: A contractor has unique skills related to the nature of the Service or construction, which makes it more practical or advantageous to single source.

Extension of Existing Annual Purchase Order or Contract: Where the extension of an existing annual purchase order or contract would, in the judgment of the appropriate department head, is the most effective or beneficial.

Promotional Sales (examples include but are not limited to, equipment auctions, used equipment purchases etc.) – where items required which have received budget approval become available through special promotional pricing, the department head, upon approval from their Commissioner, may proceed with the purchase. A report of the purchase must be forwarded to the Purchasing Division for recording and file retention.

If a department elects a single sources justification for goods and/or Services based on reasons established herein and based on consideration in accordance with the provisions of this by-law, the appropriate department head must submit to the Chief Administrative Officer, for his approval, a written cost effective or beneficial justification report in accordance with the provision of this by-law, in which the proposed single source is justified. A copy of the report will also be forwarded to the Commissioner of Corporate Services

(15) 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 this bylaw and the Phase 2 envelopes shall be treated as Tenders pursuant to this by-law.
- d. The Commissioner or Department Head shall provide to the Purchasing Services Division a purchase requisition containing the relevant specifications, terms and conditions for the acquisition.
- e. 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.

(16) IN HOUSE BIDS

- a. In House Bids may be used for the procurement of Goods, Services and Construction of any Contract value only in the following circumstances:
 - i. where a Good, Service or Construction has historically been provided by an external supplier and Council determines that it is in the best interests of the Corporation to allow its staff to compete for the provision of the Good, Service or Construction;
 - ii. where a Good, Service or Construction has historically been provided by staff of the Corporation and Council determines that it is in the best interests of the Corporation to allow its staff to compete for the provision of the Good, Service or Construction;
 - iii. in any other circumstances that Council determines may be appropriate; and
 - iv. where proper cost accounting, allocation and other infrastructure are in place to permit an accurate and thorough examination of all of the direct and indirect costs associated with the provision of the particular Good, Service or Construction;

which for the purposes of this section shall be deemed to be the "goals" of the In House Bid form of procurement;

- b. In House Bids shall only be utilized where external suppliers have also been requested to submit Bids;

- c. In House Bids must be authorized by Council, in advance;
- d. only one In House Bid will be permitted for each Bid Solicitation;
- e. if any Bid Solicitation permits In House Bids, all Bidders shall be made aware of this fact in the Bid Solicitation documentation;
- f. where an In House Bid will require the Services of a unionized employee of the Corporation and the provisions of the Good, Service or Construction will require a change to a collective agreement, then the concurrence of the Union which has collective bargaining rights with respect to that agreement shall be required before the In House Bid will be accepted;
- g. in determining whether an In House Bid is in the best interests of the Corporation, the following criteria shall be taken into account by Council:
 - i. whether the Bid will result in a significant increase or decrease in capital equipment and infrastructure expenditures by the Corporation;
 - ii. the extent to which the In House Bid will affect the future ability of the Corporation to deliver essential health, emergency or other vital Services to the public, in a cost effective and efficient manner;
 - iii. the extent to which the In House Bid will affect staffing and personnel complement of the Corporation;
 - iv. the extent to which the In House Bid will affect the financial position of the Corporation; and
 - v. the extent to which the In House Bid will affect Service levels provided to the public;
- h. If an In House Bid is selected as the Successful Bid, then compliance with sections 10 and 13 shall not be required, but instead, a memorandum of understanding shall be drafted. In all other respect, the Bid documentation required shall be the same for all Bids.

**9. BID AND CONTRACT ADMINISTRATION
SUBMISSION OF BIDS**

- (1) Written Bids shall be accepted in paper form.
- (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 could include, but are not limited to:
 - 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, the only contact that a Bidder may have with the Corporation or any of its staff or elected officials shall be made in writing, and only if made for the purposes of requesting clarification about the Bid Solicitation documentation. The Corporation may only respond to such clarification requests in writing, either in the form of a letter response or in the form of an addenda, but in either case, a copy of both the clarification request and the response or the addenda shall be provided to all Bidders at the same time.

10. FORM OF CONTRACT

- (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.
- (3) A formal agreement is to be used when the resulting Contract is complex and will contain terms and conditions as set by the Corporation.
- (4) It shall be the responsibility of the Commissioner of Corporate Services to determine if it is in the best interest of the Corporation to establish a formal agreement with the supplier.

