THE REGIONAL MUNICIPALITY OF YORK

Housing York Inc.
September 15, 2010
Report of the
Regional Solicitor
and
Treasurer

APPROVAL OF HOUSING YORK INC. PURCHASING BY-LAW

1. RECOMMENDATION

It is recommended that:

1. The Board of Directors repeal Housing York Inc. Procurement of Goods and Services Policy approved by the Board in November, 2007, and enact By-law 3-10, to provide for the procurement of goods and services in the form set out in *Attachment 1*.

2. PURPOSE

This report recommends the enactment of a Purchasing By-law for Housing York Inc. (HYI). The Purchasing By-law will mirror the provisions of the Region's Purchasing By-law, clarify provisions in HYI's existing Purchasing Policy, and incorporate amendments that reflect HYI's operational experience.

3. BACKGROUND

HYI's Purchasing Policy was adopted by the board in November 2007. Under paragraph 5(1) (a) of the *Social Housing Reform Act, 2000*, Ontario Regulation 644/00, a local housing corporation must ensure its agents are knowledgeable about all policies, procedures, standards and objectives that concern their duties. This includes knowledge of procurement procedures. The Purchasing Policy meets those requirements, and also ensures an effective, efficient, fair and transparent procedure for the procurement of goods, services and construction.

On October 8, 2009, Regional Council enacted By-law 2009-41, an amended Regional Purchasing By-law that incorporated recommendations made by the Region's Purchasing By-law Review Committee (the Committee) which was comprised of staff representing all Regional departments. The Committee identified a number of practical procurement issues that were resolved by enactment of By-law 2009-41. The Region's amended Purchasing By-law also incorporates amendments recommended by staff to strengthen and improve the wording of the By-law and to enhance its clarity and ease of understanding.

The proposed HYI By-law will mirror the provisions of the Region's amended by-law but maintain those provisions of the existing HYI Policy that reflect HYI's unique operational requirements as a legal entity distinct from the Region.

4. ANALYSIS AND OPTIONS

The basic purpose and application of the Purchasing By-law will remain consistent with the existing policy

The proposed HYI By-law does not change the general scope and application of the existing HYI Policy. The existing Policy and the proposed By-law both apply generally to the procurement of all goods, services and construction on behalf of HYI. All reporting requirements to the Board remain consistent and the existing exemption applicable to expenditures set out in Schedule "A" of the Policy is continued in the By-law. Similarly, all procurement under the proposed By-law continues to be subject to the availability of funds in the approved budget.

The Purchasing By-law enhances the Purchasing Policy in all major areas

The proposed by-law includes amendments and enhancements to the Purchasing Policy ranging from minor wording changes to entirely new provisions. Amendments to the provisions governing sole and single source provisions, and the scope change and contingency clauses will enhance transparency and accountability in HYI's purchasing practices and clarify provisions that have caused some confusion in the past. The major additions and amendments are highlighted in *Attachment 1*.

Most Significant New/Amended Definitions

Based on a review of both HYI's operational experience and York Region's Purchasing By-law, the following new/amended definitions are recommended for the proposed By-law:

"Contingency"
This new definition is used to clarify the process by which contract increases may be authorized to fund project contingencies.

"Contract"
The scope of the definition has been broadened to include all binding agreements.

"**Dollar Cost Methodology**" and **"Dollar Cost per Technical Point"**
These new definitions describe 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.

“Litigation”
This new definition is required to support the incorporation of the litigation policy into the By-law.

“Price Agreement”
Price agreements are defined in order to permit HYI to enter into service retainers following a competitive procurement process.

“Scope” and “Scope Change”
These new definitions clarify the process by which contract increases to fund changes in project scope may be authorized.

“Single Source Purchase”
This new definition supports the new provision in the proposed By-law that differentiates between “sole source” and “single source” purchases and prescribes when each may be authorized.

New and Amended Clauses

The following table identifies provisions of the proposed By-law that are either new or have been materially amended.

