

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

BY-LAW No. 2004-37

**BEING A BY-LAW
GOVERNING PROCUREMENT POLICIES AND PROCEDURES**

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, Section 5, states that the powers of the Municipal Council shall be exercised by By-law, unless the Municipality is specifically authorizes to do otherwise;

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, Part VI, Section 271 (1), states that a Municipality and a Local Board shall adopt policies with respect to its procurement of goods and services, including policies with respect to:

- a) the types of procurement processes that shall be used;
- b) the goals to be achieved by using each type of procurement process;
- c) the circumstances under which each type of procurement process shall be used;
- d) the circumstances under which a tendering process is not required;
- e) the circumstances under which in-house bids will be encouraged as part of a tendering process;
- f) how the integrity of each procurement process will be maintained;
- g) how the interests of the Municipality or local board, as the case may be, the public and persons participating in a procurement process will be protected;
- h) how and when the procurement processes will be reviewed to evaluate their effectiveness; and
- i) any other prescribed matter;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, Section 286 (1) requires that the Treasurer is responsible for handling all of the financial affairs of the Municipality on behalf of and in the manner directed by the Council of the Municipality;

AND WHEREAS this By-law establishes the authority and sets out the methods by which Goods, Services or Construction will be purchased and disposed of for the purposes of the Municipality of Magnetawan, subject to certain exceptions set out herein;

NOW THEREFORE BE IT ENACTED as a By-law of The Corporation of the Municipality of Magnetawan as follows:

1. SHORT TITLE

This By-law may be cited as the "Purchasing By-law"

2. PURPOSE OF PROCUREMENT POLICY

The purpose of this By-law is to set out guidelines for the Municipality of Magnetawan to ensure:

- 2.1 that purchases of materials, supplies and services best reflect the cost consistent with the required quality and service;
- 2.2 that an open and honest process shall be maintained that is fair and impartial; and
- 2.3 that will promote and maintain the integrity of the purchasing process and protect Council, vendors and Staff involved in the process by providing clear direction and accountabilities.

3. DEFINITIONS AND SCHEDULES

In this By-law:

- 3.1 **Acquisition** means the process used for obtaining goods and/or services;
- 3.2 **Agreement** means a formal, written legal document that binds the Corporation of the Municipality of Magnetawan and all other parties, subject to the provisions of the Contract;
- 3.3 **Approval** means the authorization to proceed with the purchase of specific goods and/or services;
- 3.4 **Award** means the acceptance of a Bid or Proposal in accordance with this By-law;
- 3.5 **Bid** means a submission from a prospective supplier in response to a request for the purchase of goods or services issued by the Municipality;
- 3.6 **Bid Deposit** means a financial guarantee to ensure the successful bidder will enter into an agreement;
- 3.7 **Committee** means a committee as designated by the Council of the Corporation of the Municipality of Magnetawan;
- 3.8 **Construction** means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site

preparation, excavation, drilling, seismic investigation, soil investigation, the supply of products and materials and the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering design or architectural work, but does not include professional services related to the construction contract unless they are included in the specifications for the procurement;

