

## PROCUREMENT BYLAW

**[INSERT NAME OF MUNICIPALITY]**  
**BYLAW NUMBER \_\_\_\_\_**

A bylaw of [insert name of municipality] in the Northwest Territories pursuant to [insert the appropriate statutory reference: (for hamlets) “sections 54(2) and 72(1)(j) of the *Hamlets Act*, S.N.W.T 2003, C. 22” or (for cities, towns and villages) “sections 52(2) and 70(1)(j) of the *Cities, Towns and Villages Act*, S.N.W.T 2003, C. 22” or (for charter communities) “sections 56(2) and 74(1)(j) of the *Charter Communities Act*, S.N.W.T 2003, C. 22”].

WHEREAS, Council wishes to provide direction and guiding principles for the Procurement of Goods and Services by or on behalf of the Municipality.

NOW, THEREFORE, THE COUNCIL OF [INSERT NAME OF MUNICIPALITY], at a duly assembled meeting, enacts as follows:

### TITLE

1. This Bylaw may be cited as the “Procurement Bylaw”.

### DEFINITIONS

2. In this Bylaw:
  - (a) “Closed Process” means an Invitation to Tender or Request for Proposals process which is only open to specific Vendors selected by the Municipality;
  - (b) “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, the supply of products and materials, 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 or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the Procurement;
  - (c) “Contract” means a formal legal agreement between two or more parties, usually written, with binding legal and moral implications; usually exchanging Goods and/or Services for money or other considerations;
  - (d) “Council” means the council of the Municipality;

- (e) "Emergency" means an unforeseeable situation of urgency in which a delay in the Procurement of certain Goods and/or Services could jeopardize the operations of the Municipality, cause the Municipality to violate a binding law or order or risk injury or damage to persons or property;
- (f) "Employee" means an employee of the Municipality;
- (g) "Evaluation Criteria" means criteria set out in the Procurement documents which are to be used to evaluate a Tender or Proposal;
- (h) "Goods" means moveable property (including the cost of installing, operating, maintaining or manufacturing such moveable property) and includes supplies, materials, raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form;
- (i) "Invitation to Tender" means an invitation to submit a Tender;
- (j) "Municipality" means [insert name of municipality];
- (k) "Open Process" means an Invitation to Tender or Request for Proposals process that is publicly advertised and open to all qualified Vendors;
- (l) "Procurement" means the acquisition, by or on behalf of the Municipality, by any means, including by purchase, rental, lease or conditional sale, of Goods and/or Services, but does not include:
  - (i) any form of government assistance such as grants, loans, equity infusion, guarantee or fiscal incentives; or
  - (ii) government provisions of Goods and/or Services to persons or other government organization;
- (m) "Procurement Value" means the estimated total financial commitment resulting from a Procurement (G.S.T. excluded) taking into account all forms of remuneration including premiums, fees, commissions and interest, and the total values of options if the Procurement provides for the possibility of options;
- (n) "Proposal" means a written proposal or offer provided in response to a Request for Proposals;
- (o) "Purchase Order" means a legal document which is the Municipality's commitment to a Vendor for the purchase of Goods and/or Services at an agreed upon price, terms, conditions and delivery date. This definition shall also include change orders;

- (p) "Request for Proposal" means a request issued by the Municipality wherein a Vendor's submission of a proposal is sought;
- (q) "Senior Administrative Officer" means the senior administrative officer of the Municipality;
- (r) "Services" means all services to be supplied, including Construction and consulting;
- (s) "Tender" means an offer in writing to provide specified Goods and/or Services at a certain price, in response to an Invitation to Tender; and
- (t) "Vendor" includes, but is not limited to, an individual, firm, partnership or proprietorship, supplier, contractor, architect, consultant, bidder or proponent.

### **APPLICATION**

- 3. This Bylaw applies to Procurement undertaken by, or on behalf of, the Municipality.
- 4. For greater certainty, this Bylaw does not apply to the acquisition of land by the Municipality.
- 5. In the event that a Procurement is determined by the Municipality to be subject to the Canadian Free Trade Agreement (CFTA) and/or the Comprehensive Economic and Trade Agreement (CETA) on the basis that the Procurement Value exceeds the relevant thresholds established in those agreements, and no exceptions to the application of those agreements applies in the circumstances:
  - (a) the relevant provisions of the Canadian Free Trade Agreement (CFTA) and/or the Comprehensive Economic and Trade Agreement (CETA), as applicable, shall apply to the Procurement in question; and
  - (b) any provision of this Bylaw that is inconsistent with an applicable provision of the Canadian Free Trade Agreement (CFTA) and/or the Comprehensive Economic and Trade Agreement (CETA) shall be of no force and effect to the extent of the inconsistency.

