

THE REGIONAL MUNICIPALITY OF YORK

PROCUREMENT BYLAW

BYLAW NO. 2021-103

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THE REGIONAL MUNICIPALITY OF YORK

BYLAW NO. 2021-103

Procurement Bylaw

WHEREAS section 270 (1) of the *Municipal Act, 2001* provides that a municipality shall adopt and maintain policies with respect to its procurement of goods and services;

AND WHEREAS at its meeting on November 25, 2021, Regional Council approved the enactment of a new procurement bylaw;

NOW THEREFORE, the Council of The Regional Municipality of York hereby enacts as follows:

1. PURPOSES, GOALS AND OBJECTIVES

1.1 The purposes, goals, and objectives of this bylaw are:

- (a) to encourage competition among suppliers;
- (b) to obtain best value in the procurement of deliverables;
- (c) to ensure fairness, objectivity, accountability and transparency in the procurement process;
- (d) to encourage environmentally responsible and sustainable procurement while maintaining fiscal prudence; and
- (e) to promote and implement procurement practices that abide by the principles of the *Accessibility for Ontarians with Disabilities Act, 2005*.

2. DEFINITIONS

2.1 In this bylaw:

“**bid**” means a submission received in response to a call for bids, and includes a quotation, a tender and a proposal;

“**Bid Debriefing Protocol**” means the protocol providing assistance and direction to individuals involved in conducting debriefings requested by bidders in respect of a procurement;

“**Bid Dispute Protocol**” means the protocol setting out the process for suppliers to make a formal complaint about a particular procurement process;

“**bidder**” means any legal entity that submits a bid in response to a call for bids;

“**call for bids**” means a formal request for bids and includes, but is not necessarily limited to, a request for quotations, a request for tenders and a request for proposals;

“**Chief Administrative Officer**” means the Chief Administrative Officer of The Regional Municipality of York;

“**Commissioner**” means any officer or employee of the Region who is designated as the head of a Regional department;

“**community benefits**” means additional physical, social, economic and/or environmental benefits for local communities that can be leveraged through funds already being spent on goods, services, construction and land development projects;

“**conflict of interest**” means:

- (a) when applied to individuals, any situation or circumstance in which an individual’s impartiality may be affected because of a personal relationship or where an individual may stand to gain from the outcome of a procurement;
- (b) when applied to suppliers, any situation or circumstance where:
 - (i) in the context of a procurement process, the supplier has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including, but not limited to:
 - A. having, or having access to, confidential information of the Region that is not available to other suppliers;
 - B. communicating with any person with a view to influencing preferred treatment in the procurement process; or
 - C. engaging in conduct that compromises, or could be seen to compromise, the integrity of an open and competitive procurement process or render that process non-competitive or unfair; or
 - (ii) in the context of performance under a contract, the supplier’s other commitments, relationships or financial interests:
 - A. could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or
 - B. could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations;

“**contingency**” means an event or circumstance that gives rise to an increase in a contract price, and which could not have been reasonably anticipated at the time the call for bids closed;

“**contract**” means any form of binding agreement between the Region and a contractor for the purchase of deliverables and includes a purchase order;

“**contractor**” means any legal entity to whom a contract is awarded;

“**corporate standard**” means specific goods, services or construction approved by Regional Council that best fulfill a long term Regional need or requirement;

“**Council**” means the Council of The Regional Municipality of York;

“**deliverables**” means goods, services, and construction;

“**Director of the Procurement Office**” means the Director of the Procurement Office of The Regional Municipality of York;

“**emergency**” means an event or circumstance where the immediate purchase of deliverables is necessary to prevent or alleviate: (a) a serious delay in service delivery that could not have been foreseen; (b) a threat to the health, safety or welfare of any person; (c) the disruption of essential services; or (d) damage to public or private property, and includes, but is not limited to, an emergency declared under the *Emergency Management and Civil Protection Act*;