11. SUPPLIER PERFORMANCE

- (1) The Commissioner or Department Head shall monitor the performance of all procurement Contracts and shall document evidence related to same and shall advise the Purchasing Services Division 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) Where it is found that a supplier has performed poorly or below Contract requirements, the Commissioner shall make recommendations to Council about ways to deal with such performance.

12. RECEIPT OF GOODS

- (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 Purchasing Division, if necessary, of discrepancies.
- (2) The Commissioner through information provided by the Purchasing Division shall coordinate an appropriate course of action for any non-performance or discrepancies.

13. REPORTING TO COUNCIL

- (1) The appropriate Commissioner shall submit to Council, through the appropriate Standing Committee, an information report containing the details relevant to the exercise of delegated authority for all Tenders awarded by Commissioners including amendments and renewals.
- (2) The Commissioner of Corporate Services shall certify in the report that the awards are in compliance with the Purchasing By-law and approved budget.

14. ACCESS TO INFORMATION

- (1) 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.
- (2) Contents of tender documents and requests for proposals, with the exception of the information read publicly at the tender opening and reported to Council, shall be treated as confidential and protected to the extent permitted by law.

15. SURPLUS STOCK

- (1) Commissioners or Department Head's shall submit to the Purchasing Division reports of 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 Purchasing Division shall make available through an internal memorandum all surplus stock, and other Goods and material from one department to other departments.
- (3) The department, with the assistance of the Purchasing Division if required, shall sell or dispose of all surplus stock which have become unsuitable for use by the Corporation or to exchange or trade the same surplus stock.

- (4) Sale of surplus stock 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. The funds derived from the sale will be credited to the appropriate department or as per regulation.
- (5) In the event of a tie between the two highest bidders, the two high bidders shall be asked to re-bid on the same item. Bids will be opened at a set date and time and awarded to the highest bidder.

16. ANNUAL EQUIPMENT RENTALS AND AGGREGATE MATERIALS

The County's Commissioner of Public Works is responsible for the County's annual equipment rentals and aggregate materials.

Equipment rentals and aggregate materials are to be acquired by annual proposal procedures as outlined in accordance with the provisions of this by-law.

The County's Public Works Commissioner, following consultation with the Purchasing Division, shall prepare a written report on the estimated requirements, including any applicable specifications and budget appropriations for the annual equipment rentals and aggregate materials.

The report shall contain a recommendation as to potential bidders being selected to provide competitive bids and the process, including the award and contract procedure to be followed.

The report shall be submitted to the Purchasing Division in accordance with the provisions of this by-law.

17. BY-LAW REVIEW

- (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.
- (3) The review shall be undertaken by the Corporate Services Committee of Council, by way of a report from the Treasurer, all Commissioners and the Purchasing Division, following consultation with such stakeholder groups as the Treasurer determines may be appropriate, but which shall include, but not be limited to, the following:
 - i. The Association of Municipalities of Ontario;
 - ii. The Minister of Municipal Affairs;

- iii. The Federation of Canadian Municipalities;
- iv. The National Institute of Governmental Purchasing.

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

1. Refundable Employees Expenses

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

2. Employer's General Expenses

1. Statutory Payroll Deduction Remittances
2. Medicals
3. Licenses (Vehicle, Firearms, etc.)
4. Debenture Payments
5. Liability and Property and Other Forms of Insurance Premiums, Payments and Adjusting Fees
6. Grants to Agencies
7. Employee Benefit Payments and Premiums
8. Building Lease Payments
9. Tax Remittances
10. Charges to and from Other Municipalities

3. Professional and Special Services

1. Committee Fees
2. Medical, Laboratory, and Pharmacy Services
3. Legal fees for expert or professional legal Services for all Municipal and Insurance Matters
4. Payments to Social Service and Health Agencies that are subject to Service Agreements
5. Medical and Dental fees
6. Appraisal Fees
7. Witness fees
8. Honorariums

