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AMENDMENT OF REGIONAL PURCHASING BY-LAW

The Finance and Administration Committee recommends:

1. Receipt of the presentation from Dan Kuzmyk, Senior Counsel, Litigation; and

2. Adoption of the recommendations contained in the following report dated September 30, 2009, from the Commissioner of Finance and the Regional Solicitor.

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council authorize the enactment of an amended Purchasing By-law as set out in this report, and as more particularly described in *Attachment 1*.

2. The Regional Solicitor be authorized to prepare the necessary by-law to give effect to the enactment of the amended by-law.

2. PURPOSE

The purpose of this report is to recommend the enactment of an amended Regional purchasing by-law. The amended purchasing by-law improves and clarifies existing provisions in the by-law, and adds some important new provisions.

3. BACKGROUND

By-law No. A-0353-2004-089, is a by-law to provide for the procurement of Regional goods and services (the "Purchasing By-law"). Among other things, the Purchasing By-law sets out the procedures and expenditure limits for purchasing goods and services and awarding contracts, including construction contracts.

The *Municipal Act, 2001* requires all municipalities to adopt and maintain policies with respect to the procurement of goods and services. Rather than merely having a procurement policy, the Region has chosen to have a by-law.

In the spring of 2008, staff formed the Purchasing By-law Review Committee (the "Committee") to undertake a comprehensive review and evaluation of the Purchasing By-law. The Purchasing By-law actually requires a review and evaluation for effectiveness at least every five years. The last comprehensive review and amendment was in November, 2004.

The Committee consisted of staff from all Regional departments, with an emphasis on those who are involved in the procurement of goods, services and construction on behalf of the Region. Representatives from the following departments participated:

- Finance, Supplies & Services Branch
- Corporate Services, Legal Services Branch
- Corporate Services, Facilities Management Branch
- Corporate Services, Property Services Branch
- Transportation Services, Capital Delivery Branch
- Transportation Services, Operations Branch
- Environmental Services, Capital Delivery Branch
- Environmental Services, Operations Branch
- Community & Health Services
- Office of the CAO, Audit Services Branch

During meetings conducted throughout 2008 and 2009, the Committee undertook a clause-by-clause analysis of the Purchasing By-law. During the analysis, the Committee identified a number of practical issues that have become apparent since the last amendment in 2004 and suggested revisions to resolve those issues. As well, the Committee attempted to strengthen and improve the wording of the By-law to enhance clarity of meaning and ease of understanding, both for the public and for staff and for contractors and suppliers wishing to do business with the Region.

The Committee's review of the Purchasing By-law was guided by the stated Purposes, Goals and Objectives of the existing Purchasing By-law, which are set out in Paragraph 1 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.

The review and amendment of the Purchasing By-law supports and is consistent with the Region's goal of continuous improvement.

4. ANALYSIS AND OPTIONS

The basic purpose of the Purchasing By-law will remain constant

The general scope and application of the Purchasing By-law remains unchanged; it will still apply generally to the procurement of all goods, services and construction on behalf of the Region. All reporting requirements to Council remain consistent, and the existing exemptions for certain expenditures as set out in Schedule "A" to the By-law, with some minor amendments, will also be continued.

Similarly, all procurement under the Purchasing By-law will continue to be subject to funds being available in the approved budget.

Staff reviewed the By-law specifically looking for ways to improve it

Staff undertook their review of the Purchasing By-law with the following specific questions in mind:

- What practical purchasing issues, challenges or concerns have been identified since the last comprehensive amendment in 2004?
- Could the wording in the Purchasing By-law be generally improved in terms of addressing issues and concerns that have been identified and to better reflect developments in the law of procurement since the last comprehensive amendment?
- Could fairness, objectivity and transparency be strengthened and enhanced?
- Could the Region's mandate to obtain the highest quality goods, services and construction at the least possible cost, while encouraging transparency and competition among contractors, be strengthened?