- 3.9 **Contract** means any formal or deliberate written agreement for the purchase of goods, services, equipment or construction;
- 3.10 **Council** means the Council of the Corporation of the Municipality of Magnetawan;
- 3.11 **Council Approved Budgets** means Council approved department budgets, including authorized revisions, or where applicable, Council approved budgets of Municipal Boards or Committees to which this By-law applies;
- 3.12 **Department** means an organizational unit of the Municipality of Magnetawan;
- 3.13 **Department Head** means the person appointed by Council, who is responsible for the direction and operational control of a Department;
- 3.14 **Deposit** means a financial guarantee to ensure the successful candidate will enter into the agreement
- 3.15 **Emergency Purchase** means a purchase made in a crisis situation where immediate action is required to prevent the possible loss of life or property. The Department Head shall make every effort to contact the Mayor/Deputy Mayor to obtain approval for the purchase;
- 3.16 **Formal Bid** means a sealed bid submission;
- 3.17 **Formal Quotation** means a document that sets out particular requirements for goods and/or services;
- 3.18 **Generic** means that no specific brand or name shall be included as part of the specifications unless such a brand or name is required to identify the intent of a purchase, order or proposal;
- 3.19 **Informal Quotation** means a competitive bid process for goods or services that is conveyed and received from bidders in a written format by e-mail, mail or fax;
- 3.20 **Purchasing Designate** means a person designated by a Department Head and approved by Council to exercise any or all responsibilities of the Department Head with respect to this By-law;
- 3.21 **Sealed Bids** are bids submitted in a sealed envelope to a specified location, by a specified date;
- 3.22 **Services** means items such as telephone, gas, heating oil, water, hydro, janitorial and cleaning services, consultant services, legal surveys, medical and related services, insurance, leases for grounds, buildings, office or other space required by the Corporation and the rental, repair or maintenance of equipment, machinery, or other personal and real property;
- 3.23 **Supplies** means goods, wares, merchandise, material and equipment;
- 3.24 **Tender** means a document which sets out particular specifications for the commodity or service required. This can also refer to an offer in writing to execute some specified work or to provide some specified articles at a specified rate;
- 3.25 **The Corporation of the Municipality of Magnetawan** is also referred herein to as the 'Municipality' or the 'Corporation';
- 3.26 **Vendor** means any person or enterprise supplying goods or services to the Corporation of the Municipality of Magnetawan.

4. GENERAL PROCUREMENT POLICY

4.1 Expenditure Authorization

- 4.1.1 The Council of the Corporation of the Municipality of Magnetawan has the ultimate authority for all expenditures. Council delegates this authority by the authorization of Budgets or by specific Resolution. Treasury cannot pay for any item that has not been authorized by Council through Budget appropriation or specific Resolution. This Procurement By-law provides guidelines outlining how spending authority is to be used.

4.2 Department Head Authorization and Responsibilities

- 4.2.1 The Department Head shall be responsible for approval of accounts within the approved Budget for such division or any amendment to same, as approved by Council.
- 4.2.2 Resolutions approving budget amendments, capital expenditures or special appropriations shall contain the purpose of the expenditure, cost estimates or expenditure amount/expenditure limitation, and the Fund from which an appropriation has been provided. All staff reports recommending such Resolutions

shall be attached.

- 4.2.3 A Department Head may designate any or all responsibilities assigned to that position by this By-law.
- 4.2.4 The Department Head shall hereby be authorized to make purchases of goods and services as per Section 5 PURCHASING MECHANISMS.
- 4.2.5 In the case of equipment repairs and equipment rentals, Council shall authorize the Department Head to select vendors not solely on the basis of cost, but also on ability, quality or workmanship, service, availability, overall performance and experience, without first obtaining quotations.

5. PURCHASING MECHANISMS

The estimated expenditure value of the good and/or service requirement will determine the purchasing mechanism to be used as per the following:

5.1 Small Order Purchases (\$0.00 - \$5,000.01)

- 5.1.1 *The Department Head shall be authorized to make small order purchases for goods and services from \$0.00 to \$5,000.01.*

5.2 Quotation Purchases (\$5,000.01 - \$20,000.00)

- 5.2.1 *The Department Head shall be authorized to obtain quotes for goods and services for estimated expenditures between \$5,000.01 and \$20,000.00 by requesting and obtaining three formal quotations wherever possible.*
- 5.2.2 *When the preferred quotation exceeds the approved budget approximation, the Department Head shall submit a report to Council for direction.*

5.3 Tender/Bid Purchases (\$20,000.01 and over)

- 5.3.1 *The Department Head shall be authorized to obtain Tenders for goods and services for estimated expenditures exceeding \$20,000.01 by requesting and obtaining sealed Bids for the goods and services unless specifically authorized to do otherwise by a resolution of Council for a particular transaction.*
- 5.3.2 *The following transactions are exempt from the requirement for tendering:*
 - 5.3.2.1 *Purchases for services or for a program where services have been awarded to a consulting firm or a service provider on an on-going basis and when clearly identified in the budget*
 - 5.3.2.2 *Purchase of replacement parts where the Original Equipment Manufacturer (OEM) is the sole provider of that equipment.*

5.4 Requests for Proposals

- 5.4.1 The Department Head shall use a 'Request for Proposal' in place of a tender or quotation when goods or services cannot be specifically stipulated or when alternative methods are being sought to perform certain functions or services, i.e. the suitability of the deliverable is dependent upon the knowledge and expertise of a bidder (architects, engineers, consulting services, etc.).
- 5.4.2 When the preferred proposal exceeds the approved budget appropriation, the Department Head shall submit a report to Council for direction.
- 5.4.3 The Request for Proposal (RFP) should include, but is not limited to, the following:
 - 5.4.3.1 Introduction
 - including some general statements regarding the purpose of the RFP, general background information, historical data, etc.

