



Being a by-law of the Municipal Corporation of the Hamlet of Clyde River in Nunavut to obtain the best value by promoting the growth of new and existing business sectors in Clyde River, providing incentives to locally established businesses while treating all suppliers fairly in all or in any part of the Hamlet of Clyde River, pursuant to the *Hamlets Act*;

WHEREAS the Council of the Corporation of the Hamlet of Clyde River has the authority to pass by-laws regulating the expenditure control of the Municipal Corporation, pursuant to the *Hamlets Act*;

AND WHEREAS Council deems it appropriate that purchases be made using a competitive process that is open and transparent;

NOW, THEREFORE, THE COUNCIL OF THE HAMLET OF CLYDE RIVER, at a duly assembled meeting enacts as follows:

SECTION 1 – SHORT TITLE

This by-law may be cited as the “**Purchasing By-Law**”.

SECTION 2 – INTERPRETATION

In this by-law, following terms (unless the context specifically requires otherwise) shall have the following meaning:

- 2.1 “Acquisition” means the process whereby property or a service is borrowed, constructed, foreclosed, leased, leased to purchase, purchased or rented;
- 2.2 “Addendum” means any change or clarification to the tender documents issued during the tender call period. For all contractors to bid on the same tender package, addenda must be used to ensure that all bidders receive written notification of changes or clarifications made during tender call period;
- 2.3 “Agreement” means the mutual understanding of the Hamlet and at least one other party. Understanding is usually conveyed through a contract or purchase order;
- 2.4 “Award” means authorization to proceed with the purchase of goods, services and construction from a chosen supplier;
- 2.5 “Best Value” means the optimal balance of performance and cost determined in accordance with a pre-defined evaluation plan;
- 2.6 “Bid” means an offer or submission from a supplier in response to a bid solicitation; also, to provide a service under stated terms and conditions;
- 2.7 “Bid Solicitation” means a formal request for bids that may be in the form of an Expression of Interest, Request for Quotation, Request for Qualifications, Request for Tender, Request for Proposal or



MUNICIPALITY OF CLYDE RIVER BY-LAWS

By-Law Title: Purchasing, Tendering, Contract & Local Incentive By-Law Number: 118

- a) an event that is exceptional or could not be foreseen and is a threat to the health, safety or welfare of the public; or
 - b) an event that has disrupted essential services that needs to be re-established without delay.
- 2.45 “Standing Offer” or “As and When” means an offer from a supplier that allows the Hamlet to purchase frequently ordered goods, services or construction from suppliers at prearranged prices, under set terms and conditions.
- 2.46 “Supplier” means a source that is capable or potentially capable of furnishing property or providing a service. A supplier shall be deemed to include a consultant, contractor, person, professional tradesperson or vendor.
- 2.47 “Supply Management” means the SAO and his/her staff are responsible for performing the purchasing services of the Hamlet.
- 2.48 “Surplus” means property which is extra to the Hamlet’s needs and therefore not required.
- 2.49 “Tender” means a bid which is submitted in response to an Invitation to Tender. A Tender is used when it is known what, when, why and how property or a service is required. The main concern is price. Suppliers compete on the pricing for the detailed property or service.

The defined words (or any derivative thereof) shall have a plural, masculine, feminine or neutral meaning where the text so requires.

SECTION 3 – APPLICATION

- 3.1 All schedules attached hereto form a part of this by-law.
- 3.2 The procedures prescribed in this by-law shall be followed to make a contract award or to make a recommendation of a contract award to Council.

SECTION 4 – RESPONSIBILITY AND AUTHORITY

- 4.1 Council delegates, to the Hamlet’s SAO, the authority to commit or expend funds for the acquisition of property or services as herein outlined from the approved budget of the Hamlet. The SAO may, as permitted within this by-law, by written documentation action only, delegate the commitment or expenditure of funds to the Hamlet Directors. Such delegation will enable staff to initiate expenditures against approved budget for which they are accountable. Council also delegates to the SAO the authority to dispose of surplus or obsolete assets. The SAO may delegate the disposal of assets to other Hamlet staff.
- 4.2 Directors have responsibility for procurement activities within their departments and are accountable for achieving the specific objectives of the procurement project. The authority, and that which is delegated, carries with it the responsibility to ensure that:



sufficient funds in appropriate accounts within the Council approved budget.

