

CORPORATION OF THE UNITED TOWNSHIPS OF HEAD, CLARA & MARIA

BY-LAW NUMBER 2012-17

BEING a by-law governing the procurement of goods and services.

WHEREAS Section 270 of the *Municipal Act*, S. O. 2001, c.25 as amended, states that a municipality must adopt and maintain policies with respect to its procurement of goods and services among others;

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 the Corporation of the United Townships of Head, Clara & Maria subject to certain exceptions set out herein;

NOW THEREFORE the Council of Corporation of the United Townships of Head, Clara & Maria enacts as follows:

1. PART I - SHORT TITLE

1.1. This by-law may be cited as the "Purchasing by-law".

2. PART II - DEFINITIONS AND SCHEDULES

2.1. The words and phrases listed below when used in this by-law shall have the following meanings ascribed to them:

"APPROVED INVOICE" means an original supplier's invoice issued at the time of purchase of low dollar goods or services not exceeding \$10,000 and which bears both the signature of an appropriately authorized employee and appropriate account number(s);

"AWARD", "AWARDED" and "AWARDING" mean authorization to proceed with the purchase of goods, service 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 Municipality, as required by Section 27 of this by-law;

"BID SOLICITATION" means a formal request for competitive bids that may be in the form of a Request for Tender, Request for Quotation or Request for Proposal;

"CLERK" means the Clerk or Senior Administrative Officer of the Corporation of the United Townships of Head, Clara & Maria, or designate;

"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, service or construction authorized in accordance with this by-law;

"COUNCIL" means the Council of the Corporation of the United Townships of Head, Clara & Maria;

"COUNCIL APPROVED BUDGETS" means Council approved department or municipal budgets including authorized revisions, or where applicable, Council approved budgets of local boards to which this by-law applies;

"DEPARTMENT" means an organizational unit of the Corporation of the United Townships of Head, Clara & Maria;

“EMERGENCY” means a situation, or the threat of an impending situation, where the purchase of goods and services is required immediately, to mitigate the effects of the situation on the environment, the life, safety, health and/or welfare of the general public, or the property of the residents of the Municipality, or to prevent serious damage, disruption of work, or to restore or to maintain essential service 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 arms-length where fully informed and not under any compulsion to transact;

“GOODS” means moveable property including, the cost of installing, operating, maintaining or manufacturing such moveable property; raw materials, products, equipment and other physical objects of every kind and description;

“INFORMAL, LOW VALUE PROCUREMENT” is used to obtain competitive pricing for a one-time procurement in an expeditious and cost effective manner through phone, fax, e-mail, other similar communication methods, vendor advertisements or vendor catalogues.

“LOWEST COMPLIANT BID” means the bid that would provide the Municipality with the desired goods, service or construction at the lowest total acquisition cost, meets all the specifications and contains no irregularities requiring automatic rejection;

“LOWEST OR ANY BID NOT NECESSARILY ACCEPTED” means that the Municipality reserves the right to not accept a lone bid or reserves the right to accept a bid other than the lowest if other conditions are met; which conditions must be stated in the tender documents.

“MOST ECONOMICALLY ADVANTAGEOUS” means the optimum combination of cost and quality of product or service (or fitness for purpose) to meet Council's requirements;

“MUNICIPALITY” means the Corporation of the United Townships of Head, Clara & Maria;

“MUNICIPAL SOLICITOR” means the Municipal Solicitor or the solicitor retained by the Municipality to act on behalf of the Corporation of the United Townships of Head, Clara & Maria, or designate;

“NEGOTIATION” means the action or process of conferring with one or more vendors leading to an agreement on the acquisition of the required goods and services under the conditions outlined in this by-law.

“NON-COMPETITIVE PROCUREMENT” is a method of procurement that is not competitive which is to be used in specific circumstances. It includes sole sourcing and single sourcing. It is used to allow for procurement in an efficient and timely manner without seeking competitive pricing or to provide for additional exceptions as specified in this by-law.

“PROFESSIONAL SERVICES” means persons having a specialized knowledge or skill for a defined Service requirement including, architects, engineers, designers, management and financial consultants; and firms or individuals having specialized competence in environmental, planning or other disciplines;

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

“QUOTATION” means a formal statement of the estimated cost of a job, good, service or construction or an offer to sell goods and services to the Municipality or an offer to purchase surplus goods from the Municipality.

“REQUEST FOR PROPOSAL” or RfP means a bid solicitation that is used to acquire goods, service or construction, on variable terms the suitability of which is determined upon multiple factors and which may result in further direct negotiation with one or more bidders. It is used to implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining unique proposals designed to meet broad outcomes to a complex problem or need for which there is no clear or single solution. It is used to select the proposal that earns the highest score and meets the requirements specified in the competition, based on qualitative, technical and pricing considerations.

“REQUEST FOR QUOTATION” or RfQ is used to implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining competitive bids based

on precisely defined requirements for which a clear or single solution exists. With this method of procurement the bid solicitation is done primarily on an invitational basis from a pre-determined bidder's list but may be supplemented with public advertising of the procurement opportunity.

"REQUEST FOR TENDER" or RfT is used to implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining competitive bids based on precisely defined requirements for which a clear or single solution exists. An RfT is used when the goal is to accept the lowest bid meeting the requirements specified in the competition.