### **PROCUREMENT AUTHORITY**

- 6. All Procurements must be approved in the Municipality's budget, unless Council has expressly authorized the expenditure in question by resolution.
- 7. Council hereby delegates Procurement authority to Employees as follows:
  - (a) Senior Administrative Officer: up to \$25,000

- |     |                                  |                |
|-----|----------------------------------|----------------|
| (b) | Director of Public Services:     | up to \$15,000 |
| (c) | Director of Finance:             | up to \$15,000 |
| (d) | Director of Community Services:  | up to \$10,000 |
| (e) | Director of Protective Services: | up to \$10,000 |
| (f) | Economic Development Manager:    | up to \$10,000 |
| (g) | Head Librarian:                  | up to \$5,000  |
8. An Employee who has been delegated Procurement authority may, subject to Section 10, sign any Procurement document, Purchase Order or Contract, within the limits of their delegated Procurement authority, necessary to complete the Procurement.
  9. Subject to Section 11, in the case of a Procurement where the Procurement value exceeds \$25,000, all Procurement documents, Purchase Orders and Contracts must be approved by Council, and, once approved, may be signed by the Mayor and Senior Administrative Officer, or their authorized designates.
  10. Before any Procurement document, Purchase Order or Contract is signed pursuant to Section 8, or provided to Council for approval pursuant to Section 9, the Procurement documents, Purchase Order or Contract in question shall be reviewed by the Senior Administrative Officer who shall take reasonable steps to ensure that the Procurement documents, Purchase Order or Contract reflect the requirements of this Bylaw and contain all appropriate terms and conditions.
  11. In the event of an Emergency, the Senior Administrative Officer may, without prior Council approval, expend funds necessary to address the Emergency, and such expenditure may exceed the sum specified in Section 7. If an Emergency expenditure is made pursuant to this Section, the Senior Administrative Officer shall report the expenditure to Council as soon as possible after it has occurred.

**PROCUREMENT PROCESS**

**General**

12. No Procurement shall be divided in order to avoid the requirements of this Bylaw.
13. Where Goods and/or Services of a similar type are to be supplied on a repetitive basis from one or more Vendors either over a period of time, in a calendar year or over the course of a season, those Goods and/or Services shall be procured in accordance with the Procurement process, described in this Bylaw, that is applicable to Goods and/or Services having a Procurement Value equal to the total estimated cost of all such similar Goods and/or Services to be supplied in

the term of Contract, whole calendar year or during the course of the entire season as the case may be.

### **Direct Purchase**

14. A direct purchase method, requiring no quotes, Proposals or Tenders to be obtained, may be utilized for Procurements with a Procurement Value of \$5,000 or less.

### **Request for Quotations**

15. Subject to Sections 17 and 43, for Procurements with a Procurement Value of between \$5,001 and \$24,999, an informal competition process shall be utilized, whereby three (3) or more quotes for the provision of the Goods and/or Services shall be obtained from selected Vendors.
16. If three (3) quotes cannot be obtained, despite reasonable efforts, this shall be documented by the Employee responsible for the Procurement, and the Procurement may proceed on the basis of the quotes that have been received.
17. Notwithstanding Section 15, the Employee responsible for the Procurement shall utilize an Invitation to Tender or Request for Proposals process if:
  - (a) he or she considers it necessary or appropriate given the nature of the Procurement; or
  - (b) Council or the Senior Administrative Officer directs that an Invitation to Tender or Request for Proposals process is to be used.

### **Invitation to Tender and Request for Proposals**

#### Invitation to Tender and Request for Proposals

18. Subject to Section 43, for Procurements with a Procurement Value of \$25,000 or greater, the method utilized shall be either an Invitation to Tender or Request for Proposal. Council shall determine which of these methods shall be utilized in each case.
19. In determining whether an Invitation to Tender or Request for Proposals shall be utilized, Council shall consider the following characteristics of these methods:
  - (a) Invitations to Tender:
    - (i) are used primarily when price or cost is the sole award factor; however, it may also be used when criteria other than price are the deciding factor;
    - (ii) contain very detailed requirements and technical specifications;

