



**The Corporation
of
The Town of Fort Erie**

**Office Consolidation of
Purchasing By-law No. 2-10, as amended**

OFFICE CONSOLIDATION – October 2017

This copy is a consolidation of Purchasing By-law No. 2-10 and subsequent amendments. It is intended for office use and convenience. For accuracy, reference should be made to the amending by-laws and schedules on file in the office of the Town Clerk.

Amended by By-law No. 97-12 re insurance exemption

Amended by By-law No. 98-2017 re contractor safety



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 2-10

BEING A BY-LAW RESPECTING THE PURCHASE OF GOODS, SERVICES AND CONSTRUCTION AND TO REPEAL BY-LAW NOS. 29-2002, 135-03 AND 61-05

WHEREAS Section 270 of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended, requires a municipality to adopt policies with respect to its purchasing of goods and services, and

WHEREAS the Council of the Town of Fort Erie has deemed it desirable to set out its policies with respect to its purchasing of goods and services in this By-law;

NOW THEREFORE the Municipal Council of the Corporation of the Town of Fort Erie hereby enacts as follows:

PART I – POLICY FRAMEWORK

1.0 **PURPOSES, GOALS AND OBJECTIVES**

- 1.1 The purposes, goals and objectives of this By-law and of each of the methods of purchasing authorized herein are:
- (a) To encourage competition among suppliers;
 - (b) To ensure fairness between bidders;
 - (c) To **maximize** savings for taxpayers; (*By-law No. 98-2017*)
 - (d) To offer a variety of purchasing methods and to use the most appropriate method depending on the particular circumstances of the acquisition;
 - (e) To the extent possible, to ensure openness, accountability and transparency while protecting the financial best interests of the Corporation;
 - (f) To delegate the appropriate level of authority to enable Town departments to meet service requirements;
 - (g) To have regard to the preservation of the natural environment and encourage the use of environment friendly Goods, Services and Construction;
 - (h) To promote and incorporate wherever possible in purchasing activities of the Corporation, the requirements of the *Ontarians with Disabilities Act, 2001*, S.O. 2001, c.32, as amended, or any successor legislation thereto.

PART II– DEFINITIONS AND SCHEDULES

2.0 **DEFINITIONS**

2.1 The words and phrases listed below when used in this By-law shall have the following meaning:

“AWARD”, **“AWARDED”** and **“AWARDING”** mean authorization to proceed with the purchase of Goods, Services or Construction from a chosen supplier:

“BID” means an offer or proposal from a supplier in response to a Bid Solicitation;

“BID DEPOSIT” means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee that the successful bidder enters into a contract with the Corporation as required by Section 12 of this By-law;

“BID SOLICITATION” means a formal request for Bids including a Request for Quotation, Request for Pre-Qualification, Request for Tender, Request for Proposal or Request for Expression of Interest;

“BLANKET PURCHASE ORDER” means a contract for repetitive required Goods or Services for a specified period of time and for a stipulated total amount, when convenience and location are significant factors in determining Total Acquisition Cost and the quantity and demand are unknown.

“CAO” or **“CHIEF ADMINISTRATIVE OFFICER”** means the Chief Administrative Officer of the Corporation or designate;

“CLERK” means the Clerk of the Corporation or designate;

“COMPLIANT BID” means a Bid that meets the terms and conditions of the Bid Solicitation;

“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;

“CONTRACT” means any agreement, regardless of form or title, for the lease, purchase or disposal of Goods, Services or Construction authorized in accordance with this By-law;

“CORPORATION” means The Corporation of the Town of Fort Erie;

“COUNCIL” means the Municipal Council of the Corporation;

“COUNCIL APPROVED BUDGET” OR “BUDGET” means Council approved departmental budgets including authorized revisions, or where applicable, Council approved budgets for local boards or committees to which this By-law applies;

“DEPARTMENT” means any department of the Corporation including any division within a department;

“DEPARTMENT DIRECTOR” means the head of a Corporation department or designate and for the purposes of this By-law includes the CAO;

“DEPARTMENT REPRESENTATIVE” means a position authorized by the CAO or Department Director to purchase Goods and Services up to the value of their prescribed signing authority;

“DESIGNATE” means a person authorized by the Department Director to act on his/her behalf;

“DIRECTOR OF FINANCIAL SERVICES” means the Director of Financial Services/Treasurer of the Corporation or designate;

“DISABILITY” or **“DISABILITIES”** shall have the same meaning as that in the *Ontarians with Disabilities Act, 2001*, as amended, or any successor legislation thereto;

“DISPOSAL” means the selling, trading, assignment and/or scrapping of surplus assets;

“ELECTRONIC ADVERTISING” means the use of a computer-based system directly accessible by suppliers irrespective of their location that provides suppliers with information related to Bid Solicitations;

“EMERGENCY” means a situation, or the threat of an impending situation, which may affect the environment, the life, safety, health and/or welfare of the general public, or is likely to cause significant loss or damage to the property of the Corporation or the residents of the Town of Fort Erie or to prevent serious damage, disruption of work, or to restore or to maintain essential services to a minimum level;

“FAIR MARKET VALUE” means the price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arm’s length who are fully informed and not under any compulsion to transact;

“GOODS AND SERVICES” means supplies, equipment, materials and any services including those pertaining to Construction;

“LEASE FINANCING AGREEMENT” means a financial agreement as described in O. Reg 653/05, as amended or superceded;

