

The Corporation of the Township of Guelph/Eramosa

By-law Number 45/2011

A By-law to to establish policies for the procurement of goods and/or services and the disposal of surplus goods for the Township of Guelph/Eramosa and to repeal By-law 53/2007.

WHEREAS pursuant to Section 271 of the Municipal Act, S.O. 2001, c. 25, a municipality and a local board shall adopt policies with respect to its procurement of goods and services; and

WHEREAS the Council for the Corporation of the Township of Guelph/Eramosa recognizes its responsibility to provide for fair, transparent and accountable purchasing practices for the effective utilization and disposal of all its resources; and

WHEREAS Part 17.1 of the Township of Guelph/Eramosa Procurement By-law 53/2007 requires a detailed review within five years of the date of its passing, on September 17, 2007; and

WHEREAS the Council for the Corporation of the Township of Guelph/Eramosa deems it desirable to amend By-law 10/2005, being a by-law to establish sound policies for the purpose of procuring goods and services to provide effective, responsive government and efficient delivery of services to the residents of the Township of Guelph/Eramosa; and

NOW THEREFORE, the Council for the Corporation of the Township of Guelph/Eramosa enacts as follows:

PART 1 – OBJECTIVES AND GOALS

1.1 Objectives

To establish policies with respect to the procurement of goods and services, including policies with respect to:

- a) the types of procurement processes that shall be used;
- b) the goals to be achieved by using each type of procurement process;
- c) the circumstances under which each type of procurement process shall be used;
- d) the circumstances under which a tendering process is not required;
- e) circumstances under which in-house bids will be encouraged as part of a tendering process;
- f) how the integrity of each procurement process will be maintained;
- g) 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;
- h) how and when the procurement processes will be reviewed to evaluate their effectiveness; and
- i) any other prescribed matter.

1.2 Goals

Efficient/Effective Procurement: To procure by purchase, rental or lease the required quality and quantity of goods and/or services, including professional and consulting services, from qualified suppliers, in the most efficient and cost effective manner possible in the circumstances.

Open Competitive Process: To encourage open competitive bidding for the acquisition or disposal of all goods and services where practicable.

Transparency and Accountability: To ensure that the procurement process is undertaken based on a clear definition of the product or service required and a clear outline of the criteria used in the evaluation. With regard to quotations and tenders, the decision to choose the low bidder will be based solely on the requirements as documented, the bidder's document and the evaluation criteria. Total project costs will be considered including, but not limited to training, maintenance, quality, warranty, payment terms, conversion costs and trade-in value.

Fair: The procurement process will be fair, such that no action is undertaken by Municipal staff to allow any given bidder an unfair advantage or disadvantage.

PART 2 – DEFINITIONS

In this By-law:

“Agreement or Contract” means a legal document that binds the Corporation of the Township of Guelph/Eramosa and all other parties.

“Authority or Authorized” means the right to conduct the subject task as directed by Council and delegated through the Office of the Chief Administrative Officer to Department Heads (or Designate).

“Authorized Purchases” are those purchases that have prior approval of Council either through resolution or through the Departmental budget (budget process).

“Award/Awarded/Awarding” means the authorization to proceed with the purchase of goods and/or services from a chosen vendor or bidder.

“Bid” means an offer or submission received in response to a Request for Quotation, Tender or Proposal, which is subject to acceptance or rejection.

“Bidder” means a person or enterprise that submits a Bid.

“Bid Solicitation” means a formal request for bids that may be in the form of a Request for Tender, Quote or Proposal.

“Blanket Order” means a contract or purchase order for the purchase of goods and services which will be required frequently or repetitively, and which establishes prices or a method for determining prices, terms and conditions and the period of time during which a vendor agrees to provide goods or services to the purchaser upon the purchaser's demand in accordance with said prices, terms and conditions.

“CAO” means the Chief Administrative Officer of the Township of Guelph/Eramosa.

“Cheque Requisition” means a written or electronically produced request in an approved format and duly authorized to obtain Goods and Services.

“Clerk” means the Clerk of the Township of Guelph/Eramosa.

“Corporation” or “Township” means the Corporation of the Township of Guelph/Eramosa.

“Cost Effective” means a bid received in response to a request that offers the best value for the dollars expended taking into consideration a quantitative and qualitative selections procedure.

“Council” means the Council for the Township of Guelph/Eramosa.

“Designate” has the meaning described in Section 3.3.

“Department Head” means the person responsible for direction and operational control of a Department and who is authorized to purchase goods and/or services from approved Departmental budgets, in accordance with this By-law.

“Department” or “Departmental” means any department within the Corporation of the Township of Guelph/Eramosa.

“Employee” is an employee of the Township of Guelph/Eramosa except volunteers.