- 5.4.3.2 Information for Bidders
 - including Municipal contact name and phone number for queries
 - closing time, date, location
 - addenda issuance
 - Municipal processes for acceptance, rejection, payment terms, delivery terms, penalties, etc.
 - requirements at time of closing, submission details (i.e. number of copies of the bid to be submitted)
- 5.4.4 Scope of Work or Deliverable - an outline of the objectives, goals, deliverable requirement(s), etc.
- 5.4.5 Evaluation Criteria - a detailed outline of the evaluation criteria to assist the bidders in outlining their submission. The actual weighted ratings will not be provided in the RFP document. The evaluation criteria cannot be changed after the bids have been submitted.
- 5.4.6 All prospective bidders shall be supplied with one (1) copy of the official bid document, and a set of plans and/or specifications, as applicable. A complete list of prospective bidders, including address, phone and fax numbers is to be maintained to facilitate the distribution of potential written addenda.
- 5.4.7 A 'Submission Envelope' will be included with all bid documents and shall include the bid document number, opening date, company name and address.
- 5.4.8 Closing times for sealed bids will be prior to 4:00:00 p.m., on the designated date, submitted to the Department Head/designate, at the designated location.
- 5.5 Petty Cash**
 - 5.5.1 The Treasurer shall have authority to establish a Petty Cash fund having a value of One Hundred, Fifty (\$150.00) Dollars for the acquisition of goods, services or construction.
 - 5.5.2 Expenditures not exceeding One Hundred, Fifty (\$150.00) Dollars, including purchases of goods, services and construction may be made from Petty Cash in any one (1) instance. Petty Cash should only be used when it is not feasible to use a Credit Card.
 - 5.5.3 All Petty Cash disbursements shall be evidenced by vouchers and shall be processed through the Municipal Treasurer.
- 5.6 Credit Card Purchases**
 - 5.6.1 The Mayor, Clerk and Roads Superintendent hold Municipal Credit Cards, (By-law to authorize and govern the use of Purchasing Cards) to be used in the procurement of low value goods and services to a maximum of amount of Five Thousand (\$5,000.00) Dollars per Card.
 - 5.6.2 All Credit Card disbursements shall be evidenced by vouchers and shall be processed through the Municipal Treasurer.
- 5.7 Blanket Orders**
 - 5.7.1 The Department Head may establish Blanket Orders or may obtain quotes for such items.
- 5.8 Purchase by Negotiation**
 - 5.8.1 A Department Head, with the approval of Council, may purchase by negotiation with one or more vendors under which a formal bid process may be waived, under the following conditions:
 - 5.8.1.1 when market conditions and in the judgment of the Department Head, the goods are in short supply;
 - 5.8.1.2 when there is only one (1) source of supply;
 - 5.8.1.3 when two (2) or more identical bids have been received, the Department Head may negotiate with the two (2) lowest bidders, keeping all negotiations fair and ethical;

5.8.1.4 when the lowest bid meeting specifications exceeds the estimated costs by at least ten (10%) per cent and is not viable or in the best interest of the Municipality.

5.8.2 Any expenditure exceeding \$50,000.00 for a one (1) time purchase or over an annual basis shall be approved by Council.

5.9 Emergency Purchases

5.9.1 Department Heads shall be authorized to make emergency purchases in excess of \$5,000.00 upon approval of the Mayor or Deputy Mayor. The Department Head shall present a report to Council at its next meeting.

