

**THE CORPORATION OF THE TOWNSHIP OF NORTH DUMFRIES  
BY-LAW NUMBER 3265-21**

**BEING A BY-LAW TO ADOPT A POLICY RESPECTING THE PROCURMENT OF GOODS  
AND SERVICES FOR THE TOWNSHIP OF NORTH DUMFRIES**

**WHEREAS** section 270 (1) of the *Municipal Act, 2001* S.O. 2001, c. 25 (the “Municipal Act”) provides that a municipality shall adopt and maintain policies respecting the procurement of goods and services; and

**WHEREAS** section 5 (3) of the Municipal Act provides that a municipal power shall be exercised by by-law unless it is specifically authorized to do otherwise; and

**WHEREAS** section 5 (1) of the Integrated Accessibility Standards, Ontario Regulation 191/11, provides that municipalities shall incorporate accessibility design, criteria and features when procuring or acquiring goods, services or facilities, except where it is not practicable to do so; and

**WHEREAS** on September 2, 2008, the Council of the Corporation of The Township of North Dumfries passed Purchasing By-law No. 2302-08; and

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF  
NORTH DUMFRIES HEREBY ENACTS AS FOLLOWS:**

**Part I. Short Title, Purpose and Scope**

**Short Title**

1. This by-law shall be known and may be cited as the “Purchasing By-law”.

**Purpose**

2. This by-law has been enacted to adopt a policy respecting the Procurement of Goods, Services, Construction or Consulting Services to:
  - a. ensure an efficient, timely and cost-effective approach while maintaining controls necessary for a public agency;
  - b. encourage objective and equitable treatment of all Suppliers while ensuring the principles of fairness, transparency and accountability;
  - c. ensure the Best Value of an acquisition is obtained by determining the total cost. Factors to consider may include, but shall not be limited to, the determination of the total cost of performing the intended function over the lifetime of the task, acquisition cost, installation, disposal value, disposal cost, quality of product, training cost, maintenance cost, quality of performance and environmental impact;
  - d. support effective business planning to ensure that acquisitions occur after consideration of need, alternatives, timing and appropriate life cycle management;
  - e. adhere to the highest standards of ethical conduct and to avoid conflicts between the interests of the Township and those of the Township’s employees and elected officials;
  - f. ensure compliance with applicable trade agreements, laws and regulations; and
  - g. encourage due regard for the preservation of the natural environment.

**Scope**

3. This by-law applies to the Procurement of all Goods, Services, Construction or Consulting Services except those items set out within Schedule “A”.

4. This by-law applies to all divisions within the Township.
5. This by-law applies to the disposal of assets owned by the Township save and except the disposal of artifacts and real property including land, building, leasehold interests, easements, encroachments, license and rentals;

## **Part II. Interpretation**

### **Headings**

6. The division of this by-law into parts and the insertion of headings are for convenient reference only and shall not affect interpretation of the by-law.
7. Schedule "A" to this by-law – Excluded Procurements forms an integral part of this by-law and is attached hereto.

### **References to Applicable Law**

8. All references to applicable policies, by-law, statutes and regulations are ambulatory and apply as amended, revised or replaced from time to time.

### **Definitions**

For the purposes of this by-law, unless a contrary intention appears;

**"Acquisition"** means to obtain Goods, Services, Construction or Consulting Services;

**"Approval Authority"** means the authority to approve and award Procurements, as well as any assignment or corporate change requests related to such Procurements, up to the Procurement Values for the respective body or person(s) set out in "Section V Standard Procurement" and "Section VI Non-Standard Procurement";

**"Authorized Delegate"** means the person who has been delegated by Council to have Approval Authority in accordance with the Procurement procedures. An Authorized Delegate includes any other person further sub-delegated in writing, by the CAO or Director of Corporate Services, to temporarily act on behalf of the Approval Authority;

**"Best Value"** means the optimal balance of performance and cost determined in accordance with pre-defined evaluation criteria and is not limited to the lowest dollar amount;

**"Bid"** means an offer or submission in response to a Solicitation Document;

**"Bidder"** means a Supplier that submits a Bid;

**"CAO "** means the Chief Administrative Officer of the Township or designate;

**"Competitive Process"** means either an Open Competition or an Invitational Competition;

**"Confidential Information"** means information of commercial value, the disclosure of which is likely to have the effect of either impairing the Township's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the Supplier or other organization from which the information was obtained, unless the Township is required by law to disclose such information;

**"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, 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 or architectural work, but does not include professional services related to the construction contract unless they are included in the Procurement;

