

**THE CORPORATION OF THE CITY OF THUNDER BAY**  
**BY-LAW NUMBER 113-2011**

A By-law to govern the way the Corporation purchases supplies, services and equipment, to be known as the “Supply Management By-law”, and to repeal By-law Number 220-1993 and Chapter 187 of the Thunder Bay Municipal Code, both as amended.

Recitals

1. The Corporation desires to have an uninterrupted supply of Goods and Services which meets its current and future needs, and provides for economical and efficient service. At the same time, it recognizes that controls must be maintained in accordance with policy as approved by Council.
2. The Corporation is committed to the highest standards of integrity with respect to the purchase of Goods and Services and managing the processes by which Goods and Services are acquired. Contract award decisions shall be based on clear, transparent and objective criteria that are applied free from political considerations or political interference.
3. The Council considers it worthwhile to enact a by-law to regulate supply management for the following purposes:
  - a) procuring the necessary quality and quantity of Goods and Services in an efficient, timely and cost effective manner;
  - b) encouraging an open and competitive Bidding process for the acquisition and disposal of Goods and Services;
  - c) providing for the equitable and objective treatment of all suppliers and potential suppliers to the Corporation; and
  - d) create an environment that facilitates obtaining the best value of an acquisition.
4. It is necessary to repeal By-law Number 220-1993 of The Corporation of the City of Thunder Bay (the “Corporation”) and Chapter 187 of the Thunder Bay Municipal Code, both as amended, as determined by resolution of the Committee of the Whole dated December 19, 2011.

ACCORDINGLY, THE COUNCIL OF THE CORPORATION OF THE CITY OF THUNDER BAY ENACTS AS FOLLOWS:

**ARTICLE 1:00      DEFINITIONS AND INTERPRETATION RULES**

**1.01    Definitions**

Wherever a term set out below appears in the text of this By-law with its initial letters capitalized, the term is intended to have the meaning set out for it in the numbered paragraphs of this Section 1.01. Wherever a term below appears in the text of this By-law in regular case, it is intended to have the meaning ordinarily attributed to it in the English language.

- 1) **“Acquisition Method”** means the process by which Goods and Services are Procured.
- 2) **“Bid”** means an offer or submission received from a prospective supplier of Goods and Services to a Bid Request.
- 3) **“Bidder”** means a person responding to a Request for Proposals, a Request for Quotations or a Tender issued by the Corporation.
- 4) **“Bid Request”** means a formal request for Bids or a solicitation, which may be in the form of a Request for Quotation, Tender or Request for Proposal.
- 5) **“Blanket Purchase Order”** means a Purchase Order which establishes prices or a method for determining prices, terms and conditions over a stipulated period of time during which a vendor agrees to provide Goods and Services to the purchaser upon the purchaser's demand. The Corporation uses Blanket Purchase Orders for frequently purchased Goods and Services, and various different departments within the Corporation utilize the Blanket Purchase Orders for their respective terms.
- 6) **“By-law”**, unless followed by a particular number, means this By-law, including its recitals and schedules, which are considered operative parts of it, as amended from time to time. When followed by another number, the term refers to the Corporate by-law bearing that number.
- 7) **“City Manager”** means the person within the employ of the Corporation holding that job title and being the chief administrator for the Corporation.
- 8) **“City Solicitor”** means a person or firm, whether employed by the Corporation or retained by the Corporation to provide legal advice to the Council and administration.
- 9) **“Competitive Method”** means an Acquisition Method where vendors are given an equal opportunity to submit Bids in accordance with Corporate policy and procedures.

- 10) **“Contract”** means a written and binding agreement in accordance with law. It may take the form of a Purchase Order or other form of written agreement. The term does not include verbal agreements.
- 11) **“Contractor”** means the Bidder with whom the Corporation enters into a Contract as the result of a Bid Request.
- 12) **“Corporate”** means belonging to, or under the control of, the Corporation.
- 13) **“Corporation”** means The Corporation of the City of Thunder Bay, a municipal corporation duly incorporated and in good standing in accordance with the *Municipal Act, 2001*.
- 14) **“Council”** means the elected municipal council of the Corporation.
- 15) **“Department Head”** means a member of the Executive Management Team.
- 16) **“Emergency”** means an event or occurrence that the City Manager, a Department Head, the Police Chief or Deputy Police Chief, the Fire Chief or Deputy Fire Chief, or the Community Emergency Management Coordinator (where the Mayor has declared an emergency under the *Emergency Management and Civil Protection Act*) deem as an immediate threat to:
  - public health;
  - the maintenance of essential Corporate services; or
  - the welfare and protection of persons, property, or the environment; and
  - the event or occurrence necessitates the immediate need for Goods and Services to mitigate the Emergency, and time does not permit for a Competitive Method.
- 17) **“Emergency Method”** means the procurement process outlined in Article 6.00 of this By-law where the usual competitive acquisition rules are suspended due to the prevailing emergency circumstances.
- 18) **“Executive Management Team”** means a committee of administrators selected and chaired by the City Manager.
- 19) **“Field Purchase Order”** has the meaning set out in Section 4.03 of this By-law.
- 20) **“General Manager of Finance and Corporate Services”** means the person within the employ of the Corporation holding that job title.