5.10 Exclusions

5.10.1 Competitive bids shall not be required for goods or services provided by any of the following, when such goods or services are not available elsewhere, including, but not limited to:

5.10.1.1 Utilities, Government agencies, Crown corporations, traveling expenses, meals, conferences, seminars, memberships, subscriptions, medical exams, licences, in-house services and any other goods or services as approved by Council.

5.10.1.2 As identified elsewhere in this By-law.

6. BID CLOSING AND OPENING

6.1 Bid Documents will establish appropriate bid closing and opening procedures.

6.2 All bids will be opened at a public meeting.

7. CONDITIONS APPLICABLE TO ALL BID SUBMISSIONS

7.1 The following conditions apply to all bid submissions:

7.1.1 Bid documents shall be submitted and received in the manner as specified in the bid document. No exemptions will be permitted.

7.1.2 Bid documents received later than the specified closing date and time will be returned to the bidder. In the case of sealed bids, the bid will be returned to the bidder unopened. No exemptions will be permitted.

7.1.3 A bidder who has already submitted a bid may submit a further bid at any time up to the official closing time. The last bid received will supersede and invalidate all bids previously received by that bidder.

7.1.4 A bidder may withdraw a submitted bid at any time up to the official closing time by letter requesting withdrawal and bearing their signature.

7.1.5 All departments must document the receipt of all submissions. Documentation shall include the bidders name, date/time of receipt of bid and initials of the employee accepting the bid.

7.2 Bids may be rejected for any of the following reasons:

7.2.1 Bid received after the specified closing date and time as specified in the bid document. No exceptions.

7.2.2 Bid does not comply with the requirements at time of closing as specified in the bid document. No exceptions.

7.2.3 Bids which are incomplete, conditional or obscure, or which contain additions not called for, erasures, alterations or irregularities of any kind.

7.2.4 Bid does not meet specification requirements.

7.3 Bid Deposits

- 7.3.1 Bid deposits shall guarantee that if a bidder is successful in the award of the bid, the bidder:
 - 7.3.1.1 will enter into an agreement within a specified amount of time;
 - 7.3.1.2 will provide the specified security as required; and
 - 7.3.1.3 will provide additional documentation as noted in the bid document.
- 7.3.2 If a bidder awarded a contract does not oblige to any of the above within twenty-one (21) days, or by the time specified in the bid document and the Municipality is required to obtain another bidder and/or is required to issue another bid document, the bid deposit is forfeited.
- 7.3.3 Bid deposits shall be required to accompany any bid submission for the following circumstances:
 - 7.3.3.1 all bids for Municipal construction projects;
 - 7.3.3.2 special contracts or scope of work as deemed appropriate by the Department Head.
- 7.3.4 Bid deposits shall be not less than ten (10%) per cent of the estimated value of the work.
- 7.3.5 A bid deposit shall be provided in one (1) of the following formats:
 - 7.3.5.1 a certified cheque made payable to The Corporation of the Municipality of Magnetawan;
 - 7.3.5.2 a money order made payable to the Corporation of the Municipality of Magnetawan;
 - 7.3.5.3 Canadian currency.
- 7.3.6 The Municipality does not pay interest on any bid deposits.
- 7.3.7 All bid deposits must be original documentation, signed and sealed as appropriate. No faxed or photocopies will be accepted.
- 7.3.8 The Municipality is authorized to cash and deposit any bid deposit in the Municipality's possession.
- 7.3.9 All bid deposits with the exception of the winning bid shall be returned to the bidder within twenty (20) days of the bid closing unless otherwise legislated. The winning bid deposit shall be released after execution of the contract agreement and submission to 'The Corporation of the Municipality of Magnetawan', all documents required for the contract, and upon completion of the project, to the satisfaction of the Department Head and Council.
- 7.4 **The bid document shall include, but is not limited to the following main requirements:**
 - 7.4.1 Instruction to Bidders:
 - 7.4.1.1 Municipal contact name and phone number for queries;
 - 7.4.1.2 Addenda issuance procedures;
 - 7.4.1.3 Closing locations, date and time;
 - 7.4.1.4 Municipal process for acceptance, rejection, payment terms, delivery terms, etc.;
 - 7.4.1.5 Requirements at time of closing (bid deposit);
 - 7.4.1.6 Terms and conditions as per Sections 7.1, 7.2 and 7.3 of this Purchasing By-law.
 - 7.4.2 A complete list of prospective bidders, including address, phone and fax numbers is to be maintained to facilitate the distribution of potential written addenda.
 - 7.4.3 A 'Submission Envelope' will be included with all bid documents and shall include the bid document number, opening date, company name and address.
 - 7.4.4 Closing times for sealed bids will be prior to 4:00:00 p.m., on the designated date, submitted to the Department Head/designate, at the designated location.

