

TOWNSHIP OF STRONG
BY-LAW 2013-016

A By-Law to Provide Policies with Respect to the Procurement of Goods and Services

WHEREAS Section 271(1) of The Municipal Act, S.O. 2001, provides that before January 1, 2005, a municipality and a local board shall adopt policies with respect to its procurement of goods and services, including policies with respect to, the types of procurement processes that shall be used; the goals to be achieved by using each type of procurement process; the circumstances under which each type of procurement process shall be used; the circumstances under which a tendering process is not required; the circumstances under which in-house bids will be encouraged as part of a tendering process; how the integrity of each procurement process will be maintained; how the interests of the municipality or local board, as the case may be, the public and persons participating in a procurement process will be protected; how and when the procurement processes will be reviewed to evaluate their effectiveness; and any other prescribed matter.

AND WHEREAS Council passed By-law 2011-017 on the Twenty-Fourth day of May 2011, to provide procedures for the purchasing of goods and services, a tendering process, and the payment of accounts for the Corporation of the Township of Strong;

AND WHEREAS Council has reviewed purchasing practices and now deems it desirable to adopt a comprehensive policy with respect to the procurement of goods and services to meet the requirements of Section 271(1) of The Municipal Act, S.O. 2001.

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF STRONG ENACTS AND BE IT ENACTED AS FOLLOWS:

1.0 DEFINITIONS

Acquisition shall mean the process used for obtaining goods and services.

Agreement shall mean a legal document that binds the Corporation of the Township of Strong and all other parties, subject to the provisions of the contract.

Annual Aggregate Value shall mean the total amount anticipated to be spent annually by all departments on a particular type of good or service.

Approval shall mean authorization to proceed with the purchase or disposal of goods and/or services.

Bid shall mean an offer or submission received in response to a request for quotation, tender or proposal which is subject to acceptance or rejection.

Bid Deposit shall mean a submission from a prospective vendor in response.

Blanket Order shall mean the agreement wherein a vendor will provide certain items to the Township for an agreed period of time with established terms and conditions.

Budget shall mean the budget approved by Council for the current fiscal year at which time purchase of goods and services are being considered.

Clerk-Treasurer shall mean the Clerk-Treasurer for the Corporation of the Township of Strong.

Committee shall mean a committee as designated by the Council of the Corporation of the Township of Strong.

Corporation shall mean the Corporation of the Township of Strong.

Council shall mean the Council of the Corporation of the Township of Strong.

Conflict of Interest shall mean a situation in which private interests or personal considerations may affect an employee's judgment in acting in the best interest of the Township of Strong. It includes using an employee's position, confidential information or corporate time, material, or facilities for private gain or advancement or the expectation of private gain or advancement. A conflict may occur when an interest benefits any member of the employee's family, friends, or business associates.

Department Head shall mean the person responsible for direction and operational control of a Department.

Disposal shall mean the removal of materials owned by the Township by sale, trade-in, auction, alternative use, gift, or destruction which are deemed surplus.

Emergency Purchase shall mean a purchase made in a crisis situation where immediate action is required to prevent or correct dangerous or potentially dangerous conditions, further damage, to restore minimum service or ensure the safety of the public.

Execute shall mean to legally bind the Corporation of the Township of Strong to the terms and conditions defined within an Agreement.

Expression of Interest shall mean a situation where vendors are solicited by the Township to advise the Township of their ability or desire to undertake Township requirements.

Expenditure shall mean the payment of moneys by the Corporation of the Township of Strong in consideration of the acquisition of goods and/or services.

Firm shall mean the company, group, supplier, business, vendor, or individual conducting business and supplying goods or services.

Formal Bid shall mean a sealed bid submission.

Formal Quotation shall mean a document that sets out particular requirements for goods and/or services.

Goods and Services shall mean supplies, work, equipment, property, construction, projects, public works services, consultant's services, which the Corporation of the Township of Strong is intending to obtain.

In-house Bid shall mean a bid made by a Department and authorized by the Department Head, submitted in response to a bid solicitation, where the provision of the goods, services or construction at the lowest total acquisition cost, meets all the specifications and contains no irregularities requiring automatic rejection.

