

CITY OF GREATER SUDBURY

BY-LAW 2006-270

BEING A BY-LAW OF THE CITY OF GREATER SUDBURY  
GOVERNING PROCUREMENT POLICIES AND  
PROCEDURES

TABLE OF CONTENTS

PAGE



<u>PART I - SHORT TITLE</u> .....	1
Section 1.....	1
<u>PART II - PURPOSES, GOALS AND OBJECTIVES</u> .....	1
Environment Clause (G).....	2
<u>PART III - DEFINITIONS AND SCHEDULES</u> .....	2
Vendor of Record.....	6
<u>PART IV - GENERAL PROCUREMENT POLICY</u> .....	7
Section 4: Application.....	7
Section 5: Restrictions.....	8
(Note: Bidder who withdraws bid can be excluded from bidding).....	9
Section 6: Total Acquisition Cost.....	10
Section 7: Prescheduled Council Approval.....	10
Section 8: Responsibilities and Authorities.....	11
Section 9: Notification of Procurement Opportunities.....	11
<u>PART V - PROCUREMENT PROCEDURES</u> .....	11
Section 10: Purchasing Procedures.....	11
(Option of receiving tender electronically).....	11
Section 11: Purchasing Cards.....	12
Section 12: Blanket Purchase Order.....	12
Section 13: Request For Expression of Interest.....	13
Section 14: Purchasing Method.....	13
Section 15: Not Exceeding \$1,499.....	13
(Shall be made from the competitive market place when possible)	

Section 16: \$1,500 - \$35,000.....	13
(Shall demonstrate that Fair Market Value was achieved).....	14
Section 17: Tender - \$35,000+.....	14
(Note: May enter into negotiations with Low Bidder Only (17-4)).....	
Section 18: Request for Proposal.....	15
Section 19: In House Bids.....	16
Section 20: Bid Deposits and Performance Guarantees.....	16
Section 21: Contract Without Budgetary Appropriation .....	17
Section 22: Emergency Purchases.....	17
Section 23: Cooperative Purchasing.....	17
Section 24: Identical Tenders.....	18
Section 25: Bid Irregularities.....	18
Section 26: Contractual Agreement over \$1,500.....	18
Section 27: Surplus and Obsolete Goods.....	19
<u>PART VI - OTHER</u> .....	20
Section 28: Access to Information.....	20
Section 29: By-Law Review.....	20
Section 30: Effective Date.....	20
Section 31: Repeal.....	20

**BY-LAW 2006-270**

**A BY-LAW OF THE CITY OF GREATER SUDBURY  
GOVERNING PROCUREMENT POLICIES AND PROCEDURES**

**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 City of Greater Sudbury subject to certain exceptions set out herein;

**AND WHEREAS** the Council of the City of Greater Sudbury has by resolution adopted on October 8th, 2003 authorized the enactment of this By-law and the repeal of By-law 2001-2 and amendments thereto, formerly governing the subject matter of this By-law;

**NOW THEREFORE** the Council of the City of Greater Sudbury enacts as follows:

**PART I - SHORT TITLE**

1. This By-Law may be cited as the "Purchasing By-Law".

**PART II - PURPOSES, GOALS AND OBJECTIVES**

2. The purposes, goals and objectives of this By-law and of each of the methods of procurement authorized are:
  - a) To encourage competition among suppliers;
  - 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 City of Greater Sudbury;
- f) To have regard to the accessibility for persons with disabilities to the Goods, Services and Construction purchased by the City of Greater Sudbury;
- g) To have regard to the preservation of the natural environment and to encourage the use of environment friendly Goods, Services and Construction.

### **PART III - DEFINITIONS AND SCHEDULES**

**3.-(1)** The words and phrases listed below when used in this By-law shall have the following meanings ascribed to them:

**“AGENT”** means the Manager of Supplies and Services / Purchasing Agent of the City of Greater Sudbury or designate;

**“APPROVED INVOICE”** means an original supplier’s invoice issued at the time of purchase of low dollar Goods or Services not exceeding \$1,499 and which bears both the signature of an appropriately authorized employee and appropriate account number(s);

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

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

**“BID DEPOSIT”** means the form of security required by the terms and conditions of Bid Solicitation documentation to guarantee that the successful bidder enters into a Contract with the City of Greater Sudbury, as required by Section 20 of this By-law;

**"BID SOLICITATION"** means a formal request for competitive Bids that may be in the form of a Tender or Request for Proposal;

**"BLANKET PURCHASE ORDER"** means a Contract for repetitive required Goods or Services for a specified period of time, when convenience and location are significant factors in determining Total Acquisition Cost and the quantity and demand are unknown.