8. PROCEDURES FOR ACCEPTANCE OF BIDS

- 8.1 **Quotations** must abide by the following procedures:
 - 8.1.1 the closing date and time is at the discretion of the Department Head issuing the bid document;
 - 8.1.2 all submissions must be received by the time, date, location and method specified in the bid document. No exceptions.
 - 8.1.3 submissions received by fax or e-mail later than the time specified will not be considered in the bid award. All bid submissions shall have the date and time of receipt noted on the document.
- 8.2 **Tenders, Requests for Proposals**, and other formal Request for Information (pre-qualification of bidders, expression of interest, etc.) must abide by the following procedures:
 - 8.2.1 All formal bids must be properly signed and sealed and placed in the sealed Submission Envelope and submitted to the Department Head/designate, at the Municipal Office, closing before 4:00:00 p.m. on the designated day;
 - 8.2.2 All sealed bid documents submitted shall have the date and time of receipt noted on the face of the envelope;
 - 8.2.3 Sealed bid documents received later than the time specified will not be opened and will be returned by registered mail or picked up by the owner, from the Department Head/designate, issuing the bid document;
 - 8.2.4 The Municipality reserves the right to verify all bid submissions for requirements and extended prices after the public opening and may reject any non-compliant bid after the bid opening. The Municipality reserves the right to select the materials, supplies and services that best reflects the cost consistent with the quality and service.
 - 8.2.5 The Department Head issuing the bid document is responsible for notifying Council of the bid call and for supplying a copy of the documentation and any addenda issued as made available to the public.

9. PROCEDURES FOR REJECTION OF BIDS

- 9.1 Bids may be rejected for any of the following reasons:
 - 9.1.1 bid received after the specified closing date and time;
 - 9.1.2 bid does not comply with the requirements at the time of closing, as specified in the bid document (i.e. bid deposit);
 - 9.1.3 bids which are incomplete, conditional or obscure, or which contain additions not called for, erasures, alterations or irregularities of any kind;
 - 9.1.4 bids that exceed, or do not meet, specification requirements;
 - 9.1.5 when it is not in the best interests of the Municipality to accept the bid, i.e. over budget, does not meet the objective of the bid document, etc.
- 9.2 Bid rejections must be documented as to the reason for rejection and retained with the bid file.

10. STATEMENT BY BIDDER

- 10.1 All formal bid documents must require that the 'Statement by Bidder', attached hereto as Schedule 'A', is completed in full and signed by an authorized representative of the company submitting the bid.

11. ADVERTISING

- 11.1 Where effective, in the opinion of the Department Head, information regarding the bid document shall be advertised in the local newspaper and/or applicable publications necessary to comply with all existing statutory Regulations.
- 11.2 The Municipal By-law to prescribe the form and manner and times for the provision of Notice, outlines additional advertising opportunities and methods.

