

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

BY-LAW NUMBER 2010-112

being a by-law to provide policies and procedures
for the procurement of goods and services.

WHEREAS pursuant to section 270 of the *Municipal Act, 2001*, the Corporation is required to establish and maintain policies with respect to its procurement of goods and services; and

WHEREAS the Corporation wishes to procure goods and services in the most efficient and cost effective manner possible; and

WHEREAS the Corporation is committed to ensuring that its procurement policies and procedures are fair, open and transparent.

NOW THEREFORE the Corporation of the Municipality of Clarington hereby enacts as follows:

PART I - INTERPRETATION

Definitions

1. In this by-law,

"Acquisition" means the purchase of a Good and/or Service for use on a permanent or temporary basis;

"AECOM Agreement" means the agreement between the Corporation and AECOM Canada Limited dated September 1, 2008 and any amendments to it;

"Bid" means a Proposal, Quotation or Tender;

"Bidder" is a Person who responds to a Bid Solicitation;

"Bid Solicitation" means a request by the Corporation for Bids for the provision of Goods and/or Services through an RFP, RFQ or RFT;

"CAO" means the Chief Administrative Officer of the Corporation or a designate;

"Clerk" means the Municipal Clerk of the Corporation or a designate;

"Committee" means the General Purpose and Administration Committee of Council;

"Consulting and Professional Services" means services provided by architects, engineers, designers, environmental consultants, surveyors, management and financial consultants, bankers, auditors, brokers, soil consultants, real estate appraisers, Ontario land surveyors, web designers or any other consultant or professional, but does not include any consulting and professional services referred to in Schedule "A";

"Corporation" means The Corporation of the Municipality of Clarington;

"Cost" means the actual cost of an Acquisition, including freight charges and all applicable custom duties, term discounts and taxes (e.g. harmonized sales tax), unless otherwise specified in an RFP, RFQ or RFT;

"Contract" means an agreement between two or more Persons one of whom is the Corporation;

"Council" means the Council of the Corporation;

"Department" means a Department of the Corporation identified on the annual organization charts and reflected in the prevailing budget;

"Department Head" means the Director of one of the Departments or a designate;

"Goods and/or Services" means any goods and/or services required by the Corporation other than (a) Consulting and Professional Services and (b) goods and/or services listed in Schedule "A";

"Local Board" means a local board (as that term is defined in the *Municipal Act, 2001*) of the Corporation;

"Person" includes an individual, association, firm, partnership, corporation, union, trust, organization, trustee or agent, and their heirs, executors, administrators, successors and assigns;

"Proposal" means an offer from a Bidder made in response to an RFP;

"Purchase Order" means a Contract or a written acceptance of a Proposal, issued on forms prescribed by the Purchasing Manager;

"Purchasing Manager" means the Purchasing Manager of the Corporation or a designate;

"Quotation" means an offer from a Bidder made in response to an RFQ;

"Request for Proposal" or "RFP" is a form of Bid Solicitation in which the Corporation invites one or more potential suppliers to submit proposals with respect to the supply of particular Goods and/or Services, which the Purchasing Manager in consultation with the Department Head, determines may be dependent upon non-price factors and may require negotiations between a Bidder and the Corporation before a Contract is made between them;

"Request for Quotation" or "RFQ" is a form of Bid Solicitation in which the Corporation requests either informal quotations (section 8) or formal quotations (section 9);

"Request for Tender" or "RFT" is a form of Bid Solicitation in which the Corporation publishes the specifications, terms, conditions and details concerning a proposed Contract, and invites prospective Bidders to submit Tenders;

"Responsive and Responsible Bidder" is a Person responding to a Bid Solicitation who complies with all of its provisions and who can reasonably be expected to provide satisfactory performance of a proposed Contract based on his reputation, references, performance on previous contracts, and proof of sufficient financial and other resources;

"Tender" means an offer received from a Bidder in response to an RFT; and

"Treasurer" means the Director of Finance/Treasurer of the Corporation or a designate.

Word Usage

2. This by-law shall be read with all changes in gender or number as the context may require.
3. A grammatical variation of a defined word or expression has a corresponding meaning.

Severability

4. Should any section or part of this by-law be held by a Court of competent jurisdiction to be invalid, the remainder of this by-law shall not be affected.

References to Legislation

5. In this by-law, reference to any Act, By-law or Policy is reference to that Act, By-law or Policy as it is amended or re-enacted from time to time.

Construction

6. Schedule 1 is attached to and forms part of this by-law.
7. Unless otherwise specified, reference in this by-law to a clause, section or Schedule is to a clause, section or Schedule in this by-law.