The Purchasing By-law has been improved in all major areas

Based on their review, the Committee has recommended many amendments to the Purchasing By-law. These amendments, ranging from minor wording changes to entirely new and important definitions and sections, are listed in Tables 1, 2 and 3, and are highlighted in the draft amended Purchasing By-law attached to this report as *Attachment 1*. Amended wording in *Attachment 1* is highlighted in yellow. Clauses which are entirely new are highlighted in gray. A discussion of the more significant definitions and new and amended clauses follows each of the respective Tables.

Definitions

Table 1

New & Amended Definitions
“bid”
“bidder”
“contingency”
“contract”
“contractor”
“dollar cost methodology”
“dollar cost per technical point”
“emergency”
“litigation”
“project”
“real property”
“scope”
“scope change”
“single source purchase”
“sole source purchase”
“total cost”

Most Significant Definitions

“Contingency”
This new definition supports the clarification of the process whereby contract increases to address project contingencies are authorized.

“Dollar Cost per Technical Point”
This new definition clarifies the “dollar cost methodology” which is used to determine the successful bidder in a response to a Request for Proposals where two or more bids are within five points of the highest overall score.

“Scope” and “Scope Change”
These new definitions support the clarification of the process whereby contract increases to address changes in project scope are authorized.

“Single Source Purchase”
This new definition supports the new provision in the Purchasing By law which differentiates between “sole source” and “single source” purchases and when each may be respectively authorized.

New and Amended Clauses

Table 2

Amended Clauses	
3.2.1	non-application of by-law to real property
4.3	authorized designate authorized to take any action
5.1	purchasing procedures do not apply to Schedule "A" goods and services with exceptions
5.2	no contract or price agreement to be divided to avoid by-law
6.4	Director may conduct request for pre-qualification
6.6	pre-qualification shall not create a contractual obligation
7.1	method of payment for purchases not exceeding $50,000
7.3	Request for Quotations shall be issued for purchases between $50,000 - $100,000
7.4	minimum of 3 written quotations
7.7(d)	evaluation criteria and weightings to be established
7.7(g)	open, fair and transparent evaluation of bids
7.7(j)	irregularities referred to Bid Review Committee
7.8(a)	Request for Tenders to be issued when two or more sources are available
7.10	quarterly reports to Council where award under section 7.9
7.11	Request for Proposals to be issued where goods, services or construction cannot be specifically defined
7.12(b)	where CAO may award contract
7.13	quarterly report to Council where award under section 7.12
7.15	report to Council where award under section 7.14
8.1	call for bids to be issued to establish price agreement
10.1(a)	sole source purchase where compatibility with existing equipment, facilities or service is paramount
11.1 & 11.2	additional funds may be authorized by Commissioner in case of a contingency
12.1(b)&(c) & 12.2	change in scope necessitating additional purchase may be authorized by Commissioner in addition to any contingency allowance
12.4	quarterly report to Council where expenditure under section 12.3
13.1	no additional purchase is permitted from the same contractor unless report to Council or procedures in by-law are complied with
14.2	co-operative purchasing with another government agency or public authority
15.2	where unsolicited proposal considered sole source purchase
16.1 to 16.4(d)	monitoring of contractor performance and unresolved litigation
16.5	where amount in unresolved litigation does not exceed $100,000
16.6	annual report to Council advising of disposition of matters pursuant to section 16
17.1(b)&(c)	Bid Review Committee member requirements
17.2	bid to be referred to Bid Review Committee where informality/irregularity or challenge
18.1(c)	Council authorization required if contract for longer than 5 years
24.1	repeal of previous by-laws
Sch. A – 4(b)	exemption for professional and skilled services
Sch. A – 5(d)	exemption for utility relocations

Table 3

New Clauses	
3.2.2	procurement in relation to real property
4.2(c)	Director to review statements of work and tender specifications
8.3	price agreement subject to contractual approvals of section 7
10.1(b)&(c)	sole source purchase without issuing a call for bids
10.2	single source purchase without issuing call for bids
12.1	change in scope of project
16.4(e)&(f)	exceptions to litigation bidding prohibition
Sch. A – 4(e)	exemption for software

Most Significant New and Amended Clauses

Section 1—Purposes, Goals and Objectives of the By-law

This section has been amended to add “accountability” to the goals of ensuring fairness, objectivity and transparency in the procurement process.