Table 1
New / Amended Clauses

3.2	Non-application of By-law to real property
4.1	General Manager relieved of technical procurement responsibilities but retains reporting function
4.2	Assistant General Manager assumes technical procurement responsibilities formerly exercised by General Manager
4.3	Manager assumes responsibility for standardization of procurement procedures
4.6	Assistant General Manager may exercise any authority granted to the Manager
5.4	No member of the board, Council or employee of HYI or Region may obtain surplus goods except through a public process
6.6	Confirmed that pre-qualification is a precursor to an RFP or tender
7.1	Purchases that may be made without formal quotation is increased to $25,000 from $10,000
7.11(a)	General Manager may award a contract, in respect of a tender, with a value up to $500,000
7.11(b)	General Manager to report quarterly to the Board in respect of the award of tenders under $500,000
7.13	HYI formally adopts the two envelope bid system used by the Region for RFPs – i.e. technical and financial
7.14 (d)	Dollar cost methodology should be stated in the evaluation criteria of the RFP document when it is applied to the evaluation

7.15	General Manager to report quarterly to the Board in respect of the award of RFPs under $500,000
8.1	HYI may enter into price agreements with contractors to obtain goods and services on an as required basis
10	Sole source purchase distinguished from single source purchase
11.1	In the case of a "contingency", additional funds of up to 15% may be authorized
11.2	General Manager's discretion to award contingency in excess of 15% subject to a cap of $15,000 is delegated to the Assistant General Manager and the cap is increased to $25,000
12.1	Provision amended to incorporate new definition of scope change
14.3	General Manager to report quarterly in respect of contracts awarded through co-operative purchasing
16	HYI adopts contractor performance and litigation provisions set out in Region's Purchasing By-law
17	HYI adopts Bid Review Committee provisions set out in Region's Purchasing By-law
18.1(a)	Board authorization required for award of tender greater than $500,000
18.1(c)	Board authorization required for contracts with term longer than 5 years. Formerly, Board authorization was required for contract with term longer than 3 years.
19	HYI adopts provisions regarding the disposition of surplus stock set out in the Region's Purchasing By-law
20	HYI contract to be in a form approved by the Corporate Solicitor
21	Payment of accounts authorized by payment certificate paid when certified by General Manager

Most Significant New and Amended Clauses

Section 3—Application

This section has been amended and expanded to specifically address situations where HYI acquires or leases real property and to clarify when the competitive bidding provisions of the By-law 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. However, there may be cases in relation to lease agreements where HYI is required to procure goods, services or construction in relation to leased premises. In such cases, the proposed By-law must be complied with.

Section 4 – Responsibilities and Authorities

Under the existing HYI Purchasing Policy, the General Manager is assigned responsibility for performing all procurement functions. The proposed By-law shifts responsibility for procurement functions from the General Manager to those officers of HYI who are directly engaged in performing the specific procurement task.

Section 5—Restrictions and Exceptions
This section, which references the list of goods and services that are excepted from the application of the By-law in Schedule "A", requires that the excepted goods and services 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 8 – Price Agreements
The new price agreement provisions will permit HYI, through a competitive and transparent process, to retain contractors and service providers who will be available "on call" and who can be rapidly deployed to provide services that may be required by HYI on a periodic basis.

Section 10—Sole Source/Single Source Purchases
This section adds provisions relating to "Single Source Purchases", which are differentiated from "Sole Source Purchases". The existing Policy does not distinguish between the two terms, with the result that it has been difficult to justify a single source purchase (applicable when there is only one legal entity capable of providing the goods, services or construction) using the criteria for sole source purchases (applicable when compatibility with existing equipment or facilities is the paramount consideration or where a joint agreement between HYI and another entity requires it). Section 10 of the new By-law resolves the issue.