4. Utilities (monthly charges and utility relocations)

1. Postage
2. Water and Sewer
3. Hydro
4. Gas
5. Telecommunications Services

- 6. Acquisitions and Disposal of Real Property**
- 7. Petty Cash Items/Replenishment**
exempt from any provisions with the exception of Section 8, Subsection 5 of this Purchasing By-law.
- 8. Food or Pharmaceutical Products** – where foods or pharmaceutical products are required for the Home for the Aged. Any other food products required by the Corporation such as catering or vending/concession type services must follow the provisions of this By-law.
- 9. Purchases required through the Municipal Emergency Plan.**

END OF SCHEDULE “A”

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 Commissioner and the Purchasing Services Division, 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 Commissioner and the Purchasing Services Division, 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 Commissioner and the Purchasing Services Division, 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. |

| | IRREGULARITY | RESPONSE |
|-----|--|---|
| 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 Initialled: | |
| (a) | uninitialled changes to the Tender documents which are minor (example: the tenderer's address is amended by overwriting but not initialled); | 48 hours to initial. |
| (b) | unit prices in the Schedule of Prices have been changed but not initialled and the Contract totals are consistent with the price as amended; | 48 hours to initial. |
| (c) | unit prices in the Schedule of Prices which have been changed but not initialled 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 Purchasing Services Division. |
| 14. | Documents, in which all necessary Addenda, which have financial implication, have not been acknowledged. | Automatic rejection. |
| 15. | Other Minor Irregularities. | The Purchasing Services Division and Commissioners 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. |

END OF SCHEDULE "B"

SCHEDULE "C" TENDERING PROCEDURES

For applicable purchases with an estimated annual or project total acquisition cost greater than \$50,000.00, sealed tenders are required. Forms and procedures for tenders shall be in accordance with the applicable provisions of this by-law.

THE REQUIREMENTS AND DESIRABLE CHARACTERISTICS OF A CONTRACT

The Award of a Contract may be made by way of an agreement, or as a purchase order.

In Municipal context the offer-acceptance sequence of events occurs as follows:

- a) An invitation to tender is published to advertise the fact that the County is interested in entering into a contract. Requests for proposal in lieu of tender are permitted in certain situations.
- b) Bids are submitted by persons wishing to undertake to supply the goods or Services. In some instances the contract may be advertised as a "Qualified Contract" and only contractors who are "Pre-Qualified" are allowed to submit tenders.
- c) A contract is entered into once the County accepts one of the tenders submitted and the contract documents are executed by both parties.

There is no legal obligation on the part of the County to accept any tender submitted, and it is customary to state this in the Tender advertisement. An acceptance must not be conditional or qualified in any way, except as specified in the Tender. For example, if the acceptance of a Tender is to be conditional on the approval of the Minister of Transportation, this fact must be set forth in the Tender documents.

TENDER DOCUMENTS

Tender documents will consist of the Tender Forms, A Copy of the Contract, Terms, General Conditions, Specifications, Instruction to Bidders and Agreement to Bond. The following is a brief description of these documents.

(a) Tender Form

The Tender Form when completed and properly signed is a legal offer by the bidder to supply/perform the contemplated goods/Services and must be drawn up with care. This protects the interest of both the bidder and the County.

The Tender Form shall be clear as to the type, quality, quantity, location and extent of the goods/Service and shall contain all necessary declarations required of the Bidder.

The County shall provide a standard Tender Form in order to ensure that all Tenders are properly prepared and truly comparable.

(b) Contract Documents

The time limit for signing the contract, usually ten (10) working days after the date of acceptance, shall be clearly stated. Provision shall be made on the form to allow for clear identification of the Bidder and the price or prices to be paid for the goods/Services.

(c) Terms and General Conditions

The Contract Terms and General Conditions set forth the duties, authority, responsibility and relationships of the contracting parties and their representatives in the conduct of the work.

(d) Instructions to Bidders

The Instructions to Bidders provide directions concerning the intended use of goods being bid: delivery requirements, etc. The Instructions contain conditions that are specific to one particular contract.

(e) Specifications

Specifications define specific requirements for the item or Service. The term “or approved equal” should either be used or the “equals” listed. The County or selected consultant has the expertise to make the determination prior to writing the specifications. For example, the wheelbase, engine size, axle ratios of a vehicle, are requirements that must be met. Failure to respond or unauthorized substitution shall result in a rejected bid.