“**essential service**” means any service rendered to or by the Region, the interruption of which could endanger the life, health or personal safety of any person;

“**low dollar value deliverable**” means a deliverable where the total cost does not exceed one hundred thousand dollars (\$100,000.00);

“**Non-Standard Procurements Protocol**” means the protocol setting out the requirements for acquiring deliverables through a non-standard procurement process;

“**price agreement**” means a contract between the Region and a contractor which may or may not have resulted from a call for bids, under which the contractor agrees to provide deliverables as and when needed by the Region, at a pre-determined price, for a pre-determined period of time, upon pre-determined terms and conditions;

“**Procurement Planning and Forecasting Protocol**” means the protocol developed to assist departments in planning for a procurement process;

“**Procurement Review Committee**” means the committee established under Section 7 of this bylaw;

“**purchase order**” means a legal document generated by the Region, setting out the terms and conditions for the purchase of deliverables, and includes the upset limit of the purchase;

“**real property**” means land, or land and buildings, and includes fixtures attached

to such land or buildings;

“**Region**” means The Regional Municipality of York;

“**Regional Clerk**” means the Regional Clerk of The Regional Municipality of York;

“**Regional Solicitor**” means the Regional Solicitor of The Regional Municipality of York;

“**scope change**” means any change to a contract to accommodate a need identified by the Region which was not originally provided for in the contract and which may include the purchase of additional deliverables or the extension of the term of the contract and which may require an adjustment to the contract price;

“**social procurement**” means using procurement processes to generate positive social outcomes which may include job creation, training, or apprenticeships for a historically disadvantaged community, or reducing carbon emissions, in addition to the efficient delivery of goods and services, and may include other benefits as defined by the local community or the Region;

“**Standard Procurements Protocol**” means the protocol setting out the requirements for acquiring deliverables through a standard procurement process;

“**supplier**” means a person carrying on the business of providing deliverables and includes a vendor, service provider, consultant, and contractor;

“**Supplier Suspension Protocol**” means the protocol setting out the process for suspending suppliers from participation in the Region’s procurement processes;

“**term contract**” means a contract which states a fixed duration during which the contract will be in effect;

“**total cost**” means the cost of the deliverables being procured for the full term of a contract excluding the Harmonized Sales Tax, and, in the case of a contract containing renewal provisions, means the total cost to the Region for the initial term and all potential renewal terms, including all applicable fees, charges, disbursements and any price escalations identified in the contract;

“**total revenue**” means, where revenue is payable to the Region under a contract, the total revenue payable during the full term of the contract, excluding the Harmonized Sales Tax, and, in the case of a contract containing renewal provisions, means the total revenue payable to the Region for the initial term and all potential renewal terms; and

“**Treasurer**” means the Commissioner of Finance and Treasurer of The Regional Municipality of York.

3. APPLICATION

- 3.1 This bylaw shall apply to the procurement of all deliverables made by or on behalf of the Region except as expressly excluded under Schedule 1 of this bylaw, and includes the acquisition of deliverables by purchase, rental or lease.
- 3.2 Where a proposed contract provides for the Region to receive revenue from a contractor, the processes and authority limits set out in this bylaw which are applicable to the total cost of a contract shall be construed as applicable, with necessary changes, to the total revenue payable under the contract.
- 3.3 The provisions of any applicable domestic or international treaty governing procurement ("**trade treaty**") shall prevail to the extent of any conflict with this bylaw as determined by the Procurement Review Committee.

4. RESTRICTIONS

- 4.1 No procurement shall be made under this bylaw unless Council has authorized funding for such procurement in the budget or otherwise agreed to the provision of such funds and no expenditure shall be authorized or incurred in excess of such funds without the approval of Council.
- 4.2 No procurement shall be arranged or made to avoid the application of this bylaw or a trade treaty. Without limiting the generality of the foregoing, no procurement of deliverables shall be divided into two or more parts for the purpose or intent of, or with the effect of, avoiding or frustrating the application of this bylaw or a trade treaty. The total cost of a procurement must be estimated in accordance with the Procurement Planning and Forecasting Protocol.
- 4.3 No deliverables may be procured by the Region directly or indirectly for the personal use of any member of Council or any member of a local board or for any officer or employee of the Region.

