

THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 89

BY-LAW NO. A-0353-2004-089

A by-law to provide for the procurement of  
goods and services

WHEREAS section 271 of the *Municipal Act, 2001* (the "*Municipal Act*") provides that a municipality shall adopt policies with respect to its procurement of goods and services;

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

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

1.1 The purposes, goals, and objectives of this by-law and of the procurement procedures authorized herein are:

- a) to encourage competition among contractors;
- b) to obtain the highest quality goods, services or construction at the least possible cost;  
and
- c) to ensure fairness, objectivity and transparency in the procurement process.

**2. DEFINITIONS**

2.1 In this by-law:

- a) "award" means the authorization to proceed with the purchase of goods, services or construction;
- b) "bid" means a submission received in response to a call for bids;
- c) "Bid Review Committee" means the committee established under section 17 of this by-law;
- d) "bidder" means a person, firm or corporation that submits a bid in response to a call for bids;
- e) "call for bids" means a formal request for bids and includes a request for quotations, a request for tenders and a request for proposals;

- f) “Chief Administrative Officer” means the Chief Administrative Officer of The Regional Municipality of York;
- g) “Commissioner” means any officer or employee of the Region who is designated as the head of a Regional department;
- h) “construction” means construction, reconstruction, demolition, repair or renovation of a building or structure 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 to a building or structure;
- i) “consulting and professional services” means those services requiring the skills of a professional for a defined service and includes the services of architects, engineers, designers, surveyors, planners, accountants, auditors, management professionals, marketing professionals, software and information technology experts, financial consultants, lawyers, law firms, real estate agents and brokers, environmental planners and engineers, hydrogeologists, transportation planners and engineers, communications consultants and any other consulting services which may be required by the Region;
- j) “contract” means a contract awarded under this by-law;
- k) “contractor” means the bidder to whom a contract is awarded;
- l) “Council” means the Council of The Regional Municipality of York;
- m) “Director of Supplies and Services” means the Director of Supplies and Services of The Regional Municipality of York;
- n) “electronic bidding” means a method of issuing a call for bids and receiving written bids by fax, email or internet;
- o) “emergency” means an event or circumstance where the immediate purchase of goods, services or construction is necessary to prevent or alleviate serious delay, a threat to public health, safety or welfare, the disruption of essential services or damage to public property or any other expenditure that is necessary to respond to any such event and may include, but is not limited to, an emergency declared under the *Emergency Management Act*;
- p) “goods” means personal property, including raw materials, products, supplies, equipment and other physical objects of every kind and description;
- q) “in house bid” means a bid made by a Regional department, submitted in response to a call for bids, where the provision of the goods, services or construction will be provided entirely by employees of the Region;
- r) “price agreement” means an agreement between the Region and a contractor resulting from a call for bids, under which the contractor agrees to provide goods, services or

construction, as and when needed by the Region, at a pre-determined price, for a pre-determined period of time, upon pre-determined terms and conditions;

- s) “proposal” means a submission received in response to a request for proposals, acceptance of which may be subject to further negotiation;
- t) “purchase order” means a written order to a contractor setting out the terms and conditions for the purchase of goods, services or construction;
- u) “quotation” means a binding offer received in response to a request for quotations;
- v) “Region” means The Regional Municipality of York;
- w) “Regional Chair” means the Regional Chair of The Regional Municipality of York;
- x) “Regional Clerk” means the Regional Clerk of The Regional Municipality of York;
- y) “Regional Solicitor” means the Regional Solicitor of The Regional Municipality of York;
- z) “request for expressions of interest” means a request made by the Region for the purpose of compiling a list of persons, firms or corporations who may be interested in providing goods, services or construction to the Region;
- aa) “request for pre-qualification” means a request for the submission of information from potential bidders, including the experience, financial strength, education, background and personnel of persons, firms or corporations who may qualify to supply goods, services or construction to the Region;
- bb) “request for proposals” means a request for proposals made pursuant to this by-law;
- cc) “request for quotations” means a request for quotations made pursuant to this by-law;
- dd) “request for tenders” means a request for tenders made pursuant to this by-law;
- ee) “responsive” means that a bid has complied in all material respects with the requirements set out in the call for bids documentation;
- ff) “services” means the services to be provided under a contract and includes consulting and professional services;
- gg) “sole source purchase” means a purchase made under section 10 of this by-law;
- hh) “tender” means a submission received in response to a request for tenders;
- ii) “total cost” means the contract cost for the full term of the contract, including all applicable taxes, but exclusive of any rebates; and
- jj) “Treasurer” means the Commissioner of Finance and Treasurer of The Regional Municipality of York.