(f) Agreement to Bond or Irrevocable Letter of Credit

The Commissioner of Corporate Services may require an Agreement to Bond Form or an Irrevocable Letter of Credit. This Agreement form is signed and sealed by the Bidder, and in effect establishes with reasonable certainty that the bidder will be able to obtain the necessary performance and labour bond if their Tender is accepted by the County.

1. TENDERING PROCEDURES AND REQUIREMENTS

(a) When Tendering Is Required

Tenders will be called for all work, and material with an estimated annual or project total acquisition cost greater than \$50,000.00 (fifty thousand dollars).

(b) Methods Of Tendering

All tenders shall be by way of advertising or invitational bid.

(c) Advertising

The Purchasing Division, upon receipt of completed documents shall proceed with the advertising. Sufficient time between advertising and tender closing shall be allowed to permit a contractor to examine the site, obtain the tender documents, complete and submit a tender. In certain situations, tendering time may be reduced to a minimum in order to meet the overall project schedule.

(d) Designated Officials’ Duties

The Operating Department Head – will provide the necessary document specifications, answer queries of prospective bidders, consider extensions of time, review bids received, rule on the acceptance of those that do not meet the tender requirements according to the policy guidelines.

Periodically, due to the nature of the proposed project, a consultant may be retained to facilitate the procurement process. Notwithstanding the foregoing, it shall be the

responsibility of the appropriate Commissioner to ensure that the provisions of this by-law are adhered to by the consultant.

The Purchasing Division– confirms completeness of documentation (specifications), bonding requirements, creates appropriate tender form(s), allocates tender number(s), schedules: tender deadlines, proponent’s meetings, tender openings and tender closings, creates and submits tender advertisement, maintains vendor contacts for tenders received, issues tender(s) documentation to potential bidders, receives and documents tender/proposal fees, issues addendum and vendor communications, attends tender opening, records bidder’s names, records amount of bid, confirms all tenders requirements/qualifications are met i.e. all insurance requirements, references, tender signatures, and mathematical extensions etc., distributes upon request bidder’s lists and bid summary results, provides the Bid Summary report for the Department Head and Commissioner, corresponds with vendors with regards to contract awarding, returns deposits, negotiates pricing and terms, issues and creates contract(s) and purchase orders for the awarded Tender, coordinates execution of the contract and maintains a complete set of tender files.

The Clerk - receives all Tenders, marks on all tender envelopes the date and time received and initials, records the Tender on a Tender Recap Sheet and deposits Tender envelopes in the locked Tender Box in the Clerk’s office. Following closing of the Tenders the Clerk shall attend at the Tender Opening and carry out those duties as defined in Section 5.0

Tender Evaluation Team

The appropriate Commissioner is delegated the authority to approve tenders, based on a written recommendation from the Tender Evaluation Team, when all of the following conditions have been satisfied:

- i. there is sufficient approved budget;
- ii. all procedures for the requisitioning of goods and Services as per this By-law have been followed;
- iii. the lowest tender is being accepted.

(e) Request of Tender Document(s) from Potential To Bidders

Upon the request of a prospective bidder, the Purchasing Division shall supply the following material for each contract:

- one copy of the official tender bid form;
- one copy of the Service contract;
- one standard tender envelope;
- tendering material, e.g. specifications, plans, profiles, etc.; and

When a fee for tendering material is required, it shall be non-refundable except where a contract is cancelled and it shall be paid to the County or to the Consultant (if applicable).

(f) Recording And Control Of Tendering Materials

A record of Tenders opened shall be maintained by the Purchasing Division for the purpose of recording tenders' names, bid amount, bid deposit, date and contract award.

(g) Tender Documents

If security is required as part of the tender documents, the following guidelines shall apply.

