

THE CORPORATION OF THE TOWNSHIP OF O'CONNOR
BY-LAW 2004-15

A BY-LAW OF THE CORPORATION OF THE TOWNSHIP OF O'CONNOR
TO PROVIDE FOR THE PURCHASE OF GOODS, SERVICES AND CONSTRUCTION
FOR THE OPERATIONS OF THE TOWNSHIP OF O'CONNOR

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THE CORPORATION OF THE TOWNSHIP OF O'CONNOR
BY-LAW NUMBER 2004-15

Being a By-law to provide for the purchase of goods, services and construction for the operations of The Township of O'Connor and to repeal By-law Number 967 as amended.

WHEREAS Section 271 of the Municipal Act, 2001 imposes upon municipalities the obligation to adopt policies with respect to the procurement of Goods, Services and Construction;

AND WHEREAS the purpose of this by-law is to provide authority and guidelines to conduct purchasing transactions to satisfy the needs of the township;

AND WHEREAS fair and open competition is a basic tenet of public acquisition using a variety of source selection methods under varying market conditions;

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 Township of O'Connor subject to certain exceptions set out herein;

NOW THEREFORE the Municipal Council of the Corporation of The Township of O'Connor enacts as follows:

PART 1 – SHORT TITLE

This By-Law may be cited as the “Purchasing By-Law”.

PART 2 – PURPOSES, GOALS AND OBJECTIVES

The purposes, goals and objectives of the By-law and of each of the methods of procurement authorizes are:

- a) To encourage competition among suppliers
- b) To maximize savings for taxpayers;
- c) To ensure service and product delivery, quality, efficiency and effectiveness;
- d) To ensure fairness among bidders;
- e) To ensure openness, accountability and transparency while protecting the financial best interests of the Township of O'Connor;
- f) To have regard to the accessibility for persons with disabilities to the Goods, Services and Construction purchased by the Township of O'Connor;
- g) To ensure that all purchases of materials, supplies and services provide the lowest costs consistent with the required quality and service.

PART 3 – DEFINITIONS AND SCHEDULES

The definitions listed below when used in this By-law shall have the following meanings attributed to them:

“**ACQUISITION**” – means the process used for obtaining Goods and/or services for use, whether on a permanent or on a temporary basis;

“AGREEMENT” – means a formal written legal agreement or contract for the supply of goods, services, equipment or construction;

“AWARD”, “AWARDED” and “AWARDING” mean authorization to proceed with the purchase of Goods, Services or Construction from a chosen supplier;

“BID” – means an offer or submission received from a supplier in response to a Bid Solicitation issued by the Township of O’Connor;

“BID BOND” – means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee that the successful bidder enters into an agreement with The Township of O’Connor.

“BID SOLICITATION” – means a formal request for bids that may be in the form of a Request for Proposal, Quotations or Tenders;

“BLANKET PURCHASE ORDER” – means an agreement or contract wherein a vendor will facilitate the rendering of repetitive use goods or services to the Township for a specified term;

“CERTIFICATE OF CLEARANCE” – from the Workplace Safety and Insurance Board means a certificate issued by an authorized official of the Workplace Safety and Insurance Board certifying that the Board waives its right under subsection 9(3) of the Workers’ Compensation Act, R.S.O. 1990, Chapter W.11;

“CLERK-TREASURER” – means the Clerk-Treasurer for Corporation of the Township of O’Connor;

“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, seismic investigation, soil 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 design or architectural work, but does not include professional services related to the construction contract unless they are included in the specifications for the procurement;

“CONTRACT” – means any binding agreement, regardless of form or title, for the lease, purchase or disposal of Goods, Services or Construction authorized in accordance with this By-law;

“COUNCIL” – means the Council for Corporation of the Township of O’Connor;

“COUNCIL APPROVED BUDGET” – means Council approved department budgets including authorized revisions;

“DEPARTMENT” – means an organizational unit of the Township of O’Connor headed by a Department Head;

“ELECTRONIC ADVERTISING” – means the use of a computer based system directly accessible by suppliers irrespective of their location that provides suppliers with information related to Bid Solicitations;

“EMERGENCY” - means a situation, or a threat of an impending situation, which may affect the environment, the life, safety, health and/or welfare of the general public, or the property of the residents of the Township of O’Connor, or to prevent serious damage, disruption of work, or to restore or to maintain essential service to a minimum level;

“FAIR MARKET VALUE” – means the price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arms-length where fully informed and not under any compulsion to transact.