“LOWEST COMPLIANT BID” means the Bid that would provide the Corporation with the desired Goods, Services or Construction at the lowest Total Acquisition Cost, meets all the specifications and contains no irregularities requiring automatic rejection;

“MANAGER OF SUPPLY AND SERVICES” means the person or designate who manages and supervises the purchasing function of the Financial Services Department, reporting to the Director of Financial Services/Treasurer;

“NEGOTIATION” means a purchasing method whereby the Corporation may negotiate directly with one or more suppliers with the intent to award a Contract;

“PROCEDURE” means internal instructions or guidelines to departments, issued by the Manager of Supply and Services on supply and service management and/or purchasing matters;

“PROFESSIONAL SERVICES” means those services requiring the skills of professionals for a defined service requirement including,

- (i) architects, engineers, designers, surveyors, geoscientists, project managers, financial, management and communications or public relations consultants, auditors, accountants, appraisers;
- (ii) firms or individuals having specialized competence in environmental, planning or similar disciplines; and
- (iii) software consultants and any other persons providing similar services;

“PROPOSAL” means an offer submitted in response to a Request for Proposal, acceptance of which may be subject to further negotiation;

“PURCHASE” means to acquire Goods and Services by purchase, rental, lease or trade;

“PURCHASE ORDER” means a written confirmation of the purchase of Goods and Services at a specific cost and includes a Blanket Purchase Order;

“QUOTATION” means a binding statement of price, terms of sale and description of Goods and Services offered by a supplier;

“REQUEST FOR EXPRESSION OF INTEREST” means a public request made by the Corporation seeking responses from potential suppliers for the purposes of compiling a list of potential suppliers who may be interested in providing Goods and Services to the Corporation from time to time. Receipt of an Expression of Interest by the Corporation does not create any obligation between the potential supplier and the Corporation, but may be a precondition to qualifying for subsequent Bid Solicitations issued by the Corporation;

“REQUEST FOR PRE-QUALIFICATION” means a public request by the Corporation seeking submissions from potential suppliers **which may include** the experience, financial strength, education, background, significant personnel, **and safety program** of potential suppliers who may, from time to time, qualify to supply Goods and Services to the Corporation; (*By-law No. 98-2017*)

“REQUEST FOR PROPOSAL” means a public Request for Proposals by the Corporation made in accordance with Section 22 of this By-law, seeking proposals to supply Goods or Services which may or may not result in an award by the Corporation;

“REQUEST FOR QUOTATION” means a Request for Quotations by the Corporation for the provision of Goods and Services made in accordance with Section 14 of this By-law;

“**REQUEST FOR TENDER**” means a public Request for Tenders by the Corporation made in accordance with Section 21 of this By-law;

“**REQUISITION**” means a request for Goods and Services for which the Budget has been approved, initiated by a department and sent to the Manager of Supply and Services;

“**SERVICES**” includes all professional and consulting services, all services in relation to real property or personal property including, without limiting the foregoing, the delivery, installation, construction, maintenance, repair, restoration, demolition or removal of personal property and real property and all other services of any nature and kind save and except only services to be delivered by an officer or employee of the Corporation in accordance with terms of employment;

“**SINGLE SOURCE**” means the purchase of Goods and Services from one supplier, even though there may be more than one source of supply;

“**SPOUSE**” has the same meaning as in the *Municipal Conflict of Interest Act*, R.S.O. 1190, c. M.50;

“**TENDER**” means a Bid Solicitation used to acquire known Goods, Services or Construction in accordance with specified terms and which is normally awarded to the Lowest Compliant Bid;

“**TOTAL ACQUISITION COST**” means an evaluation of quality and service in the assessment of a Bid, including prior performance and the sum of all costs including purchase price, all non-refundable taxes, warranties, local service costs, life cycle costs, time of completion or delivery, inventory carrying costs, operating and disposal costs for determining the Lowest Compliant Bid.

2.2 Schedules “A”, “B” and “C” attached hereto form part of this By-law.

PART III – GENERAL PROCUREMENT POLICY

3.0 APPLICATION

- 3.1 (a) The Corporation and any of its officers, servants and employees shall follow the procedures in this By-law, including all of the purposes, goals and objectives of Section 1 hereof, for the purchasing of all Goods, Services and Construction.
- (b) This By-law shall not apply to the purchase of those Goods and Services listed in Schedule “A” to this By-law. The purchase of Goods and Services listed in Schedule “A” may be made provided that sufficient funds are available and identified in appropriate accounts with Council Approved Budgets.

4.0 **RESPONSIBILITIES AND AUTHORITIES**

- 4.1 (a) The Director of Financial Services/Treasurer shall have all the necessary authority to administer this By-law and to carry out his or her duties on behalf of the Corporation.
- (b) All purchases of Goods, Services and Construction, and all purchasing enquiries shall be conducted through the Manager of Supply and Services, in accordance with the provisions of this By-law.
- (c) The Manager of Supply and Services is responsible to and shall have authority to:
- (i) acquire or dispose of Goods, Services and Construction in accordance with this By-law;
 - (ii) establish administrative procedures and policies for the implementation of this By-law;
 - (iii) establish through consultation with the Director of Legal and Legislative Services, the form, content and use of forms including Bid Solicitation, Purchase Orders, Contracts, Bonds, Letters of Credit and the forms of Guarantee or Surety, and other documents;
 - (iv) set, through consultation with the user department and Director of Legal and Legislative Services, the terms and conditions of Bid Solicitations;
 - (v) issue corporate credit cards to employees and departments for the acquisition of Goods and Services and to impose terms and conditions on their use;
 - (vi) act as agent for the Corporation, for the purposes of purchasing or selling Goods, Services and Construction;
 - (vii) ensure the open, fair and impartial purchasing process for Goods and Services;
 - (viii) be responsible to respond to concerns or questions relating to purchasing policies and procedures;
 - (ix) ensure compliance with this By-law and advise the Director of Financial Services/Treasurer when there has been non-compliance. The Director of Financial Services/Treasurer shall take appropriate action to address and correct the non-compliance;
 - (x) call, receive, open and review all Bids;
 - (xi) develop co-operative purchasing plans with other units of government or their agencies or public authorities, where deemed beneficial to the Corporation;
 - (xii) promote the standardization of Goods, Services and Construction, where such standardization demonstrably supports the purposes, goals and objectives of this By-law; and
 - (xiii) oversee any other aspect of process or procedure not specifically provided for in this By-law.