“Elected Official” means a member of the Council for the Township of Guelph/Eramosa.

“Emergency” means an event that occurs, which in the opinion of the Department Head requires immediate repair or replacement of equipment, services or facilities in order to maintain a required public service or to prevent danger to life, limb or property within the Township of Guelph/Eramosa.

“Goods and Services” means all supplies, labour, materials or equipment professional and consulting services and related procurement services. This may include installation, training, inspection, maintenance and repairs, and leases, but does not include land purchases or sales.

“In-House Bid” is a process whereby an Employee competes with external entities for procurement opportunities.

“Insurance” is the amount and type of insurance coverage required by the Township of Guelph/Eramosa, to the satisfaction of the Manager of Finance. Evidence of adequate insurance coverage will be by certified documents issued by an insurance company licensed to operate in the Province of Ontario, certifying that the bidder is insured in accordance with the Township’s insurance requirements.

“Manager of Finance” means the person responsible for direction and operation of the Finance Department for the Township of Guelph/Eramosa.

“Mayor” means the elected Mayor of the Corporation or the person duly appointed to act in place of the Mayor.

“Non-Competitive Procurement” means acquisition of goods and services without comparing pricing or product/service information from multiple vendors.

“Open Market Purchasing” means a competitive method of purchasing Goods and Services where vendors are given an equal opportunity to submit Bids in accordance with this by-law.

“Procedures” means a sequence of steps or actions establishing expectations of how the policies in this by-law are to be implemented.

“Procure” or “Procurement” means to acquire Goods and Services by purchase, rental, lease or trade.

“Professional/Consultant/Consulting Services” means a person or firm, who by virtue of a particular expertise, is hired by the Corporation to undertake a specific task or assignment and includes architects, auditors, engineers, designers, planners, surveyors, management and financial consultants, brokers, legal services, and any other professional and consulting services rendered on behalf of the Township.

“Proposal” means an offer to supply Goods and Services on which end results are outlined but no detailed specifications given to the Bidders as to the Goods and Services or how the work is to be performed, through a Request for Proposal.

“Purchase Order” means a written offer to procure Goods and Services or a written acceptance of an offer to acquire Goods and Services made on the Township’s form.

“Purchasing Card” means a card that can be used by Authorized Employees of the Corporation to purchase Goods and Services in accordance with this by-law.

“Quotation” means prices on specific Goods and Services obtained formally through a Request for Quotations or informally from selected sources, which are submitted verbally, in writing, by e-mail or transmitted by facsimile.

“Real Property” means land(s) or building(s) and any interest, estate or right of easement affecting same.

“Request for Information” has the meaning described in subparagraph 5.8.2.

“Requests for Tender/Quotation” has the meaning described in subparagraph 4.6(a).

“Request for Pre-Qualification” has the meaning described in subparagraph 5.8.1.

“Request for Proposal” has the meaning described subparagraph 4.6(b).

“Responsive and Responsible Vendor” means one who complies with the provisions of the bid solicitation, including specifications, contractual terms and conditions, and who can reasonably be expected to provide satisfactory performance on the proposed contract based on reputation, or references, or performance on previous contracts, and adequate financial and other resources.

“Sealed Bid” means a Bid submitted in a sealed envelope to a specified location, by a specified date.

“Sealed 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.

“Single or Sole Sourcing” means a non-competitive acquisition from a specific supplier, even though there may be more than one supplier capable of delivering the same goods or services, or a non-competitive acquisition where there is only one supplier for the source of the goods or services, due to reasons set out in Part 6 of this by-law.

“Surplus Goods” means any items no longer having any use to the Township or in excess of the needs of the Township, inclusive but not limited to obsolete supplies, scrap materials and vehicles, but excluding real property.

“Vendor” means any person or enterprise supplying goods or services to the Township of Guelph/Eramosa.

“Workplace Safety and Insurance Board Certificate (WSIB)” means a certificate issued by an authorized official of the Workplace Safety and Insurance Board certifying that the Board waives its rights under subsection 9(3) of the Work Place Safety and Insurance Act, R.S.O. 1997, Chapter 16, Schedule A, Section 141.

PART 3 – AUTHORITY

3.1 **Council** for the Township of Guelph/Eramosa has ultimate authority for all expenditures. Council delegates this authority by the establishment of budgets or by specific resolution. No purchase of Goods and Services shall be made unless it is in compliance with this by-law and approved by Council through the Departmental budget or specific resolution.

3.2 **Department Head Authority and Responsibilities** - Department Heads may Procure within the approved budget for such Department or any amendment to same, as approved by Council, provided that the requirements of this by-law have been met. Unspecified capital

expenditures in the annual budget require prior Council approval by resolution.

