

THE CORPORATION OF THE TOWNSHIP OF GREATER MADAWASKA

BY-LAW NUMBER 17-2024

Being a By-law to adopt and maintain policies with respect to procurement of goods and services.

WHEREAS subsection 270(1) of the *Municipal Act*, as amended requires a municipality to adopt and maintain policies with respect to its Procurement of goods and services; and

WHEREAS the Corporation of the Township of Greater Madawaska deems it advantageous to establish comprehensive Procurement policies for risk management purposes and to preserve the overarching principles of competition, best value, fairness, objectivity, accountability and transparency; and

WHEREAS the Township of Greater Madawaska adopted a Procurement Policy to ensure the appropriate financial and operational management controls are applied to the decision process in spending public funds to maximize saving for taxpayers;

AND WHEREAS the Council of Greater Madawaska deems it expedient to repeal By-Law 14-2019 and replace with By-Law 17-2024 to ensure the policy remains in compliance with provincial legislation, International/Inter-Provincial Trade treaties or agreements and the Discriminatory Business Practices Act.

NOW THEREFORE BE IT RESOLVED THAT the Council of the Township of Greater Madawaska hereby enacts as follows:

1. That By-Law 14-2019 is hereby repealed.
2. That the procurement policy attached hereto and forming part of this By-Law be adopted;
3. That this by-law shall be read in conjunction with the Township's Delegation of Authority By-Law No. 52-2022, as amended; and
4. That this By-law shall come into force and effect on the day of its passing.

READ a first and second time this 18th of April, 2024.

READ a third time and passed this 18th of April, 2024.

Rob Weir
Mayor

Robin Emon
Clerk

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1 Definitions

For the purposes of this By-Law, defined terms are in Appendix A.

2 Purpose

The purpose of this By-law is to:

- a) express the Township's goals and objectives relating to its Procurement activities;
- b) describe the roles and responsibilities and authority of Council and the Township's officers and employees in carrying out the Township's Procurement activities; and
- c) comply with the requirements of subsection 270(1) of the *Municipal Act*.

3 Goals and Objectives

The Township's goals and objectives relating to its procurement activities are to:

- a) comply with applicable legislation, policies, protocols and procedures;
- b) encourage open, fair and transparent processes that ensure equal access to all qualified suppliers;
- c) adhere to the highest standards of ethical conduct;
- d) achieve an effective balance between accountability and efficiency;
- e) achieve the best value to maximize savings for taxpayers through consideration of the full range of Procurement methods and the adoption of commercially reasonable business practices;
- f) provide for reciprocal non-discrimination and geographic neutrality;
- g) incorporate Environmental Procurement practices and consider environmental factors in the Procurement planning process wherever possible;
- h) incorporate Social Procurement practices and consider inclusion and diversity factors in the Procurement planning process wherever possible; and
- i) support effective business planning such that deliverables will only be acquired after assessing need, alternatives, timing and when applicable, life cycle management & Sustainable Procurement practices.

4 Procurement Policy Application

- a) This by-law shall apply to the purchase of goods, services and/or construction for the purposes of all municipal departments.
- b) This by-law shall not apply to the acquisition or disposal of any real property or to any lease, right or permission relating to the use or occupation of real property.
- c) This by-law is at all times subject to compliance with the Delegation of Authority By-law being a by-law to delegate certain powers and duties to Officers and Employees of the Corporation of the Township of Greater Madawaska.

5 Ethical Conduct and Conflict of Interest

- a) Council shall comply with the *Municipal Conflict of Interest Act*.
- b) Employees of the Township shall comply with Township policies on conflict of interest.
- c) At no time during a Procurement process, beginning with the planning stage, through to the Award and Contract stage, shall any Township employees accept, directly or indirectly, from any Bidder or Supplier to which any Contract is, or might be awarded, anything of any value, tangible or intangible, including but not limited to rebates, gifts, meals, money or special privileges.
- d) No preference will be given to Suppliers who provide unsolicited goods or samples to the Township or who demonstrate the operation of such goods or samples.
- e) Township employees must immediately declare to their Department Head any real or perceived conflicts of interest they may have arising from interacting with, managing, supervising or overseeing the work of family members and/or former employees of

the Township and/or anyone with whom they have a close personal relationship or have a personal interest with who are working for Suppliers in any capacity.

- f) Township employees must immediately declare to their Department Head any financial interests they may have with any Bidder or Supplier.
- g) Township employees in the role of Contract Department Head must be and be seen to be impartial in their treatment of all Bidders and Suppliers, and in managing Contracts and approving payments.

