

THE CORPORATION OF THE TOWNSHIP OF STRONG
BY – LAW 2004 – 1492

BEING the Procurement By-law
Policies and Procedures

WHEREAS Section 271 of the Municipal Act, 2001 imposes upon municipalities the obligation to adopt policies with respect to the procurement of Goods and Services

AND WHEREAS this By-law establishes the authority and sets out the methods by which Goods, Services or Construction will be purchased and disposed of for the purposes of the Corporation of the Township of Strong subject to certain exceptions set out herein;

NOW THEREFORE the Council of the Corporation of the Township of Strong hereby enacts as follows:

PART I This By-law may be cited as the “Purchase By-law”

PART II Purposes, Goals and Objectives:

- 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 ensure fairness among bidders
- e) to ensure openness, accountability and transparency while protecting the financial best interests of the Township of Strong
- f) to have regard to the accessibility for persons with disabilities to the goods, services and construction purchased by the Township of Strong
- g) to attempt to reduce the amount of solid waste requiring disposal through the purchase of environmentally responsible Goods and Services.

PART III Definitions:

Approved Invoice means an original suppliers invoice issued for goods and services not exceeding \$1,500.00 which bears both the authorized signature and appropriate account number.

Award, Awarded or Awarding means authorization to proceed with the purchase of Goods, Services or Construction from a chosen supplier

Bid means an offer or written submission from a supplier in response to a Bid Solicitation

Bid Solicitation means a formal request for bids that may be in the form of a Request for Tender or Request for Proposal.

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.

Contract means any agreement regardless of form or title, for the lease purchase or disposal of goods, services or construction authorized in accordance with this by-law;

Council means the Council of the Corporation of the Township of Strong

Council approved Budget means Council approved department budgets including authorized revisions

Emergency means a situation, or the threat of an impending situation, which may affect the environment, the life, safety, health and/or welfare of the general public, or the property of the residents of the Township of Strong, or to prevent serious damage, disruption of work, or to restore or to maintain essential service to a minimum level

Fair Market Value means the price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arms-length where fully informed and not under any compulsion to transact;

Goods means moveable property including:

- a) the cost of installing, operating, maintaining or manufacturing such moveable property
- b) raw material, products, equipment and other physical objects of every kind and description

In House Bid means a bid made by a department and authorized by Council, submitted in response to a Bid Solicitation, where the provision of goods, services or construction will be provided entirely by the employees of the Township of Strong

Lowest Compliant Bid means the bid that would provide the Township of Strong with the desired goods, services or construction at the lowest total acquisition costs, meets all the specifications and contains no irregularities requiring automatic rejection

Professional Services means persons having a specialized knowledge or skill for a defined service requirement including:

- a) Architects, Engineers, designers, management and financial consultants
- b) Firms or individuals having specialized competence in environmental, planning or other disciplines.

Proposal means an offer submitted in response to a request for proposal, acceptance of which may be subject to further negotiation

Request for Proposal means a Bid Solicitation that is used to acquire goods, services or construction, the suitability of which is dependant upon non-price factors and which may result in further negotiation between the parties

Services means all professional and consulting services, all services in relation to real property or personal property including without limiting the foregoing the delivery, installation, construction, maintenance, repair, restoration, demolition or removal of personal property and real property and all other services of any nature

and kind save and except services to only be delivered by an officer or employee of the Township of Strong in accordance with the terms of employment

Tender means a publicly advertised Bid Solicitation

Total Acquisition Cost means an evaluation of quality and service in the assessment of a Bid and the sum of all costs including Purchase price, all taxes, warranties, local service costs, life cycle costs, time of completion or delivery, inventory carrying costs, operating and disposal costs for determining the Lowest Compliant Bid

Part IV – General Procurement Policy

Application

1. The procedures in this by-law shall be followed to a) Award a Contract, or
b) Recommend to Council that a contract be awarded

- 2) The Procurement of Legal Services shall be directed by Council

- 3) The Purchase of Goods and Services listed in Schedule A to this by-law may be made provided that sufficient funds are available and identified in appropriate accounts within the council approved budget