- (d) Department Directors shall have authority and be accountable for all purchasing activity within their Departments.
- (e) The CAO or Department Director may appoint Department Representatives who shall be responsible for the purchasing of Goods and Services up to the value of their prescribed signing authority.
- (f) Notwithstanding a Department Representative's signing authority, he or she will also have the following specific responsibilities:
 - (i) ensuring that all Contract terms and conditions comply with the Bid Solicitation;
 - (ii) preparing and approving all specifications and terms of reference in consultation with the Manager of Supply and Services. Specifications shall be definitive as to quantity, quality and/or function. The Manager of Supply and Services shall review all specifications to determine if they are in the appropriate form, indicate the minimum acceptable quality level, are commercially practical and in sufficient generic form to ensure competitive bidding;
 - (iii) managing contracts to ensure Goods and Services are received by the Corporation and comply with Contract terms and conditions;
 - (iv) monitoring all Contract expenditures and ensuring that all financial limitations have been complied with and that all accounts are paid within the times set out in the Contract;
 - (v) monitoring the performance of suppliers;
 - (vi) standardizing the use of Goods and Services, where such standardization demonstrably supports the purposes, goals and objectives of this By-law; and
 - (vii) ensuring that all Goods and Services procured have in fact been received and recording such receipts in the manner prescribed by the Manager of Supply and Services.

5.0 **REQUIREMENT FOR APPROVED FUNDS**

- 5.1 (a) The exercise of authority to award a Contract is subject to the identification and availability of sufficient funds in appropriate accounts within the Council Approved Budget.
- (b) Where Goods, Services or Construction are purchased or leased on a multi-year basis, the exercise of authority to award a Contract is subject to the following:
 - (i) the identification and availability of sufficient funds in appropriate accounts for the current year within the Budget; and
 - (ii) the requirement for the Goods, Services or Construction will continue to exist in subsequent years and, in the opinion of the Director of Financial

Services/Treasurer, the required funding can reasonably be expected to be made available.

6.0 **CONTRACT WITHOUT BUDGETARY APPROPRIATION**

- 6.1 Where a requirement exists to initiate a project for which Goods, Services or Construction are required and funds are not contained within the Council Approved Budget to meet the proposed expenditure, the Department Director shall, prior to commencement of the purchasing process, submit a report to Council containing:
- (a) Information surrounding the requirement to contract;
 - (b) The terms of reference to be provided in the contract;
 - (c) Information on the availability of the funds within existing estimates, which were originally approved by Council for other purposes, or on the requirement of additional funds.

7.0 **RESTRICTIONS**

- 7.1
- (a) All persons involved in the acquisition of Goods, Services or Construction provided for in this By-law, shall act in a manner consistent with the requirements and objectives of this By-law.
 - (b) No contract for Goods and Services may be divided into two (2) or more parts to avoid the requirements of this By-law.
 - (c) No contract for Services shall be Awarded where the Services would result in the establishment of an employee-employer relationship.
- 7.2
- (a) No personal purchases shall be made for any elected or appointed officials, members of a local board or committee, or for Corporation employees or their families.
 - (b) An employee of the Corporation who has the responsibility of declaring goods surplus shall not bid on or personally obtain any goods that he or she has declared as surplus.
 - (c) Every elected official or appointed officer or employee of the Corporation or member of an employee's family is expressly prohibited from accepting, directly or indirectly from any person, company, firm or corporation to which any Purchase Order or Contract is, or might be awarded, any rebate, gift or money, except:
 - (i) gifts of a very small value; or
 - (ii) moderate hospitality during the normal course of business that would not significantly exceed what the Corporation, through the employee's expense account, would likely provide in return and would not be perceived by others as influencing the making of a business decision.
 - (d) No supplier shall be allowed to submit a Bid for any Bid Solicitation in which the supplier has participated in the preparation of the Bid Solicitation. A supplier who fails to comply will be disqualified.

- (e) Purchasing by the Corporation may be subject to the provisions of trade agreements.
- (f) Where an applicable trade agreement supercedes and is in conflict with this By-law, the trade agreement shall take precedence.
- (g) The Manager of Supply and Services shall advise Department Directors where a purchase may not conform to an applicable trade agreement as early as possible in the purchasing process.

