

THE CORPORATION OF THE TOWNSHIP OF MALAHIDE

BY-LAW NO. 18-47

Being a By-law to define the purchasing policies for the acquisition of Goods and/or Services by the Township of Malahide.

WHEREAS Section 270(1) of the Municipal Act, 2001, c. 25, as amended, requires that a municipality adopt and maintain policies with respect to its procurement of goods and services;

AND WHEREAS the Council of The Corporation of the Township of Malahide deems it expedient to establish the authority and sets out the methods by which the Township of Malahide will procure Goods and/or Services, subject to certain exceptions set out herein;

NOW THEREFORE the Council of The Corporation of the Township of Malahide **HEREBY ENACTS AS FOLLOWS:**

1. SHORT TITLE

This by-law may be cited as the "Procurement By-law".

2. PURPOSES, GOALS AND OBJECTIVES

2.1 The purpose, goals and objectives of this By-law and each of the methods of acquisition authorized are:

1. to encourage competition among suppliers;
2. to maximize savings for taxpayers;
3. to ensure service and product delivery, quality, efficiency and effectiveness;
4. to ensure fairness among bidders;
5. to ensure openness, accountability and transparency, while protecting the financial and operational best interests of the Township;
6. to have regard for the accessibility for persons with disabilities to the Goods and/or Services purchased by the Township.

3. DEFINITIONS

- 3.1 "Award" means the selection of a Bidder/Proponent and their Goods/ Services as accepted by the Township.
- 3.2 "Bid" means the Bidder's or Proponent's offer to sell the Goods/Services to the Township.
- 3.3 "Bidder" means, a person, supplier, vendor, contractor; developer or professional, who submits a Bid to the Township.
- 3.4 "Bid Document" means a Request for Tender, Request for Quotation, Request for Proposal, or other documents that state the Township's desire to buy or to consider buying and Bidders/Proponents offer to sell to the Township the Goods/Services defined in the specifications.
- 3.5 "Bid Irregularity" means a deviation between the requirements of a Bid Document request and the information provided in the Bid Response.
- 3.6 "Contract" means a binding agreement between two or more parties that creates an obligation to provide a particular Good/Service.
- 3.7 "Council" means the Council of The Corporation of the Township of Malahide.
- 3.8 "Department" means a department as established by the Township from time to time.
- 3.9 "Director" means the person chosen by the Township to be the head of a department(s).
- 3.10 "Formal Process" means the request for Bid is issued, in writing, with prescribed forms. Bidders/Proponents must submit their Bid using these forms in a sealed package by a predetermined time.
- 3.11 "Goods/Services" means all goods and services, as set out in the Bid Document, which include all supplies, materials, equipment, general maintenance and services; construction and works contracts, leases, rentals, and repairs of equipment; consulting and professional services, including the services provided by architects, engineers, designers, real estate appraisers, management or financial consultants, brokers or lawyers and any other consulting or professional service rendered on behalf of the Township.

- 3.12 "Informal Process" means the request for Bid may or may not be published and received on prescribed forms, by a predetermined time. Depending on the purchase value, Bids may be received electronically, verbally or in written formats.
- 3.13 "Major Irregularity" means an irregularity in a Bid, such that a strict compliance component is missing, which is required at the time of Bid submission, affecting the price, quality, quantity or delivery and is material to the Award. If the irregularity is permitted, the Bidder/Proponent could gain an unfair advantage over competitors and therefore results in the automatic rejection of the Bid.
- 3.14 "Minor Irregularity" means an irregularity in a Bid, such that a Bid submission is substantially compliant, and the irregularity affects form rather than substance. The effect on the price, quality, quantity or delivery is not material to the Award. If the irregularity is permitted, the Bidder/Proponent would not gain an unfair advantage over competitors. The Bidder/Proponent will, if any, be allowed time to clarify/correct the submission, only with respect to the Minor Irregularity.
- 3.15 "Proposal" means an offer from a Proponent to provide Goods/Services to the Township, acceptance of which may be subject to further negotiation. It is the response submitted to a RFP.
- 3.16 "Proponent" means a person, supplier, vendor, contractor, developer or professional submitting a Proposal.
- 3.17 "Purchasing" means the Purchasing Section of the Finance Department.
- 3.18 "Quotation" means an offer from a Bidder to provide Goods/Services to the Township or buy Goods/Services from the Township, at a specific rate or price. It is the response submitted to a RFQ, the acceptance of which will result in the formation of a binding Contract between the Township and the Bidder submitting the Quotation.
- 3.19 "RFP" means Request for Proposal, a process whereby the Township identifies a need, but the method by which it will be achieved is unknown at the outset. This process allows Proponents to propose solutions or methods to arrive at a desired result.
- 3.20 "RFQ" means Request for Quotation, a process whereby the Township, through a Formal or Informal Process, requests Bids for particular Goods/Services, which may or may not be required to be submitted on prescribed forms in sealed packages.