**“Consulting Services”** means the provision of expertise, strategic advice or design services that is presented for consideration, decision-making and problem solving, and are generally acquired to obtain information, advice, training or direct assistance;

**“Contract”** means a commitment by the Township for the Procurement of Goods, Services, Construction or Consulting Services from a Supplier which may be evidenced by:

- i. a Solicitation Document;
- ii. an Agreement executed by the Supplier and the Township; or
- iii. a Purchase Order and issued to the Supplier by a duly authorized employee of the Township;

**“Cooperative Purchasing”** means a variety of arrangements whereby two or more publicly funded entities combine their requirements in a single Procurement process to obtain advantages of volume purchases from the same Supplier(s);

**“Council”** means the Council of the Township;

**“Department”** means any department within the Township;

**“Direct Procurement”** means using a process for acquisition of Goods, Services, Construction or Consulting Services by acquiring Best Value directly from a particular Supplier, within approved budget ;

**“Director”** means the Director of a Department or an appointed acting Director;

**“Disposal”** means an act through which the Township gives up title to property or ownership of Goods;

**“Division”** means any division within a Department in the Township;

**“Emergency”** means a situation, or the threat of an impending situation, which, affect the environment, life, safety, health or welfare of the general public, or the property of the residents of the Township;

**“Evaluation Committee”** means any Township employee(s) to determine that the Vendor has the necessary technical and qualitative requirements to perform the project engagement;

**“Goods”** includes supplies, equipment, materials, products, structures and fixtures to be delivered, installed or constructed;

**“HST”** means harmonized sales tax;

**“Internal Business Partner”** means the Township Division initiating or requesting the Acquisition of the Goods, Services, Construction or Consulting Services;

**“Invitational Competition”** means a Competitive Process in which an invitation to submit Bids is issued to a minimum of three Suppliers;

**“Informal Procurement”** means a process for Acquisition of Goods, Services, Construction or Consulting Services in which a minimum of three written

Quotations are obtained directly from particular Suppliers without conducting a Competitive Process, in order to acquire the Best Value. The Quotations must be submitted to the Purchasing Clerk;

**“Limited Competition Procurement”** means the Acquisition of Goods, Services, Construction or Consulting Services through a process whereby Bids are solicited from less than three Suppliers;

**“Non-Standard Procurement”** means the Acquisition of Goods, Services, Construction or Consulting Services through a process other than the process normally required for the type and Procurement Value of the Goods, Services, Construction or Consulting Services set out in “Section VI Non- Standard Procurement”;

**“Open Competition”** means the solicitation of Bids through a publicly posted Solicitation Document;

**“Personal Information”** refers to personal information as defined within the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56;

**“Procurement”** or **“Purchasing”** means the Acquisition of Goods, Services, Construction or Consulting Services by purchasing, renting or leasing;

**“Procurement Value”** means the estimated amount (excluding taxes) for budget or planning purposes in acquiring particular Goods, Services, Construction or Consulting Services which amount may be higher, lower or equal to the actual cost of the Goods, Services, Construction or Consulting Services when ultimately acquired. For greater certainty, when multi-year Contracts are awarded for the Acquisition of Goods, Services, Construction or Consulting Services, the estimated value of the Goods, Services, Construction or Consulting Services for such multi-year Contracts is the estimated amount to be paid for the Goods, Services, Construction or Consulting Services over the entire Contract, and is not limited to the amount which may be payable in any particular budget year. The Procurement Value must include all anticipated costs to the Township, including, as applicable, Acquisition, maintenance, replacement, Disposal, and training, delivery, installation and extension options, less applicable rebates or discounts and shall exclude HST or other taxes;

**“Proposal”** means an offer to supply Goods and/or Services on which end results are outlined but no detailed Specifications were given to the Bidders as to the Goods and/or Services or how the work is to be performed through a publicly advertised Request for Proposal;

**“Quotation”** means a written offer to sell Goods or provide Services obtained from selected sources of supply to provide stipulated goods and/or Services at a particular price and with specified terms or conditions. Quotations may be received by mail, e-mail or facsimile;

**“Senior Management Team”** consists of the CAO, Fire Chief, Director of Corporate Services, Director of Leisure and Community Services and Director of Public Works or as amended by the CAO;

**“Services”** means the furnishing of labour, time or effort by a Supplier, which may involve the delivery or supply of products incidental to the provision of the Services, and includes professional, construction or maintenance Services;

**“Solicitation Document”** means the document issued by the Township to solicit Bids from Bidders or Suppliers that may be without limits in the form of a Request for Tender, a Request for Proposal or a Request for Pre-Qualification;



