**The Corporation of the Village of South River**

**By-law #35-2016**

**BEING the Procurement By-law to regulate the purchase and deposal of municipal assets**

**WHEREAS** Section 271 of the Municipal Act, 2001 imposes upon municipalities the obligation to adopt policies with respect to the procurement of Goods and Services

**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 Village of South River subject to certain exceptions set out herein;

**NOW THEREFORE** the Council of the Village of South River hereby enacts as follows:

**PART I**

This By-law may be cited as the “Purchase By-law”

**PART II**

Purposes, Goals and Objectives:

a) To obtain the best value,

b) To maximize savings for taxpayers

c) To ensure service and product delivery, quality, efficiency and effectiveness

d) To ensure fairness among bidders

e) To ensure openness, accountability and transparency while protecting the financial best interests of the Village of South River

f) To have regard to the accessibility for persons with disabilities to the goods, services and construction purchased by the Village of South River

g) To attempt to reduce the amount of solid waste requiring disposal through the purchase of environmentally responsible Goods and Services.

**PART III**

**Definitions:**

**“APPROVED INVOICE”** means an original supplier’s invoice issued for goods and services which bears both the authorized signature and appropriate account number.

**“AWARD, AWARDED OR AWARDING”** means authorization to proceed with the purchase of Goods, Services or Construction from a chosen supplier;

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

**“BID SOLICITATION”** means a formal request for bids that may be in the form of a Request for Tender or Request for Proposal;

**“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;

**“COUNCIL”** means the Council of the Village of South River

“**COUNCIL APPROVED BUDGET”** means Council approved department budgets including authorized revisions;

**“EMERGENCY”** means a situation, or the threat of an impending situation, caused by the forces of nature, an accident, an intentional act or otherwise that constitutes a danger of major proportions to life or property and requires additional or extreme actions to be taken by the staff of the Village of South River 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:

**a)** the cost of installing, operating, maintaining or manufacturing such moveable property;

**b)** raw material, products, equipment and other physical objects of every kind and description;

**“HOLD BACK”** means an amount withheld under the terms of the contract to ensure the complete performance of the contract and to avoid overpayment in relation to progress of work;

**“IN HOUSE BID”** means a bid made by a department and authorized by Council, submitted in response to a Bid Solicitation, where the provision of goods, services or construction will be provided entirely by the employees of the Village of South River;

**“LOWEST COMPLIANT BID”** means the bid that would provide the Village of South River with the desired goods, services or construction at the lowest total acquisition costs, meets all the specifications and contains no irregularities requiring automatic rejection;

**“PROFESSIONAL SERVICES”** means persons having a specialized knowledge or skill for a defined service requirement including:

**a)** Architects, Engineers, designers, management and financial consultants;

**b)** Firms or individuals having specialized competence in environmental, planning or other disciplines;

**“PROGRESS PAYMENT”** means a payment made under the terms of a contract after the performance of the part of the contract in respect of which payment is made but before the performance of the whole contract;

**“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, services or construction by purchase, rental. Lease or trade;

**“PURCHASE ORDER”** means a written offer to a supplier formally stating all terms and conditions for the purchase of goods, services or construction or a written acceptance of an offer received in accordance with this by-law;

**“QUOTE”** means a bid submitted in response to a Request for Quotation;

**“REQUEST FOR Proposal”** means a Bid Solicitation that is used to acquire goods, services or construction, the suitability of which is dependent upon non-price factors and which may result in further negotiation between the parties;

**“SECURITY DEPOSIT”** means a deposit of securities by a supplier that the Village of South River may convert under defined conditions to complete the suppliers’ contractual obligation;

**“SERVICES”** means 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 services to only be delivered by an officer or employee of the Village of South River in accordance with the terms of employment;

**“SOLE SOURCE”** means the Supplier of a good or service that is unique to a particular vendor and cannot be obtained from another source;

**“TENDER”** means a publicly advertised Bid Solicitation;

**“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 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;

**“Village or Village of South River”** means the Corporation of the Village of South River.

**PART IV – GENERAL PROCUREMENT POLICY APPLICATION**

**1.** The procedures in this by-law shall be followed to:

a) Award a Contract, or;

b) Recommend to Council that a contract be awarded.