"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 Municipality in accordance with terms of employment;

"SINGLE SOURCING" is the procurement of a good or service from a particular vendor due to reasons of function or service rather than through solicitation of bids from other vendors who can also provide the same item;

"SOLE SOURCING" is the procurement of a good or service that is unique to a particular vendor and cannot be obtained from another source.

"TENDER" means a bid solicitation used to acquire known goods, service 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 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;

"TREASURER " means the Treasurer of the Corporation of the United Townships of Head, Clara & Maria or designate.

"VENDOR OF RECORD ARRANGEMENT" means a procurement process where the municipality seeks out bids or proposals from a select group of vendors with which it has already established a satisfactory business relationship.

"VERBAL QUOTATION" means the receipt of pricing via telephone or in person, and will include the retention of written documentation of the conversation in support.

2.2. Schedules A, B, C and D attached hereto form part of this by-law.

3. PART III - PURPOSES, GOALS AND OBJECTIVES

3.1. The purpose of the by-law is to provide guidelines for the procurement by purchase, rental or lease of the required quality and quantity of goods and/or services, including professional and consulting services in an efficient, timely and cost effective manner.

3.2. The goals and objectives of this by-law and of each of the methods of procurement authorized herein are :

- i To encourage competition among suppliers;
- ii To obtain maximum value for dollars spent and minimize employee time and effort expended;
- iii To ensure improved service and support;
- iv To ensure product delivery, quality, efficiency and effectiveness;
- v To ensure fairness of competition among vendors and suppliers;
- vi To ensure openness, accountability and transparency while protecting the financial best interests of the Municipality;
- vii To have regard to the preservation of the natural environment and to encourage the use of environmentally friendly goods, services and construction.

4. APPLICATION

- 4.1. This by-law shall apply to the purchase of goods, services and/or construction for the purposes of all municipal departments.
- 4.2. This by-law shall not apply to the acquisition or disposal of any real property or to any lease, right or permission relating to the use or occupation of real property.

5. PART IV - GENERAL PROCUREMENT POLICY APPLICATION

- 5.1. The procedures in this by-law shall be followed to award a contract or to recommend to Council that a contract be awarded.
- 5.2. The Clerk or Treasurer may purchase or contract for the goods and services listed in Schedule "A" to this by-law without following the procedures set out herein.
- 5.3. The purchase of goods and services listed in Schedule "A" to this by-law may be made provided that sufficient funds are available and identified in appropriate accounts within Council approved budgets or specifically authorized by Council resolution.
- 5.4. No personal purchases shall be made by the Municipality directly or indirectly for members of Council or any appointed member of a local board or commission or for any officer, employee or volunteer of the Municipality.
- 5.5. No Council member, officer, employee or volunteer of the Municipality shall personally obtain any goods that have been declared surplus unless through an advertised public process.

6. RESTRICTIONS

- 6.1. No contract for goods, service or construction may be divided into two or more parts to avoid the application of the provisions of this by-law.
- 6.2. No contract for services shall be awarded where the services would result in the establishment of an employee - employer relationship.
- 6.3. No employee, volunteer or elected official shall purchase or offer to purchase, on behalf of the Municipality, any goods, service or construction, except in accordance with this by-law.
- 6.4. Any employee who intentionally and knowingly acquires or disposes of any goods and services for the Municipality in contravention of any section of this by-law, as amended from time to time, shall be subject to disciplinary actions in accordance with Municipal policy.
- 6.5. No Municipal employee shall award a contract where the Clerk has determined that the provisions of this by-law have not been adhered to and has so advised the employee.
- 6.6. 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,
 - i shall immediately disclose the interest to the Clerk, or Council and shall describe the general nature thereof;
 - ii shall not take part in the award of the contract; and
 - iii shall not attempt in any way to influence the award of the contract.
- 6.7. An employee has an indirect pecuniary interest in any contract in which the Municipality is concerned, if, the employee or his or her spouse or same-sex partner:
 - 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,
 - 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; or
 - iv the employee or his or her spouse or same-sex partner is in the employment of a person, unincorporated association or partnership that has a pecuniary interest in the contract.

- 6.8. All Council members shall conduct themselves in accordance with the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended.
- 6.9. All persons who provide or prepare on behalf of the Municipality contract specifications for goods, service or construction and which goods, service or construction are intended to be the subject matter of a bid solicitation, shall not be permitted to submit a bid in response to the bid solicitation for the said goods, service or construction.
- 6.10. In circumstances where a bidder has withdrawn its bid after bids have been opened in response to a bid solicitation the Clerk may by written notice exclude such bidder or supplier from bidding upon further contracts to supply goods, service or construction to the Municipality for a period up to two years from the date of the notice.
- 6.11. 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 Municipality.

7. GRATUITIES

- 7.1. Each employee of the Municipality is expressly prohibited from accepting directly or indirectly, from any person, firm or corporation to which any purchase or contract is, or might be awarded, any rebate, discount, gift, money, or anything of value whatsoever, except where given, is for the use of and the benefit of the Municipality.
- 7.2. Notwithstanding section 7.1 above, gifts of nominal value including but not limited to: baseball caps, coffee mugs, calendars, notepads etc. are acceptable.

8. TOTAL ACQUISITION COSTS

- 8.1. Where this by-law prescribes dollar limits for authority to issue contracts or contracts to be reported to Council, the contract amount shall be the estimated annual "total acquisition cost" less any rebates.