Tenders are required to conform to the conditions listed below, and those failing to do so **will be disqualified.**

- i) The correct Tender Form, sealed in an envelope must be in the possession of the Clerk's Office on/or before the tender closing date and time. Bidders must use the Tender Form supplied by the County. Failure to do so will result in the bid being rejected.
- ii) The tender must be legible, written in ink or typed where stipulated, with the unit price for items and other entries clearly shown.
- iii) Alternative proposals will not be considered unless requested in the Tender documents or by way of Addendum.
- iv) The Bid must not be qualified by any statement added to the Tender Form or a covering letter, or alterations to the tender forms (unless requested by the County).
- v) Adjustments by telephone, facsimile, email or telegram to a Tender already submitted will not be considered. A bidder desiring to make adjustments to a Tender must supersede it with a later tender submission or letter in a sealed envelope prior to the Tender closing.
- vi) The Tender Form must be signed in the space(s) provided with the signature of the bidder or of a duly authorized official of the organization bidding. If a joint bid is submitted, it must be signed on behalf of each of the bidders and if signing authority for both bidders is vested in one individual, the individual shall sign separately on behalf of each bidder. Signatures on behalf of a non-incorporated company and by individuals must be witnessed and an affidavit of witness must be attached. In the case of an incorporated company, the corporate seal must be affixed to the Tender Form or the words "I have authority to bind the corporation" must be legibly inserted immediately below the corporate officer's signatures.
- vii) Erasures, overwriting or strikeouts must be initialled by the person signing on behalf of the organization bidding.
- viii) The tender shall be accompanied by an Agreement to Bond or an Irrevocable Letter of Credit if required and a Tender deposit in the form of Cash or Certified Cheque, Bank Draft, Money Order or Bid Bond made payable to the County of Prince Edward in the amount specified in the Tender. THESE MUST BE ENCLOSED IN THE SAME ENVELOPE AS THE TENDER.
- ix) The required Tender Documents must be ORIGINALS. Photocopy or facsimile copies **will not be accepted** and will result in the Tender being rejected.

For example: Labour Bonds, Performance Bonds, Security Bonds, Letters of Credit, Bank Drafts, Certified Cheques, and Money Orders.
 Exception: Worker’s Compensation Certificate of Clearance and Insurance.

(h) Tender Deposit Requirement

Each bidder shall provide a deposit in an amount in accordance with the following:

| <u>Total Amount of Bid</u> | <u>Minimum Deposit Required</u> |
|------------------------------|---------------------------------|
| \$50,000.00 or less | Nil |
| \$50,001.00 to \$99,999.99 | \$5,000.00 |
| \$100,000.00 to \$249,999.99 | \$10,000.00 |
| \$250,000.00 to \$499,999.99 | \$25,000.00 |
| \$500,000.00 to \$999,999.99 | \$50,000.00 |
| \$1,000,000.00 and over | \$100,000.00 |

Tender Deposits will be held in safekeeping. Following Council approval of a successful bidder, the Purchasing Division shall return all tender deposits other than the low and second low bids. When copies of the Contract executed by the successful bidder are returned and are deemed to be acceptable the Tender deposit of the second low bidder shall be returned

(i) Failure To Observe Tender And Deposit Requirements

If any of the Tender and deposit requirements have not been met, the tender shall be rejected.

(j) Bonding Requirements

- a) The Commissioner of Corporate Services, in consultation with the appropriate Commissioner will determine the requirement for Performance; and Labour, and Material Bonds each equal to 50% of the bid, or other amounts when conditions warrant, issued by an approved Guarantee Company properly licensed in the Province of Ontario, on Canadian Construction Documents Committee (CCDC) bond forms acceptable to the County. The County will accept 100% of the amount of the bid in the form of cash, certified cheque or an irrevocable standby letter of credit in the approved format from a chartered bank, or a Letter of Guarantee acceptable to the Commissioner of Corporate Services/Treasurer issued by a trust Company. There may be instances where it is desirable to obtain bonding to the extent of 100% of the bid amount to be determined on the recommendation of the Department Head to the Commissioner of Corporate Service/Treasurer. These securities must be furnished by the contractor before the contract can be executed.
- b) An irrevocable letter of credit in the amount of 100% of the tender amount may be used in lieu of bonds.

2. CHANGES TO TENDERS (ADDENDUM, EXTENSION OF TIME OR

CANCELLATION)

(a) Preparation And Insurance Of Addendum

When it becomes necessary to review the Tender material, the Purchasing Division, with the assistance of the Department Head, shall make the necessary changes in the form of the Addendum.

(b) Notification Of Addendum To Prospective Bidders

The Purchasing/Budget Control Clerk must issue the Addendum to all contractors who obtained Tender documents from the County by telephone, facsimile or email. The original form will be sent out by facsimile, priority post, courier or by mail – depending on the timing and the ability of reaching each of the contractors initially by telephone or by facsimile.