### **3. APPLICATION**

- 3.1 This by-law shall apply to the purchase of goods, services or construction for the purposes of all Regional departments.
- 3.2 This by-law shall not apply to the acquisition or disposal of any real property or fixtures or to any lease, right or permission relating to the use or occupation of real property.

### **4. RESPONSIBILITIES AND AUTHORITIES**

- 4.1 Each Commissioner shall have the responsibility and authority for the procurement of goods, services or construction for his or her department, provided that:
  - a) no expenditure, purchase or commitment shall be incurred or made, and no account shall be paid by the Region for goods, services or construction, except as provided in this by-law or otherwise approved by Council; and
  - b) no contract shall be entered into and no expenditure shall be authorized or incurred unless Council has provided funds for such purpose in the annual budget or otherwise agreed to the provision of such funds and no expenditure shall be authorized or incurred in excess of the funds provided unless otherwise authorized under this by-law.
- 4.2 The Director of Supplies and Services shall be responsible for:
  - a) providing procurement advice including preparing call for bids documentation;
  - b) administering the call for bids and ensuring compliance with the terms and conditions of the call for bids;
  - c) the development of co-operative purchasing plans with other levels of government, municipalities, boards, agencies, commissions, or private sector entities where such plans are determined to be in the best interests of the Region;
  - d) the standardization of all procurement procedures;
  - e) the disposal of surplus stock; and
  - f) the preparation of reports to Council under sections 7.10,7.13,7.15,13.4,14.3,17.3 and 19.4 of this by-law.
- 4.3 Where any person is authorized to take any action pursuant to this by-law, such action may be taken by that person's authorized designate.
- 4.4 Where any authority has been granted to any officer or employee of the Region pursuant to this by-law, such authority may be exercised by the Chief Administrative Officer.

## **5. RESTRICTIONS AND EXCEPTIONS**

- 5.1 The purchasing procedures set out in this by-law shall not apply to the purchase of those goods and services set out in Schedule “A”, provided that the total cost of the purchase does not exceed the amount approved in the annual budget.
- 5.2 No procurement of goods, services or construction shall be divided into two or more parts to avoid the application of this by-law.
- 5.3 No personal purchases shall be made by the Region directly or indirectly for members of Council or any appointed member of a local board or commission or for any officer or employee of the Region.
- 5.4 No Council member, officer or employee of the Region shall personally obtain any goods that have been declared surplus unless through a public process.
- 5.5 All procurement undertaken by the Region shall be undertaken in accordance with the Region’s Code of Conduct and in accordance with the *Municipal Conflict of Interest Act*, as amended.

## **6. PRE-QUALIFICATION**

### *Request for Expressions of Interest*

- 6.1 The Director of Supplies and Services may conduct a request for expressions of interest for the purpose of determining the availability of any goods, services or construction.
- 6.2 The receipt of a submission in response to a request for expressions of interest shall not create any contractual obligation on the part of the Region.
- 6.3 A request for expressions of interest may be conducted as a pre-condition to another procurement procedure set out in this by-law.

### *Request for Pre-qualification*

- 6.4 The Director of Supplies and Services may conduct a request for pre-qualification for any goods, services or construction for the purpose of selecting qualified bidders to respond to a call for bids, if the nature of the work to be performed requires ascertainable minimum standards.
- 6.5 When a request for pre-qualification is issued, a pre-qualification bid document shall be provided to potential bidders setting out the criteria for pre-qualification, which may include:
  - a) experience of similar work;
  - b) references provided from other customers for similar work;
  - c) verification of applicable licences and certificates; and

d) financial capability.

6.6 The selection of bidders following a request for pre-qualification shall not create any contractual obligation between the Region and a pre-qualified bidder.

## **7. AUTHORIZATION OF PURCHASES**

### *Purchases Not Exceeding \$50,000.00*

7.1 Where the total cost of any goods, services or construction does not exceed fifty thousand dollars (\$50,000.00), such purchase may be made utilizing cash, a cheque, a purchase order or Regional credit card.