PART 2 – BID POLICIES**Informal Request for Quotation (\$1,000 - \$25,000)**

8. The Purchasing Manager shall have the authority to make Acquisitions for which the Cost is between \$1,000 and \$25,000 at the lowest available Cost, provided he has received a minimum of three Quotations.

Formal Request for Quotation (\$25,000 - \$100,000)

9. The Purchasing Manager shall have the authority to make Acquisitions for which the Cost is between \$25,000 and \$100,000 at the lowest available Cost, provided at least three formal Quotations have been received and the lowest Responsive and Responsible Bid received is acceptable.
10. All Quotations for which the Cost is between \$25,000 and \$100,000 received shall be retained for inspection by the Treasurer for audit purposes.

Exceptions

11. Notwithstanding section 8 or 9, if, in the opinion of the Purchasing Manager, three Quotations cannot be obtained having regard to the urgency of the purchase requisition and/or marketplace availability, then the Purchasing Manager shall be permitted to make an Acquisition having received less than three Quotations.

Requests for Tender (\$100,000 and above)

12. Acquisitions that are anticipated to have a Cost in excess of \$100,000 shall be made through an RFT, unless Council otherwise directs.

Routine Purchases

13. Notwithstanding section 12, where, in the opinion of the Purchasing Manager in consultation with the Department Head, a proposed Acquisition is of a routine and repetitive nature, and the Cost is anticipated to be more than an aggregate of \$100,000 annually including multi-year contracts at \$100,000 each year, the Purchasing Manager may obtain written Bids from suppliers and issue a Purchase Order. Where market conditions are such that price protection cannot be obtained for Goods and/or Services having an annual total value in excess of \$100,000, the Purchasing Manager may obtain competitive prices for short term commitments until such time as reasonable price protection and fair market pricing are restored.

Requests for Proposal

14. Where the Purchasing Manager in consultation with the Department Head determines that a proposed Acquisition involves unique and complicated circumstances for which there is no clear or single solution, the Acquisition may be made through the use of an RFP provided that, wherever possible, three Proposals have been received.
15. RFPs may be called by public advertisement or invitation to specific Bidders.
16. All RFPs shall be submitted in the prescribed form and delivered to the Purchasing Manager.
17. It is the Corporation's general policy to select the Proposal that earns the highest ranked score and meets the requirements of the RFP based on qualitative, technical and pricing considerations.

Bid Pre-Qualification

18. (1) In this section, "Pre-qualification" means a procedure whereby a prospective Bidder satisfies the Corporation that he is capable of supplying a particular Good and/or Service as a condition of being allowed to submit a Bid.

(2) If, in the opinion of the Purchasing Manager, Pre-qualification is required, the Contract, if awarded at all, must be awarded to the lowest Responsive and Responsible Bidder who has been pre-qualified.

Bonds and Deposits

19. All Bid deposits required as part of any Bid Solicitation shall be provided by certified cheque, bank draft or money order made payable to "The Corporation of the Municipality of Clarington" or cash and shall be enclosed in the same envelope as the Bid. Bid bonds shall be issued by a surety approved by the Treasurer, and shall be in an amount and in a form satisfactory to the Treasurer. Bid deposits shall be submitted in accordance with the following schedule, unless otherwise specified in the Bid Solicitation:

<u>Total Amount of Bid</u>	<u>Minimum Bid Deposit Required</u>
\$20,000.00 or LESS	\$1,000.00
\$20,000.01 to \$50,000.00	\$2,000.00
\$50,000.01 to \$100,000.00	\$5,000.00
\$100,000.01 to \$250,000.00	\$10,000.00
\$250,000.01 to \$500,000.00	\$25,000.00
\$500,000.01 to \$1,000,000.00	\$50,000.00
\$1,000,000.01 to \$2,000,000.00	\$100,000.00
\$2,000,000.01 or OVER	\$200,000.00

20. When the deposit of a performance bond and/or labour and material payment bond is a requirement of a Bid Solicitation, such bonds shall be,
- in the amounts specified in the Bid documents;
 - issued by a surety authorized to carry on business in Ontario and approved by the Treasurer;
 - in a form approved by the Treasurer; and
 - delivered by the Bidder to the Purchasing Manager prior to execution of the Contract by the Corporation.
21. Following the award or cancellation of a Bid Solicitation, all deposits, with the exception of the deposits supplied by lowest and the second lowest Bidders in the case of a Contract award, shall be returned to the unsuccessful Bidders by registered mail or courier, or if picked up, receipt acknowledged in writing. Retained Bid deposits shall be held until the Contract is executed by the Corporation, unless otherwise determined by the Purchasing Manager.
22. If a successful Bidder fails to enter into a Contract, the Bid deposit shall be forfeited to and become the property of the Corporation. If a Bid bond is deposited, it may be called by the Treasurer and the amount of money thereby obtained shall be forfeited to and made the property of the Corporation.