Part V – 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 Contract for services shall be awarded where the services would result in the establishment of an employee-employer relationship

3. No employee shall purchase on behalf of the Township of Strong, any goods, services or construction, except in accordance with this by-law

4. Where an employee involved in the award of any contract, either on his or her own behalf or while acting for, by with or through another person, has any pecuniary interest, direct or indirect, in the Contract, the employee:
 - a) shall immediately disclose the interest to Council and shall describe the general nature thereof;
 - b) shall not take part in the Award of the Contract
 - c) shall not attempt in any way to influence the Award of the Contract
 - d) an employee has an indirect pecuniary interest in any contract in which the Township of Strong is concerned if:
 - (a) The Employee, or his or her spouse or same sex partner:
 - i) is a shareholder in, or a director or senior officer of a corporation that does not offer its securities to the public that has a pecuniary interest in the Contract
 - ii) has a controlling interest in or is a director or senior officer of a corporation that offers its securities to the public that has a pecuniary interest in the Contract, or
 - iii) is a member of an incorporated association or partnership, that has a pecuniary interest in the matter; or

(b) The Employee or his or her spouse or same sex partner is in the employment of a person, unincorporated association or partnership that has a pecuniary interest in the contract;

5. All Council members shall conduct themselves in accordance with the *Municipal Conflict of Interest Act, RSO 1990 c. M50 as amended*.

6. PRESCRIBED COUNCIL APPROVAL

Despite any other provision of this by-law, the following contracts are subject to Council approval:

- a) any Contract requiring approval from the Ontario Municipal Board
- b) any Contract where the Total Acquisition Cost is greater than the Council approved Budget
- c) any Contract where an irregularity precludes the Award of a Contract to a supplier submitting the lowest bid
- d) any Contract where a Good, Service or Construction is available from only one source of supply and the Total Acquisition Cost of such Good, Service or Construction exceeds \$25,000,
- e) any Contract where the Request for Proposal method of purchase of Goods, Services or construction is being used and the estimated value of the goods, services of construction exceeds \$100,000
- f) when any Contract is required that involves financing and/or leasing.

7. RESPONSIBILITIES AND AUTHORITIES

Department Heads shall be responsible for and shall have authority for all procurement activity and decisions within their department and may delegate their authority, where appropriate.

PART VI PROCUREMENT – PURCHASING PROCEDURES

Council shall establish purchasing procedures consistent with the purposes, goals and objectives set out in the by-law relating to:

- a) the form, content and use of forms, whether electronic or printed, including requisitions, letters of credit and other forms of guarantee or surety, tender, proposal and other contract documents;
- b) the identification of those goods, services or construction which are more effectively acquired through co-operative purchasing;
- c) the process to be following in the issuing, receipt and evaluation of Tenders and Requests for Proposals including the option of submitting documentation, payment or signature by electronic means pursuant to the *Electronic Commerce Act, RSO 2000, C17, as amended*.
- d) Any other aspects of process or procedure not specifically provided for in this by-law

2. BLANKET PURCHASE ORDERS

May be used where:

- a) one or more departments repetitively order the same goods, services and the actual demand is not known in advance; or
- b) a need is anticipated for a range of goods or goods, services for a specific purpose and for which convenience and location are major factors but the actual demand is not known at the outset

3. REQUEST FOR EXPRESSIONS OF INTEREST

A Department Head may conduct a request for expression of interest for the purposes of determining the availability of suppliers of Goods or Services and for the purpose of keeping a list of available suppliers.

4. PURCHASING METHODS

1) PURCHASES NOT EXCEEDING \$500

Purchases shall be made from the competitive market place wherever possible and may be made by using an approved invoice, or Purchase card

2) PURCHASES BETWEEN \$500 AND \$1,500

Single purchases of Goods, Services or Construction using a Purchase Card shall not exceed \$1500

The Procedure used to purchase the goods, Services or Construction in this Total Acquisition Cost range shall demonstrate that Fair Market Value was achieved.

In appropriate circumstances, the Request for Proposal or the Request for Tender processes may be utilized in this Total Acquisition Cost Range.