6 Responsibilities and Authorities

- a) Department Heads have responsibility for procurement activities within their departments and are accountable for achieving the specific objectives of the procurement project.
- b) Department Heads and the CAO have authority to award contracts in the circumstances specified in this By-law, provided the delegated power is exercised within the limits prescribed in this By-law and the requirements of this By-law are met.
- c) The CAO has the authority to instruct Department Heads not to award contracts but to submit recommendations to Council for approval. The CAO may provide additional restrictions concerning procurement, where such action is considered necessary and in the best interest of the Township.

7 Requirement for Funding Approval

- a) Net Departmental expenditures are authorized by Council each year as part of either the Operating or Capital Budget process. Pending Council's approval of proposed budgetary estimates, Department Heads are authorized to spend up to 50% of the previous year's approved Operating Budget. Department Heads are not authorized to overrun net departmental operating budgets, except in accordance with this Policy.
- b) The exercise of authority to award a contract is subject to the identification and availability of sufficient funds in appropriate accounts, within Council approved estimates.
- c) Where goods and services are routinely purchased or leased on a multi-year basis, the exercise of authority to award a contract is subject to:
 - i. the identification and availability of sufficient funds in appropriate accounts for the current year within Council-approved estimates,
 - ii. the requirement for the goods or services will continue to exist in subsequent years and in the opinion of the Treasurer, the required funding can reasonably be expected to be made available, and
 - iii. the contract has a provision in it that the supply of goods or services in subsequent years is subject to the approval by Council of the department estimates to meet the proposed expenditures.
- d) The Capital Budget approved by Council establishes the scope, funding and spending authority for each Capital Project listed in the Capital Budget document. Department Heads do not have the authority to exceed the budget approved for a capital project. The CAO and Treasurer may authorize additional gross expenditures provided that funding is available to fund the over-expenditure from reallocating under expenditures from other capital projects within the same department.
- e) The CAO and Treasurer has certified that there is sufficient appropriate financing available for the capital project including source of funding.
- f) A report to Council for information purposes must be produced bi-annually for any excess Capital Funds that are transferred to other already approved Capital projects.
- g) Under no circumstances should excess Capital Funds be allocated to a new capital project that was not defined during the budget process without the consent of Council.

8 Restrictions

- a) No requirement may be divided into two or more parts to avoid the application of the provisions of this By-law.
- b) Purchase requisitions for services, where the services could result in the establishment of an employee-employer relationship, are not permitted.
- c) Where this By-law identifies delegated authority limits for contract awards, the value of a contract shall be the sum of:
 - i. all costs to be paid to the supplier under the contract;
 - ii. all taxes, and
 - iii. less any rebates.

9 Council Approved Contracts

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

- a) Any contract requiring approval from the Ontario Land Tribunal,
- b) Any contract prescribed by Statute to be made by Council,
- c) Where the cost amount proposed for acceptance is higher than the Council approved departmental estimates and the necessary adjustments cannot be made within the Departmental budget,
- d) Where a Substantive Objection emanating from the bid solicitation has been filed with the Treasurer or with the CAO,
- e) Where a Major Irregularity precludes the award of a tender to the supplier submitting the lowest responsive bid,
- f) Where authority to approve has not been expressly delegated,
- g) All unbudgeted capital projects, regardless of the value.

10 Procurement Documentation

- a) Procurement documentation shall avoid use of specific products or brand names.
- b) The use of standards in procurement documentation that have been certified, evaluated, qualified, registered or verified by independent nationally recognized and industry-supported organizations, such as the Standards Council of Canada, shall be preferred.
- c) Notwithstanding Section 10 a), a Department Head may with the approval of the CAO, specify a specific product or brand name for essential functionality purposes, to avoid unacceptable risk or for some other valid purpose. In such instances, the Department Head shall manage the procurement to achieve a competitive situation if possible. The reason for a specific brand shall be noted in the file with recommendations from a professional (i.e. Licensed Mechanic) if feasible.
- d) Department Heads shall:
 - i. give consideration to the need for value analysis comparisons of options or choices, and
 - ii. ensure that adequate value analysis comparisons are conducted to provide assurance that the specification will provide best value.

11 Legal Services

- a) The CAO shall be advised whenever legal services are estimated to be in excess of \$5,000 per occurrence.
- b) The CAO may approve legal services with an estimated cost less than \$15,000 per occurrence.
- c) For legal services with an estimated cost in excess of \$15,000, the CAO shall obtain the approval of Township Council. The CAO's report to Council shall remain confidential unless otherwise directed by Township Council.

12 Cancellation of a Bid Solicitation

- a) A Department Head may cancel a Bid Solicitation at any time.
- b) The Department Head shall ensure that the confidentiality of any bid submitted is maintained in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, as amended.