Informal Quotation shall mean a competitive bid process for goods or services that is conveyed and received from bidders in a written format by e-mail, mail or fax.

Lowest Responsive Bid shall mean the lowest bid price submitted which

meets the requirements and specifications as set out in the bid request, minor deviations excepted.

Material Safety Data Sheets (MSDS) shall mean Material Safety Data Sheets which must be submitted by the vendor for all hazardous materials, including an index of chemical compounds with details of properties, handling details, precautions and first-aid procedures.

Negotiation shall mean the action or process of conferring with one or more vendors leading to an agreement on the acquisition of the required goods and services under the conditions outlined in this Policy.

Open Market Procedure shall mean obtaining price quotations from vendors verbally or in writing.

Privilege Clause shall mean the standard clause used in bid documents and advertising that reads in part “the lowest or any tender not necessarily accepted.”

Procure/Procurement/Purchase shall mean to acquire by purchase, rental or lease of goods and/or service.

Purchasing Designate shall mean a person designated by a Department Head to exercise any or all responsibilities of the Department Head with respect to this policy.

Purchase Order shall mean a written offer to purchase goods and services or a written acceptance of an offer where such offer has been made on forms prescribed by the Township.

Quotation shall mean a written offer received from a firm in response to a request from the Township for the provision of goods and/or services.

Request for Proposals shall mean an offer to provide goods or services to the Township, where it is not practical to prepare precise specifications, or where alternatives to detailed specifications will be considered, which may be subject to further negotiation. This process allows vendors to propose solutions to arrive at the end product, and allows for evaluation on criteria other than price.

Sealed Bids shall mean bids submitted in a sealed envelope to a specified location, by a specified date.

Services shall mean items such as telephone, gas, water, hydro, janitorial and cleaning services, consultant services, legal surveys, medical and related services, insurance, leases for grounds, buildings, office or other space required by the Corporation of the Township of Strong and the rental, repair or maintenance of equipment, machinery, or other personal and real property.

Sole Source shall mean there may be more than one source in the open market but only for reasons of function or service only one vendor is recommended for consideration of the particular goods and/or services.

Supplies shall mean goods, wares merchandise, material and equipment.

Tender shall mean a document which sets out particular specifications for the commodity or service required. This can also refer to an offer in writing to execute some specified work or to provide some specified articles at a specified rate.

Township shall mean the Corporation of the Township of Strong.

Treasurer shall mean the Treasurer for the Corporation of the Township of Strong.

Vendor shall mean any person or enterprise supplying goods or services to the Corporation of the Township of Strong.

Verbal Quotation shall mean pricing received via telephone or in person, with written documentation of the conversation retained by the Department.

2.0 PURPOSES, GOALS AND OBJECTIVES

2.1 The purposes, goals and objectives of this by-law and of each of the methods of procurement authorized are:

- i) to encourage competition among suppliers;
- ii) to maximize savings for taxpayers;
- iii) to ensure service and product delivery, quality, efficiency and effectiveness;
- iv) to ensure fairness among bidders;
- v) to ensure openness, accountability and transparency while protecting the financial best interests of the Township of Strong;
- vi) to purchase environmentally responsible goods and services to attempt to reduce the amount of solid waste requiring disposal; and
- vii) to meet the accessibility obligations legislated under the *Ontarians for Disabilities Act, 2001* and the *Accessibility for Ontarians with Disabilities Act, 2005*. See section 2.2 below.

2.2 Accessibility Obligations in Procurement

The Township is committed to meeting its obligations under the *Human Rights Code*, the *Ontarians with Disabilities Act (ODA), 2001* and the regulations established under the *Accessibility for Ontarians with Disabilities Act (AODA), 2005*.

To this end, Department Heads or their designates will consider accessibility during all phases of the procurement process taking the following into consideration:

1. The barriers (structural or technical) that people with disabilities might face in attempting to use the goods, services or facilities being acquired.
2. Who the goods, services or facilities will be used by, i.e. members of the public or by Township employees.
3. The appropriate accessibility criteria and how it can be incorporated into the procurement process.

