

THE CORPORATION OF THE
TOWNSHIP OF BLANDFORD-BLENHEIM
BY-LAW NUMBER 1677-2011

Being a by-law of the Township of Blandford-Blenheim to provide for procurement procedures.

WHEREAS the Council of the Corporation of the Township of Blandford-Blenheim has deemed it desirable to have a procurement by-law to set out guidelines for the municipality to ensure that all purchases of materials, supplies and services provide the lowest costs consistent with the required quality and service, to provide for an open and honest process, to promote and maintain the integrity of the purchasing process and thereby to protect Council, vendors and staff involved in the process by providing clear direction and accountabilities;

AND WHEREAS The *Municipal Act, 2001, S.O. 2001, c.25, S. 270(1)* states that a municipality and a local board shall adopt policies with respect to its procurement of goods and services,

NOW THEREFORE the Municipal Council of The Corporation of the Township of Blandford-Blenheim enacts as follows:

Section 1: Definitions

1. In this by-law:

“Blanket Order” shall mean the agreement wherein a vendor will sell certain items to the Township for an agreed period of time with established terms and conditions.

“Bid” shall mean a submission from a prospective vendor in response to a request for the purchase of goods or services issued by the Township.

“Bid Deposit” shall mean a financial guarantee to ensure the successful bidder will enter into an agreement.

“CAO” shall mean the Chief Administrative Officer appointed by the Council to exercise general control and management of the affairs of the municipality.

“Capital Expenditure” shall mean any significant expenditure incurred to acquire or improve land, building, engineering structures, machinery and equipment used in providing municipal services. This expenditure normally confers benefit lasting beyond one year and results in the acquisition of, or extends the life of a fixed asset.

“Council” shall mean the elected members of the Township of Blandford-Blenheim.

“Director” shall mean a head of a department operating within the Township of Blandford-Blenheim.

“Emergency Purchase” shall mean a purchase made in a crisis situation where immediate action is required to prevent the possible loss of life or property or significant financial loss or environmental impacts.

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1. DEFINITIONS: - Cont'd.:

“Formal Bid” shall mean a sealed bid submission.

“Generic” shall mean that no specific brand or name shall be included as part of the specifications unless such a brand or name is required to identify the intent of a purchase, order or proposal.

“Invoice Approval Stamp” shall mean a stamp prescribed by the Treasury Department to ensure required approvals are applied to an invoice.

“Labour and Material Bond” shall mean a bond issued by a surety company on the Township standard Form of Bond to ensure that the contractor will fulfil its obligations to its employees, subcontractors and suppliers and thereby protects the Township.

“Letter of Agreement to Bond” shall mean a letter or other form issued by a surety company licensed to operate by the Government of Canada or the Province of Ontario advising that if the bidder is successful that the bonding agency will issue the required bonds.

“Mayor” shall mean the Mayor of the Township of Blandford-Blenheim.

“Performance Bond” shall mean a bond issued by a surety company on the Township standard Form of Bond executed in connection with a contract and which secures the performance and fulfilment of the undertakings, covenants, terms, conditions and agreements contained in the contracts. These may also be in the form of “renewable performance bonds”.

“Public Opening” shall mean a specified time and place for the opening of bids, of which will be identified in the formal quotation request or tender advertisement and will be attended by at least two Township staff members and open to the public.

“Purchasing Designate” shall mean a person designated by a Director to exercise any or all responsibilities of the Director with respect to this By-law.

“Quotation” shall mean a written offer received from a supplier to sell or buy goods or services in response to a direct request.

“Request for Proposal” or “RFP” shall mean a process where a need is identified, but the method by which it will be achieved is not prescribed at the outset. This process allows prospective suppliers to propose solutions or methods to arrive at the desired result.

“Sealed bids” shall mean bids submitted in a sealed envelope to a specified location, by a specified date.

“Services” shall mean items such as telephone, gas, water, hydro, janitorial and cleaning services, consultant services, legal surveys, medical and related services, insurance, leases for grounds, buildings, office or other space required by the Corporation and the rental, repair or maintenance of equipment, machinery, or other personal and real property.

“Single Source Process” shall mean a process for procurement where there is more than one source of the goods and/or services on the open market, but only one source is recommended due to predetermined and approved specifications.