Sections 11, 12 & 13 —"Contingencies" vs. "Change in Scope" vs. "Purchase of Additional Goods and Services"
Under the existing Policy, there has been a misconception by staff relating to the application of the existing Contingency provisions and the provisions relating to the Purchase of Additional Goods, Services or Construction. Under the existing Contingency provisions, Senior Management can authorize additional expenditures of up to 15 percent of the total cost of any original contract. Similarly, under the Purchase of Additional Goods, Services or Construction provisions, the General Manager can authorize the expenditure of up to 20 percent of the original contract price but without clear criteria confirming the circumstances when it is appropriate or permissible to do so. In practice, the authorization under the provisions relating to Purchase of Additional Goods, Services or Construction has been reserved for cases where a change in project scope has occurred, notwithstanding that there is no formal recognition of this in the existing Policy. Accordingly, it could be interpreted that, under the Policy, there is 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 additional expenditures can properly occur.

Contingencies—New Provisions in Section 11
Under the contingency provisions of the existing Policy, Senior Management can authorize the disbursement of additional contract funds up to 15 percent of the total cost of the original contract, provided that the funds are required to complete the work set out

in the original contract. Despite the fact that the section is entitled “Contingencies”, there is no definition of “Contingency” in the Policy. Staff determined that the goals of fairness, objectivity, accountability and transparency could be better served if the term “Contingency” is defined in the new By-law, and if the 15 percent “Contingency” is tied to a specifically ascertainable set of circumstances in order to justify and account for the contract price increase. The stipulation in the proposed By-law 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 Section 12

Under the existing Policy, there is no specific provision for increases in contract values due to scope changes in a particular project. Despite the lack of a specific provision, “Scope Change”, which is often an inevitable part of capital projects as circumstances arise in response to various internal or external realities, has been dealt with using the provisions applicable to the Purchase of Additional Goods, Services or Construction. Section 12 of the new By-law remedies this situation as it requires that a “Scope Change” (a new defined term) must occur before any increase in contract price can be authorized under Section 12.

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

This new provision in the proposed By-law exists solely to prohibit bid splitting or the extension of contracts to avoid a competitive procurement process.

Request for Proposals, Two Envelope Bid System—New Provisions in Section 7.13

In practice, a “two envelope bid system” has been employed to evaluate responses to HYI Requests for Proposals (“RFPs”). However, under the existing Policy, 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 RFP. The two envelope system is formally recognized in the proposed By-law, as is the requirement that RFP evaluations be weighted based upon criteria applicable to each individual project for which RFPs are called.

Contractor Performance & Litigation—Sections 16.1-16.6

The existing Policy incorporates the Region’s litigation policy by reference. The proposed By-law will specifically incorporate the provisions of the Region’s Purchasing By-law relating to both contractor performance and to contractors who are engaged in litigation with HYI.

Surplus Stock- Section 19

The existing Policy does not have a mechanism to provide for the disposal of HYI’s surplus stock. The proposed By-law incorporates the Region’s requirements relating to the disposal of surplus stock and provides that the Region’s Director of Supplies and Services shall act as the agent of HYI in the disposal of HYI surplus stock.

Contract Documents-Section 20
The proposed By-law provides that contracts executed by HYI shall be in a form approved by the Corporate Solicitor.

5. FINANCIAL IMPLICATIONS

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

6. LOCAL MUNICIPAL IMPACT

A well-managed housing corporation provides affordable housing across the Region.

7. CONCLUSION

Staff have reviewed HYI's Purchasing Policy and evaluated it for effectiveness in light of the operational experience of both HYI and the Region. The proposed By-law is recommended in order to take advantage of enhancements made to the Region's Purchasing By-law and to improve and clarify the procurement process for HYI staff, the public and for contractors wishing to do business with HYI.

For more information on this report, contact Dean Horner, Senior Counsel at Ext. 1408

The Senior Management Group has reviewed this report.

Recommended by:

Joy Hulton Regional Solicitor	Lloyd Russell Treasurer

Approved by:

Adelina Urbanski
General Manager

September 1, 2010

Attachment - 1

DH/ks

Report Wizard v.9 July 21, 2009
522033

HOUSING YORK INC.