- 3.21 "RFT" means Request for Tender, a process whereby the Township, through a Formal Process, requests Bids for particular Goods/Services which must be submitted on prescribed forms in sealed packages.
- 3.22 "RPQ" means Request for Pre-Qualification, a process whereby the Township requests specific qualification criteria, which will then be used to identify and pre select Bidders, where the experience and qualifications of the Bidder must be clearly established and verified prior to the Bidder being allowed to submit a Bid. This process is typically used when selecting Architects and General Contractors for large building construction or renovations.
- 3.23 "Single Sourcing" means the procurement of Goods/Services from a particular Bidder/Proponent rather than through the solicitation of Bids from multiple Bidders/Proponents who can also provide the same/similar Goods/Services.
- 3.24 "Sole Sourcing" means the procurement of Goods/Services that are unique to a particular Bidder/Proponent and cannot be obtained from another source.
- 3.25 "Standard Operating Procedures" means the procedures established by the Township to be followed in carrying out a given operation or a given situation.
- 3.26 "Tender" means, an offer from a Bidder to provide Goods/Services in response to a RFT, the acceptance of which will result in the formation of a binding Contract between the Township and the Bidder submitting the Tender.
- 3.27 "Township" means The Corporation of the Township of Malahide.

4. PROCUREMENT PROCEDURES

Any person acquiring Goods/Services on behalf of the Township shall do so in accordance with this By-law.

4.1 Method of Solicitation

1. Request for Quotation (RFQ)
2. Request for Tender (RFT)
3. Request for Proposal (RFP)
4. Request for Pre-Qualification (RPQ)
5. Non-competitive Process

4.2 Where the factors of suitability, quality, service and ability to deliver are deemed to be equal, the Contract shall be awarded to the lowest compliant Bidder or highest scoring compliant Proponent who meets the minimum specifications.

4.3 Notwithstanding the provisions of this By-law, the Township shall have absolute discretion in awarding Contracts and retains the right to reject any or all Bids.

4.4 Purchases \$0 - \$1,000.00

1. Competitive Bids are not required.
2. The Contract is awarded in accordance with Section 4.10 Contract Award Approval Levels.

4.5 Purchases \$1,000.01 - \$10,000.00

1. Competitive Bids are not required.
2. Verbal quotations or estimates should be obtained where possible to ensure best pricing.
3. The Contract is awarded in accordance with Section 4.10 Contract Award Approval Levels.

4.6 Purchases \$10,000.01 - \$25,000.00

1. A Formal or Informal Process shall be followed, unless the Goods/Services are authorized under Section 5 Non-Competitive Process or Section 8 Exceptions/Exemptions from Competitive Process.
2. The Director of the department making the acquisition, in consultation with the CAO, shall determine whether a Formal Process or Informal Process will be followed.
3. The Contract is awarded by the Staff in accordance with Section 4.10 Contract Award Approval Levels.

4.7 Purchases greater than \$25,000.00

1. A Formal Process shall be followed, unless the Goods/Services are authorized under Section 5 Non-Competitive Process or Section 8 Exceptions/Exemptions from Competitive Process.
2. The Contract is awarded by the Council in accordance with Section 4.10 Contract Award Approval Levels.