A copy of the Addendum notice must also be stapled to each Tender Form that has not yet been distributed.

The closing date shall be extended when required.

(c) Contract Extension Of Time

When the closing date for receiving an advertised Tender is extended, appropriate municipal departments outside agencies and all bidders shall be notified by the Purchasing Division of the extension of time by telephone, facsimile or email. The original form will be sent out by regular mail or by courier. The Purchasing Division shall keep a written log of all contacted parties.

(d) Disposition Of Tenders When Closing Date Has Been Extended

When the closing date for receiving Tenders has been extended, Tenders already received shall be handled as follows:

- i) if the extension of time is two (2) weeks or less, the prospective bidders shall be advised by the Purchasing Division that their tender will be returned unopened upon request.
- ii) if the extension of time is more than two (2) weeks, all tenders shall be returned by the Purchasing Division, unopened.
- iii) all communications shall be by facsimile or regular mail.

(e) Action When The Tender Call Is Cancelled

When an advertised tender is cancelled, outside agencies and all bidders shall be notified by the Purchasing Division by telephone, facsimile or email. The original form may be sent out by facsimile, courier or by regular mail.

(f) Cancellation Of A Tender Call

Once a tender call has been cancelled, no tenders will be accepted.

All tenders previously received prior to the cancellation shall be returned by the Purchasing Division, unopened, to the bidder by hand, courier or by registered mail with a covering letter.

3. RECEIVING TENDERS

(a) Confidentiality

The number of bids received and names of bidders is confidential information and must not be divulged prior to the tender opening. Notwithstanding that, the County may provide names of subcontractors that have bid on construction projects.

(b) Late Tenders

Late tenders will not be accepted. Regardless of the time a bid is received, the time and date will be recorded on the envelope. If the bid is for a tender already closed, it shall be returned by the Purchasing Division unopened to the bidder. A photocopy of the tender envelope showing the time and date must be retained for the County records. If a tender is to be returned by mail, it shall be accompanied by a covering letter stating that the Tender could not be accepted due to late arrival. The same explanation will be given when refusing late bids delivered in person.

NOTE: If a late bid is received by mail or by courier without a return address on the envelope, it shall be opened by the Clerk and the Purchasing Division, the address obtained, and then returned. The covering letter will state why the envelope could not be returned unopened.

4. WITHDRAWAL PROCEDURES

(a) Withdrawal Of Tenders Prior To Tender Closing

A bidder may request that their tender be withdrawn. The withdrawal shall be allowed if the request is made before the closing time for the contract to which it applies.

Withdrawal requests must be directed by a Senior Official and signing officer of the bidding company to the Clerk by letter, telegram, e-mail, or facsimile. Telephone or verbal requests will not be considered.

Tenders confirmed as withdrawn prior to being placed in the tender compartment shall be returned unopened to the bidder. Withdrawal notices received after the tender has been deposited in the tender compartment shall be placed in the tender compartment. Upon the opening of the tender compartment, "withdrawn" tenders will be removed from the tender compartment, placed in the care and custody of the Clerk and returned unopened the following day, by registered mail, to the bidder. The "withdrawn" tender may also be returned immediately following the opening of tenders by hand if the bidder is present.

The withdrawal of a tender does not disqualify a bidder from submitting another tender on the same contract.

Withdrawal requests received after the tender closing time will not be allowed. The concerned party shall be informed that the withdrawal request arrived too late for consideration.

(b) Withdrawal Of Tenders During Tender Opening

In some instances, the tenders for several contracts are opened at the same tender opening. Notwithstanding 4.02, at such an opening, at the conclusion of the reading out of bids on a specific contract, the low bidder on that contract may withdraw any of their

remaining tenders relative to those other contracts on which the tenders have not been opened. Tenders withdrawn under this procedure cannot be reinstated even if it is subsequently established that their tender on the previous contract was not low.

If more than one tender is read out under the same name for the same contract and no withdrawal notice has been received, the tender contained in the envelope bearing the latest date and time shall be considered the intended bid. The first tender received shall be considered withdrawn and returned to the bidder in the usual manner.

(c) Preparation Of Notice Of Withdrawal Of Tender Results

A bidder shall attest in writing to their identity and state the contract(s) on which they desire to withdraw. The Notice of Withdrawal of Tender must be signed by the bidder. This Notice must be handed to the Clerk before the reading out of the first tender and contract(s) to which it applies.