**“Standard Procurement”** means the Acquisition of Goods, Services, Construction or Consulting Services set out in “Section V - Standard Procurement”;

**“Supplier”** means a person carrying on the business of providing Goods, Services, Construction or Consulting Services;

**“Specifications”** means the detailed description of and written requirements and standards for Goods, Services, Construction or Consulting Services and also includes any drawings, designs and models; and

**“Standardization”** is a management decision-making process that examines a specific common need or requirement and then selects Goods, Services, Construction or Consulting Services that best fills that need to become the standard;

**“Tender”** means a sealed Bid that contains an offer in writing to execute some specified Services or to supply certain specified Goods for a certain price provided in response to a publicly advertised Request for Tenders;

**“Township”** means The Corporation of the Township of North Dumfries.

### **Part III. Authority and Responsibility**

#### **General**

9. Specific responsibilities pertaining to all stages of a Procurement process, from the initial identification of requirements through to the management of Contracts with Suppliers, are detailed in this by-law and the Township’s Procurement procedures. In addition to those specific responsibilities, the general roles and responsibilities delegated to the Township’s elected officials and employees are set out below.

#### **Council**

10. In accordance with best practices in municipal Procurement, Council recognizes the need for a clear separation of political and administrative functions in relation to the Township’s Procurement operations as follows:
  - a. It is the role of Council to establish policy and to approve expenditures through the Township’s budget approval process. Through this by-law, Council delegates to the Township’s employees the authority to incur expenditures in accordance with approved budgets through the acquisition of Goods, Services, Construction or Consulting Services in accordance with the rules and processes set out in this by-law.
  - b. To facilitate Council’s oversight role in respect of significant projects, Council may require Departments to obtain Council’s authority to initiate specific Procurements by identifying Procurement projects of interest, such as Procurements that are of a high Procurement Value or involve significant risk, security concerns or significant community interest.
  - c. To avoid the potential appearance of bias or political influence in Procurement Contract award decisions, members of Council will have no involvement in competitive Procurement processes from the time those Procurement processes have been initiated through the advertisement or issuance of the Solicitation Document until a Contract has been entered into with the successful Bidder, except where Council considers or approves the Contract award in accordance with this by-law.

## **CAO**

11. It is the role of the CAO to work cooperatively with Council and Authorized Delegates in order to ensure the goals and objectives of this by-law are met.
12. In fulfilling this role, the CAO is responsible for delegating authority approval limits to staff in compliance with this by-law and all applicable procedures.

## **Director of Corporate Services/Treasurer**

13. It is the role of the Director of Corporate Services/Treasurer to oversee the Procurement process for the Township and provide support to Authorized Delegates in order to ensure the goals and objectives of this by-law are met.
14. In fulfilling this role, the Director of Corporate Services/Treasurer is responsible for:
  - a. establishing administrative procedures and policies which include the establishment of any electronic bidding system, for the implementation of this by-law;
  - b. ensuring compliance with this by-law and reporting non-compliance, in writing, to the appropriate Director and/or the CAO where warranted.

## **Purchasing Clerk**

15. It is the role of the Purchasing Clerk to work cooperatively with the Senior Management Team in the Township's Procurement. In fulfilling this role, the Purchasing Clerk, or designate, is responsible for:
  - a. researching developments in Canadian public Procurement requirements and best practices and, through collaboration with the Internal Business Partners, recommending updates to this by-law and developing the Township's Procurement procedures to reflect such developments and support the Township's Procurement goals and objectives;
  - b. providing Procurement advice and related Services, including developing and maintaining the necessary forms and Solicitation Document templates, for the purposes of fulfilling the Procurement needs of the Township;
  - c. assisting in developing Procurement strategies and continually analyzing the Township's business requirements and spending patterns to identify opportunities for more strategic sourcing, including:
    - i. the Standardization of Goods and Services in conjunction with Internal Business Partners, where appropriate and feasible; and
    - ii. the consolidation of all similar Goods and Services where appropriate and possible;
  - d. ensuring the consistent application of Procurement procedures and providing Procurement Services in an efficient and diligent manner;

- e. addressing and, where possible, resolving issues or concerns that arise in respect of a Procurement process or the application and interpretation of this by-law and the Township's Procurement procedures and seeking guidance and advice from the Senior Management Team, as required;
- f. providing appropriate orientation, training and tools to Township employees involved in Procurement activities; and
- g. serving as the Township's representative as a member of Cooperative Purchasing groups and organizations, where such membership is determined to be in the best interests of the Township.