Initial Procedures

23. If required, Bid Solicitations shall be advertised in the method deemed most appropriate by the Purchasing Manager which may include periodicals, newspapers and/or websites.
24. All closing times shall be established by the Purchasing Manager.
25. The Purchasing Manager shall supply to all prospective Bidders,
- one copy of the official Bid form;
 - one standard Bid envelope or label appropriately imprinted; and
 - all plans, specifications, profiles and other relevant information.
26. Where a fee is required for Bid documents, such fee shall be paid to the Corporation by cash, money order, bank draft or certified cheque unless otherwise specified in the Bid Solicitation.

List of Registered Bidders

27. Names, addresses (including e-mail addresses) and facsimile numbers of all prospective Bidders who have been supplied with or who have requested the material set out in Section 25 shall be recorded in order to facilitate distribution of addenda when necessary to change or cancel a Bid under call.

Changes to Bids under Call

28. Interpretations of, or qualifications to, a Bid Solicitation shall be made in the form of a written addendum. Addenda shall be necessary to revise, delete, substitute or add to a Bid under call. The Purchasing Manager shall approve the issuance of any addendum or the cancellation of a Bid Solicitation.
29. A copy of each addendum or a notice of posting of each addendum shall be forwarded to registered Bidders by registered mail, facsimile, electronic mail, courier or hand delivery.
30. Where an addendum is released after the receipt of one or more Bids which, in the opinion of the Purchasing Manager, may affect a Bid, all Bids received and deposited prior to the Bid opening may be withdrawn and the Bidders shall be given a new set of Bid documents to be resubmitted in accordance with a further addendum.
31. The Purchasing Manager in consultation with the Department Head may cancel a Bid Solicitation either before or after Bids are opened. The procedure for the notification to Bidders set out in section 29 shall apply to a notice of cancellation. If a Bid is cancelled prior to opening, all Bids received after cancellation shall be returned unopened to the Bidders with notification of the cancellation.

Bid Submissions

32. The Purchasing Manager or, in the case of Tenders, the Clerk shall,
- (a) ensure that all Bids are in the correct envelope or have the correct label as supplied by the Corporation;
 - (b) ensure that all Bids are properly sealed and delivered prior to the closing time established for that Bid;
 - (c) time and date stamp all Bids received; and
 - (d) record all acceptable Bids in a Bid Register.
33. The Clerk shall,
- (a) not accept any Tender that does not comply with clause 32 (a) or (b) or that was delivered after the closing time;
 - (b) deposit all acceptable Tenders unopened in a suitable locked box under her control;
 - (c) advise the Purchasing Manager of any Tender that is not acceptable; and
 - (d) return unacceptable Tenders unopened to the Bidder, accompanied by a letter which states the reasons(s) why the Tender was not accepted.
34. Where no return address is visible on the outside of a Bid that is delivered after the close of Bids, it shall be opened in the presence of the Clerk by the Purchasing Manager, a return address determined, the facts noted for the record and the documents returned to the Bidder accompanied by a letter as in clause 33(d).

Withdrawal of Bids

35. A Bid can only be withdrawn prior to the close of Bids. Requests to withdraw received following the close of Bids shall not be accepted.
36. Any Bidder wishing to withdraw a Bid must do so in writing and deliver the same to the Office of the Clerk.

37. All Tenders withdrawn prior to being deposited in the Tender box kept by the Clerk shall be returned and the withdrawal of the Tender acknowledged in writing by the Bidder. Withdrawal notices received after the Tender has been deposited into the Tender box shall, together with the confirmation of withdrawal, be placed in the Tender box. The Tender box shall not be opened to withdraw a Tender already deposited in it. These Tenders shall be dealt with at the Tender opening by announcing that the Tender was withdrawn. The Tender amount of the withdrawn Tender shall not be read out.
38. All withdrawn Tenders deposited in the Tender box shall be returned unopened following the Tender opening.
39. During a Tender opening at the conclusion of the reading out of Tenders for a particular RFT, the low Bidder may withdraw any of its remaining Tenders on other RFTs that are still unopened. Tenders withdrawn under this procedure cannot be reinstated. A written notice of withdrawal must be signed by the prospective Bidder. Such notice must specify the Contract which the Bidder desires to withdraw and must be handed to the Clerk before the reading out of the first Tender on the RFT to which it applies. The Clerk shall attach the withdrawal to the applicable Tender. The Bidder's name shall be read out and it shall be announced that the Tender has been withdrawn. The Tender Bid amount shall not be read out.

