

## **THE CORPORATION OF THE CITY OF IQALUIT, NUNAVUT**

### **PURCHASING BY-LAW NO. 820**

**WHEREAS** Council (“Council”) of the Municipal Corporation of the City of Iqaluit (“City”) has the authority to pass by-laws regulating City expenditures and the control of the same pursuant to section 139(1) and (2) of the *Cities, Towns, and Villages Act*, S.Nu. 2003 (“Act”);

**WHEREAS** this By-Law is intended to address all processes by which goods and services are purchased and is intended to replace Purchasing, Tendering, Contract and Local Incentive By-Law No. 581 and amending By-Law No. 665;

**WHEREAS** City employees and Council members have a responsibility to put the interests of the public ahead of their own and ensure they are free of bias and not influenced by outside factors so that purchasing decisions can be shown to be fair and objective;

**AND WHEREAS** it is important that all City employees and Council members – regardless of level of experience with purchasing goods and services on behalf of the City – know what is expected of them when carrying out such responsibilities so that the Public interest and confidence is maintained.

**NOW THEREFORE PURSUANT** to the provisions of the *Act*, City Council, in regular session duly assembled, enacts this By-law to provide for the purchase of goods and services as follows:

#### **1. SHORT TITLE**

- (a) This By-Law, cited as the “Purchasing By-Law.”

#### **2. DEFINITIONS**

2.1 The following terms shall have the meanings set out below:

- (a) “Agreement” means any obligation between the City and at least one other party expressed in writing at the conclusion of Purchasing activity.
- (b) “Award” means the authorization to proceed with the purchase of deliverables;
- (c) “Best Value” means, in relation to a purchase, that the purchase represents the optimal balance of high quality and financial terms;
- (d) “Bid” means a submission received in response to a call for bids, and includes a proposal;
- (e) “Bidder” means any legal entity that submits a bid in response to a call for bids and includes a Proponent;
- (f) “Call” means a formal request for bids and includes a Request for Quotations, a Request for Tenders and a Request for Proposals;
- (g) “Chief Administrative Officer” (“CAO”) means the Chief Administrative Officer of the City of Iqaluit;

(h) "Contractor" means any legal entity to whom a contract is awarded and includes a vendor, supplier, service provider and consultant;

(i) "Cost" means the total sum of all cost components including, without limitation, 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 Submission. For further clarity, the definition of "Cost" excludes all and any disbursement(s), including sea, air and ground transportation costs, transportation insurance and freight costs by sea, air or truck (and related insurance costs, if any);

(j) "Council" means the Council of the Municipal Corporation of the City of Iqaluit established pursuant to the *Act*;

(k) "Deliverables" means goods, services and construction;

(l) "Departmental Purchase Order" means a written offer to a Supplier stating the terms and conditions on which the City shall purchase of goods or services whose Cost falls within the applicable Purchasing Limit;

(m) "Purchasing activity without bids" means a purchasing method where there are no bids and negotiations are entered into with one or more than one Vendor;

(n) "Director" means a person appointed by the CAO to be responsible for the operation of a City department;

(o) "Duly Signed Purchase Requisition" means a City document required to be signed by the CAO, delegate or a Director, as applicable, to authorize purchasing activity in accordance with this By-Law;

(p) "Information and Expression of Interest" means a Submission by a Supplier in response by a call to determine the marketplace interest for providing the City with goods or services;

(q) "Local Purchase Order" means a written offer to a local supplier stating the terms and conditions on which the City shall purchase goods or services whose costs fall within the applicable purchasing limit.

(r) "Local Supplier" means a person who satisfies all of the following criteria:

1. maintains a current City business license; and
2. operates from a location within the boundaries of the City.