## **Directors**

16. It is the role of the Directors to ensure that their requirements for Goods, Services, Construction or Consulting Services are met in accordance with the goals and objectives of this by-law. In fulfilling this role, the Directors are responsible for:

- a. exercising their approval authority for all Procurement activity within the prescribed limits of this by-law;
- b. ensuring that all Procurement activities and decisions are authorized by this by-law and are carried out in accordance with the Township's Procurement procedures;
- c. monitoring all Contract expenditures to ensure compliance with financial limits;
- d. identifying and addressing non-compliance with this by-law and applicable procedures within their Departments; and
- e. upon discovery of instances of non-compliance, notifying and consulting with the Purchasing Clerk to obtain advice with respect to mitigating potential risks to the Township arising from the non-compliance.

## **Internal Business Partners**

17. Employees of all Divisions are responsible for complying with this by-law. Internal Business Partners involved in Procurement activities must clearly understand their obligations and responsibilities under this by-law and all applicable procedures and should consult with the Purchasing Clerk in respect of any questions regarding the application or interpretation of this by-law or the Procurement procedures.

## **Restricted Acts after Nomination Day**

18. Certain staff are delegated authority in the Township's Delegation of Powers and Duties By-law to approve Contract awards that would not be permitted for approval by Council under Sections 275 (1) to (4.1) of the *Municipal Act* (otherwise known as "Restricted Acts After Nomination Day").

## **Part IV. Conduct and Conflicts of Interest Council and Township Employees**

19. The Township's Procurement activities must be conducted with integrity so as to maintain the public's trust. All Procurement activities undertaken by the Township must be conducted in accordance with the following policies, statutes and all other policies:

- a. the Township's Code of Conduct for Employees & Volunteers (Policy#C - 0001), as applicable;

- b. the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as applicable.

20. All participants in a Procurement process, including any Suppliers acting on the Township's behalf, must declare any perceived, possible or actual conflicts of interest.

21. The following activity is prohibited, unless specifically approved by Council:

- a. Any attempt to evade or circumvent the requirements of this by-law including, but not limited to, the division of purchases to avoid the requirements of the Procurement policy by any method.

## **Suppliers**

22. The Township expects its Suppliers to act with integrity and conduct business in an ethical manner. The Township may refuse to do business with any Supplier that:

- a. has engaged in illegal or unethical bidding practices;
- b. has an actual or potential conflict of interest;
- c. has an unfair advantage in the Procurement process; or
- d. fails to adhere to ethical business practices.

23. Where a Supplier is retained to participate in the development of a Solicitation Document or the Specifications for inclusion in a Solicitation Document, that Supplier will not be allowed to respond, directly or indirectly, to that Solicitation Document unless the Purchasing Clerk is satisfied that there is not a reasonable alternative or that there is not a competitive advantage to be gained.

24. Illegal or unethical bidding practices include:

- a. bid-rigging, price-fixing, bribery or collusion or other behaviors or practices prohibited by federal or provincial statutes;
- b. attempting to gain favor or advantage by offering gifts or incentives to Township employees, members of Council or any other representative of the Township;
- c. lobbying members of Council or Township employees or engaging in any prohibited communications during a Procurement process;
- d. submitting inaccurate or misleading information in response to a Procurement opportunity; and,
- e. engaging in any other activity that compromises the Township's ability to run a fair Procurement process.

25. The Township will, where appropriate, report suspected cases of collusion or other bid-rigging offences under the *Competition Act*, R.S.C., 1985, c. C-34 to the Competition Bureau or to other relevant authorities.

26. In providing Goods, Services, Construction or Consulting Services to the Township, Suppliers are expected to adhere to ethical business practices, including:

- a. performing all Township Contracts in a professional and competent manner and in accordance with the terms and conditions of the Contract; and

- b. complying with all applicable laws, including safety and labour codes (both domestic and international as may be applicable).

**Part V. Standard Procurement**

- 27. Standard Procurement depends on the type and Procurement Value of the Goods, Services, Construction or Consulting Services required. Standard Procurement processes include:
  - a. acquisitions made by Direct Procurement, every attempt should be made to obtain Best Value; or
  - b. conducting an Informal Procurement process by obtaining a minimum of three written Quotations; or
  - c. conducting an Invitational Competition by soliciting Bids from a minimum of three Suppliers; or
  - d. conducting an Open Competition by publicly advertising and posting the Solicitation Document by way of a Request for Tender or Request for Proposal
- 28. The following table sets out the requirements for Standard Procurement within the approved budget:

**Standard Procurement Process and Approval Authority**

Procurement Value Excluding Taxes	Procurement Process	Approval Authority
Up to \$9,999	Direct Procurement	Director or Authorized Designate
\$10,000- \$49,999	Informal Procurement or Invitational Competition	Director and CAO or Director of Corporate Services*
\$50,000-\$99,999	Open Competition	Director and CAO or Director of Corporate Services*
Greater than \$100,000	Open Competition	Council

\*Note: if Corporate Services is the issuing Department, then approval must include the CAO.