4.8 Purchases greater than \$250,000.

1. A Formal Process shall be followed, unless the Goods/Services are authorized under Section 5 Non-Competitive Process or Section 8 Exceptions/Exemptions from Competitive Process.
2. The Tender or Request for Proposal shall be posted on the Township's website for a minimum of 30 calendar days prior to closing.
3. Where the Township chooses to post the Tender or Request for Proposal on an alternate bidding site (i.e. MERX, Biddingo), the Township shall post on the alternate bidding site for a minimum of 30 calendar days and shall publish notice of the Tender or Request for Proposal and alternate location on the Township website for the same duration.
4. Where the Township is participating in a buying group, the Township shall publish such intention to participate in the buying group near the start of each calendar year and utilizing the following or similar wording:
[Insert Municipality Name] intends to participate in one or more procurements conducted by [Insert buying group name] between [month/year to month/year, for indefinite term projects include one year only and post annually]. For further information and access to [Insert buying group name] request for proposal (RFP) notices, please review the website at [Insert buying group website].

4.9 In-House Bids will not be considered.

4.10 Contract Award Approval Levels

1. In determining the appropriate authority level, the Contract purchase value shall be considered to include all applicable costs (ie. freight, taxes) in the acquisition of the Goods/Services for the entire time period the Contract is being awarded to a particular Bidder/Proponent.
2. Authority granted to the CAO or Directors to Award or enter into Contracts, subject to the dollar values detailed below and providing that the Award is made to the lowest compliant Bidder or highest scoring compliant Proponent, otherwise the Council must Award the Contract.
3. \$0 - \$10,000.00 - Directors or designate to award.
4. \$10,000.01 - \$25,000.00 - CAO or designate to award.
5. Over \$25,000 – Council to award.
6. The purchase of any item that has not been authorized by the Council through budget appropriation or specific resolution will not be permitted. All unbudgeted capital projects must be awarded by the Council, regardless of the value.

5. NON-COMPETITIVE PROCESS

5.1 A Director shall obtain a written Bid from the Bidder/Proponent for any Non-Competitive purchase of Goods/Services prior to the purchase of the Good or Service.

5.2A Non-Competitive Process shall only be used if one or more of the following conditions apply and a process of negotiation is undertaken to obtain the best value in the circumstances for the Township:

1. the Goods/Services are only available from one source or one supplier by reason of:

Sole Source:

- a. a statutory or market based monopoly;
- b. scarcity of supply in the market;
- c. existence of exclusive rights (patents, copyright or license)

Single Source:

- d. need for compatibility with Goods/Services previously acquired and there are no reasonable alternatives, substitutes or accommodations;
 - e. need to avoid violating warranties and guaranties where service/support is required;
 - f. the extension of an existing Contract would prove more cost effective or beneficial;
 - g. due to market conditions, required Goods/Services are in short supply;
 - h. the required Goods/Services are to be supplied by a particular Bidder/Proponent having special knowledge, skill, expertise or experience, which cannot be provided by any other person; or
 - i. the nature of the requirement is such that it would not be in the public interest to solicit competitive Bids, as in the case of security or confidential matters.
2. An attempt to purchase the required Goods/Services has been made in good faith, using a competitive Bid method and has failed to identify a successful Bidder/Proponent;
 3. The required Goods/Services are to be supplied as a result of an emergency, which would not reasonably permit the use of other procurement procedure methods;

4. Where, at the discretion of the Director, in consultation with the CAO, it is deemed to be in the best interests of the Township to negotiate with Bidders/Proponents.

5.3 Where a Non-competitive Procurement Process is undertaken, full disclosure shall be given on all information relating to the purchase, subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

6. UNSOLICITED BIDS

Unsolicited Bids received by the Township shall be reviewed by the Director. Any procurement activity resulting from the receipt of an unsolicited Bid shall comply with the provisions of the Non-Competitive Process requirements of this By-law.