13 Expenditure Authority & Procurement Methods

13.1 Expenditure Authority & Procurement Method - Competitive

Financial Limit (\$)	Method	Authority
Under \$5,000	Quotation- Direct Acquisition	Department Head
\$5,001 to \$10,000	Quotation (2) – Written	Department Head
\$10,001 to \$25,000	Quotation (3) – Written	Department Head and Treasurer
\$25,001 to \$50,000	Request for Proposal (RFP) Request for Tender (RFT)	Treasurer and CAO
\$50,001 or more	Request for Proposal (RFP) Request for Tender (RFT)	Council

13.2 Expenditure Authority & Procurement Method - Non-Competitive

Financial Limit (\$)	Method	Authority
Under \$25,000	Negotiated Quotation	Department Head, Treasurer and CAO
\$25,000 to \$50,000	Negotiated Quotation	Treasurer and CAO
\$50,001 or more	Negotiated Quotation	Council

13.3 Request for Quotation (RFQ)

Request for Quotation shall be used where a requirement can be fully defined and best value for the Township can be achieved, by an award selection made on the basis of the Lowest Responsive quote.

Where a minimum of three (3) written quotations are required but are not possible and/or practical to be requested, or are not received, approval of the CAO is required.

13.4 Request for Tender (RFT)

Request for Tender shall be used where the value is expected to exceed \$25,000 and where a requirement can be fully defined or for which a clear or single solution exists. Best value for the Township can be achieved by an award selection made on the basis of the Lowest Responsive Bid.

A Request for Tender shall be used where all of the following criteria apply:

- a) two or more sources are considered capable of supplying the requirement,
- b) the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria,
- c) the market conditions are such that tenders can be submitted on a common pricing basis,
- d) it is intended to accept the tender which offers the municipality the highest value.

A Request for Tender can be issued through an electronic bidding system, the Township website, and may also be issued through public process such as placing a notice in the appropriate local and/or trade newspaper.

If only one bid is received, the Department Manager, in consultation with the CAO, may exercise the right to cancel the call for tender.

If the bid(s) received is over the approved budget value, the Township may exercise the right to cancel the call for tender.

The tender is awarded to the lowest priced bidder provided the Township is satisfied in all respects to the tender submitted otherwise, including specifications/requirements as applicable.

13.5 Request for Proposal (RFP)

The Request for Proposal procedure shall be used where the value is expected to exceed \$25,000 and where there is no clear or simple solution to a complex requirement. To achieve best value, the award selection will be made on a formal evaluation. Criteria will be established, involving a combination of mandatory and desirable requirements, where the requirement is best described in a general performance and where innovative solutions are sought.

A Request for Proposal should be used where one or more of the criteria for issuing a Request for Tender cannot be met, such as:

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

Terms of reference and evaluation criteria to be applied shall be developed in advance of solicitation.

Where the requirement is not straightforward or an excessive workload would be required to evaluate Proposals, either due to their complexity, length, number or any combination thereof, a multi-step procedure may be used that would include a pre-qualification stage, to ensure the workload is at a manageable level.

A Selection Committee shall be established to review all Proposals against pre-established criteria and reach consensus on the final rating results. The final rating results with supporting documents are to be kept on a procurement file.

Request for Proposals will normally be evaluated and scored according to the following criteria:

- a) understanding of the assignment
- b) capabilities of the firm or project team
- c) previous experience on assignments of a similar nature
- d) past performance in the provision of services to the Township
- e) quality of the submission
- f) cost savings and/or process improvements for the Township
- g) project schedule
- h) cost
- i) Other criteria as may be appropriate for the services being sought.

Request for Proposal can be issued through an electronic bidding system, the Township website, and may also be issued through public process such as placing a notice in the appropriate local and/or trade newspaper.

14 Non-Standard Procurement (Single/Sole Source)

Non-Standard Procurements may only be approved in the following circumstances:

- a) Where a standard procurement process conducted in accordance with this Bylaw and applicable procedures and protocols has not resulted in the receipt of any successful Bids;
- b) Where only one Supplier is able to meet the requirements of a procurement in order to:

- i. Ensure compatibility with existing products;
 - ii. Recognize exclusive rights, such as exclusive licenses, copyright and patent rights; or
 - iii. Maintain specialized products that must be maintained by the manufacturer or its representative;
- c) Where there is an absence of competition for technical reasons and the deliverables can only be supplied by one particular Supplier and no alternative or substitute exists;
 - d) The procurement is for additional deliveries by the original Supplier of Deliverables that were not included in the initial procurement if a change of Supplier:
 - i. Cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
 - ii. Would cause significant inconvenience or substantial duplication of costs for the Township;
 - e) For the procurement of Deliverables relating to matters of a confidential or privileged nature where the disclosure of those matters through an open competition could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
 - f) For the procurement of Deliverables from a Public Body;
 - g) For the procurement of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
 - h) For the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
 - i) Where the required goods/services are to be supplied as a result of an emergency, which would not reasonably permit the use of other procurement procedure methods due to time sensitive manner.