- 6.2 Where goods and services are routinely purchased or leased on a multiyear basis, the exercise of authority to award a contract is subject to:
 - a) the identification and availability of sufficient funds in appropriate accounts for the current year within the Council approved budget;
 - b) the requirement for the goods and services will continue to exist in subsequent years and, in the opinion of the Director of Finance, the required funding can reasonably be expected to be made available; and
 - c) the contract has a provision in it that the supply of goods or services in subsequent years is subject to the approval of Council of the departmental estimates to meet the required expenditures.

- 6.3 The SAO shall reject all purchase requests for contracts for which sufficient funds are not available and identified unless, in the opinion of the SAO, the deficiency is minimal and alternate funding has been identified.

SECTION 7 – RESTRICTIONS

- 7.1 No requirement may be divided to avoid the application of the provision of this by-law.

- 7.2 A Director shall not award a contract where supply management has determined that the provisions of this by-law have not been adhered to and has so advised the Director.

- 7.3 The SAO shall:
 - a) reject all purchase requisitions for services where the services could result in the establishment of an employee-employer relationship; and
 - b) with the Director, determine whether the requirement referred to in subsection 7.3 a) can be revised or the requirement should be forwarded to the Human Resources Department for action.

SECTION 8 – PROJECT COSTS

- 8.1 Where this by-law prescribes financial limits on contracts that may be awarded on the authority of the Director, or provides for financial limits on contracts required and to be reported to Council, for the purpose of determining whether a Contract falls within these prescribed limits, the contract amount shall be the sum of:
 - a) all costs to be paid to the supplier under the contract; and
 - b) all applicable taxes
 - c) less any rebates

SECTION 9 – COUNCIL APPROVAL

- 9.1 Despite any other provision of this by-law, the following contracts are subject to Council approval:
 - a) Where the cost amount proposed for acceptance is higher than the Council approved budget and the necessary adjustments cannot be made;



- b) construction contracts; and
- c) leases.

SECTION 18 – TENDERING PROCESS

- 18.1 The tendering process begins when the documents describing the work (plans and specifications) or requisitions for goods and services have been received or prepared. The terms ‘tender’ and ‘bid’ are often used interchangeably and may occasionally be referred to as ‘price’, ‘quotation’ or ‘submission’.
- 18.2 The tender call is the first stage of the tendering process and includes all activities from the preparation of the tender documents up to the receipt of tenders from contractors/suppliers. The principal steps are as follows:
- a) Approval to tender;
 - b) Preparation of the tender documents;
 - c) Tender advertisement; and
 - d) Modifying or clarifying the tender.

SECTION 19 – INVITATIONAL TENDERS

- 19.1 The time required to obtain tenders with invitational tenders is generally shorter than that required for publicly advertised tenders.
- 19.2 Since there are no advertising restrictions, the time allowed for submitting tenders should be reasonable and sufficient to ensure reasonable bid response. Some factors to consider include:
- a) the marketplace;
 - b) availability of suppliers or contractors;
 - c) locations of business or firms willing to tender; and
 - d) use of facsimile or sealed bids.
- 19.3 As a general rule, the minimum time to be allowed for invitational tendering is one (1) week. This is acceptable in the case of simple, well-defined goods where there is a clearly identified supplier base capable of supplying the goods.
- 19.4 On the other hand, the maximum time to be allowed for tender is judgmental and depends on what reasonable time is required to enable prospective tenders to properly prepare and submit a tender.
- 19.5 Tenders should be accepted only at the Hamlet Office.

SECTION 20 – BID AND CONTRACT SECURITY

- 20.1 A Bid Bond or Security of not less than ten percent (10%) of the bid submission should be included if the contract price will be greater than five hundred thousand dollars (\$500,000).
- 20.2 For construction tenders, a Plan Holder’s Log or Tender Log must be maintained. Contract documents sets should be numbered sequentially and referenced in the log as copies are



requested by any person or company.