- 21) **“Goods and Services”** is a phrase that includes labour, supplies, materials, equipment and services of every kind that are not otherwise listed or described in Schedule `A' to this By-law. The “and” in the phrase is intended to be read as “and/or”.
- 22) **“Manager Supply Management”** means the person within the employ of the Corporation holding that job title.
- 23) **“Procure”** means to acquire by purchase, rental, lease or trade.
- 24) **“Purchase Order”** means a written offer to Procure Goods and Services, or a written acceptance of an offer to acquire Goods and Services, made on the Corporation's form bearing that title.
- 25) **“Request for Expressions of Interest”** or **“EOI”** means an invitation to the bidding community to indicate whether or not there is interest in bidding for the supply of Goods and Services. It is used from time to time to determine whether there is sufficient vendor interest to justify proceeding with procurement using a Competitive Method and/or to gain additional information on the Goods and Services in question from the vendor community.
- 26) **“Request for Proposal”** (also known as **“RFP”**) is a process where the Corporation seeks more information from Bidders than merely the price. The specifications outlined in the Request for Proposal document are not necessarily detailed or precise, and Bidders are asked to provide creative solutions to help the Corporation meet the goal outlined in the RFP document. The RFP document contains the criteria by which the Corporation will judge the various Bids submitted to determine which will be awarded the Contract. An administrative team will score the Bids based on the stipulated criteria.
- 27) **“Request for Quotations”** (also known as **“RFQ”**) is a process where the Corporation makes contact directly with selected Bidders, seeking pricing information for certain Goods and Services.
- 28) **“Single Source”** means the supplier where there is more than one source in the open market but only this one is recommended for consideration in a Contract, without a Bid Request.
- 29) **“Sole Source”** means the supplier where there is only one source of supply of particular Goods and Services.
- 30) **“Purchase Order”** is an internal Corporate document used to process payments to Contractors. The term includes Blanket Purchase Orders and Field Purchase Orders.
- 31) **“Tender”** is a process where the Corporation specifies in a Tender document, with detail and precision, the exact Goods and Services it requires. Bidders are asked to submit Bids that include pricing only, with no deviation from any of the terms, conditions or specifications in the Tender document.

32) **“Total Project Cost”** means the sum of all costs that would normally be paid to one vendor for Goods and Services required to meet a major objective over a period of time.

## **1.02 Titles**

The captions, articles and section names and numbers appearing in this By-law are for convenience of reference only and have no effect on its interpretation.

## **1.03 Plurals**

In this By-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.

## **1.04 Gender**

This By-law is to be read with all changes of gender required by the context.

## **1.05 “Includes”**

The words **“include”**, **“includes”**, **“including”** and **“included”** are not to be interpreted as restricting or modifying the words or phrases which precede or follow them.

## **1.06 Employee Titles**

References to persons employed by, or contracted to the Corporation, by virtue of their employment titles refers to those titles as at the date of enactment of this By-law. Where there has been a corporate re-organization that resulted in titles changing, the reference is to the person in the Corporation’s hierarchy that has substantively the same duties as the person who held the title used in this By-law on the date this By-law was passed. Where there is any doubt as to the appropriate reference, the City Manager shall make the determination, and his or her decision is final.

## **1.07 Delegation of Authority**

Any reference to a person employed by, or contracted to the Corporation is considered to include his or her delegates, provided the delegation is in writing.

## **1.08 Legislation**

Each reference to Provincial legislation in this By-law is printed in Italic font. Where the title of the legislation includes a year, the reference is to the Statutes of Ontario for that year. Where the title of the legislation does not include a year, the reference is to the Revised Statues of Ontario, 1990 edition. In every case, the reference includes all applicable amendments to the legislation, including successor legislation. Each reference to another by-law in this By-law, unless

otherwise specified, is a reference to a by-law of the Corporation, and, in every case, includes all applicable amendments to the by-law, including successor by-laws.

### **1.09 Severability**

If a court or tribunal of competent jurisdiction declares any portion of this By-law to be illegal or unenforceable, that portion of this By-law will be considered to be severed from the balance of the By-law, which will continue to operate in full force.