Resolutions approving budget amendments, capital expenditures or special purchases shall contain purpose of expenditure, cost estimate or expenditure limitations, and the fund in which an appropriation has been provided. All staff reports recommending such resolutions shall contain the Department Head endorsement.

Notwithstanding the above, the CAO may instruct the Department Head not to award a contract and direct staff to submit recommendations to Council for approval and may provide additional restrictions concerning procurement where such action is considered by the CAO necessary and in the best interests of the Township.

3.3 **Designate** - The Department Head may appoint one or more persons within the Department to act as his purchasing Designate(s) to conduct specific tasks and/or authorize specific expenditures, assigned to that Department Head, under this by-law.

3.4 **Signing Authorities** - The signatures of the Department Head, or Mayor and Clerk where required by law, are necessary on all agreements to Procure.

The Manager of Finance shall monitor adherence to the provisions of this by-law.

3.5 **Payments** - All invoices and accounts from vendors shall be approved prior to payment. Approval in the form of a cheque requisition signed by the Department Head, denoting clerical accuracy, budgetary or specific resolution approval and indication that Goods and Services were received in good order, must be issued to the Manager of Finance for payment.

Between the last regular meeting of Council in any year and the adoption of budgets for the next year, the Manager of Finance is authorized to pay the accounts of any ordinary business transaction of the Township of Guelph/Eramosa that are required to maintain services. This shall include accounts or the payment of previously approved capital items and projects.

After the adoption of budgets, the Manager of Finance is authorized to pay the invoices and accounts approved by the appropriate Department Head and to pay contract accounts upon receipt of evidence of value received.

PART 4 – PURCHASING GUIDELINES

4.1 **Confidentiality** - There shall be no informal contact between municipal staff or elected officials involved in the procurement process with potential suppliers during the evaluation period.

4.2 **Open Market Purchasing** - Except as otherwise stipulated, any Procurement shall be made on a competitive basis, in keeping with accepted public purchasing practices and in accordance with the applicable federal, provincial and municipal laws. The Township shall neither solicit nor accept In-House Bids.

4.3 **Splitting of Purchase Prohibited** - Where Goods and Services are required in connection with one project, all of those Goods and Services shall be included in determining the total cost for the purposes of this by-law and no requirement for Goods and Services shall be divided to avoid any provision of this by-law.

4.4 **All Costs Considered** - All purchasing shall be completed in a manner that considers all costs in evaluating bid submissions from responsive and responsible bidders, rather than a manner that bases a decision solely on the lowest bid price. Dollar amounts shown in this policy setting parameters for the purchasing process, except as otherwise stated, shall be the total cost including applicable taxes and freight.

4.5 **Risk Management** - The Department Head and Manager of Finance shall select the appropriate means to guarantee execution and performance of a contract. Means may include one or more of, but are not limited to, financial bonds or other forms of security deposits, provisions for liquidated damages, progress payments, and holdbacks. Appropriate guarantees will be set out in the bid specifications or Bid Solicitation as required.

Prior to commencement of work and where deemed appropriate, evidence of insurance coverage satisfactory to the Manager of Finance, must be obtained, ensuring indemnification of the Township of Guelph/Eramosa from any and all claims, demands, losses, costs or damages resulting from the performance of a supplier's obligations under a contract. A certificate of insurance must be submitted to the Manager of Finance for approval, prior to commencement of any service or work.

WSIB Certificates of Clearance must be submitted to the Manager of Finance at the commencement of a project and periodically as the work is completed. Prior to payment to a supplier, a WSIB Certificate of Clearance shall be obtained ensuring all premiums or levies have been paid to the Board to date.

4.6 **Evaluation Criteria:**

- a) **Request for Tender/Quotation** - The Department Head, whose budget provides for the Procurement, shall be responsible for the preparation of specifications for Requests for Tender/Quotation. All such Requests for Tender/Quotation shall be called, opened and awarded in accordance with procedures for Procurement for the Township and includes terms and conditions of the Bid Solicitation.
- b) **Request for Proposal** - Where it is not possible to prepare precise specifications the Department Head 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 document shall clearly distinguish those requirements that are deemed mandatory or non-mandatory and shall clearly outline how these items will be evaluated. All Request for Proposal shall be called, opened and awarded in accordance with procedures for Procurement for the Township.

4.7 **Construction Tender Call Before and After Approvals Received**

- a) Following the adoption of the budget by Council and the receipt of any necessary approval from outside agencies, the Department Head may call tenders for budgeted municipal construction projects and the acquisition of equipment.
- b) Notwithstanding paragraph 4.7(a), the Department Head may call tenders for municipal construction projects and the acquisition of equipment prior to the adoption of the budget by Township Council and before the receipt of the necessary approvals from any outside

agencies, provided the call and award of such tenders are conditional upon receipt of such approvals.