8.0 **CONFLICT OF INTEREST**

- 8.1 Where an employee involved in the Award of any Contract, either on his or her own behalf or while acting for, by, with or through another person, has any pecuniary interest, direct or indirect, in the Contract, the employee,
- (a) Shall immediately disclose the interest to the Department Director involved in the Award of the Contract and shall describe the general nature thereof;
 - (b) Shall not take part in the Award of the Contract; and
 - (c) Shall not attempt in any way to influence the Award of the Contract.
- 8.2 An employee has an indirect pecuniary interest in any Contract in which the Corporation is concerned, if,
- (a) The employee or his or her spouse,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public that has a pecuniary interest in the Contract; or
 - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public that has a pecuniary interest in the Contract; or
 - (iii) is a member of an unincorporated association or partnership, that has a pecuniary interest in the matter.
 - (b) The employee or his or her spouse is in the employment of a person, unincorporated association or partnership that has a pecuniary interest in the Contract.
- 8.3 All Council members shall conduct themselves in accordance with the *Municipal Conflict of Interest Act*, as amended.

9.0 **TOTAL ACQUISITION COST**

- 9.1 Where this By-law prescribes dollar limits, the Contract amount shall be the estimated Total Acquisition Cost less any rebates.

10.0 AUTHORIZATION OF PURCHASES

- 10.1 Where all the requirements of the By-law have been met, the employees and officers of the Corporation identified in Schedule “B” have the authority to award contracts, up to the prescribed limits in Schedule “B”.
- 10.2 Despite any other provisions of this By-law, the following Contracts are subject to Council approval:
- (a) Any Contract requiring approval from the Ontario Municipal Board;
 - (b) Any Contract where the Total Acquisition Cost is greater than the Council Approved Budget;
 - (c) The Award of a Contract for a capital purchase that requires entry into a Lease Financing Agreement; or
 - (d) The Award of a Contract with a Total Acquisition Cost greater than \$50,000.
- 10.3 Approval by Council of the Contracts referred to in this Section shall be by resolution.

11.0 ADVERTISING OF PURCHASING OPPORTUNITIES

- 11.1 (a) Bid Solicitation for Goods, Services or Construction exceeding an estimated Total Acquisition Cost of \$50,000 shall, as a minimum be advertised:
- (i) on the website for the Corporation from the date that the Bid Solicitation is issued up to and including the date on which the Bid Solicitation closes; and
 - (ii) one-time, at least seven (7) calendar days before the Bid Solicitation closes, in a local newspaper that has a weekly circulation within the Town.
- (b) Notification of Bid Solicitations for Goods, Services or Construction may be supplemented by other means of notification at the discretion of the Department Director or the Manager of Supply and Services.
- (c) Opportunities for lesser amounts may be advertised at the discretion of the Department Director or the Manager of Supply and Services if it is in the Corporation’s best interest to do so.
- (d) No advertising is required for purchasing methods where Bidders have been previously pre-qualified or where Single Source or Emergency purchasing is authorized by this By-law.

12.0 GUARANTEES OF CONTRACT EXECUTION AND PERFORMANCE

- 12.1 (a) The Manager of Supply and Services may require that a Bid be accompanied by a Bid Deposit or other similar security to guarantee entry into a Contract.
- (b) The successful Bidder may also be required to provide:

- (i) a Performance Bond to guarantee the faithful performance of the Contract; and
 - (ii) a Labour and Materials Bond to guarantee the payment for labour and materials to be supplied in connection with a Contract.
- (c) The Manager of Supply and Services in consultation with the Department Director shall select the appropriate means and amounts required to guarantee execution and performance of the Contract. These may include one or more of, but not limited to, certified cheque, bank draft, irrevocable letter of credit, money order and, where appropriate, a bid bond issued by an approved guarantee company properly licensed in the Province of Ontario, in a form acceptable to the Director of Legal and Legislative Services.
- (d) Prior to the commencement of work and where deemed appropriate, the successful Bidder shall provide evidence of satisfactory liability insurance coverage, in a form acceptable to the Director of Legal and Legislative Services.
- (e) Prior to payment to a supplier, the supplier shall provide a Certificate of Clearance from the Workplace Safety and Insurance Board confirming all premiums or levies have been paid to the Board to date.

13.0 FORM OF CONTRACT

- 13.1 (a) The Award of a Contract over \$250 shall be made by way of a written agreement or as a Purchase Order.
- (b) A Purchase Order may be used when the resulting Contract is straightforward and requires only the Corporation's standard terms and conditions.
- (c) A Blanket Purchase Order may be used where:
- (i) one or more Departments repetitively order the same Goods, Services or Construction; or
 - (ii) a need is anticipated for a range of Goods, Services or Construction for a specific purpose and for which convenience and location are major factors but the actual demand is not known at the outset.
- (d) A formal agreement satisfactory to the Corporation shall be used when the resulting Contract is complex.
- (e) It shall be the responsibility of the Manager of Supply and Services in consultation with the Department Director and the Director of Legal and Legislative Services to determine if it is in the best interest of the Corporation to establish a formal agreement with the supplier.
- (f) Where it is determined that a formal agreement is required, the formal agreement shall be reviewed and approved for execution by the Director of Legal and Legislative Services.

- (g) All substantive changes to standard clauses in Bid Solicitations and Contracts shall be reviewed and approved by the Director of Legal and Legislative Services.
- (h) Where a formal agreement is required, the Manager of Supply and Services shall also issue an internal Purchase Order reflecting the financial agreement for reconciliation and payment purposes.

14.0 **AUTHORITY TO EXECUTE CONTRACTS**

- 14.1 (a) Where all the requirements of this By-law have been met, the employees or officers of the Corporation identified in Schedule “B” have the authority to execute Contract documents and all other documents necessary to effect the Award or Purchase of Goods and Services, up to the prescribed limits, provided that the documents have been prepared in a form satisfactory to the Director of Legal and Legislative Services.