Where a Non-Competitive Procurement Process is undertaken, full disclosure shall be given on all information relating to the purchase, subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*.

15 Emergency Purchases

Emergency purchases of Goods/Services may be approved by the Department Head and Treasurer and where applicable, the CAO or their designates when the immediate purchase is essential to prevent serious delays in the work of any department which might involve: danger to life; damage to property; costly downtime; or the provision of an essential service.

As soon as possible following the Emergency, the Department representative shall document the details of the acquisition. The following shall apply in accordance with the dollar value of the Award:

- a) \$1,000.01 to \$10,000.00 – the Department Head or designate, shall provide a written summary report to the Treasurer, detailing the emergency expenditure.
- b) \$10,000.01 to \$25,000.00 - the Department Head or designate, shall provide a written summary report to the CAO, with a copy to the Treasurer, detailing the emergency expenditure.
- c) over \$25,000.00 - the Department Head, Treasurer and CAO or their designates, shall prepare a Report to Council “for information only” detailing the emergency expenditure.

16 Follow-On Contracts

Where a reasonable likelihood exists that on completion of a contract it will be necessary to award a non-competitive contract for follow-on goods or services, the Department Head shall ensure that the possibility of a follow-on contract will be identified in the original bid solicitation.

Authority to approve a follow-on contract will be as per authority limits for contract award under this policy provided funds exist.

17 Contract Amendments and Revisions (Scope Change)

No amendment that changes the price of a contract shall be agreed to without a corresponding change in requirement or scope of work.

Amendments to contracts are subject to the identification and availability of sufficient funds in the appropriate accounts within Council approved divisional estimates, including authorized revisions.

Department Heads may authorize amendments to contracts provided that the total amended value of the contract is within the approval authority of the Department Head.

The CAO's approval is required for amendments to contracts where the total amended value of the procurement reaches the CAO's approval threshold.

18 Contract Renewals

Where the original contract contains an option to renew or a renewal clause stipulating the provisions of what is acceptable for a renewal, the Department Head may authorize the renewal without Council approval by by-law provided that:

- a) the supplier's performance in supplying the goods, services or construction is considered to have met the requirements of the contract,
- b) the Department Head agrees that the renewal option is in the best interest of the Township, and,
- c) funds are available in appropriate accounts within the Council approved estimates, including authorized revisions, to meet the proposed expenditure.

The renewal information shall be sent to Council for information.

Where a contract contains an option for renewal, prior to the contract renewal, the Department Head shall include a written explanation to the CAO as to why the renewal is in the best interest of the Township. The CAO will determine whether the renewal suits the needs and is in the best interest for the Township.

19 Bid and Contract Administration Submission of Bids

Bids shall be accepted through electronic bidding, or in paper form, ensuring confidentiality and security, including maintaining the "sealed" nature of bids, as long as necessary where required. Bid Solicitations will indicate how bids are to be received.

20 No Acceptable Bid or Equal Bids Received

Where bids are received in response to a Bid Solicitation but exceed budget, are not responsive to the requirement or do not represent fair market value, a revised solicitation shall be issued in an effort to obtain an acceptable bid.

The Department Head may waive the need for a revised bid solicitation and enter negotiations with the Lowest Responsive Bidder or the highest responsive bidder for a revenue-driven bid selection, emanating from a bid solicitation under the following circumstances:

- a) the total cost of the Lowest Responsive Bid is in excess of the funds appropriated by Council for the project, or
- b) the total revenue of the highest response bidder is less than that appropriated by Council, or
- c) the Department Head and the CAO agree that the changes required to achieve an acceptable bid will not change the general nature of the requirement described in the bid solicitation

In the case of building construction contracts, where the total cost of the Lowest Responsive Bid is in excess of the appropriation made by Council, negotiations shall be made in accordance with the guidelines established by the most current Canadian Construction Documents Committee.

If two equal bids are received, the following process shall be employed as a means of breaking the tie: The names of the tied bidders shall be placed in a container and the bid to be recommended to Council for award, shall be drawn by the CAO or his/her designate, in the presence of the Department Head or his/her designate and the Treasurer or his/her designate.