- 4.8 **Conditional Bid Before Budget Adoption** - The Department Head may obtain, prior to the adoption of the budget by Township Council, Sealed Bids for additional and replacement equipment, provided that the documents include a clause specifically stating that the acceptance of a bid and placing of the order is subject to budget approval by Township Council and the items specified are subject to change in quantity and/or deletion.
- 4.9 **Summer and Election Recess Procedures** - Where a matter, which would otherwise require submission to Council pursuant to this by-law, requires approval prior to the next regular scheduled meeting:
- a) during July and August when the intervals between scheduled Council meetings are greater than that of the normally scheduled meetings;
 - b) during the recess required to conduct municipal elections; or
 - c) and there is a failure to obtain a quorum at a Council meeting where a contract approval was on the agenda for such meeting.

The CAO and Department Head may award contracts which are the result of a Request for Tender, where the recommended Bid is that of the lowest Responsive Bidder (all costs considered), or a Request for Proposals, where the recommended Proposal is that of the highest ranked scoring Bidder, providing in each case that the price does not exceed the approved budget. The CAO and Department Head will report all such awards following the specific recess period to the first possible Council meeting on the contracts awarded during the specific recess period. Council will not vary any action of the contract awards made in such cases.

- 4.10 **Compliance with Legislation** - Procurement activities shall be subject to all applicable Township policies and by-laws and specific provisions of the Municipal Act, S.O. 2001 and all relevant Federal and Provincial legislation.

Part 5 – Purchasing Processes

Unless otherwise stipulated in this By-law, all purchases of goods and services shall be conducted in accordance with this Part.

5.1 Low Dollar Value Items – Less than \$15,000.00

- a) Where the requirement for Goods and Services can be specified and it is estimated that the total value is **less than \$10,000**, including applicable taxes and freight, the Department Head or Designate may Procure the Goods and Services using the Township's Purchasing Card, Cheque Requisition or Petty Cash from such suppliers and upon such terms and conditions that are in the best interests of the Corporation.
- b) Where the requirement for Goods and Services can be specified and it is estimated that the total value is **\$10,000 or more, but less than \$15,000**, including applicable taxes and freight, the initiating Department Head shall solicit and review a minimum of three verbal, fax or email quotes from different sources and award the contract. If the Procurement is within the budgeted amount, the Department Head will issue a Purchase Order.

5.2 Informal and Formal Quotations

- a) **Informal Quotations**
Where the requirement for goods and Services can be specified and it is estimated that the total value is **\$15,000 or more, but less**

than \$50,000, including applicable taxes and freight, the initiating Department Head shall solicit and review a minimum of three written, fax or email quotes from different sources and award the contract. If the Procurement is within the budgeted amount, the Department Head will issue a Purchase Order.

b) **Formal Quotations**

Where the requirement for Goods and Services can be specified and is estimated to cost **\$50,000 or more, but less than \$250,000** including applicable taxes and freight, the initiating Department Head shall issue a Request for Quotation, including required specifications. All bidders must receive the same bid criteria and instructions. A Request for Quotation may be called for lesser amounts if deemed beneficial by the Department Head.

Advertising will be in accordance with this by-law and required legislation. All reasonable attempts will be made to solicit three bids. If only one Bid is received, the Township may exercise the right to cancel.

Requests for Quotation shall be called in accordance with this by-law and require a reply by a designated day and time. An officer of the bidding company must sign the reply.

Sealed Bids are opened in the presence of a Department Head and at least one other Employee. Each Sealed Bid received in response to a formal Request for Quotation is reviewed for completeness and accuracy by the initiating Department Head. The Department Head will select the successful Bid.

If the selected Bid is in accordance with the specifications and terms and conditions of the Request for Quotation, and is under budget, the Department Head may issue a Purchase Order for approval by the CAO.

An information summary report, outlining the bids and award, shall be provided to Members of Council and provided at the following regular Council meeting for information.

5.3 Tenders

Where the requirement for Goods and Services can be specified and is estimated to cost **\$250,000 or more**, including applicable taxes and freight, the initiating Department shall issue a Request for Tender, including required specifications. A Request for Tender may be called for lesser amounts if deemed beneficial by the Department Head.

All bidders must receive the same bid criteria and instructions. Advertising will be in accordance with this by-law and required legislation.

Requests for Tender shall be called in accordance with this by-law and require a reply by a designated day and time. An officer of the bidding company must sign the reply. Sealed Tenders will be opened in public in the presence of a Department Head and at least one other Employee. Each Sealed Tender received in response to a formal Request for Tender, is reviewed by the initiating Department Head for completeness and accuracy. If only one bid is received, the Township may exercise the right to cancel.