7. PROHIBITIONS

7.1 Except where a Bid is requested on a unit price basis, and subject to the provisions of the MFIPPA, no employee, or any appointed or elected official of the Township shall divulge the unit prices paid for by the Township for Goods/Services. However, the total price of a Contract, as well as the name of the successful Bidder/Proponent may be revealed to any interested party.

7.2 No contract shall be awarded to any person or corporation who or which has a claim or has instituted a legal proceeding against the Township or against whom the Township has a claim or has instituted a legal proceeding with respect to any previous Contract.

7.3 No personal purchase of Goods/Services shall be made by the Township on behalf of a member of Council, a member of a local board, or an employee of the Township, unless authorized by Council.

7.4 No employee or member of Council shall purchase or offer to purchase any Goods/Services on behalf of the Township except as may be provided for in this By-law.

7.5 No requirements for Goods/Services, including consulting or professional services, shall be divided to avoid the requirements of this By-law and the total project, annual requirement, or total Contract value shall be considered.

8. EXCEPTIONS/EXEMPTIONS FROM COMPETITIVE PROCESS (under \$25,000.00)

Unless otherwise noted, Goods/Services (under \$25,000.00) as set out below may be procured without a competitive process, subject to the funds being available in the Operating Budget or the Capital Budget for that purpose:

8.1 Utilities (excluding purchases arranged through 3rd party agreements):

- a. Electricity
- b. Hydro
- c. Water and Sewer
- d. Natural Gas
- e. Telephones & Long Distance Service (excludes cellular phones & services)

8.2 Training and Education:

- a. Membership Fees - Professional Association
- b. Magazines
- c. Periodical Subscriptions
- d. Books
- e. Conferences and Seminars
- f. Staff Development, Workshops & Reports

8.3 Refundable Employee Expenses

8.4 Employer General Expenses:

- a. Payroll Deduction Remittances
- b. OMERS
- c. Medicals
- d. Insurance Premiums and Group Benefits
- e. Honorariums

8.5 Advertising:

- a. Newspapers
- b. Radio
- c. Television
- d. Periodicals
- e. Trade Journals
- f. Magazines
- g. Internet (Specialty Association Websites such as AMCTO and MFOA)

8.6 Software

- a. Annual maintenance fees for software already approved under the requirements of this By-law, where the approved vendor is the sole source provider of the maintenance service

- b. Software upgrades for software already approved under the requirements of this By-law (including support and training), where the vendor is the sole source provider of the upgrade service
- c. Additional software licenses for software already approved under the requirements of this By-law, where the vendor is the sole source of the licensing service

8.7 General Expenses

- a. Postage
- b. Petty Cash Items & Replenishment
- c. Newspaper Subscriptions
- d. Vehicle Licenses
- e. Insurance
- f. Equipment Leases (ie photocopier)
- g. Charges to/from other government agencies or local boards

8.8 Certain Professional and Special Services:

- a. Recurring Accounting and Auditing Services
- b. Emergency Measures Consulting Services
- c. Engineering Services
- d. Legal Services
- e. Planning and Consultation Services
- f. Hourly paid Contractors
- g. Banking services where covered by agreements
- h. Realty Services regarding the Lease, Acquisition, Demolition, Sale of Land and Appraisal of Land
- i. Policing services
- j. Fire Dispatch Services
- k. Railway Crossing Maintenance
- l. Surveys
- m. Insurance

9. CO-OPERATIVE PURCHASING

9.1 The Township may participate with other government agencies or public authorities in Co-Operative Purchasing where it is in the best interest of the Township to do so.

9.2 The decision to participate in specific Co-Operative Purchasing agreements will be made by the Director of Finance.

9.3 The policies of the government agencies or public authorities calling the co-operative tender are to be the accepted policy for that particular tender.