### **1.10 Contract Interpretation**

Purchase Orders contain general terms and conditions. These terms and conditions apply to the Contract that they are connected with, unless the Contract's terms and conditions contradict them. In that case, the terms and conditions in the Contract supersede those in the Purchase Order.

### **1.11 Currency**

All references to dollars in this By-law are references to Canadian Dollars.

## **ARTICLE 2.00: PURCHASING PRINCIPLES**

### **2.01 Principles Stated**

- (a) The Corporation will Procure the necessary quality and quantity of Goods and Services for its business in an efficient and cost effective manner.
- (b) The Corporation will consider the total cost of acquisition, repair, staff training, operation and disposal when considering offers from suppliers to provide Goods and Services. This will not necessarily equate to the lowest price observed at first observation.
- (c) The Corporation will give full consideration to the Total Project Cost and/or to the total amount anticipated to be spent annually by all departments on specific Goods and Services before determining the appropriate Acquisition Method as set out in this By-law.

### **2.02 Ethics**

All Corporate staff shall comply with the codes of purchasing ethics established by the National Institute of Governmental Purchasing, Inc. and the Purchasing Management Association of Canada in respect of all Corporate acquisition and disposal processes. Copies of these codes are available at the offices of the Supply Management Division of the Finance and Corporate Services Department of the Corporation.

All suppliers and potential suppliers to the Corporation must adhere to a strict ethical standard in all Corporate acquisitions.

### **2.03 Sustainable Environmental and Ethical Procurement**

The Corporation is committed to a procurement process for Goods and Services that takes into account sustainable environmental and ethical procurement considerations. Suppliers and potential suppliers to the Corporation must respect fundamental human rights, and treat their workers fairly and with respect. They are also expected to strive continually towards minimizing the environmental impact of their operations and the Goods and Services provided.

In this regard, the Corporation will:

- (a) work cooperatively with suppliers and other key stakeholders to advance Corporate social responsibility in the business community by promoting sustainable environmental and ethical procurement considerations and encourage suppliers and subcontractors to work towards the highest possible environmental and ethical standards where practical;
- (b) develop a supplier community that exhibits leadership in Corporate social responsibility through its efforts to continuously improve best practices that protect the welfare of workers and the environment, and encourage sound social stewardship, all the while maintaining a competitive position in the market;
- (c) embed ethical, environmental, social and economic performance criteria into all Corporate supply chain procedures, processes and activities; and
- (d) audit supplier compliance with these principles through a combination of external independent certifications, supplier disclosures and certifications, and disclosure of information about factory and production facilities.

## **ARTICLE 3.00: GENERAL PROVISIONS**

### **3.01 Purpose and Effect of By-law**

This By-law is enacted as an internal policy of the Corporation. Its provisions do not confer any rights of any kind on any other person, whether or not the Corporation, its Council, officers, agents, or employees, have acted in accordance with this By-law.

### **3.02 Role of Manager Supply Management**

The Manager Supply Management shall exercise general supervision and control over the procurement of all Goods and Services in accordance with this By-law. The Manager Supply Management is authorized to make and issue administrative rules of procedure as necessary to implement this By-law.

### **3.03 Group Purchasing**

The Manager Supply Management is authorized to enter into negotiations for the purpose of cooperative buying procedures with other bodies and agencies as may be considered to be advantageous to the Corporation.

### **3.04 By-law to Govern - Exemptions**

All Procurements made by the Corporation shall be carried out in accordance with this By-law, with the following exceptions:

- (a) external legal services;
- (b) external insurance adjusting services;
- (c) payment of insurance claims and lawsuit settlements; and
- (d) software maintenance contracts.

### **3.05 Approved Budgets**

All acquisitions shall be in accordance with approved departmental budgets and estimates except where Council by by-law or resolution otherwise determines.

### **3.06 Corporate Obligations**

The purpose of this By-law is, as set out in the Recitals, to facilitate the efficient and effective acquisition of Goods and Services. In that regard, the Corporation is under no obligation to accept the lowest Bid or any Bid received in response to a verbal or written request. There may be considerations beyond the price that govern the Corporation's choices in any given circumstance.

### **3.07 Disqualified Bidders List**

The Manager Supply Management will maintain a list of persons from whom no Bids will be accepted by the Corporation. This list will include the names of persons who have performed poorly (or not at all) in past Contracts or who are involved in litigation with the Corporation relating to past Contracts. Persons whose names are on the list will not be permitted to submit Bids. In addition, the Manager Supply Management may refuse to accept Bids from persons who are affiliated with a person on the list through direct involvement or effective control by one or more of the directing minds of the other person on the list.

The disqualified Bidders list maintained under this Section applies to allow the disqualification of a Bid regardless of whether or not any particular acquisition process has involved a pre-qualification process.