3) PURCHASES OVER \$1,500 – SHALL BE BY REQUEST FOR TENDER

Where: two or more sources are considered capable of supplying the requirement

The Requirement is adequately defined and has clearly stated criteria

It is intended that the Lowest Compliant Bid will be accepted without negotiation

REQUESTS FOR PROPOSAL SHALL BE USED WHERE:

- a) owing to the nature of the requirement, suppliers are invited to propose a solution to a problem, requirement or objective and the selection of the supplier is based on the effectiveness of the proposed solution rather than on the price alone, or
- b) it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirement

4. CONTRACT PRICE IS ANTICIPATED TO BE \$100,000 OR GREATER

Every Request for Proposal shall contain an evaluation grid – criteria to include but are not limited to: approach; equipment and facilities; experience and qualifications; methodology; past performance and scheduling; price and strategy.

5. IN HOUSE BIDS

In house Bids may be used for the procurement of Goods, Services or Construction in circumstances where Council considers it appropriate to do so.

PART VII GUARANTEE OF CONTRACT EXECUTION AND PERFORMANCE

A refundable deposit shall accompany the Tender Document of 10% of the Total Acquisition Cost

Once Contract is signed there shall be the means to guarantee execution and performance of the Contract in the form of a Certified cheque, bank draft, irrevocable letter of credit, money order in the amount of 100% of the Total Acquisition Cost for contracts over \$50,000.

Prior to the commencement of work, evidence of insurance coverage satisfactory to the Clerk must be obtained. The Township of Strong must be named as an additional insured on the Insurance Certificate, indemnifying the Township of Strong 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 Clerk as requiring coverage.

Prior to the commencement of work and 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 Workplace Safety and Insurance Board to the date of payment.

PART VIII BIDS IN EXCESS OF PROJECT ESTIMATES

Council may enter into negotiations with the Lowest Compliant Bidder to achieve an acceptable Bid within the project estimate.

PART IX EMERGENCY PURCHASES

Where an emergency exists requiring the immediate procurement of goods, services or construction, a Department Head may purchase the required goods, services or construction by the most expedient and economical means, notwithstanding any other provisions of this by-law. A report to Council shall be made by the Department Head as soon as practicable thereafter.

PART X COOPERATIVE PURCHASING

The Township of Strong may participate with other government agencies or public authorities in cooperative purchasing where it is in the best interests of the Township of Strong to do so and where the purpose, goals and objectives of this by-law are complied with by such government agencies and public authorities

The policies of the government agencies or public authorities calling the cooperative bid solicitation are to be the accepted policy for that particular purchase.

PART XI IDENTICAL TENDERS

If the Lowest Compliant Bids from two or more bidders are identical in Total Acquisition Cost or unit price, Council is authorized to enter into negotiations with the bidders who have submitted the identical prices in an attempt to obtain a lesser price and shall maintain a record in respect of such negotiations.

Council shall not reveal information pertaining to such negotiations or the manner in which the final price was determined to any bidders concerned. Council shall give a written report concerning the results of such negotiations.

When Negotiations are not successful in breaking the identical tenders, then the successful bidder shall be determined by coin toss. The coin toss shall be performed in the presence of all council.

PART XII BID IRREGULARITIES

The process for administering irregularities contained in Bids pertaining to all Contracts shall be as set out in Schedule "C". For an irregularity listed in the first column of "Schedule C", the applicable response is set out opposite to the irregularity in the second column of "Schedule C".

PART XIII CONTRACTUAL AGREEMENT

Where it is determined that a formal agreement is required, the formal agreement shall be reviewed and approved for execution by our solicitor unless it is a standard form outlining Ministry Standards and Conditions.

PART XIV SURPLUS AND OBSOLETE GOODS

The goods shall be declared surplus by Council at a regular meeting and the means of disposal must be included in the Resolution to dispose: Public Tender, negotiated sale or transfer to another department.

No Council member or employee shall be permitted to received surplus or obsolete goods except by purchase by public tender.

PART XV ACCESS TO INFORMATION

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

PART XVI BY – LAW REVIEW

This 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.