Section 3—Application

This section has been amended and expanded to specifically address situations where the Region acquires or leases real property, and to clarify when the competitive bidding provisions of the Purchasing By-law apply or do not apply. Clearly, the market process whereby land is purchased or leased is not conducive to the competitive bidding process, and such leases or acquisitions are properly made without competitive bidding, but there may be cases in relation to lease agreements where the Region is required to procure goods, services or construction in relation to leased premises. In such cases the Purchasing By-law now specifies that the provisions of the Purchasing By-law must be complied with.

Section 5—Restrictions and Exceptions

This section, which refers to the list of goods and services in Schedule “A” to the Purchasing By-law which are excluded from the competitive bidding process, has been amended to include the requirement that the excluded goods and services in Schedule “A” must still be procured with a view towards obtaining the best value for the least possible cost and in compliance with the authorization provisions and delegated financial signing policies in effect.

Section 10—Sole Source/Single Source Purchases

This section adds “Single Source Purchases”, which are differentiated from “Sole Source Purchases”. Prior to this amendment, there was no differentiation, and it was difficult to justify a single source purchase (which is made when there is only one legal entity capable of providing the goods, services or construction) using the criteria which applied to sole source purchases, which are made when compatibility with existing equipment or facilities is the paramount consideration or where a joint agreement between the Region and another municipality requires it.

Sections 11, 12 and 13—"Contingencies" vs. "Change in Scope" vs. "Purchase of Additional Goods and Services"

Under the existing Purchasing By-law, the Committee found that there was a misconception by staff in the application of the existing Contingency provisions in Section 12 and the provisions relating to the Purchase of Additional Goods, Services or Construction pursuant to existing Section 13. Under the existing Contingency provisions, a Commissioner can authorize additional expenditures of up to 15 percent of the total cost of any original contract, and under the Purchase of Additional Goods, Services or Construction provisions in Section 13, the Commissioner could similarly authorize the expenditure of up to 20 percent of the original contract price with no clear indications as to the circumstances of when it was appropriate or permissible to do so. In practice, the authorization under Section 13 was reserved for cases where a change in the scope of the project had occurred, although there was no formal recognition of this in the Purchasing By-law. The net result was that it could be interpreted that there was effectively a 35 percent "safety net" (i.e. 15 percent for "contingencies" plus another 20 percent for "additional goods, services or construction") on any contract, without clear guidelines as to when the authorization of the expenditure of 35 percent in additional funds over and above the original contract could be triggered.

Contingencies—New Provisions in Amended Section 11

Under existing Section 12, a Commissioner could authorize the disbursement of additional contract funds up to 15 percent of the total cost of the original contract, provided that the funds were required to complete the work set out in the original contract. Despite the fact that the section was entitled "Contingencies", there was no definition in the Purchasing By-law as to what constituted a "contingency". The Committee determined that the goals of the Purchasing By-law of fairness, objectivity, accountability and transparency could be better served if "contingency" was a defined term, and if a potential 15 percent increase in the value of a contract based on "contingency" had to be tied to a specifically ascertainable set of circumstances in order to justify and account for the contract price increase. At the same time, the Committee had to be sensitive to the realities of administering and delivering some of the massive capital works projects that the Region is responsible for. Therefore, the stipulation that the "contingency" must arise from unforeseen or unexpected circumstances which could not have been reasonably anticipated achieves a balance between accountability and practicality.

Change in Scope—New Provisions in Amended Section 12

Under the existing Purchasing By-law, there is no reference to any provision for increases in contracts to account for changes in the scope of a particular project. Despite this, "scope change", which is often an inevitable part of significant public capital works projects as circumstances arise in response to various internal or external realities, was being dealt with under existing Section 13, which allows for the expenditure of additional goods, services or construction without any references to "scope change". The amended Section 12 now stipulates that a "Scope Change", which is a defined term, must be identified as a trigger to justify any authorized increase in contract price under Section 12.

