



BY-LAW 2009-55

A BY-LAW TO AMEND BY-LAW 2004-341 A BY-LAW TO ESTABLISH PROCUREMENT, SERVICE AND DISPOSAL REGULATIONS AND POLICIES

WHEREAS pursuant to section 271 of the Municipal Act, provides that Council may pass or amend for the regulation of Purchasing By-Law;

AND WHEREAS Staff continue to review its policies and procedures to ensure efficient and effective regulations are in place for procurement of goods and services throughout the Town;

AND WHEREAS Staff identified during the E3 process the purchasing by-law as an area for creating excellence through efficiencies and effectiveness;

NOW THEREFORE, BE IT RESOLVED that By-law No. 2004-341, a by-law to establish Procurement, Service and Disposal Regulations and Policies, be amended as follows:

1) PART 1: GENERAL

Sub- Section 1. DEFINITIONS

Delete the following paragraph in its entirety:

“Director” means a person holding a management position of Director within a Department and includes the Treasurer, a General Manager, Fire Chief, Deputy Fire Chief, Town Solicitor, Town Architect and the Town Clerk;

Replace with the following paragraph:

“Director” means a person holding a management position of Director within a Department and includes the Treasurer, a General Manager, Fire Chief, Deputy Fire Chief, Town Solicitor, Town Architect, Chief Informational Officer, The Town Clerk and any title or position that are deemed to be equal to that of a Director as approved by Human Resources;

Delete the following paragraph in its entirety:

“Finance and Administrative Committee (F&A)” means the finance Standing Committee of Council;

Replace with the following paragraph:

“General Committee” means the finance Standing Committee of Council and any other name given to this committee;

Sub- Section 2. TOWN PROCUREMENT PRINCIPLES

Delete the following word throughout the By-law in its entirety:

“Finance and Administrative Committee (F&A)”

Replace with the following paragraph:

“General Committee”

Amend the following paragraph in its entirety:

The Town is committed to purchase products and services that are environmentally friendly, where feasible from a quality and cost perspective. Details of this policy can be found in the Town’s “Green Procurement Policy”.

Replace with the following paragraph:

The Town’s environment initiatives as outlined by the Build Markham’s Future Together (BMFT) strategy plan as approved by Council.

Sub- Section 3. GENERAL CONDITIONS

Add the following paragraph:

It is mandatory for any employee or Council member to disclose to the Town of any conflict of Interest relating to Family members (Relative) who may provide goods or services to the Town. Refer to the Town of Markham's Human Resources staffing policy no. 505 for Family member (Relative) definition.

2) PART II: METHODS OF PROCUREMENT

Sub- Section 1.5. TENDERS (\$100,000 OR GREATER)

Delete the following paragraph in its entirety:

A report recommending the award shall be signed by the Commissioner and Director of the User Department, and approved by the Commissioner of Corporate Services or designate as to funding sources and submitted to the Chief Administrative Officer or Finance and Administrative Committee and Council for approval, as applicable.

Sub-Section 3.3. REQUEST FOR QUOTATIONS (BETWEEN \$5,001 AND \$24,999)

Delete the following paragraph in its entirety:

The requirement for and award for goods and services shall be approved by the appropriate Director of the User Department.

Sub-Section 3.5. REQUEST FOR QUOTATIONS (BETWEEN \$5,001 AND \$24,999)

Amend the number 3 "Clause 3" in section 3.5 to read 2 "Clause 2".

Sub-Section 4.4. REQUEST FOR QUOTATIONS (BETWEEN \$25,000 and \$99,999)

Delete the following paragraph in its entirety:

The requirement for goods and services shall be approved by the Director or Commissioner of the User Department. The award shall be approved by the Manager of Purchasing.

Sub-Section 5. Expression of Interest

Add the following paragraph

5) Based on responses received from the Expression of Interest, Markham will select a proponent(s) who submits responses meeting the requirements as listed in this EOI. Depending on the responses received, the Town will consider two options.

Option 1 is to issue a request for proposal (RFP) to invite the preferred proponents to submit a proposal to the Town. Evaluation will be based on pre-established criteria included in the RFP.

Option 2 is to negotiate with one preferred proponent to establish a contract for this project. If such negotiations do not lead to an agreement, Markham may proceed with negotiations with another proponent or issue an RFP as per option 1. Contract shall mean an agreement between the successful bidder and the Town of Markham.