“GOODS” – means moveable property including,

- a) raw materials, products, equipment and other physical objects of every kind and description;
- b) the cost of installing, operating, maintaining or manufacturing such moveable property;

“IN HOUSE BID” means a bid made by a department and authorized by the manager of that department, submitted in response to a bid solicitation, where the provision of the goods, service or construction will be provided entirely by the employees of the Township of O’Connor.

“LOWEST COMPLIANT BID” – means the bid that would provide The Township of O’Connor with the desired goods or services at the lowest total acquisition cost, meets all the specifications and contains no irregularities requiring automatic rejection;

“NEGOTIATION” – means that action or process of conferring with one or more vendors leading to an agreement on the acquisition of the required goods and services under the conditions outlined in the Policy;

“PERFORMANCE BOND” – means a monetary amount to be determined by Council to ensure that the contract is completed as detailed;

“PROFESSIONAL SERVICES” – means persons having a specialized knowledge or skill for a defined Service requirement including:

- a) architects, engineers, designers, real estate appraisers, management and financial consultants, brokers, and/or lawyers,
- b) firms or individuals having specialized competence in environmental, planning or other disciplines;
- c) and any other consulting and professional services rendered on behalf of the township;

“PROPOSAL” – means an offer from a supplier to provide Goods and/or Services, acceptance of which may be subject to further negotiation. It is the response submitted to a Request for Proposals;

“REQUEST FOR PROPOSAL/RFP” – is a form of Bid Solicitation whereby the township invites certain individuals and identifiable sources to submit proposals with respect to a particular project, or the supply of Goods and/or Services, without supplying detailed specifications and/or terms and/or conditions of the contract which might ultimately be entered into;

“REQUEST FOR QUOTATION/RFQ” – is a form of Bid Solicitation whereby the township informally requests, verbally or in writing, price quotations with respect to a particular project or the supply of particular Goods and/or Services, which may or may not be required to be submitted on prescribed forms.

“REQUEST FOR TENDER/RFT” – is a form of Bid Solicitation whereby the township publishes the specifications, terms, conditions and any and all details concerning the proposed contract, and advertises for, or invites Bidders to submit sealed Bids in accordance with detailed published procedures;

”QUOTATION” – means an offer from a supplier to sell Goods and/or Services to or buy them from selected vendors, which are submitted verbally, in writing or transmitted by facsimile as specified. It is a response to a Request for Quotation;

“SEALED BIDS” – are bids submitted in a sealed envelope to a specified location, by a specified date, as part of a quotation, tender or proposal;

“SURETY” – means an specified dollar amount in the form of cash, certified cheque, bid bond, performance bond, labour and materials payment bond, letter of credit or any other form as deemed necessary and stated in the instructions to Bidders.

“TENDER” – means an offer received from a supplier of Goods and/or Services in response to a formal Request for Tenders, the acceptance of which will result in the formation of a binding contract between the township and the Person submitting the Tender;

“TOTAL ACQUISITION COST” – means an evaluation of quality and service in the assessment of a Bid and the sum of all costs including purchase price, all taxes, warranties, local service costs, life cycle costs, time of completion or delivery, inventory carrying costs, operating and disposal costs for determining the Lowest Compliant Bid;

“VERBAL QUOTATION” – means the requisitioning department will receive pricing via telephone or in person, and will retain written documentation of the conversation and document the information on the requisition;

PART 4 – GENERAL PROCUREMENT POLICY

APPLICATION

The procedure in this By-law shall be followed to award a contract or to recommend to Council that a contract be awarded.

The purchase of goods or services listed in Schedule “A” to this By-law may be made provided that sufficient funds are available and identified in appropriate accounts within Council approved budgets.