9. COUNCIL APPROVAL

- 9.1. Despite any other provisions of this by-law, the following contracts are subject to Council approval:
- i any contract requiring approval from the Ontario Municipal Board;
 - ii any contract where the total acquisition cost is greater than or outside of the Council approved budget;
 - iii where an irregularity precludes the award of a contract to the bidder submitting the lowest bid and the total acquisition cost exceeds \$10,000;
 - iv any contract where a bid solicitation has been restricted to a single source of supply and the total acquisition cost of such good, service or construction exceeds \$50,000;
 - v where the contract price is in excess of fifty thousand dollars (\$50,000.00) and a request for proposals has been issued under this by-law;
 - vi where the purchase is prescribed by statute to be made by Council;
 - vii where there is current litigation between the bidder and the Municipality;
 - viii where the term of a proposed contract is for a period longer than three years;
 - ix where the purchase of any goods, services or construction is not authorized by this bylaw; and
 - x where otherwise specifically provided in this by-law.
- 9.2. Approval by Council of the contracts referred to in this Section shall be by Resolution.
- 9.3. If a challenged bid shall be considered to be accepted or rejected, a report shall be prepared for submission to Council setting out the nature of the informality, irregularity or challenge and the proposed action to be taken. Council shall make the ultimate decision to accept or reject said bid.

10. RESPONSIBILITIES AND AUTHORITIES

- 10.1. The Clerk and/or Treasurer shall have the responsibility and authority for the procurement of goods, services or construction for the Municipality, provided that:
- i no expenditure, purchase or commitment shall be incurred or made, and no account shall be paid by the Municipality for goods, services or construction, except as provided in this by-law or otherwise approved by Council; and

- ii no contract shall be entered into and no expenditure shall be authorized or incurred unless Council has provided funds for such purpose in the annual budget or otherwise agreed to the provision of such funds and no expenditure shall be authorized or incurred in excess of the funds provided unless otherwise authorized under this by-law or approved by specific resolution of Council.
 - iii pending Council's approval of proposed budgetary estimates, the Clerk or Treasurer is authorized to spend up to 50% of the previous year's approved operating budget.
 - iv There is no authority to overrun net operating budgets for any department, except in accordance with this by-law.
- 10.2. The Clerk and/or Treasurer shall be responsible for:
- i providing procurement advice including preparing call for bids documentation as per Schedule "D" to this by-law;
 - ii administering the call for bids and ensuring compliance with the terms and conditions of the call for bids;
 - iii the development of co-operative purchasing plans with other levels of government, municipalities, boards, agencies, commissions, or private sector entities where such plans are determined to be in the best interests of the Municipality;
 - iv the standardization of all procurement procedures; and
 - v the disposal of surplus stock.
- 10.3. Where any person is authorized to take any action pursuant to this by-law, such action may be taken by that person's authorized designate.
- 10.4. Where any authority has been granted to any officer or employee of the Municipality pursuant to this by-law, such authority may also be exercised by the Clerk or Senior Administrative Officer.
- 10.5. The Treasurer shall have authority and be accountable for all procurement activity and decisions. The Treasurer may delegate his/her authority, where appropriate.
- 10.6. The Clerk and Treasurer shall be responsible to respond to concerns and questions relating to procurement policies and procedures.

11. NOTIFICATION OF PROCUREMENT OPPORTUNITIES

- 11.1. All notices of procurement opportunities for goods, service or construction shall be placed on the Municipal website.
- 11.2. Notification of procurement opportunities for goods, service or construction by the above methods may be supplemented by other means of notification where appropriate and at the discretion of the Clerk and/or Treasurer and may include mailing the notification specifically to a known supplier.
- 11.3. When notification has been mailed to the current supplier of goods, service or construction, the Clerk and/or Treasurer shall make every effort to contact at least two other sources via mail or other appropriate means if practical and appropriate.

12. PART V - PROCUREMENT PROCEDURES

12.1. PURCHASING PROCEDURES

- 12.2. The Clerk and Treasurer shall establish purchasing procedures consistent with the purposes, goals and objectives set out in this by-law relating to:
- i the form, content and use of forms, whether electronic or printed, including requisitions, purchase orders, bonds, letters of credit and other forms of guarantee or surety, tender, proposal and other contract documents;
 - ii the identification of those goods, service or construction which, are more effectively acquired through cooperative purchasing or vendor of record arrangement;
 - iii any other aspect of process or procedure not specifically provided for in this by-law.
- 12.3. Where, in the opinion of the Clerk, circumstances giving rise to an issue of adherence or non-adherence to the requirements of this by-law which cannot be resolved to the satisfaction of the Clerk, the Clerk shall advise the Treasurer and/or the Municipal Solicitor who together shall have the authority to determine the appropriate action.

13. NON-COMPETITIVE PROCUREMENT

- 13.1. Non-competitive procurement may be used in the following circumstances:
- i When there is a statutory or market based monopoly on the item;
 - ii When no bids were received in the competitive process or in the previous competitive process;
 - iii When other bids were obtained through the previous competitive process which were significantly higher than that of the successful supplier;
 - iv When the required item is covered by an exclusive right such as a patent, copyright or exclusive license;
 - v When the purchase is already covered by a lease-purchase agreement where payments are partially or totally credited to the purchase;
 - vi When it is necessary to ensure compatibility with existing products or to avoid violating warranty/guarantee requirements when service is required;
 - vii When the required item is in short supply due to market conditions;
 - viii When competitive sourcing for low value procurement would be uneconomical or would not attract bids;
 - ix When competitive procurement may be found to be impractical due to current provider specialized knowledge, past service, availability of competitors, location, history etc.;
 - x When an urgent procurement is necessary for fulfilling a statutory order issued by a federal or provincial authority, such as an environmental, public health, or workplace safety compliance order.

