

**THE CORPORATION OF THE
TOWNSHIP OF ARMSTRONG**

BY – LAW 2017 – 48

BEING A BY-LAW of the Corporation of the Township of Armstrong Governing Procurement Policies and Procedures. May also be cited as Purchasing By-Law.

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 Corporation of the Township of Armstrong subject to certain exceptions set out herein;

AND WHEREAS the Council of the Corporation of the Township of Armstrong has by resolution adopted on December 13th, 2017 authorized the enactment of this By-Law;

AND THAT Schedules “A” “B” and “C” form part of this By-Law.

NOW THEREFORE the Council of The Corporation of the Township of Armstrong enacts as follow:

Purposes, Goals and Objectives

The purposes, goals and objectives of the By-Law and of each of the methods of procurement authorized are:

To encourage competition among suppliers;

To maximize savings for taxpayers;

To ensure service and product delivery, quality, efficiency and effectiveness;

To ensure fairness among bidders;

To ensure openness, accountability and transparency while protecting the financial interests of The Corporation of the Township of Armstrong;

To have regard to the accessibility for persons with disabilities to the Goods, Services and Construction purchased by The Corporation of the Township of Armstrong;

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

2. (1) Definitions

“Agreement” means a legal document that binds The Corporation of the Township of Armstrong and all other or involved parties, subject to the provisions of the contract;

“Approval” means authorization to proceed with the purchase or disposal of Goods, Services or Construction;

“Approved Invoice” means an original supplier’s invoice issued at the time of purchase and which bears both the signature of the authorized employee or person. If goods are ordered electronically, invoice must bear the assigned purchase order number;

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

“Bid Bonds or Bid Deposit” means the form of security required by the terms of condition of Bid Solicitation documentation to guarantee that the successful bidder enters into a contract with The Corporation of the Township of Armstrong as required by the section 18 of this By-Law;

“Bid Solicitation” means a formal request for bids that may be in form of a request for tender or request for proposal;

“Clerk” means the clerk-treasurer for The Corporation of the Township of Armstrong;

“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 lease, purchase or disposal of Goods, Services or Construction authorized in accordance with this By-Law;

“Council” means elected officials that form the council for The Corporation of the Township of Armstrong;

“Council Approved Budgets” means council approved department budgets including authorized revisions;

“Department” means Administrative department, Roads department, Water / Sewer / Garbage department, Recreation department, Fire Fighting department, Library department, Cemetery department or any other organizational unit of the Township headed by a Department Head;

“Department Head” means the person responsible for direction and operational control of a Department;

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

“Emergency Purchase” means a purchase made in a crisis situation where immediate action is required to prevent the possible loss of life or property;

“Goods and Services” means supplies, equipment, property insurance, maintenance, professional and consulting services, and service contracts, and others not specified that might arise under different situations;

“Material Safety Data Sheets (MSDS)” means Material Safety Data Sheets which must be submitted by the vendor for all hazardous materials, including an index of chemical compounds with details of properties, handling details, precautions and first-aid procedures;

“Pecuniary Interest” includes direct, indirect and deemed pecuniary interests. Its dictionary definition is “to relate to money”.

“Privilege Clause” means the standard used in bid document and advertising that reads in part “the lowest or any tender not necessarily accepted”;

“Purchasing Card” means a card issued in accordance with the purchasing card policy to purchase Goods and Services;

“Request for Proposal” means a Bid Solicitation that is used to acquire Goods, Services or Construction, the suitability of which is dependant upon non-price factors and which may result in further negotiation between the parties;

“Tenders or Sealed Bids” means a Bid submitted in a sealed envelope to a specific location by a specific date;

“Township” means The Corporation of the Township of Armstrong;

“Treasurer” means the Clerk-Treasurer for The Corporation of the Township of Armstrong;

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

3. General Conditions

Council must first approve any commitment being made where it is recommended that the Mayor and the Clerk execute a Contract;

No expenditure or commitment shall be incurred or made and no account shall be paid by the Township for Goods, Services or Construction, except as approved by Council or otherwise authorized in accordance with this policy;

Council may remove a vendor’s name from the list of bidders for a period of two years on the basis of documented poor performance, non-performance, or conflict of interest. Council will provide a written notice of the decision to the vendor;

All town employees shall follow the guidelines of the corporate values as approved by council, in adhering to the Policy as set out;

Material Safety Data Sheet must be maintained on file by the user department for all relevant products purchased;

When using the Privilege Clause which reads in part “the lowest or any tender may not necessarily be accepted” the specific reasons must be stated why the bid may not be accepted;

No employee or elected official of the Township shall purchase or offer to purchase, on behalf of the Township, any Goods, Services or Construction except in accordance with this policy;

Elected officials of the Township shall not approve nor acquire any Goods, Services or Construction unless at a regular or special meeting of council;

All petty cash purchases must exclude tendered Goods, Services or Construction; Requirements for Goods, Services or Construction may be divided in two or more parts should Council deem it necessary.