- 29. The Director of the Department whose budget provides for the Procurement shall be responsible for the preparation of Specifications for Requests for Tenders. All Requests for Tender shall be called, opened, and awarded in accordance with procedures for Procurement for the Township and includes terms and conditions of the Bid solicitation.
- 30. Where it is not possible to prepare precise Specifications, or where otherwise appropriate, the Director will issue a Request for Proposal, which will include evaluation criteria and weightings for the criteria such as, but not limited to, qualifications, experience, strategy, approach, methodology, facilities, and equipment. The documentation shall clearly distinguish those requirements that are deemed mandatory or non-mandatory and shall clearly outline how these items will be evaluated. All Proposals received are scored in accordance with



the pre-determined evaluation criteria. All Request for Proposals shall be called, opened, and awarded in accordance with procedures for Procurement for the Township.

31. Regardless of Procurement Value, the Director of Corporate Services, cooperatively with the Director, shall submit a report to Council recommending award of a purchase if any one or more of the following conditions apply:
  - a. the value of the Bid being recommended for award including any contingency allowance is in excess of the Council approved budget by \$7,500;
  - b. the project is not specifically identified within the Council approved budget; or
  - c. there are other orders of government or granting agencies which require Council approval.
32. Where any purchase of Goods, Services, Construction or Consulting Services has been authorized under this by-law, the Director may authorize disbursement of additional funds provided that the additional funds:
  - a. shall not exceed the lesser of \$7,500 or ten percent (10%) of the original Contract price;
  - b. are available within the relevant budget; and
  - c. are required to complete works that are necessary as part of the original Contract.
33. The conditions above do not apply where the additional funds required are provided to the Township from an external party by way of grant, donation, or similar funding source.
34. The Standard Procurement processes shown in the table in section 23 are minimum standards. Although the table indicates that the Procurement process shall become progressively more formal as the estimated Procurement Value increases, the Internal Business Partner may always choose to use a more formal Procurement process than the process indicated in the table.
35. The Director of Corporate Services will prepare a quarterly information only report to Council on solicitations awarded through open competition where the Procurement Value is between \$50,000 and \$99,999.

#### **Part VI. Non-Standard Procurement**

36. Non-Standard Procurement processes for Goods, Services, Construction or Consulting Services includes, without limitation:
  - a. Informal Procurement; or
  - b. Limited Competition Procurement.
37. The use of a Non-Standard Procurement processes is only permitted under the following circumstances:
  - a. where a Standard Procurement process was conducted in accordance with this by-law and applicable procedures and has not resulted in the receipt of any compliant Bids, Quotations or Proposals;
  - b. where only one Supplier is able to meet the requirements of a Procurement in order to:

- i. ensure compatibility with existing products; or
    - ii. recognize exclusive rights, such as exclusive licenses, copyright and patent rights; or
    - iii. maintain specialized products that must be maintained by the manufacturer or its representative;
  - c. where there is an absence of competition for technical reasons and the Goods, Services, Construction or Consulting Services can only be supplied by one particular Supplier and no alternative or substitute exists;
  - d. for the Procurement of Goods, Services, Construction or Consulting Services relating to matters with Confidential Information or privileged nature where the disclosure of those matters through an open competition could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
  - e. for the Procurement of Goods, Services, Construction or Consulting Services from a publicly funded agency or a non-profit organization;
  - f. for the Procurement of Goods, Services, Construction or Consulting Services through a Vendor of Record (VOR) Program or Purchasing Group where analysis supports Best Value;
  - g. for the Procurement of Goods, Services, Construction or Consulting Services under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
  - h. for the Procurement of a prototype of Goods, Services, Construction or Consulting Services to be developed in the course of, and for a particular Contract for research, experiment, study, or original development, but not for any subsequent purchases;
  - i. for the Procurement of Goods, Services, Construction or Consulting Services that is financed primarily from donations that are subject to conditions that are inconsistent with a Standard Procurement process conducted in accordance with this by-law and applicable procedures;
  - j. additional deliveries by the original Supplier of the Goods, Services, Consulting Services or Construction that were not included in the initial Procurement, if a change in Supplier:
    - i. cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, Services or installations procured under the initial Procurement; and
    - ii. would cause significant inconvenience or substantial duplication of costs for the Township;
  - k. where expressly authorized by Council
38. The following table sets out the requirements for Non-Standard Procurement:

## Non-Standard Procurement Process and Approval Authority

Procurement Value Excluding Taxes	Procurement Process	Approval Authority
Up to \$49,999	Informal Procurement	Director and Director of Corporate Services or CAO
Greater than \$50,000	Informal Procurement or Limited Competition Procurement	Council

## Part VII. Emergency Procurement

39. Notwithstanding any other provisions of this by-law and provided time does not permit the use of a Standard Procurement process Goods, Services, Construction or Consulting Services may be purchased on an Emergency basis where they are required as a result of an unforeseen situation or an event occurs that is a threat to any of the following:
- public health or safety;
  - the maintenance of essential Township Services or to prevent the disruption of essential Township Services;
  - the welfare of persons or of public property; or
  - the security of the Township's interests.
40. Where an Emergency purchase is required as described above and cannot be accommodated in the approved budget, on the recommendation of a Department Director, the Director of Corporate Services/Treasurer or CAO has the approval authority to issue a purchase for the requirements. When the Procurement Value of the Emergency acquisition exceeds \$100,000, the Director of Corporate Services/Treasurer shall provide a report to Council as soon as practicable.
41. Where there is a declared municipal Emergency in accordance with the Township's emergency response plan, the CAO or the Emergency Operation Commander shall authorize any required purchases. This authority shall continue until the declared municipal emergency is terminated in accordance with the Township's emergency response plan. When the Procurement Value of the acquisition exceeds \$100,000, the Director of Corporate Services/Treasurer shall issue an information report to Council as soon as practicable.

## Part VIII. Pre-Qualification for Suppliers

42. The purpose for prequalification of Suppliers is to ensure that each Supplier intending to perform work on a Township Contract can demonstrate its ability to provide the necessary expertise and resources to satisfactorily complete the work required.
43. Pre-qualification of Suppliers will only be considered when one or more of the following circumstances exists:

- a. the work will require substantial project management by the Township if the Supplier is not appropriately experienced and could result in a substantial cost to the Township;
  - b. the Goods, Services, Construction or Consulting Services to be purchased must meet national safety standards;
  - c. the work involves complex, multi-disciplinary activities, specialized expertise, equipment, materials, or financial requirements;
  - d. there could be a substantial impact on the Township operations if the work is not satisfactorily performed the first time;
  - e. time requirements necessitate efficient use of time and expertise; or
  - f. any other circumstances deemed appropriate by the CAO.
44. Pre-qualification requires Suppliers to provide such information as requested by the Township to determine that the Supplier has the capability in all respects to perform the Contract requirements. This information may include such things as:
- a. previous experience on similar work (Supplier and/or any staff assigned);
  - b. capacity to fulfill the Contract requirements; and
  - c. the facilities and/or equipment to perform the work.
45. Pre-qualifications may be done on a project specific basis. As a result of the pre-qualification the Township will only allow those who are pre-qualified to participate in the bidding process for scope of work and/or Services as specified in the Solicitation Document, while maintaining the competitive bidding process.

#### **Part VIII. Expression of Interest**

46. A Director may use an Expression of Interest (EOI) prior to a Bid request to seek information from interested parties for an upcoming solicitation. An EOI is a process whereby the Township can acquire information. An EOI may be used:
- a. to determine interest of the marketplace to provide Goods or Services which the Township is contemplating acquiring;
  - b. as a general market research tool to determine availability of Acquisition, and if they meet the business or operational requirements of the potential Acquisition;
  - c. to request publicly available cost details for the purpose of budget planning or developing a future Bid.

An EOI should not create a contractual obligation between the Township and the interested party. An EOI process does not lead to a Contract award.

#### **Part IX. Bidder Debriefings**

47. Where the Township has conducted a Standard Procurement process, unsuccessful Bidders may request a debriefing from the Purchasing Clerk. Unsuccessful Bidders shall have 60 calendar days following the date of the contract award notification to request a debriefing.

#### **Part X. Contract Management and Supplier Performance**

48. All Contracts must be managed by the respective Internal Business Partner acting as the project lead in accordance with this by-law and all applicable procedures to ensure that both the Township and the Supplier fulfil the requirements of the Contract.

49. No Invitational Competition or Open Competition will be awarded to any Supplier which has a claim or has instituted a legal proceeding against the Township or against which the Township has a claim or has instituted a legal proceeding with respect to any previous Contract, without approval of Council. For purposes of this provision, a legal proceeding includes an arbitration and includes a proceeding before the Ontario Land Tribunal.

#### **Part XI. Two-Envelope Procurement Process**

50. When acquiring Goods, Services, Construction or Consulting Services and where an evaluation of experience and qualification is required, the Township may employ the Two Envelope Method and shall only consider the financial envelope containing the prices of the Supplier if the technical envelope has permitted the Evaluation Committee to determine that the Supplier has the necessary technical and qualitative requirements to perform the project engagement. The Evaluation Committee may consist of the Purchasing Clerk, the Director of the project, the CAO and/or the Director of Corporate Services and/or Authorized Delegate.

#### **Part XII. Unsolicited Proposals**

51. All unsolicited Proposals, including any offers for presentations or product/service trials submitted to the Township with the expectation on the part of the submitter of obtaining consideration for an ensuing Contractor purchase by the Township, must be directed to the Purchasing Clerk in conjunction with the Director for review and approval for acceptance.
52. Any Procurement resulting from the receipt of an unsolicited Proposal must comply with the provisions of this by-law.
53. If it is determined that there is a legitimate need for the Goods, Services, Construction or Consulting Services offered by way of an unsolicited Proposal, then an acquisition process shall be conducted in accordance with this by-law and all applicable procedures.

#### **Part XIII. Cooperative Purchasing**

54. The Township may participate with other publicly funded agencies in Cooperative Purchasing for Goods, Services, Construction or Consulting Services when it is in the best interests of the Township to do so, as determined by the Director or in conjunction with the Purchasing Clerk.
55. In the event that the Cooperative Purchasing Contract was led by a publicly funded agency other than the Township, the Procurement process must be substantially consistent with the spirit and intent of this by-law and the resulting Contract must permit the Township to purchase from that Supplier under the same terms and conditions.

#### **Part XIV. Green Procurement**

56. The Township is committed to the purchase of Goods and Services with due regard to the preservation of the natural environment and to encourage the use of environmentally friendly products and Services, except where it is not practicable to do so.
57. All Internal Business Partners, in conjunction with the Purchasing Clerk, are encouraged to seek additional ways of achieving the goal of being environmentally safe and responsible by thorough review of each Procurement process to ensure that, wherever possible and economically feasible, the Township's Solicitation Document includes



Specifications that reflect environmentally friendly attributes of the Goods and Services, except where it is not practicable to do so.

#### **Part XV. Protection of Confidential/Personal Information**

58. In situations where a Supplier may receive the Township's Confidential Information or any Personal Information as part of the provision of the Goods, Services, Construction or Consulting Services, the Township will ensure that the Solicitation Document and/or terms and conditions include requirements that the Supplier safeguards the Confidential Information and Personal Information.

#### **Part XV. Disposal of Surplus Assets**

59. The Director, or delegate, shall submit to the Purchasing Clerk, a written report of all Township assets from their Department, including but not limited to, furniture, vehicles, equipment, supplies, and other Goods and material, which are deemed surplus or which have become obsolete, worn out, or otherwise incapable of use.
60. The Purchasing Clerk, shall have the approval authority to sell, exchange, or otherwise dispose of Township assets declared as surplus or obsolete to the needs of the Township. The Purchasing Clerk may first offer the surplus assets to other Departments. Any surplus assets not required by other Departments and that are deemed by the Purchasing Clerk as having a residual value may be disposed of by any of the following Disposal methods:
  - a. by auction or solicitation; or
  - b. by donation to a charity or non-profit agency; or
  - c. by recycling; or
  - d. in the event that all efforts to dispose of the goods by sale are unsuccessful, by scrapping or destroying if recycling is unavailable.

#### **Part XVII. Incorporation of Accessibility Design, Criteria and Features**

61. In compliance with the Township of North Dumfries Accessibility Policies and Procedures, every provider of Goods and Services shall ensure that every person who deals with members of the public or participates in the developing of the service providers policies, practices and procedures governing the provision of Goods and Services to members of the public shall be trained. Website or other preapproved training would be considered an acceptable form of training. A waiver form will be required from the successful Bidder. In accordance with the Integrated Accessibility Standards Regulation 191/11, the Township of North Dumfries is committed to including accessibility criteria and features, when procuring or acquiring Goods, Services or facilities. When it is not practicable to do so, an explanation will be provided, upon request. Whenever possible, Township staff will take into account the accessibility features and criteria of Goods, Services, and facilities procured, purchased, or acquired.