BY-LAW NO. 3-10

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

The Board of Directors of Housing York Inc. hereby enact 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) "Assistant General Manager" means the Assistant General Manager of HYI;

b) "Assistant Treasurer" means the Assistant Treasurer of HYI;

c) "award" means the authorization to proceed with the purchase of goods, services or construction;

d) "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;

e) "Bid Review Committee" means the Bid Review Committee established by the Region's By-law 2009-41 as amended or superseded from time to time;

f) "bidder" means any legal entity that submits a bid in response to a call for bids;

g) "Board" means the Board of Directors of HYI;

h) "call for bids" means a formal request for bids and includes a request for quotations, a request for tenders and a request for proposals;

i) "Chair" means the Chair of the HYI Board of Directors;

j) "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;

k) "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 HYI;

l) "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;

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

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

o) "Corporate Secretary" means the Corporate Secretary of HYI;

p) "Corporate Solicitor" means the Corporate Solicitor of HYI;

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

r) "designate" means the person provided with the written authority to act on another person's behalf in accordance with this by-law;

s) "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;

t) "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;

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

v) "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 HYI or public property or any other expenditure that is necessary to respond to any such event;

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

x) "HYI" means Housing York Inc.;

y) "litigation" means any dispute between HYI 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;

z) "Manager" means the Manager of HYI;

aa) "price agreement" means an agreement between HYI 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 HYI, at a pre-determined price, for a pre-determined period of time, upon pre-determined terms and conditions;

bb) "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;

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

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

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

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

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

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

ii) "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 HYI;

jj) "request for proposals" means a request for proposals made pursuant to this by-law;

kk) "request for quotations" means a request for quotations made pursuant to this by-law;

ll) "request for tenders" means a request for tenders made pursuant to this by-law;

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

nn) "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;

oo) "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;

pp) "Senior Management" or "Senior Manager" means the General Manager, Assistant General Manager, and Manager and any of their designates;

qq) "services" means the services to be provided under a contract and includes consulting and professional services;

rr) "single source purchase" means a purchase made under section 10.2 of this by-law when there is only one legal entity available to HYI capable of doing the work;

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

tt) "tender" means a submission received in response to a request for tenders;

uu) "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, Provincial Sales Tax, and Harmonized Sales Tax or any blend, combination or component thereof, but including all applicable, fees, charges and disbursements;

vv) "Treasurer" means the Treasurer of HYI;

ww) "Vice Chair" means the Vice-Chair of the HYI Board of Directors.

3. APPLICATION

3.1 This by-law shall apply to the purchase of goods, services or construction for the purposes of HYI.

3.2 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 HYI's right to procure goods, services or construction relating to such use or occupation of the real property.

3.3 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 The General Manager shall be responsible for:

a) the preparation of reports to the Board under sections 7.12, 7.15, 7.17, 14.3, 17.2 and 19.4 of this by-law.

4.2 The Assistant General Manager 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 staff 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 HYI; and

e) the disposal of surplus stock.

4.3 The Manager shall be responsible for:

a) the standardization of all procurement procedures.

4.4 HYI will use the Region's Supplies and Services Branch as its agent to facilitate the issuance of requests for tenders, proposals, expressions of interest, and for pre-qualification. However, the General Manager will report to the Board and make the award.

4.5 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 General Manager and a record thereof filed with the Corporate Secretary.

4.6 Where any authority has been granted to any officer or employee of HYI pursuant to this by-law, such authority may be exercised by the General Manager or designate.

4.7 Where any authority has been granted to the Manager, pursuant to this by-law, such authority may be exercised by the Assistant General Manager or designate.

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 HYI budget and further provided that there is compliance with the authorization provisions of this by-law and/or any 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 HYI directly or indirectly for members of the Board, Council, or for any officer or employee of HYI or the Region.

5.4 No Board member, Council member, officer or employee of HYI or the Region shall personally obtain any goods that have been declared surplus unless through a public process.

5.5 All procurement undertaken by HYI 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 General Manager 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 HYI.

