

The Regional Municipality of York

Housing York Inc.
April 5, 2018

Report of the
Corporate Solicitor
and
General Manager

New Purchasing Bylaw
Housing York Inc. 2018

1. Recommendations

It is recommended that:

1. The Board of Directors request approval from the Shareholder for the enactment of a new Purchasing Bylaw for Housing York Inc., in the form set out in Attachment 1, and for the repeal of the [Purchasing Bylaw No. 6-14.](#)

2. Purpose

This report recommends that a new Purchasing Bylaw for Housing York Inc. (Housing York) be enacted by the Regional Municipality of York in its capacity as the sole shareholder of Housing York. The new Purchasing Bylaw will ensure consistency with the Region's new [Purchasing Bylaw No. 2017-30](#) enacted by Council on May 25, 2017.

Housing York is subject to a Shareholder Direction approved by Council on [June 26, 2014](#), which provides that Housing York may not pass, repeal or amend any bylaws without receiving Shareholder approval.

3. Background

The Housing York Purchasing Bylaw provides for transparency and accountability and is subject to periodic review to evaluate its effectiveness

Housing York's existing [Purchasing Bylaw 6-14](#) was approved by Regional Council on September 11, 2014 and adopted by the Board in September 2014. The Purchasing Bylaw ensures that effective, efficient, fair and transparent procedures are in place to encourage environmentally responsible and sustainable procurement of goods and services, while maintaining fiscal prudence. The existing Purchasing Bylaw provides for a review every three years to evaluate its effectiveness.

The periodic review of the Housing York Purchasing Bylaw is undertaken following enactment of the Region's [Purchasing Bylaw](#), in order to align procurement procedures between the two organizations. The Region's new Purchasing Bylaw incorporated a number of improvements aimed at introducing administrative efficiency, while maintaining transparency and accountability. Staff from Housing York reviewed the Region's Bylaw in consultation with the Region's Legal Services and recommend that corresponding amendments be made to the Board's Bylaw, as set out in this Report.

Most goods and services purchased by Housing York are competitively procured either through a Request for Tender or Request for Proposal

The existing Purchasing Bylaw governs all matters of procurement in relation to goods and services, including the supply of equipment, service agreements, maintenance of facilities, and capital delivery; the vast majority of which are competitively procured through either the Request for Tender or Request for Proposal process.

4. Analysis and Implications

Staff recommend five key amendments to the Purchasing Bylaw 6-14.

- a) Increase the President's delegated authority to award contracts as the result of a Request for Tender or a Request for Proposal process from \$500,000 to \$1,000,000
- b) Authorize the General Manager to award contracts as the result of a Request for Tender or a Request for Proposal process up to \$500,000
- c) Authorize the President to award contracts resulting from Request for Proposals where the highest score is not the lowest cost
- d) Amend the Litigating Bidder Prohibition to achieve greater clarity and flexibility

In addition to these key amendments, additional amendments are recommended which are more administrative in nature. The changes that would be made to the current bylaw subject to approval of recommendation 1 in this report are highlighted in Attachment 1.

- a) Increase the President's delegated authority to award contracts as the result of a Request for Tender or a Request for Proposal process from \$500,000 to \$1,000,000

Under the current Purchasing Bylaw, the President is authorized to award contracts as a result of a tender or a Request for Proposal process to a maximum of \$500,000. Staff propose to increase this delegated authority to \$1,000,000. Increasing the threshold would result in a shorter lead time for procurement of goods and services. In 2017 there were four contracts awarded within this range with the highest award being \$936,672.

Although at the Region a Commissioner is authorized to award contracts arising from Request for Proposal's up to \$500,000, the Chief of York Regional Police and the Chief Administrative Officer are authorized to award contracts arising from Request for Proposals up to \$2,000,000. An increase in the President's signing authority to \$1,000,000 would be commensurate with the position, as the highest signing authority for Housing York. A comparison of Delegated Authorities is set out in Attachment 2.

- b) Authorize the General Manager to award contracts as the result of a Request for Tender or a Request for Proposal process up to \$500,000

The current Purchasing Bylaw does not delegate authority to the General Manager to award contracts arising from either Request for Proposals or tenders. The Regional Municipality of York Police Services Board's Purchasing Bylaw contains approval limits for Deputy Chiefs to award contracts under \$500,000. In order to correspond to these other Purchasing Bylaws, it is recommended that a new delegation be included in the Housing York Purchasing Bylaw to delegate authority to the General Manager to award contracts arising from Request for Proposals and tenders under \$500,000. In 2017 there were eight contract awards between \$100,000 and \$500,000.

