

THE CORPORATION OF THE TOWN OF MILTON

BY-LAW NO. 044-2017

BEING A BY-LAW TO ESTABLISH POLICIES FOR THE PROCUREMENT OF GOODS AND SERVICES, AND THE DISPOSAL OF SURPLUS GOODS, AND TO REPEAL BY-LAW NO. 079-2014.

WHEREAS the Council of the Corporation of the Town of Milton, recognizing its responsibility for the effective utilization of all of its resources, is desirous of codifying sound policies for the purpose of procuring goods and services in a manner that fulfils its mandate to provide effective, responsible government and efficiently deliver services to the residents of the Town of Milton;

AND WHEREAS in view of the complexity and volume of Town activities, it is recognized that professional skills are required to ensure that the required quality and quantity of goods and services are procured in an efficient and economical manner;

AND WHEREAS the Corporate Services Department is charged with the centralized responsibility for the acquisition of all goods and services and the disposal of Town assets;

AND WHEREAS the Town of Milton will follow the guidelines set out in the codes of ethics established by the Purchasing Management Association of Canada and the National Institute of Government Purchasers;

AND WHEREAS Town Council is desirous of repealing By-law No. 079-2014;

NOW THEREFORE the Council of the Corporation of the Town of Milton hereby enacts as follows:

1. **THAT** Schedule "A" forms part of this By-law and is hereby adopted.
2. **THAT** By-Law No. 044-2017 shall be known as the Purchasing By-law.
3. **THAT** By-law No. 079-2014 is hereby repealed in its entirety.
4. **AND THAT** this By-law shall come into effect on the day it is passed.

PASSED IN OPEN COUNCIL ON APRIL 10, 2017.

Gordon A. Krantz

Mayor

Troy McHarg

Town Clerk

SCHEDULE 'A'

**PURCHASING BYLAW
TOWN OF MILTON**

Effective: April 10, 2017

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1. PURPOSE

- 1.1. The purpose of this bylaw and the procurement procedures authorized herein are:
 - 1.1.1. to encourage competition;
 - 1.1.2. to obtain the highest quality goods and services at a cost effective price;
- 1.2. To ensure fairness, objectivity, accountability and transparency in the procurement/contract process;
- 1.3. This bylaw shall apply to the purchase of all goods, services and construction by all Town staff.

2. OBJECTIVES

- 2.1. Open, Objective and Competitive Process – to encourage open competitive bidding for the acquisition or disposal of all goods and services. Bids are solicited for purchases with an annual total value of over \$10,000 (inclusive of taxes and freight) and the lowest compliant bid is awarded the contract. All bids over \$10,000 will be posted on the Town web page www.milton.ca and advertised on the Ontario Public Buyers web page www.opba.ca and on www.biddingo.ca.
- 2.2. Transparent – The procurement process is undertaken based on a clear definition of the product or service required and a clear outline of the criteria used in the evaluation. With regards to quotations and tenders, the decision to choose the low bidder will be based solely on the requirements as documented, the bidder's document and the evaluation criteria. Total project costs will be considered, including, but not limited to training, maintenance, quality, warranty, payment terms, conversion costs and trade-in value. A list of suppliers bidding on contracts over \$10,000 is available on the Town web site. In addition, once the bids are closed a summary of quotation and tender prices are available on the Town web site.
- 2.3. Fair – The process will be fair, such that no action is undertaken by Town staff to allow any given bidder an unfair advantage or disadvantage.
- 2.4. Efficient – Purchases may be grouped with other departments or with other agencies to minimize administrative costs and to maximize buying power through economies of scale.

3. DEFINITIONS

3.1. In this bylaw:

- 3.1.1. “Award” means the authorization to proceed with the purchase of goods, services or construction.
- 3.1.2. “Authority” or “Authorized” means the legal right to conduct the tasks outlined in this bylaw as directed by Council and delegated through the Office of the Chief Administrative Officer to the Deputy CAO/CFO and subsequently to the Director, Finance Manager, Purchasing and Risk Services. Authorized purchases are those that have prior approval of Council either through resolution, delegated authority or an emergency purchase.
- 3.1.3. “Best value” means the optimal balance of performance and cost. It may include a time horizon that reflects the overall life cycle of a given asset or service.
- 3.1.4. “Bid” means an 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.
- 3.1.5. “Bidder” means any legal entity that submits a bid in response to a call for bids.
- 3.1.6. “Bid Deposit” means currencies, certified cheques, or other form of negotiable instrument or bond surety issued by a surety company to ensure the successful bidder will enter into an agreement.
- 3.1.7. “Bid Irregularity” means a deviation between the requirements (terms, conditions, specifications, special instructions) of a bid request and the information provided in a bid response.
- 3.1.8. “Blanket Order” means an agreement between the Corporation and a supplier under which the supplier agrees to sell a product or service to the Corporation for an agreed period of time, terms and conditions and at an agreed pricing arrangement.
- 3.1.9. “Call for bids” means a formal request for bids and includes, but is not limited to, a request for quotations, tenders and proposals.
- 3.1.10. “CAO” means the Chief Administrative Officer of the Town of Milton or appointed delegate.