Purchase of Additional Goods, Services or Construction— New Provisions in Amended Section 13

This provision now exists solely to prevent potential bid splitting or the extension of contracts to avoid competitive bidding under the provisions of the Purchasing By-law. It is now quite separate and apart from the scope change provisions which are dealt with exclusively in Section 12. Formerly, the two functions were combined, with no differentiation or definition of "scope change".

Request for Proposals, Two Envelope Bid System—New Provisions in Amended Section 7.11

In practice, a "two envelope bid system" has been employed to evaluate responses to Regional Requests for Proposals ("RFPs"). However, under the existing Purchasing By-law, there is no mention of the two envelope system, nor of the weighting that is applied in the evaluation of the financial and technical aspects of the proposals. The two envelope system is now formally recognized in the Purchasing By-law, as well as the fact that the evaluation of the proposal will be weighted by Supplies and Services and the issuing department based on criteria applicable to each individual project for which RFPs are called.

Contractor Performance & Litigation—New Provisions in Amended Section 16.4

In November, 2007, Council amended the Purchasing By-law to disqualify any contractor or party engaged in litigation with the Region from entering into contracts for the provision of goods, services or construction. The provision was, in effect, a complete ban on doing business with litigating contractors, subject to a few carefully circumscribed exceptions. The experience with this bidding prohibition over the past two years has been very positive; however, in some circumstances the blanket prohibition may be too narrow. Such circumstances arise when a contractor is essentially "forced" by its insurers to name the Region as a party in a legal proceeding. The "classic" case occurs where some incident on a Regional project gives rise to a personal injury claim by a third party against the contractor. The claim is defended by the contractor's insurer, who may then name the Region as a third party against whom the insurer claims contribution and indemnity. The contractor has no say in the matter, and in many cases would not in fact have proceeded with the third party action against the Region, but is forced to do so because the contractor's interest in the action has been subrogated to the insurer pursuant to the terms of the insurance policy that the Region requires the contractor to have in the first place.

In such cases, the litigation is quite often resolved by way of the insurer agreeing to let the Region out of the action or take over the Region's defence on the basis of the contractor's obligation in the original contract to indemnify the Region, but the process of dealing with and convincing the insurer to do this is often quite lengthy. During this process, the contractor, who never wanted to proceed with the litigation in the first place, is prevented from bidding. This is neither fair, nor is it in keeping with the spirit of the litigation provision, which is to prevent Contractors from making a conscious decision to reap the benefit of doing business with the Region on the one hand, yet fight the Region on the other hand.

The situation can be addressed by agreeing to enter into a "standstill agreement" with the named contractor while the issue of the contractor's forced involvement can be sorted out with the insurer. Under the "standstill agreement", the parties agree not to take any steps to advance the litigation until further notice, and without giving up any rights to proceed if some accommodation cannot be made. Such a "standstill agreement" qualifies as a "resolution" of the litigation for the purposes of the bidding prohibition in the Purchasing By-law, and prevents the contractor from being unable to bid while the issues with the insurer are being resolved.

As well, the litigating bidder provisions in the By-law have been amended by exempting disputes under the *Expropriation Act* from acting as triggers for the bidding prohibition. The right of a landowner to be entitled to due process where an expropriating authority seeks to take land is sacrosanct under our system of law, and interference with that right would be neither fair nor in keeping with the intent of the litigating bidder prohibition.

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 Purchasing By-law and evaluated it for effectiveness in light of the requirement in the By-law to do so at least every five years. The proposed amendment of the Purchasing By-law is recommended in order to improve and clarify the By-law for staff, the public and for contractors wishing to do business with the Region.

For more information on this report, please contact Dan Kuzmyk, Senior Counsel, at Ext. 1401, or Stan Gal, Director of Supplies & Services, at Ext. 1650.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report).