Department Heads shall monitor the performance of Contractors, including documenting evidence of their performance. Department Heads will inform the Manager Supply Management, in writing, where the performance of a Contractor has failed to comply with a Contract or other Corporate requirements. The Manager Supply Management will consider this information when determining whether or not a person's name is added to the disqualified Bidders list.

### **3.08 Litigants**

Unless otherwise permitted by this section, no Bid shall be accepted from, nor shall any Contract be awarded or extended to any Contractor, its principals, directors or any officer of that firm, or another related person (as determined by the Manager Supply Management, in his or her sole and unreviewable discretion), with whom the Corporation is engaged in unresolved litigation.

A Bid may be accepted and a Contract may be awarded to a Contractor or other related party with whom the Corporation is engaged in unresolved litigation in the following circumstances:

- (a) where there is only one qualified supplier of Goods and Services;
- (b) in the case of an Emergency;
- (c) where there is a legal obligation on the part of the Corporation to enter into the Contract;
- (d) where the proposed Contract is pursuant to the co-operative purchasing provisions of this By-law and where another public agency will be party to the Contract and has approved the award; or
- (e) where the Corporation is a plaintiff or defendant pursuant to a subrogated interest and where, in the discretion of the Corporation, an appropriate arrangement has been made to indemnify the Corporation.

### **3.09 Dispute Resolution Mechanism for Bidding Process**

Contracts are typically awarded after the Bids are opened and sufficient time has passed to review the Bid to check its compliance with all of the requirements. A Bidder wishing to dispute the pending award of a Contract shall make this known to the Manager Supply Management prior to the award. When the Manager Supply Management is aware of a dispute, he or she will meet with the Bidder. If that meeting does not lead to a resolution of the dispute, the Bidder may make this known to the General Manager of Finance and Corporate Services.

The General Manager of Finance and Corporate Services shall, upon hearing of the dispute, meet with the Bidder. If that meeting does not lead to a resolution of the dispute, the Bidder may make this known to the City Manager.

The City Manager shall, upon hearing of the dispute, review it with the City Solicitor and either meet with the Bidder or review the Bidder's circumstances as presented in writing, at the City Manager's sole and unreviewable discretion. The decision of the City Manager in determining the dispute is final.

### **3.10 Bid Irregularities**

The process for administering irregularities contained in Bids pertaining to all competitive procurement processes is set out in this Section.

The following irregularities are incurable, and result in rejection of the Bid:

- (a) Bid submitted late;
- (b) Bid submitted in an unsealed envelope;
- (c) Bid prepared (in whole or in part) or signed using an erasable medium (such as lead pencil);
- (d) the execution (by the bonding company) of agreements to bond (performance security) are improper in that there is a company corporate seal or signature missing from the agreement to bond;
- (e) the Bid is unsigned (or is improperly signed – for example, without the corporate seal or by unauthorized persons);
- (f) any required payment is submitted in a manner other than by certified cheque or money order;
- (g) changes to unit prices in a schedule of prices were made (or over-written) without being initialed, and the Bid totals are inconsistent with the prices as changed; or
- (h) addenda issued by the Corporation, which have financial implications, have not been acknowledged.

The following irregularities may be overlooked by the Manager Supply Management if he or she considers the irregularity to be trivial or insignificant:

- (a) insufficient financial security (for example, no Bid security or an insufficient Bid bond or agreement to bond);
- (b) all required sections of the Bid document were not completed;
- (c) the Bid contains a qualification, condition or restriction; or
- (d) the Bid was not submitted on the proper or specified form.

The following irregularities may be corrected (or confirmed) by the Bidder within forty-eight (48) hours of the opening of the Bid:

- (a) Bids containing minor and obvious clerical errors;
- (b) the execution (by the Bidder) of agreements to bond (performance security) are improper in that there is a company corporate seal or signature missing from the agreement to bond;
- (c) minor changes to the Bid documents which were corrected by the Bidder, but the correction or over-write was not initialed;
- (d) changes to unit prices in a schedule of prices were made (or over-written) without being initialed, but the Bid totals are consistent with the prices as changed; or
- (e) mathematical errors were made which are not consistent with the unit prices, and are noted and corrected by the Manager Supply Management.

Where an error or irregularity is made that is not referenced in this section, the Manager Supply Management shall, in consultation with the City Solicitor, determine whether the error is trivial in nature, whether it is incurable, or whether it can be addressed and corrected by the Bidder within forty-eight (48) hours.

### **3.11 Tie Bids**

In the event of two or more identical or tied Bids, the Manager Supply Management shall, in the presence of at least two departmental staff persons, toss a coin. The Award shall then be made to the winner of the coin toss. Where there are more than two Bids and they remain tied or identical following that evaluation, the Manager Supply Management shall, in the presence of at least two departmental staff persons, conduct a lottery draw. The Award shall then be made to the winner of the lottery.