21 Contract Execution and Performance Guarantees

- a) The Department Head may require that a bid be accompanied by a Bid Deposit or other similar security, to guarantee entry into a contract.
- b) In addition, the successful supplier may be required to provide:
 - i. a Performance Bond to guarantee the faithful performance of the contract and
 - ii. a Payment Bond to guarantee the payment for labour and materials to be supplied in connection with the contract.
- c) The Department Head shall select the appropriate means to guarantee execution and performance of the contract. Means may include one or more of, but are not limited to, financial bonds or other forms of security deposits, provisions for liquidated damages, progress payments, and holdbacks.
- d) At the discretion of the Department Head, prior to the commencement of work, evidence of liability insurance coverage may be obtained, ensuring indemnification of the Township of Greater Madawaska from any and all claims, demands, losses, costs or damages resulting from the performance of a supplier's obligations under the contract. When evidence of Liability Insurance Coverage is obtained, it shall satisfy the requirements of the Treasurer.
- e) Prior to commencement of work payment, an Independent Operators Status or Certificate of Clearance from the Workplace Safety and Insurance Board shall be required by the Department Head, ensuring all premiums or levies have been paid to the Board to date.
- f) The guarantee means selected will:
 - i) not be excessive but sufficient to cover financial risks to the Township,
 - ii) provide flexibility in applying leverage on a supplier so that the penalty is proportional to the deficiencies, and
 - iii) comply with Provincial Statutes and Regulations.
- g) Financial security for contract performance shall only be required where the Township will be exposed to costs if the contractor does not complete the requirements of the contract.
- h) The Treasurer may release the holdback funds on construction contracts upon:
 - i) the contractor submitting a Statutory Declaration that all accounts have been paid and that all documents have been received for all damage claims;
 - ii) receipt of clearance from the Workplace Safety and Insurance Board for any arrears of Workplace Safety and Insurance Board assessment;

- iii) all the requirements of the Construction Act being satisfied;
- iv) where applicable, staff may conduct a title search without the assistance of the Township solicitor to ensure that liens have not been registered, and
- v) certification from the Department Head, under whom the work has been performed, that the conditions of the contract have been satisfied.

22 Bid Irregularities

The process for administering irregularities contained in bids pertaining to all contracts, are set out in Appendix C. This is not a comprehensive list and shall not fetter the Township.

23 Contractual Agreement

The award of contract may be made by way of a Formal Agreement, supplier invoice or a Purchase Order.

- a) A Purchase Order is to be used when the resulting contract is straightforward and will contain the Township's standard terms and conditions.
- b) A Formal Agreement is to be used when the resulting contract is complex and will contain terms and conditions other than the Township's standard terms and conditions.
- c) A Supplier's invoice is to be used when the resulting contract is straightforward and will contain the Supplier's standard terms and conditions.

It shall be the responsibility of the Department Head and/or the Township Solicitor, to determine if it is in the best interest of the Township to establish a Formal Agreement with the supplier.

Where it is determined that a Formal Agreement is required, the Formal Agreement may be reviewed and approved for execution by the Township's Solicitor.

24 Cooperative Purchasing

The Township may participate with other government agencies or public authorities in Cooperative Purchasing, where it is in the best interests of the Township to do so.

The procurement policies of the Township or government agencies or public authorities calling the cooperative tender are to be the accepted policies for that particular tender.

Notice of Participation in cooperative purchases will be posted annually on the Town's website in accordance with the requirements of legislation.

25 Supplier Performance

The Department Head shall monitor and document the performance of suppliers providing goods and services to that department and shall advise the CAO when the performance of a supplier has been unsatisfactory.

The Corporation may, in its sole discretion, disqualify a Supplier from bidding on any bid solicitation or reject a bid submitted by the Supplier if a Supplier:

- a) has, at any time, threatened, commenced or engaged in a claim or litigation against the Corporation, except an adjudication under the Construction Act;
- b) is a respondent in a claim or litigation initiated by the Corporation;
- c) previously provided Goods and/or Services to the Corporation in an unsatisfactory manner;
- d) has failed to satisfy an outstanding debt owed by the Supplier to the Corporation
- e) provides incomplete, unrepresentative references, or receives unsatisfactory external and/or internal references in a reference check in relation to the bid solicitation.

26 Receipt of Goods

The Department Head or his/her designate, shall arrange for the prompt inspection of goods on receipt to confirm conformance with the terms of the contract and inform the Treasurer of discrepancies immediately.

The Department Head shall coordinate an appropriate course of action with the Treasurer, for any non-performance or discrepancies.

27 Access to Information

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

28 Unsolicited Bids

Unsolicited Bids received by the Township shall be reviewed by the Department Head or Treasurer. Any procurement activity resulting from the receipt of an unsolicited Bid shall comply with the provisions of the Non-Standard Procurement requirements of this By-law.