AMENDMENT OF REGIONAL PURCHASING BY-LAW

Finance and Administration Committee

October 8, 2009

Presenters: Dan Kuzmyk & Stan Gal

Purpose of Presentation

- To provide an overview of the review of the Purchasing By-law.
- To describe recommended amendments.
- To address questions Committee may have.

Why Review?

- The last comprehensive review and amendment was in 2004.
- Staff are required to review and evaluate the Purchasing By-Law for effectiveness at least every five years.
- The review of the By-law is consistent with the Region's goal of continuous improvement.
- Amendments since 2004 were incorporated into one document.

The Review Process

- ❑ Improvements to the By-law were required to be consistent with the purpose, goals and objectives of the By-law, which are:

- ✓ to encourage competition among contractors;

- ✓ to obtain the highest quality goods, services or construction at the least possible cost; and

- ✓ to ensure fairness, objectivity and transparency in the procurement process.

The Working Group

- Representatives from the following Departments participated:
  - **Finance** - Supplies & Services
  - **Corporate Services** - Legal Services, Facilities Management & Property Services
  - **Transportation Services** - Capital Delivery & Operations
  - **Environmental Services** - Capital Delivery & Operations
  - **Office of CAO** - Audit Services
  - **Community & Health Services**

The Working Group (cont'd)

- All working group members are experienced with the procurement process.

Basic Purpose of By-law

- The Purchasing By-law still applies generally to the procurement of all goods, services and construction on behalf of the Region.
- All reporting requirements to Council remain consistent.
- The existing exemptions for certain expenditures as set out in Schedule “A” to the By-law, with some minor amendments, are continued.
- Procurement under the Purchasing By-law will continue to be subject to funds being available in the approved budget.

Most Significant Definitions

"Contingency"

- This new definition supports the clarification of the process whereby contract increases to address project contingencies are authorized.

"Scope" and "Scope Change"

- These new definitions support the clarification of the process whereby contract increases to address changes in project scope are authorized.

Most Significant Definitions (cont'd)

"Single Source Purchase"

- This new definition supports the new provision in the Purchasing By law which differentiates between "sole source" and "single source" purchases and when each may be respectively authorized.

"Dollar Cost per Technical Point"

- This new definition clarifies the "dollar cost methodology" which is used to determine the successful bidder in a response to a Request for Proposals where two or more bids are within five points of the highest overall score.

Section 1
Purposes, Goals and Objectives of the By-law

- This section has been amended to add "accountability" to the goals of ensuring fairness, objectivity and transparency in the procurement process.

Section 3
Application

- ❑ Amended and expanded:
  - ✓ to address situations where the Region acquires or leases real property
  - ✓ to clarify when the competitive bidding provisions of the Purchasing By-law apply or do not apply.

Section 5
Restrictions and Exceptions

- The intent of Schedule “A” was to have certain classes of procurement be exempt from the competitive bidding process.
- Under the existing Purchasing By-law, procurement of Schedule “A” items does not necessarily have to follow any of the controls, checks and balances in the by-law, including:
  - authorization provisions and delegated financial signing policies
  - value for cost

Section 5
Restrictions and Exceptions (cont'd)

- Now…

  Schedule "A" items are properly excluded from the competitive bidding process, but:

  - excluded goods and services in Schedule "A" must still be procured with a view towards obtaining the best value for the least possible cost

  - authorization provisions and delegated financial signing policies are still in effect

Section 10
Sole Source/Single Source Purchases

- “Single Source Purchases” are differentiated from “Sole Source Purchases”.
- “Single Source” means only one supplier is available.
- “Sole Source” means compatibility with existing equipment, facilities or services is the paramount consideration.

Sections 11, 12 and 13

- "Contingencies"

  vs. "Change in Scope"

  vs. "Purchase of Additional Goods & Services"

- New provisions address the misconception that there was a 35% blanket contingency for all contracts.

Section 11
Contingencies—New Provisions

- "Contingency" is a defined term.
- The "contingency" must arise from unforeseen or unexpected circumstances which could not have been reasonably anticipated.
- Achieves a balance between accountability and practicality.
- Commissioner still has authority to approve.

