

THE CORPORATION OF THE TOWNSHIP OF MCKELLAR

BY-LAW NO. 2019-44

Being a by-law to define the procurement of goods and services policies and procedures for the Corporation of the Township of McKellar

WHEREAS Section 5.(3) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, states that a municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS Section 224, (b) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, requires the role of Council to include the development and evaluation of the policies and programs of the Municipality;

AND WHEREAS Section 224, (d) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, specifies that it is the role of council to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;

AND WHEREAS Section 224, (d.1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, requires council to ensure the accountability and transparency of the operations of the Municipality, including the activities of the Senior Management of the Municipality;

AND WHEREAS Section 270.(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, requires Municipalities to adopt and maintain policies with respect to the procurement of goods and services;

NOW THEREFORE the Council of the Corporation of the Township of McKellar hereby enacts as follows:

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

- 1.01** The purposes, goals and objectives of this by-law and of each of the methods of procurement authorized herein are to:
- (a) encourage competition among suppliers;
 - (b) maximize savings for taxpayers;
 - (c) ensure service and product delivery efficiency and effectiveness and quality;
 - (d) make service and product providers accountable to the municipality and the public;
 - (e) provide the highest level of government service at the least possible cost;
 - (f) ensure fairness among bidders;
 - (g) ensure objectivity in the procurement process;
 - (h) ensure openness, accountability and transparency, to the extent possible, while protecting the financial best interests of the municipality;
 - (i) obtain the best value for the municipality when procuring goods and services;
 - (j) encourage the purchase of goods, services, or construction which are environmentally preferred;
 - (k) incorporate the requirements of the *Ontarians with Disabilities Act, 2001, S.O. 2001, c. 32* with the purchase of goods, services, or construction; and,
 - (l) avoid conflicts among the interests of the Corporation and those of the Corporation's employees and councillors.

2. DEFINITIONS

- 2.01 In this by-law,
- (a) "**Award**" means the authorization to proceed with the purchase of goods, services or construction from a chosen Supplier;
 - (b) "**Bid**" means an offer or submission from a Supplier in response to a Request for Quotation, Request for Qualifications, Request for Tender, Request for Proposal, or a Request for Standing Agreement, which is subject to acceptance or rejection by the Corporation;
 - (c) "**Bidder**" means a person, firm or corporation that submits a bid in response to a call for bids;
 - (d) "**Bid Bond**" means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee that the Successful Bidder enters into a Contract with the Corporation, as required by section 10 of this by-law;
 - (e) "**Bid Evaluation Committee**" means the committee established under section 17 of this by-law;
 - (f) "**Bid Solicitation**" means a formal request for Bids that may be in the form of a Request for Quotation, Request for Qualifications, Request for Tender, Request for Proposal, or a Request for Standing Agreement;
 - (g) "**Clerk-Administrator**" means the person appointed by Council as the Clerk-Administrator of the Corporation and includes a designated person;
 - (h) "**Conflict of Interest**" means a situation where a personal or business interest of a councillor, officer or employee of the Corporation is in conflict with the best interests of the Corporation, and includes:
 - i. the giving or receiving of a direct or indirect personal gain or benefit, or a direct or indirect advantage or privilege, by any business or individual that provides advice, goods, services or construction to the Corporation or a family member of such business that provides goods, services or construction;
 - ii. employment by the Corporation; and
 - iii. a direct or indirect interest in any business that provides goods, services or construction to the Corporation;
 - (i) "**Construction**" means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work 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 of a building, structure or other civil engineering design or architectural work, but does not include professional services related to the construction contract unless they are included in the specifications for the procurement;
 - (j) "**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, planners, environmental planners and engineers, hydrogeologists,

transportation planners and engineers, communications consultants and any other consulting services which may be required by the Corporation;

- (k) **"Contract"** means a binding agreement between two or more parties that creates an obligation to do or provide a particular thing or service and awarded under this by-law;
- (l) **"Contractor"** means the Bidder to whom a contract is awarded;
- (m) **"Corporation"** means The Corporation of the Township of McKellar;
- (n) **"Council"** means the Council of the Corporation of the Township of McKellar;
- (o) **"Department"** means any department of the Corporation including Fire and Public Works, the operation of which a Department Head is responsible for;
- (p) **"Department Head"** means the person appointed by the Council to be responsible for the operation of a Department and shall include the Public Works Superintendent, Clerk, Treasurer and the Fire Chief, or their designates;
- (q) **"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;
- (r) **"Employee-Employer Relationship"** means a relationship that exists where persons for pay or other consideration enter into the service of others and devote their personal labour for any given period and the other person has the power or right to control or direct the person in the material details of how the work is to be performed;
- (s) **"Expanded Works"** means an approved construction project in which an unexpected problem arises during construction, which does not expand the scope of the project but is necessary to deliver the original approved work;
- (t) **"Expression of Interest"** means a written detailed proposal submitted in response to a Request for Expression of Interest;
- (u) **"Fair Market Value"** means the price that would be paid, in an open and unrestricted market, by a knowledgeable and willing purchaser to a knowledgeable and willing vendor, both of whom are dealing at arm's length, are fully informed and are not under any compulsion to transact with one another;
- (v) **"Financing Lease"** means a lease which allows for the provision of goods, services or construction if the lease may or will require payment by the Corporation of financing, interest, bonuses, premiums or other charges or costs for the goods, services or construction over time and upon terms, whether or not the term of the lease extends beyond the term of the Council in which it was Awarded;
- (w) **"Formal Advertising"** means the advertisement for requests for costs will be published once in a local newspaper, posted at the municipal office and on the Township website.

- (x) **"Goods"** means moveable property including,
- (a) the costs of installing, operating, maintaining or manufacturing such moveable property, and
 - (b) raw materials, products, supplies, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a Construction Contract;
- (y) **"Holdback"** means an amount withheld under the terms of a Contract to be used as security for the completion or performance of the Contract, and to avoid overpayment in relation to the progress of work;
- (z) **"Low Value Purchase"** means a purchase of goods, services or construction which is random in nature, is not included as part of a Standing Agreement, is not available out of the Corporation's inventory and does not exceed a value of \$1,000.00;
- (aa) **"Lowest Compliant Bid"** means the Bid that would provide the Corporation with the desired goods, services or construction at the lowest cost, meets all the specifications and contains no major irregularities or qualifications;
- (bb) **"Mayor"** means the elected Head of Council of the Township of McKellar;
- (cc) **"Municipality"** means the geographic limits of the Township of McKellar;
- (dd) **"Payment Security"** means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee the payment of labour and materials to be supplied in connection with a Contract, as required by section 10 of this by-law;
- (ee) **"Performance Security"** means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee the faithful performance of the Contract by a supplier, as required by section 10 of this by-law;
- (ff) **"Pre-qualification Submission"** means a detailed written proposal submitted in response to a Request for Pre-qualification but which does not create any contractual obligation between the party submitting the Pre-qualification Submission and the Corporation, but which may be a pre-condition to further procurement Contracts with the Corporation;
- (gg) **"Procurement"** means a goods, services or construction contract involving a purchasing, leasing, renting or exchange transaction, arrived at by a competitive or non-competitive process. Procurement also includes material(s) management, contract management, advisory services and implementation and adherence to best practices.
- (hh) **"Progress Payment"** means a payment made under the terms of a Contract after the performance of the part of the Contract in respect of which payment is made but before the performance of the whole contract;
- (ii) **"Proposal"** means an offer submitted in response to a Request for Proposal, acceptance of which may be subject to further negotiation;
- (ij) **"Purchase"** means to acquire goods, services or construction by purchase, rental, lease or trade;