## **ARTICLE 4.00: METHODS OF ACQUISITION**

### **4.01 Pricing Limits**

All applicable taxes, duties and shipping are excluded in determining the procurement limit of authorized delegates and the type of procurement process to be followed as set out in this Article 4.00.

### **4.02 Purchase Order Requirements**

The acquisition of any Goods and Services requires a Purchase Order unless the Goods and Services are listed in Schedule A.

#### **4.03 Blanket Purchase Orders**

Where a Blanket Purchase Order exists for acquisitions of Goods and Services, none of the specified Goods and Services may be Procured except through that Blanket Purchase Order.

#### **4.04 Purchases At or Under \$1,000**

The acquisition of Goods and Services having a value of one thousand (\$1,000.00) dollars or less which are not covered by a Blanket Purchase Order shall be carried out by the Department Head in accordance with the principles set out in this By-law and such other applicable policies and procedures established from time to time. These Procurements may be undertaken using:

- (a) petty cash;
- (b) Field Purchase Orders; or
- (c) Corporation-issued Procurement credit cards.

#### **4.05 Purchases between \$1,000 and \$5,000**

The acquisition of Goods and Services having a value of at least one thousand (\$1,000.00) dollars but less than five thousand (\$5,000.00) dollars which are not covered by a Blanket Purchase Order shall be carried out by the Department Head in accordance with the principles set out in this By-law and such other applicable policies and procedures established from time to time. These Procurements may be undertaken using:

- (a) Field Purchase Orders; or
- (b) Corporation-issued Procurement credit cards.

#### **4.06 Purchases between \$5,000 and \$ 60,000**

Goods and Services with an estimated value of at least five thousand (\$5,000.00) dollars but less than sixty thousand (\$60,000.00) dollars may be purchased through a Request for Quotation process. At least three (3) written quotations shall be solicited by the Manager Supply Management in consultation with the requisitioning Department Head. The lowest acceptable quotation will be accepted and the Bidder who provided it shall be the Contractor.

#### **4.07 Purchases at \$60,000 or More**

Goods and Services with an estimated value of at least sixty thousand (\$60,000.00) dollars shall be procured using either a Request for Proposal process or a Tender process. The Manager Supply Management, in consultation with the requisitioning Department Head, shall:

- (a) advertise the Bid Request in one or more publications of general circulation;
- (b) publicize the Bid Request through at least one publically accessible web site;

- (c) receive written Bids up to the published deadline; and
- (d) coordinate the opening of Bids in public at the appointed time by a committee comprised of at least two members of the Manager Supply Management's staff. The committee shall keep a written record of all Bids, initialed by the committee members.

Where it is not possible to prepare precise specifications to issue a Tender, a Request for Proposals shall be issued. Supply Management shall establish evaluation criteria and weightings for the criteria. The RFP shall clearly distinguish those requirements that are mandatory and non-mandatory, and shall clearly outline how these items will be evaluated.

#### **4.08 Use of Negotiation for Goods and Services less than \$60,000**

Despite any other provisions of this By-law, in circumstances set out in this Section, the requisitioning Department Head may wish to negotiate with one or more potential suppliers for acquiring Goods and Services valued at sixty thousand (\$60,000.00) dollars or less. In that case, the Department Head shall consult with the Manager Supply Management who may then enter into negotiations with one or more vendors for the supply of Goods and Services when any of the following conditions exist:

- (a) due to market conditions, Goods and Services are in short supply;
- (b) it is a Sole Source circumstance (including circumstances where only one Bidder submitted an acceptable Bid);
- (c) all acceptable Bids exceed the amount budgeted for the Goods and Services and the lowest Bid is within twenty (20%) percent of budget;
- (d) market research indicates that the extension or reinstatement of an existing Contract would be more cost-effective or beneficial to the Corporation;
- (e) a Single Source is being recommended because it is more cost-effective or is otherwise more beneficial; or
- (f) when authorized by Council.

If consultation between the requisitioning Department Head and the Manager Supply Management does not result in consensus as to whether or not to negotiate rather than issue a Bid Request, then the final determination shall be made by the General Manager of Finance and Corporate Services.

#### **4.09 Negotiation Method for Goods and Services Valued at More than \$60,000**

In circumstances where Section 4.08 would have applied had the value of Goods and Services been sixty thousand (\$60,000.00) dollars or less, but the estimated value exceeds that, this

Section applies. Despite any other provisions of this By-law, the requisitioning Department Head shall consult with the Manager Supply Management to determine if there is suitable merit for the use of the Negotiation Method for the purchase of Goods and Services valued at greater than sixty thousand (\$60,000.00) dollars.