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1. DEFINITIONS: - Cont'd.:

“Sole Source Process” shall mean a process for procurement where the goods and/or services being sought are only available from one supplier.

“Supplies” shall mean goods, wares, merchandise, material and equipment.

“Tender” shall mean a written offer received from a supplier for goods and services in response to a public advertisement, or an invitation to bid requesting sealed tenders.

“The Corporation of the Township of Blandford-Blenheim” herein is also referred to as the “Township” or the “Corporation”.

“Vendor” shall mean any person or enterprise supplying goods or services to the Corporation of the Township of Blandford-Blenheim.

Section 2: Purchasing Responsibilities

2.1 Expenditure Authorization

Council has ultimate authority for all expenditures. Council delegates this authority by the authorization of budgets or by specific resolution. Treasury cannot pay for any item that has not been authorized by Council through budget appropriation or specific resolution. This Procurement By-law provides guidelines outlining how spending authority is to be used.

2.2 Director Authorization and Responsibilities

2.2.1 The Director shall be responsible for approval of accounts within the approved budget for each department or any amendment to same as approved by Council. Unspecified capital expenditures in the annual estimates require prior Council approval by resolution.

2.2.2 Resolutions approving budget amendments, capital expenditures or special appropriations shall contain purpose of expenditure, cost estimates or expenditure limitation, and the fund in which an appropriation has been provided. All staff reports recommending such resolutions shall contain the Director and the CAO's endorsement.

2.3 Purchasing Designate

A Director may appoint a Purchasing Designate to exercise any or all responsibilities assigned by this By-law.

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Section 3: Purchasing Mechanisms

3.1 Quotation Purchases

- 3.1.1 The Director shall be authorized to make purchases of goods and services for estimated expenditures exceeding \$5,000.00 and less than \$30,000.00 without requesting and obtaining sealed tenders for the goods and services, unless specifically authorized to do so by a resolution of Council for a particular transaction, from such vendor and upon such terms and conditions as the Director deems appropriate. All attempts must be made to obtain at least three (3) written quotations whenever possible. Bid documents and specifications (as applicable) can be issued and received by e-mail and/or fax transmission at the issuing department's location.
- 3.1.2 Exclusions: Single item small capital projects or purchases including those of complex specifications or requirements must be issued in a formal bid document (example, the purchase of a new vehicle). A formal bid document must have a submission label detailing the project name, bidder's name and address.

3.2 Tender Purchases

- 3.2.1 The Director shall not order goods or services exceeding \$30,000.00 without requesting and obtaining sealed tenders for the goods and services unless specifically authorized to do so by a resolution of Council for a particular transaction. All attempts must be made to obtain at least three (3) written tenders whenever possible.
- 3.2.2 Council approval of the tender is not required if all of the following conditions have been met:
- a) The project has been approved in the current year estimates.
 - b) The contract is being awarded to the lowest bidder meeting the specifications.
 - c) The total value of the tender is less than \$30,000.00.
 - d) There are no Senior Government requirements for Council approval of a tender.

In the case that Council approval is not required, the Director, with the approval of the CAO, shall be authorized to award the tender and the Mayor and CAO are authorized to execute the necessary agreements.

3.3 Requests for Proposals

- 3.3.1 The Director may use a Request for Proposal in place of a tender or quotation when goods or services cannot be specifically stipulated or when alternative methods are being sought to perform certain functions or services. A Request for Proposal shall permit more flexibility on the part of vendors to provide creative and alternative proposals for the supply of products or services.

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Section 3: Requests for Proposals Cont'd.

- i. The evaluation criteria and process shall be approved by the CAO prior to the issuance of the Request for Proposal.
- ii. When the preferred proposal exceeds \$30,000.00, the Director shall submit a report to Council for direction.

Section 4: Exemptions to Tendering Aspects of By-law

4.1 Notwithstanding the above, adherence to tendering aspects of this Procurement By-law is not required with respect to those items listed below within Section 4 of this by-law, or to a transaction specifically authorized by resolution of Council to be exempt from this By-law.

4.1.1 Purchases for the supply and placement of road material throughout Blandford-Blenheim Township less than \$100,000.00 when clearly identified in the budget.