- (kk) **"Purchase Order"** means a written Order to a Supplier formally stating all terms and conditions for the purchase of goods, services or construction or a written acceptance of an offer received in accordance with this by-law;
- (ll) **"Quotation"** means a binding offer submitted in response to a Request for Quotation;
- (mm) **"Request for Expressions of Interest"** means a request made by the Corporation to the market place for the purposes of compiling a list of persons or corporations who may be interested in providing goods, services or construction to the Corporation from time to time. Acceptance of an Expression of Interest by the Corporation does not create any contractual obligation between the party submitting the Expression of Interest and the Corporation, but may be a precondition to Pre-qualification or further procurement Contracts with the Corporation;
- (nn) **"Request for Pre-qualification"** means a request for the detailed submission of the experience, financial strength, education, background and personnel of persons, firms or corporations, who may, from time to time, qualify to supply goods, services and construction to the Corporation;
- (oo) **"Request for Standing Agreement"** means a request for the submission of a Tender or Proposal to enter into a Standing Agreement with the Corporation;
- (pp) **"Request for Proposal"** means a request for Proposals made pursuant to subsections 8.07 and 8.08 of this by-law, which may or may not result in further negotiation, or the creation of Contractual obligations between the parties, depending on the terms of the Request for Proposal;
- (qq) **"Request for Quotation"** means a request for Quotations for the provisions of goods, services or construction to the Corporation made pursuant to subsections 8.04 and 8.05 of this by-law;
- (rr) **"Request for Tender"** means a request for Tenders for the provisions of goods, services or construction to the Corporation made pursuant to subsections 8.06 and 8.07 of this by-law;
- (ss) **"Responsive"** means that a Bid has complied in all material respects with the requirements set out in the call for bids documentation;
- (tt) **"Services"** means the services to be provided under a Contract and includes consulting and professional services;
- (uu) **"Sole Source Purchase"** means the purchase of a good, service or construction where there is only one available Supplier of that good, service or construction that meets the needs or requirements of the Corporation;
- (vv) **"Standing Agreement"** means an agreement between the Township 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 Township, at a predetermined price, for a predetermined period of time, upon predetermined terms and conditions;
- (ww) **"Substantive Objection"** means a written objection provided to the Treasurer or the Department Head by an interested party giving specific reasons for the objection;

(xx) **"Successful Bid"** means the Bid that would provide the Corporation with the best product or service as measured by the evaluation criteria and which is compliant;

(yy) **"Supplier"** means any individual or legal entity that is available to provide goods, services or construction to the Township;

(zz) **"Tender"** means a written detailed Offer from a vendor or service provider, to supply goods, services or construction to the Corporation;

(aaa) **"Time-Sensitive Works"** means work for which the timing to initiate and/or complete is paramount but the time available to follow normal procedures is insufficient;

(bbb) **"Total Cost"** means the Contract cost for the full term of the Contract, including all applicable taxes, but exclusive of any rebates;

(ccc) **"Township"** means the Corporation of the Township of McKellar;

(ddd) **"Treasurer"** means the individual appointed by Council as the Treasurer/Tax Collector/Deputy Clerk of the Corporation and includes a designated person;

2.02 To establish the definition of any other purchasing term not herein included, reference shall be made to the latest edition of the *National Institute of Governmental Purchasing Inc.'s Dictionary of Purchasing Terms*.

[http://www.nigp.org/eweb/DynamicPage.aspx?Site=NIGP&webcode=pd-ep_onlinedict]

2.03 Schedules "A" and "B" attached hereto form part of this By-law.

3. GENERAL PROCUREMENT POLICIES AND PROCEDURES

3.01 APPLICATION

3.011 The policies and procedures prescribed in this by-law, including all of the purposes, goals and objectives of section 1 hereof, shall be followed for the procurement of all goods and services and for the awarding of any construction Contract by the Corporation or any of its officers, servants and employees.

3.012 This by-law shall not apply to the acquisition or disposal of any real property or fixtures or to any lease, right or permission relating to the use or occupation of real property.

3.013 This by-law shall not apply to those procurement processes enumerated in Schedule "A", provided that the total cost of the purchase does not exceed the amount approved in the annual budget.

4. RESPONSIBILITIES AND AUTHORITIES

4.01 Each Department Head, in consultation with the Clerk-Administrator and/or the Treasurer, 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 Township for goods, services or construction, except as provided in this by-law;

- (b) No contract shall be entered into and no expenditure shall be authorized or incurred unless Council has provided funds for such purposes 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;
- (c) In all cases, Department Heads shall provide proof to the Treasurer of the receipt of goods, services or construction before payment is made to a Supplier and all proposed expenditures shall (i) be supported by original invoices, vouchers, or requisition forms with satisfactory detail to support a purchase, and (ii) all invoices shall be initialed and assigned a proper account number by the appropriate Department Head and shall be submitted to the Treasurer for review and payment;
- (d) All payments for goods, services or construction shall be made by cheque issued by the Treasurer;
- (e) The Treasurer may pay for the purchase of goods, services or construction prior to Council's approval for the purpose of meeting a due date, avoiding a penalty or interest charge, or to receive a discount for early payment;
- (f) For the purposes of budgetary controls, the Treasurer shall provide Department Heads with a financial statement at the end of each month;
- (g) All of the purposes, goals and objectives of section I of this by-law shall be complied with; and,
- (h) No procurement activity or decision shall be contrary to any specific direction of the Clerk-Administrator, the Treasurer, or Council.

4.02 In addition, Department Heads shall be responsible for:

- (a) preparing of all departmental Quotations, Tenders, Proposals and Bids, in consultation with the Clerk-Administrator;
- (b) checking all departmental Quotations, Tenders, Proposals and Bids, in consultation with the Clerk-Administrator;
- (c) in consultation with the Treasurer, reviewing the development of co-operative purchasing plans with other levels of government, other governments and local boards, agencies or commissions, where same is found to be in the financial best interest of the Corporation;
- (d) identifying goods and salvage which may be declared surplus;
- (e) in consultation with the Treasurer, monitoring all Contract expenditures and ensuring that all budgeted financial limitations have been complied with and that all accounts are paid within the times set out in the Contract; and
- (f) ensuring that all goods, services and construction contracted for, have in fact been received.

4.03 The Treasurer shall be responsible for:

- (a) providing procurement advice and services, including all forms, Contracts, Bonds and all other Bid Solicitation documentation required by each department, the Clerk-Administrator and Council for the purposes of fulfilling the procurement needs of the Corporation;

- (b) attending the opening, when acting as a member of the Bid Evaluation Committee, and assisting the Department Head(s) in the checking of all Quotations, Tenders, Proposals and Bids;
- (c) ensuring compliance with this by-law and advising the Clerk-Administrator or Council when there has been non-compliance;
- (d) developing co-operative purchasing plans with other levels of government, other governments and local boards, agencies or commissions, where same is found to be in the financial best interest of the Corporation;
- (e) ensuring the standardization of all procurement procedures, where possible;
- (f) complying with all of the purposes, goals and objectives of section 1 of this bylaw;
- (g) monitoring all Contract expenditures and ensuring that all budgeted financial limitations have been complied with and that all accounts are paid within the times set out in the Contract;
- (h) ensuring, in consultation with the Department Head, that all goods, services and construction contracted for, have in fact been received; and
- (i) preparing reports to Council where such reports are required to be submitted to Council under this by-law.