Section 12
Change in Scope—New Provisions

- “Scope Change” is now a defined term.
- “Scope Change” must be identified as a trigger to justify any authorized increase in contract price.
- Commissioner has authority to approve.

Section 13
Purchase of Additional Goods, Services or Construction

- This provision is now designed to prevent potential bid splitting or the extension of contracts to avoid competitive bidding.
- Now separate and apart from the scope change provisions.

Section 7.11
Request for Proposals, Two Envelope Bid

- Two envelope system is now formally recognized, as well as the evaluation and weighting methodology.

- Supplies & Services and the issuing department will apply weighting criteria applicable to each project for which RFPs are called.

Section 16.4
Contractor Performance & Litigation

- New provisions added in 2007 are working well.

- 2009 amendments address situations where contractors may be “forced” to sue the Region by their insurers.

York Region

Section 16.4
Contractor Performance & Litigation (cont'd)

- Gives Regional Solicitor flexibility to allow bidding where a contractor has been forced to litigate by an insurer or third party.
- Region's rights are still protected, potential unfairness to contractors is addressed.

Staff Training

- Supplies & Services will provide training to all affected Regional staff.

- Supplies & Services will develop a quick reference sheet highlighting changes.

Conclusion

- The Purchasing By-law has been improved.
- We have complied with our requirement in the By-law to review it every 5 years.
- The Region is well positioned until 2014 when the next review will be undertaken.

THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 41

BY-LAW NO. *-****-2009-***

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

WHEREAS section 270 (1) 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, accountability 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 an offer or submission from a vendor received in response to a request for quotation, tender, proposal or call for bids, which is subject to acceptance or rejection;

c) "Bid Review Committee" means the committee established under section 17 of this by-law;

d) "bidder" means any legal entity 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) "contingency" means costs that are in addition to, or exceed any stipulated contract or price agreement and which result from unforeseen or unexpected conditions or circumstances, which could not have been reasonably anticipated and which arise during the currency of the contract or price agreement

k) "contract" means any form of binding agreement between two or more legal entities, awarded under this by-law;

l) "contractor" means any legal entity to whom a contract is awarded;

m) "Council" means the Council of The Regional Municipality of York;

n) "Director of Supplies and Services" means the Director of Supplies and Services of The Regional Municipality of York;

o) "dollar cost methodology" means the methodology used to determine the successful bidder where two or more bids are within 5 points of the highest overall score, with the successful bidder submitting the bid with the lowest dollar cost per technical point, provided that the technical score of the bid meets the minimum requirements;

p) "dollar cost per technical point" means the product of

"X" ÷ "Y" where,

"X" means the total cost of the bid, and

"Y" means the technical score of the bid;

q) "electronic bidding" means a method of issuing a call for bids and receiving written bids by fax, email or internet;

r) "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 and Civil Protection Act*, R.S.O. 1990, c.E.9;

s) "goods" means personal property, including raw materials, products, supplies, equipment and other physical objects of every kind and description;

t) "litigation" means any dispute between the Region and any other party or related 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;

u) "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;

v) "project" means an undertaking in respect of which an expenditure is incurred to acquire, improve, demolish or maintain land, buildings, engineering structures, machinery and equipment;

w) "proposal" means a submission received in response to a request for proposals, acceptance of which may be subject to further negotiation;

x) "purchase order" means a written order to a contractor setting out the terms and conditions for the purchase of goods, services or construction;

y) "quotation" means a binding offer received in response to a request for quotations;

aa) "real property" means land, or land and buildings, and includes fixtures attached to such land or buildings as may be acquired or disposed of;

bb) "Region" means The Regional Municipality of York;

cc) "Regional Chair" means the Regional Chair of The Regional Municipality of York;

dd) "Regional Clerk" means the Regional Clerk of The Regional Municipality of York;

ee) "Regional Solicitor" means the Regional Solicitor of The Regional Municipality of York;

ff) “request for expressions of interest” means a request made by the Region for the purpose of compiling a list of potential bidders who may be interested in providing goods, services or construction to the Region;