(s) "Pre-Qualification Submission" means the submission of qualifications by a supplier in response to a call as part of a process to determine those suppliers who would qualify to be solicited in a subsequent call;

(t) "Proponent" means a supplier who submits a proposal or a pre-qualification submission prior to a proposal;

(u) "Proposal" means an offer by a supplier to furnish goods, services or construction, including professional consulting services, as a basis for negotiations between the City and the supplier before entering into an agreement;

(v) "Purchasing activity" means the purchase of goods or services on behalf of the City, with or without bids, from external sources;

(w) "Purchasing Limit" means the maximum cost associated with each form of purchasing activity as set out in this By-Law;

(x) "Purchase Order" means an agreement between the City and a supplier to supply goods or services where a need is anticipated for a specific purpose and for which convenience and location are major factors but the actual demand is not known at the outset;

(y) "Quotation" means an offer by a supplier to supply goods or services at a price fixed as to the total amount or on a unit basis, or both;

(z) "Sole Source" means engaging in purchasing activity (without bids) with a vendor to provide goods, services or construction where there is only one vendor is able to meet the requirements of the procurement under one of the circumstances set out in this By-Law;

(aa) "Special Circumstance" means an event or circumstance that may reasonably be described as one or more of the following:

1. an event or circumstance that is a threat to the health, safety or welfare of the public;
2. an event or circumstance that will disrupt or has disrupted essential City services; or
3. an event or circumstance that requires immediate action by the City and may not reasonably be addressed through bids.

(bb) "Supplier" means a person who makes a submission to the City or who supplies goods or services to the City in accordance with this By-Law and its related procedures;

(cc) "Tender" means a bid by a supplier in respect of goods and services, including construction at a price fixed as to total amount or on a unit basis, or both, and where all of the material terms, conditions and specifications to be met for the construction project are contained in the Call and determined at a time a bid is opened;

(dd) "Vendor" means an individual or organization that may offer goods, services or construction to the City including but not limited to contractors, consultants, suppliers and service organizations

### **3. APPLICATION**

3.1 Any person involved in City purchasing activity has a duty to ensure that all purchasing activity is performed fairly and objectively to serve the public interest, and shall be aware of and comply with this By-Law, including ensuring the best value is obtained when spending public money;

3.3 No personal purchases shall be made by the City directly or indirectly for Council and Committee members or for any City officer or employee and all procurement shall be undertaken in accordance with applicable Codes of Conduct;

3.5 Council Members shall conduct themselves in accordance with Nunavut's *Conflict of Interest Act*, RSNWT (Nu) 1988, c. C-16, which may be amended from time to time.

- 3.6 No purchasing activity may be conducted in such a way as to avoid application of this By-Law, and without limiting the generality of the foregoing, no purchasing activity shall be divided into two or more parts for the purpose or intent of, or with the effect of, avoiding or frustrating the application of this By-law;
- 3.7 No purchasing activity shall be made under this By-law unless Council has provided funds for such the same in the City budget or has otherwise agreed to the provision of such funds and no expenditure shall be authorized or incurred in excess of such funds. However, in special circumstances, Council may authorize any purchase or procurement where to do so would be in the best interests of the City;
- 3.8 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;
- 3.9 When the procurement of deliverables is required under any lease of real property and is provided for under the terms of such lease, including tenant improvements, equipment and fixtures, the terms of the lease shall govern to the extent of any conflict with this By-law;
- 3.10 The provisions of this By-Law shall apply to By-Law #404, Property Procedures By-Law. In the event of a conflict between the provisions of this By-Law and the Property Procedures By-Law, this By-Law shall govern.
- 3.11 This By-Law shall also be read in conjunction with all other City By-Laws including By-Law #503, Signing Authority By-Law, and the City's Conflict of Interest policy and procedures, including those relating to the use (limited) of the City's corporate credit card.
- 3.12 Where a Council member or City employee has, or may have, a personal pecuniary interest in purchasing activity or in an Agreement or a proposed Agreement, whether such personal pecuniary interest is either on his or her own behalf or while acting for, by, with or through another person, regardless of whether that pecuniary interest is direct or indirect, that Council member or City employee shall:
  - (a) immediately disclose in writing the general nature of the pecuniary interest to the CAO and the Director of the City Department involved in the purchasing activity;
  - (b) shall not take part in an award or the making of an agreement; and
  - (c) shall not attempt in any way to influence an award or the making of an agreement.
- 3.13 Each Director shall submit an annual written report by the end of January of each year to the CAO regarding the purchasing activity performed by the Director's Department and in relation to the Department.

