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REVISIONS TO REGIONAL PURCHASING BY-LAW

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, October 18, 2004, from the Commissioner of Finance and Regional Solicitor:

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council authorize the enactment of a new purchasing by-law as set out in this report.
2. The Regional Solicitor be authorized to prepare the necessary by-law to give effect to these amendments.

2. PURPOSE

The purpose of this report is to recommend the enactment of a new purchasing by-law in compliance with the *Municipal Act*, 2001. The report also proposes increasing the delegated authority to staff to purchase goods and services and to award contracts.

3. BACKGROUND

The Region's purchasing by-law sets out the procedures and expenditure limits for purchasing goods and services and awarding contracts, including construction contracts. The by-law also provides for a process to be followed when disposing of surplus or obsolete assets. The by-law was substantially revised in April, 2002 to reflect increases in expenditure limits.

3.1 Requirements of Section 271 of the *Municipal Act*, 2001

Section 271 of the *Municipal Act* 2001 (the "Act") requires that Council adopt procurement policies before January, 2005. The Act prescribes the issues that must be addressed in procurement policies, including the circumstances under which different types of procurement will be required. For the most part, the Region's existing by-law meets the requirement of the Act. There are, however, some new concepts that now need to be addressed. To address the legislative changes and to continue to meet the goals set out in the Act, the York Public Buyers Co-op formed a working group early in 2004 to create a standard purchasing by-law template that would address the legislative requirements yet allow for individual municipalities to tailor provisions to suit their needs. This collaborative approach addressed concerns raised from time to time by vendors and contractors that purchasing procedures within the geographic boundaries of York Region are not consistent. York Region also formed a staff committee with representatives from all departments including the Legal Branch and Internal Audit to

review the existing by-law and the new template and to make recommendations that would address issues encountered since that last by-law revision. The recommendations in this report reflect the consensus of that committee.

4. ANALYSIS AND OPTIONS

4.1 Application of By-law

The general scope of the by-law remains unchanged. The by-law applies generally to the procurement of all goods, services and construction contracts. It does not apply to the purchase and sale of real property. All land acquisitions, leases and other interests in land will still be subject to reports to Council, except for purchases under \$100,000.00 for which the Chief Administrative Officer and the Commissioner of Corporate Services have approval authority.

The existing exemptions for certain expenditures will also be continued. These include those items for which the Treasurer has existing authority to requisition such as the payment of general expenses of the Region, professional memberships, utility payments and so forth. These exemptions are set out in a Schedule to the by-law.

All purchases under the by-law will continue to be subject to funds being available in the current budget.

4.2 Expenditure Limits

A survey was conducted of purchasing limits established by other municipalities. The results of this survey are set out in the attached summary. (*Attachment 1*). The threshold for calling tenders is in most cases \$100,000.00. This is to comply with the Internal Trade Agreement where public tenders are required for the procurement of goods and services with a value of \$100,000.00 or greater.

The following table sets out the existing expenditure limits and delegated authorities.

Table 1

LIMIT	AWARDED BY	CONDITIONS
Up to \$10,000	Commissioner/ Chief Administrative Officer	
\$10,001 to \$50,000	Commissioner/ Chief Administrative Officer	• three quotations where possible • award to lowest responsive bidder
\$50,001 to \$100,000	Commissioner/ Chief Administrative Officer	• formal process • award to lowest responsive bidder • no complications
• Tenders Over \$100,000 • Proposals \$100,001 to \$250,000	Chief Administrative Officer	• formal process • award to lowest responsive bidder • no complications • report quarterly to Council
Proposals Over \$250,000	Council	• formal process
Emergency purchases up to \$100,000	Commissioner/ Chief Administrative Officer	• subsequent report to Council
Emergency purchases over \$100,000	Chief Administrative Officer	• subsequent report to Council

4.3 Proposed Amendments

It is proposed that the following amendments be made to the expenditure limits:

- increasing the limit for informal purchases from \$10,000.00 to \$50,000.00. Purchase of goods and services within this limit are administered at the departmental level and do not utilize the centralized purchasing services of the Supplies and Services Branch. There is no requirement for a competitive process.
- increasing the authority of the Chief Administrative Officer to award proposals to a maximum of \$500,000.00. This will be subject to the condition that the contract be awarded to the proponent submitting the highest scoring and lowest cost proposal.

4.4 Additional Amendments

In addition to the increase in expenditure limits, the proposed new by-law incorporates the following amendments:

- *unsolicited bids*: a provision to formalize the acceptance of unsolicited bids;

- *performance measurement*: providing that a contractor's prior performance on Regional contracts may be taken into account in the procurement process. Staff are currently developing criteria and policies to support this process and will report back to Council for endorsement before year end; and
- *in-house bidding*: the Act requires that procurement policies make provision for in-house bidding. The new by-law will accommodate this requirement but will require further development of a policy to define the circumstances under which in-house bids will be appropriate.

The new by-law will also continue the following procedures which were introduced as amendments to the by-law in 2002:

- expedited approvals process: the Chair and the Chief Administrative Officer are authorized to approve additional expenditures in limited circumstances where:
 - a) the requirement for additional work or services could not reasonably have been anticipated at the time of the original award of the contract; and
 - b) it is not practical to report to Council because an expedited approval is required to ensure continued service delivery or to avoid extra costs.
- provision for contingency allowances of 15%;
- provision for authorizing increased scope of work for existing contracts, to a maximum of 20% of the initial value of the contract; and
- a negotiation process in limited circumstances where only one supply source has been identified.

5. FINANCIAL IMPLICATIONS

There are no financial implications associated with the recommendations set out in this report.

6. LOCAL MUNICIPAL IMPACT

There are no local municipal impacts associated with this report.

7. CONCLUSION

A staff committee has reviewed the Region's existing purchasing by-law in light of the requirement of the *Municipal Act, 2001* and the recommendation from the York Public

Buyers Co-op. The proposed amendments are recommended to ensure the by-law remains responsive to the need for timely and responsible procurement of goods, services and construction.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause was included in the Agenda for the November 4, 2004 Committee meeting.)