14. SOLE SOURCE AND SINGLE SOURCE PURCHASING

- 14.1. A sole source purchase may be made:
- i where other service providers are not available;
 - ii for the procurement of goods, services or construction without issuing a call for bids where the compatibility of a purchase with existing equipment, facilities or service is the paramount consideration;
 - iii where the procurement is unique to a particular vendor and cannot be obtained from another source; or
 - iv where work is required in another location, a contractor has already been secured through a tender process, with established unit prices, and it is considered beneficial and cost effective to extend the unit prices for the work to be completed on a similar job.
- 14.2. The Clerk may award the contract under single or sole sourcing if the total cost does not exceed fifty thousand dollars (\$50,000.00), in which case the award shall be subject to Council approval.

15. REQUEST FOR EXPRESSIONS OF INTEREST

- 15.1. The Clerk may conduct a request for expression of interest for the purposes of determining the availability of suppliers of any goods, service or construction and for the purposes of keeping a list of available suppliers.

16. PURCHASING METHODS

- 16.1. The purchasing methods for the procurement of goods, service or construction at different values are listed in Schedule "B" to this by-law.

17. PURCHASE ORDER AUTHORIZATION – Exceeding \$200.00

- 17.1. Purchases above this amount may only be authorized by the Clerk or Treasurer unless authorized within the annual Council approved budget.

18. PETTY CASH

- 18.1. The Treasurer shall have authority to establish petty cash funds in such an amount to meet the requirements of the Municipality for the acquisition of goods, service or construction having an individual total acquisition cost of \$250 or less.
- 18.2. All petty cash fund disbursements shall be evidenced by receipts and shall be available for auditing purposes through the Treasurer.
- 18.3. A float of \$120 is to be established and maintained in the municipal office to provide working funds for making change while processing payments of any fees

payable to the municipality including but not limited to taxes, photocopies, faxes, tipping fees etc.

19. PURCHASES NOT EXCEEDING TWO THOUSAND FOUR HUNDRED AND NINETY- NINE (\$2,499) DOLLARS

- 19.1. The Clerk and Treasurer shall have authority to meet the requirements of day-to-day operations for the acquisition of goods, service or construction having an individual total acquisition cost of \$2, 499 or less.
- 19.2. Purchases made pursuant to this Section shall be made from the competitive market place wherever possible.
- 19.3. No quotations are required for purchases not exceeding \$2,499 but a request for quotations is recommended to best determine competitive pricing.
- 19.4. Informal, low procurement and non-competitive methods of procurement are authorized where warranted.

20. PURCHASES BETWEEN TWO THOUSAND FIVE HUNDRED (\$2,500)AND TEN THOUSAND DOLLARS (\$10,000)

- 20.1. Quotations are recommended but not mandatory for purchases between \$2,500 and \$5,000. This will be left to the discretion of the Clerk and/or Treasurer depending on the availability of suppliers and competitive pricing.
- 20.2. Two quotations are required for purchases from \$5,001 to and including \$10,000.
 - i The purchaser shall demonstrate that the selection process used to purchase the goods, service or construction in this total acquisition cost range shall demonstrate that fair market value was achieved.
 - ii Quotations shall be obtained via informal, low value procurement methods such as: verbally, via phone, in person; in writing, via letter, fax or email; through on-line research by staff; or through vendor advertisements and/or catalogues.
- 20.3. Informal, low procurement and non-competitive methods of procurement are authorized where warranted especially when competitive products or service providers are not available.

21. PURCHASES EXCEEDING TEN THOUSAND (\$10,000) DOLLARS

22. REQUEST FOR TENDER or REQUEST FOR QUOTATION

- 22.1. Every Request for Tender shall contain an explanation of the criteria which will be used to evaluate all proposals.
- 22.2. A Request for Tender or a Request for Quotation may be used for purchases exceeding Ten Thousand (\$10,000) Dollars where all of the following criteria apply:
 - i two or more local sources are considered capable of supplying the requirement;
 - ii "local" in this sense means within a travel area which will not incur additional mileage expenses. This criteria is not to disqualify bidders but to ensure that mileage costs are being considered in overall bid submissions;
 - iii the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria; and
 - iv it is intended that the Lowest Compliant bid will be accepted without negotiations.
- 22.3. The Clerk and Treasurer, may award contracts emanating from a Request for Tender or Request for Quotation provided that:
 - i the estimated total acquisition cost of the goods, service or construction does not exceed \$100,000;
 - ii sufficient funds are available and identified in appropriate accounts within Council approved budgets; and
 - iii the provisions of this by-law are complied with.
- 22.4. The award is to the Lowest Compliant bidder;

- i This criterion is used when the technical specifications are fully clear and fixed, and no variants are allowed. In this case, the contract is awarded to the tenderer who was not excluded from the tender procedure during the qualitative selection and whose tender was not rejected in the technical evaluation stage (i.e. it was judged that it meets the technical specifications and other requirements) and, during financial evaluation, was established as the tender offering the most economical solution for Council.