PART IV – PURCHASING PROCEDURES

15.0 **REQUEST FOR PRE-QUALIFICATION OF ACCEPTABLE BIDDERS**

- 15.1 (a) A Request for Pre-Qualification may be issued by the Manager of Supply and Services to develop a list of potential suppliers eligible to submit a Bid in subsequent competitive **processes. (By-law No. 98-2017)**
- (b) Pre-Qualification may be considered if:
 - (i) the work will require substantial project management by the Corporation and could result in substantial cost to the Corporation if the supplier is not appropriately experienced;
 - (ii) the Goods, Services or Construction to be purchased must meet Provincial or Federal safety standards or require suppliers be approved or certified by Provincial or Federal departments or regulatory bodies;
 - (iii) the work involves complex, multi-disciplinary activities, specialized expertise, equipment, materials or financial requirements;
 - (iv) there could be substantial impact on the Corporation’s operations if the work is not satisfactorily performed the first time;
 - (v) **the safety program and safety record of potential contractors is to be assessed; or (By-law No. 98-2017)**
 - (vi) any other circumstances deemed appropriate by the Manager of Supply and Services.

- (c) A Pre-Qualification document shall be provided to the potential suppliers setting out the criteria for Pre-Qualification which may include, but are not limited to:
 - (i) experience on similar work (firm and staff assigned);
 - (ii) references provided from other customers for similar work;
 - (iii) verification of applicable licences, approvals and certificates;
 - (iv) health and safety policies and staff training; and
 - (v) financial capability.
- (d) Supplier submissions will be evaluated and ranked and a short list of Pre-Qualified suppliers will be invited to participate in the second step of the two-step purchasing process, being a Request for Proposal or a Request for Tender.

16.0 REQUEST FOR EXPRESSIONS OF INTEREST

- 16.1 The Manager of Supply and Services may conduct a Request for Expressions of Interest for the purpose of determining the availability of suppliers of any Goods and Services including for the purpose of keeping a list of available suppliers that may be used as a specific pre-condition of any purchasing method utilized by the Corporation.

17.0 PETTY CASH

- 17.1 The Director of Financial Services/Treasurer may authorize Departments to keep a petty cash float. All expenditures from petty cash floats are to be authorized by Department Directors or designates. Petty cash expenditures shall be recorded in the manner prescribed by the Director of Financial Services/Treasurer and are subject to internal audit procedures.

18.0 CORPORATE CREDIT CARDS

- 18.1 (a) The Director of Financial Services/Treasurer is authorized to issue Department Directors and employees authorized by Department Directors, a corporate credit card to purchase Goods and Services, in accordance with the procedures and restrictions contained in this By-law.
- (b) The corporate credit card shall not be used:
 - (i) when a Bid Solicitation has been issued or is required;
 - (ii) for personal use including personal vehicle expenses; or
 - (iii) when the Total Acquisition Cost exceeds the single purchase limit on the card.
 - (c) Cash advances are not permitted.
 - (d) The cardholder is responsible for:

- (i) adhering to all conditions and restrictions imposed on the corporate credit card by the Corporation and the Corporation's bank of record;
- (ii) submitting the cardholder agreement form to the Director of Financial Services/Treasurer;
- (iii) ensuring that the corporate credit card monthly statements and other documents bearing the card number are kept in a secure location with controlled access;
- (iv) immediately notifying the Corporation's bank of record, the Department Director and Director of Financial Services/Treasurer of any loss or theft of the corporate credit card;
- (v) approving the corporate credit card statement;
- (vi) resolving disputed charges with the assistance of the Corporation's bank of record and the Director of Financial Services/Treasurer as required;
- (vii) keeping supporting documentation, for example cash register and credit card receipts, vendor notices and purchasing register related to all purchases made with the corporate credit card for reconciliation; and
- (viii) submitting all supporting documentation and a reconciled purchasing register to the Department for authorization at the end of each billing cycle in time for accounts payable.

PART V – PURCHASING METHODS

19.0 LOW VALUE PURCHASES (PURCHASES NOT EXCEEDING \$10,000)

- 19.1 (a) Requests for Goods, Services or Construction shall be directed to the Manager of Supply and Services by means of a purchase requisition signed by the requisitioner and authorized by the Department Director or designate, with the following exceptions:
- (i) purchases of Goods or Services may be made without a purchase requisition for Goods or Services not exceeding a Total Acquisition Cost of \$250 which may be picked up or ordered by an employee as directed by their immediate Supervisor.
- (b) Purchases made pursuant to this Section shall be made from the competitive market place wherever possible and may be made using petty cash, a corporate credit card, a purchase order, or an invoice from the supplier approved and signed by the Department Representative.

20.0 QUOTATIONS (PURCHASES GREATER THAN \$10,000 AND NOT EXCEEDING \$50,000)

- 20.1 (a) Where the Total Acquisition Cost of Goods, Services or Construction is estimated to exceed \$10,000.00 but does not exceed \$50,000.00 the purchase may be made provided that at least three (3) written quotations have been solicited by the Manager of Supply and Services and written approval of the selected supplier has been received by the Manager of Supply and Services from the Department Director or designate who initiated the request.
- (b) In appropriate circumstances, the Request for Tender or Request for Proposal purchasing methods may be substituted for an informal quotation.
- (c) Quotations received shall be evaluated on price and the criteria outlined in the quotation request to determine the preferred supplier.
- (d) The Department Representative shall be responsible to demonstrate that the selection process used demonstrates that Fair Market Value was achieved.