- 3.1.11. "Certificate of Clearance" from the Workplace Safety and Insurance Board means a certificate issued by an authorized official of the Workplace Safety and Insurance Board certifying that the Board waives its rights under subsection 9(3) of the Work Place Safety and Insurance Act, R.S.O. 1997, Chapter 16, Schedule A, Section 141.
- 3.1.12. "Compliance" means that a bid meet the terms in all material respects with the requirements set out in the call for bids documentation.
- 3.1.13. "Construction" means construction, reconstruction, demolition, repair or renovation of a building or structure and includes 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 to a building or structure.
- 3.1.14. "Consulting and professional services" means those services requiring the skills of a professional for a defined service and includes the services of architects, landscape architects, engineers, designers, surveyors, planners, accountants, auditors, management and marketing professionals, software and information technology experts, financial consultants, lawyers, law firms, real estate agents and brokers, environmental planners and engineers, hydro geologists, transportation planners and engineers, communications consultants and any other consulting services which may be required by the Town.
- 3.1.15. "Contingency" means costs that are in addition to, or exceed any stipulated contract or price agreement and which result from unforeseen or unexpected conditions or circumstances, which could not have been reasonably anticipated and which arise during the currency of the term of the contract or price agreement.
- 3.1.16. "Contract" means any form of a legally binding agreement between two or more legal entities, awarded under this bylaw.
- 3.1.17. "Contractor" means any legal entity to which a contract is awarded.
- 3.1.18. The "Corporation" or "the Town" means the Corporation of the Town of Milton.

- 3.1.19. "Council" means the Municipal Council of the Corporation of the Town of Milton.
- 3.1.20. "Delegated Purchasing Report" is a report that summarizes the details of a bid call for the purposes of making an award. The report is an internal document that may be signed by the CAO, Commissioner, Director of Finance and the End User Director.
- 3.1.21. "Department" means any department within the Corporation.
- 3.1.22. "Commissioner" means the Head of any Town Department (i.e. CFO/Deputy CAO, Commissioner, Planning and Development, Commissioner, Community Services, Commissioner, Engineering Services, Fire Chief and/or the Chief Administrative Officer).
- 3.1.23. "Designate" means a person authorized by the Commissioners/Directors or by the Manager, Purchasing and Risk Services to act on their behalf, for the purposes of this bylaw.
- 3.1.24. "Emergency" means an event or circumstance where the immediate purchase of goods, services or construction is necessary to prevent or alleviate serious delay, a threat to public health, safety or welfare, the disruption of essential services or damage to public property or any other expenditure that is necessary to respond to any such event.
- 3.1.25. "Gift in Kind" are goods and/or services of value to the Town received rather than cash.
- 3.1.26. "Goods and Services" means all supplies, materials or equipment and maintenance, professional and consulting services, revenue generating and/or bids that give special consideration. This may include installation, training, inspection, maintenance and repairs and related procurement services, but does not include land purchases, sales and property leases.
- 3.1.27. "Insurance Documents" means certified documents issued by an insurance company licensed to operate by the Government of Canada or the Province of Ontario stating that the bidder is insured in accordance with the Town's insurance requirements as contained in the bid documents.

- 3.1.28. "Lease" means a financial arrangement whereby equipment or municipal capital facilities are provided to the Town by a third party in exchange for a series of payments.
- 3.1.29. "Manager, Purchasing and Risk Services" means the Manager, Purchasing and Risk Services and is hereby authorized to act as agent in all such matters pertaining hereto.
- 3.1.30. "Purchase Order" means the legal document that is the Corporation's commitment to the supplier for the value of the goods or services ordered. It is also the supplier's authority to ship and charge for the goods specified on the order.
- 3.1.31. "Purchasing Card" means a card that can be used by authorized employees of the Corporation to purchase goods and/or services.
- 3.1.32. "Relationship" means a parent, spouse, child, sibling or in-law.
- 3.1.33. "Requisition" means a written or electronically transmitted request on an approved form, which is sent to Purchasing to procure goods or services.
- 3.1.34. "Responsive and Responsible Vendor" means one who complies with the provisions of the bid, including specifications, contractual terms and conditions, and who can reasonably be expected to provide satisfactory performance on the proposed contract based on reputation, or references, or performance on previous contracts, and adequate financial and other resources.