4.04 The Clerk-Administrator has the authority to instruct Department Heads to submit recommendations to Council for approval and may provide additional restrictions concerning procurement where such action is considered necessary and in the best interest of the Corporation.

4.05 The exercise of all authority to award a Contract is subject to the identification and availability of sufficient funds in appropriate accounts within Council approved estimates or upon a determination being made by the Clerk-Administrator, in consultation with the Treasurer, that the required funding can reasonably be expected to be made available in the current, or future years.

4.06 Where any person is authorized to take any action pursuant to this by-law, such action may be taken by that person's authorized designate;

4.07 Where any authority has been delegated to any officer or employee of the Township pursuant to this by-law, such delegation shall be deemed to also authorize the Clerk-Administrator to exercise such power if necessary.

5. RESTRICTIONS AND EXCEPTIONS

5.01 No Contract for goods, services or construction may be divided into two or more parts to avoid the application of the provisions of this by-law.

5.02 No Contract for services shall be Awarded where the services could result in the establishment of an Employee -Employer Relationship unless it can be demonstrated, to the satisfaction of the Clerk-Administrator, that significant cost savings can be realized.

5.03 No personal purchases shall be made by the Corporation for members of Council or any appointed member of a local board or commission or for Corporation employees or their families.

- 5.04 No employee or Council member shall purchase, on behalf of the Corporation, any goods, services or construction, except in accordance with this By-law.
- 5.05 No Council member, officer or employee of the Corporation or any immediate family members thereof shall personally obtain any goods that have been declared surplus unless through a public process.
- 5.06 No Township employee or member of Council may bid on any Call for Bids or sell or provide goods, services or construction to the Township outside of their employment with the Township.
- 5.07 No councillor, officer or employee, or member of an employee's family, of the Corporation shall accept, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is, or might be awarded, any rebate or gift or money, in accordance with the municipality's *Code of Conduct*, except:
- i. gifts of a very small intrinsic value;
 - ii. gifts given for the use and benefit of the Corporation;
 - iii. moderate hospitality during the normal course of business that would not significantly exceed what the Corporation would likely provide in return and would not be perceived by others as influencing the making of a business decision.
- 5.08 All councillors, officers and employees of the Corporation shall declare any Conflict of Interest to the Clerk-Administrator and such persons shall refrain from participating in the procurement process to which the Conflict of Interest relates.
- 5.09 All procurement undertaken by the Corporation shall be undertaken in accordance with the Corporation's Code of Conduct, [<http://township.mckellar.on.ca/docs/Code%20of%20Conduct.pdf>] the Corporation's procedural by-law, [<http://township.mckellar.on.ca/docs/Procedural%20by-law%2009.pdf>] and in accordance with the *Municipal Conflict of Interest Act, R.S.O. 1990, c.M.50*, as amended.
- 5.10 Any form of communication, including verbal, e-mail, written, lobbying or any other attempt at influencing the results of the procurement processes by a Bidder with an employee and/or Council member(s) of the Township will result in disqualification of that Bidder.
- 5.11 Where an applicable national or international trade agreement is in conflict with this bylaw, the trade agreement shall take precedence.
- 5.12 Where the Township is pursuing a claim against a Supplier in contract or tort, or where a Supplier is pursuing a claim against the Township, the Supplier shall not be eligible to respond to any Call for Bids for goods, services or construction, unless the Clerk-Administrator convinces Council that it is in the best interests of the Township to do so.
- 5.13 The Corporation may enter into a Financing Lease only if:
- i. a by-law authorizing the Financing Lease is passed;
 - ii. before the by-law authorizing the Financing Lease is enacted, the Corporation has adopted a statement of the Corporation's lease financing policies and goals; and
 - iii. the Financing Lease includes a schedule of all fixed amounts of payment, if any, required under the lease and that may be required under any possible extensions or renewals of the lease.

- 5.14** The statement required by subsection 5(13)(ii), shall include, at a minimum, a discussion of the financial and other risks for the municipality of Financing Leases.
- 5.15** Before entering into a Financing Lease, the Treasurer, in consultation with the Clerk-Administrator, shall:
- (a) prepare a report to Council with a recommendation, assessing, in the opinion of the Treasurer, the costs and financial and other risks associated with the proposed Financing Lease, including:
- i. a comparison between the fixed and estimated costs and the risks associated with the proposed Financing Lease, and those associated with other methods of financing;
 - ii. a statement summarizing the effective rate or rates of financing for the Financing Lease, the ability for lease payment amounts to vary, and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the Financing Lease;
 - iii. a statement summarizing any contingent payment obligations under the Financing Lease that in the opinion of the Treasurer would result in a material impact for the Corporation, including lease termination provisions, equipment loss, equipment replacement options, and guaranties and indemnities;
 - iv. a summary of the assumptions applicable to any possible variations in the Financing Lease payment and contingent payment obligations; and
 - v. any other matters the Treasurer or Council considers advisable;
- (b) obtain legal advice and financial advice with respect to the proposed Financing Lease and if the scope of the proposed transaction warrants it, ensure that the legal and financial advice is from a source independent from the advice ordinarily obtained by the Corporation for legal or financial matters;
- (c) provide an opinion about whether the costs of the financing for the proposed Financing Lease are lower than other methods of financing available to the Corporation, and whether the risks associated with the Financing Lease are reasonable.
- 5.16** The costs and risks associated with a proposed Financing Lease in a report made under subsection 5.15(a) shall be assessed as of the date the report is made.
- 5.17** If at any time after a report under subsection 5.15(a) is made, but before the financing Lease is executed, the Treasurer becomes of the opinion that a changed circumstance with respect to the proposed Financing Lease may result in a material impact for the Corporation, the Treasurer shall, as soon as is reasonably possible update the report and present it to Council.
- 5.18** A report made under subsection 5.15(a) shall summarize the information required by that subsection for the entire term of the Financing Lease, including any possible extensions or renewals.
- 5.19** Where applicable each of the procurement procedures set out in section 8 below shall be undertaken in compliance with the following steps:
- (a) the scope of the goods, services and construction shall be clearly and extensively defined by the Bid Solicitation documentation;