Requirement for Approved Funds

Net departmental expenditures are authorized by Council each year as part of either the operating or capital budget process. Pending Council’s approval of proposed budgetary estimates Department Heads are authorized to spend up to 35% of the previous year’s approved budget. Department Heads are not authorized to overrun net departmental operating budgets.

The exercise of authority to award a Contract is subject to the identification and availability of sufficient funds in appropriate accounts within the Council’s approved operating budget. The Council may reject all purchase requests for which sufficient funds are not available. If the Department Head advises the Council that the deficiency is minimal and alternative funding has been identified, the purchase request may proceed provided appropriate authorizations are obtained in accordance with this policy.

DISCLOSURE

Where an employee or member of Council is involved in the award of a Contract either on his or her own behalf, or while acting for, by, with or through another person who has any *pecuniary interest*, direct or indirect, in the Contract, the employee or member of Council:

- (a) shall immediately disclose the interest to Council and shall describe the general nature;
- (b) shall not take part in the award of the Contract;
- (c) shall not attempt in any way to influence the award of the Contract.

An employee or member of Council has a *pecuniary interest* if it affects you, your spouse, or adult Interdependent partner, or children, your parents or parents of your spouse, or a business which employs you or in which you have an interest. *It also means* a councillor has a *Pecuniary Interest* in a matter if (a) the matter could monetarily affect the councillor or an employer of the councillor or (b) the councillor knows or should know that the matter could monetarily affect the councillor's family. You must decide when you have a pecuniary interest. Council cannot make the decision for you.

An employee or member of Council has an indirect pecuniary interest in any Contract in which the Township is concerned, if the employee or member of Council or his or her spouse or same sex partner:

- (a) is a shareholder in or a director or senior officer of a corporation that does not offer its securities to the public that has a pecuniary interest in the Contract; or,
- (b) has a controlling interest in or is director or senior officer of a corporation that offers its securities to the public that has a pecuniary interest in the Contract; or,
- (c) is a member of an unincorporated association or partnership, that has a pecuniary interest in the Contract; or,
- (d) the employee or member of Council 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.

All employees and members of Council shall conduct themselves in accordance with the Municipal Conflict of Interest Act, R.S.O. 1990, and c.m.50 as amended.

PRESCRIBED COUNCIL APPROVAL

Despite any other provisions of this By-Law, the following Contracts are subject to Council Approval:

- (a) any Contract requiring approval from the Ontario Municipal Board;
- (b) any Contract where the total acquisition cost is greater than the approved budget;
- (c) any Contract where an irregularity precludes the award of a Contract to the supplier submitting the lowest bid;
- (d) any Contract where a Good, Service or Construction is available from only one source of supply and total acquisition of such exceeds Council's expected cost, or where a Bid Solicitation has been restricted to a single source of supply because standardization or compatibility is the overriding consideration.

RESPONSIBILITIES AND AUTHORITIES

The Council shall be responsible for and shall have authority for all procurement activity and decisions within all Departments and may delegate their authority where appropriate.

NOTIFICATION OF PROCUREMENT OPPORTUNITIES

Notification of procurement opportunities for Goods, Services or Construction exceeding a total cost of \$5,001.00 may be made by Electronic Advertising and may be used for any other purchase, and may also be supplemented by other means of notification where appropriate.

PURCHASING PROCEDURES

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

- (a) the form, content and use of forms, whether electronic or printed, including requisitions, bonds, letters of credit and other forms of guarantee of surety, tender, proposal and other contract documents;
- (b) the identification of those Goods, Services or Construction which are more effectively acquired through cooperative purchasing;
- (c) the process to be followed in issuing, receipt and evaluation of Tenders and Request for Proposals including the option of submitting documentation, payment or signature by electronic means pursuant to the Electronic Commerce Act, S.O. 2000, c.17, as amended;
- (d) any other aspect of process or procedure not specifically provided for in this By-Law;

Where, in the opinion of Council, circumstances give rise to an issue of adherence or non-adherence to the requirements of this By-Law, Council shall determine the appropriate action.

PURCHASING CARDS

Council is responsible for the Purchasing Cards (Visa) program outlined in the Township's Purchasing Card Policy. The Purchasing Card Policy shall adhere to this Purchasing By-law.

REQUEST FOR EXPRESSION OF INTEREST

Council or Department Head may conduct a request for expression of interest for the purpose of determining the availability of suppliers of any Goods, Services or Construction and for the purpose of keeping a list of available suppliers.