Bid Opening

40. All Quotations and Proposals shall be opened by the Purchasing Manager.
41. All Tenders shall be opened by the Clerk and the Purchasing Manager.
42. Any interested person may attend a Tender opening.
43. Where two or more Tender openings are called for at the same time, the Tenders shall be opened in numerical order, with the lowest numbered Tender being opened first.
44. Where a Contract number or the author of a Bid cannot be identified, the Bid envelope shall be opened and the documents placed with the appropriate group of Bids.
45. Where a conflict exists between the envelope and its contents as to the Contract number, the Contract number on the Bid documents shall prevail.
46. When all Tenders have been sorted, opened and withdrawn Tenders segregated, the Clerk shall compare the number of Tenders opened to the number of Tenders recorded in the record of Tenders. Where a discrepancy exists, the opening procedures shall be delayed until all Tenders have been accounted for.
47. When all Tenders have been accounted for, the following information shall be publically announced:
 - (a) Tender number and description;
 - (b) Bidder's name and location;
 - (c) Tender deposit and bonding letter (if required); and
 - (d) total Tender amount.
48. All Bids shall be checked to determine that each Bidder has submitted one Bid only. Should more than one Bid be submitted, and no withdrawal notice has been received, the Bid with the latest time stamp shown on the envelope shall be deemed to have superseded the earlier Bid and the Bidder shall be bound by the contents of the more recent Bid. If surety bonds are required to be submitted with the Bid at the time of closing, and the Bidder has included the required surety bonds in the first envelope, the surety bonds may be deemed applicable to the Bid submitted in the second envelope.
49. Following the opening and recording of Bids, the record of Bids shall be closed and the record signed attesting to that fact.
50. With the exception of the Clerk and the Purchasing Manager, no dialogue shall be permitted during the opening of Bids.

51. Any Bid that does not appear on initial examination by the Purchasing Manager to satisfy the requirements of this by-law shall be marked "Improper Bid", but shall nonetheless be subject to further examination to determine whether it should be rejected pursuant to section 54, 55 or 56.

Verification of Bids

52. Every Bid shall be delivered to the Purchasing Manager who shall ensure that,
- (a) it complies with the Bid Solicitation requirements;
 - (b) unit prices have been correctly extended;
 - (c) extensions have been correctly totalled; and
 - (d) applicable taxes have been calculated correctly.
53. Any extension errors, addition errors or incorrect tax calculations identified by the Purchasing Manager may be corrected. No corrections shall be made to unit prices or quantities.

Rejection of Non-Compliant Bids

54. A Bid shall be rejected if it,
- (a) is received after the Bid closing time;
 - (b) is not submitted on the correct Bid form;
 - (c) is not completed in ink, by typewriter or electronic processor;
 - (d) does not provide all entries for all unit prices referred to in the Bid Solicitation (unless otherwise specified in the Bid Solicitation) or is otherwise incomplete in any material respect;
 - (e) includes any restrictive or conditional statement that alters the form or intent of the Bid;
 - (f) is not signed by the Bidder with an original signature;
 - (g) does not contain or acknowledge substantive addenda that have an effect on price or specifications;
 - (h) is not accompanied by bonding documents or bid deposits where required; or
 - (i) contains an error that cannot be corrected in accordance with section 53.
55. A Bid shall be rejected if it does not comply with the specifications set out in the Bid Solicitation unless, in the opinion of the Purchasing Manager in consultation with the Department Head, the non-compliance does not materially impact the proposed Acquisition.
56. The Purchasing Manager may, in his sole discretion, accept or reject a Bid if,
- (a) the agreement to bond required by a Bid Solicitation has not been signed by the surety with his original signature; provided that if the Bid is accepted, the Purchasing Manager may allow a period of time to have the agreement to bond correctly signed by the surety;
 - (b) the envelope is improperly sealed;
 - (c) the Bid documents are illegible;
 - (d) the envelope contains an improper or insufficient Bid deposit;

- (e) it is unbalanced, meaning it contains lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs;
 - (f) non-substantive addenda have not been submitted or acknowledged;
 - (g) all erasures, overwriting, strike-outs and other similar alterations inserted in the Bid have not been initialled;
 - (h) the Bidder or a subcontractor of a Bidder has an outstanding legal action against the Corporation, or the Corporation has an outstanding legal action against a Bidder or a subcontractor of the Bidder including arbitration or any association or union issues;
 - (a) the Bidder owes money to the Corporation including outstanding property taxes;
 - (b) the Bidder is not in compliance with any of the Corporation's policies or regulatory by-laws including the Property Standards By-law; or
 - (c) the Bidder has provided unsatisfactory goods and/or services to the Corporation and consequently had an agreement or service contract terminated.
57. Bids rejected in accordance this by-law shall be noted in reports as "Rejected" with an explanation but without the Bid price.