**"CHIEF ADMINISTRATIVE OFFICER"** means the Chief Administrative Officer of the City of Greater Sudbury, or designate;

**"CHIEF FINANCIAL OFFICER / TREASURER "** means the Chief Financial Officer / Treasurer of the City of Greater Sudbury or designate.

**"CHIEF OF POLICE"** means the Chief of Police as appointed by The Greater Sudbury Police Services Board pursuant to the *Police Services Act*, or designate;

**"CITY SOLICITOR"** means the City Solicitor of the City of Greater Sudbury, or designate;

**"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 City of Greater Sudbury;

**“COUNCIL APPROVED BUDGETS”** means Council approved department budgets including authorized revisions, or where applicable, Council approved budgets of local boards or utilities to which this By-law applies;

**“DEPARTMENT”** means an organizational unit of the City of Greater Sudbury headed by a General Manager, the Executive Director of Administrative Services, Director of Human Resources or the Chief Financial Officer;

**“DIRECTOR OF HUMAN RESOURCES”** shall mean the Director of Human Resources of the City of Greater Sudbury, or designate;

**“ELECTRONIC ADVERTISING”** means the use of a computer based system directly accessible by suppliers irrespective of their location that provides suppliers with information related to Bid Solicitations;

**“EMERGENCY”** means a situation, or the threat of an impending situation, which may affect the environment, the life, safety, health and/or welfare of the general public, or the property of the residents of the City of Greater Sudbury, or 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;

**“GENERAL MANAGER”** means the person responsible for the operation of a Department and/or their designate and includes the person appointed to the positions of Chief Administrative Officer, Director of Human Resources, Executive Director of Administrative Services, and Chief Financial Officer / Treasurer;

**“GOODS”** means moveable property including,

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

- (b) raw materials, products, equipment and other physical objects of every kind and description;

**"IN HOUSE BID"** means a Bid made by a Department and authorized by the General Manager of that Department, submitted in response to a Bid Solicitation, where the provision of the Goods, Services or Construction will be provided entirely by the employees of the City of Greater Sudbury;

**"LEASE FINANCING POLICY"** means the policy passed by Council under the authority of the Municipal Act, 2001, S.O. c.25, section 110;

**"LOWEST COMPLIANT BID"** means the Bid that would provide the City of Greater Sudbury with the desired Goods, Services or Construction at the lowest Total Acquisition Cost, 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;  
and
- (b) firms or individuals having specialized competence in environmental, planning or other disciplines;

**"PROPOSAL"** means an offer submitted in response to a Request for Proposal, acceptance of which may be subject to further negotiation;

**"PURCHASE ORDER"** means a Contract between the City of Greater Sudbury and a supplier to supply specific Goods or specific Services or a specific type of Construction defined by such things as quantity, time period, location(s) and price, and includes a Blanket Purchase Order;

**"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, on variable terms the suitability of which is determined upon multiple factors and which may result in further direct negotiation with one or more bidders;

**"RISK MANAGEMENT/ INSURANCE OFFICER"** shall mean the Risk Management/ Insurance Officer of the City of Greater Sudbury or designate;

**"SERVICES"** includes 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 only services to be delivered by an officer or employee of the City of Greater Sudbury in accordance with terms of employment;

**"TENDER"** means a Bid Solicitation used to acquire known Goods, Services or Construction in accordance with specified terms and which is normally awarded to the Lowest Compliant Bid;

**"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 non refundable 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;

**"VENDOR OF RECORD ARRANGEMENT"** means a procurement arrangement resulting from a competitive Bid Solicitation that authorizes one or more suppliers to offer specific Goods or Services for a defined time period, with terms and conditions and pricing set out in a Contract.

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

## **PART IV - GENERAL PROCUREMENT POLICY**

### **APPLICATION**

**4.-(1)** The procedures in this By-law shall be followed to Award a Contract or to recommend to Council that a Contract be Awarded.

