

THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 87

BY-LAW NO. A-0353(b)-2007-084

To amend By-law No. A-0353-2004-089 governing the
procurement of goods and services

WHEREAS section 270(1) of the *Municipal Act, 2001* provides that a municipality shall adopt and maintain policies with respect to its procurement of goods and services;

AND WHEREAS on November 18, 2004, Regional Council enacted By-law A-0353-2004-089, (the “Purchasing By-law”);

AND WHEREAS on June 22, 2006, Regional Council enacted By-law A-0353(a)-2006-063, amending the Purchasing By-law;

AND WHEREAS on November 15, 2007 Regional Council adopted Clause 7 of Report 9 of the Finance and Administration Committee and approved further amendments to the Purchasing By-law.

NOW THEREFORE, the Council of The Regional Municipality of York hereby enacts as follows:

1. By-law No. A-0353-2004-089 is hereby amended as set out in this by-law.
2. Subparagraph ii) of section 2.1 is amended by deleting the words “but exclusive” and replacing with “net after”.
3. Section 2.1 is amended by inserting the following:

“mm) “litigation” means any dispute between the Region and any other party adverse in interest, including third party and cross-claims, where either a legal proceeding has been commenced for an

injunction, a mandatory order, a declaration or the recovery of money, or a threat of legal action has been made in writing.”

4. Section 16 is hereby deleted and replaced with the following:

16. CONTRACTOR PERFORMANCE AND LITIGATION

- 16.1 The Commissioner shall be responsible for monitoring the performance of contractors and documenting evidence of such performance and shall advise the Director of Supplies and Services in writing where the performance of a contractor has failed to comply with a contract or other Regional requirements.
- 16.2 The Commissioner may prohibit a contractor whose performance has been unsatisfactory from submitting a bid in response to a call for bids in accordance with policies adopted by Council.
- 16.3 Unless otherwise permitted by this by-law, no bid or proposal shall be accepted from, nor shall any contract be awarded or extended to any contractor or any other party with whom the Region is engaged in unresolved litigation.
- 16.4 A bid or proposal may be accepted and a contract may be awarded or extended to a contractor or other party with whom the Region is engaged in unresolved litigation in the following circumstances:
- a) where there is only one supplier of the goods or services and the Chief Administrative Officer has approved the award;
 - b) in the case of an emergency;
 - c) where there is a legal obligation on the part of the Region to enter into the contract;

- d) where the proposed contract is pursuant to the co-operative purchasing provisions of this by-law or where another public agency will be party to the contract and has approved the award.

16.5 Where the amount in dispute in any unresolved litigation does not exceed fifty thousand dollars (\$50,000.00), the Commissioner may accept the bid or proposal or award the contract provided that he or she is satisfied that it would be in the best interests of the Region, based on consideration of factors including but not limited to the following:

- a) the bidder's or proponent's performance under previous contracts with the Region; or
- b) the Region's claims history with the bidder or proponent; or
- c) an assessment of the overall risk and total cost in entering into a contract with the bidder or proponent.

16.6 A report shall be submitted to Council at least quarterly advising of the disposition of any matter pursuant to this section.

- 5. Section 18.1 is amended by deleting "Despite any other provision of this by-law" and replacing with "Unless otherwise authorized by this by-law".

ENACTED AND PASSED this 15th day of November, 2007.

Denis Kelly
Regional Clerk

Bill Fisch
Regional Chair

Authorized by Clause 7, Report 9 of the Finance and Administration Committee, adopted by Regional Council at its meeting on November 15, 2007.