#### **Part XVIII. By-Law Administration**

62. In the event the provisions of this by-law are inconsistent with the provisions of the Municipal Act, its Regulations or any other Act, the provisions of the Act or Regulation shall prevail.
63. Under this by-law and associated procedures, the Director of Corporate Services and/or CAO is authorized to make all decisions, save and except where Council is specifically identified in this by-law as the approval authority.

64. Council approval contemplated herein or any waiver of the requirements of this by-law shall be by majority vote.
65. This by-law will be reviewed every five (5) years, or such earlier date as the Purchasing Clerk, or Director of Corporate Services or Council may deem it appropriate to evaluate its effectiveness.
66. It is hereby declared that each and every of the foregoing sections and subsections of this by-law is severable and that, if any provisions of this by-law should for any reason be declared invalid by any court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.
67. Notwithstanding its repeal, any purchases begun but not yet completed by the effective date of this by-law shall be completed in accordance with the terms of the previous Purchasing By-law No. 2302-08 as if it were still in effect.

#### **Part XIX. Enactment and Repeal**

68. This by-law shall come into full force and effect on the date that it is passed, at which time By-law No. 2302-08 is repealed and all by-laws, policies and resolutions that are inconsistent with the provisions of this by-law are hereby amended or repealed insofar as it is necessary to give effect to the provisions of this by-law.
69. Notwithstanding any clause above, this by-Law shall remain in effect until repealed by Council.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 12<sup>th</sup> DAY OF JULY, 2021.**



\_\_\_\_\_  
Susan Foxton, Mayor



\_\_\_\_\_  
Ashley Sage, Clerk

## **Schedule “A”: Excluded Procurements**

This By-law does not apply to the acquisition of the following:

- a. Training and Education including:
  - i. staff training and professional development;
  - ii. memberships, and subscriptions, periodicals and books; and
  - iii. training and development including course development and delivery;
- b. Employer’s General Expenses including:
  - i. employee expenses (professional dues / license renewals, meal allowances, travel, advances, misc.);
  - ii. petty cash replenishment and cash advances;
  - iii. Workplace Safety and Insurance Board payments;
  - iv. health benefits, medical notes and exams;
  - v. tax remittances;
  - vi. insurance premiums;
  - vii. damage claims;
  - viii. legal settlements;
  - ix. arbitration awards;
  - x. charges to, and from, other publicly funded agencies or administrative authorities mandated by the government;
  - xi. Council approved grants and / or donations;
  - xii. employee, Councilor, and Mayor’s income (including sick leave gratuity, vacation leave, severance);
  - xiii. payroll deduction remittances;
  - xiv. honorariums;
  - xv. debentures, debt and sinking funds;
  - xvi. payments to Local Boards and affiliates;
  - xvii. real property, including land, building, leasehold interests, easements, encroachments, license and rentals;
  - xviii. investments;
  - xix. refunds (including building permit refunds, property tax refunds, and refunds for cancelled Services, programs or events);
  - xx. license fees (regular maintenance fees for vehicles, elevators, communications, software etc.);
  - xxi. utilities (including water, sewer, hydro, natural gas, telecommunications, postage and cable service);
  - xxii. temporary staffing agencies and Services;
  - xxiii. election equipment, materials, supplies and Services;
  - xxiv. media / advertising; and
  - xxv. software upgrades / maintenance costs;
- c. Special Services including:
  - i. legal counsel fees and disbursements;
  - ii. financial Services related to financial assets and liabilities, including banking Services, ancillary advisory and information Services as well as management of investments whether or not delivered by a financial institution;
  - iii. witness fees;
  - iv. committee fees;
  - v. arbitrator fees;
  - vi. appraisal fees;
  - vii. real estate fees;
  - viii. land transfer tax;
  - ix. registry office fees;
  - x. insurance claims;

- xi. revenue collected on behalf of a third party; and
    - xii. collection agency fees;
  - d. Acquisitions which will be reimbursed in full by a third party;
  - e. work to be performed under the provisions of a warranty or guarantee held in respect to the original work;
  - f. Acquisitions purchased on a commodity market;
  - g. Acquisitions related to cultural or artistic fields, including:
    - i. events supporting local non-profit or charitable organizations;
    - ii. entertainers for theatre or special events;
    - iii. original works of art; and
    - iv. antiques or artifacts;
  - h. sponsorships;
  - i. Construction costs of developer built parkland when the Township is reimbursing a developer for construction costs related to parkland in the course of development a subdivision development; and