4. RESPONSIBILITIES AND AUTHORITY

- 4.1. This bylaw authorizes the Manager, Purchasing and Risk Services to act as the legal purchasing agent for the Corporation of the Town of Milton.
- 4.2. The signatures of the Manager, Purchasing and Risk Services, are required on all Purchase Orders over \$10,000. Managers, Directors and the CAO may sign blanket contract purchase order releases up to \$50,000, inclusive of HST).
- 4.3. The Director, Finance and/or the Manager, Purchasing and Risk Services (up to \$50,000) and the Mayor and Clerk (over \$50,000), in conjunction with the Manager, Purchasing and Risk Management, shall be authorized to sign all other forms of contracts.
- 4.4. The Manager, Purchasing and Risk Services shall monitor adherence to the provisions of this bylaw and the procedures adopted for its use. Failure to comply with the provisions of the bylaw and the procedures shall be reported to the Director, Finance.
- 4.5. The Manager, Purchasing and Risk Services shall be responsible for maintaining good supplier relations and for the conduct of all contracts/contract negotiations/dispute resolution, subject to the other provisions of this bylaw. The Manager, Purchasing and Risk Services shall be provided with assistance from the Departments prior to the outset of calling bids, in matters that require further expertise and may request Departments to undertake research into specific goods, services or suppliers.
- 4.6. All inquiries regarding materials, prices, services, delivery, terms, conditions and adjustments, are to be conducted by or through the Corporate Services Department, Purchasing and Risk Services.
- 4.7. Except as otherwise stipulated, any purchase of goods, services or construction shall be made using a competitive bid process, in keeping with accepted public purchasing practices and in accordance with the applicable federal, provincial and municipal laws/agreements. The Town does not solicit in-house bids in competition with outside firms.
- 4.8. Splitting of purchases to avoid any of the purchasing policies or processes outlined in this bylaw is strictly prohibited. Such practices shall be reported to the Director, Finance.
- 4.9. Dollar amounts shown in this bylaw setting parameters for the purchasing process, except as otherwise stated, shall be the total annual cost including taxes and freight.

5. AUTHORITY OF THE CHIEF ADMINISTRATIVE OFFICER (CAO)

5.1. Despite any other provisions of this bylaw, during any period that regular Council meetings are suspended either during the summer period or for any other reason, or during the period that the acts of Council are restricted under section 275 of the Municipal Act, the Chief Administrative Office shall be authorized to award any contract within the following limits:

5.1.1. The CAO can award all contracts where the value of the contract is within the council approved budget for that project; or

5.1.2. If the value of the contract is within a 5% variance of the value of the contract; subject to an overall maximum variance of \$500,000 and subject to the Director, Finance being satisfied with the funding strategy being proposed for the variance.

5.2. A report shall be submitted to Council by the Manager, Purchasing and Risk Services as soon as possible setting out the details of any contracts awarded under section.

6. PURCHASING LIMITS

6.1. Notwithstanding any other provisions of this bylaw, the acquisition of the items listed in Section 24 do not fall under the guidelines of the Purchasing bylaw and shall not be subject to applicable policies and procedures established, provided that the total cost of the purchase does not exceed the amount approved in the annual budget and further provided that there is compliance with the authorization provisions of this bylaw and / or the delegated financial signing authority policies in effect.

6.2. Where the requirement for goods, services or construction can be specified and it is estimated that the total annual value is less than \$10,000, including taxes and freight, and not included in any existing contract and/or blanket order, the good/service shall be acquired directly by the end user either by:

6.2.1. The Purchasing Card (as per established limits) or

6.2.2. Purchase Order or

6.2.3. Petty cash (as per established limits)

6.3. No report to Council is necessary under this section. All Insurance and worker's compensation and accessibility documentation, as applicable, and either authorization to use the Purchasing card or a signed Purchase Order, is to be in place, prior to the delivery of goods or the supply of services and /or construction. Any contravention of this process will be reported to the

Director, Finance and Director of the user department. Any purchase orders/purchasing card purchases that have been split and total over \$10,000 will be reported to Council, as a single source purchase.

6.4. REQUEST FOR QUOTATION

6.4.1. Where the requirement for goods or services can be specified and is estimated to annually cost \$10,000, but less than \$50,000 including taxes and freight, the Manager, Purchasing and Risk Services in consultation with the Department(s), shall issue a Request for Quotation. A Request for Quotation may be issued for lesser amounts if deemed beneficial by the Manager, Purchasing and Risk Services. The request will be advertised on the Internet through Biddingo, the Ontario Public Buyers Association web page (www.opba.ca), as well as the Town's web page (www.milton.ca). Advertising in a general publication will be at the discretion of the Manager, Purchasing and Risk Services. Quotations require a reply by a designated day and time. Quotations will be allowed to be submitted electronically on E-bids. An Officer of the bidding company must sign the submission or provide an electronic signature if submitted on E-bids. A purchase order shall be executed or a contract signed. No report to Council is necessary. Quotations are not formally opened in public; however, the prices are available on the Town's web page.

6.5. TENDERS

6.5.1. Where the requirement for goods or services can be specified and is estimated to annually cost \$50,000 or more, including taxes and freight, the Manager, Purchasing and Risk Services in consultation with the Department(s) shall issue a Request for Tender (RFT). The tender requests will be advertised on the Internet through the Ontario Public Buyers Association web page (www.opba.ca), Biddingo (www.biddingo.com) as well as the Town's web page (www.milton.ca). Advertising in a general publication will be at the discretion of the Manager, Purchasing and Risk Services. Tenders require a reply by a designated day and time. An Officer of the bidding company must sign the submission. Tenders will be opened in public in the presence of the Manager, Purchasing and Risk Services and at least one other employee of the Town. Bidders may also submit an e-bid, fd bids. An Officer of the bidding company must provide an electronic signature, in this instance and there will not be a formal tender opening. Pricing will be available online.

6.5.2. On contracts up to a value of \$500,000, if the lowest cost compliant bid is being recommended, and the award can be accommodated within

approved budget, a purchase order/formal contract shall be executed upon approval of the delegated purchasing report.