22.5. The award is to the most economically advantageous tender:

- i This criterion is used when the staff wishes to ensure that the contract shall be awarded to the candidate whose tender offers the best value for money. In this case:
- ii Staff has the opportunity to determine the specifications for the contract placing greater emphasis on functional performance rather than on strict technical requirements. Submission of variants may be allowed, provided that these meet the minimum requirements specified.
- iii Desirable specifications may also be determined, in addition to the mandatory requirements and specifications. Failure to meet the desirable specifications does not lead to the rejection of the tender, meeting them, however, may lead to an advantage in the evaluation procedure.

23. When the contract is awarded to the most economically advantageous tender, the award takes place based on various criteria related to the scope of the specific contract, such as the quality, price, technical value, aesthetic and functional characteristics, environmental characteristics, operating cost, efficiency, after-sales support and technical assistance, delivery date and delivery or execution deadline, references, experience, how each tenderer proposes to deliver the contract (quality), plant, machinery and equipment, reliability of performance from past work.

23.1. A price/quality split is determined, prior to the issue of the tender, which will vary according to the procurement. There is no fixed ratio but an assessment based on price and quality means that staff can select the offer, which represents the best balance of price and quality and not just the lowest price.

- i The weighting attached to each criterion chosen must be stated in the tender documents.
- ii The weightings may be given a range, specifying minimum and maximum weighting.
- iii Where it is not possible to provide weightings on objective grounds, the criteria should be indicated in descending order of importance.
- iv The Clerk and Treasurer will create a predetermined split to be included in the tender documents.

23.2. Where bids are received in response to a bid solicitation but exceed project estimates, the Clerk and the Treasurer, jointly, may enter negotiations with the Lowest Compliant bidder to achieve an acceptable bid within the project estimate or bring the proposal to Council with staff recommendation for final decision .

24. REQUEST FOR PROPOSAL

24.1. A Request for Proposal shall be used:

- i where one or more of the criteria for issuing a Request for Tender 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 required good, service or construction.
- ii where the goods and services that are required are of a highly specialized or technical nature, such as telecommunications, computer equipment and insurance or audit services.

iii where it would allow the municipality to obtain current information about the required product, service or solution without having to spend considerable research time by staff.

24.2. Where the contract price is anticipated to be \$50,001 or greater and the Request for Proposal method of procurement is utilized, the Clerk shall with the Treasurer evaluate the response to the Request for Proposal and prepare a report to Council with appropriate recommendations. Council will then make a decision and direct the Clerk to award or not award the contract.

24.3. Every Request for Proposal package shall contain an explanation of the criteria which will be used to evaluate all proposals.

24.4. The Clerk, on behalf of the municipality, may award contracts emanating from a Request for Proposal provided that:

- i the estimated total acquisition cost of the goods, service or construction does not exceed \$50,000;
- ii the award is to be made to the supplier meeting all mandatory requirements and determined, by reference to the evaluation criteria, as providing best value;
- iii sufficient funds are available and identified in appropriate accounts within Council approved budgets or have been allocated specifically by a resolution of Council; and
- iv the provisions of this by-law are complied with.

24.5. The Clerk shall follow the provisions of Section 35 regarding the form of contract required to complete the purchase.

25. NON-COMPETITIVE, SOLE AND SINGLE SOURCING PROCUREMENT LIMITS

25.1. Non-competitive, sole sourcing and single sourcing procurement methods may be used for any dollar value purchase where conditions warrant it as per the applicable sections of this by-law.

25.2. Due to the size, location and budget of the municipality, often sole and single sourcing are the only options due to the lack of local or willing providers.

25.3. Where past requests for bids or tenders have resulted in single tenders or only one interested bidder, staff have the option of simply renewing existing contracts.

25.4. Notice will be provided to Council through a formal report prior to renegotiating procurement in these situations.

26. ACCEPTANCE OF BIDS

26.1. Council is under no obligation to accept any proposal or bid and where only one quotation or bid is received, the Municipality may exercise its right to cancel the call for tender or quotations.

26.2. If only one tender or bid is received, the municipality has the option of not opening the bid and closing the call for tender.

27. BID DEPOSITS AND PERFORMANCE GUARANTEES

27.1. The Clerk and Treasurer may require that a bid be accompanied by a bid Deposit or other similar security to guarantee entry into a contract.

27.2. Prior to the commencement of the work, the successful bidder may be required to provide the following security in addition to the security referred to in Subsection 27.1:

- i a performance bond to guarantee the performance of a contract, and
- ii a payment bond to guarantee the payment for labour and materials to be supplied in connection with a contract.

27.3. The Clerk and Treasurer shall select the appropriate means to guarantee execution and performance of the contract. Means may include one or more of, but are 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, on bond forms acceptable to the Corporation of the United Townships of Head, Clara & Maria.

27.4. Prior to the commencement of work, evidence of insurance coverage satisfactory to the Clerk and Treasurer must be obtained, ensuring indemnification of the

Corporation of the United Townships of Head, Clara & Maria from any and all claims, demands, losses, costs or damages resulting from the performance of a bidder's obligations under the contract and from any other risk determined by the Clerk and Treasurer as requiring coverage.

- 27.5. Prior to payment to a supplier, a Certificate of Clearance from the Workplace Safety and Insurance Board may be required ensuring all premiums or levies have been paid to the Workplace Safety and Insurance Board to the date of payment.