(2) Subject to section 27 and section 4(3), a General Manager may purchase or contract for the Goods and Services listed in Schedule "A" to this By-law without following the procedures set out herein.

(3) The procurement of legal services shall be contracted for by the City Solicitor, the Director of Human Resources, or by the Chief of Police.

(4) 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 Council Approved Budgets.

(5) The following local boards and corporations are bound by this By-law and this By-law shall apply with necessary modification to such local boards and corporations:

Greater Sudbury Police Services Board

Greater Sudbury Public Library Board

City of Greater Sudbury Development Corporation

Sudbury Community Development Corporation

Sudbury Airport Community Development Corporation

(6) For all purposes of this By-law and this Section, all references to Council shall mean the governing body of each of the following local boards and corporations:

Greater Sudbury Police Services Board

Greater Sudbury Public Library Board

City of Greater Sudbury Development Corporation

Sudbury Community Development Corporation

Sudbury Airport Community Development Corporation

(7) For all purposes of this By-law and this Section, all references to the Chief Administrative Officer and General Managers of the City shall mean the following persons associated with the relevant local board and corporation:

Greater Sudbury Police Services Board: Chief of Police or designate;

Greater Sudbury Public Library Board: General Manager of Community Development or designate;

City of Greater Sudbury Development Corporation: General Manager of Growth and Development or designate;

Sudbury Community Development Corporation: General Manager of Growth and Development or designate;

Sudbury Airport Community Development Corporation :Chief Executive Officer of Airport Services or designate;

## **RESTRICTIONS**

**5.-(1)** 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.

(2) No Contract for Services shall be Awarded where the services would result in the establishment of an employee - employer relationship.

(3) No employee shall purchase, on behalf of the City of Greater Sudbury, any Goods, Services or Construction, except in accordance with this By-law.

(4) 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,

(a) shall immediately disclose the interest to the General Manager involved in the Award of the Contract and shall describe the general nature thereof;

(b) shall not take part in the Award of the Contract; and

- (c) shall not attempt in any way to influence the Award of the Contract.
  - (5) An employee has an indirect pecuniary interest in any Contract in which the City of Greater Sudbury is concerned, if,
    - (a) the employee or his or her spouse or same-sex partner
      - (i) 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,
      - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public that has a pecuniary interest in the Contract, or
      - (iii) is a member of an unincorporated association or partnership, that has a pecuniary interest in the matter; or
    - (b) the employee 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.
  - (6) All Council members shall conduct themselves in accordance with the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended.
  - (7) All persons who provide or prepare on behalf of the City contract specifications for Goods, Services or Construction and which Goods, Services or Construction are intended to be the subject matter of a Bid Solicitation, shall not be permitted to submit a Bid in response to the Bid Solicitation for the said Goods, Services or Construction.
- 5.1** In circumstances where a bidder has withdrawn its Bid after Bids have been opened in response to a Bid Solicitation the Agent and the General Manager in charge of the Bid Solicitation may by written notice exclude such bidder or supplier from bidding upon further Contracts to supply Goods, Services or Construction to the City for a period up to two years from the date of the notice.

This prohibition shall be in addition to and not in substitution for the forfeiture of any Bid Deposit or security or other remedy that may be available to the City.

#### **TOTAL ACQUISITION COST**

6. Where this By-law prescribes dollar limits, the Contract amount shall be the estimated Total Acquisition Cost less any rebates.

#### **PRESCRIBED COUNCIL APPROVAL**

7(1). 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;
  - (ii) any Contract where the Total Acquisition Cost is greater than the Council Approved Budget;
  - (iii) where an irregularity precludes the Award of a Contract to the bidder submitting the lowest bid and the Total Acquisition Cost exceeds \$35,000;
  - (iv) any Contract where a Bid Solicitation has been restricted to a single source of supply and the Total Acquisition Cost of such Good, Service or Construction exceeds \$ 35,000;
  - (v) 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 or Construction exceeds \$200,000;
  - (vi) when any Contract is required in accordance with the City of Greater Sudbury's Lease Financing Policy.
- (2) In circumstances where Council has approved a Contract for the acquisition of a Good, Service or Construction where a Bid Solicitation has been restricted to a single source of supply, the maximum term of such Contract shall be five years.
- (3) Approval by Council of the Contracts referred to in this Section shall be by Resolution.