A report, by the initiating Department Head, shall be issued to Council to approve award of tender. Upon Council approval, the Department Head shall issue a Purchase Order or a contract shall be signed by the Mayor and Township Clerk.

5.4 Proposals

This method of acquisition can be used for any dollar value and involves the solicitation of Proposals when the requirements for Goods and Services cannot be definitely specified, the requirements of the Township are best described in a general performance specification, and innovative solutions are sought. Proposals shall be called in accordance with this by-law. The initiating Department Head will develop evaluation criteria prior to issuing a Request for Proposals. All Proposals received are scored in accordance with the pre-determined evaluation criteria. The contract is awarded to the highest scoring Bidder. Advertising will be in accordance with this by-law and required legislation.

The Request for Proposals will require a reply by a designated day and time. An officer of the bidding company must sign the reply. Proposals are not formally opened in public nor is it necessary to disclose prices or terms at the time of closing. If only one Proposal is received, the Township has the option of not opening the bid and cancelling the call for the Proposal.

a) **Proposals Less than \$50,000**

Where it is estimated that the total cost of the Goods and Services, inclusive of delivery charges and applicable tax, will cost less than \$50,000, three written, fax or email Proposals shall be solicited by the initiating Department from different sources. The Department Head will evaluate the Proposals received and award the successful Bid. If the Procurement is within the budgeted amount and there are no challenges to the process by interested parties, the Department Head may issue a Purchase Order to the Manager of Finance.

b) **Proposals \$50,000 or more, But Less than \$250,000**

Where it is estimated that the total cost of the Goods and Services, inclusive of delivery charges and applicable tax, will cost \$50,000 or more, but less than \$250,000, a Request for Proposal shall be advertised by the initiating Department Head. Proposals received are opened in the presence of the Department Head and at least one other Employee. The Department Head will review and evaluate the Proposals received and select the successful Bid. If the Procurement is under budget and there are no challenges to the process by interested parties, the Department Head may issue a Purchase Order for approval by the CAO. An information summary report, outlining the bids and award, shall be provided to Members of Council and provided at the following regular Council meeting for information.

c) **Proposals \$250,000 or More**

Where it is estimated that the total cost of the Goods and Services, inclusive of delivery charges and applicable tax, will cost \$250,000 or more, a Request for Proposal shall be advertised by the initiating Department Head. Proposals received are opened in the presence of the Department Head and at least one other Employee. Proposals received will be reviewed by the initiating Department Head for completeness and accuracy.

A report, initiated by the Department Head, shall be issued to Council for approval of successful proposal. Upon Council approval, the Department Head shall issue a Purchase Order or a contract shall be signed by the Mayor and Township Clerk.

5.5 Co-operative Bid Calls

Notwithstanding anything else contained in this by-law, the Department Head may join or participate with other units of government, as a named agency, including local boards, commissions and agencies in co-operative purchasing and bulk buying of Goods and Services, if it is in the best interests of the Township to do so.

5.6 Purchase of Used Fleet Equipment

Notwithstanding Parts 4 and 5 of this by-law, Department Heads may purchase used fleet equipment that is sold by other municipalities by private sale or public auction, sold through a vendor licensed to sell used equipment, sold by sealed bid or by negotiation provided that:

- a) The equipment meets or exceeds the departmental equipment requirements;
- b) It is documented that it is fiscally responsible to purchase a used piece of equipment rather than purchase new;
- c) If the total expenditure per piece of equipment exceeds \$50,000, a report will be forwarded to Council detailing purchase information and expenses prior to issuing a purchase order.

5.7 Specifications

The Department Head, whose budget provides for the subject Procurement, shall be responsible for the preparation of the specifications for a quotation or tender.

Specifications should be detailed, may be brand specific, but shall leave room for potential vendors to provide alternatives in the event an equal or better-proven product or method is available and shall not deter a competitive process. In such cases where the specifications will result in a Single Source Procurement, it shall be at the discretion of CAO to require the department to bring forward a report for Council approval.

Suppliers or potential suppliers should not be requested to expend time, money, or effort to design or in developing specifications or otherwise help define a requirement beyond the normal level of service expected.

Should such extraordinary services be required:

- a) the contracted supplier will be considered as a consultant and unable to make an offer for the supply of the goods and services, unless approved by the Department Head and the CAO;
- b) fee shall be paid; and
- c) detailed specifications shall be approved by the Department Head of the initiating department and shall become the property of the Township for use in obtaining competitive bids.