In cases where the Township is contemplating the acquisition of a service to be provided to the public by an external source, the procurement document will specify that the vendor must adhere to the Township's Accessible Customer Service policy by ensuring that their staff receive customer service training, that is acceptable and approved by the Township, on interacting with people with disabilities and delivering the service appropriately.

During the procurement process, documentation will be kept acknowledging the Township's efforts to ensure compliance with the ODA and the AODA. In cases where incorporating accessibility criteria and

features into the acquisition are not practical, an explanation will be provided, upon request, and documented.

3.0 PURCHASING RESPONSIBILITIES

3.1 Expenditure Authorization

- i) Council has ultimate authority for all expenditures. Council delegates this authority by the authorization of budgets or by specific resolution. Treasury shall not pay for any item that has not been authorized by Council through budget appropriation or specific resolution.

3.2 Department Head Authorization and Responsibilities

- i) A Department Head shall be responsible for approval of accounts within the approved department budget. Unbudgeted capital expenditures require prior Council approval.
- ii) Resolutions approving budget amendments, capital expenditures or special appropriations shall contain the purpose of expenditure, cost estimates or expenditure limitation, and the fund in which an appropriation has been provided. All staff reports recommending such resolutions shall contain the Department Head's endorsement.
- iii) A Department Head may appoint a designate to exercise any or all responsibilities assigned to the Department Head by this policy.

4.0 PURCHASING MECHANISMS

4.1 Informal Quotation Purchases

The Department Head shall be authorized to make purchase of goods and services for estimated expenditures less than \$10,000 from such vendor and upon such terms and conditions as the Department Head deems appropriate subject to first obtaining at least three written quotations whenever possible. Bid documents and specifications, as applicable, may be issued or received by email and/or fax transmission.

4.2 Formal Quotation Purchases

The Department Head shall be authorized to make Formal Quotation Purchases for goods and services for estimated expenditures exceeding \$10,000 and less than \$25,000. At least three bids must be obtained whenever possible.

4.3 Tender Purchases

- i) The Department Head shall not order goods or services exceeding \$25,000 without requesting and obtaining sealed tenders for the goods and services unless specifically authorized to do so by a resolution of Council for a particular transaction. At least three bids must be obtained whenever possible.
- ii) Notwithstanding the above, adherence to this purchasing policy is not required with respect to those items listed below, or to a transaction specifically authorized by resolution of Council to be exempt from this tendering policy.
 - a) Purchases for services for a program where services have been awarded to a firm on an on-going basis when clearly identified in the budget.
 - b) Purchase of replacement parts where the original equipment

manufacturer is the sole provider of the equipment.

- c) Sole source supply.

4.4 Requests for Proposals

- i) The Department Head may use a Request for Proposal in place of a tender or quotation when goods or services cannot be specifically stipulated or when alternative methods are being sought to perform certain functions or services.
- ii) When the preferred proposal exceeds the approved budget appropriation, the Department Head shall submit a report to Council for direction.

4.5 Blanket Orders

- i) The Department Head may establish Blanket Orders using the applicable bid mechanism based upon the estimated annual expenditure.
- ii) In the case of equipment repairs and equipment rentals, the Department Head shall be authorized to select vendors not solely on the basis of cost, but also on ability, quality or workmanship, service, availability, overall performance and experience without obtaining quotations.
- iii) Blanket Orders shall be issued with all ordering departments responsible for maintaining purchases within budget allocations.

4.6 Emergency Purchases

Notwithstanding the provisions of this policy, tender and quotation procedures shall be disregarded for goods or services that may be required in the event of an emergency situation provided the Department Head first obtained the approval. Any purchase of goods or services purchased in the event of an emergency shall be reported to the very next Council meeting.