PURCHASING METHODS

The purchasing methods for purchase of Goods, Services or Constructions are listed in Schedule "B".

PURCHASES NOT EXCEEDING \$200.00

The Clerk shall have the authority to establish petty cash funds in such an amount to meet the requirements of a Department for acquisition of Goods, Services or Construction having an individual total cost of \$200.00 or less.

Purchases made pursuant to this section shall be made from the competitive market place wherever possible and may be made by using an Approved Invoice, Petty Cash Voucher or Purchasing Card.

All petty cash fund disbursements shall be evidenced by invoice and available for auditing purposes through the Clerk.

PURCHASES OF BETWEEN \$201.00 AND \$5,000.00

Purchasing requirements for Goods, Services or Construction having an acquisition cost of between \$201.00 and \$5,000.00 may be made by using an Approved Invoice or Purchasing Card.

In appropriate circumstances, the Request for Proposal or the request for Tender processes may be utilized.

Must ensure best price for best quality.

PURCHASES EXCEEDING \$5,001.00 REQUEST FOR TENDER

A request for Tender shall be used for purchases of Goods, Services or Construction exceeding \$5,001.00 where all the following criteria apply:

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

The requirement is adequately defined to permit the evaluation of Tenders against clearly stated criteria; and,

It is intended that the lowest compliant bid will be accepted without negotiations.

REQUEST FOR PROPOSAL

A Request for Proposal shall be used 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; or,

(b) it is expected that negotiations with one or more bidders may be required with respect with any aspect of the requirement.

(c) every Request for Proposal will be evaluated by Council.

(d) subject to approval by resolution of Council, the award shall be made to the supplier meeting all mandatory requirements and determined, by reference to an evaluation, as providing best value.

GUARANTEE OF CONTRACT EXECUTION AND PERFORMANCE

Council may require that a Bid be accompanied by a Bid Bond, Bid Deposit or other similar security to guarantee entry into a Contract. Unless otherwise specified, in circumstances where a Bid Bond, Bid Deposit or other security is required, the refundable deposit requirement for request for Tenders or Request for Proposals shall be 5% where estimated total acquisition costs are \$999.99 or less and 10% where estimated total acquisition costs are greater than \$999.99;

PRIOR TO COMMENCEMENT OF WORK, THE SUCCESSFUL BIDDER MAY BE REQUIRED TO PROVIDE THE FOLLOWING ADDITIONAL SECURITY:

(a) a performance bond to guarantee the performance of a Contract;

(b) a payment bond to guarantee the payment for labour and materials to be supplied in connection with a Contract;

The Council 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 Township;

Prior to commencement of work, evidence of insurance coverage satisfactory to Council must be obtained ensuring indemnification of the Township 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 risks determined by Council as requiring coverage.

CONTRACT WITHOUT BUDGETARY APPROPRIATION

Where a need exists for which Goods, Services or Construction are required and funds are not contained within a Department's Council Approved Budget to meet the proposed expenditure, the Department Head council shall, prior to commencement of purchasing process, gather:

(a) information surrounding the requirement to contract;

(b) the terms of reference to be provided in the Contract;

(c) information on the availability of funds within existing estimates which were originally approved by Council for other purposes, or on the requirement of additional funds;

BIDS IN EXCESS OF PROJECT ESTIMATES

Where Bids are received in response to a Bid Solicitation but exceed project estimates, Council may enter negotiations with the lowest compliant bidder to achieve an acceptable Bid within the project estimate.

EMERGENCY PURCHASES

Where an emergency exists requiring the immediate procurement of Goods, Services or Construction, the Department Head may purchase the required Goods, Services or Construction, with funds available within existing estimates which were originally approved by Council for other purposes.

If the estimated cost of the required Goods, Services or Construction exceeds funds available within existing estimates which were originally approved by Council for other purposes, a special meeting of Council shall be called to determine whether the expenditure will be authorized.

CO-OPERATIVE PURCHASING

The Township may participate with other municipalities, government agencies or public authorities in cooperative purchasing where it is in the best interests of the Township to do so and where the purposes, goals and objectives of this By-Law are achieved.

The policies of the municipalities, government agencies or the public authorities calling the cooperative Bid Solicitation are to be the accepted policy for that particular purchase.

IDENTICAL TENDERS

If the lowest compliant Bids from two or more bidders are identical in total acquisition cost or unit price, Council may enter into negotiations with the bidders who have submitted the identical prices in an attempt to obtain a lesser price and shall maintain records 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 of the bidders concerned. Council shall include as part of the record, a 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 performed by the Clerk, or in his absence, the Reeve for Council at a regular or special Council meeting.

BID IRREGULARITIES

The process for administering irregularities in Bids pertaining to all Contracts shall be 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".