- (b) the form of Bid Solicitation documentation shall be, to the extent possible, standardized using common forms and processes;
- (c) the Bid Solicitation 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 Bid Solicitation;
- (d) all Bids shall be fairly and completely evaluated using as open, fair and transparent a process as may be possible in the circumstances of the particular Bid Solicitation.
- (e) all Successful Bidders shall, where required by this by-law, be required to comply with the Contract negotiation, preparation and execution requirements of section 10 of this by-law;
- (f) all Contracts shall be monitored to ensure that performance is in accordance with the requirements of the Contract and steps shall be taken to correct the performance of Suppliers where it falls below the standard required by the Contract;
- (g) all Bids received by the Corporation shall be kept together in a secure place until the time for opening. All Bids shall remain sealed until the opening, which shall occur in public. Bid Solicitations requiring the submission of proprietary information or information containing intellectual property protected by law shall contain provisions providing for protecting the confidentiality of same, in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O.1990, c. M.56*, as amended.
- (h) all Bid Solicitation documentation shall clearly set out the requirements for the price element of the submission, specifying whether the Bid price is submitted on a unit price or total price basis and whether it is net of any taxes, early payment discounts, premiums, financing charges, administrative costs, cost of living or other escalations, contingencies or other deductions or additions and how any Contract extras shall be dealt with;
- (i) Bid Solicitation documentation may specify how each of the following criteria, as a minimum, shall be utilized in evaluating all Bids:
 - (a) price
 - (b) quality of goods, services, or construction
 - (c) experience and qualifications of Bidder(s)
 - (d) risk
 - (e) strategy
 - (f) approach
 - (g) methodology
 - (h) scheduling of work
 - (i) past performance
 - (j) facilities and equipment to be utilized in Contract performance;
 - (k) personnel to be used in Contract performance.
- (j) No Contract resulting from a Bid Solicitation shall be entered into and no expenditure shall be authorized or incurred unless Council has provided funds for such purposes 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;

6. TOTAL PROJECT COST

6.01 Where this by-law prescribes financial limits on Contracts that may be Awarded on the authority of a Department Head, or provides for financial limits on Contracts required to be reported to Council, for the purpose of determining whether a Contract falls within these prescribed limits, the Contract amount shall be the sum of all costs to be paid to the Supplier under the Contract plus all taxes and less any rebates.

7. PRESCRIBED COUNCIL APPROVAL

7.01 Despite any other provision of this by-law, the following Contracts are subject to Council approval:

- (a) any Contract requiring approval from the Ontario Municipal Board;
- (b) any Contract prescribed by statute to be made by Council;
- (c) where the cost amount proposed for acceptance is higher than the Council approved estimates and the necessary adjustments cannot be made;
- (d) where a Substantive Objection emanating from the Bid Solicitation has been filed with the Department Head or with the Treasurer;
- (e) where authority to approve has not been expressly delegated; and
- (f) any Contract having a value in excess of fifteen thousand dollars (\$15,000.00).

7.02 Council may award the Contract in accordance with the recommendations made to it by the bid evaluation committee or person responsible for the purchase of goods, services or construction, provided that Council shall have the authority to reject such recommendations where the procedures prescribed in this by-law or the specific call for bids have not been complied with, or for any other grounds for which the authority is set out in this by-law.

8. PROCUREMENT PROCEDURES

The following are hereby authorized as the acceptable procedures for all procurement undertaken by or on behalf of the Corporation. They may be utilized individually or in combination with one another, as may be appropriate in the circumstances:

8.01 REQUEST FOR EXPRESSIONS OF INTEREST

A Department Head, in consultation with the Treasurer and/or the Clerk-Administrator; the Treasurer; or the Clerk-Administrator may conduct a Request for Expression of Interest for the purposes of determining the availability of Suppliers of any good, service or construction and for the purposes of keeping a list of available Suppliers (which shall be deemed to be the "goal" of the Request for Expression of Interest form of procurement). The submission of an Expression of Interest does not create any contractual obligation between the Corporation and the interested Supplier. The submission of an Expression of Interest may be made a specific pre-condition of any other procurement procedure utilized by the Corporation.

8.02 REQUEST FOR PRE-QUALIFICATION

- (a) A Department Head, in consultation with the Treasurer and/or the Clerk-Administrator; the Treasurer; or the Clerk-Administrator may conduct a Request for Pre-qualification for any good, services or construction to select the number of acceptable Bidders that may Bid on the subsequent competitive sealed Bid process under the following circumstances:
- i. the work is considered "high risk" with respect to Regulations governed under the *Occupational Health and Safety Act, R.S.O. 1990, c. O.I.*;
 - ii. the work is such that Contract administration costs (work inspection, follow-up, extra fee negotiations) could result in a substantial cost to the Corporation if the work is not satisfactorily performed the first time;
 - iii. the goods or equipment to be purchased must meet national safety standards or must demonstrate an acceptable level of performance; or
 - iv. the work involves complex, multi-disciplinary activities; which for the purposes of this section, shall also be deemed to be the "goal" of the Request for Pre-qualification form of procurement.
- (b) When the Request for Pre-qualification is utilized, a Pre-qualification Proposal document shall be provided to the potential Bidders setting out the criteria for pre-qualification which may include:
- i. experience on similar work (firm and staff assigned);
 - ii. references provided from other customers for similar work;
 - iii. verification of applicable licences and certificates;
 - iv. health and safety policies and staff training;
 - v. financial capability.
- (c) The selection of Bidders following a Pre-qualification process does no create any contractual obligation between the Corporation and the pre-qualified Bidder. Pre-qualification may be made a specific pre-condition of any other procurement procedure utilized by the Corporation.

8.03 LOW VALUE PURCHASES

- 8.03.1** A Low Value Purchase may be utilized for purchases involving Contracts which do not exceed one thousand dollars (\$1,000.00) (which shall be deemed to be the "goal" of the Low Value Purchase form of procurement).
- 8.03.2** Normal or maintenance purchases that are proposed prior to the adoption of the annual budget shall be authorized by the Clerk-Administrator, Treasurer or Department Head having a value not exceeding ten thousand dollars (\$10,000.00). Purchases exceeding ten thousand dollars (\$10,000.00) shall be authorized by Council.
- 8.03.3** Purchases that are proposed after the adoption of the annual budget shall be authorized by the Clerk-Administrator,

Treasurer or Department Head having a value not exceeding fifteen thousand dollars (\$15,000.00).

8.03.4 In circumstances where a purchase is paid from the petty cash fund, an original receipt or voucher indicating the nature of the expenditure, the Supplier, the amount paid (including taxes), and the account to be charged, shall be provided to the Treasurer for reimbursement from the petty cash fund.

8.03.5 The Treasurer shall determine the amount to be carried in all petty cash funds.

8.04 REQUEST FOR QUOTATION -INFORMAL (PURCHASES BETWEEN \$5,001.00 AND \$15,000.00)

8.04.1 For the procurement of goods, services or construction having a Contract Value of five thousand and one dollars (\$5,001.00) or more but not exceeding fifteen thousand dollars (\$15,000.00), an Informal Request for Quotation shall be utilized (which shall be deemed to be the "goal" of the Informal Request for Quotation form of procurement).

8.04.2 Two Quotations, either by telephone or in writing, shall be solicited, provided that the proposed purchase comes within the approved budget appropriations. These purchases do not require formal advertising or the receipt of sealed Bids. The Quotations shall be reviewed, and the results tabulated to determine the Award of the Contract for same.

8.04.3 Notwithstanding the requirement to solicit a minimum of two quotations, a Department Head, in consultation with the Clerk-Administrator, shall not be precluded from awarding the contract to a qualified Bidder in the event that two quotations are not received provided that the "goals" of the by-law are maintained.

8.05 REQUEST FOR QUOTATION -FORMAL (PURCHASES BETWEEN \$15,001.00 AND \$25,000.00)

8.05.1 For the procurement of goods, services or construction having a Contract Value of fifteen thousand and one dollars (\$15,001.00) or more but not exceeding twenty five thousand dollars (\$25,000.00), a formal Request for Quotation shall be utilized (which shall be deemed to be the "goal" of the Formal Request for Quotation form of procurement).

