

**BY-LAW NUMBER 271-04**

- of -

**THE CORPORATION OF THE COUNTY OF BRANT**

To adopt policies to govern the purchasing of goods and services  
by the Corporation of the County of Brant

**WHEREAS** the Council of the Corporation of the County of Brant has deemed it desirable to have a by-law to provide fair, transparent and accountable purchasing policies;

**AND WHEREAS** Section 27(1) of the Municipal Act, S.O. 2001, as amended states that a municipality and a local board shall adopt policies with respect to its 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 type of procurement process shall be used;
- d) The circumstances under which a tendering process is not required;
- e) The 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 process will be reviewed to evaluate their effectiveness; and
- i) Any other prescribed matter.

**AND WHEREAS** the Corporation of the County of Brant has deemed it desirable to repeal By-law Numbers 23-99 and 214-99 and pass a new by-law to conform to the requirements of the Municipal Act, S.O. 2001, and to strengthen the procurement function while maintaining the integrity of the process;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE COUNTY OF BRANT HEREBY ENACTS** as follows:

1. This By-law shall be entitled the "Purchasing Policy By-law".
2. A policy shall be and is hereby established for purchase of goods and services by the County of Brant in accordance with Schedule "A" attached hereto. Said Schedule "A" shall be deemed to be a part of this by-law to the same extent and effect as if incorporated herein.
3. Acceptance by resolution of Council of any quote or tender requiring Council approval shall be sufficient authority for the Department Head or his/her designate to execute a contract with the successful bidder.
4. In the event that any court should adjudge that any Section or Sections of this By-law is not valid for any cause, such Section or Sections shall be severable from the remainder of the by-law to the same extent as if the offending Section or Sections had not been included therein.
5. By-law Numbers 23-99 and 214-99, together with any and all other by-laws or portions thereof or any resolutions of the Council of the County of Brant contrary hereto or inconsistent herewith, shall be and are hereby repealed.
6. That this By-law shall take effect upon final passing hereof

**READ** a first and second time, this 21<sup>st</sup> day of December, 2004.

**READ** a third time and finally passed in Council, this 21<sup>st</sup> day of December, 2004.

**THE CORPORATION OF THE COUNTY OF BRANT**

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Mayor

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Clerk

## **Schedule A**

### **To By-law Number 271-04**

#### **1.0 Purpose**

1.1 This purpose of this policy is:

- a) To set out the minimum requirements for fair and competitive purchasing and to ensure that the County obtains goods and services at the most economical cost consistent with the required quality.
- b) To maintain an open and honest process that is fair and impartial.
- c) To promote and maintain the integrity of the purchasing process and protect Council, vendors and staff involved in the process by providing clear direction and accountabilities.

#### **2. Principles**

- 2.1 To purchase the necessary quality and quantity of goods and services in an efficient and cost effective manner.
- 2.2 To encourage open competitive bidding for the acquisition of goods and services.
- 2.3 To consider all costs, including but not limited to, acquisition, operating, training, maintenance, quality, warranty, payment terms, disposal cost and residual value when evaluating quotes/bid submissions from qualified vendors.
- 2.4 To consider the total project cost of an undertaking prior to determining the appropriate acquisition method.
- 2.5 To procure necessary goods and services with due regard to the preservation of the natural environment.

3.0 **Definitions**

- 3.1 Best Value - Means the optional balance of performance and cost. Best value may include a time horizon that reflects the overall life cycle of a given asset.
- 3.2 Bid - Means an offer or submission received from a vendor, contractor or consultant in response to a request which offer or submission may be subject to acceptance or rejection.
- 3.3 Bid request - Means a formal request for bids or a solicitation which may be in the form of a Request for Quotation, Request for Tender, or Request for Proposal.
- 3.4 Council - Means the Council for the County of Brant.
- 3.5 County - Means the County of Brant.
- 3.6 Department Head - Means the person responsible for direction or operational control of any department, agency or local board subject to the provisions of this policy.
- 3.7 Emergency - Means a situation where the immediate acquisition of goods and services is essential to prevent serious delays, injury, further damage or to restore or maintain minimum service.
- 3.8 Goods & Services - Includes labour, supplies, materials, equipment and services of every kind required to be used to carry out the operations of a department but does not include land purchases, sales and property leases.
- 3.9 Quotation - Means a request for prices on specific goods and/or services from selected vendors which are submitted verbally, in writing or transmitted by facsimile as specified in the Request for Quotation.
- 3.10 Request for Expression of Interest -  
  
Is a formal market research tool used to determine vendor interest in a proposed procurement.