- 6.5.3. On contracts over \$500,000 or bids that have any of the conditions outlined in section 12.1, a report will be submitted to Council for approval.
- 6.5.4. On construction projects where there are warranty provisions by the installing contractor, staff will issue a blanket order to this contractor for regular maintenance requirements, during this warranty period, without having to submit a single source report. Upon expiry of the warranty period, the service will either be rolled into an existing contract or openly bid.

6.6. PROPOSALS

- 6.6.1. A Request for Proposal shall be used where due to the nature of the requirement bidders are invited to propose a solution to a problem and/or requirement and a cost for that solution. The selection of the successful bidder is based on the effectiveness of the proposed solution rather than on price alone and/or negotiations may be necessary with respect to any aspect of the requirement. The effectiveness of the proposal is measured against a set of evaluation criteria, which may include but is not limited to: approach, experience and qualifications, methodology, past performance, scheduling, price and/or strategy.
- 6.6.2. Where it is estimated that the total cost of the goods or services, inclusive of delivery charges and tax will cost more than \$10,000, but less than \$50,000 the Manager, Purchasing and Risk Services, in consultation with the Department shall issue a Request for Proposal. Proposals require a reply by a designated day and time. An Officer of the bidding company must sign the reply. These proposals are not formally opened in public nor is it necessary to disclose price or terms at the time of closing. If only one proposal is received, the Town has the option of not opening the bid and closing the call for the proposal. The Manager, Purchasing and Risk Services shall execute a purchase order or the Director, Finance shall execute a contract. No report is required.
- 6.6.3. Where it is estimated that the total cost of the goods or services, inclusive of delivery charges and tax will cost more than \$50,000 the Manager, Purchasing and Risk Services, in consultation with the requisitioning Department shall issue a Request for Proposal. Proposals require a reply by a designated day and time. An Officer of the bidding company must sign the reply. These proposals are not

formally opened in public, but submitting bidders will be acknowledged. If only one proposal is received, the Town has the option of not opening the bid and recalling the proposal. The Manager, Purchasing and Risk Services, in conjunction with the user Department and the Director, Finance will submit a report to Council for authority to award. The Manager, Purchasing and Risk Services will issue a purchase order or the Mayor and Town Clerk shall execute a contract. Proposal Contract renewal authorization will be done via delegated purchasing report.

7. PROCEDURES APPLICABLE TO ALL TYPES OF BIDS

- 7.1. The Manager, Purchasing and Risk Services , may from time to time pre-qualify persons or firms or obtain desired information for any bid call where the Manager, Purchasing and Risk Services believes it to be in the best interest of the Town.
- 7.2. Where the Corporation contracts work out in an agreement with the private sector, the policies and procedures of the Corporation will prevail in all bid calls.
- 7.3. Through the utilization of the Town's website every effort will be made to send notification to firms. The onus is on interested firms to review the website, the Ontario Public Buyers' website (www.opba.ca) and/or Biddingo (www.biddingo.com), from time to time for competitions that may be of interest to them.
- 7.4. When the requirements for goods, services and/or construction exceed a current threshold, the Manager, Purchasing and Risk Services, can extend the current contract for a period of up to three months. During this time a bid call is issued to the marketplace to ensure compliance to the bylaw.
- 7.5. Except as otherwise provided, no work may commence or commitment to purchase goods shall be entered into, until such time as an Official Purchase Order has been issued or a Contract signed, and all necessary documents and approvals received.
- 7.6. Each sealed bid received in response to a formal bid request is reviewed to determine whether a bid irregularity exists, and action is taken according to the nature of the irregularity as per section 26.

8. PRE-QUALIFICATION

- 8.1. The Manager, Purchasing and Risk Services may conduct a request for pre-qualification for any goods, services or construction for the purpose of selecting qualified bidders to respond to a call for bids.

8.2. When a request for pre-qualification is issued, a pre-qualification bid document shall be available to potential bidders setting out the criteria for pre-qualification, which may include but is not limited to:

8.2.1. Experience of similar work,

8.2.2. Reference provided from the other customers for similar work,

8.2.3. Verification of applicable licenses and certificates and,

8.2.4. Financial capability

8.3. The selection of bidders following a request for pre-qualification shall not create any contractual obligation between the Town and the pre-qualified bidder. When utilized, the request for pre-qualification is a precursor to a request for quotation, or tender, or proposal.

9. CONTRACT ADMINISTRATION

9.1. Contingencies: Where any purchase of goods, services or construction has been authorized under this bylaw, the Director or authorized delegate may, in the case of a contingency, authorize disbursement of additional funds, provided such additions shall not exceed ten (10%) of the total costs of the original contract or price agreement, and provided that the additional funds are required to complete the work set out in the original contract and the contingency was provided in the original council approved budget and sufficient funds remain in the contingency to cover the additional disbursement.

9.2. Change in Scope: Where goods, services or construction have been purchased under this bylaw pursuant to a contract, where a change in the scope of the project to which the contract relates occurs, which necessitates the purchase of additional or related goods, services or construction, such additional goods, services, or construction shall not be purchased unless the Manager, Purchasing and Risk Services submits a report to Council and a change order will be executed by Purchasing upon receiving Council approval;

9.3. In the event that there is a claim against the Town in regard to a contract, the Manager, Purchasing and Risk Services, in conjunction with the Director, Finance, user department Director and Legal Council if required, will authorize the settlement (up to \$250,000) and a confidential summary report to Council will follow.