5.8 Pre-Qualification / Request for Information

5.8.1 A Department Head may issue a Request for Pre-Qualification to select a number of bidders prior to the competitive sealed bid process. The purpose of the pre-qualification is to ensure that each bidder can demonstrate they have the ability to provide the necessary expertise and resources to satisfactorily complete the work required. Pre-qualification would only be considered in the following circumstances:

- a) the work is considered "high risk" with respect to Regulations governed under the "Occupational Health and Safety Act";

- b) the work is such that contract administration costs (i.e. work inspection, follow up, extra fee negotiations) could result in a substantial cost to the Township if the work is not satisfactorily performed the first time;
- c) the goods or equipment to be purchased must meet national safety standards, or if no standard has been established, has demonstrated an acceptable level of performance; or
- d) the work involves complex, multi-disciplinary activities, specialized expertise, equipment, materials, or financial requirements.

This is a two-step process, where either a Request for Tender/Quotation or Request for Proposals will follow. Pre-qualification is the first step and would set out the criteria requiring bidders to provide information, such as, but not limited to:

- a) experience on similar work (firm and staff assigned);
- b) references provided from other customers for similar work;
- c) verification of applicable licenses and certificates;
- d) health and safety policies and staff training; and
- e) financial capability.

The initiating Department Head will evaluate and rank the submissions received and then recommend a short list of acceptable bidders who will be invited to participate in the subsequent Request for Tender/Quotation or Request for Proposals. A reply to the Request for Pre-Qualification is required by a designated date and time to the Department Head who initiated the request, and signed by an officer authorized to legally bind the Corporation. Any resulting bid document will be processed and advertised in accordance with this By-law.

- 5.8.2 Alternatively, the Township may issue a Request for Information. A Request for Information can be used to build supplier interest and to see if there are enough suppliers to justify a full Request for Proposal competition. The Request for Information would request detailed information such as, but not limited to, company background, who the interested parties are, what they can offer and what they can do for the Township. A reply to the Request for Information is required by a designated date and time to the Department Head who initiated the request, and signed by an Officer authorized to legally bind the Corporation. Any resulting bid document will be processed and advertised in accordance with this by-law.

PART 6 – NON-COMPETITIVE PROCUREMENT

- 6.1 Notwithstanding the requirements of Parts 4 and 5 herein, the Department Head may, under the following conditions, negotiate with one or more bidders and in such cases the requirement for inviting tenders or quotations is waived:
- a) when in the judgment of the Department Head, goods are judged to be in short supply due to market conditions;
 - b) when compatibility with an existing product, facility or service is required or to avoid violating warranty/guarantee requirements when service is required;
 - c) where two or more identical bids have been received;
 - d) where the lowest tender or quotation meeting specifications and the terms and conditions exceed the approved budget of the goods and services and it is impractical to re-bid;

- e) when all bids received fail to meet the specifications or tender terms and conditions and it is impractical to recall tenders or quotations;
- f) when no bids are received in competitive process;
- g) when only one bid is received in a tender or quotation;
- h) when work is required at a location where a contractor has already been secured through a tender process, with established unit prices and it is considered to be beneficial and cost effective to extend the unit prices for the work to be completed;
- i) when the required item is covered by an exclusive right, such as a patent, copyright or exclusive license;
- j) when the purchase is already covered by a lease-purchase agreement where payments are partially or totally credited to the purchase;
- k) when construction or renovation work on a leased building may be performed only by the lessor of the building;
- l) for the extension of a contract which has expired and unforeseeable circumstances have caused a delay in issuing a new tender/proposal document;
- m) the required goods and services are to be supplied by a particular vendor or supplier having special knowledge, skills, expertise or experience.

When negotiations are deemed necessary, they shall be carried out by the Department Head, subject to approval by the CAO and the remaining provisions of this by-law shall apply.

6.2 **Single/Sole Sourcing**

- a) In circumstances set out in Section 6.1 of this by-law and where the expenditure will exceed \$50,000, approval must be obtained from Council prior to negotiations with the single source. The Department Head or Designate shall be responsible for submitting a report detailing the rationale supporting the use of the Single Source.
- b) If a Department Head requires goods, services or equipment deemed to be available from only one source of supply, and where the expenditure will exceed \$50,000, the Department Head, with the concurrence of the Manager of Finance and the C.A.O., shall obtain approval from the Council for the tendering procedure to be waived and for authorization for the Department Head to negotiate with the Single Source.

6.3 **Leasing**

In certain circumstances, it may be economically advisable for the Township to enter into a financing lease to acquire the rights to use capital property and equipment rather than an outright purchase. In such cases, the Township will follow the Municipal Act, 2001, Regulation 46/94 as amended by 401/02.

For any lease, a report initiated by the Manager of Finance shall be issued to Council for its approval.