**4. RESPONSIBILITIES AND AUTHORITIES TO UNDERTAKE PURCHASING ACTIVITY**

4.1 City Council

4.1.1 City Council: In keeping with the City's best practices, the Mayor and Members of Council shall have no involvement in specific purchasing activity, unless otherwise permitted in this By-law.

4.1.2 The Mayor and Members of Council who receive inquiries from bidders related to any specific procurement are required to advise the bidders(s) to communicate with the contact person listed.

4.2 City officers and employees responsible for purchasing activity

4.2.1 The CAO: The CAO has authority to undertake purchasing activity in accordance with this By-Law and may:

- (a) place restrictions on purchasing activity where such restrictions are reasonably considered to be in the public interest;
- (b) delegate his authority under this By-Law.

4.2.2 Department Directors: each Director has the authority to undertake purchasing activity in accordance with this By-Law, and:

- (a) is accountable for achieving the specific objectives of the purchasing activity;
- (b) shall engage with the CAO and/or the Purchasing Committee as required by this By-Law.

4.2.3 Director of Corporate Services: the Director of Finances or delegate shall be responsible for:

- (a) providing procurement advice, including, but not limited to, overseeing calls for bids; administering calls for bids and ensuring compliance with the terms and conditions of the calls for bids;
- (b) reviewing statements of work and specifications for compliance with the terms of this By-law, including section 1 of this By-law;
- (c) the development of co-operative purchasing agreements with other levels of government, municipalities, boards, agencies, commissions, or private sector entities, as the case may be, where such arrangements are determined to be in the best interests of the City;
- (d) the standardization of all purchasing procedures.

4.2.4 Where any authority has been granted to any person under this By-law, such authority may be exercised by that person's authorized designate. The appointment of a designate shall be subject to the CAO's written approval.

**5. PURCHASING ACTIVITY WITH AND WITHOUT BIDS**

5.1 Direct Purchases: Purchasing Activity Without Bids

5.1.1 Deliverables may be procured without issuing a call for bids where:

- (a) in the opinion of the CAO after recommendation from the Purchasing Committee, there is only one entity reasonably capable of providing the deliverables; or
- (b) the purchasing activity relates to the purchase of services that are procured based on compliance with eligibility criteria other than the bid process, under programs approved by Council, and where multiple contractors may provide the same or similar services.

5.1.2 The CAO, CFO and/or a Director may authorize purchasing activity for the City, without issuing a call for bids, that does not exceed thirty thousand (\$30,000.00) dollars, provided he or she is satisfied that the purchase of the deliverable represents the best value and provided the CFO or Director, as the case may be, advises the CAO, prior to the purchase without bid, which is thirty thousand (\$30,000.00) dollars or over.

5.1.3 The Purchasing Limit for purchasing activity without bids shall be as follows:

Petty Cash Expenditure	Up to \$50.00
Local Purchase Order	Up to \$200.00 for a City employee authorized by his/her Director to proceed with a Local Purchase Order
Purchase Order	Up to \$2,500.00
Sole Sourcing	Up to \$5,000.00 per occurrence or per issue

5.2 Purchasing Activity with Bids

The Purchasing Limit for purchasing activity with bids shall be as follows:

Request for Quotations (“RFQ”)	\$30,000 up to but not exceeding \$100,000 in the total cost
Request for Tenders (“RFT”)	\$100,000.00 or more
Request for Proposals (“RFP”)	\$100,000.00 or more
Request for Information and Expression of Interest	No Threshold

Request for Quotations

5.2.1 Where the Cost of any purchasing activity (with or without bids) exceeds thirty thousand dollars (\$30,000.00), but does not exceed one hundred thousand dollars (\$100,000.00) a Request for Quotations (RFQ) shall be issued:

- (a) A minimum of three (3) written quotations shall be solicited, if available;
- (b) The Purchasing Committee consisting of the CFO, the applicable Director and another Director, selected by the CAO, shall make a recommendation to the CAO, which includes any dissent, regarding award to the bidder submitting a responsive bid with the lowest

total cost. The award may be made notwithstanding that fewer than three (3) quotations are received.