PART 5 - RESTRICTIONS

No contract for goods, services or construction may be divided into two or more parts to avoid the application of the provisions of this By-law.

No contract for services shall be awarded where the services would result in the establishment of an employee-employer relationship.

No employee shall purchase, on behalf of The Township of O'Connor, any goods, services or construction except in accordance with this By-law.

Where an employee involved in the award of any contract, either on his or her own behalf, or while acting for, by with or through another person, has any pecuniary interest, direct or indirect, in the contract, the employee:

- a) shall immediately disclose the interest to the Department Head involved in the award of the contract and shall describe the general nature thereof
- b) shall not take part in the award of the contract
- c) shall not attempt in any way to influence the award of the contract

An employee has an indirect pecuniary interest in any contract in which the Township of O'Connor is concerned if:

- a) the employee or his or her spouse or same-sex partner:
 - i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public that has a pecuniary interest in the contract;
 - ii) has a pecuniary interest in or is a director or senior officer of, a corporation that offers its securities to the public that has a pecuniary interest in the contract;
 - iii) is a member of an incorporated association or partnership, that has a pecuniary interest in the matter;
- b) the employee or his or her spouse or same-sex partner is in the employment of a person, unincorporated association or partnership that has a pecuniary interest in the contract.

All Council members shall conduct themselves in accordance with the Municipal Conflict of Interest Act, R.S.O. 1990, c M.50, as amended.

PART 6 – TOTAL ACQUISITION COST

Where this By-law prescribes dollar limits, the contract amount shall be the estimated total acquisition cost less any rebates.

PART 7 – PRESCRIBED COUNCIL APPROVAL

Despite any other provisions of this By-law, the following contracts are subject to Council approval:

- a) any contract requiring approval from the Ontario Municipal Board
- b) any contract where the total acquisition cost is greater than the Council approved budget

- c) any contract where an irregularity precludes the award of a contract to the supplier submitting the lowest bid
- d) any contract where a good, service or construction is available from only one source of supply and the total acquisition cost of such good, service or construction exceeds \$25,000; or where a Bid Solicitation has been restricted to a single source of supply because standardization or compatibility is the overriding consideration
- e) any contract where the request for proposal method of purchase of goods, services or construction is being used and the estimated value of goods, services or construction exceeds \$2,500.
- f) The lowest or any tender may not necessarily be accepted. The specific reasons must be stated why the bids may not be accepted.

PART 8 – RESPONSIBILITIES AND AUTHORITIES

Department heads shall be responsible for and shall have authority for all procurement activity and decisions within their departments and may delegate their authority where appropriate.

PART 9 – NOTIFICATION OF PROCUREMENT OPPORTUNITIES

Notification of procurement opportunities for goods, services or construction exceeding a total acquisition cost of \$25,000 may be made by electronic advertising and may be used for other purchases.

Notification of procurement opportunities for goods, services or construction may be supplemented by other means of notification where appropriate.

PART 10 – PROCUREMENT PROCEDURES

The Township shall establish purchasing procedures consistent with the purposes, goals and objectives set out in this By-law relating to:

- a) the form, content and use of forms, whether electronic or printed, including requisitions, purchase orders, bonds, letters of credit and other forms of guarantee or surety, tender, proposal and other contract documents;
- b) the identification of those goods, services or construction which are more effectively acquired through cooperative purchasing;
- c) the process to be followed in the issuing, receipt and evaluation of tenders and requests for proposals including the option of submitting documentation, payment or signature by electronic means pursuant to the Electronic Commerce Act, S.O. 2000, c 17, as amended;
- d) any other aspect of process or procedure not specifically provided for in this By-law.

PART 11 - BLANKET PURCHASE ORDERS

A Blanket purchase order may be used where one or more departments repetitively order the same goods, services or construction and the actual demand is not known in

advance. More than one supplier may be selected where it is in the best interest of The Township of O'Connor and the bid solicitation allows for more than one.

PART 12 – REQUEST FOR EXPRESSION OF INTEREST

Department heads may conduct a request for expression of interest for the purposes of determining the availability of suppliers of goods, services or construction and for the purposes of keeping a list of available suppliers.