29 No Local Preference

The following two legislative documents prohibit municipalities from adopting a Local Preference By-law:

- a) The Discriminatory Business Practices Act (R.S.O. 1990, Chapter D12), as amended; and
- b) The Canadian Governments implementation of the Agreement of Internal Trade.

The primary objective of the purchasing process is to acquire Goods/Services at the lowest possible cost, consistent with the demands of suitability, quality, service, and delivery capabilities.

30 Exclusion of Bidders in Litigation

The Township may, in its absolute discretion, reject a bid submission prior to or after a bid opening from any bidder that is:

- in litigation with the Township; or
- is directly or indirectly, including by common ownership or control or otherwise, related to a party to litigation with the Township; or
- intending to use a sub-contractor in respect of a specific project who is party to litigation with the Township or who is directly or indirectly, including by common ownership or control or otherwise, related to a party to litigation with the Township.

Bids from any Bidder in any of these circumstances shall be rejected as informal and non-compliant.

Appendix A – Definitions

“Authority” means the authorization to proceed with procurement.

“Bid” means an electronic offer or submission from a bidder received in response to a request for quotation, tender, proposal or any other request, which is subject to acceptance or rejection.

“Bidder” means a supplier who submits a Bid and includes proponents and respondents.

“Bid Deposit” means the form of security required by the terms and conditions of bid solicitation documentation to guarantee that the successful bidder enters into a contract with the Municipality and performs the services/work, as required by Section 27 of this by-law.

“Bidding System” means the Township’s online web-based solution for issuing solicitations and/or receiving online bid submissions and posting bid results.

“Bid Irregularity” means a deviation between the requirements of a Bid Document request and the information provided in the Bid.

“Bid Solicitation” means a formal request for competitive bids that may be in the form of a Request for Tender, Request for Quotation or Request for Proposal.

“Budget” means a Budget approved by Council, in an annual Budget document or by specific Council resolution to acquire a Deliverable, including pre-commitments and any subsequent change to such a Budget either by Council or by Delegated authority.

“Chief Administrative Officer (CAO)” means the Township’s employee with that title or person acting in that capacity as designated by By-Law.

“Conflict of Interest” is defined as a situation or circumstance, real or perceived that could give a supplier or consultant an unfair advantage during a procurement process or compromise the ability of a supplier or consultant to perform its obligations under the contract.

“Contract” means any form of a legally binding agreement between two or more legal entities, awarded under this by-law.

“Council” means the Council of the Township of Greater Madawaska.

“Department” means any division within the Township.

“Department Head” means the person chosen by the Township or delegated by the CAO to be the head of a Department.

“Designate” means a person or persons assigned the duties and responsibilities on behalf of or in the absence or incapacity of the person charged with the principal authority to take the relevant action or decision.

“Electronic Bidding” means a method of issuing bids and/or receiving bids through a bidding system over the internet.

“Emergency” means a situation, or the threat of an impending situation, where the purchase of goods and services is required immediately, to mitigate the effects of the situation on the environment, the life, safety, health and/or welfare of the general public, or the property of the residents of the Municipality, or to prevent serious damage, disruption of work, or to restore or to maintain essential service to a minimum level;

“Goods/Services” means all goods and services, as set out in the Bid Document, which include all supplies, materials, equipment, general maintenance and services, construction and works contracts, leases, rentals, and repairs of equipment; consulting and professional services, including the services provided by architects, engineers, designers, real estate appraisers,

management or financial consultants, brokers or lawyers and any other consulting or professional service rendered on behalf of the Township.

“Insurance” means certified documents issued by an insurance company licensed to operate by the Province of Ontario stating that the bidder is insured in accordance with the Township’s insurance requirements as contained in the bid documents and that the Township is named as an additional insured.

“Lowest Responsive” means the bidder who fully complied with all of the bid requirements and whose past performance, reputation, and financial capacity is deemed acceptable, and who has offered the most advantageous pricing or cost-benefit, based on the criteria stipulated in the bid documents.

“Major Irregularity” means an irregularity in a Bid, such that a strict compliance component is missing, which is required at the time of Bid submission, affecting the price, quality, quantity or delivery and is material to the Award. If the irregularity is permitted, the Bidder/Proponent could gain an unfair advantage over competitors.

“Minor Irregularity” means an irregularity in a Bid, such that a Bid submission is substantially compliant, and the irregularity affects form rather than substance. The effect on the price, quality, quantity or delivery is not material to the Award. If the irregularity is permitted, the Bidder/Proponent would not gain an unfair advantage over competitors.