7.2 The Commissioner or his or her designate may authorize any purchase under section 7.1 of this by-law.

### *Purchases Not Exceeding \$100,000.00*

7.3 Where the total cost of any goods, services or construction exceeds fifty thousand dollars (\$50,000.00), but does not exceed one hundred thousand dollars (\$100,000.00) a request for quotations may be issued.

7.4 A minimum of three (3) quotations shall be requested and may be received verbally or in writing.

7.5 The Commissioner may award the contract provided that the award is made to the bidder submitting the lowest cost responsive bid.

### *Purchases Exceeding \$100,000.00*

7.6 Where the total cost of any goods, services or construction exceeds one hundred thousand dollars (\$100,000.00), either a request for tenders or a request for proposals shall be issued.

7.7 A request for tenders or request for proposals shall be undertaken in compliance with the following process:

- a) the scope of the goods, services or construction shall be set out in the call for bids documentation;
- b) the form of the call for bids shall, to the extent possible, use standardised documentation;
- c) the call for bids documentation shall be circulated and advertised in as wide and extensive manner as will ensure the best, most comprehensive and most competitive response to the call for bids;
- d) evaluation criteria and weightings shall be established prior to the call for bids and the call for bids documentation shall clearly specify how each of the applicable criteria shall be utilized in evaluating the bids;

- e) bids shall be publicly opened on the specified date, at the specified time;
- f) all bid amounts shall be recorded;
- g) all bids shall be fairly and completely evaluated using as open, fair and transparent a process as may be possible in the circumstances of the particular call for bids;
- h) the evaluation of each bid shall be recorded using a standardized form of evaluation record;
- i) the evaluation record shall be stored and shall only be destroyed in accordance with the Regional records retention by-law; and
- j) any irregularities shall be referred to the Bid Review Committee.

#### *Request for Tenders*

7.8 A request for tenders shall be issued where the following criteria apply:

- a) two or more sources are considered capable of supplying the goods, services or construction;
- b) the goods, services or construction are clearly ascertainable and permit the evaluation of bids against applicable specifications;
- c) the market conditions are such that bids can be submitted on a competitive pricing basis; and
- d) it is intended that the lowest cost responsive bid shall be accepted without negotiation.

7.9 The Chief Administrative Officer may award the contract provided that the award is made to the bidder submitting the lowest cost responsive bid.

7.10 A report shall be submitted quarterly to Council to advise of the award of any contract under section 7.9 of this by-law.

#### *Request for Proposals*

7.11 A request for proposals shall be issued where the goods, services or construction cannot be specifically defined and it is anticipated that bidders may propose a variety of alternatives to fulfil the Region's requirements.

7.12 The Chief Administrative Officer may award the contract provided that:

- a) the total cost of the contract does not exceed five hundred thousand dollars (\$500,000.00);
- b) the award is made to the bidder whose bid achieves the highest score as a result of the evaluation; and

c) the award is made to the bidder submitting the lowest cost responsive bid.

7.13 A report shall be submitted quarterly to Council to advise of the award of any contract under section 7.12 of this by-law.

*Authority of Chief Administrative Officer*

7.14 Despite any other provision of this by-law, during any period that regular Council meetings are suspended either during the summer recess or for any other reason, or during the period that the acts of Council are restricted under section 275 of the *Municipal Act*, the Chief Administrative Officer shall be authorized to award any contract.

7.15 A report shall be submitted to Council as soon as reasonably possible setting out the details of any contract awarded under section 7.14 of this by-law.

**8. PRICE AGREEMENTS**

8.1 A call for bids may be issued in order to establish a price agreement for specified goods, services or construction for a specified time.

8.2 The Region shall have no obligation to any contractor to order any goods, services or construction under a price agreement.

**9. EMERGENCY PURCHASES**

9.1 Despite any other provision of this by-law, in cases of emergency, as determined by a Commissioner or the Chief Administrative Officer, the purchase of goods, services or construction may be authorized in accordance with section 9.3 of this by-law, without issuing a call for bids.

9.2 The Director of Supplies and Services shall endeavour to obtain the lowest cost for any goods, services or construction required, using as fair and transparent a process as is feasible having regard to the particular emergency.

9.3 The Commissioner may authorize the purchase where the total cost does not exceed one hundred thousand dollars (\$100,000.00), in which case the purchase shall be authorized by the Chief Administrative Officer.

**10. SOLE SOURCE PURCHASES**

10.1 A sole source purchase may be made for the procurement of goods, services or construction without issuing a call for bids where the compatibility of a purchase with existing equipment, facilities or service is the paramount consideration.