- 20.3 The Plan Holder’s Log is public information and is available to the public at any time prior to or after tender closing.
- 20.4 Immediately prior to tender closing, caution should be exercised if no general contractors or only one general contractor has picked up documents. If an interested bidder knows this information, that bidder will be aware that there is no competition. In this case, the log should still remain public, but the contract coordinator should make a note of the circumstances. Following closure of the tenders, a review should be conducted to determine whether the bid, in fact, represented competitive bidding.
- 20.5 The information contained in the Plan Holder’s Log (bidder’s name and address) may be provided over the telephone or by facsimile to the person requesting the information.
- 20.6 The Director and the SAO must take extreme care so that incorrect or misleading information is not provided during the tender process.

SECTION 21 – FACSIMILE TENDERING

- 21.1 The receipt of tenders by facsimile transmission is acceptable subject to the following:
 - a) If the contract value is less than twenty-five thousand dollars (\$25,000), approval by the Director or his delegate must be obtained; and
 - b) Adjustments to bids by facsimile will be permitted prior to the closing deadline.

SECTION 22 – DETERMINATION OF FOB POINTS

- 22.1 FOB points and freight cost responsibilities must be determined in each instance by using sound judgment based on procurement principles and policy. The Contracting Authority is responsible for ensuring that the best value is obtained for the Hamlet.
- 22.2 It should be recognized that specifying FOB destination in contracts provides the benefit of mitigating the risks of damage and loss of goods in transit to the Hamlet.

SECTION 23 – TRANSLATION OF ADVERTISEMENTS

- 23.1 Advertisements will be published in both English and Inuktitut.

SECTION 24 – PUBLIC NOTICE OF ADVERTISED TENDERS

- 24.1 Public notices of advertised tenders may be posted on bulletin boards throughout the Hamlet.

SECTION 25 – MODIFYING TENDER INFORMATION

- 25.1 This section deals with amending tenders or clarifying the information contained within tenders prior to the closing date and time.
- 25.2 To ensure that all contractors are eligible to bid on the same tender package, addenda must be used to ensure that all bidders receive written notification of changes or clarifications made



during the tender call period.

- 25.3 The addendum should only deal with issues that have a major impact on the job. Minor items that will not have a significant impact on the cost or schedule may be dealt with by way of change orders. The use of excess addenda will decrease competition and increase costs.

SECTION 26 – TENDER OPENING

- 26.1 All publicly advertised tenders over twenty-five thousand dollars (\$25,000) in value should be opened in public. To ensure the tendering process is open and fair to all bidders, the Hamlet allows the public to attend all tender openings, including those tendered by invitation list. Tenders should be opened as soon as possible after the tender closing time.
- 26.2 An official clock should be designated as the clock to be used for tender closures.
- 26.3 The date and time received is to be recorded on each tender and tender amendment upon receipt.
- 26.4 A Tender Opening Committee will open tenders. At least two (2) Hamlet employees will be present for a tender opening. The Chairperson should announce that all tenders received are subject to audit and review prior to any recommendation for award, and that no questions concerning tenders will be answered during the opening. The Committee then records all bids received on time on a tender register for each request for tenders. Bids are not reviewed at the tender opening.
- 26.5 Upon opening each envelope (for sealed tenders), and for tenders received by facsimile, the Chairperson must announce only:
- a) the name of the person or company who submitted the tender;
 - b) if applicable, whether or not bid security is provided;
 - c) the amount of the tender (the total only);
 - d) any amendments to the tender price; and
 - e) the final tender price, which is the tendered price plus or minus any amendments [if amendments were received, two (2) Committee members calculate the final contract price].
- 26.6 After each announcement, the Secretary records:
- a) the correct name of the bidder from the tender form (may differ from envelope);
 - b) if applicable, the type of security provided: bid bond, certified cheque, etc.; and
 - c) the amount of each bid, the amendment amounts and the final contract price.
- 26.7 Each Committee member initials the bid page where the price is indicated and signs the tender register.
- 26.8 If no bids are received it is written in the tender register which is then signed by the Committee.