4.1.2 Purchases for consulting services for a program where services (i.e. bridge inspection/evaluation) have been awarded to a consulting firm on an on-going basis when clearly identified in the budget.

4.1.3 Drainage projects carried out under the *Drainage Act*.

4.2 Sole Source

4.2.1 The purchase may be conducted using a sole source process if the goods and/or services are available from only one supplier for reason of:

- a) Statutory or market based monopoly.
- b) Competition is precluded due to the application of any Act or legislation or 'because of the existence of patent rights, copyrights, licence, technical secrets or controls of raw material.
- c) The complete item, service, or system is unique to one supplier and no alternative or substitute exists.

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4.3 Single Source

4.3.1 The purchase may be conducted using a single source procurement process if the goods and/or services are available from more than one source, but there are valid and sufficient reasons for selecting one supplier in particular, as follows:

- a) An attempt to acquire the required goods and/or services by soliciting competitive bids has been made in good faith, but has failed to identify more than one willing and compliant supplier.
- b) The confidential nature of the requirements is such that it would not be in the public interest to solicit competitive bids.
- c) There is a need for compatibility with goods and/or services previously acquired or the required goods and/or services will be additional to similar goods and/or services being supplied under an existing contact (i.e. contract extension or renewal).
- d) The required goods and/or services are to be supplied by a particular supplier having special knowledge, skills, expertise or experience.
- e) The goods are purchased under circumstances which are exceptionally advantageous to the Township, such as in the case of a bankruptcy or receivership.
- f) It is advantageous to the Township to acquire the goods or services from a supplier pursuant to the procurement process conducted by another public body.
- g) It is advantageous to the Township to acquire the good or services directly from another public body, or public service body.
- h) Another organization is funding or substantially funding the acquisition and has determined the supplier, and the terms and conditions of the commitment into which the Township will enter are acceptable to the Township.
- i) The acquisition is for a particular brand of goods or services that are intended solely for resale to the public and no other brand is desirable and the brand is not available from any other source.
- j) Where due to abnormal market conditions, the goods, services or construction required are in short supply.

Section 5: Bid Closing and Opening

5.1 All tenders and request for proposals will be opened at a public opening.

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Section 6: Conditions Acceptable to All Bid Submissions

6.1 The following conditions apply to all bid submissions whether they are formal or informal:

- a) Bid documents must be submitted and received in the manner as specified in the bid document. No exceptions will be permitted.
- b) Bid documents received at the designated Township location later than the specified closing date and time will be returned to the bidder. In the case of sealed bids, the bid will be returned to the bidder unopened. No exceptions will be permitted.
- c) A bidder who has already submitted a bid may submit a further bid at any time up to the official closing time. The last bid received will supersede and invalidate all bids previously received by that bidder.
- d) A bidder may withdraw a submitted bid at any time up to the official closing time by letter bearing their signature.
- e) All departments/divisions must document the receipt of all submissions over \$5,000.00 including the bidder's name, date/time of receipt of bid and initials of the employee accepting the bid. Documents will not be electronically date stamped.

6.2 Bids may be rejected for any of the following reasons:

- a) Bid received after the specified closing date and time as specified in the bid document. No exceptions.
- b) Bid does not comply with the requirements at time of closing as specified in the bid document. No exceptions.
- c) Bids which are incomplete, conditional or obscure, or which contain additions not called for, erasures, alterations or irregularities of any kind.
- d) Does not meet specification requirements.

Section 7: Blanket Orders

- 7.1 The Director may establish Blanket Orders using the applicable bid mechanism based upon the estimated annual expenditure.
- 7.2 In the case of equipment repairs and equipment rentals for amounts not exceeding \$15,000.00, the Director shall be authorized to select vendors not solely on the basis of cost, but also on ability, quality or workmanship, service, availability, overall performance and experience without first obtaining quotations.
- 7.3 Blanket Orders shall be issued for a specific time period with all ordering departments responsible for maintaining purchases within budget allocations.

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Section 8: Purchase of Used Fleet Equipment

- 8.1 The Director of Public Works/designate and the Director of Protective Services/designate are authorized to 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; 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.
 - c) If the total expenditure per piece of equipment exceeds \$50,000.00, a report will be forwarded to Council detailing purchase information and expenses.
- 8.2 The Director of Public Works/designate and the Director of Protective Services are exempt from the Township's formal quotation/tender/RFP process when purchasing used fleet equipment by any of the methods detailed in 8.1.