4.7 Purchases By Negotiation

- i) Department Head may under the following conditions negotiate with one or more suppliers of goods or services and in such cases the requirement for inviting tenders or quotations is waived.
- ii) When in the judgement of the Department Head, goods or services are determined to be in short supply due to market conditions.
- iii) Where there is only one source of supply.
- iv) When two or more identical bids have been received, the Department Head may negotiate with the lowest bidders, keeping all negotiations fair and ethical.
- v) When the lowest bid meeting specifications exceeds the estimated costs and it is not practical to recall the tender or quotation.
- vi) When no bids are received in a tender or quotation call.
- vii) When all bids received fail to meet the specifications or tender term and conditions and it is impractical to recall tenders or questions.
- viii) Any negotiated purchase contract for \$25,000 or more in value, excluding taxes and freight, shall be subject to approval from Council.

4.8 Sole Source Purchases

- i) General Rules for Sole Source Purchasing:
 - a) That the procurement of materials, parts, supplies, equipment or services without competition is done under exceptional and limited circumstances.
- ii) Conditions Required for Sole Source Purchasing of Which One or More Must be Met:
 - a) When the expertise or product of an individual organization or individual is deemed to be specifically required by the Corporation.
 - b) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of raw material or other such conditions.
 - c) When the procurement is for services related to electric power or energy, gas, water or other utility services and/or system where it would not be practical to allow a contractor other than the utility company itself to work upon the system.
 - d) When the procurement is for technical supply and/or services in connection with the assembly, installation or servicing of equipment or software of a highly technical, electronic, or specialized nature.
 - e) When the procurement is for parts or components to be used as replacements in support of equipment specifically designed by the manufacturer.
 - f) When a contractor is already at work on the site based on an existing contract and it would not be practical to engage another contractor for additional work deemed to be necessary.
- iii) Process to be Followed Prior to Initiating a Sole Source Purchase:
 - a) Sole source items require detailed documentation from the responsible department to justify the purchase and to ensure that the cost charged by the vendor is reasonable.
 - b) Where a Department Head deems that a sole source purchase is necessary, a written report shall be submitted to the Clerk Treasurer for approval.

4.9 In-House Bids

- i) In-house bids may be used for the procurement of goods, services or construction in circumstances where the Clerk Treasurer considers it appropriate to do so.

5.0 CONDITIONS APPLICABLE TO ALL BID SUBMISSIONS

5.1 The following conditions apply to all bid submissions whether they are formal or informal:

- i) Bid documents must be submitted and received in the manner specified.
- ii) A bidder who has already submitted a bid may submit a further bid at any time up to the official closing time. The last bid received will

supersede and invalidate all bids previously received by that bidder.

- iii) A bidder may withdraw a submitted bid at any time up to the official closing time.
- iv) All Departments must document the receipt of all submissions over \$25,000 including the bidders name and date and time of receipt of bid.

5.2 Bids may be rejected for the following reasons:

- i) Bids received after the specified closing date and time as specified in the bid document.
- ii) Bids which are incomplete, conditional or obscure, or which contain additions not called for, erasures, alterations or irregularities of any kind.
- iii) Does not meet specification requirements.

5.3 All bid openings will be open to the public.

6.0 LOCAL PREFERENCE

6.1 The Township will endeavour to achieve best value in its commercial transactions. As a consequence, the Township will not practice local preference in awarding purchases in accordance with the Discriminatory Business Practices Act, R.S.O. 1990, Chapter D12.

7.0 ADVERTISING

7.1 Where effective in the opinion of the Department Head, information regarding the bid document shall be advertised in the local newspaper and/or applicable publications necessary to comply with all existing statutory regulations. Bid Documents shall be posted on the Township's web site.

8.0 BID DEPOSITS

8.1 Bid deposits shall be required to accompany bid submissions for the following circumstances:

- i) Construction projects in excess of \$25,000.
- ii) Special contracts or scope of work as deemed appropriate by the Department Head.

8.2 For estimated expenditures less than \$25,000, the Department Head shall determine the amount of the bid deposit.

8.3 For estimated expenditures greater than \$25,000, the minimum bid deposit required shall be 5%.

8.4 A bid deposit may be provided in one of the following formats:

- i) Bid bond issued by a bonding agency naming the Corporation of the Township of Strong as the obligee.
- ii) Certified cheque made payable to the Township of Strong.
- iii) Irrevocable letter of credit naming the Corporation of the Township of Strong as beneficiary.
- iv) Money orders made payable to the Corporation of the Township of

Strong.

v) Canadian currency.