10.2 The Commissioner may award the contract provided that the total cost does not exceed one hundred thousand dollars (\$100,000.00), in which case the award shall be subject to Council approval.

## **11. IN HOUSE BIDS**

- 11.1 In house bids may be used for the procurement of goods, services or construction in accordance with policies adopted by Council.
- 11.2 In house bids shall only be utilized where external bidders have also been invited to submit bids.

## **12. CONTINGENCIES**

- 12.1 Where any purchase of goods, services or construction has been authorized under this by-law, the Commissioner may authorize disbursement of additional funds, provided that such additional funds shall not exceed fifteen percent (15%) of the total cost of the original contract, and provided that the additional funds are required to complete the work set out in the original contract.
- 12.2 The Commissioner may authorize any expenditure under section 12.1 of this by-law, irrespective of the total cost of the original contract.

## **13. PURCHASE OF ADDITIONAL GOODS, SERVICES OR CONSTRUCTION**

- 13.1 Where goods, services or construction have been purchased under this by-law, no similar, additional or related goods, services or construction shall be purchased from the same contractor, whether by way of contract extension, renewal, or separate purchase, unless:
  - a) a report is submitted to Council; or
  - b) the procurement procedures set out in this by-law are complied with as if the additional purchase is a new contract; or
  - c) the total cost of the additional goods, services or construction does not exceed twenty percent (20%) of the total cost of the original contract; or
  - d) the total cost of the additional goods, services or construction is to be paid in full by a third party, and security to ensure payment is in place, to the satisfaction of the Treasurer.
- 13.2 Any amount authorized under section 13.1 of this by-law may be expended in addition to any contingency allowance authorized under section 12.1 of this by-law and may be authorized by the Commissioner irrespective of the total cost of the original contract.
- 13.3 Despite section 13.1 of this by-law, the Regional Chair and Chief Administrative Officer may jointly authorize the purchase of additional goods, services or construction provided that:
  - a) the requirement for the additional goods, services or construction could not reasonably have been anticipated at the time of the award of the original contract; and

- b) the authorization to purchase the additional goods, services or construction is required to prevent interruption in service delay or to avoid incurring extra costs; and
- c) a request is submitted to the Regional Chair and Chief Administrative Officer on a form prescribed by the Treasurer.

13.4 A report shall be submitted quarterly to Council to advise of any expenditures made under section 13.3 of this by-law.

#### **14. CO-OPERATIVE PURCHASING**

14.1 The Region may participate with other government agencies or public authorities in co-operative purchasing where the Commissioner determines it is in the best interests of the Region to do so.

14.2 The Region shall adhere to the policies of the agency calling the co-operative bid.

14.3 A report shall be submitted quarterly to Council to advise of the goods, services or construction purchased under section 14.1 of this by-law.

#### **15. UNSOLICITED PROPOSALS**

15.1 Where an unsolicited proposal is received by the Region, the Commissioner may determine if the proposal shall be evaluated in accordance with section 10 of this by-law.

15.2 If the Commissioner determines that the unsolicited proposal should be considered a sole source purchase, the award shall be made in accordance with section 10.2 of this by-law.

#### **16. CONTRACTOR PERFORMANCE**

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.

#### **17. BID REVIEW COMMITTEE**

17.1 The Treasurer shall establish a Bid Review Committee composed of, at a minimum, the following members of Regional staff:

- a) the Director of Supplies and Services;
- b) a representative from the Regional department requesting the procurement of the goods, services or construction; and

c) a solicitor from Legal Services.

17.2 If a bid contains an informality or irregularity, or if there is a challenge to the call for bids process, the issue shall be referred to the Bid Review Committee to determine whether the bid complies with the submission requirements set out in the call for bids or to determine the validity of the challenge.

17.3 If the Bid Review Committee does not agree unanimously that the bid shall be accepted or rejected, a report shall be prepared for submission to Council setting out the nature of the informality, irregularity or challenge and the proposed action to be taken.