PART 13 – PURCHASING METHODS

The Purchasing methods for the purchase of goods, services or construction are listed in Schedule "B".

PART 14 - PURCHASES NOT EXCEEDING TWO HUNDRED (\$200) DOLLARS

The Clerk-Treasurer shall have authority to establish petty cash funds in such an amount to meet the requirements of a department for the acquisition of goods, services or construction having an individual total acquisition of \$200 or less.

Purchases made pursuant to this Section shall be made from the competitive market place wherever possible.

All petty cash fund disbursements shall be evidenced by vouchers and shall be available for auditing purposes and will be included on the monthly administration and road voucher.

PART 15 - PURCHASES BETWEEN TWO HUNDRED (\$200) DOLLARS AND FIVE THOUSAND (\$5,000) DOLLARS

Purchasing requirements for goods, services and construction having an estimated total acquisition cost between \$200 and \$5,000 shall be made by the department head using the competitive market place wherever possible. The purchase will be charged to the township credit card, paid by township cheque or charged to the township account if possible. Copies of the invoices will be included on the monthly administration and road voucher for Council's approval.

PART 16 – PURCHASES BETWEEN FIVE THOUSAND (\$5,000) DOLLARS AND TWENTY THOUSAND (\$20,000) DOLLARS

Purchasing requirements for goods, services or construction having an estimated total acquisition cost between \$5,000 and \$20,000 shall require three written quotation where possible. Council will approve the successful quotation and the purchase may be made.

In appropriate circumstances, the request for proposal or request for tender process may be utilized for the purchase of good, services or construction within this total acquisition cost range.

The procedure used to purchase the goods, services or construction in this total acquisition cost range shall demonstrate that fair market value was achieved.

PART 17 – PURCHASES OVER TWENTY THOUSAND (\$20,000) DOLLARS

A request for tender shall be used for purchases exceeding \$20,000 where all of the following criteria apply:

- a) two or more sources are considered capable of supplying the requirement;
- b) the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria; and
- c) it is intended that the lowest compliant bid will be accepted with negotiations.

A request for proposal shall be used where one or more of the criteria of issuing a request for tender cannot be met such as:

- a) owing to the nature of the requirement, suppliers are invited to propose a solution to a problem, requirement or objective, and the selection of the supplier is based on the effectiveness of the proposed solution rather than on price alone
- b) it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirement

A list of suggested evaluation criteria for assistance in formulating an evaluation grid, which criteria may include, but are not limited to, factors such as approach, equipment and facilities, experience and qualifications, methodology, past performance, scheduling, price and strategy.

PART 18 – IN HOUSE BIDS

In House Bids may be used for the procurement of goods, services or construction in circumstances where the Council and the Leadhand considers it appropriate to do so.

PART 19 – GUARANTEE OF CONTRACT EXECUTION AND PERFORMANCE

The Township of O'Connor may require that a bid be accompanied by a bid bond or other similar security to guarantee entry into a contract. Unless otherwise specified, in circumstances where a bid bond or other security is required, the refundable deposit requirements for request for tenders and requests for proposals shall be as follows:

- a) Estimated total acquisition cost - \$25,000 or less - 5%
- b) Estimated total acquisition cost – over \$25,000 - 10%

Prior to commencement of the work, the successful bidder may be required to provide the following security in addition to the security referred to above:

- a) a performance bond to guarantee the performance of the contract
- b) a payment bond to guarantee the payment for labour and materials to be supplied in connection with a contract

The appropriate means to guarantee execution and performance of a contract shall include one or more of, but not limited to, certified cheque, bank draft, irrevocable letter of credit, money order or bid bond.

Prior to commencement of work, evidence of insurance coverage satisfactory to the Township of O'Connor must be obtained, ensuring indemnification of The Township of O'Connor from any and all claims, demands, losses, costs or damages resulting from the performance of a bidder's obligations under the contract, and from any other risk determined by Council as requiring coverage.