3.11 Request for Information -

Means a written request for details on a vendor's background and the goods or services they are offering, such information should be used to pre-qualify vendors to be invited to submit bids.

3.12 Request for Proposal -

Means a process where a need is identified, but the method by which it will be achieved is unknown at the outset. This process allows vendors to propose solutions or methods to arrive at the desired result.

3.13 Sealed Bid -

Means a formal sealed response received as part of a quotation, tender or proposal.

3.14 Single Source -

Means there is more than one source in the open market but only for reasons of function or service one vendor is recommended for consideration of the particular goods and/or services.

3.15 Sole Source -

Means there is only one source of supply of particular goods or services that is reasonably available to the County.

3.16 Standing Committee of Council -

Means those Standing Committees of Council as appointed by Council in accordance with its Procedural By-law and shall include those agencies and local boards subject to this policy.

3.17 Tender -

Means a sealed bid which contains an offer in writing to execute certain specified works, services or to supply certain specified goods, at a certain price in response to the information contained in a public call/request for tender.

3.18 Total Project cost -

Means the sum of all costs that would normally be paid to one vendor for goods or services required to meet a major objective over a period of time.

#### 4.0 **Responsibilities**

- 4.1 The Department Head is responsible for ensuring within their department compliance with this policy.
- 4.2 A Department head at their discretion may in writing, delegate to other specific individuals any of their responsibilities as contained in this policy.
- 4.3 In the event of exceptional circumstances justifying a departure from policy, this purchasing policy may be overridden by Council in the event Council determines it to be appropriate and in the best interests of the County.

#### 5.0 **Purchasing Requirements**

- 5.1 Prior to the approval of the current budget, a department may incur normal operating expenditures.
- 5.2 Council approved department operating budgets shall constitute sufficient authorization for a Department to proceed with the purchase of supplies and materials or with work, subject to the limitations as contained in this policy.
- 5.3 Authorization of capital work by Council shall constitute authorization for any purchase of materials and supplies necessary to carry out such work within the approved project cost provided such purchases are made in accordance with the provision as contained in this policy. Where tender prices, or, on the job costs exceed the approved budget by 10% a report to the appropriate Standing Committee of Council must be submitted seeking authorization to proceed with the work, to expend additional funds over and above those originally approved, and to provide the necessary funding for the then approved capital work.
- 5.4 Except as otherwise stipulated, any purchase of goods, services or equipment 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.
- 5.5 The County does not solicit in-house bids in competition with outside suppliers of goods and services.
- 5.6 Splitting of purchases to avoid any of the purchasing procedures outlined in this policy is prohibited.
- 5.7 Dollar amounts shown in this by-law setting parameters for the purchasing process except as otherwise stated, shall be the total cost excluding applicable taxes and freight.

6.0 **Purchasing Processes**

- 6.1 Where the estimated value of the goods or services is to be purchased is less than \$5,000.00, the Department Head may purchase from such suppliers and upon such terms and conditions that are considered to be appropriate and best for the County.
- 6.2 Where the estimated value of the goods or services to be purchased is \$5,000.00 or more but less than \$25,000 staff is to obtain a minimum of two competitive written quotations. The Department Head is authorized to make the purchase of such goods or services and upon such terms and conditions that are appropriate and best for the County.
- 6.3 Where the estimated value of the goods or services to be purchased is \$25,000 or more but less than \$50,000 staff is to obtain a minimum of three sealed quotations to be opened in the presence of the Department Head or designate and at least one other employee of the County. The Department Head is authorized to make the purchase of such goods or services and upon such terms and conditions that are considered to be appropriate and best for the County.
- 6.4 All requirements for goods, services, equipment or construction for \$50,000 or more shall be obtained by sealed tender or proposal and be awarded by Council following a report being made to the appropriate Standing Committee of Council who will make a recommendation to Council.
- 6.5 The Department Head shall issue all request for tenders or proposals and receive all sealed bids and proposals.
- 6.6 All Requests for Tenders or Proposals shall be publicly advertised in accordance with the County's advertising policies and such other legislative requirements as may be applicable.
- 6.7 All sealed bids received in response to a Request for Tender or Proposal shall be opened and recorded in public by the Department Head, a member of Council, and one other County employee at a place and time specified in the bid documents. Any sealed bids that are rejected prior to opening shall be recorded at this time.
- 6.8 The Department Head may pre-qualify persons or firms or obtain desired information for any bid call where the Department Head believes it to be in the best interest of the County.
- 6.9 Requests for proposals may be called when the requirement for goods or services cannot be definitely specified, or when alternative methods are being sought to perform certain functions or services. In these cases a Request for proposal will be made to obtain specific offers to fulfill the requirements for the goods or services. Requests for proposal may include a request for initial expression of interest.