8.05.2 At least three Quotations shall be solicited, in writing, provided that the proposed purchase comes within the approved budget appropriations. These purchases do not require formal advertising or the receipt of sealed Bids. The Quotations shall be reviewed and the results tabulated, to determine the Award of the Contract for same.

8.05.3 Notwithstanding the requirement to solicit a minimum of three quotations, a Department Head, in consultation with the Clerk-Administrator, shall not be precluded from awarding the contract to a qualified Bidder in the event that three quotations are not received provided that the "goals" of the by-law are maintained.

8.05.4 In appropriate circumstances, the Request for Proposal or the Request for Tender processes may be utilized for Contracts in this value range, if the criteria for each procurement method are otherwise met.

8.05.5 In any circumstance where the lowest quotation exceeds twenty five thousand dollars (\$25,000.00), provided that the proposed purchase comes within the approved budget appropriation, Council shall be responsible to approve or reject the proposed purchase.

8.06 REQUEST FOR TENDER (PURCHASES EXCEEDING \$25,001)

- (a) For the procurement of goods, services or construction having a Contract Value of twenty five thousand and one dollars (\$25,001.00) or more, provided the proposed purchase comes within the approved budget appropriations, a Request for Tender shall be used where all of the following criteria apply:
- i. two or more sources are considered capable of supplying the good, service or construction;
 - ii. the good, service or construction is adequately defined to permit the evaluation of Tenders against clearly stated criteria; and
 - iii. the market conditions are such that Tenders can be submitted on a common and competitive pricing basis; which for the purposes of this section, shall also be deemed to be the "goals" of the Request for Tender form of procurement.
- (b) The Department Head, in consultation with the Clerk-Administrator and/or the Treasurer, shall prepare a purchase requisition containing the relevant specifications, terms and conditions for the acquisition.
- (c) The form of the request for tender shall, to the extent possible, use standardized documentation, provided that if such documentation is provided by professional advisors, the advisors shall confirm the adequacy and appropriateness of their standardized documentation.
- (d) Tenders submitted on other than the Tender Form supplied by the Corporation shall not be accepted. The Tender Form shall provide the Bidder significant space to complete a minimum of the following information:
- i. Name, address and phone number of Bidder.
 - ii. Specifications of goods or work to be performed.
 - iii. Date of completion/delivery.
 - iv. Price and terms of payment.
 - v. Disposition of taxes.
 - vi. Warranty terms and conditions.
 - vii. Signature of the Bidder.
 - viii. Acknowledgement of receipt of addenda.
- (e) Notice of the Tender shall be given by formal advertising. Notice shall also be given to all Bidders who were required to be Pre-qualified and to all Bidders who were required to submit an Expression of Interest.
- (f) Each advertisement for Tender shall typically contain the following information:
- i. Location where Tender documents may be obtained.
 - ii. Amount of non-refundable fee for the documents, if applicable.
 - iii. Date and Time of tender closing and opening.

- iv. General specifications of the goods, services or construction to be performed.
- v. Name and phone number of contact person.
- vi. Each tender advertisement shall contain the following statements: "Tenders on the prescribed Tender Form and sealed in an envelope clearly marked as such will be received by the Clerk-Administrator at the Township of McKellar - 701 Hwy. 124, P.O. Box 69, McKellar, ON POG 1CO." and "The lowest or any tender will not necessarily be accepted."
- (g) The Closing Date for the Tender shall be no sooner than two weeks following publication in the local media unless the urgency of the requirement dictates otherwise and approval by resolution of Council has been obtained.
- (h) The Tender Form, supplied by the municipality, must be fully completed and in the possession of the Clerk-Administrator on or before the Tender Closing date and time. Tenders received after the closing time shall not be considered but shall be returned unopened to the Bidder.
- (i) Sealed Tenders with a public opening shall be required.
- (j) Any correspondence by mail, e-mail, or telephone, pertaining to adjustments or corrections to a Tender already submitted, shall not be considered. A Bidder wishing to make adjustments to a Tender must first withdraw the original Tender and resubmit the alternative bid on the prescribed Tender Form and in accordance with the provisions contained herein prior to the closing.
- (k) The number of bids received and the names of Bidders shall not be divulged prior to the Tender opening.
- (l) The Tender shall be opened by the Clerk-Administrator or designate and Department Head. The envelope, Form of Tender, cheque, and Agreement to Bond, if required, for each individual tender shall be clipped together. The Clerk-Administrator or designate shall announce the name of the Bidder, the general specifications, the total amount of each bid, and the total number of bids received. All persons present at the Tender Opening shall be advised that the tenders will be referred to the designated person responsible for the Tender and that a recommendation will be made to Council.
- (m) The Clerk-Administrator shall promptly file all certified cheques or other security with the Treasurer for safekeeping and prepare a Summary of Tenders containing the name of each bidder, the general specifications and the total amount of each bid. The Summary of Tenders shall be made available to the public.
- (n) The designated person responsible for the Tender shall check the tenders to ensure that all tender requirements and conditions have been met. Any irregularities in the Tender shall be dealt with in accordance with Schedule "B" and section 11 of this by-law. If it is deemed necessary to reject the tender by reason of the improper or defective tender, the Bidder shall be advised in writing that the Tender has been rejected and reasons for same.
- (o) The Tender documents shall require the Successful Bidder to execute those documents and take those steps set out in this by-law.

- (p) Where deemed appropriate, Tenders shall be accompanied by a Tender Deposit, in the form of a certified cheque or other security acceptable to the Corporation, in an amount of no less than ten percent (10%) of the tender price and made payable to the Corporation of the Township of McKellar. Tender deposit cheques or other security shall not be cashed or deposited unless the successful Bidder fails to enter into a formal Contract with the Corporation or fails to supply the goods, services or construction tendered within a specified period of time. The security of the successful Bidder shall be forfeit to the Corporation if the Bidder fails to meet the above requirements. The security of all unsuccessful Bidders, except the security of the second most appropriate Bidder, shall be returned promptly after a tender has been accepted. The second most appropriate Bidder's security and the successful Bidder's security shall be returned no later than the date on execution of the Contract or delivery of the goods, services or construction.
- (q) If the estimated cost of the project warrants, tenders shall also be accompanied by an Agreement to Bond according to section 10 of this by-law. If an Agreement to Bond is required, the successful Bidder shall be required to submit a Performance Bond issued by an approved Bonding company for one hundred percent (100%) of the amount of the Tender prior to the execution of a Contract by the Corporation.
- (r) The Corporation reserves the right to reject any or all quotations/bids and to reject the lowest or any quotation/bid if deemed to be in the best interests of the Corporation. Acceptance of a quotation/bid shall be at the sole discretion of the Corporation based upon examinations of quotations/bids received.
- (s) When, in the opinion of the Corporation, it is advisable to cancel a Tender Call, an advertisement shall be inserted in the same publications originally used stating that the Tender has been cancelled, the reason for such cancellation and whether or not the Tender will be recalled. Each person who obtained Tender documents shall be mailed written notice of the cancellation of the Contract and all tenders received shall be returned unopened to the Bidder(s).
- (t) The Award of any Tender having a Contract Value in excess of twenty five thousand dollars (\$25,000.00) requires Council approval.