- b) To provide a proposal that effectively prioritizes the Hamlet’s needs, the weightings of the criteria to be used for evaluation should normally be listed in the RFP. However, there may be occasions where the nature of the proposal is such that the weighting criteria should not be disclosed. These situations should be discussed with the appropriate Director.

27.11 Restrictions

- a) To clearly establish that a proposal is intended to be a proposal; not to be confused with a tender, the words ‘tender’ or ‘bid’ should not be used at all in the proposal documents.
- b) Since a proposal is one proposer’s unique solution to a need or problem, the terms of a proposal cannot be absolutely set out in the proposal call. Usually, some level of further negotiation will need to take place before the final terms of the contract are agreed upon. Ultimately, anyone of the various proposers may not be able or willing to contract on the terms eventually developed. Therefore, RFPs shall not include the requirement for bid security nor shall they require proposals to be irrevocable for any period of time.

27.12 Who to Invite on a Request for Proposal

The next few sections outline who should be invited to submit proposals and how different types of proposals are to be distributed. They cover calling competitive proposals through public advertising, short list invitation and sole source selection using proposals.

27.13 Competitive Selection

- a) To ensure a competitive selection process, proposals should be advertised or invited from at least three (3) interested and capable firms.
- b) For consulting contracts, usually no more than three (3) or four (4) firms should be invited since both the preparation and evaluation of proposals can require a substantial amount of time and money relative to the value of the work.
- c) For goods or general services contracts, the RFPs should be publicly advertised, or all appropriate Nunavut contractors should be invited to propose. Many should be advertised, particularly if there are service requirements where many firms are capable of performing the work.

SECTION 28 – RFP PURCHASES EXCEEDING TWENTY-FIVE THOUSAND DOLLARS (\$25,000)

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

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

28.2 The Director shall provide the SAO with a purchase requisition, terms of reference and evaluation criteria including the scoring assessment to be applied in assessing the proposals submitted.



- 28.3 The Director and SAO may jointly select a supplier to provide professional services without competition where:
- a) the estimated total cost does not exceed twenty-five thousand dollars (\$25,000); and
 - b) the cost of preparing a detailed proposal would deter suppliers from submitting proposals.
- 28.4 The SAO shall issue an RFP in the same manner as for an RFT as set out in this by-law, excluding the requirement for a public opening, if the estimated value is less than twenty-five thousand dollars (\$25,000).
- 28.5 Where the requirement is not straightforward, or an excessive workload would be required to evaluate proposals, either due to their complexity, length, number or any combination thereof, a multi-step procedure may be used that would include a pre-qualification stage to ensure the workload is at a manageable level.
- 28.6 A selection committee, composed of a minimum of one Director/Manager from the department and the SAO, shall review all proposals against the established criteria and reach consensus on the final rating results and ensure that the final rating results with supporting documents are kept on the procurement file.
- 28.7 The SAO shall forward to the Director a summary of the procurement and recommendation for award of contract to the supplier meeting all mandatory requirement and providing best value as stipulated in the RFP.
- 28.8 The SAO and the department Director may recommend a contract within the limits of the signing authority established within this by-law or emanating from an RFP provide that:
- a) sufficient funds are available and identified in appropriate accounts within Council-approved departmental budgets including authorization provisions;
 - b) the award is made to the supplier meeting all mandatory requirements and providing best value as stipulated in the RFP;
 - c) supply management is in receipt of a funded requisition; and
 - d) the provisions of this by-law are followed.
- 28.9 Awards emanating from an RFP require the SAO's approval as per the signing authority established under this by-law.
- 28.10 RFPs must be signed by the department Director and/or delegate and the SAO.

SECTION 29 – UNSOLICITED PROPOSALS

- 29.1 Unsolicited proposals will be accepted by the Hamlet of Clyde River.

SECTION 30 – NON-BUDGETARY CONTRACT APPROPRIATIONS

- 30.1 Where a requirement exists to initiate a project for which goods, services or construction are required, and funds are not contained in appropriate accounts within the Council-approved budget to meet the proposed expenditure, the SAO shall, prior to the commencement of the purchasing process, submit a report to Council containing:

