

BY-LAW NUMBER 2015-34

BEING A BY-LAW RESPECTING THE PURCHASE OF GOODS, SERVICES AND CONSTRUCTION FOR THE TOWNSHIP OF NAIRN AND HYMAN

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, subsection 270 (3) requires municipalities to adopt policies with respect to its procurement of Goods and Services;

AND WHEREAS the council of The Corporation of the Township of Nairn and Hyman (the "**Township**") deems it advisable to establish authority and policies governing the procurement of Goods and Services and payment therefor;

AND WHEREAS in view of the volume and complexity of the Township buying activity, it is recognized that professional skills may be required to ensure that the required quality and quantity of Goods and Services are procured in the most efficient and economical manner;

AND WHEREAS the Chief Administrative Officer is charged with the responsibility for the acquisition of all Goods and Services required by the Township, and shall seek the lowest overall Bid or solution by considering total acquisition cost and benefits in carrying out this responsibility in accordance with this By-law;

AND WHEREAS the Township desires to ensure objective and equitable treatment of all Suppliers and purchasers;

NOW THEREFORE the Council of The Corporation of the Township of Nairn and Hyman hereby enacts as follows:

1. DEFINITIONS

1.1 In this By-law,

- (a) "**Award**" means authorization to proceed with the purchase of Goods or Services from a chosen supplier;
- (b) "**Acquisition Method**" means the process by which Goods or Services are procured;
- (c) "**Bid**" means an offer or submission received from a Supplier in response to a Bid Request, which offer or submission may be subject to acceptance or rejection;
- (d) "**Bidder**" means one who submits a Bid in response to a Bid Request;
- (e) "**Bid Irregularity**" and "**Bid Irregularities**" means a variance between the requirements (terms, conditions, specifications, special instructions) of a Bid Request and the information provided in a Bid. A Bid Irregularity is classified as a "**Major Irregularity**", or "**Minor Irregularity**" or a "**Mathematical Error**" and is defined as follows:
 - (i) "**Major Irregularity**" and "**Major Irregularities**" means a deviation from the Bid Request which affects the price, quality, quantity or delivery, and is material to the Award;
 - (ii) "**Minor Irregularity**" and "**Minor Irregularities**" is a deviation from the Bid Request which affects form, rather than substance and the effect on the price, quantity or delivery is not material to the Award;
 - (iii) "**Mathematical Error**" and "**Mathematical Errors**" is a deviation in addition, subtraction, multiplication or division, or a transposition error which may or may not affect the total price;

- (f) **“Bid Request”** means a formal request for Bids or a solicitation, which may be in the form of a Request for Quotation, Request for Tender or Request for Proposal;
- (g) **“Blanket Purchase Order”** means a Purchase Order which establishes prices or a method for determining prices, terms and conditions and the period of time during which a Supplier agrees to provide Goods or Services to the purchaser upon the purchaser’s demand;
- (h) **“Chief Administrative Officer”** means that person appointed as the Township’s Chief Administrative Officer and includes his or her designate(s);
- (i) **“Competitive Method”** means an Acquisition method whereby Suppliers are given an equal opportunity to submit Bids in accordance with this By-law;
- (j) **“Construction”** means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, soil investigation, the supply of products and materials and the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering design or architectural work, but does not include professional services related to the construction contract unless they are included in the specifications for the procurement;
- (k) **“Contract”** means an agreement by way of a Purchase Order or other agreement;
- (l) **“Council”** means the Council of The Corporation of the Township of Nairn and Hyman;
- (m) **“Department Head”** means the general manager of any Township department and includes his or her designate(s);
- (n) **“Disposal”** means the removal of material from the Township by sale, trade-in, alternative use or destruction;
- (o) **“Emergency”** means a situation where the immediate acquisition of Goods, Services or Construction is essential to prevent serious delays, injury, damage or to restore or maintain required service;
- (p) **“Emergency Method”** means a procurement process where the usual competitive acquisition rules are suspended due to the prevailing emergency circumstances;
- (q) **“Goods and Services”** and **“Goods or Services”** includes labour, supplies, materials, equipment and services of every kind, including Construction;
- (r) **“Lowest Acceptable Bid”** means the lowest price submitted which meets the requirements and specifications as set out in the Bid Request, with Minor Irregularities accepted;
- (s) **“Negotiation Method”** means an Acquisition Method whereby the Township may confer with one or more Suppliers leading to an agreement on needed Goods and Services under the conditions of this By-law;
- (t) **“Procure”** means to acquire by purchase, rental, lease or trade;
- (u) **“Public-Private Partnership”** means a cooperative venture between the Township and a private corporation, built on the expertise of each partner, that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards;
- (v) **“Purchase Order”** means a written offer to procure Goods and Services or a written acceptance of an offer to acquire Goods and Services made on the Township’s form;
- (w) **“Request for Information”** means a written request for details on a Supplier’s background and the Goods or Services being offered. Such information shall be used to pre-qualify Suppliers to be invited to submit Bids;