**2. RESPONSIBILITIES AND AUTHORITIES;**

a) The Procurement of Legal Services shall be directed by Council;

b) The Department Heads have the responsibility for procurement activities within their departments and are accountable for achieving the specific objectives of the procurement project;

c) The Department Heads have the authority to award contracts in the circumstances specified in this by-law provided that the delegated power is exercised within the limits prescribed in this by-law, and the requirements of this by-law are met.

**3) REQUIREMENT FOR APPROVE FUNDS**

a) 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 the council approved budget;

b) Where goods and services are routinely purchased or leased on a multi-year basis, the exercise of authority to award a contract is subject to:

 i) the identification and availability of sufficient funds in appropriate accounts for the current year within Council approved estimates;

 ii) the requirement for the goods or services will continue to exist in subsequent years and, in the opinion of the Department Head, the required funding can reasonably be expected to be made available, and;

 iii) the contract has a provision in it that the supply of goods or services in subsequent years is subject to the approval by Council of the estimates to meet the proposed expenditures.

**4. RESTRICTIONS**

a) No contract for Goods, Services or Construction may be divided into two or more parts to avoid the application of the provisions of this by-law;

b) No Contract for services shall be awarded where the services would result in the establishment of an employee-employer relationship;

c) No employee shall purchase on behalf of the Village of South River any goods, services or construction, except in accordance with this by-law;

d) 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 Council and shall describe the general nature thereof;

 ii) Shall not take part in the Award of the Contract;

 iii) Shall not attempt in any way to influence the Award of the Contract;

 iv) An employee has an indirect pecuniary interest in any contract.

**5.** All Council members shall conduct themselves in accordance with the *Municipal Conflict of Interest Act, RSO 1990 c. M50 as amended.*

**6. TOTAL PROJECT COST:**

Where this by-law prescribes financial limits on contracts that may be awarded on the authority of a Department Head, or provides for financial limits on contracts required to be reported to council, for the purpose of determining whether a contract falls within these prescribed limits, the contract amount shall be the sum of:

a) All costs to be paid to the supplier under the contract; and

b) All taxes,

c) Less any rebates.

**7. PRESCRIBED COUNCIL APPROVAL**

Despite any other provision 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) Any Contract where an irregularity precludes the Award of a Contract to a supplier submitting the lowest bid;

d) Any Contract where a Good, Service or Construction is available from only one source of supply and the Total Acquisition Cost of such Good, Service or Construction exceeds $100,000

e) Any Contract where the Request for Proposal method of purchase of Goods, Services or construction is being used and the estimated value of the goods, services of construction exceeds $100,000;

f) When any Contract is required that involves financing and/or leasing.

**PART V PROCUREMENT – PURCHASING PROCEDURES**

Council shall establish purchasing procedures consistent with the purposes, goals and objectives set out in the by-law relating to:

a) The form, content and use of forms, whether electronic or printed, including requisitions, letters of credit and other forms of guarantee or surety, tender, proposal and other contract documents;

b) The identification of those goods, services or construction which are more effectively acquired through co-operative purchasing;

c) The process to be following in the issuing, receipt and evaluation of Tenders and Requests for Proposals including the option of submitting documentation, payment or signature by electronic means pursuant to the *Electronic Commerce Act, RSO 2000, C17, as amended.*

d) Any other aspects of process or procedure not specifically provided for in this by-law

e) Council shall consider a purchase without a tender if the equipment or product which is being purchased is an addition to a unique previous purchase from a specific company ie software upgrades to the existing municipal program, parts and accessories to the existing equipment fleet.

f) Council shall consider a purchase without a tender if the equipment is by private sale for used equipment if the price is discounted further than negotiations would allow for a new model for the exact specifications which would be tendered.

**2. BLANKET PURCHASE ORDERS**

May be used where:

a) one or more departments repetitively order the same goods, services and the actual demand is not known in advance; or

b) a need is anticipated for a range of goods or goods, services for a specific purpose and for which convenience and location are major factors but the actual demand is not known at the outset.

**3. REQUEST FOR EXPRESSIONS OF INTEREST**

A Department Head may conduct a request for expression of interest for the purposes of determining the availability of suppliers of Goods or Services and for the purpose of keeping a list of available suppliers.