28. CONTRACT WITHOUT BUDGETARY APPROPRIATION

- 28.1. Where a requirement exists to initiate a project for which goods, service or construction are required and funds are not contained within the budget to meet the proposed expenditure, the Clerk shall, prior to commencement of the purchasing process, submit a report to Council containing:
- i information surrounding the requirement to contract;
 - ii the terms of reference to be provided in the contract;
 - iii 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 and obtain a special resolution of Council authorizing the purchase.

29. CONTINGENCIES

- 29.1. Where any purchase of goods, services or construction has been authorized under this by-law, the Clerk or Treasurer may authorize disbursement of additional funds, provided that such additional funds shall not exceed fifteen percent (15%) of the total cost of the original contract, and provided that the additional funds are required to complete the work set out in the original contract.

30. PURCHASE OF ADDITIONAL GOODS, SERVICES OR CONSTRUCTION

- 30.1. Notwithstanding section 29.1 above and section 15.1 (iii), where goods, services or construction have been purchased under this by-law, similar, additional or related goods, services or construction shall be purchased from the same contractor, whether by way of contract extension, renewal, or separate purchase, only if:
- i a report is submitted to Council for prior approval; or
 - ii the procurement procedures set out in this by-law are complied with as if the additional purchase is a new contract; or
 - iii the total cost of the additional goods, services or construction does not exceed twenty percent (20%) of the total cost of the original contract.
- 30.2. Any amount authorized under section 30.1 of this by-law may be expended in addition to any contingency allowance authorized under section 29.1 of this by-law and may be authorized by the Clerk irrespective of the total cost of the original contract.
- 30.3. Despite section 30.1 of this by-law, the Clerk and Treasurer may jointly authorize the purchase of additional goods, services or construction provided that:
- i the requirement for the additional goods, services or construction could not reasonably have been anticipated at the time of the award of the original contract; and
 - ii the authorization to purchase the additional goods, services or construction is required to prevent interruption in service delay or to avoid incurring extra costs.
- 30.4. A report shall be submitted quarterly to Council to advise of any expenditures made under section 30 of this by-law.

31. EMERGENCY PURCHASES

- 31.1. Where an Emergency exists requiring the immediate procurement of goods, service or construction, the Clerk and Treasurer may purchase the required goods, service or construction by the most expedient and economical means, notwithstanding any other provision of this by-law to a maximum of \$50,000.
- 31.2. The Clerk or senior Administrative Officer shall have authority without reference to Council to enter into expenditures of money not exceeding \$50,000 for extraordinary situations and/or emergency circumstances relating to a situation that constitutes a

danger of major proportions to life or property, and based upon implementation of the Municipality's Emergency Response Plan and associated with an official declaration of an emergency by the Corporation of the United Townships of Head, Clara & Maria.

- 31.3. Where expenditures are required and authorized under Section 31.1 of this by-law the normal cheque signing procedure of the Municipality may be amended as circumstances dictate to allow for any two signing officers to sign for payment of authorized emergency expenses, no matter what their position. During emergency situations it is not required that every cheque be signed by one member of Council and one member of staff due to the possible unavailability of either depending on the particular emergency.
- 31.4. The Clerk shall endeavour to obtain the lowest cost for any goods, services or construction required using as fair and transparent a process as is feasible having regard to the particular emergency.
- 31.5. For all Emergency purchases made by the Clerk or Treasurer under sections 31.1 and/or 31.2, the Clerk or Treasurer shall as soon after the purchase as reasonably possible, notify Council with a written report detailing the circumstances of the Emergency.
- 31.6. An emergency does not occur as a result of a user or department failing to plan and forecast department requirements in a timely fashion.

32. COOPERATIVE PURCHASING

- 32.1. The Corporation of the United Townships of Head, Clara & Maria may participate with other government agencies or public authorities in cooperative purchasing where it is in the best interests of the Municipality to do so and where the purposes, goals and objectives of this by-law are complied with by such government agencies and public authorities.
- 32.2. The policies of the government agencies or public authorities calling the cooperative bid solicitation are to be the accepted policy for that particular purchase.

33. IDENTICAL TENDERS

- 33.1. If the lowest compliant bids from two or more bidders are identical in total acquisition cost or unit price, the Clerk, in collaboration with the Treasurer, is authorized to enter into negotiations with the bidders who have submitted the identical prices in an attempt to obtain a lesser price and shall maintain a record in respect of such negotiations.
- 33.2. The Clerk shall not reveal information pertaining to such negotiations or the manner in which the final price was determined to any of the other bidders concerned. The Clerk shall include as part of the record, a report concerning the results of such negotiations.
- 33.3. When negotiations are not successful in breaking the identical tenders, then the successful bidder shall be determined by coin toss. The coin toss shall be performed in the presence of the Clerk, the Treasurer and the Head of Council, or their designate(s).

34. BID IRREGULARITIES

- 34.1. The process for administering irregularities contained in bids pertaining to all contracts shall be as set out in Schedule "C". For an irregularity listed in the first column of Schedule "C", the applicable response is set out opposite to the irregularity in the second column of Schedule "C".

35. CONTRACTUAL AGREEMENT

- 35.1. The award of a contract that exceeds \$ 2,500 shall be made by way of a written agreement, approved and/or signed invoice or as a purchase order.
- 35.2. A formal agreement or written contract is to be used when the resulting contract is complex and will contain terms and conditions other than the Corporation of the United Townships of Head, Clara & Maria's standard contractual terms and conditions.