5. ETHICAL CONDUCT AND CONFLICTS OF INTEREST

- 5.1 The Region's procurement activities must be conducted with integrity and all individuals involved in procurement activities must act in a manner that is consistent with the goals and objectives of this bylaw.
- 5.2 All procurement activities undertaken by the Region shall comply with the Region's Code of Conduct and the *Municipal Conflict of Interest Act*.
- 5.3 The Region requires its contractors to act with integrity and conduct business in an ethical manner. All suppliers participating in a procurement process or providing deliverables to the Region must declare any perceived, potential, or actual conflict

of interest and must conduct themselves in accordance with the Region's Supplier Code of Conduct set out in Schedule 2 of this bylaw.

- 5.4 The Region may refuse to do business with any supplier that has engaged in illegal or unethical bidding practices, has a perceived, potential or actual conflict of interest or fails to adhere to ethical business practices.

6. RESPONSIBILITIES AND AUTHORITIES

- 6.1 Each Commissioner shall have responsibility for the procurement of deliverables for their department in accordance with the terms of this bylaw.

- 6.2 The Director of the Procurement Office shall be responsible for:

- (a) providing procurement services and advice, in consultation with the Regional Solicitor, if required, including, but not limited to, preparing calls for bids;
- (b) administering calls for bids and ensuring compliance with the terms and conditions of the calls for bids and this bylaw;
- (c) reviewing statements of work and specifications for compliance with the terms of this bylaw, including, but not limited to the Purposes, Goals and Objectives described in Section 1 of this bylaw;
- (d) the development of co-operative purchasing arrangements with other levels of government, municipalities, agencies, public authorities and other entities where such arrangements are determined to be in the best interests of the Region;
- (e) the standardization of all procurement processes and protocols;
- (f) determining, in consultation with the procuring department, whether a procurement should be conducted so as to establish a corporate standard, in accordance with the applicable Regional policies, processes and protocols as may be amended from time to time; and
- (g) the coordination of reports to Council where required under this bylaw.

- 6.3 Where any authority has been granted to any officer or employee of the Region under this bylaw, such authority may be exercised by that person's authorized designate. The appointment of a designate shall be subject to the approval of the Chief Administrative Officer.

6.4 Where any authority has been granted to any officer or employee of the Region under this bylaw, such authority may be exercised by the Chief Administrative Officer.

7. PROCUREMENT REVIEW COMMITTEE

7.1 The Treasurer shall establish a Procurement Review Committee for the purposes of:

- (a) making determinations with respect to bid irregularities;
- (b) making determinations with respect to perceived, potential or actual conflicts of interest;
- (c) making determinations under the Non-Standard Procurements Protocol where the total cost of the deliverables exceeds one hundred thousand dollars (\$100,000.00);
- (d) making determinations in relation to the purchase of an additional deliverable/scope change under an existing contract where the total value of the additional deliverable/scope change exceeds one million dollars (\$1,000,000.00);
- (e) making determinations under the Bid Dispute Protocol; and
- (f) making determinations under the Supplier Suspension Protocol.

7.2 The Procurement Review Committee shall be composed of the following members of Regional staff:

- (a) the Director of the Procurement Office or their management level designate;
- (b) a management representative of the Regional department requesting the procurement of the deliverables; and
- (c) a lawyer from Legal Services.

7.3 The Procurement Review Committee may call upon other Regional staff, and other subject matter experts, to attend committee meetings as required, in order to assist the committee in making its determinations.

7.4 If the Procurement Review Committee does not agree unanimously on any determination it is required to make under this bylaw, the Commissioner responsible for the program or project to which the matter relates shall submit a report to Council setting out the nature of the issue to be determined and the proposed action to be taken.