- c) Authorize the President to award contracts resulting from Request for Proposals where the highest score is not the lowest cost

Currently, the Purchasing Bylaw requires a report to the Board where, following a formal Request for Proposal process, the highest scoring

proponent as a result of the evaluation is not the lowest cost. In the past two years, only one Request for Proposal of this type has come forward and was approved by the Board without amendment.

Request for Proposal scores are determined by an evaluation committee of staff with subject matter expertise, using pre-determined objective criteria. If the Board were to substitute its recommendation for that of the evaluation committee, it may undermine the integrity of the Request for Proposal process and potentially incur liability. Accordingly, it is recommended that the President and the General Manager be authorized to award contracts in these circumstances, within their respective approval levels consistent with The Regional Municipality of York and the York Region Police Services Board.

The Board will continue to be advised of the outcome of Request for Proposals through the requirements for quarterly information reports.

d) Amend the Litigating Bidder Prohibition to achieve greater clarity and flexibility

The Purchasing Bylaw prohibits contractors who are engaged in unresolved litigation with the Region from submitting bids or being awarded contracts until the litigation is resolved. This “litigating bidder prohibition” has been effective in avoiding or settling litigation because all parties realize that it is in their respective best interests to focus their resources on settling disputes and getting “back to business” rather than litigating.

Staff recommend improvements to the litigating bidder prohibition language to focus, clarify and strengthen the intention of avoiding litigation or hastening resolution while protecting Housing York’s interests.

5. Financial Considerations

The proposed enhancements incorporated in Housing York’s revised Purchasing Bylaw support Housing York’s objectives of obtaining goods and services that reflect best value and fiscal prudence.

6. Local Municipal Impact

There are no local municipal impacts directly arising from this report.

7. Conclusion

Consistent with the requirement in Housing York's existing Purchasing Bylaw to review the Bylaw and evaluate it for effectiveness every three years, staff conducted a comprehensive review of Housing York's Purchasing Bylaw, with particular reference to amendments recently adopted by the Region and The Regional Municipality of York Police Services Board. The recommendations in this report represent amendments that will enhance administrative efficiency and responsiveness to business needs while preserving the fundamental principles of competitiveness, transparency and best value.

For more information on this report, please contact Zella Phillips, Senior Counsel, Corporate at 1-877-464-9675 ext. 71452 or Michelle Willson, Director, Program Finance and Chief Financial Officer, Housing York Inc. 1-877-464-9675 at ext. 76064.

The Senior Management Group has reviewed this report.

Recommended by:

Joy Hulton
Corporate Solicitor

Rick Farrell
General Manager

Approved for Submission:

Katherine Chislett
President

March 22, 2018

Attachments (2)

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Accessible formats or communication supports are available upon request

HOUSING YORK INC.

PURCHASING BYLAW

BYLAW NO. X-XX

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BYLAW NO. x-xx
Purchasing Bylaw

A bylaw to provide for the procurement of goods and services by Housing York Inc. (the “**Corporation**”).

BE IT ENACTED as a bylaw of the Corporation as follows:

1. PURPOSES, GOALS AND OBJECTIVES

1.1 The purposes, goals, and objectives of this bylaw are:

- (a) to encourage competition among contractors;
- (b) to obtain best value in the procurement of deliverables;
- (c) to ensure fairness, objectivity, accountability and transparency in the procurement process;
- (d) to encourage environmentally responsible and sustainable procurement while maintaining fiscal prudence; and
- (e) to promote and implement procurement practices that support the principles of the *Ontarians with Disabilities Act, 2001* and the *Accessibility for Ontarians with Disabilities Act, 2005*.