Absolute Right

58. Except as may be otherwise expressly stated in a Bid Solicitation, the Corporation shall have absolute discretion in the awarding of Contracts and retains the right to reject any or all Bids.

Local Preference

59. (1) In this section,
- (a) "Local Bid" means a Bid submitted by a Bidder who operates a business within the Municipality of Clarington; and
 - (b) "Regional Bid" means a Bid submitted by a Bidder who operates a business within the Regional Municipality of Durham.
- (2) If, in the opinion of the Purchasing Manager, a competitive market exists and two or more Bids are received which are identical in Cost, provided quality, service and delivery terms are similar, then priority of acceptance shall be first to a Local Bid, if any, and second to a Regional Bid, if any.
- (3) Ontario's *Discriminatory Business Practices Act* has been established to prevent discrimination in Ontario on the grounds of race, creed, colour, nationality, ancestry, place of origin, sex, or geographical location of persons employed in or engaging in business. Accordingly, other than as noted in subsection (2), preference to a Local Bid or a Regional Bid shall not be given.

Negotiations

60. In place of a Bid Solicitation, Goods and/or Services may be purchased through negotiation where, in the opinion of the Purchasing Manager in consultation with Department Head,
- (a) the sources of supply are restricted to the extent that there is no effective price competition;
 - (b) the purchase involves Goods and/or Services,
 - (i) that are in short supply due to market conditions;
 - (ii) for which there is no reasonable substitute or competitive product;

- (iii) for which compatibility with an existing product is the overriding consideration; or
 - (iv) that must comply with standards adopted by Council;
- (c) the Bid from the lowest Responsive and Responsible Bidder substantially exceeds the estimated Cost;
 - (d) no Bid from a Responsive and Responsible Bidder is received and it is impractical to issue another Bid Solicitation;
 - (e) the extension or reinstatement of an existing Contract would prove most cost-effective or beneficial to the Corporation;
 - (f) the terms and conditions of a Proposal provide for negotiation with the selected Bidder;
 - (g) Consulting and Professional Services are being purchased; or
 - (h) Council has specifically authorized an Acquisition through negotiation.
61. In the case of an RFT for a construction project, negotiations shall be conducted in accordance with the Canadian Construction Documents Committee (C.C.D.C.) Document 23 published by the Canadian Construction Association where expressly required by the provisions of an RFT.

Reporting Requirements

62. The Purchasing Manager shall submit to the Department Head an analysis listing all Quotations or Proposals received with a recommendation for the Department Head's approval if,
- (a) the value of the proposed Contract does not exceed \$100,000.00;
 - (b) the value of the proposed Contract does not exceed an approved budget limit; and
 - (c) either (i) the recommended Quotation is from the lowest Responsive and Responsible Bidder, or (ii) the recommended Proposal earned the highest ranked score and met the requirements of the RFP based on qualitative, technical and pricing considerations.
63. After consulting with the Department Head, the Purchasing Manager shall prepare a report to the CAO for his approval if,
- (d) the value of the proposed Contract does not exceed \$250,000.00;
 - (e) the value of the proposed Contract does not exceed an approved budget limit; and
 - (f) either (i) the recommended Tender or Quotation is from the lowest Responsive and Responsible Bidder or (ii) the recommended Proposal earned the highest ranked score and met the requirements of the RFP based on qualitative, technical and pricing considerations.
64. After consulting with the Department Head, the Purchasing Manager shall prepare a recommendation report to Committee if,
- (a) the value of the proposed Contract exceeds \$250,000.00;
 - (b) the value of the proposed Contract exceeds an approved budget limit;
 - (c) the recommended Tender or Quotation is not from the lowest Responsive and Responsible Bidder; or
 - (d) the recommended Proposal did not earn the highest ranked score or meet the requirements of the RFP based on qualitative, technical and pricing considerations.

65. If the recommended Bid is in excess of an approved budget limit, the report to Committee shall identify the source of additional funding.
66. Upon approval of a Contract Award, the Purchasing Manager shall make the award and issue a Purchase Order or prepare a Contract in accordance with the conditions of the Bid Solicitation.

Council Recess Procedures

67. (1) Notwithstanding section 64, where a matter which would have otherwise been submitted to Committee requires approval during any of Council's recesses, including elections, the CAO shall be authorized to award the Contract if,
 - (a) the recommended Quotation or Tender is from the lowest Responsive and Responsible Bidder;
 - (b) the recommended Proposal earned the highest ranked score or meet the requirements of the RFP based on qualitative, technical and pricing considerations;
 - (c) the Treasurer is of the opinion that the price is reasonably reflective of the approved budget allocation and/or is part of the normal operating responsibility of the Department; and
 - (d) the Department Head concurs with the recommendation.
- (2) The Purchasing Manager shall report all Contracts awarded under subsection (1) to Committee as soon as possible after the conclusion of the recess.
- (3) Council shall not vary any action or decision of the Contract awards made in accordance with this section.