- 6.10 The evaluation criteria and process to be used in a Request for Tender or Proposal shall be approved by the Standing Committee of Council prior to the issuance of Request and must be disclosed in the documents.
- 6.11 The Department Head may under the following conditions, negotiate with one or more bidders and in such cases as applicable the requirement for inviting tenders or quotations is waived.
- a) When in the judgement of the Department Head, goods are judged to be in short supply due to market conditions.
  - b) Where there is only one source of supply for the goods or services.
  - c) Where two or more identical bids have been received.
  - d) Where the lowest tender or quotation meeting specifications substantially exceeds the estimated cost and it is impractical to recall the tender or quotation.
  - 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 as a result of Request for a Tender or Request for Quotation or Proposal.
  - g) When only one bid is received in a Tender, Quotation or Proposal.
  - h) Any negotiated purchase for \$50,000 or more in value shall be subject to approval from Council following a report being made to the appropriate Standing Committee of Council who will make a recommendation to Council.

## 7.0 **Conflict of Interest**

- 7.1 The Department Head shall not open or consider any bid, or otherwise acquire any goods or services from an elected official, officer or employee of the County without the prior approval of Council.
- 7.2 No elected official, officer or employee of the County shall allow contact with a person, or any officer, employee or agent of the person who has submitted a bid to the County, unless the bid call has been awarded or the contact is for the purpose of receiving a complaint, or for making a presentation to the appropriate party when a presentation was included in the bid documents as being a part of the selection process.

8.0 **Disposal of Surplus**

- 8.1 Where any goods are surplus, obsolete or unrepairable they shall be declared surplus by the Department Head.
- 8.2 Where no other use can be found for goods declared surplus in any County department or local board they shall be disposed of through public auction, tender or quotation, or such other manner, whichever is in the best interest of the County.
- 8.3 Where the item has limited market value, the Department Head may to the benefit of the County, dispose of the item in a manner other than the ones listed above.

9.0 **Legal Claims**

- 9.1 No tender, proposal or quotation will be accepted from any person or company which has a claim or instituted a legal proceeding against the County or against whom the County has a claim or instituted a legal proceeding with respect to any previous contract without prior approval by Council.

10.0 **Performance**

- 10.1 The Department Head shall institute a performance evaluation at the substantial completion of a contract or more frequently if determined to be more appropriate in all contracts where:
- a) The cost of the construction, consulting service, or other service received exceeds \$100,000.
  - b) In any other instance when the Department Head determines that a performance evaluation would be appropriate.
- 10.2 The performance evaluation shall rate the performance and or the quality of the service as provided by the contractor, consultant or other service provider on criteria determined to be appropriate to determine if the County has obtained a satisfactory level of performance.
- 10.3 The performance evaluation form and criteria adopted from time to time shall be provided to the contractor, consultant or service provider in advance of the contract and shall remain constant for the duration of the contract. The same evaluation criteria shall apply to all consultant or construction projects undertaken for the County but may be amended from time to time by the senior Administration for the County.

- 10.4 The contractor or consultant shall be provided with the written results of the performance evaluation. The contractor or consultant shall have twenty days following delivery of the evaluation to request an appeal.
- 10.5 The appeal shall be heard by the Senior Administration for the County plus the Mayor who shall file their report with the Corporate Services Committee for a recommendation to Council who's decision shall be final..
- 10.6 The performance evaluation shall determine whether a contractor or consultant will be allowed:
- a) to tender quotation or proposal bids for future contracts with the Corporation;
  - b) or that the contractor or consultant be placed on a probationary list for three years during which time it shall be allowed to bid on work for the County;
  - c) or that the contractor or consultant be prohibited from bidding on any contracts with the County for a three year period.
- 10.7 In arriving at its decision the County shall be entitled to rely upon the evaluation criteria determined in advance of the project, and the results of prior performance evaluations relating to other contracts performed by the same contractor or consultant.
- 10.8 No tender, proposal or quotation shall be accepted from any contractor or consultant during the term of a prohibition.