2. DEFINITIONS

2.1 In this bylaw:

“**award**” means the authorization to proceed with the purchase of deliverables;

“**best value**” means, in relation to a purchase, that the purchase represents the optimal balance of high quality and financial terms;

“**bid**” means a submission received in response to a call for bids, and includes a quotation, a tender and a proposal;

“**Bid Review Committee**” means the committee established under Section 17 of this bylaw;

“**bidder**” means any legal entity that submits a bid in response to a call for bids;

“**Board**” means the board of Directors of HYI;

“**call for bids**” means a formal request for bids and includes a request for quotations, a request for tenders and a request for proposals;

“Chair” means the Chair of the Housing York Inc. Board of Directors;

“Chief Financial Officer” means the Chief Financial Officer of HYI;

“construction” means construction, reconstruction, demolition, repair or renovation of a building or structure 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 to a building or structure;

“consulting and professional services” means those services requiring the skills of a professional for a specialized service and includes the services of architects, engineers, designers, surveyors, planners, accountants, auditors, management professionals, marketing professionals, software and information technology experts, financial consultants, lawyers, law firms, real estate agents and brokers, environmental planners and engineers, hydrogeologists, transportation planners and engineers, communications consultants and any other consulting services which may be required by HYI;

“contingency” means an event or circumstance that gives rise to an increase in a contract price and which could not have been reasonably anticipated at the time of contract award;

“contract” means any form of binding agreement between HYI and a contractor for the purchase of deliverables and includes a purchase order;

“contractor” means any legal entity to whom a contract is awarded and includes a vendor, supplier, service provider and consultant;

“Corporate Solicitor” means the Corporate Solicitor of HYI or his/her delegate;

“deliverables” means goods, services and construction;

“Director, Procurement Office” means the Director, Procurement Office of the Shareholder;

“dollar cost methodology” means the methodology used to determine the highest scoring bidder where two or more bids are within five (5) points of the highest overall score, by calculating the dollar cost per technical point; **“dollar cost per technical point”** means the product of: $X \div Y$ where, **“X”** means the total cost of the bid, and **“Y”** means the technical score of the bid;

“electronic bidding” means a method of issuing a call for bids and receiving written bids by fax, email or internet;

“emergency” means an event or circumstance where the immediate purchase of deliverables is necessary to prevent or alleviate: (a) a serious delay in service delivery; (b) a threat to the

health, safety or welfare of any person; (c) the disruption of essential services; or (d) damage to HYI or public property and includes, but is not limited to, an emergency declared under the *Emergency Management and Civil Protection Act*;

“General Manager” means the General Manager of HYI;

“goods” means personal property, including raw materials, products, supplies, equipment and other physical objects of every kind and description;

“HYI” means Housing York Inc.;

“litigation” means any unresolved dispute between HYI and any other party or related party adverse in interest, including third party and cross-claims, where either a legal proceeding has been commenced for an injunction, a mandatory order, a declaration or the recovery of money;

“President” means the President of HYI;

“price agreement” means a contract between HYI and a contractor resulting from a call for bids, under which the contractor agrees to provide deliverables as and when needed by HYI, at a pre-determined price, for a pre-determined period of time, upon pre-determined terms and conditions;

“proposal” means a submission received in response to a request for proposals;

“purchase order” means a written order to a contractor setting out the terms and conditions for the purchase of deliverables;

“quotation” means an offer received in response to a request for quotations;

“real property” means land, or land and buildings, and includes fixtures attached to such land or buildings;

“request for expressions of interest” or **“request for information”** means a request made by HYI for the purpose of compiling a list of potential bidders who may be interested in providing deliverables to HYI;

“request for pre-qualification” means a request made by HYI for the submission of information from potential bidders, including the qualifications, experience, financial capability, background and staffing of any entity who may qualify to supply deliverables to HYI;

“request for proposals” means a request for proposals issued under this bylaw;

“request for quotations” means a request for quotations issued under this bylaw;

“request for tenders” means a request for tenders issued under this bylaw;

“responsive” means that a bid has complied in all material respects with the requirements set out in the call for bids;

“scope change” means any change to a contract to accommodate a need identified by HYI which was not originally provided for in the contract and which may include the purchase of additional deliverables or the extension of the term of the contract and which may require an adjustment to the contract price;

“services” means the services to be provided to HYI under a contract and includes consulting and professional services;

“Shareholder” means The Regional Municipality of York;

“tender” means a submission received in response to a request for tenders

“total cost” means the contract cost for the full term of the contract, and, in the case of a contract containing renewal provisions, the total contract cost for the initial term and all potential renewal terms, excluding the Harmonized Sales Tax, but including all other applicable, fees, charges and disbursements;

“total revenue” means, where revenue is payable to HYI under a contract, the total revenue payable during the full term of the contract and, in the case of a contract containing renewal provisions, the total revenue payable during the initial term and all potential renewal terms.