Prior to payment to a supplier, a Certificate of Clearance from the Workplace Safety and Insurance Board shall be obtained ensuring all premiums or levies have been paid to the Workplace Safety and Insurance Board to the date of payment.

PART 20 – CONTRACT WITHOUT BUDGETARY APPROPRIATION

Where a requirement exists to initiate a project for which goods, services or construction are required and funds are not contained within the council approved budget to meet the proposed expenditure, Council must receive information surrounding the requirement to contract and information on the availability to the funds within existing estimates, which were originally approved by Council for other purposes, or on the requirement of additional funds and approve such funding.

PART 21 - BIDS IN EXCESS OF PROJECT ESTIMATES

Where bids are received in response to a bid solicitation but exceed project estimates, the department head and/or Council may enter negotiations with the lowest compliant bidder to achieve an acceptable bid within the project estimate.

PART 22 – EMERGENCY PURCHASES

Where an emergency exists requiring the immediate procurement of goods, services or construction, a department head may purchase the required goods, services or construction by the most expedient and economical means, notwithstanding the requirements of this By-law. For all emergency purchases, Council shall be notified as soon as possible with a written report detailing the circumstances of the emergency.

PART 23 – CO-OPERATIVE PURCHASING

The Township of O'Connor may participate with other government agencies or public authorities in cooperative purchasing where it is in the best interests of The Township of O'Connor to do so and where the purposes, goals and objectives of this By-law are complied with by such government agencies and public authorities.

PART 24 – IDENTICAL TENDERS

If the lowest compliant bids from two or more bidders are identical in total acquisition cost or unit price, the Township of O'Connor shall enter into negotiations with the bidders who have submitted the identical prices in an attempt to obtain a lesser price.

Such negotiations shall be confidential in their entirety, except for a final total cost agreement.

When negotiations are not successful in breaking the identical tenders, then the successful bidder shall be determined by coin toss. The coin toss shall be performed in the presence of a quorum of Council.

PART 25 - BID IRREGULARITIES

The process for administering irregularities contained in bids pertaining to all contracts shall be set out in Schedule "C".

PART 26 – PURCHASE OF USED FLEET EQUIPMENT

Council may authorize the purchase of used fleet equipment that is sold by other municipalities by private sale or public auction; sold through a vendor licensed to sell used equipment; by sealed bid; or by negotiation providing 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.

PART 27 - SURPLUS AND OBSOLETE GOODS

The Township of O'Connor may dispose of all goods which no longer have a use, using any method for disposal in the township's best interest, including without limitation, public auction, public tender, trade, negotiated sale or transfer to another department.

Employees who declare goods surplus or obsolete, shall not bid on or personally obtain any of those goods.

No member of Council or employee shall be permitted to receive surplus or obsolete goods except by purchase at public auction, public tender, trade or negotiated sale.

PART 28 – ACCESS TO INFORMATION

The disclosure of information received relevant to the issue of bid solicitations or the award of contracts emanating from bid solicitations shall be in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, as amended.

PART 29 – BY-LAW REVIEW

This By-law shall be reviewed prior to the end of each Council term, by Council and the department heads, and any amendment thereto shall be made prior to the inaugural meeting of the next Council.

The review shall determine how effective this By-law has been in achieving the objectives set out in this By-law, as well as the requirements of the Municipal Act, 2001, as amended.

PART 30 – EFFECTIVE DATE

This By-law shall come into force and take effect on the 1st day of January, 2005.

PART 31 – REPEAL

This By-law repeals any existing purchasing by-laws or policies of The Township of O'Connor.

Read a first and second time this 8th day of December, 2004.

Read a third time and finally passed this 8th day of December, 2004.