The Clerk shall have the completed Notice attached to the applicable tender. The Clerk shall read out the bidder's name and announce that the tender has been withdrawn in accordance with established procedure.

5. TENDER OPENING AND CHECKING PROCEDURES AND RELEASE OF TENDER RESULTS

Opening Of Tenders

The opening of tenders shall take place on the same day as the closing date. This shall be done in public, fifteen (15) minutes or as soon thereafter as possible after the tender has closed. Tender opening shall be conducted by the Tender Opening Committee which is comprised of the Clerk or designate; the appropriate Department Head or designate and the Purchasing Division or designate. All tender openings shall be held in the Committee Room or Council Chambers and are open to the public.

Every tender received within the time specified in the tender documents shall be opened in full view of those attending and each bidder's name, the tendered amount(s) and particulars are read aloud by the Clerk and recorded by the Purchasing Division.

Opening of Tender Compartment – the Clerk shall arrange to have the Tender Compartment opened and the contents removed. Where there are tenders for two or more contracts to be opened at the same time, the Tender with the lowest tender number will be opened first.

All Tenders received must be accounted for – when the tender compartment has been opened and all Tenders sorted, the Clerk shall check the Tenders against the bidders' list to ensure that all Tenders received are accounted for. If a discrepancy occurs, the tender opening proceedings shall be delayed until all tenders have been accounted for. When the correspondence in the tender compartment has been dealt with, the remaining tenders shall be opened.

Action on “Unknown” Tenders at Tender Opening – any Tender that does not have the Tender number on the envelope shall be opened and placed with the other tenders for the contract.

Action on Correspondence Found Enclosed in Tender Envelope – correspondence found enclosed with a tender in the tender envelope, which has not been requested by the County shall not be considered part of the tender.

NOTE: All correspondence not requested by the County should be inserted in a separate envelope stating “information only” and bearing the correct tender number. This envelope should be given to the Purchasing Division or Department Head who requested the tender call.

Reading Out of Bid Amounts, etc. – when all Tenders have been accounted for, the Clerk shall:

- i) announce the Tender number and Contract
 - ii) announce the name of the bidder
 - iii) check for bond agreement (if required) or irrevocable letter of credit
 - iv) check for bid deposit and amount
 - v) announce the total bid amount
 - vi) initial the bid page
- h) The Clerk shall check to insure that not more than one tender under the same contract has been inserted in the same tender envelope. If two tenders for the same contract are received in the same tender envelope, (contractor’s copy included), and if both are properly executed and prices differ, the lower prices shall be considered to be the intended bid, which shall be processed in the normal manner.
- i) All tenders opened are placed in the custody of the Purchasing /Budget Control Clerk for checking and subsequent report to the Department Head and Department Commissioner. All bid deposits will be maintained by the Purchasing Division.

Release Of Tender Results

Unofficial tender results may be obtained from the Purchasing Division on the same day as the tender opening. A list of all bidders, their addresses and the bid amounts may be faxed to any interested party. The Purchasing Division shall notify all bidders of the results by letter and shall thank them for submitting a tender to the County.

Checking Tenders

Prior to issuing the tender results to the Department Head and Tender Evaluation Team, the Purchasing Division will check the tenders for compliance. The purpose of checking tenders is to determine whether all tendering requirements have been met and all mathematical calculations are correct.

Tenders, which do not conform to tender requirements, shall be dealt with as provided in Section 6.

All tender documents shall be checked by the Purchasing Division to ensure that:

- a) the bidder's name and tender amount shown on the Record of Tenders Opened, is correct.
- b) the tender document has been properly completed, signed, sealed or witnessed.
- c) the correct tender form has been used.
- d) each tender envelope was received prior to the contract closing time.
- e) the deposit (when applicable) is in the required amount and in an acceptable form.
- f) Agreement to bond or irrevocable letter of credit is supplied, if required.
- g) each item on the tender has been bid.
- h) all extensions and the total for each tender are correct. If an extension or total is incorrect, the checker shall cross out the incorrect figure shown on the Tender Bid Form, enter the correct figure in red above and initial the entry. If all extensions and totals are correct the checker shall initial each page certifying that figures have been properly checked.
- i) the tender is free of restrictions or alterations.
- j) all other tendering requirements have been met.