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 General Manager 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 HYI 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 $25,000.00

7.1 Where the total cost of any goods, services or construction does not exceed twenty-five thousand dollars ($25,000.00), such purchase may be made without the need for a formal quotation.

7.2 The General Manager, Assistant General Manager or Manager may authorize any purchase under Section 7.1 of this by-law.

Purchases Not Exceeding $50,000.00

7.3 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.

7.4 The General Manager, or Assistant General Manager may authorize any purchase under section 7.3 of this by-law.

Purchases Not Exceeding $100,000.00

7.5 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.

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

7.7 The General Manager 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

7.8 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.

7.9 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 any applicable records retention policy; **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

7.10 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.

7.11 The General Manager 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 submitting the lowest cost responsive bid.

7.12 A report shall be submitted quarterly to the Board by the Treasurer to advise of the award of any contract under section 7.11 of this by-law.

Request for Proposals

7.13 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 HYI'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 HYI and Supplies & Services) shall be used in the submission of all proposals, unless otherwise approved by the Region's Director, Supplies & Services.

7.14 The General Manager 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.

7.15 A report shall be submitted quarterly to the Board by the Treasurer to advise of the award of any contract under section 7.14 of this by-law.

Authority of General Manager

7.16 Despite any other provision of this by-law, during any period that regular Board meetings are suspended either during the summer recess or for any other reason, the General Manager shall be authorized to award any contract.

7.17 A report shall be submitted to the Board by the Treasurer as soon as reasonably possible setting out the details of any contract awarded under section 7.16 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 HYI 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 article 7 above.

9. EMERGENCY PURCHASES

9.1 Despite any other provision of this by-law, in cases of emergency, as determined by the General Manager, 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 General Manager 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 General Manager 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 any one of the Chair, Vice-Chair, or General Manager together with the Treasurer or Assistant Treasurer, in the Treasurer's absence.

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 the Board has authorized a sole source purchase pursuant to a report; or

b) the purchase is the subject matter of a joint agreement that is arrived at through the efforts of a co-operative purchasing plan as permitted by article 14.

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 General Manager 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 Board approval.

11. CONTINGENCIES

11.1 Subject to Section 11.2, where any purchase of goods, services or construction has been authorized under this by-law, by a Senior Manager, that Senior Manager 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 Notwithstanding, Section 11.1 the Assistant General Manager may, in the case of a contingency, authorize disbursements of additional funds in excess of fifteen percent (15%) provided that:

a) The total cost of the original contract or price agreement can be accommodated within the annual HYI budget; and

b) The amount of the additional funds does not exceed twenty-five thousand dollars ($25,000.00).

11.3 The Board may authorize any contingency expenditure in any amount.

12. SCOPE CHANGE

12.1 Where goods, services or construction have been purchased under this by-law pursuant to a contract or price agreement, and a scope change occurs in the project to which the contract or price agreement relates, 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 the Board; 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 (not including the Region) and security to ensure payment is in place, to the satisfaction of the General Manager.

12.2 Any amount authorized under section 12.1 of this by-law may be expended in addition to any contingency allowance authorized under article 11 of this by-law and may be authorized by the General Manager irrespective of the total cost of the original contract or price agreement.

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, and approved by, the Board or the procurement procedures set out in this by-law are complied with.

14. CO-OPERATIVE PURCHASING

14.1 HYI may participate with the Region, other government agencies, public authorities, including but not limited to recognized housing provider affiliations such as the Ontario Non Profit Housing Association, and the Social Housing Services Corporation, or private sector entities in co-operative purchasing where the General Manager determines it is in the best interests of HYI to do so.

14.2 If HYI participates with another agency in co-operative purchasing, HYI shall adhere to the policies of the agency calling the co-operative bid.

14.3 A report shall be submitted quarterly to the Board by the General Manager 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 HYI, the General Manager may determine if the proposal shall be evaluated in accordance with article 10 of this by-law.

15.2 If the General Manager determines that the unsolicited proposal should be considered a sole source or single source purchase, the award shall be made in accordance with article 10 of this by-law.