Pre-qualification: Request for Quotations Expressions of Interest/Request for Information

- 5.2.2 Following the written recommendation by the Purchasing Committee to the CAO, including any dissent, the CAO may issue a request for expressions of interest or a request for information for the purpose of determining the availability of any deliverable:
- (a) A request for expressions of interest or a request for information may be conducted as a pre-condition to any purchasing activity;
  - (b) The receipt of a submission in response to a request for expressions of interest or a request for information shall not create any contractual obligation on the part of the City. The City is not required to proceed with any further purchase process following a request for expressions of interest or a request for information.

Request for Pre-qualification

- 5.2.3 Following the written recommendation by the Purchasing Committee to the CAO, including any dissent, the CAO may issue a request for pre-qualification for the purpose of selecting qualified bidders to respond to a call for bids:
- (a) When a request for pre-qualification is issued, a pre-qualification document shall be provided to potential bidders setting out the criteria for pre-qualification, which may include:
    - i. experience of similar work;
    - ii. references provided from other customers for similar work;
    - iii. verification of qualifications, licenses and permits, if applicable; and
    - iv. financial capability.
  - (b) The selection of bidders following a request for pre-qualification shall not create any contractual obligation between the City and a pre-qualified bidder. The City is not required to proceed with any further purchasing process following a request for pre-qualification.

**6. AUTHORIZATION OF PURCHASES**

**6.1 Purchases not exceeding \$30,000.00**

6.1.1 See paragraph 5.1.2.

**6.2 Purchases not less than \$30,000.00 and not exceeding \$100,000.00**

6.2.1 Where the total cost of any deliverable exceeds thirty thousand dollars (\$30,000.00), but does not exceed one hundred thousand dollars (\$100,000.00), the CAO, following the written recommendation by the Purchasing Committee, including any dissent, may issue a request for quotations:

- (a) A minimum of three (3) written quotations shall be solicited, if available;
- (b) The CAO may authorize the purchase provided that the award is made to the bidder submitting a responsive bid with the lowest total cost. The award may be made notwithstanding that fewer than three (3) quotations are received.

### **6.3 Purchases exceeding \$100,000.00**

6.3.1 Where the total cost of any deliverable exceeds one hundred thousand dollars (\$100,000.00), following the written recommendation by the Purchasing Committee to the CAO, including any dissent, the CAO may issue either a request for tenders or a request for proposal, in compliance with the following:

- (a) the scope of the deliverables shall be set out in the call for bids;
- (b) the form of the call for bids shall, to the extent possible, use standardized documentation;
- (c) the call for bids shall be circulated and advertised in as wide and extensive a manner as will ensure the most comprehensive and most competitive response to the call for bids;
- (d) in the case of a request for proposals, the evaluation criteria and weightings shall be established by the CAO (on recommendation by the Purchasing Committee, including any dissent) prior to the call for bids and the call for bids shall clearly specify how each of the applicable criteria will be applied in evaluating the bids and whether the dollar cost methodology will be applied;
- (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 an open, fair and transparent process;
- (h) the evaluation of each bid shall be recorded using a standardized form of evaluation record;
- (i) any informality or irregularity shall be referred to the Purchasing Committee, including any dissent, for recommendation to the CAO as to next steps

### **6.4 Request for Tenders**

6.4.1 A request for tenders shall be issued by the CAO, on recommendation by the Purchasing Committee, including any dissent, where the following criteria apply:

- (a) two or more sources are available to supply the deliverables;
- (b) the deliverables can be clearly specified;
- (c) the market conditions are such that bids can be submitted on a competitive pricing basis; and



(d) it is intended that the lowest cost responsive bid shall be accepted without negotiation.

