

The Corporation of the Town of Tecumseh

By-Law Number 2021-60

Being a by-law to govern procurement policies and procedures

Whereas Section 270 of the Municipal Act, 2001, S.O. 2001, c.25 imposes upon municipalities the obligation to adopt policies with respect to the procurement of Goods and Services;

And whereas this By-law establishes the authority and sets out the methods by which Goods, Services or Construction will be purchased and disposed of for the purposes of the Town of Tecumseh subject to certain exceptions as set out herein;

And whereas the Council of the Corporation of the Town of Tecumseh deems it expedient to enact this by-law to make provisions to govern the procurement of all goods and services within the municipality of Tecumseh.

Now therefore the Council of the Corporation of the Town of Tecumseh enacts as follows:

Short title

This By-law may be cited as the Town of Tecumseh “Purchasing By-law”.

1.0 Part I – Objective

- 1.1 This By-law outlines the processes to be followed in order to obtain the best value when purchasing goods, or contracting services for the Town of Tecumseh.
- 1.2 The guiding principle is that procurement decisions will be made using a competitive process that is open, transparent and fair, and in accordance with applicable regulatory Trade Agreements.

2.0 Part II – General Provisions

- 2.1 Unless otherwise provided in accordance with this By-law, the Department Directors shall act for the Town of Tecumseh for the purchase of all goods and services and shall be responsible for providing all necessary advice and services required for such purchases in accordance with the method of purchase authorized by this By-law and the Purchasing Policy contained herein.
- 2.2 No purchase of goods and services shall be authorized unless it is in compliance with the Purchasing By-law and the Purchasing Policy contained herein.

- 2.3 Elected Officials shall not approve or acquire any goods and services.
- 2.4 Unless otherwise provided in accordance with this By-law and the Purchasing Policy contained herein as Schedule "C", the purchase of all goods and services shall be authorized in accordance with the provisions of Schedule "A" to this By-law.
- 2.5 No requirement for goods and services may be divided into two or more parts to avoid the provisions of this policy.
- 2.6 The Purchasing Coordinator, together with the Purchasing Officer, are authorized to make and promulgate from time to time administrative policies, procedures and directions respecting:
 - i) the preparation and development of specifications;
 - ii) the requirements and form of bid deposits;
 - iii) other securities and documentation required or advisable for sealed bids;
 - iv) procedures for the opening, evaluation and recommendation of tenders;
 - v) such other matters of an ancillary or incidental nature to more fully carry out the intent and purpose of this By-law.
- 2.7 Definitions specific to this By-law are documented in the Purchasing Policy contained herein.
- 2.8 Disputes shall be resolved as follows:
 - i) meeting between the bidder and the Department Director;
 - ii) if (i) does not lead to a resolution, the decision can be appealed to the Chief Administrative Officer;
 - iii) if (ii) does not lead to a resolution, the decision can be appealed to the Town Council.
- 2.9 This By-law will be reviewed and revised on a periodic basis. It is anticipated that reviews will be conducted every five years or more frequently as required.
- 2.10 Goods and services not subject to the By-law are listed in Schedule "B" to this By-law.

3.0 Part III – Responsibilities and Authorities

Responsibilities

3.1 Department Directors:

- i) have responsibility for all procurement activities within their respective Department and are accountable to achieving best value while following the procurement principles; and have authority to purchase items as outlined in Schedule “A”.

3.2 The Purchasing Officer is responsible for:

- i) providing professional procurement advice and services to Department Directors;
- ii) monitoring compliance with this By-law;
- iii) reporting to the Purchasing Coordinator whenever the specifications of a tender call or Request for Proposal cannot be met by two or more suppliers;
- iv) notifying the Purchasing Coordinator, in advance if possible, of non-compliance with this By-law and/or the Purchasing Policy contained herein;
- v) rejecting all purchase requisitions for services where the services could result in the establishment of an employee-employer relationship;
- vi) providing education and training sessions to all departments on an annual basis and as requested. Training sessions would include, but not be limited to; procurement legislation, electronic purchasing platform, procurement processes and procurement best practices.

Single/Sole Sourcing/Direct Negotiation

Single Source Procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required by the Town, but a single source is recommended by the Department Director or delegate.

3.3 In circumstances where there may be more than one source of supply in the open market, but only one of these is recommended by the Department Director, with the concurrence of the Purchasing Officer, for consideration on the grounds that it is more cost effective or beneficial to the Town; and where the expenditure is between \$10,000 and \$100,000, approval authority is required from the Department Director, Purchasing Coordinator and CAO. The Department Director or delegate shall be responsible for submitting the approval memo detailing the rationale supporting the use of the single source prior to negotiations with the single source.

- 3.4 In circumstances where there may be more than one source of supply in the open market, but only one of these is recommended by the Department Director, with the concurrence of the Purchasing Officer, for consideration on the grounds that it is more cost effective or beneficial to the Town; and where the expenditure will exceed \$100,000, approval must be obtained from Town Council prior to negotiations with the single source. The Department Director shall be responsible for submitting a report detailing the rationale supporting the use of the single source.