8.5 The Corporation of the Township of Strong does not pay interest on any bid deposits.

8.6 All bid deposits must be original documentation, signed and sealed as appropriate. Faxes, photocopies or electronic versions of bid deposits will not be accepted.

8.7 The Corporation of the Township of Strong is authorized to cash and deposit any bid deposit in its possession that is forfeited as a result of non-compliance with any of the terms, conditions and/or specifications of a sealed bid.

9.0 EXCLUSION OF BIDDERS

9.1 The Township may, in its absolute discretion, reject a bid if the bidder, or any officer or director of the bidder, is or has been engaged either directly or indirectly through another corporation, in legal action against the Township, its elected or appointed officials, officers and employees in relation to any other contract or service or any matter arising from the Town's exercise of its powers, duties, or functions.

9.2 In determining whether or not to reject a quotation, tender or proposal under this clause, the Township will consider whether the litigation is likely to affect the bidder's ability to work with the Township, its staff, consultants and representatives, and whether the Town's experience with the bidder indicates that the Township is likely to incur increased staff and legal costs in the administration of the contract if it is awarded to the bidder.

9.3 The Department Head shall document evidence 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 violations.

9.4 The Township may prohibit an unsatisfactory supplier from bidding on future contracts.

10.0 EXCEPTIONS FROM REQUIREMENT OF PURCHASING PROCESS

10.1 Purchasing processes are not required for the following items:

i) Employer's General Expenses

- a. property rentals
- b. insurance premium payments
- c. grants and donations to agencies
- d. payments of damage claims
- e. charges to and from other government agencies
- f. real property including land, building, leasehold interest, easements, encroachments and licenses
- g. catering
- h. office supplies
- i. maintenance of telephone system and equipment service agreements
- j. supplies from the Registrar General

ii) Professional and Special Services

- a. legal settlements
- b. witness fees
- c. committee fees
- d. arbitrator fees
- e. appraisal fees

- f. real estate fees
 - g. legal fees and other professional services related to litigation or legal matters
 - h. funeral and burial expenses
 - i. insurance claims
 - j. revenue collected on behalf of a third party
 - k. providers of artistic and recreational services, such as instructors, dance/yoga/gymnastic teachers, historical experts, artistic designers, health and appearance therapists
- iii) Utilities, including postage, water, sewer, gas, hydro, telephone (basic services, cable television, and related billing services).
 - iv) Advertising services required by the Township on or in but not limited to radio, television, newspaper and magazines.
 - v) Bailiff or collection agencies.
 - vi) Expenses related to an event which will be recovered in full by a third party.
 - vii) Amendments or Renewals of Existing Agreements.
 - viii) When a general contractor or consulting firm has been engaged for a specific project that includes the procurement of sub-trades and suppliers, it shall be deemed permissible for the said contractor or firm to bring forward competitive quotations for Council's approval.

11.0 ADMINISTRATION

- 11.1 Contracts or purchases shall not be divided to avoid any requirements of this policy.
- 11.2 In all purchases, price shall be the prime selection criteria prior to any special provisions or add/delete calculated into the bid price, providing that all specification requirements are met. Such specifications are to be generic or "as equivalent." All factors influencing the purchasing decision are to be included in the specifications.
- 11.3 Goods or services shall not be purchased by an employee of the Township through the use of a personal credit card without first obtaining the approval of the Department Head in advance of the purchase. Use of personal credit cards is only allowed when there is not an account with a vendor and where the vendor will not invoice the Township.
- 11.4 Goods or services shall not be purchased from an employee of the Township or from any association of such employee, unless the extent of the interest of such employee has been fully disclosed and the vendor has been approved by the Clerk Treasurer.
- 11.5 The Township of Strong may participate with other units of government, their agencies or public authorities in co-operative purchase ventures when the best interest of the Township of Strong will be served. Where such participation is at variance with the Township of Strong's Purchasing policy, Council shall first authorize any participation.
- 11.6 Performance evaluations may be undertaken on suppliers and providers of service.
- 11.7 After the adoption of the budget, the Treasurer is authorized to pay the accounts approved by the appropriate Department Head as contained in the budget, upon receipt of evidence of value received and which have been approved by signature of the Department Head.
- 11.8 Notwithstanding the provisions of this procedure, the Corporation shall

have the right to reject the lowest or any bid at its absolute discretion. The Corporation also reserves the right to reissue the bid document in its original format or modified as best suits the requirements of the Corporation.