Sub-Section 7.1. NON-COMPETITIVE PROCUREMENT

Delete the following paragraph in its entirety:

When any of the following conditions apply, the Treasurer and the Manager of Purchasing may, in consultation with the appropriate Director, negotiate a contract for the supply of goods and services without a competitive process, which shall be submitted to the Chief Administrative Officer for approval. Final approval will be in accordance with the Contract Award Authority in Part III of this By-law. The conditions are as follows:

Replace with the following paragraph:

When any of the following conditions apply, the Treasurer and/or the Manager of Purchasing may, in consultation with the appropriate Director, negotiate a contract for the supply of goods and services without a competitive process, which shall be submitted to the Commissioner or Chief Administrative Officer for approval. Final approval will be in accordance with the Non-Competitive Approval Authority outlined below:

Non-Competitive Approval Authority

| <u>Contract value</u> | <u>Authority</u> |
|-----------------------|------------------|
| >\$5k and <\$50k | Commissioner |
| >\$50k and <\$350k | CAO |
| >\$350k | Council |

Sub-Section 7.2. NON-COMPETITIVE PROCUREMENT

Delete the following paragraph in its entirety:

Tenders, Requests for Proposal and Requests for Quotation may not be required for goods and services to be provided by any of the following:

- (a) Hydro Electric Corporations;
- (b) Public utilities;
- (c) Provincial and federal government agencies or Crown corporations;
- (d) Municipalities and special purpose bodies within the Town when similar goods or services are not available from any other source; and
- (e) Toronto and Region Conservation Authority (TRCA).

Replace with the following paragraph:

Tenders, Requests for Proposal and Requests for Quotation may not be required for goods and services to be provided by any of the following:

- (a) Hydro Electric Corporations;
- (b) Utilities;
- (c) Provincial and federal government agencies or Crown corporations;
- (d) Municipalities and special purpose bodies within the Town when similar goods or services are not available from any other source; and
- (e) Toronto and Region Conservation Authority (TRCA).

Final approval will be in accordance with the Non-Competitive Approval Authority outlined below:

Non-Competitive Approval Authority

| <u>Contract value</u> | <u>Authority</u> |
|-----------------------|--|
| >\$5k and <\$350k | Director (Engineering) or Commissioner (Development Services) (Relocates only) (a & b) |
| >\$5k and <\$350k | CAO (a – e) |
| >\$350k | Council (a – e) |

3) PART III: CONTRACT AWARD AUTHORITY

Sub-Section 1.b. Amount exceeding \$5,000 but less than \$25,000

Amend the approval authority within this paragraph from the following:
the Director of the User Department shall have delegated authority to
award and execute such contract on behalf of the Town.

Replace with the following:
the Manager of the User Department shall have delegated authority to
award and execute such contract on behalf of the Town.

Sub-Section 1.c. Amount exceeding \$25,000 but less than \$100,000

Amend the approval authority within this paragraph from the following:
the approval of the Director or Commissioner of the User Department,
shall have the authority to award and execute such contract.

Replace with the following:
the approval of the Director or Commissioner of the User Department,
shall have the authority to award a contract as per award authority
criteria in Part VIII and Appendix A.

Sub-Section 2.a. \$100,000 or greater but less than \$350,000

Amend the approval authority within this paragraph from the following:
the award shall be approved by the Chief Administrative Officer.

Replace with the following:
the award shall be approved by the Commissioner of the User
Department or Chief Administrative Officer as per award authority
criteria in Part VII and Appendix A.

Sub-Section 3 \$350,000 or Over

Amend the approval authority within this paragraph from the following:
the said contract shall be executed by the Mayor and Clerk, as
authorized by the Finance and Administrative Committee and Council

Replace with the following:
the said contract shall be executed by Chief Administration Officer or
the Mayor and Clerk, as authorized by the General Committee and
Council as per award authority criteria in Part VII and Appendix A.

Sub-Section 4. Reporting Requirements

Delete the following paragraph in its entirety:
The Treasurer, on a monthly basis, will advise the Finance and
Administrative Committee of all Tenders, Requests for Proposals and
Requests for Quotation awarded by staff that are greater than \$50,000
and less than \$350,000.

Replace with the following paragraph:
The Treasurer, on a monthly basis, will advise the General Committee of
all Tenders, Requests for Proposals and Requests for Quotation awarded
by staff that are greater than \$50,000.

4) PART VI: GENERAL

Sub-Section 5.

Delete the following paragraph in its entirety:

The Treasurer or the Director, Financial and Client Services may assume at any time any of the authorities, responsibilities and duties imposed upon the Manager of Purchasing under this By-law.