Sole Source Procurement

- 3.5 Sole Source Procurement is one in which there is only one supplier available for the required goods or services.
- 3.6 In circumstances where there is only one source of supply for the required goods, services or equipment and where the expenditure is between \$10,000 and \$100,000, with the concurrence of the Purchasing Officer, approval authority is required from the Department Director, Purchasing Coordinator and CAO for the sole source prior to negotiations with the sole source supplier. The Department Director or delegate shall be responsible for submitting the approval memo detailing the rationale supporting the use of the sole source procurement.
- 3.7 If a Department Director requires goods, services or equipment deemed to be available from only one source of supply and where the expenditure will exceed \$100,000 the Department Director, with the concurrence of the Purchasing Officer, shall initiate a report to the Town Council requesting that the tendering procedure be waived and that the Department Director be authorized to negotiate with the sole source supplier.

Authority

- 3.8 Department Directors are delegated the authority to award and execute contracts in the circumstances specified in the Purchasing Policy contained herein provided that the delegated power is exercised within the limits prescribed in Schedule "A" to this By-law, and the requirements of this By-law and the Purchasing Policy are met.
- 3.9 When a Department Director is of the opinion that a "triggering event" has occurred, the Department Director may authorize the purchase of such goods, services and construction as is considered necessary to remedy the situation without regard to the requirement for a bid solicitation and may award the necessary contract amendment.

The relevant details surrounding the "triggering event" shall be included in a report and submitted to Town Council as soon as possible.

- 3.10 The Town Clerk has the authority to purchase goods, services and equipment considered necessary or advisable to carry out the requirements of the Municipal Elections Act, R.S.O. 1996. The Town

Clerk shall whenever possible, be guided by the provisions of this By-law and the Purchasing Policy contained herein.

- 3.11 Despite any other provision of this By-law, the following contracts are subject to Town Council approval:
 - i) any contract requiring approval from the Ontario Municipal Board;
 - ii) any contract prescribed by Statute to be made by Town Council;
 - iii) where the cost amount proposed for acceptance is higher than the Town Council approved budget for that expenditure or where the expenditure would result in insufficient remaining funds in the project budget to complete the project as budgeted;
 - iv) where a substantive objection emanating from the bid solicitation has been filed with the Chief Administrative Officer;
 - v) an extension of an existing contract where there is no option to extend included in the contract;
 - vi) where a major irregularity precludes the award of a tender to the supplier submitting the lowest bid, and
 - vii) where authority to approve has not been expressly delegated.
- 3.12 No appointed officer or employee of the Town will have any interest directly or indirectly, as a contracting party, partner, shareholder, surety or otherwise in any contract for goods or services or in any portion of the profits thereof, or any supplies to be used therein, or in any of the monies to be derived therefrom unless such interest has been declared and approved by Council prior to the close of the bid, or in the case of multiple small non-contracted jobs, on an annual basis.
- 3.13 Any contract with the Town, or with any person acting for the Town, and any contract for the supply of goods, materials or services to a contractor for work for which the Town pays or is liable, directly or indirectly, to pay in which a member of Council or any employee of the Town has an undeclared pecuniary interest, directly or indirectly may be voided.
- 3.14 All staff and others participating in the evaluation of proposals shall disclose any conflict of interest prior to the evaluation process and shall not be permitted to influence or participate in the evaluation.
- 3.15 All consultants awarded a contract shall disclose to the Town prior to accepting an assignment, any potential conflict of interest. If such a conflict of interest exists, the Town as directed by the Director of Chief Administrative Officer may, at its discretion, withhold the assignment from the consultant until the matter is resolved. Furthermore, if during the conduct of a Town assignment, a consultant is retained by another client

giving rise to a potential conflict of interest, then the consultant shall so inform the Town.

4.0 **Part IV – Requirement for approved funds**

- 4.1 The exercise of authority to award a contract is subject to the identification and availability of sufficient funds in appropriate accounts within Town Council approved budget with the exception of provisions in Section 4.4. Pending Council's approval of proposed budgetary estimates, Department Directors are authorized to spend up to 50% of the previous year's approved Operating Budget.
- 4.2 Where goods and services are routinely purchased or leased on a multi-year basis, the exercise of authority to award a contract is subject to:
 - i) the identification and availability of sufficient funds in appropriate accounts for the current year within Town Council approved budget; and
 - ii) the requirement for the goods or services will continue to exist in subsequent years and, in the opinion of the Town Treasurer, the required funding can reasonably be expected to be made available.