“Municipality” means the Corporation of the Township of Greater Madawaska;

“Municipal Solicitor” means the Municipal Solicitor or the solicitor retained by the Municipality to act on behalf of the Corporation of the Township of Greater Madawaska, or designate;

“Non-competitive Procurement” is a method of procurement that is not competitive which is to be used in specific circumstances. It includes sole sourcing and single sourcing. It is used to allow for procurement in an efficient and timely manner without seeking competitive pricing or to provide for additional exceptions as specified in this by-law.

“Party to litigation with the Township” includes cases in which the Bidder or prospective Bidder or any of the parties included have advised the Township in writing of their intent to commence litigation or have commenced or have advised the Township of their intention to commence an arbitral proceeding against the Town.

“Petty Cash” means a small amount of discretionary funds in the form of cash used for expenditures where it is not feasible to make the disbursement by any other means.

“Professional Services” means persons having a specialized knowledge or skill for a defined Service requirement including, architects, engineers, designers, management and financial consultants; and firms or individuals having specialized competence in environmental, planning or other disciplines;

“Proposal” means an offer submitted in response to a Request for Proposal, acceptance of which may be subject to further negotiation.

“Proponent” means a person, supplier, vendor, contractor; developer or professional submitting a Proposal.

“Purchasing” means the Purchasing Section of the Finance Department.

“Purchase Order” means a written offer to a supplier formally stating all terms and conditions for the purchase of goods or service or a written acceptance of an offer received in accordance with this By-law.

“Quotation” means a formal statement of the estimated cost of a job, good, service or construction or an offer to sell goods and services to the Municipality or an offer to purchase surplus goods from the Municipality.

"Security Deposit" means a deposit of securities by a supplier that the Township may convert under defined conditions to complete the supplier’s contractual obligation.

"Selection Committee" means a committee comprised of at least three staff members who are knowledgeable about a project under review and charged with the responsibility of evaluation of proposal submissions. The CAO shall appoint the committee members.

“Services” includes all professional and consulting services, all services in relation to real property or personal property including, without limiting the foregoing, the delivery, installation, construction, maintenance, repair, restoration, demolition or removal of personal property and real property and all other services of any nature and kind save and except only services to be delivered by an officer or employee of the Municipality in accordance with terms of employment;

“Single Sourcing” means the procurement of Goods/Services from a particular Bidder/Proponent rather than through the solicitation of Bids from multiple Bidders/Proponents who can also provide the same/similar Goods/Services.

“Sole Sourcing” means the procurement of Goods/Services that are unique to a particular Bidder/Proponent and cannot be obtained from another source.

“Substantive Objection” means a written objection provided to the procurement division from a supplier with respect to a bid solicitation giving specific reasons for the objection.

“Tender” means a written detailed offer where the estimated value exceeds \$25,000 from a supplier to supply goods, services or construction.

“Total Acquisition Cost” means an evaluation of quality and service in the assessment of a bid and the sum of all costs including purchase price, all non-refundable taxes, warranties, local service costs, life cycle costs, time of completion or delivery, inventory carrying costs, operating and disposal costs for determining the Lowest Compliant bid;

“Township” means The Corporation of the Township of Greater Madawaska.

“Treasurer” means the Township’s employee with that title or person acting in that capacity as designated by By-Law.

Appendix B – Exceptions/Exemptions from Competitive Process (under \$25,000)

Unless otherwise noted, Goods/Services (under \$25,000.00) as set out below may be procured without a competitive process, subject to the funds being available in the Operating Budget or the Capital Budget for that purpose:

Utilities (excluding purchases arranged through 3rd party agreements):

- a) Electricity;
- b) Hydro;
- c) Water and Sewer;
- d) Propane;
- e) Oil
- f) Telephones & Long Distance Service (excludes cellular phones & services);
- g) Internet.

Training and Education:

- a) Membership Fees - Professional Association;
- b) Magazine and Periodical Subscriptions;
- c) Books;
- d) Registration for Conferences, Seminars & Conventions;
- e) Courses;
- f) Staff Training, Development, Workshops & Reports.

Refundable Employee Expenses;

- a) Advances;
- b) Meal Allowances;
- c) Travel & Hotel Accommodations;
- d) Entertainment;
- e) Miscellaneous – Non Travel;

Federal/Provincial/Municipal Mandated Programs;

Advertising:

- a) Newspapers (National and Local);
- b) Radio;
- c) Television;
- d) Periodicals;
- e) Trade Journals;
- f) Magazines;
- g) Internet (Specialty Association Websites, such as AMCTO, OPBA).