16. CONTRACTOR PERFORMANCE AND LITIGATION

16.1 The Manager 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 HYI requirements.

16.2 The Assistant General Manager 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 the Board.

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 Corporate Solicitor, or any other party with whom HYI 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 HYI is engaged in unresolved litigation in the following circumstances:

a) where there is only one qualified supplier of goods or services and the General Manager has approved the award;

b) in the case of an emergency;

c) where there is a legal obligation on the part of HYI 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 HYI has been named as plaintiff or as a defendant pursuant to a subrogated interest and where, in the discretion of the Corporate Solicitor, an appropriate arrangement has been made to indemnify HYI.

16.5 Where the amount in dispute in any unresolved litigation does not exceed one hundred thousand dollars ($100,000.00), the General Manager 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 HYI, based on consideration of factors including but not limited to the following:

a) the bidder's or proponent's performance under previous contracts with HYI; or

b) HYI'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 the Board by the Corporate Solicitor annually advising of the disposition of any matter pursuant to this section.

17. BID REVIEW COMMITTEE

17.1 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.

17.2 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 the Board setting out the nature of the informality, irregularity or challenge and the proposed action to be taken.

18. BOARD APPROVAL

18.1 Unless otherwise authorized by this by-law, a report shall be submitted to the Board 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 tenders or proposals has been issued under this by-law;

b) where the purchase is prescribed by statute to be made by the Board;

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 The Assistant General Manager 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 as agent for HYI to transfer such surplus stock to the Region, 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 the Region or any 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 the Board 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 Corporate Solicitor.

20.2 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 Assistant General Manager may execute such contract, in a form approved by the Corporate Solicitor.

20.3 All contracts executed pursuant to this by-law shall be delivered to the Corporate Secretary for safekeeping.

21. PAYMENT OF ACCOUNTS

21.1 Any one of the Chair, Vice Chair or the General Manager together with the Treasurer or Assistant Treasurer, in the Treasurer's absence 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 the Board;

b) all accounts authorized by payment certificate, for work done under a contract awarded in accordance with this by-law, where such payments have been certified in writing by the General Manager;

c) all items listed in Schedule "A" subject to such expenditures being approved in HYI's annual budget; and

d) 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 The Housing York Inc. Procurement of Goods and Services Policy approved by the Board on November 7, 2007 is hereby repealed.

ENACTED AND PASSED this 15th day of September, 2010

Secretary

Chair

#2702106

APPROVED

SOLICITOR

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 employment related expenses in respect of Regional employees delivering services to HYI consistent with Regional policies, including:

    a) advances for expenditures;
    b) meal allowances;
    c) travel and entertainment expenses; and
    d) miscellaneous expenses.

3. HYI's General Expenses, including:

    a) licences required for HYI personal property (e.g. vehicles);
    b) financing costs for buildings;
    c) insurance premiums;
    d) damage claims;
    e) petty cash replenishment; and
    f) tax remittances.

4. Any purchase related to inter-company services with the Region, such as:

    a) Regional invoices for salaries, benefits and overhead allocations;
    b) audit services;
    c) courier services for interoffice mail and external deliveries;
    d) armoured delivery services for banking;
    e) office equipment and supplies; and
    f) lease purchases for HYI administration office.

5. Any purchase related to professional services as directed by the Region, such as:

    a) memberships and affiliations, for example;
        i. Ontario Non Profit Housing Association (ONPHA)
        ii. Institute of Housing Management (IHM)
    b) licences and maintenance costs for proprietary software and systems; and
    c) provision of skilled services to individuals as part of approved programs.

6. The following contracts and related purchases concerning property management activities:

   a) laundry services;
   b) alarm answering services;
   c) local advertising for vacant market units; and
   d) accommodation for displaced tenants due to building repairs.

7. Utility Charges, including:

   a) water;
   b) hydro;
   c) natural gas;
   d) utility relocations;
   e) telephone; and
   f) telecommunications.

8. Postal charges.

9. Any payments required to be made by HYI under statutory authority.