8.07 REQUEST FOR PROPOSAL (PURCHASES EXCEEDING \$25,001.00)

- (a) For the procurement of goods, services or construction having a Contract Value of twenty five thousand and one dollars (\$25,001.00) or more, provided the proposed purchase comes within the approved budget appropriations, a Request for Proposal shall be used where after applying the following criteria, it is determined that the Request for Proposal is a more appropriate form of procurement than Tender:
- i. the procurement is required as a result of a peculiar problem, requirement or objective;
 - ii. the selection of the Supplier depends more upon the effectiveness of the proposed solution, than the price alone;

- iii. one or more of the criteria for issuing a Tender cannot be met;
 - iv. it is expected that negotiation with one or more Bidders may be required with respect to any aspect of the Contract; and
 - v. the precise good, service or construction, or the specifications thereof are not known or are not definable and it is expected that Bidders will further define them; which for the purposes of this section shall also be deemed to be the "goals" of the Request for Proposal form of procurement.
- (b) The Department Head, in consultation with the Clerk-Administrator and/or the Treasurer, shall prepare a purchase requisition containing the relevant specifications, terms and conditions for the acquisition.
 - (c) Notice of the Request for Proposal shall be given by formal advertising. Notice shall also be given to all Bidders who were required to be Pre-qualified and to all Bidders who were required to submit an Expression of Interest.
 - (d) The Award of any Request for Proposal having a Contract Value in excess of fifteen thousand dollars (\$25,001.00) requires Council approval.
 - (e) Any irregularities in the Request for Proposal shall be dealt with in accordance with Schedule "B" and section 11 of this by-law.
 - (f) Where an Award may be made following an evaluation of the Proposals, without further negotiation, the Successful Bidder shall be required to comply with the Contract requirements of this by-law.
 - (g) Relevant procedures enumerated for section 8.06 "Request for Tenders" shall be followed.

8.08 REQUEST FOR STANDING AGREEMENT

- (a) A Request for Standing Agreement shall be used for the procurement of goods, services or construction of any Contract Value when the following criteria apply:
 - i. where it is important that the Corporation be guaranteed a continuous supply of goods, services or construction;
 - ii. the volume of goods, services or construction over the course of a year is high;
 - iii. economies of scale can be achieved by eliminating multiple Low Value Bids;
 - iv. demand is not known in advance;
 - v. the use of the goods, services or construction required is repetitive in nature; and
 - vi. delivery of the goods, services or construction is Contracted for as the need arises;Which for the purposes of this section shall also be deemed to be the "goals" of the Request for Standing Agreement form of procurement.
- (b) The Department Head, in consultation with the Clerk-Administrator and/or the Treasurer, shall prepare a purchase requisition containing the relevant specifications, terms and conditions for the acquisition.

- (c) Notice of the Request for Standing Agreement shall be given by formal Advertising. Notice shall also be given to all Bidders who were required to be Pre-qualified and to all Bidders who were required to submit an Expression of Interest.
- (d) The Award of any Standing Agreement having a Contract Value in excess of fifteen thousand dollars (\$25,000.00) requires Council approval.
- (e) Any irregularities in a Standing Agreement submission shall be dealt with in accordance with Schedule "B" and section 11 of this by-law.
- (f) The Tender shall be opened and read out in public. All Bid amounts shall be recorded on a Summary of Bidders sheet.
- (g) The Tender documents shall require the Successful Bidder to execute those documents and take those steps set out in this by-law.
- (h) No Contractual obligation shall arise between a Supplier and the Corporation who have executed a Standing Agreement until the goods, services or construction are actually ordered.

8.09 REQUEST FOR PROFESSIONAL SERVICE

- (a) the procurement of professional services shall be at the discretion of Council.
- (b) Professional Services may be procured for the following reasons:
 - i. on-going pre-defined services (e.g. banking, auditing, insurance);
 - ii. on-going non pre-defined services (e.g. solicitors, engineers, planners, HR specialists, property appraisers, land surveyors);
 - iii. one-time services (e.g. consultants for specific projects)
- (c) On-going pre-defined services may be procured for four year periods depending on the dollar value of the service. Council retains the right to extend the four year period should they be satisfied with the price and quality of work.
- (d) On-going non pre-defined services shall be procured at the discretion of the Clerk-Administrator based on the area of expertise and reputation of the various practitioners.
- (e) One-time services shall be procured at the discretion of Council based on the area of expertise and reputation of the various practitioners.

8.10 NEGOTIATION – ANY PRICE

- (a) Negotiation may be used for the procurement of goods, services or construction for Contracts of any Contract Value when any of the following criteria apply:
 - i. due to abnormal market conditions, the goods, services or construction required are in short supply;
 - ii. where competition is precluded due to the existence of any patent rights, copyright, technical secret or control of raw material;

- iii. where there is only one source of the goods, services or construction which would be acceptable and cost effective;
 - iv. where two or more identical Bids are received;
 - v. where all Bids received are not acceptable or exceed the amount budgeted for the procurement;
 - vi. where the extension or reinstatement of an existing Contract would be more cost effective or beneficial to the Corporation;
 - vii. where Emergency Circumstances exist;
 - viii. where for security or confidentiality reasons it is in the public interest; or
 - ix. where authorized by Council so to do; which for the purposes of this section shall also be deemed to be the "goals" of the Negotiation form of procurement.
- (b) The Award of any negotiated Contract having a Contract Value in excess of fifteen thousand dollars (\$25,000.00) requires Council approval.
 - (c) The Award of any negotiated Contract shall comply with this by-law.

8.11 EMERGENCY PURCHASES

- (a) When a Department Head is of the opinion that an Emergency exists, the Department Head, in consultation with the Clerk-Administrator and/or Treasurer, may authorize the purchase of such goods, services or construction as is considered necessary to remedy the situation without regard to the requirement for a Bid Solicitation and may award the necessary Contract provided that the Contract does not exceed twenty five thousand dollars \$25,000 (which for the purposes of this section, shall also be deemed to be the "goal" of the Emergency Purchase).
- (b) the relevant details surrounding an Emergency Award shall be reported to Council at the next possible meeting following the Award.

8.12 SOLE SOURCE PURCHASE

- (a) A Sole Source Purchase may be used for the procurement of goods, services or construction for Contracts of any Contract Value, in the following circumstances:
 - i. where the compatibility of a purchase with existing equipment, facilities or service is a paramount consideration and the purchase must be made from a sole source;
 - ii. where a good is purchased for testing or trial use;
 - iii. where the Corporation purchases supplies for resale;
 - iv. where the Corporation has a rental contract with a purchase option and such purchase option could be beneficial to the Corporation;
 - v. notwithstanding anything in this policy, where a purchase is determined by Council to be fair and reasonable and is made from a non-profit corporation supported by the Corporation, the Corporation may make such purchase as a Sole Source Purchase;
 - vi. where goods are offered for sale by tender, auction or negotiation such purchase will be deemed to be a Sole Source Purchase and the Clerk-Administrator may authorize the submission of a Bid or the conduct of

negotiations where the Clerk-Administrator determines the purchase to be clearly in the best interest of the Corporation;

- vii. for matters involving security, police matters, or confidential issues, a purchase may be made in a manner that protects the confidentiality of the contractor or the Corporation. Such purchases may be made as a Sole Source Purchase; which for the purposes of this section shall also be deemed to be the "goals" of the Sole Source Purchase form of procurement.