6.4.2 Following the written recommendation by the Purchasing Committee to the CAO, including any dissent, the CAO may award the contract provided that: (i) the total cost of the contract does not exceed two hundred and fifty thousand dollars (\$250,000.00) ; and (ii) the award is made to the bidder submitting the lowest cost responsive bid.

6.4.3 A report shall be submitted quarterly to Council to advise of the award of any contract pursuant to section 6.4 of this By-law.

## **6.5 Request for Proposals**

6.5.1 A request for proposals shall be issued by the CAO, on recommendation from the Purchasing Committee, including any dissent, where the deliverables are not clearly specified and it is anticipated that bidders may propose a variety of alternatives to fulfill City requirements.

6.5.2 The request for proposals shall be conducted using a two (2) envelope system: one (1) envelope for the technical proposal and one (1) envelope for the financial proposal:

(a) The CAO, following recommendation from Purchasing Committee, including the dissent, may award the contract provided that: (i) the total cost of the contract does not exceed two hundred and fifty thousand dollars (\$250,000.00); and (ii) the award is made to the bidder submitting the highest scoring bid at the lowest total cost, or, if applicable, the lowest dollar cost per technical point;

(b) If the total cost of the contract exceeds two hundred and fifty thousand dollars (\$250,000.00) or if it is recommended that the award of the contract is not to be made to the bidder submitting the highest scoring bid at the lowest total cost, or, if applicable, the lowest cost per technical point, the award of the contract shall be subject to the approval of Council.

6.5.3 A report shall be submitted quarterly to Council to advise of the award of any contract pursuant to section 6.5 of this By-law.

## **7 SPECIAL CIRCUMSTANCES**

7.1 In the case of a special circumstance, the purchase of deliverables may be authorized by the CAO, after recommendation, where practicable, from the Purchasing Committee, including any dissent, without issuing a call for bids where the cost for the purchasing activity is \$249,999.99 or less and where one or more of the following circumstances are present:

(a) where a special circumstance may occur, has occurred or is ongoing;

(b) where market conditions are such that required goods or services can only be delivered by a particular Supplier and no reasonable alternative is available;

(c) where information disclosure through bids could compromise required confidentiality, cause economic disruption or be contrary to the public interest;

(d) where purchasing activity is not funded solely from the City.

- 7.2 Any waiver of the bidding process, where the cost of the purchasing activity exceeds \$50,000.01, shall be reported to Council by the CAO or delegate.
- 7.3 Where a Special Circumstance exists, has existed or is existing, a Director is required to forthwith inform the CAO or delegate in writing of such Special Circumstance and the necessary purchasing activity-related action.
- 7.4 The City shall endeavor to obtain the best value for any deliverables purchased during the special circumstance, using as fair and transparent a process as is feasible having regard to the particular circumstances.
- 7.5 As soon as practicable upon the conclusion of the special circumstance, the CAO shall submit a report to Council describing any expenditures made under this authority.
- 7.6 The CAO may authorize the purchase where the total cost does not exceed two hundred and forty-nine thousand and ninety nine cents (\$249,999).