12. INSURANCE

- 12.1 All successful bidders shall provide a Certificate of Insurance. The Municipality's minimum requirement for all insurance types is Two (\$2,000,000.00) Million Dollars. Bid documents must clearly indicate insurance requirements to be provided by the successful bidder. The Certificate of Insurance requirements are detailed as follows:
- 12.1.1 General Liability Policy
\$2 million whenever a successful bidder is being used to perform work for the Municipality;
 - 12.1.2 Automobile Liability Policy
\$2 million whenever a successful bidder's vehicle(s) is being used to perform work on Municipal property or for the Municipality
 - 12.1.3 \$2 million - homeowners (i.e. for rental of facilities);
 - 12.1.4 \$2 million - professional errors and omissions liability;
- 12.2 The successful bidder must furnish the Municipality at his/her cost, a "certified copy" of a liability insurance policy covering public liability and property damage for no less than the minimum amounts stated in Section 12.1, to the satisfaction of the Municipality and in force for the entire contract period. The policy must contain:
- 12.2.1 a "Cross Liability" clause or endorsement;
 - 12.2.2 an endorsement certifying that The Corporation of the Municipality of Magnetawan and the successful bidder are included as an additional named insured;
 - 12.2.3 an endorsement to the effect that the policy or policies will not be altered, canceled or allowed to lapse without thirty (30) days prior written notice to the Municipality of Magnetawan.
- 12.3 Contractor's Liability Insurance Policy shall not contain any exclusions of liability for damage, etc. to property, building or land arising from:
- 12.3.1 the removal or weakening of support of any property, building or land whether such support be natural or otherwise;
 - 12.3.2 the use of explosives for blasting;
 - 12.3.3 the vibration from pile driving or caisson work, provided that the minimum coverage for any such loss or damage shall be five (\$5,000,000.00) million dollars.

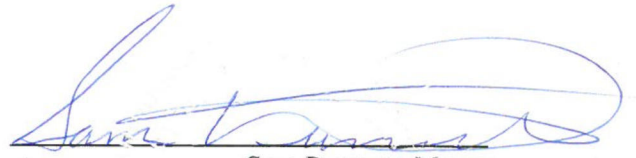
13. ADMINISTRATION

- 13.1 No contract or purchase shall be divided to avoid any requirements of this By-law.
- 13.2 In all purchases, price shall be the prime selection criteria prior to any special provisions or add/delete calculated into the bid price, providing that all specification requirements are met. Such specifications are to be generic or "as equivalent". All factors influencing the purchasing decision are to be included in the specifications.
- 13.3 The Corporation of the Municipality of Magnetawan may participate with other units of Government, their agencies or public authorities in co-operative purchase ventures when the best interests of the Municipality of Magnetawan will be served. Where such participation is at variance with the Municipality's Purchasing By-law, Council shall first authorize any participation.
- 13.4 Performance evaluations may be undertaken on suppliers and providers of service.
- 13.5 All invoices and accounts from vendors shall be authorized prior to payment. Authorization in the form of signatures/initials of the Department Head and authorizing Resolution must be in place. The required signature will be deemed to authorize payment.
- 13.6 Between the last Regular Meeting of Council in any year and the adoption of the Budget for the following year, the Treasurer is authorized to pay the accounts of any ordinary business transactions of the Municipal Corporation that are required to maintain services. This shall include the payment of accounts or previously approved capital items and projects.
- 13.7 After the adoption of the Budget, the Treasurer is authorized to pay the accounts approved by the appropriate Department Head and to pay contract accounts upon receipt of evidence

of value received and which are approved by the appropriate Department Head.

- 13.8 Notwithstanding the provisions of this By-law, the Municipality of Magnetawan shall have the right to reject any bid at its absolute discretion. The Municipality also reserves the right to reissue the bid document in its original format or modified as best suits the requirements of the Municipality.
- 13.9 Reports to Council seeking direction, are to be submitted when any of the following criteria apply:
- 13.9.1 Quotation: if the preferred bid exceeds the approved Budget appropriation by ten (10%) per cent of the total project budget.
- 13.9.2 Tender: all tender award recommendations to be submitted to Council.
- 13.9.3 Request For Proposal: the evaluation criteria and process must be approved by Council Resolution prior to the issuance of the RFP; and after the closing of the RFP, if the preferred proposal exceeds the approved budget, a report must be submitted to Council.
- 14. RETENTION OF DOCUMENTATION**
- 14.1 All background information, information submitted by vendors, purchase orders and other relevant information involved in obtaining prices for goods and services shall be retained in accordance with the Records Retention By-law.
- 15. MONITORING**
- 15.1 Council/Staff may review the Purchasing By-law, to ensure the effectiveness and integrity of the purchasing process.
- 16. REPEAL**
- 16.1 All former Policies, Resolutions and By-laws are hereby repealed.

Passed in open Council as read a First, Second and Third time,
this 8th day of December, 2004



Sam Dunnett, Mayor



Brenda J. Fraser, Clerk/Administrator