21.0 REQUEST FOR TENDER (PURCHASES EXCEEDING \$50,000)

- 21.1 (a) A Request for Tender shall be used for purchases within estimated Total Acquisition Cost exceeding \$50,000 where all of the following criteria apply:
- (i) two or more sources are considered capable of supplying the requirement;
 - (ii) the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria; and
 - (iii) it is intended that the Lowest Compliant Bid will be accepted without negotiations.
- (b) All Bids which are required in the Bid Solicitation to be sealed shall be received by the Clerk and opened in public at the time and place stated in the Bid Solicitation.
- (c) The opening of all sealed Bids shall be attended by a representative from Financial Services and Legal and Legislative Services.
- (d) Every Bid received within the time specified in a Bid Solicitation shall be opened and the bidder's name and the Bid amount(s) shall be read aloud and recorded. In the case where the Bid Solicitation is for registration purposes only the bidder's name will be read aloud and recorded.
- (e) In the case where only one (1) Bid is received, only the bidder's name shall be read aloud. The Bid amount shall not be read aloud.
- (f) Any Bid irregularities shall be dealt with in accordance with Schedule "C".
- (g) Where a Request for Pre-Qualification has previously been conducted, only Pre-Qualified Bidders shall be notified and Bids shall only be accepted from Pre-Qualified Bidders.

- (h) Subject to Section 10, the Department Director in charge of the Bid Solicitation or the Manager of Supply and Services on behalf of such Department Director, may Award Contracts emanating from a Request for Tender provided that the provisions of this By-law are complied with.
- (i) The Department Director or Manager of Supply and Services shall follow the provisions of Section 13 regarding the form of Contract required to complete the purchase.
- (j) Where Bids are received in response to a Bid Solicitation but exceed project estimates, the Department Director or Department representative in charge of the Bid Solicitation and the Manager of Supply and Services jointly, may enter into negotiations with the Lowest Compliant Bidder to achieve an acceptable Bid within the project estimate.

22.0 **REQUEST FOR PROPOSAL (PURCHASES EXCEEDING \$50,000)**

- 22.1 (a) A Request for Proposal shall be used for purchases where an estimated Total Acquisition Cost exceeding \$50,000 and where it is determined that it is the most appropriate purchasing method due to one or more of the following criteria:
 - (i) the purchase is required as a result of a particular problem, requirement or objective;
 - (ii) the selection of the supplier depends more upon the effectiveness of the proposed solution, rather than the price alone;
 - (iii) the precise Goods and Services or the specifications therefore are not known or are not definable and it is expected that Bidders will further define them; or
 - (iv) it is expected that negotiations with one or more Bidders may be required with respect to any aspect of the requirement.
- (b) Every Request for Proposal shall contain an explanation of the criteria which will be used to evaluate proposals.
- (c) Proposals shall be analyzed and evaluated using the criteria outlined in the Bid Solicitation and where the Contract price is anticipated to be \$100,000 or greater, the Manager of Supply and Services shall be a member of the committee formed to evaluate the response to the Request for Proposal.
- (d) Ideally most Request for Proposals will require bidders to submit a Bid in two (2) sealed envelopes. The first envelope will contain the technical proposal including the corporate and key personnel qualifications, methodology, schedule and any other technical requirements of the Bid Solicitation. The second envelope will contain the proposed fee for the services, and will only be opened once the qualitative analysis has been completed.
- (e) Any Bid irregularities shall be dealt with in accordance with Schedule "C".

- (f) Subject to Section 10, the Department Director in charge of the particular Bid Solicitation or the Manager of Supply and Services, on behalf of the Department Director, may Award Contracts emanating from a Request for Proposal provided that the provisions of this By-law are complied with.
- (g) The Department Director and the Manager of Supply and Services shall follow the provisions of Section 13 regarding the form of Contract required to complete the purchase.

23.0 SINGLE SOURCE PURCHASES

- 23.1 A Single Source may be used for the purchase of Goods and Services without a Bid Solicitation provided that any of the following conditions apply:
- (a) Where there is only one known source of supply;
 - (b) Where compatibility of a purchase with existing equipment, product standards, facilities or service is a paramount consideration;
 - (c) Where a Good is purchased for testing or trial use;
 - (d) For matters involving security or confidential issues, in which case a purchase may be made in a manner that protects the confidentiality of the supplier or the Corporation; or
 - (e) Where the Corporation has a rental contract with a purchase option and such purchase option is beneficial to the Corporation.
- 23.2 The maximum term of a Contract Awarded for the acquisition of Goods, Services or Construction where a Bid Solicitation has been restricted to a Single Source of supply shall be five (5) years, unless otherwise authorized by Council.

24.0 EMERGENCY PURCHASES

- 24.1 (a) Where an Emergency exists requiring the immediate procurement of Goods, Services or Construction, the purchase of required Goods, Services or Construction by the most expedient and economical means is authorized, notwithstanding any other provision of this By-law.
- (b) The Department Director shall as soon after the purchase as reasonably possible notify the Manager of Supply and Services with a written report detailing the circumstances of the Emergency.

25.0 CO-OPERATIVE PURCHASING

- 25.1 (a) The Manager of Supply and Services may enter into arrangements with any government body including local boards and commissions and agencies on a co-operative or joint basis for the purchase of Goods, Services or Construction, where it is in the best interests of the Corporation to do so and where the purchasing method utilized is compatible with the purposes, goals and objectives of this By-law.
- (b) The policies of the government agencies or public authorities calling the co-operative Bid Solicitation are to be the accepted policy for that particular purchase.