## **8. CONTINGENCIES and SCOPE CHANGE / ADDITIONAL DELIVERABLES**

- 8.1 Where any purchase of deliverables has been authorized under this By-law, Council may, upon being satisfied that a contingency has arisen, authorize expenditures that exceed the original approved contract amount, provided that any additional expenditure shall not exceed ten percent (10%) of the total cost of the contract at the time of award and further provided that the additional expenditures are required to complete the deliverables set out in the original contract.
- 8.2 Following the written recommendation by the Purchasing Committee to the CAO, including any dissent, the CAO may authorize the purchase of additional deliverables under a contract, provided that the CAO is satisfied that a scope change necessitates the purchase of additional deliverables and:
  - (j) the total Cost of the additional deliverables does not exceed ten percent (10%) of the total cost of the contract; or
  - (k) the total Cost of the additional deliverables is to be paid in full by a third party and security to ensure payment has been provided to the City, failing which the purchase of the additional deliverables shall be subject to Council approval.
- 8.3 If a scope change requires the extension or renewal of a contract, any extension or renewal of a contract that would result in a total contract term in excess of five (5) years shall be subject to Council approval.
- 8.4 The CAO, after recommendation from the Purchasing Committee, including any dissent, may authorize the purchase of additional deliverables provided that the authorization to purchase the additional deliverables is required to prevent interruption in service delay or to avoid incurring extra costs.

8.5 A report shall be submitted quarterly to Council to advise of any expenditures made under this authority.

## **9. CO-OPERATIVE PURCHASING**

9.1 The City may participate with other government agencies or public authorities in co-operative purchasing where the CAO determines, after recommendation from the Purchasing Committee, including any dissent, that it is in the best interests of the City to do so.

9.2 Any contract proposed to be entered into as a result of co-operative purchasing may be authorized in accordance with the authority limits set out in this By-law.

## **10. PURCHASING COMMITTEE**

10.1 The CAO shall establish a Purchasing Committee composed of, at a minimum, the following:

- (a) a representative of the City Department requesting the procurement of the deliverables;
- (b) a Director or delegate from another Department;
- (c) the Director or delegate of Finance; and
- (d) the Purchasing Department.

which shall make recommendations in writing to the CAO, including any dissents, in relation to any Purchasing activity exceeding any purchase activity of thirty thousand (\$30,000.00) dollars or more, as set out in this By-law.

10.2 If a bid contains an informality or irregularity, or if there is a challenge to the call for bids process, the issue shall be referred to the Purchasing Committee, for written recommendation to the CAO, including any dissent, who will determine whether the bid complies with the submission requirements set out in the call for bids or to determine the validity of the challenge.

10.3 If the Purchasing Committee does not agree unanimously that the bid shall be accepted or rejected in its recommendation to the CAO, it shall submit a report to the CAO setting out the nature of the informality, irregularity or challenge and the proposed action to be taken.

## **11. REQUIREMENT FOR COUNCIL APPROVAL**

11.1 A report shall be submitted to Council prior to authorizing an award in each of the following circumstances:

- (a) where the term of a proposed contract is for a period greater than five (5) years, or where the renewal or extension of a contract would result in an aggregate term of greater than five (5) years;
- (b) where a request for proposals has been issued under this By-law and the total cost of the contract exceeds two million dollars (\$2,000,000.00);
- (c) where the purchase is prescribed by statute to be made by Council;
- (d) where the purchase of any deliverables is not authorized by this By-law; and
- (e) where otherwise specifically provided in this By-law.

**12 BY-LAW REVIEW**

This By-law shall be reviewed and evaluated for effectiveness in one (1) year from the date of its enactment, and every two (2) years after that.

**13. EFFECTIVE DATE**

The By-law shall come into effect on the Third and final Reading.

**14. REPEAL**

This By-law hereby repeals By-law No. 581, Purchasing, Tendering, Contract and Local Incentive By-Law and amending By-law No. 665.

**THIS BY-LAW READ** a First Time this **26** day of **July**, 2016, A.D.

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Madeleine Redfern

Mayor

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Muhamud Hassan

Chief Administrative Officer

**THIS BY-LAW READ** a Second Time this **26** day of **July**, 2016, A.D.

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Madeleine Redfern  
Mayor

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Muhamud Hassan  
Chief Administrative Officer

**THIS BY-LAW READ** a Third Time this **23** day of **August**, 2016, A.D.

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Madeleine Redfern  
Mayor

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Muhamud Hassan  
Chief Administrative Officer