



## **TOWN OF MINTO**

**DATE:** July 17, 2017

**REPORT TO:** Mayor and Council

**FROM:** Bill White C.A.O. Clerk

**SUBJECT:** New Purchasing By-law

---

### **STRATEGIC PLAN:**

5.2 Work with neighbouring municipalities and the County to create mutually-beneficial cost-sharing arrangements including but not limited joint purchasing of equipment, sharing capital expenses on common projects and sharing personnel and expertise where possible.

5.7 Adopt and maintain fair and transparent procurement policies and by-laws to ensure the Town receives competitive pricing on tenders and proposals, and that local business has equal opportunity to submit bids.

### **BACKGROUND:**

Section 270(1) of the Municipal Act requires municipalities have a policy for procurement of goods and services, and Section 5(3) of the Act states that municipalities' capacities, rights, powers and privileges must be stated in bylaw. Regulation 191/11 requires incorporate accessibility design, criteria and features when procuring or acquiring goods, services or facilities, except where it is not practical to do so. At the June 20, 2017 Council meeting a new draft purchasing by-law was reviewed and the following resolution adopted:

### **MOTION: COW 2017-161**

**THAT the Council of the Town of Minto receive the C.A.O. Clerk's report regarding the Draft Purchasing By-Law and agree to pass a By-law at a future Council Meeting.**

Council directed that Town legal counsel review the by-law, and comments from Michael A. van Bodegom of Duncan Linton were obtained July 12. The by-law on the agenda for adoption includes changes recommended by legal counsel summarized as follows:

- Preamble and Bylaw Purpose Section 1.0 minor technical changes to authorities under Municipal Act and Integrated Accessibility Standard
- Section 2.0 clarification around exemptions for disposition of land and purchasing of consulting services
- Expanded definition of "best value" to include capacity, skill, ability and other qualities in Section 9.1, refine other definitions and remove several not referenced in body of by-law
- Section 4.0 clarifications around CAO Clerk authority during elections, confirming decision on procurement limits (\$10,000 and \$50,000) are based on budget or estimates, and cleaning up wording regarding Treasurer paying accounts
- Clarify Section 5.0 authority to cancel contracts "where appropriate" so that issues are first resolved where possible, Section 6.0 and 7.0 minor wording corrections

- No change Section 8.0 Sole Source Purchases
- Section 9.0 various minor wording changes, clarify 9.2(iv) and (vii) that bids assessed “based on best value to the Town”, improved wording around one year extensions in 9.5(iv), require Council approval to negotiate in all cases under 9.5, and allow more discretion as to who may buy in emergencies under 9.6.
- As recommended by legal counsel new Section 9.7 regarding disposal of surplus assets requires bid include terms for disposal and Council approval to add assets; references Disposal of Surplus Equipment policy and ensures “best value” achieved
- Section 10.0 remove specific mention of local suppliers due to avoid conflict with Business Practices Act; Town “best value” for small purchases by credit card is local
- Section 11.0 allows Bid Review Committee to deal with errors in bids but still decision must be unanimous
- Section 12.0 no change; Section 13.0 CAO and Treasurer authorized to award contracts budgeted during “Lame Duck” Period; Section 14.0 minor wording changes
- Rewrite with proper legal wording Section 15.0 Refusal of Responses
- Section 16.0 minor wording, but not changes to 17.0, 18.0 or 19.0
- Section 20.0 clarify legal wording around Freedom of Information Act; no changes with Section 21.0 or 22.0
- Schedule A (Standard Bid, Quotation, Tender) the following changes:
  - clarify on title page around late bids which are to be rejected
  - proper legal wording of privilege clause section f)
  - revised legal wording of claims or litigation clause section o)
  - Section 6.0 clarify legal entitlement to “liquidated damages” which the Town may be entitled to as opposed to “penalties”
  - clarify wording around written agreements in Section 7.0, and remove redundant clauses in subsequent sections plus correct wording
  - clarify acceptance dates for quotes in Bid Submission increasing from 10 to 30 days or more depending on bid purpose

#### **COMMENTS:**

The proposed new purchasing bylaw has updated title references and responsibilities for Council, the C.A.O. position, Treasurer and Department Heads. The new bylaw is clearer, includes one standard form document that can be used for all purchasing and has the following additional clarifications:

- 1) The C.A.O. Position may buy up to \$5,000 goods and services one-time urgent basis
- 2) Up to \$10,000 the C.A.O. position and Treasurer may approve a sole source purchase that meets special circumstances in Section 8.0, otherwise Council approval needed.
- 3) Informal Quotes are required of CAO position or Department Head for purchases up to \$10,000 provided “best value” is achieved for Town
- 4) Formal Quotations are required of CAO position or Department Head for purchases between \$10,000 and \$50,000 - involves minimum three written, emailed or faxed quotes and “best value” must be achieved with report to Council where there are equal bids, bids are over budget, or where clarification is required

- 5) Tendering for goods that can be “clearly identified and quantified” is required of CAO position or Department Head for purchases over \$50,000 - involves full tender process as per standard document (Schedule “A”) and “best value” achieved with report to Council prior to award
- 6) Requests for proposals required for goods that cannot be “clearly identified and quantified” is required of CAO position or Department Head for purchases over \$50,000 - involves same process as a tender (standard document Schedule “A”) and “best value” must be achieved with report to Council prior to award.
- 7) To negotiate or sole source purchases over \$10,000 Council approval is required and specific rules under Section 9.5 are to be met.
- 8) The CAO position and Department Head may purchase in an emergency where there is a threat to public property, services, health etc.
- 9) Surplus Assets are to be disposed of to ensure “best value” and in accordance with Town policy with Council approval needed to add assets that might otherwise have been disposed
- 10) Credit card purchases to be limited to incidental goods and services primarily maintenance related.
- 11) New provisions for Bid Review Committee with requirement that award be unanimous or it refers back to Council
- 12) The CAO position and Treasurer authority for budgeted purchases during “Lame Duck” period.
- 13) New references to Fiscal Accountability and Transparency policies, Code of Conduct and other applicable legislation to ensure fair and equitable process
- 14) Proper accommodation requirements for persons with disability as required by Integrated Standard under the Accessibility for Ontarians with Disabilities Act.
- 15) Reference to environmental conditions in determining “best value” for Town.

While it has been several years in preparation, staff is comfortable the bylaw is an effective replacement for the original purchasing bylaw passed in 2004.

#### **FINANCIAL CONSIDERATIONS:**

The bylaw was developed “in-house” with incidental legal expenses to review draft and clarify legislation and legal wording.

#### **RECOMMENDATION:**

That Council receives the C.A.O. Clerk’s July 17, 2017 report on the New Purchasing By-law, and that the By-law and Schedule “A” be approved in regular session.

Bill White C.A.O. Clerk