6.4 **Emergency**

- (a) When an emergency occurs, the Department Head concerned has the authority to issue a purchase order for the goods or services required. For expenditures of \$15,000 and over, the Department Head shall obtain the prior approval of the CAO.
- (b) After the emergency is over, any expenditure over \$15,000 shall be reported to Council for information purposes only.

Emergency purchases do not include emergencies that come under the Township's Emergency Management Plan.

6.5 Performance Evaluation

6.5.1 The CAO, in consultation with Department Heads, shall conduct a performance evaluation of all Professional and Consulting services routinely utilized by the Township of Guelph/Eramosa, in the second year following a Municipal Election. The CAO shall report to Council on the performance of all professional and consulting services following her/his performance evaluation.

The performance evaluations conducted by the CAO will determine whether:

- (a) the professional/consulting services should be extended; or
- (b) requests for proposal should be issued.

6.5.2 Measurement Criteria

The following measurement criteria will be used by the CAO when conducting performance evaluations:

- service levels
- quality of work
- staffing qualifications/experience
- municipal experience/areas of expertise
- success rate in obtaining funding/grants
- competitive rates.

PART 7 – UNSOLICITED PROPOSALS

Unsolicited proposals received by the Township shall be reviewed by the Department Head and CAO. Any Procurement resulting from the receipt of an unsolicited Proposal shall comply with the provisions of this by-law. A contract resulting from an unsolicited proposal shall be awarded on a non-competitive basis only when the procurement requirements comply with the non-competitive procurement policies and procedures described in Part 6 herein.

PART 8 – REPORTING

- 8.1 In addition to the instances enumerated herein, reports to Council will be required if one of the following circumstances exist:
- the lowest bid is not being recommended and the reasons
 - a contract requires the signature of both the Mayor and Clerk
 - the capital acquisition exceeds the budgeted amount
 - less than three Bids were received for a tender
 - recommended Bid does not meet major specifications
 - procurements required without a competitive bidding process
 - before making unspecified capital budget expenditures
 - the CAO requests a report be written

- the CAO conducts performance evaluations for professional/consulting services.
- 8.2 The report will be initiated by the requisitioning Department Head and initialled by the CAO. The report will include background information regarding the purpose for the Procurement, the circumstances requiring Council's authorization for the Procurement, and, if possible, a recommendation or recommended options for Council's consideration.
- 8.3 Upon approval by Council, the Department Head shall issue a Purchase Order and/or a Contract shall be executed by the Mayor and the Township Clerk.

PART 9 – ADVERTISING

Advertising for tenders, quotations or proposals estimated to be or exceed \$50,000.00 including applicable taxes and freight, shall be posted on the Township's website (www.get.on.ca) and may be advertised in a newspaper having general circulation within the municipality, at the discretion of the Department Head. The ability of the Corporation to cancel Request for Tenders/Quotations/Proposals, where less than two bids are received, will be explicit in all newspaper and website advertisements.

PART 10 – DISPOSAL OF SURPLUS GOODS

- 10.1 Where any goods or equipment are considered to be obsolete or un-repairable, the Department Head shall issue a report for Council to declare the item(s) to be surplus, except where the replacement of goods has already been approved or discussed by Council in open session, such as through budget deliberations.
- 10.2 Surplus items may be disposed of through formal auction, internet auction, tender or quotation or trade-in, whichever is in the best interest of the Corporation at the discretion of the Department Head. An information report shall be submitted to Council listing all surplus items and the value obtained for each.
- 10.3 Where the item has limited market value, the Department Head may, to the benefit of the Corporation, dispose of the item in a manner other than the ones listed above.
- 10.4 Any revenue from the sale of scrap material shall be credited to the appropriate account.

PART 11 – CONFLICT OF INTEREST GUIDELINES

- 11.1 No elected official or Employee, nor any corporation of which an elected official or Employee has an interest, shall offer any Bid, or otherwise sell any goods or services to the Township.
- 11.2 No elected official or Employee may purchase Goods and Services for personal use through the Corporation, subject to any other Township policy.
- 11.3 No elected official or Employee, nor any corporation of which an elected official or Employee has an interest, shall discuss a Bid Solicitation with a person, or any officer, employee or agent of the person who has submitted a Bid to the Township, unless the bid call has been awarded or for the purpose of receiving clarification.