gg) “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;

hh) “request for proposals” means a request for proposals made pursuant to this by-law;

ii) “request for quotations” means a request for quotations made pursuant to this by-law;

jj) “request for tenders” means a request for tenders made pursuant to this by-law;

kk) “responsive” means that a bid has complied in all material respects with the requirements set out in the call for bids documentation;

ll) “Scope” means the work that has been described in a contract or price agreement that must be done to deliver the goods, services or construction with the specified features and functions and within the time specified as described in the contract or price agreement;

mm) “Scope Change” means any change to the agreed scope of a project to accommodate a need not originally defined in the contract or price agreement which relates to the project and which will require an adjustment to the project cost and/or schedule;

nn) “services” means the services to be provided under a contract and includes consulting and professional services;

oo) “single source purchase” means a purchase made under section 10 of this by-law when there is only one legal entity available to the Region capable of doing the work;

pp) “sole source purchase” means a purchase made for the reasons delineated in section 10.1 of this by-law;

qq) “tender” means a submission received in response to a request for tenders;

rr) “total cost” means the contract cost for the full term of the contract, or, in the case of contracts containing renewal provisions, at its full term potential, exclusive of any value added taxes such as Goods and Services Tax or Provincial Sales Tax or any blend or combination thereof, but including all applicable, fees, charges and disbursements; and

ss) “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.

3.2.1 This by-law shall not apply to the acquisition or disposal of any real property or to any lease, right or permission relating to the use or occupation of real property which constrains the Region's rights to procure goods, services or construction relating to such use or occupation of the real property.

3.2.2 When the procurement of goods, services or construction in relation to any lease of real property are not constrained by the terms of such lease, the provisions of this by-law shall apply.

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) reviewing statements of work and tender specifications as prepared by tendering department for objectivity, transparency and fairness;

d) 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;

e) the standardization of all procurement procedures;

f) the disposal of surplus stock; and

g) the preparation of reports to Council under sections 7.10, 7.13, 7.15, 12.4, 14.3, 16.6, 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. Any such appointment shall be subject to the approval of the Chief Administrative Officer and a record thereof filed with the Regional Clerk.

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, save and except the provisions of clause 1.1.(b) hereof, 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 and further provided that there is compliance with the authorization provisions of this by-law and/or the delegated financial signing authority policies in effect.

5.2 No contract or price agreement for the procurement of goods, services or construction shall be divided into two or more parts for the purpose of avoiding 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*, R,S.O. 1990, c.M.50, as amended.

6. PRE-QUALIFICATION

Request for Expressions of Interest/Request for Information

6.1 The Director of Supplies and Services may conduct a request for expressions of interest or a request for information 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 or a request for information 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 an open 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.

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. When utilized, the request for pre-qualification is a precursor to a request for quotations, a request for tenders or a request for proposal.

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 without the need for formal quotations.

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 shall be issued, in lieu of a request for tenders or a request for proposals.

7.4 A minimum of three (3) written quotations shall be requested.

7.5 The Commissioner may award the contract provided that the award is made to the bidder submitting the lowest total 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 a 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 and whether the dollar cost methodology will be applied to determine the bidder to whom the contract will be awarded;

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 an open, fair and transparent process;

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, except those specifically identified in the Tender/Proposal Procedures portion of the bid documentation, 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 available to supply 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 by the Treasurer 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. A two envelope bid system (one envelope for the technical aspects of the proposal and the other for the financial aspects, with appropriate weighting to be determined jointly by the issuing Department and Supplies & Services) shall be used in the submission of all proposals, unless otherwise approved by the Director, Supplies & Services.

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); and,

b) the award is made to the bidder whose bid achieves the highest overall score as a result of the evaluation at the lowest cost, or if applicable the lowest dollar cost per technical point, as the case may be.

7.13 A report shall be submitted quarterly to Council by the Treasurer 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 by the Treasurer 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 shall be issued in accordance with this by-law 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.