Execution of Contract

68. A successful Bidder shall be allowed ten working days from the date of mailing of the form of Contract to execute and return the Contract to the Purchasing Manager.

Default By Successful Bidder

69. If the successful Bidder fails to execute the Contract or fails to meet any of the requirements of the Contract within the prescribed time, the Contract may be awarded to the next lowest Bidder or cancelled.

Co-Operative Purchasing

70. (1) In this section, "Co-operative Purchasing" means the participation of the Corporation with one or more public agencies, school boards, hospitals or other public agencies in a Bid Solicitation.
- (2) Notwithstanding the provisions of this by-law, Co-operative Purchasing shall be utilized when advantageous and practical. In the event of any conflict, the purchasing by-law and procurement practices of the municipality, school board, hospital or other public agency issuing the co-operative Bid shall take precedence over the provisions of this by-law.

Prohibitions

71. No requests for prices or demonstrations for approved projects or programs shall be made without prior consultation with the Purchasing Manager.
72. (1) Purchase Orders shall not be split so as to circumvent the established method of purchase or the dollar limits imposed by this by-law.
- (2) Notwithstanding subsection (1), at the discretion of the Purchasing Manager, in consultation with the Department Head, if it is deemed advantageous due to short supply or time constraints, pre-bids for components of a major project may be obtained in accordance with this by-law.

Consulting and Professional Services

73. Where it is estimated that the Cost of Consulting and Professional Services will be less than \$30,000 and funds are allocated in the approved budget, the Department may obtain the services, provided that if the requested services are engineering or related services referred to in the AECOM Agreement, the Director of Engineering Services shall be consulted before the services are purchased.
74. Where it is estimated that the Cost of Consulting and Professional Services will be more than \$30,000 and funds are allocated in the approved budget, the Purchasing Manager shall issue an RFP and, in consultation with the Department Head, shall submit a report to Committee providing a list of Bid amounts received with a recommendation for award.
75. Where the requesting Department is the Engineering Department and the Consulting and Professional Services are for the construction and/or reconstruction of roads, sanitary sewers and/or Ontario Municipal Board hearing representation, an RFP is not required and the Contract may be approved by the Director of Engineering Services provided that it is based on an authorization approved by Council to acquire such Consulting and Professional Services. Where the Contract Cost exceeds \$30,000, Council approval shall be required.
76. Where the requesting Department is the Planning Services Department and the Consulting and Professional Services are for the purpose of the preparation of an Environmental Study as referred to in Report PD-165-96, an RFP shall be issued on an as-needed basis and a subsequent roster of consultants as approved by Council shall be issued. Individual contracts for such services may then be approved by the Director of Planning Services.
77. An external consultant who has entered into a Contract for consulting services for a particular phase of a project, may be deemed to have a conflict of interest and be disqualified from soliciting a Bid on a later phase of consulting services for the same project. Any issue as to whether there is a conflict of interest shall be determined by the Purchasing Manager in consultation with the Department Head. This section shall not apply where a consultant has been requested to provide a budget estimate or general review and estimate for a potential Acquisition.
78. Any consultant authorized to issue a Bid Solicitation on behalf of the Corporation shall comply with this by-law.

Fair Wage Policy

79. The Corporation has implemented a Fair Wage Policy on a trial basis applicable to industrial, commercial and institutional (ICI) Contracts with a value greater than \$1,000,000. Bids for such Contracts shall be called in accordance with the policy. If the successful Bidder fails to adhere to the Fair Wage Policy, the remedies specified in the Policy shall be applied.

In House Bids

80. (1) In this section, "In House Bid" means a Bid made by a Department or Local Union or Association authorized by the CAO to make a Bid, submitted in response to a Bid Solicitation, where the provision of Goods and/or Services will be provided by the employees of the Corporation in competition with external entities for procurement opportunities, but does not include any comparison done by management of the Corporation for Cost analysis purposes of internal and external services.
 - (2) In House Bids may be used for the procurement of Goods and/or Services in circumstances where the CAO considers it appropriate to do so.
 - (3) In House Bids may be made by an internal Union or Association and shall be subject to the conditions of this by-law.

Requests for Product Information

81. Requests on behalf of the Corporation may be made by Department Heads for informal non-binding product and technical information, catalogues and price lists. Each Department Head shall provide the Purchasing Manager with such data, specification details and information relating to a proposed Acquisition, including the Corporation's approved budget prices. The Purchasing Manager shall obtain all binding or estimated prices provided by potential Bidders.