## **RESPONSIBILITIES AND AUTHORITIES**

**8.(1)** General Managers for and shall have authority and be accountable for all procurement activity and decisions within their Departments. General Managers may delegate their authority, where appropriate.

(2) The Agent shall be responsible to respond to concerns and questions relating to procurement policies and procedures.

## **NOTIFICATION OF PROCUREMENT OPPORTUNITIES**

**9.-(1)** Bid Solicitation for Goods, Services or Construction exceeding an estimated Total Acquisition Cost of \$35,000 (excluding G.S.T.) shall be done by Electronic Advertising and may be used for any other purchase.

(2) Notification of procurement opportunities for Goods, Services or Construction by Electronic Advertising may be supplemented by other means of notification where appropriate.

## **PART V - PROCUREMENT PROCEDURES**

### **PURCHASING PROCEDURES**

**10.-(1)** The Agent 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, purchase orders, bonds, 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 cooperative purchasing or Vendor of Record Arrangement;

(c) the process to be followed 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, S.O. 2000, c.17, as amended;*

(d) any other aspect of process or procedure not specifically provided for in this By-law.

(2) Where, in the opinion of the Agent, circumstances giving rise to an issue of adherence or non-adherence to the requirements of this By-law which cannot be resolved to the satisfaction of the Agent, the Agent shall advise the Chief Financial Officer who shall have the authority to determine the appropriate action.

### **PURCHASING CARDS**

11. The Agent is responsible for the Purchasing Card program outlined in the City of Greater Sudbury's Purchasing Card Policy. The Purchasing Card Policy shall adhere to this Purchasing By-law.

### **BLANKET PURCHASE ORDERS**

12.-(1) A Blanket Purchase Order may be used where:

(a) one or more Departments repetitively order the same Goods, Services or Construction; or

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

(2) The Agent shall establish and maintain Blanket Purchase Orders.

(3) To establish prices and select sources, the Agent shall employ the provisions contained in this by-law for the acquisition of Goods, Services or Construction.

(4) More than one supplier may be selected where it is in the best interests of the City of Greater Sudbury and the Bid Solicitation allows for more than one.

(5) The expected quantity of the specified Goods, Services or Construction to be purchased over the time period of the agreement will be as accurate an estimate as practical and be based, to the greatest extent possible, on previous usage adjusted for any known factors.

## **REQUEST FOR EXPRESSIONS OF INTEREST**

13. A General Manager may through the Agent conduct a request for expression of interest for the purposes of determining the availability of suppliers of any Goods, Services or Construction and for the purposes of keeping a list of available suppliers.

## **PURCHASING METHODS**

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

## **PURCHASES NOT EXCEEDING ONE THOUSAND FOUR HUNDRED AND NINETY-NINE (\$1,499) DOLLARS**

15.-(1) The Treasurer/Director of Finance shall have authority to establish petty cash funds in such an amount to meet the requirements of a Department for the acquisition of Goods, Services or Construction having an individual Total Acquisition Cost of \$1,499 or less.

(2) 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, a Purchasing Card or a Purchase Order, subject to Section 26.

(3) All petty cash fund disbursements shall be evidenced by vouchers and shall be available for auditing purposes through the Treasurer/Director of Finance.

## **PURCHASES BETWEEN ONE THOUSAND FIVE HUNDRED (\$1,500) AND THIRTY-FIVE THOUSAND DOLLARS (\$35,000).**

16.-(1) Purchasing requirements for Goods, Services or Construction having an estimated Total Acquisition Cost between \$1,500 and \$35,000 may be made by using either a Purchasing Card or Purchase Order, subject to Section 26.

(2) Single purchases of Goods, Services or Construction using a Purchasing Card shall not exceed \$5,000, unless approved by the Agent.

(3) In appropriate circumstances, the Request for Proposal or the Request for

Tender processes may be utilized for the purchase of Goods, Services or Construction in this Total Acquisition Cost range.

(4) General Manager shall demonstrate that the selection process used to purchase the Goods, Services or Construction in this Total Acquisition Cost range shall demonstrate that Fair Market Value was achieved.