11.0 **Exemptions**

11.1 Notwithstanding the requirements for purchasing in accordance with this policy the following items or class of items are exempt from the provisions of this policy or unless specifically withdrawn by the C.A.O.

11.1.1 Recurring Utility Services:

- a) Natural gas
- b) Electrical power
- c) Sewer and water
- d) Telephone
- e) Postage

11.1.2 Easements and property rentals.

11.1.3 Payments made in accordance with employee and payroll benefits as legislated by the Federal and Provincial governments or as authorized by Council .

11.1.4 Professional fees and Special Services as authorized by Committee for:

- a) Consultants
- b) External auditors
- c) Legal services
- d) Ontario Land Surveyors and property appraisers
- e) Banking services
- f) Legal settlements
- g) Engineering services

11.1.5 Training and Education

11.1.6 Specific payments as authorized by Council

- a) Land purchase.
- b) Expropriation.

11.1.7 Council and Employee Expense.

- a) Meal allowances.
- b) Travel and Hotel accommodations.
- c) Public Relations.

11.1.8 Employer's General Expenses.

- a) Licenses
- b) Debenture payments
- c) Grants
- d) Payments of damage or liability
- e) Charges from other Governments, their agencies and Crown corporations
- f) Freight charges.

12.0 **Single Sourcing**

12.1 A Department Head may with the prior approval of the appropriate Standing Committee negotiate a purchase from a single source without quotations or Request for Tender where any of the following conditions exist.

- a) There is only one source of supply for the goods or service.
- b) The compatibility of a purchase with existing equipment, facilities or services is a primary consideration and that purchase must be made from a single source.
- c) An item or service is purchased for testing or trial use.
- d) Lack of goods or services may adversely affect the functioning of the County, threaten public or private property or the environment; or jeopardize the health or safety of the public.

12.1.1 Where the value of the purchase negotiated in accordance with Clause 12.1 is \$50,000 or more, the purchase shall require Council approval following a report being submitted to the appropriate Standing Committee who will make a recommendation to Council.

### 13.0 **General Provisions**

13.1 Where the provisions of this policy requires three quotations, and three quotations are not received, justification must be made for a recommendation to award by way of a report to the appropriate standing committee of Council who will make its recommendation to Council.

13.2 Where the County contracts work out in an agreement with the private sector the policies and procedures of the County will prevail and be adhered to in all Requests for tender, quotation or proposal.

13.3 At the discretion of the Department Head, invitations to tender and requests for quotations and proposals may be sent to potential bidders to ensure the best possible response.

13.4 When an emergency occurs, the Department Head has the authority to purchase such goods and services as necessary and in the best interest of the County. After the emergency is over, any expenditure over and above the authorization as provided in this policy shall be reported to Council. Should the emergency fall within the scope of the County's Emergency Plan, the terms and conditions of that plan shall apply.

13.5 Suppliers or Consultants who provide Design services and/ or specifications for work to be tendered or quoted shall not be permitted to submit a bid for said work unless authorized by Council.

13.6 Awards shall be made to the lowest bidder who has complied with the terms and conditions of the tender, all other factors being equal. In addition to price, consideration of factors as set out below may result in the acceptance of a bid other than the lowest bid.

- a) Ability and experience to perform in accordance with the Terms of the Invitation.
- b) Record of past performance with the County.
- c) Past performance with other municipalities.
- d) Financial and technical resources.
- e) Knowledge of County operations, system and services.

- f) Compatibility with other good and services of the County.
  - g) Any other factors which may be set out in the Request for tender, quotation or proposal.
- 13.7 The Senior Administration for the County shall have responsibility for the implementation of this policy including the allocation of resources, training, and the development of procedures necessary for its implementation.
- 13.8 Evaluation and Monitoring of this Policy shall be the responsibility of the Municipal Treasurer who shall report annually to the Senior Administration.
- 13.9 This Policy shall be reviewed by Council once every five years or at such other time as deemed necessary.