8. PROCUREMENT PROCEDURES AND PROTOCOLS

- 8.1 The Director of the Procurement Office is authorized to develop procedures and protocols to support this bylaw and to ensure compliance with the Region's trade treaty obligations and the laws of public procurement. All procurements subject to this bylaw must be conducted in accordance with all applicable procurement protocols.

9. SUPPLIER RESEARCH

- 9.1 The Director of the Procurement Office may issue a request for information or an expression of interest for the purpose of obtaining information about any deliverable or determining the availability of any deliverable.
- 9.2 Requests for information or expressions of interest must be publicly posted in order to obtain written information about the capabilities of prospective suppliers. A request for information or expression of interest must not be used to prequalify suppliers.
- 9.3 The receipt of a submission in response to a request for information or expression of interest shall not create any contractual obligation on the part of the Region.

10. PRE-QUALIFICATION

- 10.1 The Director of the Procurement Office may issue a request for pre-qualification for the purpose of selecting qualified suppliers to respond to a call for bids.
- 10.2 The Director of the Procurement Office may also issue a request for pre-qualification for the purpose of establishing a roster of qualified suppliers that may respond to calls for bids and/or may be invited to compete for discrete work assignments, as and when required, for the delivery of a particular type of deliverable, in accordance with the Procurement Planning and Forecasting Protocol and the Standard Procurements Protocol.
- 10.3 Requests for pre-qualification must be publicly posted to solicit responses from all interested suppliers.
- 10.4 The pre-qualification of suppliers shall not create any contractual obligation between the Region and a pre-qualified supplier. The Director of the Procurement Office is not required to proceed with any further procurement process following a request for pre-qualification.

11. PRICE AGREEMENTS

- 11.1 Price agreements for the purchase of deliverables for a specified time may be established in accordance with this bylaw.
- 11.2 The Region shall have no obligation to any supplier to purchase any deliverable under a price agreement, unless otherwise agreed upon, in writing, pursuant to a contract between the Region and the supplier.

12. STANDARD PROCUREMENT METHODS

- 12.1 The Region may procure deliverables through a number of different procurement methods in accordance with the Standard Procurements Protocol. Depending on the nature and estimated total cost of the deliverables, standard procurement methods may include:
- (a) procuring deliverables through an existing price agreement;
 - (b) conducting a roster competition by soliciting quotes from suppliers on an established roster of pre-qualified suppliers;
 - (c) obtaining quotes;
 - (d) conducting an invitational competitive procurement process by soliciting bids through the issuance of a call for bids to invited suppliers; and
 - (e) conducting an open competitive procurement process by soliciting bids through the public posting of a call for bids.
- 12.2 The standard procurement method for a particular procurement must be determined in accordance with the Region's Standard Procurements Protocol.

13. LOW DOLLAR VALUE DELIVERABLE PURCHASES

- 13.1 The Commissioner may procure low dollar value deliverables through a number of different procurement methods in accordance with the Standard and Non-Standard Procurements Protocols, as applicable, depending on the nature and estimated total cost of the deliverables as follows:
- (a) for deliverables with a total cost that does not exceed twenty-five thousand dollars (\$25,000.00), the Commissioner may solicit only one quote;
 - (b) for deliverables with a total cost that exceeds twenty-five thousand dollars (\$25,000.00) but does not exceed fifty thousand dollars (\$50,000.00), the Commissioner must solicit a minimum of two quotes; and

- (c) for deliverables with a total cost that exceeds fifty thousand dollars (\$50,000.00) but does not exceed one hundred thousand dollars (\$100,000.00), the Commissioner must solicit a minimum of three quotes.

13.2 Notwithstanding Section 13.1, the Commissioner may authorize a non-standard procurement, including an emergency purchase, for any low dollar value deliverable, where the Commissioner is of the opinion that the requirements of the Non-Standard Procurements Protocol have been satisfied.