If consultation between the requisitioning Department Head and the Manager Supply Management does not result in consensus to use the Negotiation Method, then the final decision as to whether or not to use the method shall be made by the City Manager. Any Department Head may request that the matter be reviewed by the Executive Management Team.

If it is determined that the Negotiation Method is suitable, the requisitioning Department Head shall prepare and submit a report to Council seeking approval for the use of this method prior to making any Contract award.

#### **4.10 Reporting to Council Generally**

After a Bid Request, in addition to other reporting requirements set out in this By-law, a report must be submitted to Council by the requisitioning department prior to a Contract award when:

- (a) the acquisition has a value of five hundred thousand (\$500,000.00) dollars or more, excluding items which are required for replenishment of inventory; or
- (b) the acquisition has a value of at least \$60,000 dollars and the lowest acceptable Bid, in the case of a Tender, or highest scoring proposal, in the case of a Request for Proposals, is not being recommended.

### **ARTICLE 5.00: EMERGENCIES**

#### **5.01 Emergency Method for Goods and Services up to \$60,000.00**

In the event of an Emergency, each of the following is authorized to enter into a Contract for Goods and Services up to a value of sixty thousand (\$60,000.00) dollars without the requirement for any Competitive Method: the City Manager, any Department Head, or the Fire Chief or Deputy Fire Chief. The Procurement shall be undertaken using the most expedient, economical, and practicable means in the circumstances.

#### **5.02 Emergency Method for Goods and Services over \$60,000**

Where an Emergency exists, a Department Head is authorized to requisition the Manager Supply Management to obtain necessary Goods and Services having an estimated value of over sixty thousand (\$60,000.00) dollars through the most expedient, economical, and practicable means in the circumstances, provided that the Department Head in consultation with the City Manager, prepares and submits a report to the Executive Management Team at its next meeting explaining the circumstances giving rise to the Emergency. Where the cumulative total of all purchases made to address the Emergency is greater than five hundred thousand (\$500,000.00) dollars, a

report shall be made by the City Manager to the City Council as soon as possible when the Emergency is over, explaining the circumstances and providing for the appropriate budgetary adjustments.

## **ARTICLE 6.00: SPECIFICATIONS**

### **6.01 Responsibility for Preparation**

The preparation of the specifications to be included in Bid Requests is the responsibility of the requisitioning department.

The Manager Supply Management has the authority to review and recommend to the requisitioning department any improvements to the specifications. The requisitioning department and the Manager Supply Management shall work co-operatively in the finalization of the specifications. The Manager Supply Management may reject any specification that is not consistent with this By-law.

### **6.02 Brand Name Avoidance**

Specifications will not stipulate a specific product, particularly by brand name.

### **6.03 Exception to Section 6.02**

A requisitioning department may specify a specific product, brand name or approved equal for essential functionality purposes (with consideration for operating, maintenance and standardization costs) to avoid unacceptable risk or for some other valid purpose. In such instances, the Department Head of the requisitioning department and the Manager Supply Management shall work together to manage the procurement to achieve a competitive situation whenever possible.

### **6.04 Rules for Preparing Specifications**

The paragraphs in this Section stipulate requirements to be followed in the preparation of specifications for Bid Requests.

- (a) Specifications should be detailed, but leave sufficient flexibility for potential vendors to provide alternatives in the event an equal or better-proven product or method is available. This maintains competitiveness in the procurement process.
- (b) Where the specification requirements of the requisitioning department have been prepared in a manner that leads the Manager Supply Management to believe that it will result in a Single Source purchase, the Manager Supply Management will refer the matter to the Executive Management Team for discussion and conclusion as to whether the specifications are appropriate in the circumstances. If so, the Executive Management Team will recommend that the requisitioning department negotiate for the Procurement

following the rules associated with Sole Source Procurement as set out in Sections 4.08 and 4.09 of this By-law.

(c) Potential vendors may be requested to expend time, money or effort on the content and/or in the development of specifications, or to otherwise help define a requirement to be contained in the specifications or elsewhere in the Bid Request documents. A vendor who provides such assistance may have obtained sufficient information to be considered to have a competitive advantage, and in that case, shall be paid a consulting fee and be ineligible to submit a Bid in response to the purchasing process that it assisted with.

(d) Regardless of assistance obtained by external parties, all specifications are and remain the property of the Corporation.

## **ARTICLE 7.00 FORMS OF COMMITMENT**

### **7.01 Expenditures of \$1,000 or less**

Expenditures of one thousand (\$1,000.00) dollars or less may be authorized by a Department Head and may be made without the involvement of the Manager Supply Management in accordance with the policies and procedures prescribed in this By-law.