6. AWARD PROCEDURES

(a) Contract On Which Tenders Are In Order

When tenders have been checked, the Purchasing Division will create a Bid Summary Report indicating all the bids received and the amount of each bid. The Purchasing Division will forward a copy of the Bid Summary Report as well as a complete copy of each tender received to the appropriate department head.

Formal approval of the annual budget constitutes financial approval to proceed with the purchases subject to any scheduling or priority considerations as may be deemed necessary by Council and as outlined by the Purchasing Policy's.

The Tender Evaluation Team shall make a recommendation to the appropriate Commissioner on the award of the tender based on the Approvals and Procedures found in this By-law and procedures included in this Appendix. Tenders exceeding the approved budget or not included as part of the budget require the approval of Committee and Council prior to an award.

The Commissioner shall accept or reject any bid, and recommend an award, or if necessary, the cancellation of the tender, all of which must be approved by the Chief Administrative Officer.

(b) Contract On Which Improper Tenders With Bidding Infractions Have Been Received

Following completion of the checking procedures outlined in this Appendix B, bidding infractions, if any, shall be noted and the reason the bid is considered improper must be clearly stated. The Purchasing Division and Department Head, together, shall recommend to the appropriate committee acceptance or rejection of the tender.

(c) Basis Of Decisions On Rejection Or Acceptance Of Tenders With Bidding Infractions

The decision as to whether a tender shall be rejected or accepted shall be based upon the following general considerations:

- 1) is the intention of the bidder clear?
- 2) has the bidder made a conscientious attempt to comply with the tender requirements?

Extreme care must be exercised by the official(s) responsible to ensure that bidding infractions are handled in a manner, which is fair to other bidders as well as to the public. The following are guidelines and are intended to illustrate some of the discretion allowable:

(d) Notification Of Acceptance Of Tender

Upon the award of the tender, the Purchasing Division shall immediately send a Notification of Acceptance to the successful bidder advising that the necessary documents be prepared for submission to the County at the time the bidder signs the Contract Agreement.

(e) Execution Of Contract

When the tender has been awarded, the formal contract agreement, where required, shall be submitted to the contractor for execution. The contractor shall sign and seal all contract documents (three copies).

If the contractor is a corporation, the seal of the corporation must accompany the signature or the words **“I have authority to bind the corporation”** must be legibly inserted immediately below the corporate officers’ signatures. If the bidder is a private individual, their signature must be witnessed and an affidavit of witness must be attached.

The following documents must be submitted to the County at the time of executing the contract if requested by the County:

- a) Workplace Safety Insurance Board Certificate
- b) Insurance Certificates
- c) Performance and Labour Bonds or a Letter of Credit

Upon signing of the contract document by the contractor, the contract shall be forwarded to the appropriate County Officials for execution and distribution.

(f) Action On Acceptance Of Contract

As soon as all copies of the executed contract, etc., are returned, the bid deposit of the second and third low bidders shall be returned by mail by the Purchasing Division. A tender award for the purchase of goods shall be confirmed by the issuing of a Purchase Order. An award for Service(s) shall be confirmed by a Service Contract issued by the Purchasing Division.

(g) Action When Successful Bidder - Does Not Finalize Contract

If a contract has been awarded and the successful contractor fails to execute the contract or provide the necessary documents as stated in 6.05 (a,b,c), within the specified time, the Purchasing Division in consultation with the Department Head may grant additional time to fulfill the necessary requirements or may recommend to Council one of the following:

- (i) contract be awarded to the next higher bidder.
- (ii) contract be cancelled.

In the case of (i) and (ii) above, the deposit of the low bidder shall be forfeited. If a contract is to be awarded to the second low bidder, their bid deposit shall be retained until the contract has been executed.

If the second low bidder fails to execute the contract or provide bond requirements, cash or other acceptable security etc., or declines to execute the contract if awarded to them, their deposit shall be forfeited. The same shall occur with the third low bidder.

(h) Commencement Of Construction Projects

When all necessary approval(s) and documents are received, the project may proceed. Copies of the contract are to be filed with the Purchasing Division and Department Head.

END OF SCHEDULE "C"