14. NON-STANDARD PROCUREMENT

14.1 A non-standard procurement is the procurement of deliverables using a procurement method other than the process or method normally required for the type and value of the deliverables.

14.2 Non-standard procurements are permitted only under the specific circumstances set out in the Non-Standard Procurements Protocol.

14.3 Under no circumstances shall a non-standard procurement be used for the purpose of avoiding competition among suppliers or in a manner that discriminates against or gives an advantage to suppliers based on geographic location.

15. DELEGATED AUTHORITIES FOR STANDARD PROCUREMENTS

15.1 The Commissioner may authorize the procurement where the total cost of the deliverables does not exceed five hundred thousand dollars (\$500,000.00) and all conditions set out in Section 15.3 are satisfied.

15.2 The Chief Administrative Officer may authorize the procurement, irrespective of the total cost, provided that all conditions set out in Section 15.3 are satisfied.

15.3 The delegated procurement authorities in Sections 15.1 and 15.2 are subject to all of the following conditions:

- (a) the procurement process was conducted through the standard procurement method, as determined in accordance with the Standard Procurements Protocol;
- (b) the procurement process was conducted in accordance with all applicable processes and protocols;
- (c) where a call for bids is issued, the contract is awarded to the top-ranked bidder, as determined in accordance with the evaluation and selection process set out in the call for bids;

- (d) there are no irregularities or disputes in connection with the procurement process that have not been resolved by the Procurement Review Committee; and
 - (e) the term of a proposed term contract does not exceed five (5) years.
- 15.4 A report shall be submitted to Council, as per the Standard Procurements Protocol, to advise of all contracts awarded under the delegated authorities for standard procurements.

16. DELEGATED AUTHORITY FOR NON-STANDARD PROCUREMENTS

- 16.1 Non-standard procurements for any low dollar value deliverable will be governed by Section 13 - Low Dollar Value Deliverable Purchases. Non-standard procurements which are considered emergency purchases will be governed by Section 17 – Emergency Purchases.
- 16.2 The Chief Administrative Officer may authorize a non-standard procurement under the following conditions:
- (a) the total cost of the deliverables does not exceed five hundred thousand dollars (\$500,000.00);
 - (b) the term of a proposed term contract does not exceed five (5) years; and
 - (c) the Procurement Review Committee has determined that a non-standard procurement is permitted under the circumstances set out in the Non-Standard Procurements Protocol.
- 16.3 A report shall be submitted to Council, as per the Non-Standard Procurements Protocol, to advise of all contracts awarded under the delegated authorities for non-standard procurements.

17. EMERGENCY PURCHASES

- 17.1 In the case of an emergency, the purchase of deliverables may be authorized by the Director of the Procurement Office without issuing a call for bids.
- 17.2 The Director of the Procurement Office shall endeavour to obtain the best value for any deliverables purchased during an emergency, using as fair and transparent a process as is feasible having regard to the particular emergency and complying, to the greatest extent practicable, with the Non-Standard Procurements Protocol.
- 17.3 The Commissioner may authorize the purchase provided that the total cost does not exceed one hundred thousand dollars (\$100,000.00).

- 17.4 The Chief Administrative Officer may authorize the purchase where the total cost exceeds one hundred thousand dollars (\$100,000.00).
- 17.5 Emergency purchases shall not be used to circumvent the need to procure deliverables through a standard procurement process in accordance with this bylaw.
- 17.6 A report shall be submitted to Council, as specified in the Non-Standard Procurements Protocol, to advise of any purchases made under delegated authority for emergency purchases.