3. APPLICATION AND RESTRICTIONS

- 3.1 The purchasing procedures set out in this bylaw shall apply to the procurement of all deliverables made by or on behalf of HYI except as may be expressly exempted or restricted under this bylaw.
- 3.2 No procurement shall be made under this bylaw unless the Board has provided funds for such procurement in the budget or otherwise agreed to the provision of such funds and no expenditure shall be authorized or incurred in excess of such funds.
- 3.3 Despite any other provision of this bylaw, the Board may authorize any purchase or method of procurement where to do so would be in the best interests of HYI.
- 3.4 No procurement or purchase shall be arranged or made to avoid the application of this bylaw. Without limiting the generality of the foregoing, no procurement of deliverables 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 bylaw.
- 3.5 No purchases shall be made by HYI directly or indirectly for the personal use of any member of the Board or officer of HYI or employee of the Region.

- 3.6 All procurement undertaken by HYI shall be undertaken in accordance with the Shareholder's Code of Conduct and in accordance with the *Municipal Conflict of Interest Act*.
- 3.7 Where a proposed contract provides for HYI to receive revenue from a contractor, the procedures and authority limits set out in this bylaw which are applicable to the total cost of a contract shall be construed as applicable, with necessary changes, to the total revenue payable under the contract.
- 3.8 The provisions of any domestic or international treaty governing procurement shall prevail to the extent of any conflict with this bylaw.

4. EXEMPTIONS

- 4.1 This bylaw shall not apply to the acquisition of any real property or to any lease, right or permission relating to the use or occupation of real property.
- 4.2 Where 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 bylaw.

4.3 This bylaw shall not apply where the procurement relates to:

- (a) the relocation of non-HYI utilities associated with a HYI contract, including but not limited to: hydro-electrical, gas, cable or telecommunications works;
- (b) the purchase of services where HYI provides subsidies or funding to the service provider or to a recipient under a program approved by the Board;
- (c) the purchase of services that are procured based on a determination by the President that the service provider is eligible to participate in a program approved by the Board based on eligibility criteria for that program, and not through a competitive process, and where multiple contractors may provide the same or similar services;
- (d) the purchase of services for educational or training purposes where the service provider is prescribed by an external agency;
- (e) advertising for HYI services or programs; or
- (f) catering or venues for HYI events and activities.

5. RESPONSIBILITIES AND AUTHORITIES

- 5.1 The President shall have responsibility for the procurement of deliverables in accordance with the terms of this bylaw.

- 5.2 HYI will use the Shareholder's Procurement Office as its agent to facilitate any call for bids. However, the President will make the award.
- 5.3 The Director, Procurement Office shall be responsible for:
- (a) providing procurement advice, in consultation with the Corporate Solicitor, if required, including, but not limited to, preparing calls for bids;
 - (b) administering calls for bids and ensuring compliance with the terms and conditions of the calls for bids;
 - (c) reviewing statements of work and specifications for compliance with the terms of this bylaw, including, but not limited to, the Purposes, Goals and Objectives described in Section 1 of this bylaw;
 - (d) the development of co-operative purchasing arrangements with 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 HYI; and
 - (e) the standardization of all procurement procedures.
 - (f) the preparation of reports to the Board when required under this bylaw.
- 5.4 Where any authority has been granted to any person under this bylaw, such authority may be exercised by that person's authorized designate. The appointment of a designate shall be subject to the approval of the President.
- 5.5 Where any authority has been granted to any officer or employee of the Region under this bylaw, such authority may be exercised by the President.

6. PRE-QUALIFICATION

Request for Expressions of Interest/Request for Information

- 6.1 The Director, Procurement Office may issue a request for expressions of interest or a request for information for the purpose of determining the availability of any deliverable.
- 6.2 A request for expressions of interest or a request for information may be conducted as a pre-condition to any procurement procedure set out in this bylaw.
- 6.3 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 HYI. The Director, Procurement Office is not required to proceed with any further procurement process following a request for expressions of interest or a request for information.

Request for Pre-qualification

- 6.4 The Director, Procurement Office may issue a request for pre-qualification for the purpose of selecting qualified bidders to respond to a call for bids.
- 6.5 Where 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:
- (a) experience of similar work;
 - (b) references provided from other customers for similar work;
 - (c) verification of qualifications, licences and permits, if applicable; and
 - (d) financial capability.
- 6.6 The selection of bidders following a request for pre-qualification shall not create any contractual obligation between HYI and a pre-qualified bidder. The Director, Procurement Office is not required to proceed with any further procurement process following a request for pre-qualification.