- 35.3. It shall be the responsibility of the Clerk, Treasurer and/or the Municipal Solicitor, to determine if it is in the best interests of the Corporation of the United Townships of Head, Clara & Maria to establish a formal agreement with the supplier.
- 35.4. Where it is determined that a formal agreement is required, the formal agreement shall be drafted by staff and may be reviewed and approved for execution by the Municipal Solicitor depending on circumstances and value.
- 35.5. Where a formal agreement is required, the Clerk and/or the Head of Council shall execute the agreement in the name of Corporation of the United Townships of Head, Clara & Maria.
- 35.6. Where a formal agreement is not required, the Clerk or Treasurer may issue and execute a Purchase Order incorporating the relevant terms and conditions or sign the appropriate invoice which lists the total price, terms, conditions of sale and a description of the goods or services.

36. SURPLUS AND OBSOLETE GOODS

- 36.1. The Clerk must dispose of all Goods for which the Municipality no longer has use and the Clerk and Treasurer may use any method for disposal in the Municipality's best interests, including without limitation, public auction, sealed bid, public tender, trade, consignment, donation to charitable organization, negotiated sale, transfer to another department (including the Municipal Library for May Madness) or destruction.
- 36.2. If the estimated residual value of any surplus or obsolete good is less than \$100, low cost disposal methods such as donation to other departments or organizations are preferred.
- 36.3. An employee who has the responsibility of declaring Goods surplus or obsolete, or for sending items to a public auction shall not bid on or personally obtain any Goods that the employee has declared as surplus.
- 36.4. No Council Member, employee or volunteer shall be permitted to receive surplus or obsolete Goods except by purchase at public auction, public tender, trade or advertised sale.

37. TERMS OF PAYMENT

- 37.1. The Municipality maintains a net 60 days (n/60) upon receipt of an invoice policy unless under special circumstances, the Treasurer decides that to reduce or extend the terms of payment is in the best interest of the Municipality.
- 37.2. Interest in the amount of 2% of the outstanding balance will be charged monthly and added to any outstanding balances after the 60 days.

38. ACCESS TO INFORMATION

- 38.1. The disclosure of information received relevant to the issue of bid solicitations or the award of contracts emanating from bid solicitations shall be in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 as amended.

39. BY-LAW REVIEW

- 39.1. This by-law shall be reviewed within each new term of Council.
- 39.2. The review will include a report from staff that will assist in determining how effective this by-law has been in achieving the objectives set out in Part III as well as the requirements of the *Municipal Act, 2001*, as amended.
- 39.3. The review may be undertaken by an ad-hoc committee of Council, the final result of which shall be comprised of a report to Council.

40. EFFECTIVE DATE.

- 40.1. This by-law shall come into force and take effect on the date of passage.

41. REPEAL

41.1. By-law 2008-07 and all amendments thereto are hereby repealed on the effective date of this by-law.

Read a first and second time this 4th day of May 2012.

Read a third time short and passed this 15th day of June 2012.

TAMMY STEWART, REEVE

MELINDA REITH, CLERK

SCHEDULE "A"
TO BY-LAW 2008-07 OF THE CORPORATION OF THE UNITED TOWNSHIPS OF
HEAD, CLARA & MARIA

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

1. Training and Education
 - (1) Registration and Tuition fees for conferences, conventions, courses and seminars
 - (2) Subscriptions to magazines, books and periodicals
 - (3) Memberships
 - (4) Staff training, development or workshops

2. Refundable Employee/Councillor Expenses
 - (1) Advances
 - (2) Meal Allowances
 - (3) Travel and Hotel Accommodation
 - (4) Miscellaneous - Non-Travel

3. Employer's General Expenses
 - (1) Payroll Deductions Remittances
 - (2) Medical
 - (3) Licenses (Vehicle, etc.)
 - (4) Damage Claims
 - (5) Tax Remittances

4. Professional and Special Services
 - (1) Committee Fees
 - (2) Legal fees and other Professional Services related to litigation or legal matters
 - (3) Witness fees

5. Utilities
 - (1) Heat and Hydro
 - (2) Oil
 - (3) Telephone, internet and other communications

6. Advertising services required by the Municipality on or in but not limited to radio, television, newspaper and magazines

7. Bailiff or collection agencies

8. Miscellaneous – courier charges, postage

9. Petty Cash Purchases

SCHEDULE "B"
TO BY-LAW 2008-07 OF THE CORPORATION OF THE UNITED TOWNSHIPS OF
HEAD, CLARA & MARIA

PURCHASING METHODS

REQUIRED PROCEDURE and PURCHASING OPTIONS	COST OF GOODS OR SERVICE
Petty Cash or Municipal Credit Card <ul style="list-style-type: none"> ▪ Receipts Required ▪ Informal, low-value procurement ▪ Non-competitive procurement 	< \$250 (Section 19)
Approved Invoice or Purchase Order or Municipal Credit Card <ul style="list-style-type: none"> ▪ Quotes not mandatory but recommended. ▪ Informal, low-value procurement ▪ Non-competitive procurement 	\$2,499 or less (Section 20)
Approved Invoice, Signed Agreement, Written contract or Purchase Order <ul style="list-style-type: none"> ▪ Quotes not required but recommended. ▪ Informal, low-value procurement ▪ Non-competitive procurement ▪ Request for Tender ▪ Request for Proposal ▪ Request for Quotation 	\$2,500 to \$5,000 (Section 21)
Approved Invoice, Signed Agreement, Written contract or Purchase Order <ul style="list-style-type: none"> ▪ Two quotes required. ▪ Informal, low-value procurement ▪ Non-competitive procurement ▪ Request for Tender ▪ Request for Proposal ▪ Request for Quotation 	\$5,001 to \$10,000 (Section 21)
Written contract or Signed Agreement with may include a Purchase Order <ul style="list-style-type: none"> ▪ Request for Proposal, ▪ Request for Tender or ▪ Request for Quotation ▪ Minimum of two quotes required if practicable and obtainable ▪ Non-competitive procurement 	\$10,000 or more (Sections 22, 23 & 24)