18. REQUIREMENT FOR COUNCIL APPROVAL

- 18.1 Council approval is required in each of the following circumstances:
- (a) prior to authorizing a procurement where the procurement is prescribed by statute to be made by Council;
 - (b) prior to authorizing a procurement where the procurement of any deliverable is not authorized by this bylaw;
 - (c) prior to authorizing a procurement where the term of a proposed term contract is for a period greater than five (5) years, or where the extension or renewal of a contract would result in an aggregate term of greater than five (5) years, unless permitted under the Non-Standard Procurements Protocol;
 - (d) prior to renewing a term contract where the contract does not provide for a renewal option or all renewal options have been exercised, unless permitted under the Non-Standard Procurements Protocol;
 - (e) prior to authorizing a procurement where the total cost of a non-standard procurement exceeds five hundred thousand dollars (\$500,000.00); or
 - (f) where otherwise specifically required by this bylaw.

19. CONTRACT DOCUMENTS

- 19.1 Where the procurement of deliverables has been authorized under this bylaw, the contract may be executed by the person who authorized the award.
- 19.2 When awarding a contract, Council may authorize any officer or employee of the Region to execute the contract, failing which the contract may be executed by the Chief Administrative Officer.
- 19.3 Any contracts authorized under this bylaw shall be in a form approved by the Regional Solicitor.

20. CONTINGENCIES

- 20.1 Where any purchase of deliverables has been authorized under this bylaw, the Commissioner may, upon being satisfied that a contingency has arisen, authorize expenditures that exceed the originally approved contract amount, provided that any additional expenditures shall not exceed fifteen percent (15%) of the total cost of the contract at the time of award and further provided that the additional expenditures are required to fulfill the requirements of the contract.
- 20.2 The Commissioner may authorize any expenditure under Section 20.1 of this bylaw, irrespective of the total amount of the expenditure. Where a contingency arises more than once in respect of a particular contract, the total cumulative additional expenditures, including the value of all previously approved additional expenditures and the value of the proposed additional expenditure, shall not exceed fifteen (15%) of the total cost of the contract at the time of award.

21. SCOPE CHANGE/ADDITIONAL DELIVERABLES

- 21.1 Additional deliverables may only be procured from the same contractor, through an amendment to an existing contract, in accordance with this bylaw.
- 21.2 Contract amendments and extensions must not be used to circumvent the need to procure additional deliverables through a competitive process in accordance with this bylaw.
- 21.3 The Commissioner may authorize the purchase of additional deliverables under a contract, provided that the Commissioner is satisfied that a scope change necessitates the purchase of additional deliverables, and:
- (a) the total cost of the additional deliverables does not exceed twenty percent (20%) of the total cost of the contract at the time of award; or
 - (b) the total cost of the additional deliverables is to be paid in full by a third party and security to ensure payment has been provided to the Region, to the satisfaction of the Treasurer,
- failing which the purchase of the additional deliverables shall be subject to Council approval.
- 21.4 If the total value of the purchase of an additional deliverable under an existing contract exceeds one million dollars (\$1,000,000.00), the Commissioner must obtain approval for the purchase from the Procurement Review Committee prior to authorizing the purchase of the additional deliverable. The determination made by the Procurement Review Committee will be based upon the criteria established for non-standard procurements under the Non-Standard Procurements Protocol.

- 21.5 If a scope change requires the extension or renewal of a term contract, any extension or renewal of a term contract that would result in a total contract term of greater than five (5) years shall be subject to Council approval, unless permitted under the Non-Standard Procurements Protocol.
- 21.6 Any purchase authorized under Section 21.3 of this bylaw may be made in addition to any expenditure for any contingency authorized under Section 20 of this bylaw and, subject to Section 21.4, may be authorized by the Commissioner, irrespective of the total amount of the expenditure.
- 21.7 Despite Section 21.3 (a) of this bylaw, the Regional Chair and Chief Administrative Officer may jointly authorize the purchase of additional deliverables, irrespective of the total amount of the expenditure, provided that:
- (a) the authorization to purchase the additional deliverables is required to prevent interruption in service delivery or to avoid incurring extra costs; and
 - (b) a request is submitted to the Regional Chair and Chief Administrative Officer on a form prescribed by the Treasurer.
- 21.8 A report shall be submitted to Council, as specified in the Non-Standard Procurements Protocol to advise of any expenditures made under Section 21.7 of this bylaw.