- (iii) are legally binding documents between the Municipality and all potential Vendors, in accordance with the terms and conditions attached to the Procurement documents and which forms the awarded Contract;
  - (iv) are appropriate when it is intended to award the Contract to a selected Vendor without further negotiations; and
  - (v) are appropriate when a tight market requires security from the potential Vendors.
- (b) Requests for Proposals:
- (i) are appropriate where a need is identified, but how it will be achieved is unknown at the outset;
  - (ii) allow Vendors to propose solutions or methods to arrive at an end product or solution;
  - (iii) typically include specifications that are more general in nature;
  - (iv) involve selection of a Vendor based on Evaluation Criteria other than only price;
  - (v) provide for the negotiation of the specific terms and conditions of the Contract with the selected Vendor following the closing of the Request for Proposals; and
  - (vi) are not legally binding on either party until the Contract is executed.

### Open Process

20. Subject to Section 23, an Open Process shall be utilized for all Invitations to Tender and Requests for Proposals.
21. Subject to Section 22, notice of opportunities to participate in an Invitation to Tender or Request for Proposal that is subject to an Open Process shall be provided:
  - (a) by posting on the website:[insert website(s) utilized for procurement postings]; and
  - (b) by such other means as the Senior Administrative Officer or Council considers appropriate.

22. Council may direct that notice of the opportunity to participate in the Invitation to Tender or Request for Proposals be advertised locally or regionally only, in a manner specified by Council.

#### Closed Process

23. Council may direct that a Closed Process be utilized for an Invitation to Tender or Request for Proposal and, in such a case, Council shall determine which Vendors are to receive notice of, and be eligible to participate in, the Invitation to Tender or Request for Proposals process.

#### Procurement Documents

24. Invitation to Tender and Request for Proposal documents shall be prepared for each Procurement conducted by way of Invitation to Tender or Request for Proposals, and such documents shall contain:
  - (a) the date and time that the Invitation to Tender or Request for Proposals will close and the address at which Tenders or Proposals may be submitted;
  - (b) in the case of a Request for Proposals, or an Invitation to Tender for which if price is not the sole awarding factor, the Evaluation Criteria to be used in the selection process;
  - (c) the requirements to be fulfilled by the Vendor and the terms and conditions applicable to the Invitation to Tender or Request for Proposal;
  - (d) specifications for the Goods and/or Services to be provided, which shall contain:
    - (i) clear, accurate and complete requirements of the Goods and/or Services;
    - (ii) minimum standards expected of potential Vendors;
    - (iii) all mandatory standards that are required in respect of the Goods and/or Services; and
    - (iv) desirable technical standards that are preferred in respect of the Goods and/or Services;
  - (e) provisions providing that the Municipality reserves the right to:
    - (i) accept or reject any Tender or Proposal, or reject all Tenders or Proposals;

- (ii) waive irregularities in Tenders or Proposals; and
  - (iii) accept a Tender or Proposal other than the lowest price Tender or Proposal;
- (f) in the case of an Invitation to Tender, provisions specifying that Tenders may not be withdrawn after the date and time set for the closing of the Invitation to Tender;
- (g) in the case of an Invitation to Tender, provisions requiring prospective Vendors to provide financial security of the types, and in the forms and amounts, considered appropriate by the Municipality given the details of the Procurement and nature of the Goods and/or Services, which required security may include, without limiting the generality of the foregoing, bid bonds, security deposits, performance bonds and/or labour and materials bonds;
- (h) any additional content required by this Bylaw; and
- (i) any additional content that the Municipality deems to be necessary or desirable in the circumstances.

#### Receipt of Tenders and Proposals

25. When Tenders or Proposals are received by the Municipality, a notation of the date and time of receipt shall be made on the envelope containing the Tender or Proposal.
26. Tenders or Proposals submitted after the date and time established for the closing of the Invitation to Tender or Request for Proposals, as applicable, shall be automatically rejected without being opened.

#### Tender Opening

27. Tenders shall be opened, in random order, at the date and time specified in the notice of Invitation to Tender.
28. Opening of Tenders shall be conducted in public.
29. Only the name of the Vendor and the total cost or price identified in the Tender is to be released during a public opening.
30. There shall be no award at a public opening of Tenders; rather, all Tenders shall be subject to further review and analysis prior to award.
31. The Senior Administrative Officer and at least one (1) additional Employee, selected by the Senior Administrative Officer, shall attend public openings of Tenders and keep a record of the Tenders received.



## Waiving Irregularities

32. The Senior Administrative Officer may waive irregularities in Tenders or Proposals that he or she considers to be minor and immaterial, using fair and consistent practices.