9.4. Despite section 9.1, 9.2 and 9.3 of this bylaw, the CAO may authorize the purchase of additional goods, services or construction and/or settle a claim, provided that:

9.4.1. The requirement for the additional goods, services or construction could not reasonably have been anticipated at the time of the award of the original contract, and/or

9.4.2. The authorization to purchase the additional goods, services, construction and/or authorize a settlement of a claim over \$250,000 is required to prevent interruption in the service delay or to avoid incurring extra costs.

9.5. A report will be submitted to Council, by the Manager, Purchasing and Risk Services for the change in scope requests.

9.6. Where a contract change(s) is/are requested and the revised total value of the revised contract is still less than the limits for reporting to Council, the change order will be verified for available budget and a report to Council is not required.

10. LEASING

10.1. In certain circumstances, it may be economically advisable for the Town to enter into a financing lease to acquire the rights to use capital property and equipment rather than an outright purchase.

10.2. The Director, Finance in accordance with the Town's leasing policy must review all lease arrangements.

10.3. A report initiated by the Manager, Purchasing and Risk Services shall be issued to Council for award and financing approval. The report shall authorize the Mayor and Clerk to sign the leasing contract.

11. CO-OPERATIVE BID CALLS

11.1. The Manager, Purchasing and Risk Services shall have the authority to join or participate with other units of government, as a named agency, including local boards, commissions and agencies in co-operative purchasing, and bulk buying of goods and services. The Manager, Purchasing and Risk Services may acquire any goods or services from an existing government contract if it is deemed to be in the best interest of the Town.

- 11.2. If the Town participates with another government agency or public authority in co-operative purchasing, the policies of the agency calling the co-operative bid shall apply.
- 11.3. Purchases made through co-operative buying procedures will still follow all approvals and reporting as outlined in this bylaw.

12. REPORTS

- 12.1. Reports to Council will be required if one of the following circumstances exist:
- The lowest acceptable (compliant) bid is not being recommended;
 - The acquisition exceeds the budget by more than the Director, Finance's signing authority
 - Low bid is being recommended but does not meet major specifications;
 - Purchasing bylaw is being waived;
 - Proposal awards over \$50,000 (initial award, renewal options will be done on a delegated purchasing report)
 - Tender awards over \$500,000
 - The CAO requests a report be written
 - Identical bids were received
 - One or more of the bidders has an unacceptable conflict of interest
 - Low bidder has current or pending legal action resulting from a previous contract.
- 12.2. The award report will be submitted by the Manager, Purchasing and Risk Services in consultation with the requisitioning Department and the Director, Finance. Upon approval, the Manager, Purchasing and Risk Services shall execute a purchase order and/or the Mayor and the Town Clerk shall execute a contract.
- 12.3. All bids that are being awarded to the lowest responsive bidder and that are within the delegated financial guidelines for the Director, Finance will be award by the Manager, Purchasing and Risk Services, by the Delegated Authority Report. The Delegated Authority Report will be prepared by the Manager, Purchasing and Risk Services and signed by the User Department/Division Director, when the award is within the approved budget and additionally by the Director, Finance, when it is over the budget but there is contingency/requesting a favourable variances to remain in the budget/requesting provisional items be considered.

- 12.4. Annually, the Manager, Purchasing and Risk Services will submit a summary of the annual purchases to Council.

13. SPECIFICATIONS

- 13.1. The user department shall be responsible for preparing and providing to the Manager, Purchasing and Risk Services, specifications when required. The Manager, Purchasing and Risk Services shall review all specifications, terms and conditions and have the authority to recommend changes.
- 13.2. Where practical, specifications or Terms of Reference should be considered, that are detailed but not brand specific. Care shall be taken to ensure potential bidders may provide alternatives in the event an equal or better-proven product or method is available.

14. SPECIFICATION DEVELOPMENT

- 14.1. Suppliers, potential suppliers and consulting firms shall not be requested to expend time, money, or effort to design or developing specifications or otherwise help define a requirement beyond the normal level of service expected. Should such services be required, the Manager, Purchasing and Risk Services will be advised. If there is no alternative but to request such services, then the company providing it shall be compensated at a pre-determined fee. The resulting specifications shall become the property of the Corporation for use in obtaining competitive bids.
- 14.2. Suppliers or Consultants who provide design services and/or specifications for work to be bid will not be permitted to submit a bid for said work, unless there has been prior approval from Council.

15. EMERGENCY PURCHASES

- 15.1. When an emergency occurs, as determined by the end user Director and the Director, Finance, the Manager, Purchasing and Risk Services has the authority to issue a purchase order, upon receiving a written request from the Director concerned, for the goods or services required without issuing a call for bids. For expenditures in excess of \$10,000, the Manager, Purchasing and Risk Services shall obtain the prior approval from the Director, Finance. For expenditures in excess of \$100,000, the Manager, Purchasing and Risk Services shall obtain the prior approval from the Chief Administrative Officer.
- 15.2. In the case of a declared emergency the Town's Emergency Response Plan will supersede this by-law.

- 15.3. After the emergency is over, any expenditure over and above this bylaw's authorization shall be reported to Council, according to the requirements of the bylaw.