The Review shall determine how effective this by-law has been in achieving the objectives set out in Section 2 of the By-law as well as the requirements of the *Municipal Act, 2001 as amended*.

The Review may be undertaken by an ad-hoc committee of council, the final result of which shall be comprised of a report to full Council.

PART XVII EFFECTIVE DATE

This By-law shall come into force and take effect on the 1st day of January 2005

READ A FIRST TIME THIS 28th DAY OF September 2004.

READ A SECOND TIME THIS 26TH DAY OF OCTOBER 2004

READ A THIRD TIME AND FINALLY PASSED ON A MOTION BY **SCOTT McLAREN**

AND SECONDED BY **SHAWN EDDISON** THIS 23RD DAY OF NOVEMBER 2004

Chris Ellis, Presiding Officer

Clerk Diana Georgie

Procurement by-law #2004 - 1492

SCHEDULE 'A'

The purchasing methods described in this by-law do not apply to the following Goods and Services

1. Training and Education
 - a) Registration and Tuition fees for conferences, conventions, courses and seminars
 - b) Magazines, books and periodicals
 - c) Memberships

2. Refundable Employee/councillor expenses
 - a) Advances
 - b) Meal Allowances
 - c) Travel and Entertainment
 - d) Miscellaneous non-travel

3. Employer's General Expenses
 - a) Payroll deductions remittances
 - b) Medical
 - c) Licenses (vehicle, firearms etc.)
 - d) Debenture payments
 - e) Grants to Agencies
 - f) Damage claims
 - g) Petty Cash replacement
 - h) Tax remittances

4. Professional and Special Services
 - a) Committee fees
 - b) Legal fees and Planning fees
 - c) Funeral and Burial expenses

- d) Witness fees
- e) Contracts related to the provision of “controlled acts” by persons governed by a health profession Act” as those expressions are used in the Regulated Health Professions Act, RSO 1991 c 18 as amended.
- f) Veterinary Expenses

5. Utilities

6. Advertising services required by the Township of Strong on or in but not limited to Radio, TV, Newspaper and Magazine

7. Bailiff or collection agencies

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SCHEDULE "B"

PURCHASING METHOD

Procedure	Cost of Goods or Services	
Approved Invoice or Petty Cash or Purchasing Card	\$499 or less	Part VI (4) (1)
Agreement or Purchasing Card or Request for Proposal or Request for Tender	\$500 to \$1,500	Part VI (4) (2)
Agreement, Request for Tender or Request for Proposal	\$1,500 or more	Part VI (4) (3) (4)

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SCHEDULE "C"

1	Late Bids	Automatic rejection, not opened or read publicly
2	Insufficient Financial Security	Automatic rejection,
3	Bids completed and/or signed in pencil	Automatic rejection
4	Bids in unsealed envelope	Automatic rejection
5	All required sections of Bid document not completed	Automatic rejection unless in the consensual opinion of council the incomplete nature is trivial or insignificant
6	Qualified bids (bids qualified or restricted by an attached statement	Automatic rejection unless in the consensual opinion of council the qualification is trivial or insignificant
7	Bids received on documents other than those provided or specified by township	Automatic rejection
8	Bids containing minor obvious clerical errors	48 hours to correct and initial errors
9	Document Execution – Corporate Seal or Signature missing – signatory’s authority to bind the corporation or signature missing	48 hours to rectify the situation
10	Document – Execution – Corporate seal and signature missing	Automatic rejection
11	Erasures, overwriting or strike outs which are not initialed	48 hours to initial upon the consensual opinion of council are insignificant
12	Changes other than the unit price	“
13	-change in the unit price and total is inconsistent with the changed total price	48 hours to initial – upon the consensual opinion of council are insignificant
14	Change in unit price and total is inconsistent with the changed total price	Automatic rejection if significant
15	Mathematical errors which are not consistent with the unit price	48 hours to initial corrections as made by the council
16	Documents in which all necessary addenda which have financial implications, have not been acknowledged	Automatic rejection
17	Any other irregularities	Council, acting in consensus shall have authority to waive other irregularities or grant 48 hours to initial such other irregularities which they jointly consider to be minor.