## **PURCHASES EXCEEDING THIRTY-FIVE THOUSAND \$35,000 DOLLARS**

### **REQUEST FOR TENDER**

**17.-(1)** A Request for Tender shall be used for purchases exceeding 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; and
- (c) it is intended that the Lowest Compliant Bid will be accepted without negotiations.

(2) The General Manager in charge of the Bid Solicitation or the Agent, on behalf of such General Manager, may Award Contracts emanating from a Request for Tender provided that

- 1. the Award is to the Lowest Compliant Bidder;
- (b) sufficient funds are available and identified in appropriate accounts within Council Approved Budgets; and
- (c) the provisions of this By-law are complied with.

(3) The General Manager or Agent shall follow the provisions of Section 26 regarding the form of contract required to complete the purchase.

(4) Where Bids are received in response to a Bid Solicitation but exceed project estimates, the General Manager in charge of the Bid Solicitation and the Agent, jointly, may enter negotiations with the Lowest Compliant Bidder to achieve an acceptable Bid within the project estimate.

(5) Negotiations shall be conducted in accordance with the guidelines established by the Canadian Construction Documents Committee, as applicable.

## **REQUEST FOR PROPOSAL**

**18.-(1)** 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 to any aspect of the requirement.

(2) Where the Contract price is anticipated to be \$200,000 or greater and the Request for Proposal method of procurement is utilized, the Agent shall be a member of the committee formed to evaluate the response to the Request for Proposal.

(3) Every Request for Proposal shall contain an explanation of the criteria which will be used to evaluate proposals.

(4) The General Manager in charge of the particular Bid Solicitation or the Agent, on behalf of such General Manager, may Award Contracts emanating from a Request for Proposal provided that:

(a) the estimated Total Acquisition Cost of the Goods, Services or Construction does not exceed \$200,000;

(b) the Award is to made to the supplier meeting all mandatory requirements and determined, by reference to the evaluation criteria, as providing best value;

(c) sufficient funds are available and identified in appropriate accounts within Council Approved Budgets; and

(d) the provisions of this By-law are complied with.

(5) The General Manager and Agent shall follow the provisions of Section 26 regarding the form of contract required to complete the purchase.

## **IN HOUSE BIDS**

**19.** In House Bids may be used for the procurement of Goods, Services or Construction in circumstances where the Chief Administrative Officer considers it appropriate to do so.

## **BID DEPOSITS AND PERFORMANCE GUARANTEES**

**20.-(1)** The Agent may require that a Bid be accompanied by a Bid Deposit or other similar security to guarantee entry into a Contract.

(2) Prior to the commencement of the work, the successful bidder may be required to provide the following security in addition to the security referred to in Subsection 20.-(1):

- (a) a performance bond to guarantee the performance of a Contract, and
- (b) a payment bond to guarantee the payment for labour and materials to be supplied in connection with a Contract.

(3) The Agent 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 City of Greater Sudbury.

(4) Prior to the commencement of work, evidence of insurance coverage satisfactory to the Risk Management/ Insurance Officer must be obtained, ensuring indemnification of the City of Greater Sudbury 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 Risk Management/Insurance Officer as requiring coverage.

(5) 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.

## **CONTRACT WITHOUT BUDGETARY APPROPRIATION**

**21.** Where a requirement exists to initiate a project for which Goods, Services or Construction are required and funds are not contained within the Council Approved Budget to meet the proposed expenditure, the General Manager shall, prior to commencement of the purchasing process, submit a report to Council containing:

- (a) information surrounding the requirement to contract;
- (b) the terms of reference to be provided in the Contract;
- (c) information on the availability of the funds within existing estimates, which were originally approved by Council for other purposes, or on the requirement of additional funds.

## **EMERGENCY PURCHASES**

**22.-(1)** Where an Emergency exists requiring the immediate procurement of Goods, Services or Construction, a General Manager or the Agent may purchase the required Goods, Services or Construction by the most expedient and economical means, notwithstanding any other provision of this By-Law. As soon as practicable thereafter, the Agent shall comply with Section 26 of this By-law.

(2) For all Emergency purchases made by a General Manager, the General Manager shall as soon after the purchase as reasonably possible, notify the Agent with a written report detailing the circumstances of the Emergency. A report to Council shall be made by the General Manager or the Agent in all circumstances where the Emergency purchase exceeds \$35,000.