Section 9: Emergency Purchases

- 9.1 The Director shall be authorized to make emergency purchases in excess of \$5,000.00 upon the approval of the CAO. The Director shall subsequently present a report to Council.

Section 10: Purchase by Negotiation

- 10.1 A Director may purchase by negotiation with one or more vendors under which a formal bid process may be waived under the following conditions:
- a) When market conditions and in the judgement of the CAO and the Director, the goods are in short supply.
 - b) When there is only one source of supply.
 - c) When two or more identical bids have been received, the Director may negotiate with the two lowest bidders, keeping all negotiations fair and ethical.
 - d) When the lowest bid meeting specifications exceeds the estimated costs by at least 10% and it is not viable or in the best interest of the Township.
- 10.2 Any expenditure exceeding \$30,000.00 for a purchase which is made through negotiation must be reported to Council.

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Section 11: Exemptions

11.1 A Director may request exemption from any or all the purchasing methods outlined in this By-law by submission of a report requesting the same to the CAO and Council. Such exemption may be granted by resolution.

Section 12: Exclusions

12.1 Competitive bids shall not be required for goods or services provided by any of the following when such goods or services are not available elsewhere, including, but not limited to:

- a) Utilities, government agencies, Crown corporations, travelling expenses, meals, conferences, seminars, memberships, subscriptions, medical exams, licenses, in-house services and any other goods or services as approved by Council.
- b) As identified elsewhere in this By-law.

Section 13: Advertising

13.1 Where effective in the opinion of the Director, information, regarding the bid document shall be advertised in the local newspaper, Township website, and/or applicable publications/websites necessary to comply with all existing statutory regulations.

Section 14: Bid Deposits

14.1 Bid deposits shall be required to accompany bid submissions for the following circumstances:

- a) All bids for municipal construction projects.
- b) Special contracts or scope of work as deemed appropriate by the Director.

14.2 For estimated expenditures less than \$100,000.00, the Director shall determine the amount of the bid deposit.

14.3 For estimated expenditures in excess of \$100,000.00, bid deposits shall be no less than 10% of the estimated value of the work prior to bidding or an amount equal to a minimum of 10% of the bid submitted.

14.4 A bid deposit shall be provided in one of the following formats:

- a) A certified cheque made payable to The Corporation of the Township of Blandford-Blenheim.
- b) Money orders made payable to The Corporation of the Township of Blandford-Blenheim.

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- c) Canadian currency.
- d) An irrevocable standby letter of credit in favour of the Township of Blandford-Blenheim.
- e) Agreement to Bond.

14.5 The Township does not pay interest on any bid deposits.

14.6 The Township is authorized to cash and deposit any bid deposit in the Township's possession that is forfeited as a result of non-compliance with any of the terms, conditions and/or specifications of a sealed bid.

Section 15: Bonding Requirements

15.1 Performance Bonds, Labour and Material Bonds are required for all construction projects exceeding \$100,000.00 for a minimum of 50% of the bid amount.

15.2 The Director may accept alternative security in the form of a certified cheque or irrevocable Letter of Credit if stated as a requirement in the contract document.

15.3 All bonds must be originals, signed and sealed. No faxed or photocopies will be accepted.

Section 16: Insurance

16.1 The standard insurance minimums are as follows for the following insurance policies if deemed necessary by the Director. All coverages must be underwritten by an insurer licensed to conduct business in the Province of Ontario.

\$2 million – general liability policy

\$2 million – automobile liability policy

\$2 million – homeowners (e.g. for rental of facilities)

\$5 million – general liability and automobile liability policies – for contract work done for most Public Works projects

\$2 million – professional errors and omissions liability

Builder's Risk – 1.1 times the contract price

Bid documents must clearly indicate insurance requirements to be provided by the successful bidder.

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16.2 When deemed necessary by the Director, the successful bidder must furnish the Township proof of a liability insurance policy covering public liability and property damage, 10 days prior to commencing the work, to the satisfaction of the Township, and in force for the entire contract period from commencement of the work until twelve months following substantial completion of the project.