CONTRACTUAL AGREEMENT

Council shall decide at a regular meeting, or at a special meeting called for that purpose, if an award of Contract shall be made by Agreement or Purchase Order provided, however, an Agreement shall be used when the resulting contract is complex and contains terms and condition other than the Township's standard contractual terms and conditions.

SURPLUS AND OBSOLETE GOODS

A Department Head may dispose of any Goods for which the Department no longer has use after Council has, by resolution, determined that the Goods are of no further use to the Township.

The method of disposal shall be in the best interests of the Township including, without limitation, public auction, public tender, trade or negotiated sale. An item with a marketable value of more than \$500.00 must be declared by Motion as Surplus Equipment and advertised for sale in the local newspaper. When an item has a marketable value of less than \$500.00 needs only to be advertised using the billboard.

No Council member or employee shall be permitted to receive surplus or obsolete Goods except by purchase at public auction, public tender, trade or negotiated sale.

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, R.S.O., 1990, c.m. 56, as amended.

BY-LAW REVIEW

This By-Law shall be reviewed prior to the end of each Council term and any amendment thereto shall be made prior to the inaugural meeting of the next Council.

The review shall determine how effective this By-Law has been in achieving the objectives set out in this By-Law as well as the requirements of the Municipal Act, 2001, S.O. 2001, c. 25 as amended.

EFFECTIVE DATE

This By-Law shall come into force and take effect on the day it is passed by Council and that any previous By-law is therefore repealed.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS
13th DAY OF DECEMBER, 2017.**


Mayor


Clerk Treasurer Administrator

SCHEDULE "A"

To By-Law 2017 - 48 of the Corporation of the Township of Armstrong

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

Training and Education
Registration and tuition fees for conferences, conventions, courses and seminars
Magazines, books and periodicals unless the purchase of such magazines books and periodicals are subject to value-added services
Memberships
Refundable Employee/Councillor Expenses
Advances
Meal Allowances
Travel and Entertainment
Miscellaneous – Non-Travel
Employer's General Expenses
Payroll Deductions Remittances
Medical
Licenses (Vehicle, Firearms, etc.)
Debenture Payments
Grants to Agencies
Damage Claims
Petty Cash Replenishment
Tax Remittances
Professional and Special Services
Committee Fees
Legal fees and other Professional Services related to litigation or legal matters
Funeral and Burial expenses
Witness fees
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, S.O. 1991, c.18, as amended
Veterinary Expenses
Utilities
Advertising services required by the Township on or in, but not limited to, radio, television, newspaper and magazines
Bailiff or collection agencies

SCHEDULE "B"

To By-Law 2017 – 48 of the Corporation of the Township of Armstrong

PURCHASING METHODS

PROCEDURE	COST OF GOODS, SERVICE OR CONSTRUCTION
Approved Invoice or Petty Cash or Purchasing Card	\$1,000 or less (Section 14)
Agreement or Approved Invoice or Purchasing Card or Request for Proposal or Request for Tender	\$1,001 to \$5,000 (Section 15)
Agreement, Request for Tender or Request for Proposal	\$5,001 or more (Section 16)

SCHEDULE "C"

To By-Law 2017 - 48 of the Corporation of the Township of Armstrong

	IRREGULARITY	RESPONSE
1	Late Bids.	Automatic rejection and not opened or read publicly.
2	Unsealed Envelopes.	Automatic rejection.
3	Insufficient Financial Security (No Bid Security or agreement to bond or insufficient Bid Bond, Bill 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 Department Head in charge of the Bid Solicitation and council, 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 Department Head in charge of the Bid Solicitation and council, the qualification or restriction is trivial or not significant.
7	Bids received on documents other than those provided or specified by the Township.	Automatic rejection.
8	Bids Containing Minor Obvious Clerical Errors.	48 hours to correct and initial errors.
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	Failure to execute Bid Bond by Bidder and Bonding Company.	Automatic rejection.
(a)	Corporate seal of the Bidder and Bonding Company, missing.	48 hours to correct.
11	Documents – Execution	
(a)	Corporate seal or signature is missing; signatory's authority to	48 hours to rectify situation.

	bind the corporation or signature missing.	
(b)	Corporate seal and signature is missing; signatory's authority to bind the corporation and signature missing.	Automatic rejection.
12	Erasures, Overwriting or Strike-outs which are not initialed.	
(a)	Not initialed 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 not initialed changes shall be made in the consensual opinion of the Department Head in charge of the Bid Solicitation and council.
(b)	Unit prices in the Schedule of Prices which have been changed but not initialed 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 Department Head in charge of Bid Solicitations.
14	Documents, in which all necessary Addenda, which have financial implications, have not been acknowledged.	Automatic rejection.
15	Any other irregularities.	The Department Head in charge of the Bid Solicitation and council, 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 minor.