SCHEDULE "C"
TO BY-LAW 2008-07 OF THE CORPORATION OF THE UNITED TOWNSHIPS OF
HEAD, CLARA & MARIA

	IRREGULARITY	RESPONSE	
1	a	Late bid	Automatic rejection and not opened or read publicly.
	b	Late Request for bid Package	Request not fulfilled.
2		Unsealed Envelope	Automatic rejection.
3		No bid Security or agreement to bond or insufficient bid Deposit or agreement to bond.	Automatic rejection.
4		Bids completed and/or signed in erasable medium.	Automatic rejection.
5		All required sections of bid documents not completed.	Automatic rejection unless, in the consensual opinion of the Clerk and the Treasurer the incomplete nature is trivial or insignificant.
6		Qualified bids (bids qualified or restricted by an attached statement).	Automatic rejection unless, in the consensual opinion of the Clerk and the Treasurer the qualification or restriction is trivial or not significant
7		Bids received on documents other than those provided or specified by the Corporation.	Automatic rejection.
8		Bids Containing Clerical Errors, which are trivial or insignificant.	48 hours to correct and initial errors. The determination of what constitutes trivial or insignificant errors shall be made in the consensual opinion of the Clerk and the Treasurer
9		Failure to execute Agreement to Bond (Surety's Consent) or Bonding company corporate seal or signature missing from Agreement to Bond.	Automatic rejection.
10	a	Failure to execute bid Bond by bidder and Bonding Company.	Automatic rejection.
	b	Corporate seal of the bidder and Bonding Company, missing.	48 hours to correct.
11		Documents – Execution	
	a	Corporate seal (if applicable) or signature missing; signatory's authority to bind the corporation or signature missing.	48 hours to rectify situation.
	b	Corporate seal (if applicable) and signature missing; signatory's authority to bind the corporation and signature missing.	Automatic rejection.
12		Erasures, Overwriting or Strike- Outs which are not initialled:	
	a	Un-initialled changes to the Tender documents, other than unit prices, which are trivial or not significant;	48 hours to initial. The determination of what constitutes trivial or insignificant un-initialled changes shall be made in the consensual opinion of the Clerk and the Treasurer.
	b	unit prices in the Schedule of Prices have been changed but not initialled and the contract totals are consistent with the price as changed;	48 hours to initial change in unit price. The determination of what constitutes trivial or insignificant un-initialled changes shall be made in the consensual opinion of the Clerk and the Treasurer.
	c	unit prices in the Schedule of Prices which have been changed but not initialled and the contract totals are inconsistent with the price as changed;	Automatic rejection.
13		Mathematical errors which are not consistent with unit prices.	48 hours to initial corrections as made by the Clerk and/or Treasurer.
14		Bids, in which all necessary Addenda, which have financial implication, have not been acknowledged.	Automatic rejection.
15		Any other irregularities.	The Clerk, Treasurer and the Municipal Solicitor acting in consensus shall have authority to waive other irregularities or grant 48 hours to initial such other irregularities, which they jointly consider to be trivial or insignificant

Note: The above list of irregularities should not be considered all-inclusive. The Clerk and Treasurer will review minor irregularities not listed and/or may consult with the Municipal Solicitor. Only after that will a decision be made and the Clerk may then accept the bid or request that the bidder rectify the deviation.

SCHEDULE "D"
TO BY-LAW 2008-07 OF THE CORPORATION OF THE UNITED TOWNSHIPS OF
HEAD, CLARA & MARIA

A request for tenders or request for proposals shall be undertaken in compliance with the following process:

- a) the scope of the goods, services or construction shall be set out in the call for bids documentation;
- b) the form of the call for bids shall, to the extent possible, use standardised documentation;
- c) the call for bids documentation shall be circulated and advertised in as wide and extensive manner as will ensure the best, most comprehensive and most competitive response to the call for bids and as per this by-law;
- d) evaluation criteria and weightings shall be established prior to the call for bids and the call for bids documentation shall clearly specify how each of the applicable criteria shall be utilized in evaluating the bids;
- e) bids shall be publicly opened on the specified date, at the specified time;
- f) all bid amounts shall be recorded;
- g) all bids shall be fairly and completely evaluated using as open, fair and transparent a process as may be possible in the circumstances of the particular call for bids;
- h) the evaluation of each bid shall be recorded using a standardized form of evaluation record;
- i) the evaluation record shall be stored and shall only be destroyed in accordance with the Municipal records retention by-law; and
- j) any irregularities shall be referred to the schedule "C" to this by-law or failing to be listed on this schedule, to our Municipal Solicitor for advice.