7. AUTHORIZATION OF PURCHASES

Purchases not exceeding \$100,000.00

- 7.1 Where the total cost of any deliverable does not exceed one hundred thousand dollars (\$100,000.00), the President may authorize the purchase without issuing a call for bids, provided that in the opinion of the President:
- (a) the compatibility of the deliverable with existing equipment, facilities or service is paramount consideration;
 - (b) there is only one entity reasonably capable of providing the deliverable; or
 - (c) the purchase of the deliverable represents best value, provided that where the cost of any deliverable exceeds fifty thousand dollars (\$50,000.00) but does not exceed one hundred thousand dollars (\$100,000.00), a minimum of three quotations shall be solicited, if available.
- 7.2 Section 7.1 (c) does not preclude the issuance of a call for bids if, in the opinion of the President, it is necessary to issue a call for bids to determine best value.

Purchases exceeding \$100,000.00

- 7.3 Where the total cost of any deliverable exceeds one hundred thousand dollars (\$100,000.00), either a request for tenders or a request for proposals shall be issued.
- 7.4 A request for tenders or a request for proposals shall be undertaken in compliance with the following process:
- (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 prior to the call for bids and 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;
 - (e) bids shall be publicly opened on the date and at the time specified in the call for bids;
 - (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) the evaluation record shall be stored and shall only be destroyed in accordance with the Regional records retention bylaw; and
 - (j) any informality or irregularity shall be referred to the Bid Review Committee in accordance with Section 17 of this bylaw.

Request for Tenders

- 7.5 A request for tenders shall be issued 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.

- 7.6 The General Manager may award the contract provided that: (i) the total cost of the contract does not exceed five hundred thousand dollars (\$500,000.00); and (ii) the award is made to the bidder submitting the lowest cost responsive bid.
- 7.7 The President may award the contract provided that: (i) the total cost of the contract does not exceed one million dollars (\$1,000,000.00); and (ii) the award is made to the bidder submitting the lowest cost responsive bid.
- 7.8 If the total cost of the contract exceeds one million dollars (\$1,000,000.00), the award of the contract shall be subject to the approval of the Board.
- 7.9 A report shall be submitted quarterly to the Board to advise of the award of any contract under Section 7.6 or 7.7 of this bylaw.

Request for Proposals

- 7.10 A request for proposals shall be issued where the deliverables are not clearly specified and it is anticipated that bidders may propose a variety of alternatives to fulfill HYI's requirements.
- 7.11 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.
- 7.12 The General Manager may award the contract provided that the total cost of the contract does not exceed five hundred thousand dollars (\$500,000.00).
- 7.13 The President may award the contract provided that the total cost of the contract does not exceed one million dollars (\$1,000,000.00).
- 7.14 If the total cost of the contract exceeds one million dollars (\$1,000,000.00), the award of the contract shall be subject to the approval of the Board.
- 7.15 A report shall be submitted quarterly to the Board to advise of the award of any contract under Section 7.12 or 7.13 of this bylaw.

Authority of President during summer recess or suspension of Board or Shareholder meetings

- 7.16 Despite any other provision of this bylaw, during any period that regular Board or Shareholder meetings are suspended either during a summer recess or for any other reason, or during the period that the acts of the Shareholder are restricted under Section 275 of the *Municipal Act, 2001*, the President shall be authorized to award any contract.
- 7.17 A report shall be submitted to the Board as soon as reasonably possible setting out the details of any contract awarded under Section 7.16 of this bylaw.

8. PRICE AGREEMENTS

- 8.1 A call for bids may be issued in accordance with this bylaw in order to establish price agreements for the purchase of deliverables for a specified time.
- 8.2 HYI shall have no obligation to any contractor to order any deliverable under a price agreement, unless otherwise agreed upon, in writing, pursuant to a contract between HYI and the contractor.

9. EMERGENCY PURCHASES

- 9.1 In the case of an emergency, the purchase of deliverables may be authorized without issuing a call for bids.
- 9.2 The Director, Procurement Office shall endeavor to obtain the best value for any deliverables purchased during an emergency, using as fair and transparent a process as is feasible having regard to the particular emergency.
- 9.3 The President may authorize any purchase in the case of an emergency.
- 9.4 As soon as practicable upon the conclusion of the emergency, the President shall submit a report to the Board describing any expenditures made under Section 9.3 of this bylaw.