22. RENEWAL OF CONTRACTS

- 22.1 Where a contract provides for a renewal term, the Commissioner may exercise the option to renew, provided that:
- (a) the contract was awarded in accordance with this bylaw;
 - (b) the contractor has performed the contract to the satisfaction of the Commissioner and is not currently suspended under the Supplier Suspension Protocol; and
 - (c) the renewal of the contract would not result in an aggregate term of greater than five (5) years.

23. CO-OPERATIVE PURCHASING

- 23.1 The Region may participate with other levels of government, municipalities, agencies or public authorities, and other entities in co-operative purchasing where the Commissioner or Director of the Procurement Office determines it is in the best interests of the Region to do so,

23.2 Where the Region participates in co-operative purchasing where the call for bids is issued by another entity, the Region shall adhere to the policies of the entity issuing the co-operative call for bids with respect to the procurement process.

23.3 Despite Section 23.2, the award of any contract proposed to be entered into by the Region where the call for bids was issued by another entity shall be authorized in accordance with this bylaw.

24. UNSOLICITED BIDS

24.1 Any procurement resulting from the receipt of an unsolicited bid must comply with the requirements of this bylaw.

24.2 Unless the total cost does not exceed one hundred thousand dollars (\$100,000.00), a contract may only be awarded in respect of an unsolicited bid if a non-standard procurement is authorized in accordance with this bylaw.

25. SOCIAL PROCUREMENT AND COMMUNITY BENEFITS

25.1 To the extent practicable, the Region shall endeavour to promote and incorporate social procurement opportunities and community benefit approaches into its procurements, having regard to the requirements of all applicable legislation and trade treaties, and in accordance with any applicable protocols.

26. BID DEBRIEFINGS

26.1 Where the Region has conducted an open competition, unsuccessful bidders may request a debriefing. Debriefings must be conducted in accordance with the Bid Debriefing Protocol.

27. BID DISPUTES

27.1 Suppliers may formally dispute the outcome of a procurement process. Formal disputes must be made by suppliers and responded to by the Region in accordance with the Bid Dispute Protocol.

28. SUPPLIER PERFORMANCE AND SUSPENSION

28.1 All contracts for deliverables must be managed by the department responsible for the procurement and the performance of the contractor must be monitored and tracked in accordance with any applicable protocols.

28.2 Suppliers may be suspended from participating in future procurement for a specified period of time in accordance with the Supplier Suspension Protocol.

29. RECORDS RETENTION AND ACCESS TO INFORMATION

- 29.1 All procurement activities must be supported by appropriate documentation and all records relating to a procurement process must be retained in accordance with the applicable procurement protocols and the Region's records management policies.
- 29.2 Disclosure of information related to the Region's procurement processes must be made in accordance with applicable procurement processes, protocols and the Region's policies with respect to disclosure and protection of information.

30. BYLAW REVIEW

- 30.1 This bylaw shall be reviewed and evaluated for effectiveness at least once during each term of Council.

31. REPEAL

- 31.1 Bylaw No. 2017-30 is hereby repealed effective January 1, 2022.

32. TRANSITION PROVISION

- 32.1 Where a procurement was initiated under Bylaw 2017-30, effective January 1, 2022, the award of any contract as a result of such procurement shall be made in accordance with this bylaw.

33. EFFECTIVE DATE

- 33.1 This bylaw shall come into force on January 1, 2022.

ENACTED AND PASSED on November 25, 2021.