16. PERFORMANCE EVALUATION

- 16.1. The Manager, Purchasing and Risk Services shall institute a performance evaluation at the substantial completion of the contract, or more frequently if determined by the Manager, Purchasing and Risk Services to be more appropriate, in all contracts where:
 - 16.1.1. The cost of the construction contracts that exceed \$500,000 or consulting services that exceed \$100,000.00, or
 - 16.1.2. In any other consulting or construction contracts where the Manager, Purchasing and Risk Services determine that a performance evaluation would be appropriate.
- 16.2. The Manager, Purchasing and Risk Services in conjunction with the Project Manager, responsible for overseeing the project, shall conduct the performance evaluation.
- 16.3. The performance evaluation shall rate the performance of the contractor and/or consultant on criteria determined by the Manager, Purchasing and Risk Services, and the Project Manager, to be appropriate in determining if the Town has obtained a satisfactory level of performance by the contractor or consultant. The performance evaluation form and criteria adopted from time to time shall be provided to the contractor or consultant in advance of the contract, and shall remain constant for the duration of the term of the contract. The same evaluation criteria shall apply to all consultants or construction projects undertaken for the Town, but may be amended from time to time by the Manager, Purchasing and Risk Services.
- 16.4. The contractor or consultant shall be provided with the written results of the performance evaluation. The contractor or consultant shall have twenty days following delivery of the evaluation to request an appeal.
- 16.5. A Dispute Committee will hear from both Town staff and the contractor, at a time and place appointed in writing by the Committee shall conduct the appeal. The Dispute Committee shall be comprised of the Manager, Purchasing and Risk Services, Purchasing, Director, Finance, and the Director of the User Department. The decision of the Dispute Committee shall be in writing, a copy of which shall be provided to the contractor or consultant, and the decision of a majority of the Dispute Committee shall be final.

- 16.6. The performance evaluation shall determine whether a contractor or consultant, or any related contractor or consultant, will be allowed:
- 16.6.1. To tender or respond to requests for proposals for future contracts with the Town of Milton while identified issues are resolved;
 - 16.6.2. Or whether the contractor will be placed on a probationary list for a period of time during which time it shall be not permitted to bid or propose work for the Town,
 - 16.6.3. Or that the contractor will be prohibited from bidding or proposing on any contracts with the Town during a three-year period.
- 16.7. In reaching a determination the Project Manager and/or the Dispute Committee, shall be entitled to rely upon the evaluation criteria determined in advance of the project, any correspondence, consultant notes and the results of prior performance evaluations relating to other contracts performed by the same contractor, consultant or related contractor or related consultant.
- 16.8. No bid will be recommended for an award from any contractor or consultant, or related contractor or consultant, during the term of a prohibition.
- 16.9. In determining whether a bid is being received from a related party, any consultant or contractor submitting a tender or quotation to the Town shall be required to submit a statement disclosing its principal shareholders (if a privately held corporation), the members of its Board of Directors, its partners or proprietors, its senior management, and those managers having specific responsibility for completion of the proposed contract with the Town. The Manager, Purchasing and Risk Services may determine that the tendering or proposing party is related if there is a substantial connection between the shareholders, directors, partners, proprietors, senior management or managers proposed to be in charge of the work for the Town, and those persons holding similar positions with prohibited contractors or consultants. The decision of the Manager, Purchasing and Risk Services may be appealed to the Dispute Committee within five days of the delivery of the Manager, Purchasing and Risk Services decision to the contractor or consultant. The composition of the Dispute Committee, its procedure, and the finality of its decision, shall be as outlined in 16.5 above.

17. PURCHASES BY NEGOTIATION

- 17.1. The Manager, Purchasing and Risk Services may under the following conditions negotiate with one or more bidders and in such cases the requirement for inviting tenders or quotations is waived:
- 17.2. when in the judgment of the Manager, Purchasing and Risk Services , goods are judged to be in short supply due to market conditions;
- 17.3. where there is only one source of supply for the goods or services;
- 17.4. when compatibility with an existing product, facility or service is required;
- 17.5. where two or more identical bids have been received;
- 17.6. where the lowest bid meeting specifications and the terms and conditions exceed the approved budget of the goods and services and it is impractical to re-bid;
- 17.7. when all bids received fail to meet the specifications or tender terms and conditions and it is impractical to recall tenders or quotations;
- 17.8. when no bids are received in a bid call;
- 17.9. when only one bid was received in a bid call;
- 17.10. when work is required at a location where a contractor has already been secured through a bid process, with established unit prices and it is considered to be beneficial and cost effective to extend the unit prices for the work to be completed;
- 17.11. after the RFP process, it may be necessary for discussion and revision of the proposal;
- 17.12. when negotiations are deemed necessary they shall be carried out jointly in co-operation with the Department subject to the conditions of this Bylaw;
- 17.13. the methods of negotiation shall be those accepted as standard negotiating procedures that employ fair ethical practices, as outlined in the Purchasing code of ethics of the Purchasing Management Association of Canada and the National Institute of Governmental Purchasing Inc.

18. LOCAL PREFERENCE

- 18.1. The Town will endeavour to achieve Best Value in its commercial transactions. As a consequence the Town will not practice local preference in awarding purchases. This will allow the Town to comply with the Discriminatory Business Practices Act, R.S.O. 1990, and Chapter D12.