## **COOPERATIVE PURCHASING**

**23-(1)** The City of Greater Sudbury may participate with other government agencies or public authorities in cooperative purchasing where it is in the best interests of the City of Greater Sudbury to do so and where the purposes, goals and objectives of this By-law are complied with by such government agencies and public authorities.

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

### **IDENTICAL TENDERS**

**24-(1)** If the Lowest Compliant Bids from two or more bidders are identical in Total Acquisition Cost or unit price, the Agent, with the consent of the General Manager in charge of the Bid Solicitation, 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.

(2) The Agent shall not reveal information pertaining to such negotiations or the manner in which the final price was determined to any of the bidders concerned. The Agent shall include as part of the record, a report concerning the results of such negotiations.

(3) 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 the General Manager in charge of the Bid Solicitation, the Agent and the Director of Legal Services, or their designate(s).

### **BID IRREGULARITIES**

**25.** 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".

### **CONTRACTUAL AGREEMENT**

**26.-(1)** The Award of a Contract over \$ 1,500 shall be made by way of a written agreement, or as a Purchase Order.

(2) A Purchase Order is to be used when the resulting Contract requires only the City of Greater Sudbury's standard contractual terms and conditions.

(3) A formal agreement is to be used when the resulting Contract is complex

and will contain terms and conditions other than the City of Greater Sudbury's standard contractual terms and conditions.

(4) It shall be the responsibility of the General Manager in charge of the particular Bid Solicitation, with the Agent and/or the City Solicitor, to determine if it is in the best interests of the City of Greater Sudbury to establish a formal agreement with the supplier.

(5) Where it is determined that a formal agreement is required, the formal agreement shall be reviewed and approved for execution by the City Solicitor.

(6) Where a formal agreement is required, the General Manager shall execute the agreement in the name of City of Greater Sudbury.

(7) Where a formal agreement is issued, the Agent may issue a Purchase Order incorporating the formal agreement.

(8) Where a formal agreement is not required, the Agent shall issue and execute a Purchase Order incorporating the relevant terms and conditions.

#### **SURPLUS AND OBSOLETE GOODS**

**27-(1)** The Agent must dispose of all Goods for which a Department no longer has use and the Agent may use any method for disposal in the City of Greater Sudbury's best interests, including without limitation, public auction, public tender, trade, negotiated sale or transfer to another Department.

(2) An employee who has the responsibility of declaring Goods surplus or obsolete, or for sending items to a public auction shall not bid on or personally obtain any Goods that the employee has declared as surplus.

(3) No Council Member or employee shall be permitted to receive surplus or obsolete Goods except by purchase at public auction, public tender, trade or advertised sale.

**PART VI - OTHER**

**ACCESS TO INFORMATION**

28. 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.

**BY-LAW REVIEW**

29.-(1) 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.

(2) The review shall determine how effective this By-law has been in achieving the objectives set out in Section 2 of the By-law as well as the requirements of the *Municipal Act, 2001*, as amended.

(3) The review may be undertaken by an ad-hoc committee of Council, the final result of which shall be comprised of a report to Council, by the Agent.