Regional Clerk

Regional Chair

SCHEDULE 1 - EXCLUSIONS

Unless determined otherwise by the Procurement Review Committee, this bylaw shall not apply to:

- (a) the acquisition of any real property or to any lease, right or permission relating to the use or occupation of real property;
- (b) procurement of deliverables required under any lease of real property and provided for under the terms of such lease, including tenant improvements, equipment and fixtures;
- (c) procurement related to the relocation of non-Regional utilities associated with a Regional contract, including but not limited to hydro-electrical, gas, cable, or telecommunications works;
- (d) procurement of services where the Region provides subsidies or funding to the service provider or to a recipient under a program approved by Council;
- (e) the provision of services by a service provider that is eligible to participate in a Council- approved program based on eligibility criteria for that program, where the opportunity is offered to multiple service providers;
- (f) procurement of services for educational or training purposes where the service provider is prescribed by a regulatory body;
- (g) procurement of advertising for Regional services or programs;
- (h) procurement of catering or venues for Regional events and activities;
- (i) procurement of services provided in relation to internal audit conducted by the Audit Services Branch, including forensic investigation services;
- (j) procurement of services required by the Procurement Office to comply with the Region's Procurement Bylaw and applicable trade treaties;
- (k) procurement of services of expert witnesses or factual witnesses for proceedings before the courts or administrative tribunals;
- (l) procurement of legal services;
- (m) procurement of goods intended for resale to the public;
- (n) procurement of goods purchased on a commodity market;
- (o) procurement of goods or services mandated by regulatory agencies;

- (p) procurement of railway flagging and protection services in relation to work performed adjacent to a railway crossing;
- (q) procurement of works of art;
- (r) attendance at conferences, seminars, courses, and conventions;
- (s) subscriptions to newspapers, magazines, or other periodicals, as well as digital research resources which are acquired in accordance with the Region's applicable technology policies;
- (t) association membership fees; and
- (u) purchases from other government bodies.

SCHEDULE 2 - SUPPLIER CODE OF CONDUCT

The Region requires its suppliers to act with integrity and conduct business in an ethical manner. The Region may refuse to do business with any supplier that has engaged in illegal or unethical bidding practices, has an actual or potential conflict of interest or an unfair advantage, or fails to adhere to ethical business practices.

Suppliers are responsible for ensuring that any employees, representatives, agents or subcontractors acting on their behalf conduct themselves in accordance with this Code of Conduct. The Region may require the immediate removal and replacement of any individual or entity acting on behalf of a supplier that conducts themselves in a manner inconsistent with this Code of Conduct. The Region may refuse to do business with any supplier that is unwilling or unable to comply with such requirement.

(a) Illegal or Unethical Bidding Practices

Illegal or unethical bidding practices include:

- bid-rigging, price-fixing, bribery or collusion or other behaviour or practices prohibited by federal or provincial statutes;
- offering gifts or favours to the Region's officers, employees, appointed or elected officials or any other representative of the Region;
- engaging in any prohibited communications during a procurement process;
- submitting inaccurate or misleading information in a procurement process; and
- engaging in any other activity that compromises the Region's ability to conduct a fair procurement process.

The Region will report any suspected cases of collusion, bid-rigging or other offenses under the *Competition Act* to the Competition Bureau or to other relevant authorities.

(b) Conflicts of Interest

All suppliers participating in a procurement process must declare any perceived, possible or actual conflict of interest.

The term "**Conflict of Interest**", when applied to suppliers, includes any situation or circumstance where:

- in the context of a procurement process, the supplier has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the Region that is not available to other suppliers; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process (including but not limited to the lobbying of decision makers involved in the

procurement process); or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of an open and competitive procurement process or render that process non-competitive or unfair; or

- in the context of performance under a potential contract, the supplier's other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

Where a supplier is retained to participate in the development of a procurement solicitation document or the specifications for inclusion in a solicitation document, that supplier will not be permitted to respond, directly or indirectly, to that solicitation document, or participate, in any way (other than as a consultant to the Region), in the procurement process pertaining to that solicitation document.

(c) Ethical Business Practices

In providing deliverables to the Region, suppliers are required to adhere to ethical business practices, including:

- performing all contracts in a professional and competent manner and in accordance with the terms and conditions of the contract and the duty of honest performance;
- complying with all applicable laws, including safety and labour codes (both domestic and international as may be applicable); and
- providing workplaces that are free from harassment and discrimination.