The policy must contain:

- a) a "Cross Liability" clause or endorsement;
- b) an endorsement certifying that The Corporation of the Township of Blandford-Blenheim and any other affiliated party(s) as additional insured;
- c) an endorsement to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty days prior written notice to Blandford-Blenheim Township.

16.3 If deemed necessary by the Director, a Contractor's Liability Insurance Policy shall not contain any exclusions of liability for damage, etc. to property, building or land arising from:

- a) the removal or weakening of support of any property, building or land whether such support be natural or otherwise;
- b) the use of explosives for blasting, only when blasting is required under the contract;
- c) the vibration from pile driving or caisson work, provided that the minimum coverage for any such loss or damage shall be \$5,000,000.00. This coverage will only be required if activities are being undertaken that involve the significant use of explosives, or may result in the significant weakening of support of any property, building or land.

Section 17: Administration

17.1 No contract or purchase shall be divided to avoid any requirements of this By-law.

17.2 In all purchases, price shall be the prime selection criteria prior to any special provisions or add/delete calculated into the bid price, providing that all specification requirements are met. Such specifications are to be generic or "as equivalent". All factors influencing the purchasing decision are to be included in the specifications.

17.3 Blandford-Blenheim Township may participate with other units of government, their agencies or public authorities in co-operative purchase ventures when the best interest of Blandford-Blenheim Township will be served. Where such participation is at variance with the Township's Procurement By-law, Council shall first authorize any participation.

17.4 Performance evaluations may be undertaken on suppliers and providers of service.

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- 17.5 All invoices and accounts from vendors shall be authorized prior to payment. Authorization in the form of signatures of the Director and staff denoting clerical accuracy, budgetary or specific resolution approval and indication that goods and services were received in good order must be in place. These required signatures will be deemed to authorize payment.
- 17.6 Notwithstanding the provisions of this procedure, the Township shall have the right to reject the lowest or any bid at its absolute discretion. The Township also reserves the right to reissue the bid document in its original format or modified as best suits the requirements of the Township.
- 17.7 After the adoption of the budget, the Director is authorized to pay the accounts and to pay contract accounts upon receipt of evidence of value received.

Section 18: Expenses Prior to Budget Adoption

- 18.1 Prior to the adoption of each year's budget, operating supplies and services purchased shall continue at the level set out in the prior year's operating budget. This shall include the payment of accounts or previously approved capital items and projects. Other Capital expenditures shall not be made until the current year's budget is approved or Council approval is obtained.

Section 19: Prohibitions

- 19.1 Elected officials, appointed officers and employees shall not knowingly cause or permit anything to be done or communicated to anyone in a manner which is likely to cause a potential supplier to have an unfair advantage or disadvantage in obtaining a contract for the supply of goods and/or services to the Township. This also includes a contract with another municipality, local board, or public body involved in the purchase of goods and/or services either jointly or in cooperation with the Township.
- 19.2 Elected officials shall separate themselves from the procurement process and have no involvement whatsoever in specific procurements. Elected officials should not see any documents or receive any information related to a particular procurement while the procurement process is ongoing. Elected officials who receive inquiries from suppliers related to any specific procurement shall immediately direct those inquiries to the Township Director in charge of the specific procurement process.
- 19.3 No bidder who has been awarded a contract shall engage in any contact or activities in an attempt to influence any elected official or any employee of the Township with respect to the purchase of additional enhancements, options, or modules. However, a contractor may communicate with the appropriate Director in charge of the contract, for the purposes of administration of the contract during the term of the contract.

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Section 20: Retention of Documentation

20.1 All background information, information submitted by vendors, purchase orders and other relevant information involved in obtaining prices for goods and services exceeding \$5,000.00 shall be retained in the department/division for the entire budget year and five (5) years in records retention.

Section 21: Enactment/Repeal

21.1 Where any previous by-law or policy passed prior to this by-law conflicts with this by-law, the terms of this by-law will prevail.

21.2 This by-law shall become effective on the date of enactment.

By-law **READ** a **FIRST** and **SECOND** time this 20th day of April, 2011.

By-law **READ** a **THIRD** time and **ENACTED** in Open Council this 20th day of April, 2011.

Marion Wearn, Mayor

(SEAL)

Fran Bell, CAO/Clerk