- (b) The Award of any Sole Source Purchase Contract having a Contract Value in excess of fifteen thousand dollars (\$25,000.00) requires Council approval.

- (c) The Award of any Sole Source Purchase Contract shall comply with this by-law.

9. BID AND CONTRACT ADMINISTRATION

9.01 SUBMISSION OF BIDS

9.01.1 Bids shall be accepted in paper form.

9.01.2 If two equal Bids are received, a means of breaking the tie consistent with the provisions of the solicitation shall be employed.

9.01.3 Factors to be considered in breaking the tie include:

- (a) whether a prompt payment discount has been offered,
- (b) when delivery is an important factor, the Bidder offering the best delivery date shall be given preference,
- (c) a Bidder in a position to provide better after sales service, with a good record in this regard, shall be given preference,
- (d) a Bidder with an overall satisfactory performance record shall be given preference over a Bidder known to have an unsatisfactory performance record.

9.01.4 Following the closing of a Bid Solicitation, there shall be no informal contact between any Bidder and any elected official or staff member of the Corporation relating to the Tender. Any contact shall occur only in a formal manner, to the extent permitted by the Bid Solicitation documentation.

9.01.5 Prior to the closing of a Bid Solicitation, clarification about the Bid Solicitation documentation may be obtained by the Bidder, either in writing or verbally from the Corporation.

9.01.6 Should the Corporation determine that an addendum to the Bid Solicitation documentation is to be issued, it shall be issued, in writing, to all Bidders at the same time.

9.01.7 The Corporation reserves the right to reject any or all quotations/bids and to reject the lowest or any quotation/bid if deemed to be in the best interests of the Corporation. Acceptance of a quotation/bid shall be at the sole discretion of the Corporation based upon examinations of quotations/bids received.

10. GUARANTEES OF CONTRACT EXECUTION AND PERFORMANCE

- 10.01** The Treasurer may require that a Bid be accompanied by a Bid Bond or other similar security to guarantee entry into a Contract.
- 10.02** In addition to the security referred to in Subsection 10.01 the Successful Bidder may be required to provide,
- i. a Performance Bond to guarantee the faithful performance of a Contract, and
 - ii. a Payment Bond to guarantee the payment for labour and materials to be supplied in connection with a Contract.
- 10.03** The Clerk-Administrator, in consultation with the Treasurer, shall select the appropriate means to guarantee execution and performance of the Contract. Means may include one or more of, but are not limited to, financial bonds or other forms of security deposits, provisions for liquidated damages, progress payments, and Holdbacks.
- 10.04** Prior to the commencement of work and where deemed appropriate, evidence of Liability Insurance Coverage satisfactory to the Treasurer must be obtained, ensuring indemnification of the Corporation from any and all claims, demands, losses, costs or damages resulting from the performance of a Bidder's obligations under the Contract and from any other risk determined by the Treasurer as requiring coverage.
- 10.05** Prior to payment to a supplier, a Certificate of Clearance from the Workplace Safety and Insurance Board shall be obtained ensuring all premiums or levies have been paid to the Board to date.
- 10.06** The Treasurer shall ensure that the guarantee means selected will:
- (a) not be excessive but sufficient to cover financial risks to the Corporation, provide flexibility in applying leverage on a supplier so that the penalty is proportional to the deficiencies, and
 - (b) comply with provincial statutes and regulations.
- 10.07** Financial bonds for Contract performance shall be required only where the Corporation will be exposed to costs if the supplier does not complete the requirements of the Contract.
- 10.08** If the risk to the Corporation is not adequately limited by the progress payment provisions of the Contract, a minimum payment Holdback of 10% shall be mandatory on all Contracts exceeding \$15,000.
- 10.09** The Treasurer may release the Holdback funds on construction contracts upon:
- (a) the contractor submitting a statutory declaration that all accounts have been paid, in accordance with the Construction Liens Act, as amended, and that all documents have been received for all damage claims;
 - (b) receipt of clearance from the Workplace Safety and Insurance Board for any arrears of Workplace Safety and Insurance Board assessment;
 - (c) all the requirements of the Construction Liens Act being satisfied; receipt of certification from the Corporation's Solicitor, where applicable, that liens have not been registered; and

(d) certification from the Department Head, under whom the work has been performed, that the conditions of the Contract have been satisfied.

10.10 The conditions for release of Holdback funds provided in Subsection 10.09 apply to other goods, services or construction Contracts with necessary modifications.

11. BID IRREGULARITIES

11.01 The process for administering irregularities contained in Bids pertaining to all Contracts shall be as set out in Schedule "B".

11.02 For an irregularity listed in the first column of Schedule "B", the response applicable to it is set out opposite to it in the second column of Schedule "B".

12. FORM OF CONTRACT

12.01 The Award of a Contract may be made by way of an Agreement, or as a Purchase Order.

12.02 A Purchase Order is to be used when the resulting Contract is straightforward and will contain the Corporation's standard terms and conditions.

12.03 A formal Agreement is to be used when the resulting Contract is complex and will contain terms and conditions other than the Corporation's standard terms and conditions.

12.04 It shall be the responsibility of the Clerk-Administrator to determine if it is in the best interest of the Corporation to establish a formal Agreement with the Supplier.

12.05 Where it is determined that Subsection 12.04 is to apply, the formal Agreement may be reviewed by the Corporation's Solicitor.

12.06 Where a formal agreement is not required, the Treasurer shall issue a Purchase Order incorporating the terms and conditions relevant to the Award of Contract.

13. CONTRACT DOCUMENTS

13.01 Where the purchase of goods, services or construction has been authorized under this by-law, the contract shall be executed by the Mayor and the Clerk-Administrator of the Township, and shall be in a form approved by the Clerk-Administrator.

13.02 Any Contract may be amended or renewed by a resolution of Council provided that any extension is expressly authorized in such Contract, provided further that any provision permitting a Contract extension does not circumvent the established rules on competitive contracting.

13.03 All Contracts executed pursuant to this by-law shall be delivered to the Clerk-Administrator for safekeeping.

14. CO-OPERATIVE PURCHASING

14.01 The Corporation may participate with other government agencies or public authorities in Co-operative Purchasing where the Treasurer determines that it is in the best interests of the Corporation to do so.

14.02 The policies of the government agencies or public authorities calling the Co-operative Tender are to be the accepted policy for that particular Tender.

15. SUPPLIER PERFORMANCE

15.01 The Department Head shall monitor the performance of all procurement Contracts and shall document evidence related to same and shall advise the Treasurer in writing where the performance of a supplier has been unsatisfactory in terms of failure to meet Contract specifications, terms and conditions or for Health and Safety, environmental or other violations.

15.02 The Clerk-Administrator, in consultation with the Department Head, the Treasurer, and the Corporation's Solicitor, may prohibit an unsatisfactory Supplier from bidding on future contracts.

15.03 Where it is found that a Supplier has performed poorly or below Contract requirements, the Department Head, in consultation with the Clerk-Administrator, shall make recommendations to Council about ways to deal with such performance.