8.3 Any resulting price agreement shall be subject to contractual approvals as set forth in section 7 above.

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/SINGLE 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:

a) the compatibility of a purchase with existing equipment, facilities or service is the paramount consideration and Council has authorized a sole source purchase pursuant to a report; or,

b) the purchase is the subject matter of a joint agreement with other area or regional municipalities and/or other levels of government as the case may be.

10.2 A single source purchase may be made for the procurement of goods, services or construction without issuing a call for bids where there is only one legal entity capable of fulfilling the contract.

10.3 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. CONTINGENCIES

11.1 Where any purchase of goods, services or construction has been authorized under this by-law, the Commissioner or his or her authorized delegate may, in the case of a contingency, authorize disbursement of additional funds, provided that such additional funds shall not exceed fifteen percent (15%) of the total cost of the original contract or price agreement, and provided that the additional funds are required to complete the work set out in the original contract or price agreement.

11.2 The Commissioner or his or her authorized delegate may authorize any expenditure under section 11.1 of this by-law, irrespective of the total cost of the original contract or price agreement.

12. CHANGE IN SCOPE

12.1 Where goods, services or construction have been purchased under this by-law pursuant to a contract or price agreement, where a change in the scope of the project to which the contract or price agreement relates occurs, which necessitates the purchase of additional or related goods, services or construction, such additional goods, services or construction shall not be purchased 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 price agreement; 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 price agreement; 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.

12.2 Any amount authorized under section 12.1 of this by-law may be expended in addition to any contingency allowance authorized under section 11.1 of this by-law and may be authorized by the Commissioner irrespective of the total cost of the original contract or price agreement.

12.3 Despite section 12.1 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 or price agreement; 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.

12.4 A report of the Treasurer shall be submitted quarterly to Council to advise of any expenditures made under section 12.3 of this by-law.

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 Report is provided to Council or the procurement procedures set out in this by-law are complied with.

14. CO-OPERATIVE PURCHASING

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

14.2 If the Region participates with another government agency or public authority in co-operative purchasing, 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 by the Treasurer 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 appropriate 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 of this by-law.

16. CONTRACTOR PERFORMANCE AND LITIGATION

16.1 The appropriate 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 related party as determined in the discretion of the Regional solicitor, 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 qualified supplier of 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;

e) where the Region has been named as plaintiff or as a defendant pursuant to a subrogated interest and where, in the discretion of the Regional Solicitor, an appropriate arrangement has been made to indemnify the Region;

f) where the contractor or other party is exercising rights pursuant to the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended.

16.5 Where the amount in dispute in any unresolved litigation does not exceed one hundred thousand dollars ($100,000.00), 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 by the Regional Solicitor annually advising of the disposition of any matter pursuant to this section.

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 (who has authority to make decisions on behalf of their department) 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, except those specifically identified in the Tender/Proposal Procedures portion of the bid documentation, 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 by the Treasurer 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 Unless otherwise authorized by 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 the term of a proposed contract is for a period longer than five years, or where the renewal of a contract would result in an aggregate term of greater than five years;

d) 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;

e) where the purchase of any goods, services or construction is not authorized by this by-law; and

f) 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 by the Treasurer 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;

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; and

e) all eInvoice vendor accounts as approved by the Treasurer, prior to validation of expenditures.

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-0353-2004-089, A-0353(a)-2006-063, and A-0353(b)-2007-04, are hereby repealed.

ENACTED AND PASSED this day of October, 2009.

Denis Kelly	Bill Fisch
Regional Clerk	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) provision of professional and skilled services to individuals where such professional and skilled services are part of programs specifically approved by Council pursuant to this Schedule;
   c) payments to Social Service and Health Agencies that are subject to purchase of service agreements;
   d) medical and dental fees; and
   e) licences and maintenance costs for proprietary software and systems.

5. Utility Charges, including:

   a) water;
   b) hydro;
   c) natural gas;

d) utility relocations;
e) telephone; and
f) telecommunications.

6. Postal charges.

7. Any payments required to be made by the Region under statutory authority.