Conflict of Interest

82. The participation of members of Council and employees of the Corporation in the procurement process shall be governed by, in the case of members of Council, the *Municipal Conflict of Interest Act* and, in the case of employees, by the Code of Ethics Policy H3.

Records Retention and Destruction

83. Bid documents and related material shall be retained in a manner and for a period in accordance with the Municipality's Retention By-law No. 92-139.

Complaints and Inquiries

84. All Bidder or potential Bidder complaints or inquiries, whether addressed to an elected official, the CAO, a Department Head or any member of staff shall be referred to Purchasing Services and dealt with in accordance with appropriate purchasing policy.

PART 3 – GENERAL PURCHASING POLICIES**Purchasing Manager Authority**

85. The Purchasing Manager shall have the authority to act as agent of the Corporation for the purposes of (a) issuing Bid Solicitation documents and requests for pre-qualifications;(b) soliciting expressions of interest in order to determine what goods and services are available, scope out business requirements, and/or estimate costs; and (c) signing all Purchase Orders and Contracts that are necessary to acquire Goods and/or Services in accordance with this by-law.
86. The Purchasing Manager shall determine the method of Acquisition having regard to the nature, importance or urgency associated with the purchase requisition, subject to the general trade practice, market conditions and the provisions of this by-law.

Insurance

87. The Director of Finance shall review all Contracts that include provisions relating to liability and insurance.

Administration

88. The Purchasing Manager shall establish and maintain administrative procedures, standard practices and forms to implement this by-law, including the Purchasing Procedures Manual included in the Corporate Services Department Procedures Manual outlining all daily procedures related to the procurement of goods and services.

Purchase Requisitions

89. Each Department Head shall submit to the Purchasing Manager a written request in the form of an "electronic purchase requisition" for any required Goods and/or Services or Consulting and Professional Services where the Cost exceeds \$1,000. Department Heads shall be required to ensure that funds for any such requisition are included in an approved budget and that the appropriate accounting charge number is referenced in the requisition. Purchase Orders for such purchases shall be issued by the Purchasing Manager.
90. All electronic purchase requisitions shall be approved by an employee who is authorized to approve the requisition according to the signing authority limits established by the Treasurer.

Emergency Purchases

91. (1) In this section, "Emergency" means a situation or the threat of an impending situation which, in the opinion of the CAO or a Department Head, requires an immediate Acquisition to prevent serious delays, damage to a basic service, or to maintain or restore a basic service provided by the Corporation.
- (2) Emergency Acquisitions shall be made by the Purchasing Manager. In the absence of the Purchasing Manager, Emergency Acquisitions may be made by a Department Head.
- (3) All Emergency Acquisitions shall be confirmed through a Purchase Order and shall be reported to Committee through a report prepared jointly by the Department Head and the Purchasing Manager if the Cost exceeds \$25,000 or an approved budget limit.

Parts and Equipment Orders

92. Under the direction of the Purchasing Manager, a person authorized to make purchases by Purchase Order on behalf of either the Operations Department or the Emergency and Fire Services Department may issue a Purchase Order for vehicle parts necessary to maintain the Corporation's vehicles provided the Cost of each separate order does not exceed \$7,500.

Pre-Budget Approval

93. Staff are authorized to proceed with pre-budget approval each January for the purchase of all light duty vehicles budgeted in that year, with the final award being subject to the reporting requirements of this by-law.

AECOM Agreement

94. None of the provisions of this by-law is intended to or shall be deemed to affect any of the rights, obligations or responsibilities of the parties to the AECOM Agreement including the responsibilities of the official of the Corporation named in the AECOM Agreement.

Disclosure

95. No Corporation employee or any member of Council shall disclose any details regarding Bids except as permitted by this by-law and the *Municipal Freedom of Information and Protection of Privacy Act*.
96. In the case of a Bid submitted in response to an RFP, the total Bid amount shall be provided on written request of any Person only upon completion of negotiations and award of the Contract.

Personal Purchases

97. (1) In this section, "Personal Purchase" means a purchase of Goods and/or Services requested by an elected official, an appointed official or by any other employee of the Corporation that is not required for the purposes of the Corporation or a Local Board.
- (2) No Personal Purchases shall be made by the Corporation for any Member of Council, member of a Local Board, or employees of the Corporation, unless specifically authorized.