10. EMERGENCY PURCHASES (greater than \$1,000.00)

10.1 An "Emergency" includes:

1. an imminent or actual danger to the life, health or safety of an official or an employee while acting on the Township's behalf;
2. an imminent or actual danger of injury to or destruction of real or personal property belonging to the Township;
3. an unexpected interruption of an essential public service;
4. an emergency as defined by the Emergency Plans Act, R.S.O. 1990, Chapter E.9 and the emergency plan formulated thereunder by the County;
5. a spill of a pollutant as contemplated by Part X of the Environmental Protection Act, R.S.O. 1990, Chapter E. 19; and
6. mandate of a non-compliance order.

10.2 Where in the opinion of the Chief Administrative Officer (CAO), or two Directors, an emergency has occurred,

1. A Director may initiate a purchase in excess of the preauthorized expenditure limit; and
2. Any purchase executed under this Section shall be justified and reported to Council at its' next regular meeting.

11. REVIEW OF BIDS & BID IRREGULARITIES

11.1 Bids received are reviewed by the Staff for compliance with the Bidding process and procedural rules as set out in the Bid Document. Bids are further evaluated to determine the following, all in accordance with the Bid Document:

1. technical requirements have been met;
2. minimum specifications have been met;
3. minimum required qualification have been met;
4. minimum experience has been met; and
5. accuracy of the Bid.

11.2 Bid irregularities found in a Bid are categorized as a Major Irregularity or a Minor Irregularity with respect to Bid compliance. A Major Irregularity found in the Bid will result in automatic rejection of the Bid. Where a Minor Irregularity is found in the Bid, the Township reserves the right to waive, correct or have the Bidder/Proponent clarify the irregularity in order to best serve the interests of the Township.

11.3 Notwithstanding the provisions of Appendix A (attached) and notwithstanding that Appendix A may be part of the Bid Document, where the Bid Document provides the Township with the right to waive any irregularities and/or omissions in a Bid, this shall give the Township the

discretion to waive the Bid Irregularities, and in the absence of such waiver, Appendix A shall govern the Township's response.

11.4 In exercising judgment, the CAO or a Director shall consider the advice of the Township's Solicitor.

12. BIDDER/PROPONENT PERFORMANCE

12.1 The Director shall be responsible for monitoring the Contract performance of Bidders/Proponents and for documenting evidence of such performance.

12.2 The Township may, in its sole discretion, reject a Bid from a Bidder/Proponent if:

1. the Bidder/Proponent has not performed works for previous Contracts in compliance with the Contract Documents;
2. the Bidder/Proponent has previously provided Goods/Services in an unsatisfactory manner;
3. the Bidder/Proponent failed to satisfy an outstanding debt or obligation to the Township;
4. there have been past bad dealings between the Township and the Bidder/Proponent;
5. the Township determines that the Bidder/Proponent does not have sufficient experience in the supply of the Goods/Services;
or
6. the Township has concerns with the financial ability of the Bidder/Proponent to perform the Contract.

12.3 Rejection of a Bid, for any of the above noted situations, must be substantiated by written documentation related to Bidder/Proponent performance of a Contract where applicable.

12.4 Rejection of a Bid for performance shall be approved by the appropriate Director and the CAO.

13. REPORTING

13.1 Not later than 20 days after the award of each contract, the Township shall publish a notice on the Township website for a minimum of 30 days. The notice shall include at least the following information:

1. a description of the goods or services procured;
2. the name and address of the Township;
3. the name and address of the successful bidder;

4. the value of the successful tender(s);
5. the date of the award; and
6. the type of procurement method used.

13.2 Procurement processes and their respective award values shall be documented and reported annually in the Township's Financial Information Return and in other locations as may be stipulated by regulation.

14. REVIEW PROCESS

14.1 This By-law will be reviewed every five (5) years or more often, at the discretion of the CAO.

15. REPEAL AND REPLACE

15.1 This by-law repeals and replaces By-Law 15-31 in its entirety upon passage.

READ a FIRST and SECOND time this 7th day of June 2018.

READ a THIRD time and **FINALLY PASSED** this 7th day of June 2018.



Mayor, D. Mennill



Clerk, M. Casavecchia-Somers