4.3 Over budget and Unbudgeted Projects

Over budget projects – Where a project will be over budget, departments must take the following steps to mitigate the financial impact:

- i) Scale back the scope of the project to come within budget (applies to budgeted projects only);
- ii) Cancel another current or prior year capital project with the same funding source; A report will go to Council to advise what project is being cancelled and where they are redirecting the funds;
- iii) Cancel the project, close the capital account and resubmit the project for the subsequent year's budget/long range capital plan;
- iv) Under budget amounts from previously awarded capital projects and /or operating budgets are **not** eligible funding sources;

Unbudgeted projects – where a requirement exists to initiate a project for which goods and/or services are required and funds are not contained within the Council approved budget to meet the proposed expenditure, the Department Director shall, prior to commencement of the purchasing process, submit a report to Council containing:

- v) Information surrounding the requirement to Contract;

- vi) Information on the availability of funds within existing budgets, which were originally approved by Council for other purposes, or on the requirement of additional funds;

Reports to Council relating to any financial impacts shall be reviewed by the Purchasing Coordinator (Director of Finance/CFO) prior to being placed on the Council agenda.

4.4 Expenditures Exceeding Approved Budget Funding

The Department Director or delegate must seek Council approval when;

- i) Regardless of which Bid Solicitation process is utilized, in the event the cost amount proposed for acceptance is higher than the Town Council approved budget for that expenditure and where the cost of a project is in excess of the greater of \$10,000 or 10% of the Council approved budget;
- ii) The report should be completed prior to incurring the over expenditure or at the earliest opportunity subsequent to the over expenditure. The report should outline the following items at a minimum;
 - a) Approved budget for the project;
 - b) Amount of awarded contract;
 - c) Overall cost of the completed project;
 - d) The amount of and the reasons for the over budget situation;
 - e) Source of financing for the over budget amount.

5.0 Repeal

- 5.1 That By-law No 2017-63 and any by-law inconsistent with this by-law is hereby repealed.

Read a first, second, third time and finally passed this 27th day of July, 2021.

Gary McNamara, Mayor

Laura Moy, Clerk

Schedule “A” - to By-Law 2021-60**Levels of contract approval authority**

Note: Sales taxes, excise taxes, goods and services taxes and duties shall be included in determining the price of a contract for the supply of goods or services for the purpose of the relationship of the price to the preauthorized expenditure limit.

In the case of multi-year supply and/or service contract, the preauthorized expenditure limit shall refer to the estimated annual expenditure under the contract.

Regular Purchases

| Dollar Value | Procurement Process | Approval Authority | Source of Bids |
|------------------------|---|--|--|
| \$10,000 or less | No formal quotes required. | Any employee authorized by the Department Director | Purchase from the competitive marketplace where possible and practicable |
| \$10,000 to \$50,000 | Informal Quotation - written quotation required | Department Director | Three (3) written quotes to be obtained |
| \$50,000 to \$500,000 | Formal Quotation -written quotation required by Request for Quotation/Proposal/Tender | Department Director, Purchasing Coordinator and Chief Administrative Officer | Advertised on website and /or direct invitation |
| Greater than \$500,000 | Written quotation required by Request for Tender/Proposal/ Quotation | Town Council | Advertised on website and/ or direct invitation |

Single/Sole Sourcing/Direct Negotiation

| Dollar Value | Procurement Process | Approval Authority | Source of Bids |
|---|---------------------|--|----------------|
| Greater than \$10,000 less than \$100,000 | | Department Director, Purchasing Coordinator and Chief Administrative Officer | |
| Greater than \$100,000 | | Town Council | |

Irregular Result

| Dollar Value | Procurement Process | Approval Authority | Source of Bids |
|---|---------------------|--|----------------|
| Greater than \$10,000 less than \$100,000 | | Department Director, Purchasing Coordinator and Chief Administrative Officer | |
| Greater than \$100,000 | | Town Council | |

Schedule “B” – to By-law 2021-60

Goods and Services not subject to this by-law

1. Petty cash items
2. Training and education including:
 - i. conferences, courses, seminars, professional development, staff development/workshops;
 - ii. magazines and periodicals;
 - iii. memberships;
 - iv. staff relations.
3. Refundable employee expenses including:
 - i. cash advances;
 - ii. meal allowances, accommodation and travel expenses.
4. Employer's general expenses including:
 - i. payroll deduction remittances;
 - ii. medicals;
 - iii. insurance premiums;
 - iv. tax remittances;
 - v. grants to agencies;
 - vi. payments of damages;
 - vii. charges to/from other Government or Crown Corporations.
5. Licenses, certificates, and other approvals required.
6. Ongoing maintenance for existing computer hardware and software
7. Professional and special services including:
 - i. additional non-recurring accounting and auditing services;
 - ii. legal services;
 - iii. surveying services;
 - iv. property taxation services;
 - v. banking services where covered by agreements;
 - vi. public debenture sales;
 - vii. group benefits (health or social services);
 - viii. realty services regarding the lease, acquisition, demolition, sale of land and appraisal of land;
 - ix. policing services.

8. Advertising services required by the Town on or in but not limited to radio, television, newspaper and magazines
9. Utilities
 - i. Postage;
 - ii. water, sewer, hydro electricity and natural gas;
 - iii. internet services.