- (x) **“Sole Source”** means there is only one source of supply of particular Goods or Services;
- (y) **“Single Source”** means there is more than one source in the open market but only one of these is recommended for consideration in a Contract;
- (z) **“Standard Form Contract”** means a completed (signed and accepted) Purchase Order;
- (aa) **“Substantially Non-compliant Bid”** means a Bid which fails to comply substantially with the Bid Request;
- (bb) **“Supplier”** means a person, corporation or other entity providing or seeking to provide Goods and Services to the Township;
- (cc) **“Total Project Cost”** means the sum of all costs that would normally be paid to one Supplier for Goods or Services required to meet a major objective over a period of time;
- (dd) **“Township”** means The Corporation of the Township of Nairn and Hyman.

2. PURCHASING PRINCIPLES

2.1 The Township’s purchasing principles are as follows:

- (a) To procure the necessary quality and quantity of Goods and Services in an efficient and cost effective manner;
- (b) to consider the total cost of acquisition, including repair, staff training, operation and disposal rather than only the lowest invoice price;
- (c) to give full consideration to the total project cost and/or to the annual aggregate value of specific Goods or Services prior to determining the appropriate acquisition method;
- (d) to procure necessary Goods and Services with due regard to the preservation of the natural environment, to encourage Suppliers to supply Goods made by a method resulting in the least damage to the environment and to encourage Suppliers to supply Goods incorporating recycled materials where practicable.

2.2 The Township reserves the right to enter into a Public-Private Partnership in regards to the delivery of Goods and Services, if it is deemed to be in the best interest of The Corporation of the Township of Nairn and Hyman.

3. GENERAL

3.1 The Chief Administrative Officer:

- (a) shall exercise general supervision and control over the procurement of all Goods and Services in accordance with this By-law;
- (b) shall recommend to Council any suggested changes to administrative rules of procedure as are necessary to implement the policy contained in this By-law;
- (c) may direct negotiations for the purpose of co-operative buying procedures with other municipal bodies and agencies as may be deemed advantageous to the Township.

3.2 All acquisitions made by the Township shall be carried out in accordance with this By-law, other by-laws and Township policies and principles established from time to time.

3.3 All acquisitions shall be in accordance with approved departmental budgets and estimates except where Council by-law or resolution otherwise determines.

3.4 The Township shall be under no obligation to accept the lowest Bid or any Bid received in response to a Bid Request.

- 3.5 The Township reserves the right to cancel and reissue a Bid Request at any time prior to making a decision to accept a Bid.
- 3.6 The Chief Administrative Officer may remove a Supplier's name from consideration for contracts under this By-law on the basis of poor performance or non-performance on a Township contract with the approval of Council.

4. METHODS OF ACQUISITION

4.1 REGULAR PURCHASES

- (a) Purchases of \$50 or less

Notwithstanding any other provisions of this By-law, the acquisition of the items listed in Appendix "A" shall not require a Purchase Order unless requested by the Supplier.