- 11.4 No elected official or Employee shall purchase or offer to purchase, on behalf of the Township, any Goods and Services, except in accordance with this Policy.
- 11.5 No elected official or Employee shall bid on the sale of goods except those disposed of by public auction, internet auction, tender or quotation.
- 11.6 All consultants (e.g.: architects, engineers, etc.) retained by the Township shall disclose to the Township prior to accepting an assignment, any potential conflict of interest. If such a conflict of interest does exist, the Township as directed by the Department Head may, at its discretion, withhold the assignment from the consultant until the matter is resolved. And furthermore, if during the conduct of a Township assignment, a consultant is retained by another client giving rise to a potential conflict of interest, then the consultant shall so inform the Township

PART 12 – CODE OF ETHICS

The code of purchasing ethics attached as Schedule “A” to this By-law shall apply to all employees involved in the procurement process for the Township of Guelph/Eramosa.

PART 13 – LEGAL CLAIMS

No tender, proposal or quotation will be accepted from any company or subsidiaries or sub-contractors who have a claim or instituted a legal proceeding against the Township or against whom the Township has a claim or instituted a legal proceeding with respect to any previous contract, without prior approval by Council.

PART 14 – ACCESS TO INFORMATION

- 14.1 The disclosure of information received relevant to the issue of bid solicitations or the award of contracts emanating from bid solicitations shall be made by the appropriate officers in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, as amended.
- 14.2 All records and information pertaining to tenders, proposals and other sealed bids, which reveal a trade secret or scientific, technical, commercial, financial or other labour relations information, supplied in confidence implicitly or explicitly, shall remain confidential if the disclosure could reasonably be expected to:
- i) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organizations;
 - ii) result in similar information no longer being supplied to the Township where it is in the public interest that similar information continue to be so supplied;
 - iii) result in undue loss or gain to any person, group, committee or financial institution or agency; or
 - iv) result in information whose disclosure could reasonably be expected to be injurious to the financial interests of the Township.

PART 15 – PURCHASE ORDER NOT REQUIRED

A Purchase Order is not required for the following items or class of items unless specifically requested by the requisitioner:

- a) Petty Cash Items;
- b) Training and Education;
- c) Refundable Employee Expenses;
- d) Items under \$5,000
- e) Professional and Special Services (Committee fees, witness fees, court reporter fees, honoraria, arbitrators, legal settlements);
- f) Utilities – (Postage, water, sewer, cable television, hydro);
- g) Freight Charges;
- h) Other government agencies.

PART 16 – REAL PROPERTY

The disposal or sale of real property shall be governed by the Township's current By-law to establish procedures governing the sale of real property, and any amendments thereto. The purchase of construction material and/or services used to build, renovate, repair or improve Real Property shall be governed by this By-law.

PART 17 – ADMINISTRATION

In this Policy, unless the context requires otherwise, words importing the singular shall include the plural and words importing the masculine gender, shall include the feminine.

17.1 Purchasing Policy Review

The CAO, in consultation with the appropriate Department Heads, shall conduct a detailed review of this by-law on an as-required basis, but no longer than five years following its passage. The review is to take into consideration current and future professional practices, industry standards, market conditions, Federal/Provincial Government directions/policies, technological developments and advancements and the impact that any recommended changes may have on potential suppliers to the Township.

17.2 Purchasing Procedures

Purchasing procedures developed by Department Heads and approved by the CAO, are to be used as a guideline and for information on Procurement in compliance with this by-law and any related legislation.

17.3 Procurement Documentation/Forms

Conflict of Interest Guidelines will be included in all competitive bidding documents.

A Privacy Statement, as required under *The Municipal Freedom of Information and Protection of Privacy Act*, will be included in all competitive bidding documents.

READ a three times and finally passed
this 2nd day of **August, 2011**.

Chris White, Mayor

Meaghen Reid, Clerk

Schedule "A" to By-law Number 53/2007**Statement of Ethics for Public Purchasing**

All employees who are authorized to purchase Goods and Services on behalf of the Township of Guelph/Eramosa are to adhere to the following code of ethics:

1. **Open and Honest Dealings With Everyone Who is Involved in the Purchasing Process.** This includes all businesses with which this Township contracts or from which it purchases Goods and Services, as well as all members of staff and of the public who utilize the services of the Township.
2. **Fair and Impartial Award Recommendations for All Contracts and Tenders.** This means that preferential treatment shall not be extended to any vendor. Not only is it against the law, it is not good business practice, since it limits fair and open competition for all vendors and is, therefore, a detriment to obtaining the best possible value for each tax dollar.
3. **An Irreproachable Standard of Personal Integrity on the Part of All Those Designated as Purchasing Representatives for this Township.** Business gifts, other than items of small intrinsic value, should not be accepted. However, reasonable hospitality is an accepted courtesy of a business relationship. The frequency and nature of gifts or hospitality accepted should not be allowed whereby the recipient might be or might be deemed by others to have been influenced in making a business decision as a consequence of accepting such hospitality or gifts.

Also, the purchasing representatives of this Township do not publicly endorse one company in order to give that company an advantage over others.