Replace with the following paragraph:

The Treasurer or Designate may assume at any time any of the authorities, responsibilities and duties imposed upon the Manager of Purchasing under this By-law.

5) ADDITIONS TO THE PURCHASING BY-LAW

Add the Following to the Purchasing By-Law

Part VII Contract Award Authority Criteria

Part VIII Termination Authority

Part IX Contract Execution Authority

PART VII CONTRACT AWARD AUTHORITY CRITERIA

The following criteria must be met to enable award of contracts by staff without limits.

- The award is to the lowest priced bidder
- The expenses relating to the goods/ services being procured is included in the budget (Operating/Capital)
- The award of the contract is within the approved budget
- The award results from the normal tendering process of the Town (i.e. open bidding through advertisements that meet transparency and enables open participation)
- The term of the contract is for a maximum of 4 years
- There are no litigation between the successful bidder and the Town at the time of award
- There are no bidder protests and/or disqualified bidders at the time of contract award

PART VIII TERMINATION AUTHORITY

Contracts awarded by the Town may be terminated by the Purchasing Department at the request of the User Department for non satisfactory performance of a contractor or any other reason that deem the contract to be terminated.

Purchasing shall obtain first approval from the legal department before terminating the final contract. The final approval to terminate shall be as follows:

Contract (Award) Approval

>\$5k - <\$25
>\$25 - <\$100
>\$100 - <\$350
>\$350

Termination Approval

Director
Commissioner
CAO
Council

Notwithstanding the above limits, Council approval will be required based on terms and conditions which are required based on legal requirements.

PART IX CONTRACT EXECUTION AUTHORITY

The Commissioner of the User Department and/or the Manager of Purchasing shall have the delegated authority to execute contracts arising out of the acceptance of a Tender, Request for Proposal or Request for Quotation on behalf of the Town for a contractual value <\$350,000

The Mayor and Clerk, as authorized by General Committee and Council shall have the delegated authority to execute contracts arising out of the acceptance of a Tender, Request for Proposal or Request for Quotation on behalf of the Town for a contractual value >\$350,000

6) APPENDIX A: CONTRACT AWARD AUTHORITIES

Delete the following chart in its entirety:

| Dollar Threshold | -Quotation Type - Contract Type | Quote Source | Approval Authority |
|--|--|---|--|
| \$5,000 or less | -No formal quote required -Purchasing Card, GSO or Purchase Order | -Approved by the User Department | -Approved by the User Department |
| Greater than \$5,000 but less than \$25,000 | -Three Request for Quotations -Purchase Order | -User Department or Purchasing Department | -Approved by the User Department |
| \$25,000 or greater but less than \$100,000 | -Three Request for Quotations -Purchase Order | -Purchasing Department | -Department Director and/or Commissioner -Post Award Report to F&A for awards greater than \$50,000 |
| \$100,000 or greater but less than \$350,000 | -Tender or Request for Proposal -Purchase Order | -Purchasing Department | -Director, Commissioner with CAO approval -Post Award Report to F&A |
| \$350,000 or greater | -Tender or Request for Proposal -Purchase Order | -Purchasing Department | -Director, Commissioner, CAO. -Approval of F&A and Council |

Replace with the following chart:

| Dollar Threshold | -Quotation Type - Contract Type | Quote Source | Approval Authority Within Criteria | Approval Authority Outside Criteria |
|---------------------------|--|---|------------------------------------|-------------------------------------|
| \$5,000 or less | -No formal quote required -Purchasing Card, GSO or Purchase Order | -Approved by the User Department | -Approved by the User Department | -Approved by the User Department |
| > \$5,000 - < \$25,000 | -Three Request for Quotations -Purchase Order | -User Department or Purchasing Department | Manager | Manager |

| | | | | |
|--|---|---------------------------|------------------|--|
| >\$25,000 – < \$100,000 | -Three Request for Quotations -Purchase Order | -Purchasing Department | Director | Director up to \$50k Commissioner \$50 - \$100k |
| \$100,000 or greater but less than \$350,000 | -Tender or Request for Proposal -Purchase Order | -Purchasing Department | Commission er | CAO |
| \$350,000 or greater | -Tender or Request for Proposal -Purchase Order | -Purchasing Department | CAO | Council |

Notwithstanding the above, Request for Proposals (RFP) will continue to be approved by CAO up to \$350,000 and Council for values > \$350,000.

Request for Proposals (RFP) approval levels shall be per the Approval Authority outside Criteria.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
26TH DAY OF MAY, 2009.



KIMBERLEY KITTINGHAM
TOWN CLERK



FRANK SCARPITTI
MAYOR