The Corporation of the
Township of O'Connor

Ron Nelson
Mayor

Lorna Buob
Clerk-Treasurer

This By-law has been amended as follows:

March 27, 2006 – By-law #2006-05 added Part 2 g) and Part 7 f)

December 17, 2007 – By-law #2007-23 – adjusting acquisition cost amounts-Part 15 and 16, By-law 2010-17 – amending Parts 7, 16 and 17

The Corporation of The Township of O'Connor

Schedule " A "
to By-Law # 2004-15

GOODS AND SERVICES "EXEMPT" FROM
PROVISIONS OF THE PROCUREMENT POLICIES

1. Petty Cash Items
2. Training and Education including:
 - a) Conferences, conventions, courses, seminars,
 - b) Staff training, development, workshops or relations
 - c) Memberships
 - d) Periodicals, subscriptions, magazines
3. Employee Expenses including:
 - a) Advances
 - b) Meal allowances
 - c) Travel expenses
 - d) Hotel accommodations
 - e) Entertainment
 - f) Miscellaneous – Non-Travel
4. Employer's General Expenses including:
 - a) Payroll deduction remittances
 - b) Licenses (vehicle, radio, etc.)
 - c) Tax remittances
 - d) Insurance Premiums
 - e) Medicals
 - f) Debenture payments
 - g) Charges to/from other Government or Crown Corporations
 - h) Petty cash replenishment
 - i) Damage claims
5. Professional and Special Services
 - a) Additional non-recurring Accounting and Auditing Services
 - b) Banking Services where covered by agreements
 - c) Group Benefits
 - d) Legal fees
 - e) Realty Services regarding the Lease, Acquisition, Demolition, Sale of Land and Appraisal of Land.
 - f) Advertising services including but not limited to radio, television, newspaper
 - g) Veterinary Expenses
 - h) Funeral and Burial expenses
6. Utilities
 - a) Postage
 - b) Hydro
 - c) Telephone

The Corporation of The Township of O'Connor

Schedule " B "
to By-Law # 2004-15**PURCHASING METHODS**

<u>Procedure</u>	<u>Cost of Goods, Services or Construction</u>
Approved invoice or petty cash	\$200 or less (Section 13)
Competitive market place, department head charge to credit card or account	\$200 to \$5,000 (Section 14)
Agreement, written quotation where possible.	\$5,001 to \$20,000 (Section 15)
Agreement, Request for Tender or Request for Proposal.	\$20,001 or more (Section 16)

The Corporation of The Township of O'Connor

Schedule " C "
to By-Law # 2004-15IRREGULARITY

Late Bids	Automatic rejection and not opened or read publicly
Unsealed Envelopes	Automatic rejection
Insufficient Financial Security (No Bid Security or agreement to bond or insufficient Bid bond or agreement to bond)	Automatic rejection
Bids completed and/or signed in erasable medium	Automatic rejection
All required sections of Bid documents not completed	Automatic rejection unless, in the consensual opinion of the Council or designate, the incomplete nature is trivial or not significant
Qualified bids (Bids qualified or restricted by an attached statement.)	Automatic rejection unless, in the consensual opinion of the Council or designate, the incomplete nature is trivial or not significant
Bids received on documents other than those provided or specified by Council	Automatic rejection
Bids Containing Minor Obvious Clerical Errors	48 hours to correct and initial errors
Failure to execute Agreement to bond (Surety's Consent) or Bonding company corporate seal or signature missing from Agreement to Bond	Automatic rejection
Failure to execute bid bond by bidder and bonding company	Automatic rejection
Corporate Seal of the Bidder and Bonding Company Missing	48 hours to correct
Corporate Seal or signature missing; signatory's authority to bind the corporation or signature missing	48 hours to rectify situation

Corporate Seal and signature missing; signatory's authority to bind the corporation and signature missing	Automatic rejection
Erasures, Overwriting or Strikeouts, which are not initialed	Automatic rejection
Unit prices in the Schedule of Prices have been changed but not initialed and the Contract totals are inconsistent with the price as changed	48 hours to initial change in unit price. The determination of what constitutes trivial or insignificant uninitialed changes shall be made in the consensual opinion of the Council or designate
Mathematical errors, which are not consistent with unit prices	48 hours to initial corrections as made by the Supplies and Services Division
Documents, in which all necessary Addenda, which have financial implication, have not been acknowledged	Automatic rejection
Any other irregularities	The Council or designate, acting in consensus shall have authority to waive other irregularities or grant 48 hours to initial such other irregularities, which they jointly consider to be minor.