26.0 PURCHASE BY NEGOTIATION

- 26.1 (a) The Manager of Supply and Services may, in consultation with the Department Director, purchase by negotiating with one or more supplier and in such case the requirements for inviting tenders and quotations may be waived when any of the following criteria apply:
- (i) When due market conditions and in the judgment of the Manager of Supply and Services, Goods, Services or Construction are in short supply.
 - (ii) Where two or more identical lowest bids have been received, the Manager of Supply and Services shall negotiate with the two lowest bidders to obtain the best price and value for the Town.
 - (iii) Where the Manager of Supply and Services has been previously unsuccessful in breaking identical bids and the same Goods, Services and Construction are required again.
 - (iv) Where the lowest Bid meeting specifications is excessive in total cost and/or exceeds the estimated costs by at least 10%.
 - (v) When all Bids received fail to meet the specifications and/or tender terms and conditions and it is impractical to recall tenders or quotations.
 - (vi) Only one (1) Bid is received in response to a Bid Solicitation.
 - (vii) Where small dollar value purchases for Goods and Services are to be obtained by means of a Blanket Order from sole source vendors or suppliers or from retail or wholesale vendors where a quotation is impractical to issue.
- (b) The methods of negotiation shall be those accepted as standard negotiating procedures that employ fair and ethical practices. A record of all information pertinent to the results of all such negotiations shall be maintained by the Manager of Supply and Services.

PART VI – OTHER

27.0 SUPPLIER PERFORMANCE

- 27.1 (a) The Department Representative shall monitor the performance of all Contracts and shall document evidence related to same and shall advise the Department Director and the Manager of Supply and Services in writing where the performance of a supplier has been unsatisfactory.
- (b) The Corporation may, in its sole discretion, reject a Bid, including a low bid, if a bidder:
- (i) has commenced or is engaged in legal claims or litigation against the Corporation at any time in the preceding three (3) years;

- (ii) previously provided goods or services to the Corporation in an unsatisfactory manner;
 - (iii) has failed to satisfy an outstanding debt to the Corporation;
 - (iv) has a history of illegitimate, frivolous, unreasonable or invalid claims;
 - (v) provides incomplete, unrepresentative or unsatisfactory references;
 - (vi) has engaged in conduct that leads the Corporation to determine that it would not be in the Corporation's best interests to accept the Bid;
 - (vii) is in contravention of any By-law of the Corporation and has failed to comply with an Order or Notice to remedy the contravention; or
 - (viii) has failed to comply with required safety program criteria or satisfied safety record requirements as described in the bid solicitation. (*By-law No. 98-2017*)
- (c) In circumstances where a bidder has withdrawn its Bid after Bids have been opened in response to a Bid Solicitation the Manager of Supply and Services and the Department Director in charge of the Bid Solicitation may by written notice exclude such bidder or supplier from bidding upon further Contracts to supply Goods, Services or Construction to the Corporation for a period of up to two (2) years from the date of the notice. This prohibition shall be in addition to and not in substitution for the forfeiture of any Bid Deposit or security or other remedy that may be available to the Corporation.

28.0 SURPLUS AND OBSOLETE ASSETS

- 28.1 (a) Department Directors shall advise the Manager of Supply and Services of any goods, equipment or other assets that are obsolete, damaged, or surplus to the Department's needs.
- (b) Surplus lists must be approved by the Chief Administrative officer before disposal of goods or equipment.
- (c) All obsolete, damaged or surplus assets shall first be offered to other Departments within the Corporation, after which, the Manager of Supply and Services may dispose of such assets by Regional auction, public tender and/or the District School Board of Niagara's on-line auction site.
- (d) If a surplus or obsolete asset has an estimated market value less than \$300, the Manager of Supply and Services may dispose of the asset in any other suitable manner, including by donation to a not-for-profit organization, employee auction, or as scrap.
- (e) No surplus assets shall be sold directly to an employee or to an elected official, although this does not prohibit any employee or elected official from purchasing surplus assets being sold through a public process.
- (f) A Department Director who declares an item surplus shall not subsequently acquire the asset.

29.0 ACCESS TO INFORMATION

29.1 The disclosure of information received relevant to the issue of Bid Solicitations or the Award of Contracts emanating from Bid Solicitations shall be made by the appropriate officers in accordance with the provisions of all relevant privacy legislation including primarily the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.

30.0 SHORT TITLE

30.1 This By-law may be cited as the “Purchasing By-law”.

31.0 REPEAL

- 31.1 (a) By-law Nos. 29-2002, 135-03 and 61-05, shall be repealed effective on the date this By-law comes into force.
- (b) Notwithstanding Subsection (a), By-law No. 29-2002, as amended, shall continue to apply to all Bid Solicitations commenced before its repeal.

32.0 EFFECTIVE DATE

This By-law comes into force on February1, 2010.

33.0 CORRECTIONS

33.1 Pursuant to the provisions of Sections 23.1 to 23.5 inclusive of the Municipal Act, 2001, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 18TH DAY OF JANUARY, 2010.

MAYOR

CLERK

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 2-10 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 200 .