10. DIRECT PURCHASES

- 10.1 Despite Section 7.3 of this bylaw, where the total cost of any deliverable exceeds one hundred thousand dollars (\$100,000.00) the deliverable may be procured without issuing a call for bids provided that, in the opinion of the President:
 - (a) the compatibility of a purchase with existing equipment, facilities or service is the paramount consideration;
 - (b) there is only one entity reasonably capable of providing the deliverable;
- 10.2 The award of any contract under Section 10.1 (a) or 10.1 (b) of this bylaw shall be subject to Board approval.

11. CONTINGENCIES

- 11.1 Where any purchase of deliverables has been authorized under this bylaw, the President 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 fifteen percent (15%) 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.

11.2 The President may authorize any expenditure under Section 11.1 of this bylaw, irrespective of the amount of the expenditure.

12. SCOPE CHANGE/ADDITIONAL DELIVERABLES

12.1 Where deliverables have been purchased under this bylaw, no similar or additional deliverables shall be purchased from the same contractor, whether by way of contract extension, renewal, or separate purchase, unless specifically permitted under this bylaw.

12.2 The President may authorize the purchase of additional deliverables under a contract, provided that the President is satisfied that a scope change necessitates the purchase of additional deliverables and:

- (a) the total cost of the additional deliverables does not exceed twenty percent (20%) of the total cost of the contract at the time of award; or
- (b) 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 President, to the satisfaction of the Chief Financial Officer,

failing which the purchase of the additional deliverables shall be subject to Board approval.

12.3 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 Board approval.

12.4 Any expenditure authorized under Section 12.2 of this bylaw may be made in addition to any expenditure for any contingency authorized under Section 11 of this bylaw and may be authorized by the President irrespective of the amount of the expenditure.

12.5 Despite Section 12.2 (a) of this bylaw, the Chair and the President may jointly authorize the purchase of additional deliverables, irrespective of the total amount of the expenditure, provided that:

- (a) the authorization to purchase the additional deliverables is required to prevent interruption in service delay or to avoid incurring extra costs; and
- (b) a request is submitted to the Chair and the President on a form prescribed by the Chief Financial Officer.

12.6 A report shall be submitted quarterly to the Board to advise of any expenditures made under Section 12.5 of this bylaw.

13. RENEWAL OF CONTRACTS

- 13.1 Where a contract provides for a renewal term, the President may exercise the option to renew, provided that:
- (a) the total cost of the contract, including the renewal term, is within the purchasing authority of the President, as the case may be, as set out in this bylaw;
 - (b) the contract was awarded in accordance with the procedure applicable to the total cost, including any renewal term; and
 - (c) the contractor has performed the contract to the satisfaction of the President, as the case may be.

14. CO-OPERATIVE PURCHASING

- 14.1 HYI may participate with the Shareholder, other levels of government, municipalities, agencies or public authorities in co-operative purchasing where the President determines it is in the best interests of HYI to do so, either by including other entities in a call for bids issued by HYI or by requesting that HYI be included in a call for bids issued by another entity.
- 14.2 Where another level of government, municipality, agency or public authority has completed a competitive procurement and offers to extend to HYI the same terms and pricing offered by the successful bidder, HYI may enter a contract with the successful bidder without issuing a further call for bids, whether or not HYI was named in the call for bids.
- 14.3 Where HYI participates in co-operative purchasing where the call for bids is issued by another entity, HYI shall adhere to the policies of the entity issuing the co-operative call for bids.
- 14.4 Any contract proposed to be entered by HYI where the call for bids was issued by another entity shall be authorized in accordance with the authority limits set out in Section 7 of this bylaw.

15. UNSOLICITED PROPOSALS

- 15.1 Where an unsolicited proposal is received by HYI, the President may determine if the proposal shall be evaluated in accordance with Section 10 of this bylaw.
- 15.2 If the President determines that the unsolicited proposal should be considered a direct purchase, the award may be made in accordance with Section 10 of this bylaw.

16. CONTRACTOR PERFORMANCE AND LITIGATION

- 16.1 Unless otherwise permitted by this bylaw, no bid shall be accepted from, nor shall any contract be awarded to or an extension of contract be granted to any contractor or related party, as

determined in the discretion of the Corporate Solicitor, or any other party with whom HYI or the Shareholder is engaged in unresolved litigation.