- (b) Purchases not exceeding \$1,500

The acquisition of Goods and Services having a value of \$50 to \$1,500 which are not covered by Blanket Purchase Order shall be carried out by the Department Head in accordance with the principles set out in this By-law and such other applicable policies and procedures established from time to time.

- (c) Purchases not exceeding \$5,000

Goods and Services having a value of \$1,500 to \$5,000 may be purchased as deemed by the Chief Administrative Officer to be the most economically and beneficial method to the Township in accordance with the principles set out in this By-law.

4.2 COMPETITIVE METHOD

- (a) Purchases not exceeding \$25,000

- (i) For the acquisition of Goods and Services with an estimated value of at least \$5,000 and less than \$25,000, at least three written Bids shall be solicited, reviewed and accepted/rejected by the Township in consultation with the requisitioning Department Head to be approved by Council.

- (b) Purchases exceeding \$25,000

- (i) The following process shall be followed for the acquisition of Goods and Services with an estimated value of at least \$25,000.00 or more:

- (ii) the Chief Administrative Officer in consultation with the requisitioning Department Head shall:

- (1) advertise the Bid Request;
- (2) receive the written Bids up to the published deadline date;
- (3) co-ordinate the opening and review of Bids; and
- (4) prepare a report to Council outlining the Bids received, identifying any Bid Irregularities and making recommendations regarding the Bids.

- (iii) Bidder inquiries, concerning the Bid, prior to closing, should be faxed or emailed to the Township. As deemed prudent by the Township, the Department Head or other person receiving the questions will provide these questions and their respective answers, in writing, to all potential Bidders prior to the closing of the Bid. Any questions and answers occurring during telephone calls, meetings, site visits or information sessions will be treated in the same fashion, where possible.

- (iv) Errors in completing the Bid cannot be corrected unless the Bid is completely withdrawn and resubmitted prior to the closing of the Bid Request.

- (v) Bids shall be opened at a public meeting at the appointed time and place as determined by the Chief Administrative Officer, with notice to all Bidders and such opening shall be open to the public.
 - (vi) Any decision as to acceptance or rejection of Bids due to non-compliance with the Bid Request will not be made until a review of the Bids has been conducted by the Chief Administrative Officer.
 - (vii) Bid Irregularities will be treated as follows:
 - (1) The Chief Administrative Officer shall declare a Bid a Substantially Non-compliant Bid where it contains a Major Irregularity. A Substantially Non-compliant Bid shall be rejected.
 - (2) The Chief Administrative Officer may correct a Minor Irregularity.
 - (3) The Chief Administrative Officer may correct a Mathematical Error based on the unit price bid, including sales tax amounts, if applicable. Where the intent of a price, unit or otherwise is unclear, the Bid may be declared Substantially Non-compliant.
 - (viii) A decision to accept a Bid will be made by resolution of Council after which time the successful Bidder shall be notified.
 - (ix) The Township reserves the right, in its sole discretion, to reject any or all Bids, and the lowest or highest Bid, as the case may be, will not necessarily be accepted.
- (c) The Department Head may compile a list of qualified Bidders when:
- (i) a large number of Bids is anticipated and the evaluation of Bids would create an undue cost burden to the Township; or
 - (ii) it is desirable to pre-qualify Bidders to establish criteria prior to bidding;
- provided that:*
- (iii) potential Bidders are invited by the Chief Administrative Officer to reply to a Request for Information advertised in a publication of general circulation;
- and*
- (iv) all submissions received in response to item 4.2 c iii) shall be reviewed by a Supplier selection committee composed of the Chief Administrative Officer, the Department Head of the requisitioning department, the Mayor, Council and the hired consultant (if applicable), and the committee shall prepare a list of all potential Bidders who meet the stated criteria.