Purchasing Cards

98. (1) In this section, "Purchasing Card" means a credit card issued by the Purchasing Manager in accordance with the Purchasing Card Policy.
- (2) Purchasing Cards may be used for all purchases as defined in the Purchasing Card Policy where the Goods and/or Services do not fall under the requirements of this by-law. Purchasing Cards are issued on an as needed basis upon approval of the Purchasing Manager and at the request of the Department Head. The Purchasing Manager shall be responsible for the program outlined in the Corporation's Purchasing Card Policy.

Disposal of Goods

99. The disposal of surplus or redundant goods of the Corporation shall be the responsibility of the Purchasing Manager. At least once each calendar year, Department Heads shall provide the Purchasing Manager with a list of such goods. The Purchasing Manager shall determine the appropriate method of disposal including sale, RFT, RFP, auction, gratuitous transfer to a Department, Local Board, other municipality or a charity, or by sale to the Corporation's staff by sealed Bid. The Purchasing Manager may periodically circulate a list of surplus or redundant goods to all Departments and Local Boards.

Over Expenditures

100. Subsequent to a Contract award, the approval of any over expenditure shall be in accordance with the Corporation's Capital Project Over Expenditure Policy H17.

Sustainability

101. In order to contribute to waste reduction and to increase the development and awareness of environmentally sound purchasing, Acquisitions shall ensure that, wherever reasonably possible, specifications shall provide for expanded use of durable products, reusable products and products (including those used in services) that contain the maximum level of post-consumer waste and/or recyclable content, without significantly affecting the intended use of the product or service. It is recognized that Cost analysis is required in order to ensure that the products are made available at competitive prices.

PART 8 – GENERAL PROVISIONS**By-Law Review**

102. The Purchasing Manager in consultation with appropriate staff shall conduct a detailed review of this by-law no less frequently than every five years.

Repeal

103. By-Law #2010-100 is hereby repealed.
104. The "Execution of Contracts" Policy contained in Report TR-73-00 approved by Council on October 16, 2000 is hereby repealed.

Effective Date

105. This By-law shall take effect on the date that it is passed by Council.

By-law read a first, second and third time and finally passed this 20th day of September, 2010.

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

PER:


Jim Abernethy, Mayor

PER:


Patti Barrie, Municipal Clerk

SCHEDULE "A"

To By-Law # 2010- 112

The items listed in this Schedule do not require a Purchase Order unless specifically requested by the Department Head or the vendor or supplier or by Purchasing for the purposes of records maintenance and tracking, and for which other purchasing procedures of this by-law may be waived where application is impractical, in the opinion of the Purchasing Manager.

1. Petty Cash Items
2. Training and Education
 - a. Conferences
 - b. Courses
 - c. Conventions
 - d. Magazines
 - e. Memberships
 - f. Periodicals
 - g. Seminars
 - h. Staff Development
 - i. Staff Workshops
 - j. Staff Reports
 - k. Subscriptions
 - l. Trainers (includes workshop & seminars)
3. Refundable Employee Expenses
 - a. Advances
 - b. Meal Allowances
 - c. Miscellaneous – Non – Travel
 - d. Travel Expenses
 - e. Entertainment Expenses
4. Employer's General Expenses
 - a. Payroll Deduction Remittances
 - b. Medicals
 - c. Licenses (Vehicles, Software, Communications, etc.)
 - d. Debenture Payments
 - e. Insurance
 - f. Grants and Agencies
 - g. Damage Claims
 - h. Petty Cash Replenishment
 - i. Land & Building Lease Payments made by Municipality
 - j. Tax Remittances
 - k. Sinking Fund Payments
 - l. Newspaper Advertising and Public Notices
 - m. Day Camp or other similar Admission Fees
 - n. Software or equipment maintenance agreements when provided by the software or equipment manufacturer/distributor.
5. Certain Professional and other Services
 - a. Committee Fees
 - b. Counselling Services
 - c. Laboratory Services
 - d. Nursing Services
 - e. Physician Fees
 - f. Temporary Help
 - g. Banking and Underwriting Services, where covered by Agreements
 - h. Legal Services
 - i. Engineering and Consulting Services provided for in the AECOM Agreement
 - j. Newspaper, radio, TV advertising
 - k. Policing
 - l. Red Cross Supplies
 - m. Web Design Usage Fee & penalties
 - n. Payroll consulting fees
 - o. Employee Assistance programs
- 6.1 Utilities (including hedging agreements in accordance with the Hedging Policy as may be amended from time to time)
 - a. Postage
 - b. Water
 - c. Hydro
 - d. Gas (including hedging agreements)
 - e. Telephones – excluding cellular

f. Cable television

- 6.2 Canadian National and Canadian Pacific Railways
- 6.3 Provincial and/or Federal Government Agencies or Crown Corporations
- 6.4 Regional Municipality of Durham or other municipalities located within the Regional Municipality of Durham goods or services