19. SUSTAINABLE PRODUCTS & SERVICES

- 19.1. The purchase of sustainable products and services will be considered at all times. These products and services are defined as those having a lesser or reduced effect on human health and the environment when compared to other products and services that serve the same purpose. Specifications will include, unless otherwise justified, sustainable products that: use recycled materials; are durable, reusable or are designed to be recycled; consume fewer resources in their manufacture and/or their use; and services that use sustainable responsible practices.

20. LOBBYING PROHIBITED (as it relates to the award of a contract)

- 20.1. If any director, officer, employee, agent or other representative of a respondent team, including any other parties that may be involved in a joint venture, consortium, or similar business relationship with the respondent, makes, from and after the closing date of the bid document, any representation or solicitation to any elected representative or employee or agent of the Town of Milton, or to the media, with respect to the respondent's submission, the Town will be entitled to reject said submission. This requirement does not extend to any public deputations that may be made to any Town committee in accordance with the respective Town's Procedural Bylaws. The Manager, Purchasing and Risk Services in consultation with the User Department and the Director, Finance will issue the notice of rejection.

21. DISPOSAL OF SURPLUS ASSETS

- 21.1. Where any goods are surplus, obsolete or unrepairable, they shall be declared surplus to the Manager, Purchasing and Risk Services through a Director.
- 21.2. When no other use can be found for these items in other Departments, they shall be added to the surplus list and at the discretion of the Manager, Purchasing and Risk Services, disposed of through formal auction, internet auction, tender or quotation or trade-in, whichever is

- 21.3. in the best interest of the Corporation. Any remaining surplus assets may be awarded to any non-profit entity.
- 21.4. When items are unrepairable the Manager, Purchasing and Risk Services may dispose of the item(s) through a licensed waste hauler.
- 21.5. Where the item has limited market value the Manager, Purchasing and Risk Services may, to the benefit of the Corporation, dispose of the item in a manner other than the ones listed above.
- 21.6. Annually, an information report shall be submitted to Council indicating the surplus products and the value obtained for the goods as a whole.

22. CONFLICT OF INTEREST

- 22.1. The Manager, Purchasing and Risk Services shall not consider any bid, or otherwise acquire any goods or services, as per the corporate personnel manual.
- 22.2. No Council member or employee of the Town may purchase goods or services for personal use through the Corporation.
- 22.3. No elected official, officer or employee of the Town (besides the Purchasing and Risk Service staff) shall have/allow contact with a person, or any officer, employee or agent of the person who has submitted a bid to the Town unless the bid call has been awarded. All contact with the bidders relating to the open bid call is to be through the Purchasing and Risk division. If there is a current business relationship or other awarded contracts, employees may continue to do daily business but may not discuss the open bid call.
- 22.4. No employee or elected official shall purchase or offer to purchase, on behalf of the Town, any goods and/or services, except in accordance with this Bylaw.
- 22.5. No contract or purchase shall be divided to avoid requirements of this Bylaw.
- 22.6. Where required, a Conflict of Interest form may be included as part of the bid call, that requires all bidders to declare any Conflicts of Interest. The Manager, Purchasing and Risk Services in consultation with the user Department and the Director, Finance will determine if the conflict is to the detriment of the Town and should not be considered for award. A report to Council will be submitted, for this award.

23. LEGAL CLAIMS

- 23.1. No tender, proposal or quotation will be accepted from any bidder inclusive of its sub-contractor, which has a claim or instituted a legal proceeding against the Town or against whom the Town has a claim or instituted a legal proceeding with respect to any previous contract (alone or in conjunction with others), without prior approval by Council.

24. PURCHASE ORDER NOT REQUIRED

- 24.1. A purchase order is not required for the following items or class of items unless specifically requested by the Requisitioner:
 - 24.1.1. H/R requirements (i.e.: Training and Education);
 - 24.1.2. Refundable Employee Expenses;
 - 24.1.3. Professional and Special Services (i.e.: Committee fees, witness fees, court reporter fees, honoraria, Committees of Council, arbitrators, legal settlements, financial services, Election Services, entertainment acts, camp destination excursions, trade show rentals);
 - 24.1.4. Utilities (i.e.: Postage, water, sewer, cable television, gas, hydro);
 - 24.1.5. Other government agencies, except where services can be openly bid, including where another government agency specifically requests the purchase of goods/services under the terms of an executed agreement (i.e. road maintenance contract).

25. ADMINISTRATION

- 25.1. The Manager, Purchasing and Risk Services will bring forward from time to time amendments to this bylaw to update, whether adding new clauses or adjusting those currently in force.
- 25.2. In this bylaw, unless the context requires otherwise, words importing the singular shall include the plural and words importing the masculine gender, shall include the feminine.