16. PAYMENT OF ACCOUNTS

16.01 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 appropriate Department Head;
- (c) all items listed in Schedule "A" subject to such expenditures being approved in the annual budget, and
- (d) all requisitions for monies which the Township 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.

17. BID EVALUATION COMMITTEE

17.01 The Clerk Administrator shall establish a bid evaluation committee composed of, at a minimum, three members from the following:

the Department Head who is responsible for the call for bids in question, an outside professional, a member of Council, the Clerk Administrator, and another staff member with special experience in the field of the particular call for bids.

17.02 If a bid contains an informality or irregularity, or if there is a challenge to the call for bids process, the issue shall be referred to the bid evaluation 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.

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

18. RECEIPT OF GOODS

18.01 The Department Head shall,

- (a) arrange for the prompt inspection of goods on receipt to confirm conformance with the terms of the Contract, and
- (b) inform the Treasurer of discrepancies immediately.

18.02 The Treasurer, in consultation with the Clerk-Administrator, shall coordinate an appropriate course of action with the Department Head for any non-performance or discrepancies.

19. ACCESS TO INFORMATION

19.01 The disclosure of information received relevant to the issue of Bid Solicitations or the Award of Contracts emanating from Bid Solicitations shall be made by the appropriate officers in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56*, as amended.

20. SURPLUS STOCK

20.01 Department Heads shall submit to the Clerk-Administrator reports of surplus stocks including furniture, vehicles, equipment, stocks of all supplies, and other goods and material, which are no longer used or which have become obsolete, worn out, or incapable of being used.

20.02 The Clerk-Administrator shall have the authority to transfer furniture, vehicles, equipment, surplus stock, and other goods and material from one department to other departments.

20.03 The Clerk-Administrator shall have the authority to sell or dispose of all furniture, vehicles, equipment, surplus stock, supplies, or other goods and material which have become unsuitable for use by the Corporation or to exchange or trade the same for new furniture, vehicle, equipment, surplus stock, supplies, or other goods and material.

20.04 Sale of surplus furniture, vehicles, equipment; stock, supplies and other goods and material shall be made to the highest responsive Bidder and the sale shall be made in accordance with the provisions of this by-law where applicable. Notwithstanding the foregoing, the Clerk-Administrator, with the approval of Council, may donate surplus materials to non-profit community groups provided the articles serve to promote and preserve the Municipality's culture and heritage for the enjoyment of future generations.

21. BY-LAW REVIEW

21.01 The Procurement By-law shall be reviewed by Council every five years to ensure that it still meets the municipality's needs.

21.02 The review shall determine how effective the Procurement By-law has been in achieving the objectives set out in section 1 of the by-law as well as the requirements of the *Municipal Act, 2001, S.O. 2001, c.25*, as amended.

22. SHORT TITLE

22.01 The short title of this by-law shall be the "Procurement By-law"

23. REPEAL

23.01 By-law No. 2014-06, as amended, and any other by-laws not consistent with this by-law are hereby repealed in their entirety.

24. EFFECTIVE DATE

24.01 This by-law shall come into force and take effect upon final passing thereof.

READ a FIRST and SECOND time this 7th day of October, 2019.

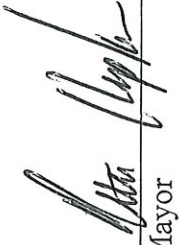


Mayor




Clerk

READ a THIRD time and PASSED in OPEN COUNCIL this 7th day of October, 2019.



Mayor



Clerk

By-law No. 2019-44

SCHEDULE "A"

The acquisition methods described in this by-law **do not apply** to the following items:

1. Training and Education

- (a) Conferences, conventions, courses and seminars
- (b) Magazines, books, periodicals
- (c) Memberships

2. Refundable Employees Expenses

- (a) Advances
- (b) Meal Allowances
- (c) Travel and Entertainment
- (d) Miscellaneous – Non-Travel

3. Employer's General Expenses

- (a) Payroll Deductions Remittances
- (b) Medical
- (c) Licenses (Vehicle, Firearms, etc.)
- (d) Debenture Payments
- (e) Insurance Premiums
- (f) Grants to Agencies
- (g) Damage Claims
- (h) Petty Cash Replenishment
- (i) Payments to Real Property
- (j) Tax Remittances
- (k) Regional Charges to and from other government bodies
- (l) Sinking Fund Payments
- (m) Payments for employment

4. Professional and Special Services

- (a) Committee Fees
- (b) Medical, Laboratory and Pharmacy Services
- (c) Legal fees for expert or professional legal services for all Insurance Matters
- (d) Professional Fees for Engineering, Legal, Planning, Auditing Consulting Services
- (e) Medical and Dental Fees
- (f) Funeral and Burial expenses
- (g) Appraisal Fees
- (h) Witness Fees
- (i) Honorariums

5. Utilities (monthly charges and utility relocations)

- (a) Postage
- (b) Hydro
- (c) Gas
- (d) Telecommunications services
- (e) Waste Disposal Fees (inclusive of recycling)

SCHEDULE "B"

IRREGULARITY RESPONSE

IRREGULARITY	RESPONSE
Late Bids	Automatic rejection and not opened or publicly read
Unsealed Envelopes	Automatic rejection
Insufficient Financial Security (No Bid Security or agreement to bond or insufficient Bid Bond or agreement to bond)	Automatic rejection
Bids not Completed in non-erasable medium and signed in ink	Automatic rejection
Incomplete Bids (Part bids – all items not bid)	Automatic rejection, unless, in the joint opinion of the Department Head, the Treasurer and the Clerk-Administrator the incomplete nature is trivial or insignificant
Qualified Bids (Bids qualified or restricted by an attached statement)	Automatic rejection unless, in the joint opinion of the Department Head, the Treasurer and the Clerk-Administrator the qualification or restriction is trivial or not significant
Bids received on documents other than those provided by the Corporation	Automatic rejection unless, in the joint opinion of the Department Head, the Treasurer and the Clerk-Administrator the matter is trivial or insignificant
Bids Containing Minor Obvious Clerical Errors	48 hours to correct and initial errors
Failure to execute Agreement to Bond (Performance Security) or Bonding company corporate seal or signature missing from agreement to bond	Automatic rejection
Failure to execute Bid Security (Financial Security)	Automatic rejection
Corporate seal or signature or both of the Bidder, missing	48 hours to correct
Corporate seal or signature of bonding company missing	Automatic rejection
Other Bid Security – Uncertified Cheques	Automatic rejection
Corporate seal or signature missing	48 hours to rectify situation
Corporate seal or signature missing	Automatic rejection
Un-initialed changes to the Tender documents which are minor (example: the tenderer's address is amended by overwriting but not initialed)	48 hours to initial
Unit process in the Schedule of Prices have been changed but not initialed and the Contract totals are not consistent with the price as amended	48 hours to initial
Unit prices in the Schedule of Prices which have been changed but not initialed and the Contract totals are not consistent with the price as amended	Automatic rejection
Other mathematical errors, which are not consistent with the unit process	48 hours to initial corrections as made by the Treasurer
Documents in which all necessary Addenda, which have financial implication, have not been acknowledged	Automatic rejection
Other Minor Irregularities	The Treasurer, Department Head, and Clerk-Administrator shall have authority to waive irregularities, which they jointly consider to be minor
Any Irregularity	Despite the provisions herein contained, Council may waive any irregularity where it considers it to be in the best interest of the Township