**4. PURCHASING METHODS/AUTHORIZED EXPENDITURE LIMITS**

**1)** Sales taxes, excise taxes goods and services taxes and duties shall be excluded in determining the value of a contract for the supply of goods or services.

**2)** Where the requirement for goods or services has an estimated value not in excess of $ 2,000.00, a Department Head on behalf of the department concerned, is empowered to sign for and to make the purchase on his own authority so long as the purchase has been included in the approved municipal budget.

**3) PURCHASES Over $2,000.00 up to $5,000.00 –**

Where the requirement of goods or services is estimated to exceed $2,000.00 but is less than $5,000.00, the purchase may be made on the authority of the Department Head provided he has obtained three written quotations and has approval of the related committee. The lowest quotation received may be acceptable, providing it meets all the specifications and all other prerequisites. Listings of all quotations received must be retained for inspection by the auditors, and by other officials such as the Treasurer. Where three written quotations cannot be obtained, approval to purchase must be given by the Treasurer/Council.

**4**) **PURCHASES over $5,000 up to $100,000**

Where the requirement for goods or services is estimated to exceed $5,000.but is less than $ 100,000.00 the Department Head shall obtain three written quotes or request for proposals and provide the appropriate department committee with these quotes and the committee will recommend to Council approval of the purchase. Final acceptance of the proposal must be by Council Resolution.

**5) REQUESTS FOR PROPOSAL SHALL BE USED WHERE:**

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 the price alone; or

b) It is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirement;

c) A request for proposal shall be issued by an advertisement in a local publication and/or an advertisement on municipal website.

 Final acceptance of the proposal must be by Council Resolution

**6. PURCHASES OVER $100,001.00**

Where the requirement for goods or services exceeds $100,001.00 the Department Head shall follow the Request for Tender procedures. A request for tender shall be used for purchases exceeding $100,001.00 where all of the following criteria apply:

a) Two or more sources are considered capable of supplying the requirement;

b) The requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria;

c) The market conditions are such that tenders can be submitted on a common pricing basis;

d) It is intended to accept the lowest priced responsive tender without negotiations;

e) Sufficient funds are available and identified in appropriate accounts within Council Approved budgets, except in an emergency situation;

f) The provisions of this by-law are complied with;

g) A Request for tender shall be issued by – publication with wide commercial circulation and/or advertisement at least once in the local newspaper;

h) Tender will be opened and reviewed by members of Council at a Council meeting on a date and time predetermined by Council;

i) Final acceptance of Tenders must be by Resolution of Council.

**7. IN HOUSE BIDS**

In house Bids may be used for the procurement of Goods, Services or Construction in circumstances where Council considers it appropriate to do so.

**PART VII**

**GUARANTEE OF CONTRACT EXECUTION AND PERFORMANCE**

A refundable deposit shall accompany the Tender Document of 10% of the Total Acquisition Cost

Once a Contract is signed there shall be the means to guarantee execution and performance of the Contract in the form of a Certified cheque, bank draft, irrevocable letter of credit, money order in the amount of 100% of the Total Acquisition Cost for contracts over $50,000.

Prior to the commencement of work, evidence of insurance coverage satisfactory to the Clerk Administrator must be obtained. The Village of South River must be named as an additional insured on the Insurance Certificate, indemnifying the Village 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 as requiring coverage.

Prior to the commencement of work and prior to payment to a supplier, a Certificate of Clearance from the Workplace Safety and Insurance Board shall be obtained ensuring all premiums or levies have been paid to the Workplace Safety and Insurance Board to the date of payment.

**PART VIII**

**BIDS IN EXCESS OF PROJECT ESTIMATES**

Council may enter into negotiations with the Lowest Compliant Bidder to achieve an acceptable Bid within the project estimate.

**PART IX**

**EMERGENCY PURCHASES**

Where an emergency exists requiring the immediate procurement of goods, services or construction, a Department Head may purchase the required goods, services or construction by the most expedient and economical means, notwithstanding any other provisions of this by-law. A report to Council shall be made by the Department Head as soon as practicable thereafter.

**PART X**

**COOPERATIVE PURCHASING**

The Village of South River may participate with other government agencies or public authorities in cooperative purchasing where it is in the best interests of the Village to do so and where the purpose, goals and objectives of this by-law are complied with by such government agencies and public authorities

The policies of the government agencies or public authorities calling the cooperative bid solicitation are to be the accepted policy for that particular purchase.