26. BID IRREGULARITIES

26.1. BID IRREGULARITY

- 26.1.1. A bid irregularity is a deviation between the requirements (terms, conditions, specifications, special instructions) of a bid request and the information provided in a bid response.
- 26.1.2. For the purposes of this bylaw, bid irregularities are further classified as "major irregularities" or "minor irregularities".
- 26.1.3. A "major irregularity" is a deviation from the bid request, which affects the price, quality, quantity or delivery, and is material to the award. If the deviation is permitted, the bidder could gain an unfair advantage over competitors. The Manager, Purchasing and Risk Services must reject any bid, which contains a major irregularity.
- 26.1.4. A "minor irregularity" is a deviation from the bid request, which affects form, rather than substance. The effect on the price, quality, quantity or delivery is not material to the award. If the deviation is permitted or corrected, the bidder would not gain an unfair advantage over competitors. The Manager, Purchasing and Risk Services may permit the bidder to correct a minor irregularity.

26.2. ACTION TAKEN:

- 26.2.1. The Manager, Purchasing and Risk Services is responsible for all action taken in dealing with bid irregularities, and acts in accordance with the nature of the irregularity:
 - 26.2.1.1. Major irregularity;
 - 26.2.1.2. Minor irregularity; or
 - 26.2.1.3. Mathematical error (additions or extensions).

26.3. MAJOR IRREGULARITY - AUTOMATIC REJECTION

- 26.3.1. Failure to meet any of the following requirements constitutes a major irregularity. The Manager, Purchasing and Risk Services must reject the bid without further consideration.
 - 26.3.1.1. The bid must be received and time stamped by Corporate Services, by official bid closing time, for hard copy submissions and submitted/transmitted when using e-bidding.

- 26.3.1.2. Price related information must be non erasable (i.e. in ink, or typewritten). Prices must be complete and specified in accordance with the bid request.
- 26.3.1.3. Bid surety must be submitted with the bid when the bid request (or any addenda) indicated that such surety is required. Bid surety must be in the form specified in the bid request, or in a form providing equivalent or greater financial security for the Town. Amount of bid surety must be no less than the amount indicated in the bid request, when a dollar amount is specified.
- 26.3.1.4. Proof of authority (corporate seal or signatures) to bind the bidder must be evident in the bid submission when the bid request (or any addenda) indicated that such proof is required.
- 26.3.1.5. Bid or performance bonding company must be licensed to conduct business in Canada and in the province of Ontario.
- 26.3.1.6. Notwithstanding provisions for "alternate bids" which may be contained in the bid request, bids must conform to the essential requirements in the specifications or terms of reference. Essential requirements are those, which are necessary to perform the intended operation.
- 26.3.1.7. Bidders must attend site meetings if such attendance is identified in the advertisement and bid request as mandatory.
- 26.3.2. The above list of irregularities should not be considered all inclusive. The Manager, Purchasing and Risk Services after consultation with legal services, may reject a bid based on an irregularity not listed, but considered major.
- 26.3.3. The Manager, Purchasing and Risk Services prior to any bid award will notify bidders whose bids are rejected due to a major irregularity.

26.4. MINOR IRREGULARITY - BIDDER MAY RECTIFY

26.4.1. Failure to meet the following requirements constitutes a minor irregularity. The Manager, Purchasing and Risk Services will notify the bidder and ask that the deviation from the bid request be rectified within a specified time (usually two working days from the time of notification). If the information is not provided within the specified time, the Manager, Purchasing and Risk Services will reject the bid.

26.4.1.1. Technical specifications documents not completed and submitted with the bid, when specified in the bid request.

26.4.2. This should not be considered all inclusive. The Manager, Purchasing and Risk Services will review minor irregularities. The Manager, Purchasing and Risk Services, may then accept the bid, or request that the bidder rectify the deviation.

26.5. MATHEMATICAL ERRORS - RECTIFIED BY STAFF

26.5.1. The Manager, Purchasing and Risk Services will correct errors in mathematical extensions. In all cases the unit prices will be used to correct the discrepancy. Taxes must be clearly identified in the bid submission as an extra cost.

27. GIFT IN KIND

27.1. The Town welcomes and encourages Gifts in Kind to assist in the provision of the Town's projects and fund raising goals. All Gifts in Kind shall be consistent with the Town's vision and values and will not compromise or contradict any by-laws, policies or the Town's public image.

27.2. To ensure that the program is open, transparent and fair, the process must:

27.2.1. Have the specific fund raising program authorized by Town Council,

27.2.2. Have the fund raising program advertised as an Expression of Interest (EOI) on the Town's website, Biddingo and any other appropriate sites,

- 27.2.3. Have a Corporate staff Team in place to evaluate the submissions. The Team will be established when Council approval of the project has been approved.
- 27.3. All responses will be evaluated by the Staff Team to determine the usefulness of the donation and if it is determined that it will be accepted, the Gift in Kind will be assigned a project to be applied to. Acceptance of the offer:
 - 27.3.1. With a value of up to \$250,000, the EOI Offer Form will be signed off by the Staff Team Facilitator and the Director, Corporate Services,
 - 27.3.2. With a value of \$250,000 and over, a report will be submitted to Council, by Purchasing Services,
 - 27.3.3. At the end of the specific program, all Gifts in Kind will be summarized in a report to Council.
- 27.4. Basic assumptions for the program:
 - 27.4.1. The accepted offer is not the Town's endorsement of the good and/or service,
 - 27.4.2. The relationship must not cause a Town employee to receive any product, service or assets for personal gain or use,
 - 27.4.3. All approved offers shall not invoke future considerations or be perceived to influence the day-to-day business of the Town.