**EFFECTIVE DATE.**

30. This By-law shall come into force and take effect on the 1st day of January, 2007.

**REPEAL**

31. By-law 2003-300 and all amendments thereto are hereby repealed on the effective date of this By-law.

**READ A FIRST AND SECOND TIME IN OPEN COUNCIL** this 29<sup>th</sup> day of  
November, 2006.

\_\_\_\_\_ Mayor

\_\_\_\_\_ Clerk

**READ A THIRD TIME AND FINALLY ENACTED AND PASSED IN OPEN**

**COUNCIL** this 29<sup>th</sup> day of November, 2006.

\_\_\_\_\_ Mayor

\_\_\_\_\_ Clerk

## SCHEDULE "A"

### to By-Law 2006-270 of the City of Greater Sudbury

Page 1 of 1

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

1. Training and Education
  - (1) Registration and Tuition fees for conferences, conventions, courses and seminars
  - (2) Magazines, books and periodicals unless the purchase of such magazines books and periodicals are subject to value-added services
  - (3) Memberships
2. Refundable Employee/Councillor Expenses
  - (1) Advances
  - (2) Meal Allowances
  - (3) Travel and Entertainment
  - (4) Miscellaneous - Non-Travel
3. Employer's General Expenses
  - (1) Payroll Deductions Remittances
  - (2) Medical
  - (3) Licenses (Vehicle, Firearms, etc.)
  - (4) Debenture Payments
  - (5) Grants to Agencies
  - (6) Damage Claims
  - (7) Petty Cash Replenishment
  - (8) Tax Remittances
4. Professional and Special Services
  - (1) Committee Fees
  - (2) Legal fees and other Professional Services related to litigation or legal matters
  - (3) Funeral and Burial expenses
  - (4) Witness fees
  - (5) 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
  - (6) Veterinary Expenses
5. Utilities
6. Advertising services required by the City on or in but not limited to radio, television, newspaper and magazines
7. Bailiff or collection agencies

**SCHEDULE "B"**

**to By-Law 2006-270 of the City of Greater Sudbury**

Page 1 of 1

**PURCHASING METHODS**

<b>Procedure</b>	<b>Cost of Goods or Service</b>
Approved Invoice or Petty Cash or Purchase Order (including Blanket Purchase Order) or Purchasing Card	\$1,499 or less (Section 15)
Written Contract including but not limited to Purchase Order (including Blanket Purchase Order) or Purchasing Card or Request for Proposal or Request for Tender	\$1,500 to \$35,000 (Section 16)
Agreement, Request for Tender or Request for Proposal	\$35,000 or more (Sections 17 and 18)

**SCHEDULE "C"**

**to By-Law 2006-270 of the City of Greater Sudbury  
As amended by By-law 2004-2**

Page 1 of 2

	<b>IRREGULARITY</b>	<b>RESPONSE</b>
1	Late Bid.	Automatic rejection and not opened or read publicly.
2	Unsealed Envelope.	Automatic rejection.
3	No Bid Security or agreement to bond or insufficient Bid 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 Agent, General Manager in charge of the Bid Solicitation and the City Solicitor, 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 Agent, General Manager in charge of the Bid Solicitation and the City Solicitor, the qualification or restriction is trivial or not significant.
7	Bids received on documents other than those provided or specified by the City.	Automatic rejection.
8	Bids Containing Clerical Errors, which are trivial or insignificant.	48 hours to correct and initial errors. The determination of what constitutes trivial or insignificant errors shall be made in the consensual opinion of the Agent, General Manager in charge of the Bid Solicitation and the City Solicitor
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 (a)	Failure to execute Bid Bond by Bidder and Bonding Company.	Automatic rejection.
(b)	Corporate seal of the Bidder and Bonding Company, missing.	48 hours to correct.
11	Documents - Execution	
(a)	Corporate seal or signature missing; signatory's authority to bind the corporation or signature missing.	48 hours to rectify situation.
(b)	Corporate seal and signature missing; signatory's authority to bind the corporation and signature missing.	Automatic rejection.

**SCHEDULE "C"**

**to By-Law 2006-270 of the City of Greater Sudbury  
As amended by By-law 2004-2**

	<b>IRREGULARITY</b>	<b>RESPONSE</b>
12	Erasures, Overwriting or Strike-Outs which are not initialled:	
(a)	uninitialled 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 uninitialled changes shall be made in the consensual opinion of the Agent. General Manager in charge of the Bid Solicitation and the City Solicitor.
(b)	unit prices in the Schedule of Prices have been changed but not initialled and the Contract totals are consistent with the price as changed;	48 hours to initial change in unit price. The determination of what constitutes trivial or insignificant uninitialled changes shall be made in the consensual opinion of the Agent, General Manager in charge of the Bid Solicitation and the City Solicitor.
(c)	unit prices in the Schedule of Prices which have been changed but not initialled 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 Supplies and Services Division.
14	Bids, in which all necessary Addenda, which have financial implication, have not been acknowledged.	Automatic rejection.
15	Any other irregularities.	The Agent, General Manager in charge of the Bid Solicitation and the City Solicitor acting in consensus shall have authority to waive other irregularities or grant 48 hours to intitial such other irregularities, which they jointly consider to be trivial or insignificant.