### **7.02 Expenditures between \$1,000 and \$500,000**

Except as otherwise directed by Council, Contract awards for expenditures of more than one thousand (\$1,000.00) dollars and less than five hundred thousand (\$500,000.00) dollars shall be made by the Manager Supply Management, through the issuing of a Purchase Order, provided that the appropriate Acquisition Method has been followed to select the Contractors in accordance with this By-law.

### **7.03 Expenditures of More Than \$500,000**

Except as otherwise directed by Council, all Contract awards for expenditures of more than five hundred thousand (\$500,000.00) dollars shall be undertaken through a Contract in a form approved by Council, and executed on behalf of the Corporation by its proper signing officers.

## **ARTICLE 8.00 DISPOSAL OF SURPLUS GOODS**

### **8.01 Role of Manager Supply Management**

The Manager Supply Management is responsible for the disposal of all surplus Corporate assets, exclusive of real estate.



## **8.02 Surplus Goods Listing**

Department Heads shall identify goods valued at two hundred fifty (\$250.00) dollars or more which become surplus to their departmental needs and submit the lists to the Manager Supply Management. These lists shall be kept current and will be made available to all staff responsible for purchasing Goods and Services. Corporate staff should consult the surplus lists to determine whether there are goods available to them prior to Procuring goods. Material on the surplus list shall be stored under the control of the Manager Supply Management.

## **8.03 Method of Disposal to Achieve best Overall Corporate Benefit**

Surplus goods valued at two hundred fifty (\$250.00) dollars or more shall be disposed of. The method of disposal used on a particular surplus item will be that which results in the best overall benefit to the Corporation. Disposal methods include:

- (a) scrap, dismantle or destroy, classify as waste and dispose;
- (b) transfer to another department, committee or program for use within the Corporation;
- (c) donate to an external non-profit or charitable organization;
- (d) trade-in, and/or return to the supplier for credit;
- (e) invite public or selective quotations; or
- (f) undertake a public auction.

## **8.04 No Disposal to Corporate Employees or Members of Council**

The Bid for or purchase of any surplus Corporate goods directly or indirectly by or for a Corporate employee or a member of the Council is prohibited. For clarification, the Bid for or purchase of an asset is considered to be made “indirectly” by a Corporate employee or member of the Council if it is made by a parent, spouse, sibling or child of that individual, or from a company owned or controlled by that individual or by a parent, spouse, sibling or child of that individual whether or not the item is ever transferred to the employee or member of Council. Accordingly, purchases by those individuals or companies are also prohibited, subject to the Code of Conduct.

## **ARTICLE 9.00 PROHIBITIONS**

### **9.01 Division of Contracts**

Any attempt to evade or circumvent the requirements of this By-law is prohibited. This includes the division of purchases in an apparent attempt to artificially reduce the estimated or actual

Total Project Cost in order to avoid particular requirements of this By-law. The same is true regardless of the method of purchase utilized.

### **9.02 Personal Purchases**

Purchase by the Corporation of any Goods and Services for personal use by or on behalf of any Corporate employee or member of the Council for purposes other than the legitimate requirements of the Corporation is prohibited.

### **9.03 Restrictions on Seeking External Vendors**

Where Goods and Services are available within the Corporation (for example, at City Stores or through City Printing & Graphics), external purchases of the same Goods and Services is prohibited. The prohibition will be waived if the requisitioning department can demonstrate to the Manager Supply Management that the purchase from an external source will result in a lower total acquisition cost, or that the department's requirements exceed internal capabilities.

### **9.04 Conflicts of Interest; Codes of Conduct When Purchasing**

The acceptance of gifts, benefits, money, discounts, favours or other assistance by any Corporate employee or member of the Council, whether directly or indirectly, from potential suppliers to the Corporation is prohibited. The image and integrity of the Corporation, and its staff and elected officials, must be preserved at all times. Everyone involved in the purchasing process shall abide by relevant conflict of interest policies and codes of ethical conduct. For clarification, favours are considered to be bestowed "indirectly" to a Corporate employee or member of the Council if it is bestowed upon a parent, spouse, sibling or child of that individual, or upon a company owned or controlled by that individual, or by a parent, spouse, sibling or child of that individual, in any case whether or not the benefit is ever transferred to the employee or member of Council. Accordingly, acceptance of gifts, benefits, money, discounts, favours or other assistance by those individuals and companies is also prohibited.

### **9.05 Conflicts of Interest; Codes of Conduct When Selling**

The Corporation will not purchase Goods and Services from any Corporate employee or member of the Council, whether directly or indirectly, except in accordance with all relevant conflict of interest policies and codes of ethical conduct, and the requirements of the *Municipal Conflict of Interest Act*.