SCHEDULE “A”**To By-Law No. 2-10 of the Town of Fort Erie**

The purchasing methods described in this by-law do not apply to the following Goods and Services:

1. Training and Education
 - (a) Registration and Tuition fees for conferences, conventions, courses and seminars
 - (b) Magazines, subscriptions, books and periodicals
 - (c) Memberships
 - (d) Counseling services
2. Refundable Employee/Councillor Expenses
 - (a) Advances
 - (b) Meal Allowances
 - (c) Travel
 - (d) Miscellaneous – Non-Travel
3. Employer’s General Expenses
 - (a) Payroll Deductions Remittances
 - (b) Medical / EAP
 - (c) Vehicle Licenses
 - (d) Debenture Payments
 - (e) Grants to Agencies
 - (f) Damage Claims
 - (g) Petty Cash Replenishment
 - (h) Tax Remittances
 - (i) Lease Payments
 - (j) Postage
 - (k) Employee Benefits
 - (l) Honorarium
 - (m) Advertising
4. Professional and Special Services
 - (a) Legal or Paralegal fees, and other Professional Services related to litigation or potential litigation, or the provision of legal advice
 - (b) Witness fees
 - (c) Insurance Premiums, Claim Settlements and Adjuster Services (*By-law No. 97-12*)
5. Utilities
 - (a) Water and Sewer
 - (b) Hydro
 - (c) Gas
 - (d) Communication Infrastructure Services
 - (e) Utility relocates
6. Bailiff or collection agencies

SCHEDULE “B”

To By-Law No. 2-10 of the Town of Fort Erie

Purchasing Method	Dollar Value	Purchasing Authority	Document Execution Authority	Type of Agreement with Supplier
Low Value (for routine purchases of low dollar value)	Up to \$10,000	Department Representative	Department Director or Designate	Cash, purchase order or Purchasing Card, invoice
Quotations (obtain 3 written quotations for goods and services)	>\$10,000 to \$50,000	Department Director	Department Director or Designate	Purchase order or legally executed agreement
Request for Tender (for obtaining competitive bids based on precisely defined requirements)	Up to \$50,000	Department Director	Department Director and CAO	Purchase order or legally executed agreement
	All other	Council	Mayor and Clerk	
Request for Proposal (for obtaining unique proposals designed to address a complex problem or need for which there is no clear or single solution)	Up to \$50,000	Department Director	Department Director and CAO	Purchase order or legally executed agreement
	All other	Council	Mayor and Clerk	
Emergency (for purchase of goods or services necessary to respond to an emergency)	Up to \$50,000	CAO	CAO and Department Director	Cash, purchase order, Purchasing Card or legally executed agreement
	All other	Council	Mayor and Clerk	
Single Source (for purchase of goods or services from a particular supplier, rather than through a bid solicitation)	Up to \$50,000	CAO	CAO and Department Director	Purchase order or legally executed agreement
	All other	Council	Mayor and Clerk	
Negotiation (negotiation for purchase of goods and services from a particular supplier, rather than through a bid solicitation)	Up to \$50,000	CAO	CAO and Department Director	Purchase order or legally executed agreement
	All other	Council	Mayor and Clerk	

SCHEDULE “C”
To By-Law No. 2-10 of the Town of Fort Erie

BID IRREGULARITIES

For an irregularity listed in the first column, the applicable response is set out opposite to the irregularity in the second column.

IRREGULARITY	RESPONSE
1. Late Bids	Automatic Rejection; not read publicly and returned unopened to bidder
2. Unsealed Envelopes	Automatic Rejection
3. Insufficient Financial Security, if required (e.g. no bid deposit/insufficient bid deposit)	Automatic Rejection
4. Failure to insert the name of the bonding company in the space provided in the Bid Solicitation Form (if required)	Automatic Rejection
5. Failure to provide an agreement to bond where required and/or letter of intent to provide an irrevocable standby letter of credit	Automatic Rejection
6. All required sections of Bid documents not completed	Automatic Rejection; unless in the consensual opinion of the Manager of Supply and Services and the Department Director, the incomplete nature is trivial or insignificant
7. Failure to attend mandatory site meeting, if required	Automatic Rejection
8. Bids received on documents other than those provided or specified by the Corporation	Automatic Rejection
9. Failure to include signature of the person authorized to bind the bidder in the space provided on the Form of Tender	Automatic Rejection
10. Qualified Bids (qualified or restricted by an attached statement)	Automatic Rejection; except where the change is requested by the Corporation or where, in the consensual opinion of the Manager of Supply and Services and the Department Director, the change is trivial or insignificant

SCHEDULE “C”	
To By-Law No. 2-10 of the Town of Fort Erie	
Page 2	
IRREGULARITY	RESPONSE
11. Mathematical Errors, which are not consistent with unit prices	48 hours to initial corrections made by the Department Representative or Manager of Supply and Services using unit prices to re-calculate extensions
12. Bid completed and/or signed in erasable medium	Automatic Rejection
13. Erasures, Overwriting or Strikeout, which are not initialed	
(a) un-initialed changes, other than unit prices which are trivial or not significant	48 hours to initial
(b) unit prices have been changed but not initialed and the contract totals are consistent with the price as amended	48 hours to initial change in unit price
(c) unit prices have been changed but not initialed and the contract totals are not consistent with the prices as amended	Automatic Rejection
14. Bids, in which all necessary addenda, have not been acknowledged	48 hours to confirm Bid to the satisfaction of the Manager of Supply and Services
15. Failure to execute Agreement with Bond (Surety's Consent) or Bonding Company's corporate seal or signature missing from agreement to Bond	Automatic Rejection
16. Failure to execute Bid - Bond by Bidder and Bonding Company	Automatic Rejection
17. If required in the bid solicitation, failure to Pre-Qualify in advance of the bid solicitation. (<i>By-law No. 98-2017</i>)	Automatic Rejection