Software (Proprietary, Non-Value Added Resellers):

- a) Annual maintenance fees for software already approved under the requirements of this By-law, where the approved vendor is the sole source provider of the maintenance service;
- b) Software upgrades for software already approved under the requirements of this By-law (including support and training), where the vendor is the sole source provider of the upgrade service;
- c) Additional software licenses for software already approved under the requirements of this By-law, where the vendor is the sole source of the licensing service.

General Expenses:

- a) Postage, Courier;
- b) Petty Cash & Replenishment;
- c) Newspaper Subscriptions;
- d) Licenses (i.e. Vehicles);
- e) Transportation (Bus, Train, Airplane);
- f) Insurance;
- g) Legal Services
- h) Building Lease Payments;

- i) Payroll Deduction Remittances;
- j) Medical
- k) Grants to Agencies;
- l) Damage Claims;
- m) Tax remittances;
- n) Charges to/from other Government or Crown Corporations
- o) Employee income.

Certain Professional and Special Services:

- a) Arbitration Services;
- b) Mediation Services;
- c) Legal Settlements;
- d) Witness fees;
- e) Bailiff or collection agencies
- f) Additional Non-recurring Accounting and Auditing Services;
- g) Group benefits;
- h) Physician Services;
- i) Counselling Services;
- j) Committee Fees;
- k) Temporary Help;
- l) Banking & Underwriting Services (where covered by Agreements);
- m) Providers of artistic or specialized services, such as; instructors for dance, yoga, karate; artists; entertainers or entertainment products, etc. (providing the total acquisition cost is less than \$25,000);
- n) Catering (excluding concessions & vending services).

Public Relations:

- a) Trade Show Registration;
- b) Trade Show Booth Rentals;
- c) Event Sponsorship.

Appendix C – Bid Irregularities

IRREGULARITIES CONTAINED IN BIDS
Non-exclusive list

Item	Irregularity	Response
1.	Late Bids	Automatic Rejection, not read publicly, returned unopened to the bidder.
2.	Unsealed envelopes	Automatic Rejection, not read publicly, returned unread to the bidder.
3.	Financial Security – Execution a. No bid deposit, cheque not certified or not an original financial security (e.g. a photocopy or a facsimile of a financial security).	Automatic Rejection
	b. Insufficient financial security	Automatic Rejection, unless in the opinion of Department Head the insufficiency in the financial security is trivial or insignificant.
	c. Signature and/or Corporate Seal of Contractor or of bonding company or both are missing from bid bond.	A Bid bond must be executed (signed) by both the Principal (Contractor) and Surety (Bonding Company) to be valid. If either signature is missing, the response is Automatic Rejection. If one or both Corporate Seals is missing, the bond is still considered to be valid and no additional action is required.
4.	Bid Document – Execution a. Bids not executed in non-erasable medium and signed in ink.	Automatic Rejection
	b. Bid document missing signature of authorized representative, whether corporate seal affixed or not.	Automatic Rejection
	c. Bid documents in which all Addenda issued have not been acknowledged.	Automatic Rejection, unless in the opinion of the CAO, the Addenda do not significantly impact the bid, in which case the bidder will be given 48 hours to formally acknowledge the Addenda, with no change permitted to the original financial bid.
5.	Incomplete Bids • Partial bids, all required items not bid	Automatic Rejection
6.	Qualified Bids • bids qualified or restricted by a written statement, whether within the form of tender or included as an attachment	Automatic Rejection
7.	Bids received on documents other than those provided by the Township.	Automatic Rejection, unless in the opinion of the CAO, the intention of the bidder is clear, and the bid submission details do not deviate in any material manner from those provided by the Township.

8.	Bids Containing Clerical or Mathematical Errors a. Uninitialed changes to the bid document, which are in the opinion of Director trivial in nature.	After official notification from the Department Head, the bidder has 48 hours to rectify the situation and initial any changes.
	b. Uninitialed changes to the unit prices in the price schedule and the contract totals are consistent with the price as amended.	After official notification from the Department Head, the bidder has 48 hours to initial the changes.
	c. Extension error, based on quantity provided in bid document and unit rate provided by bidder.	Mathematical error corrected by the Department, using the unit price.
9.	Mistakes in Tendering • on the application of the bidder and the clear demonstration of an error in the tender or in the bidder's calculation sheets	Following consultation with the bidder, the Department Head may allow the bidder to withdraw the bid, in writing, without financial penalty. In some instances the CAO may elect to retain the bid deposit.
10.	Other Irregularities	The CAO and the Department Head shall have authority to waive irregularities, which are considered to be trivial or insignificant.
11.	Any Irregularity	Despite any provisions herein contained, Township of Greater Madawaska Council may waive any irregularity, where Council, in its' sole opinion, considers it to be in the best interests of the Township.