## **18. COUNCIL APPROVAL**

18.1 Despite any other provision of this by-law, a report shall be submitted to Council prior to authorizing an award in each of the following circumstances:

- a) where the contract price is in excess of five hundred thousand dollars (\$500,000.00) and a request for proposals has been issued under this by-law;
- b) where the purchase is prescribed by statute to be made by Council;
- c) where there is current litigation between the bidder and the Region;
- d) where the term of a proposed contract is for a period longer than three years, or where the renewal of a contract would result in an aggregate term of greater than three years;
- e) where a request for tenders has been issued and the award is not proposed to be made to the bidder with the lowest cost responsive bid or there is an informality or irregularity that cannot be resolved by the Bid Review Committee;
- f) where the purchase of any goods, services or construction is not authorized by this by-law; and
- g) where otherwise specifically provided in this by-law.

## **19. SURPLUS STOCK**

19.1 Commissioners shall submit to the Director of Supplies and Services reports of surplus stock including furniture, vehicles, equipment, supplies, and other goods which are no longer used or which have become damaged or obsolete.

19.2 The Director of Supplies and Services shall have the authority to transfer such surplus stock from one department to another department, or to an area municipality, and shall have the authority to sell or dispose of such surplus stock or to exchange or trade the same for replacement goods.

19.3 Where surplus stock is offered to but not required by any Regional department or area municipality it shall be disposed of by means of public auction or advertised for public tender and sold to the bidder submitting the highest priced bid.

19.4 A report shall be submitted annually to Council to advise of the sale or disposition of surplus stock under this section.

## **20. CONTRACT DOCUMENTS**

20.1 Where the purchase of goods, services or construction has been authorized under this by-law, the contract may be executed by the person who authorized the award, and shall be in a form approved by the Regional Solicitor.

20.2 Despite section 20.1 of this by-law, all contracts for capital works shall be submitted to the Regional Chair and Regional Clerk for execution on behalf of the Region.

20.3 Where a contract for goods, services or construction is of nominal value and is not subject to the procurement procedures set out in this by-law, the Commissioner may execute such contract, subject to the prior approval of the Regional Solicitor.

20.4 All contracts executed pursuant to this by-law shall be delivered to the Regional Clerk for safekeeping.

## **21. PAYMENT OF ACCOUNTS**

21.1 Except as otherwise provided, the Treasurer shall be authorized to pay:

- a) all accounts for the purchase of goods, services or construction, where the purchase of such goods, services or construction has been made in accordance with this by-law, or otherwise approved by Council;
- b) all accounts authorized by payment certificate, for work done under a contract approved by Council, where such payments have been certified in writing by the Commissioner;
- c) all items listed in Schedule “A” subject to such expenditures being approved in the annual budget; and
- d) all requisitions for monies which the Region is by statute required to pay to its local boards or other bodies on account of their approved annual estimates, including advances before such budgets are approved.

## **22. SCHEDULE**

22.1 Schedule “A” shall form part of this by-law.

## **23. BY-LAW REVIEW**

23.1 This by-law shall be reviewed and evaluated for effectiveness at least every five (5) years from the date of its enactment.

**24. REPEAL**

24.1 By-law A-0304-2002-031, as amended, is hereby repealed.

ENACTED AND PASSED this 18<sup>th</sup> day of November, 2004.

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Regional Clerk

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Regional Chair

## **SCHEDULE “A”**

1. Expenditures for Training and Education, including:
  - a) attendance at conferences, seminars, courses and conventions;
  - b) subscriptions to books, magazines and periodicals;
  - c) membership fees; and
  - d) fees for trainers/facilitators.
2. Refundable Employee Expenses, including:
  - a) advances for expenditures;
  - b) meal allowances;
  - c) travel and entertainment expenses; and
  - d) miscellaneous expenses.
3. Employer’s General Expenses, including:
  - a) payroll deduction remittances;
  - b) health benefits;
  - c) licences required for Regional personal property (e.g. vehicles);
  - d) debenture payments;
  - e) insurance premiums;
  - f) grants to agencies;
  - g) damage claims;
  - h) petty cash replenishment;
  - i) tax remittances;
  - j) sinking fund payments; and
  - k) witness fees.
4. Professional and Special Services, including:
  - a) committee fees;
  - b) utility relocations;
  - c) provision of professional and skilled services to individuals as part of approved programs;
  - d) payments to Social Service and Health Agencies that are subject to purchase of service agreements; and
  - e) medical and dental fees.
5. Utility Charges, including:
  - a) water;
  - b) hydro;
  - c) gas;
  - d) telephone; and

- e) telecommunications.
- 6. Postal charges.
- 7. Any payments required to be made by the Region under statutory authority.