## Selection

33. Once the Invitation to Tender or Request for Proposals has closed, the Senior Administrative Officer shall compile and review all accepted Tenders and Proposals, and associated documents, and provide Council with:
  - (a) copies of the accepted Tenders, Proposals and related documents;
  - (b) a summary of the Tenders and Proposal received; and
  - (c) the Senior Administrative Officer's recommendation respecting selection of a Vendor.
34. Following receipt of the documents and information described in Section 33, Council may select a successful Vendor.
35. A selected Vendor shall be notified as soon as possible after the selection has been made, and unsuccessful Vendors shall be notified that a successful Vendor has been selected.
36. Complaints received from unsuccessful Vendors shall be forwarded to Council for review and consideration.

## **AWARD CONSIDERATIONS**

### **General Principle**

37. Persons engaged in Procurement activities on behalf of the Municipality shall be guided by the general principle that purchases shall be at the best value to the Municipality, taking into account all relevant price and non-price factors.

### **Evaluation Criteria**

38. If a Procurement is to be by Invitation to Tender or Request for Proposals, and price is not to be the sole awarding factor, Evaluation Criteria shall be established and included in the Procurement documents provided to Vendors.
39. Examples of possible Evaluation Criteria that may be implemented in a given case include, but are not limited to, the following:
  - (a) project understanding;

- (b) project experience: previous experience on similar projects;
- (c) staff allocation: experience of staff allocated to the project and the assignment to specific project components;
- (d) estimated time required for project; and
- (e) past performance: the quality and performance of previous Contracts entered in to with, or Goods and/or Services provided to, the Municipality.

### **Local Preference**

- 40. In making a Procurement decision, preference may be given to Vendors that are considered, by the Municipality, to be local Vendors, provided that the price offered by the local Vendor or Vendors is no more than fifteen (15%) percent greater than the price that could be obtained by utilizing a Vendor other than a local Vendor.
- 41. Where Procurement is by way of Invitation to Tender or Request for Proposals, any local preference that is to be implemented pursuant to Section 40 shall be identified and described in the notice of Invitation to Tender or Request for Proposals provided to Vendors.

### **Exclusion of Suppliers**

- 42. The Municipality may refuse to do business with, and may reject quotes, Tenders and Proposals received from, Vendors who do not act in good faith towards the Municipality, which may include, without restriction, failing to live up to the terms and conditions of prior Contracts with the Municipality or entering into litigation with the Municipality, or its Employees or councillors, without valid justification.

### **SINGLE SOURCING**

- 43. Procurement from a single Vendor, without obtaining quotes in accordance with Section 15, or conducting an Invitation to Tender or Request for Proposals process in accordance with this Bylaw, may only occur if one or more of the following conditions apply:
  - (a) the Procurement is subject to direct purchase pursuant to Section 14 of this Bylaw;
  - (b) the Procurement is required to address an Emergency;
  - (c) the Goods and/or Services in question are only available from one Vendor by reason of:

- (i) a statutory or market based monopoly;
  - (ii) scarcity of supply in the market;
  - (iii) existence of exclusive rights (i.e. patent, copyright or license);  
or
  - (iv) need to avoid violating warranties or guarantees;
- (d) the Goods and/or Services being procured fall within one or more of the following categories:
- (i) Goods and/or Services related to training and education of Employees and/or councillors, which may include, without limiting the generality of the foregoing, conferences, conventions or workshops and education materials;
  - (ii) ongoing maintenance of existing computer hardware and software;
  - (iii) group benefits plans for Employees and councillors;
  - (iv) health Services and social Services;
  - (v) Services provided by lawyers and notaries;
  - (vi) Services related to the acquisition of land;
  - (vii) financial Services respecting the management of the Municipality's financial assets and liabilities, including ancillary advisory and information services; and
  - (viii) utility Services, where a franchise or monopoly exists.
- (e) no quotes, Tenders or Proposals have been received in response to a request for quotations, Invitation to Tender or Request for Proposals, as applicable.

44. A Procurement from a single Vendor, without competition, shall be recorded by the Employee responsible for the Procurement and reported to the Senior Administrative Officer.

Read a first time this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Read a second time this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Read a third time this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed, certified by the senior administrative officer and sealed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

I hereby certify that this bylaw has been made in accordance with the requirements of the *Hamlets Act* and the bylaws of the Hamlet

\_\_\_\_\_  
Senior Administrative Officer

**[SEAL]**