4.3 NEGOTIATION METHOD

- (a) Notwithstanding any other provisions of this By-law, in consultation with the requisitioning Department Head, the Chief Administrative Officer may enter into negotiations with one or more Suppliers for the supply of Goods or Services when any of the following exists:
 - (i) due to market conditions, Goods or Services are in short supply;
 - (ii) there is only a Sole Source of the subject Goods or Services;
 - (iii) two or more identical acceptable low Bids have been received;
 - (iv) efforts at breaking identical Bids have previously been unsuccessful and the same Goods or Services are required again;
 - (v) all acceptable Bids exceed the amount budgeted for the Goods or Services;
 - (vi) all Bids received are not acceptable;
 - (vii) the extension or reinstatement of an existing contract would be more cost effective or beneficial to the Township;

- (viii) a Single Source is being recommended because it is more cost-effective or beneficial;
 - (ix) when Goods are required for resale and the determining criteria is marketability and profitability or when costs are recovered through customer/consumer preference;
 - (x) when authorized by Council.
- (b) Where the negotiation method set out in Section 4.3 a) is used to select a Supplier of Goods or Services, except professional and consulting services, with a value of at least \$10,000 or where the extension of an existing contract exceeds twenty per cent (20%) of the original contract value, the Chief Administrative Officer and the requisitioning Department Head shall submit a report to Council prior to the award of the contract setting out the circumstances for recommending the award.

4.4 PROFESSIONAL AND CONSULTING SERVICES

All professional and consulting services are to be approved by Council with written and signed agreements by both parties. This includes but is not limited to engineers, lawyers, surveyors and appraisers.

4.5 EMERGENCY METHOD

Notwithstanding any other provision of this By-law, where an Emergency exists;

- (a) the Department Head is authorized to requisition the Mayor to obtain necessary Goods or Services with a value of less than \$10,000 by the most expedient economical and practicable means in the circumstances;
- (b) the Department Head is authorized to requisition the Chief Administrative Officer to call an emergency Council meeting to obtain necessary Goods or Services having an estimated value of at least \$10,000 and over, by the most expedient, economical and practicable means in the circumstances, provided that the Department Head in consultation with the Chief Administrative Officer shall submit a report to Council explaining the circumstances giving rise to the Emergency.

4.6 CO-OPERATIVE TENDERS

The Chief Administrative Officer shall have the authority to join or participate with other units of government including local boards, commissions and agencies in co-operative purchasing, and bulk buying of Goods and Services. Purchases made through co-operative buying procedures involving the Township require the approval of Council only where the Township's portion of the purchase will be or exceeds \$75,000 in value, excluding taxes and freight. If the Township participates with another unit of government in co-operative purchasing, the policies of the agency calling the co-operative Bid shall apply. Purchases made through co-operative buying procedures will still follow all approvals and reporting as outlined in this By-law.

4.7 PUBLIC-PRIVATE PARTNERSHIP

- (a) Notwithstanding any other provision of this By-law, where it has been determined to be in the best interest of the Township by way of Council motion, the Chief Administrative Officer may enter into a Public-Private Partnership in regards to the purchase and delivery of major Goods and Services.
- (b) This procurement method is to be used only in the circumstances wherein it has been determined to be the most economical, efficient and practical method of procurement.
- (c) The procedures and practices surrounding any Public-Private Partnership are to be determined by Council in co-operation with the Chief Administrative Officer.

5. SPECIFICATIONS

- 5.1 The department whose budget provides for the acquisition of Goods and Services shall be responsible, in consultation with the Chief Administrative Officer and any other

Township department as appropriate, for the preparation and approval of all specifications to be used for the acquisition of such Goods or Services.

- 5.2 Wherever practicable, the Acquisition Method utilized shall provide for consideration of alternatives to approved specifications provided that all potential Bidders shall be notified that minor amendments to approved specifications may be made without further notice.

6. REPORTS TO COUNCIL

- 6.1 In addition to other reporting requirements set out in this By-law, a report shall be submitted to Council by the requisitioning Department Head or CAO prior to an expenditure when:

- (a) the acquisition has a value of \$5,000 and over;
- (b) the acquisition has a value of \$5,000 and over and the Lowest Acceptable Bid is not being recommended,
- (c) the purchase being suggested will exceed the budgeted amount for the given year.