For clarification, Goods and Services are considered to have been purchased "indirectly" from a Corporate employee or member of the Council if they are purchased from a parent, spouse, sibling or child of that individual, or from a company owned or controlled by that individual or by a parent, spouse, sibling or child of that individual, in any case whether or not the benefit is ever transferred to the employee or member of Council. Accordingly, purchasing from those companies and individuals is also prohibited.

## **9.06 Official Point of Purchasing Contact**

The official point of purchasing contact is the Manager Supply Management, or a member of his or her staff. Should it be necessary or desirable to have a contact person to respond to technical issues, that person shall be named in the competitive Bid documents. All communications will be made by these individuals and, during the procurement process, no Bidder or person acting on behalf of a Bidder, shall contact any member of Council, any consultant engaged by the Corporation with respect to the particular purchase in question, or any employee of the Corporation to attempt to seek information or to influence the award of the Contract. Any activity that will or will appear to influence the decision process, including the contact prohibited in this Section, and including contact purporting to be meetings of introduction, social events, meals or meetings related to the selection process, shall result in disqualification of the Bidder for the project to which the influential activity is directed. This prohibition does not apply to meetings specifically scheduled by the Manager Supply Management for presentations or negotiations. Any Bidder found to be in breach of this Section shall be subject to immediate disqualification from the procurement process and may be prohibited from future bidding opportunities at the discretion of Manager Supply Management.

In addition, no Contractor shall engage in any contact or activities in an attempt to influence any Corporate employee or member of the Council with respect to the purchase of additional enhancements, options, or modules. However, a Contractor may communicate with the Manager Supply Management or an appropriate member of his or her staff, for purposes of administration of the Contract during the term of the Contract.

The determination of what constitutes influential activity is in the sole discretion of the Manager Supply Management, acting reasonably, and not subject to appeal.

Any employee who is approached by a potential supplier should refer the supplier to the Supply Management Division of the Finance and Corporate Services Department.

## **ARTICLE 10.00 RESPONSIBILITIES AND AUTHORITIES**

### **10.01 By-law to Govern all Purchases**

No expenditure, purchase or commitment shall be incurred or made, and no account shall be paid by the Corporation for Goods and Services, except as provided in this By-law or otherwise approved by Council.

### **10.02 Budget Consideration**

No Contract shall be entered into and no expenditure shall be authorized or incurred unless Council has provided funds for such purpose in the annual budget or otherwise agreed to the provision of such funds, and no expenditure shall be authorized or incurred in excess of the funds provided unless otherwise authorized by Council.

### **10.03 Role of Manager Supply Management**

The Manager Supply Management is responsible for:

- (a) providing professional procurement advice, including assistance in business decisions based on market place knowledge, market timing or other professional supply opinions;
- (b) soliciting for the purchase of Goods and Services;
- (c) determining the method and scope of solicitation, including reviewing statements of work and specifications as prepared by the requisitioning department, for objectivity, transparency and fairness;
- (d) developing co-operative purchasing plans with other levels of government, municipalities, boards, agencies, commissions, or private sector entities where such plans are in the best interests of the Corporation;
- (e) standardizing procurement procedures;
- (f) monitoring compliance with this By-law;
- (g) notifying the General Manager of Finance and Corporate Service, in advance if possible, of any non-compliance with this Policy;
- (h) in consultation with the Human Resources Division of the City Manager's Office or the City Solicitor, rejecting any purchase requisitions for services where the services could result in the establishment of an employee/employer relationship;
- (i) disposing of surplus Corporate assets;
- (j) cancelling any procurement process, at any stage, when;
  - there is a request by the requisitioning Department Head, and responses are greater in value than the funding approval for the commitment that would result from an award in respect of the call; or
  - in the opinion of the requisitioning Department Head or the Manager Supply Management, a change in the scope of work or specifications is required, and therefore a new call should be issued; or
  - the Goods and Services to be provided by the call no longer meet the Corporation's requirements; or
  - in the opinion of the Manager Supply Management, the integrity of the process has been compromised.

## **ARTICLE 11.00: MISCELLANEOUS**

### **11.01 Repeals**

By-law 220-1993 and Chapter 187 of the Municipal Code are repealed.

### **11.02 Effective date**

This By-law comes into force and takes effect upon the date it is passed.

### **11.03 Regular Review of By-law**

This By-law will be formally reviewed on a periodic basis of not less than every five (5) years. After review, the Manager Supply Management will report to Council, whether or not recommendations for amendments are included in the report.

Enacted and passed this 19th day of December, A.D. 2011 as witnessed by the Seal of the Corporation and the hands of its proper Officers.

Keith Hobbs  
Mayor

Marcella Vallelunga  
Deputy City Clerk