**PART XI**

**IDENTICAL TENDERS**

If the Lowest Compliant Bids from two or more bidders are identical in Total Acquisition Cost or unit price, Council 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.

Council shall not reveal information pertaining to such negotiations or the manner in which the final price was determined to any bidders concerned. Council shall be given a written report concerning the results of such negotiations.

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 all council.

**PART XII**

**BID IRREGULARITIES**

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”.

**PART XIII**

**CONTRACTUAL AGREEMENT**

Where it is determined that a formal agreement is required, the formal agreement shall be reviewed and approved for execution by our solicitor unless it is a standard form outlining Ministry Standards and Conditions.

**PART XIV**

**SURPLUS AND OBSOLETE GOODS**

Unless otherwise authorized by Council:

1. Upon the recommendation of a department Manager, and following ratification by the appropriate Committee of Council, non-essential goods or products deemed to be surplus may be put up for sale and a minimum price set;
2. Prior to any public notification that non-essential goods or products have been deemed surplus, notice shall be forwarded to all other Department Managers along with the minimum purchase price;
3. Prior to any public notification that non-essential goods or products have been deemed surplus and after these same goods and services have been offered to other Departments but are not purchased in-house, notice shall be forwarded to other neighbouring municipalities who may be interested along with the minimum purchase price.
4. Should the non-essential goods or products not be sought by other Department Managers or other municipalities then the item will be advertised for sale and sealed tender bids will be accepted;
5. A non-essential good or product, or a group of non-essential goods or products, must have a minimum value of $750.00 for the item to be deemed valuable enough to be advertised in a local newspaper and municipal web-site for sale.
6. Non-essential Goods and products which do not meet the threshold of $750 shall be declared surplus by Council and advertised only on the municipal website. If there is no interested purchaser the goods or products shall be disposed of by either a donation to charity or another appropriate means. A list of where the items were disposed of shall be kept on file with the Department Manager.

No Council member or employee shall be permitted to receive surplus or obsolete goods except by purchase by public tender.

**PART XV**

**ACCESS TO INFORMATION**

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, as amended.*

**PART XVI**

**EFFECTIVE DATE**

This By-law shall come into force and take effect on the 14 day of November 2016

By-law 13-2009 shall be repealed.

READ A FIRST TIME AND SECOND TIME THIS 14th DAY OF NOVEMBER 2016

READ A THIRD TIME AND FINALLY PASSED THIS 14th DAY OF NOVEMBER 2016

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Mayor, Jim Coleman

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Clerk Administrator, Susan L. Arnold

**SCHEDULE ‘A’**

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, books and periodicals

c) Memberships

**2. Refundable Employee/Councillor Expenses**

a) Advances

b) Meal Allowances

c) Travel and Entertainment

d) Miscellaneous non-travel

**3. Employer’s General Expenses**

a) Payroll deductions remittances

b) Medical

c) Licenses (vehicle, firearms etc.)

d) Debenture payments

e) Grants to Agencies

f) Damage claims

g) Petty Cash replacement

h) Tax remittances

**4. Professional and Special Services**

a) Committee fees

b) Legal fees and Planning fees

c) Funeral and Burial expenses

d) Witness fees

e) Contracts related to the provision of “controlled acts” by persons governed by a health profession Act” as those expressions are used in the Regulated Health Professions Act, RSO 1991 c 18 as amended.

f) Veterinary Expenses

g) Software Annual Fees

h) Rents

**5. Utilities**

**6.** Advertising services required by the Village of South River on or in but not limited to Radio, TV, Newspaper and Magazine

**7.** Bailiff or collection agencies

**SCHEDULE “B”**

|  |  |
| --- | --- |
| **PURCHASING METHOD** Procedure  | Cost of Goods or Services  |
| Approved Invoice (Department Head) | Up to $ 2,000.00  |
| Obtaining Three written quotations (Committee approval)  | $2001.00 to $5,000.00 |
|  |  |
| Request for Proposal (Committee and Council approval) | $5,001.00 to $100,000.00  |
| Request for Tender  | $100,001.00 and up  |

(Council Approval)