11.9 Moneys and Accounts

i) Moneys Paid Out

All moneys ordered to be paid by the Council shall be so paid by cheque of the Municipality signed by the Clerk Treasurer and the Mayor, or in special circumstances any two of the Deputy Treasurer, Mayor and/or Clerk Treasurer or in their absence, by a Member appointed for the purpose by the Council. Bank drafts, money orders and electronic fund transfers may also be used. All payments will be made payable directly to the vendor, except where Section 11.3 may apply.

ii) Approval of Accounts

Each invoice received shall be inspected and approved by signature of the Department Head concerned, or authorized designate. Each month, all such approved invoices shall be listed on the Council List of Accounts for Approval. The Council List of Accounts for Approval shall be distributed to Council for review. Each month, Council shall pass a resolution approving the accounts, as confirmed and paid. This or any other rule shall not affect or interfere with the payment of salaries, or of sums authorized by By-law of the Council or payable under any Act of Parliament.

iii) Payment of Accounts

a) No payment shall be made by the Clerk Treasurer on account of the municipality unless the goods and/or services have been received, the invoice has been approved for payment by the Department Head and an appropriation for same is included in the current budget.

b) Between the last regular meeting of Council in any year and the adoption of a budget for the next year, the Clerk Treasurer is authorized to pay the accounts of any ordinary business transactions of the Corporation that are required to maintain services. This shall include the payment of operating accounts and/or previously approved capital items and projects.

iv) Money Votes

Any resolution involving the disbursement of money, not recommended by report of a Department Head, or of some Committee of the Council, or included in the current budget, shall require for its adoption the favourable vote of the majority of the Members present.

12.0 GENERAL APPLICATION

12.1 Notwithstanding the provisions By-law 2013-016, all previous purchasing transactions shall be herein confirmed as valid.

12.2 Where there is a conflict between the provisions of this by-law and those of any other by-law, the provisions of this by-law shall prevail.

12.3 Council may when determine to be in the best interest of the Township

waive any section or clause of this by-law.

13.0 RESOLUTION OF QUESTIONS OF POLICY

13.1 Any question involving the meaning or application of this policy is to be submitted to the Clerk Treasurer who will resolve the question.

14.0 POLICY REVIEW

14.1 This policy shall be reviewed every five years.

14.2 The review shall determine how effective this policy has been in achieving the purpose, goals and objectives set out in Section 2.0 of the By-law as well as the requirements of the Municipal Act, 2001.

15.0 DISPOSAL OF SURPLUS GOODS

15.1 When a Department Head has identified surplus goods, the Clerk Treasurer shall be notified in writing, describing the goods, condition and location. A list of the items will be made available to all Township departments in the event that some items may be used by other departments. If a department is interested in any of the surplus items, there will be a journal entry made to each department for an agreed value. Any surplus goods not transferred within Township departments, will be accumulated by the Township and will be disposed of by any of the following methods:

- i) Sealed bid by advertised public bid;
- ii) Advertised as being for sale to the public;
- iii) Sold by auction and/or consignment;
- iv) Donation to a registered charity.

15.2 Equipment that can not be sold and has been determined by the Department Head to be of no value shall be disposed of as deemed appropriate by the Department Head.

16.0 REPEAL

By-law 2011-017 are hereby repealed.

17.0 EFFECTIVE DATE

This by-law shall come into force and effect on the 28th day of May 2013.

BY-LAW read a first, second and third time and finally passed at a meeting of Council on the 28th day of May, 2013.

Deputy Mayor
Kelly Elik

Clerk Treasurer
Linda Maurer