7. DISPOSAL OF SURPLUS GOODS

- 7.1 On a least an annual basis, each Department Head shall identify Goods which become surplus to their needs and submit such lists to the Chief Administrative Officer for disposal.

- 7.2 The method of disposal used on a particular surplus time will be that which results in the best overall benefit to the Township, such as:

- (i) scrap, dismantle or destroy, classify as waste and dispose;
- (ii) transfer to another department for use within the Township;
- (iii) donate to a non-profit charitable organization;
- (iv) trade-in, return to supplier for credit;
- (v) invite public or selective quotations by newsletter and newspaper advertisement;
- (vi) public auction or tender.

8. PROHIBITIONS

- 8.1 The division of Contracts or purchases to avoid the requirements of this By-law is prohibited.

9. INTERNAL POLICY ONLY

- 9.1 This By-law is enacted solely as an internal policy for the Township and the provisions hereof do not confer any rights of any kind whatsoever on any other person including, but not limited to, persons supplying or seeking to supply or asserting claims with respect to the supply of Goods or Services to the Township, whether or not the Township, its Council, officers agents or employees, have acted in accordance herewith.

10. NOTES

- 10.1 By-law number 2013-12 of the Township of Nairn and Hyman is hereby repealed.
- 10.2 10.2 This By-law may be referred to as the "Purchasing By-law".
- 10.3 This By-law shall come into full force and effect immediately upon passing.

Read a first and second time this 14th day of December, 2015.

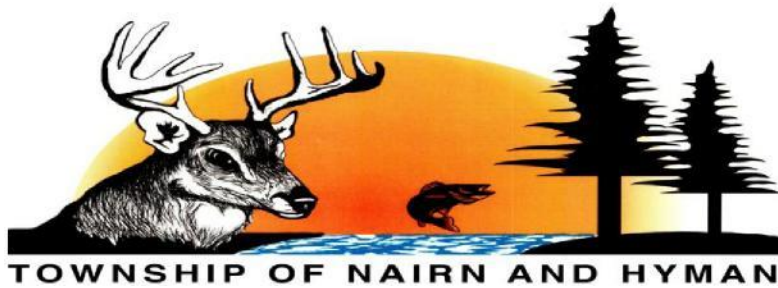
Read a third time and passed in open Council this 14th day of December, 2015.

(Original Signature on File

Laurier Falldien, Mayor

(Original Signature on File

Robert Deschene, CAO Clerk-Treasurer



SCHEDULE "A"
TO
BY-LAW NUMBER 2015-34

Subject to all applicable Township policies and procedures a Purchase Order is not required for the following items unless requested by the Supplier:

- 1.00 Purchases of \$50.00 or less.
- 2.00 Training and Education:
 - (a) Conferences
 - (b) Courses
 - (c) Conventions
 - (d) Memberships
 - (e) Seminars
 - (f) Periodicals
 - (g) Magazines
 - (h) Staff Training
 - (i) Staff Development
 - (j) Staff Workshops
- 3.00 Refundable Employee Expenses:
 - (a) Advances
 - (b) Meal Allowances
 - (c) Travel Expenses
 - (d) Hotel Accommodation
- 4.00 Employer's General Expenses
 - (a) Payroll Deduction Remittances
 - (b) Licences (vehicles, radios, etc.)
 - (c) Debenture Payments
 - (d) Grants or Donations to Agencies
 - (e) Bank Charges
- 5.00 Utilities
 - (a) Postage
 - (b) Electricity
 - (c) Gas
 - (d) Telephone Service Charges

Subject to all applicable Township policies and procedures, prior Council approval is not required for the payment of the following Goods and Services:

postage, utility charges (natural gas, electricity, etc.), contract items previously approved by Council, payroll related deductions, (police, health, etc.) and credit card purchases where interest will be charged by a particular due date.