16.2 A bid may be accepted from and a contract may be awarded to or the extension of a contract granted to a contractor or other party with whom HYI or the Shareholder is engaged in unresolved litigation in the following circumstances:

- (a) where there is only one qualified contractor and the President has approved the award;
- (b) in the case of an emergency;
- (c) where there is a legal obligation on the part of HYI to enter into the contract;
- (d) where the proposed contract is pursuant to the co-operative purchasing provisions of this bylaw or where another public agency will be party to the contract and has approved the award;
- (e) where HYI or the Shareholder has been named as plaintiff or as a defendant pursuant to the exercise of the third party subrogated rights and where an agreement or arrangement has been entered into which indemnifies or otherwise adequately protects HYI's or the Shareholder's interests while resolution is pursued, as may be determined in the sole discretion of the Corporate Solicitor;
- (f) where HYI or the Shareholder and any party adverse in interest have agreed to refer the litigation to alternative dispute resolution in a form or format approved by the Corporate Solicitor or where an agreement or arrangement has been entered into which indemnifies or otherwise adequately protects HYI's or the Shareholder's interests while resolution is pursued, as may be determined in the sole discretion of the Corporate Solicitor;
- (g) where HYI or the Shareholder has been named in an action by a sub-contractor pursuant to the Construction Lien Act, or any successor legislation, and HYI or the Shareholder's general contractor has bonded off or otherwise disposed of the construction lien or protected HYI's or the Shareholder's interests in accordance with the general contractor's contract with HYI or the Shareholder;
- (h) in any such instance referred to in Section 16.2 (g), where a general contractor fails to dispose of the construction lien pursuant to its contractual obligations, the general contractor shall be prohibited from bidding in accordance with Section 16.1 until such time as the general contractor has complied with its contractual obligations; or
- (i) where the contractor or related party is exercising rights pursuant to the *Expropriations Act*.

- 16.3 Where the amount in dispute in any unresolved litigation does not exceed one hundred thousand dollars (\$100,000.00), the President may accept the bid or award the contract, or approve the extension of the contract, provided that he or she is satisfied that it would be in the best interests of HYI, based on the consideration of factors including but not limited to the following:
- (a) the bidder's performance under previous contracts with HYI or the Shareholder; or
 - (b) HYI's or the Shareholder's claims history with the bidder; or
 - (c) an assessment of the overall risk and total cost to HYI in entering into a contract with the bidder.
- 16.4 The President shall be responsible for monitoring the performance of contractors and documenting evidence of such performance and shall advise the Director, Procurement Office in writing where the performance of a contractor has failed to comply with the terms of the contract or other HYI requirements.
- 16.5 The Director, Procurement Office may recommend, and upon such recommendation, the President may prohibit a contractor from submitting a bid in response to a call for bids where the President is satisfied that the contractor has demonstrated unsatisfactory performance under a contract with HYI.
- 16.6 For the purpose of this Section 16, unsatisfactory performance means past performance by a contractor under a contract with HYI or the Shareholder that is inconsistent with the expected standard of service delivery applicable in a commercial context, including, but not limited to any of the following:
- (a) consistent or significant failure to adhere to specified schedules or delivery requirements;
 - (b) consistent or significant failure to follow specified contract requirements or authorized directions;
 - (c) consistent or significant failure to perform the contract in accordance with generally accepted standards of good workmanship;
 - (d) consistent or significant failure to adhere to legislative requirements, including but not limited to applicable statutes, regulations and bylaws; or
 - (e) dishonesty or criminal actions in relation to or within the scope of a HYI contract.
- 16.7 A report shall be submitted to the Board by the Corporate Solicitor annually to advise of the disposition of any matter under this Section 16.

17. BID REVIEW COMMITTEE

- 17.1 The Director, Procurement Office shall establish a Bid Review Committee composed of, at a minimum, the following members of Regional staff:
- (a) a representative from the Procurement Office;
 - (b) a representative of HYI requesting the procurement of the deliverables; and
 - (c) a solicitor from Legal Services.
- 17.2 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 Bid Review Committee to determine whether the bid complies with the submission requirements set out in the call for bids or to determine the validity of the challenge.
- 17.3 If the Bid Review Committee does not agree unanimously that the bid shall be accepted or rejected, the Chief Financial Officer shall submit a report to the Board setting out the nature of the informality, irregularity or challenge and the proposed action to be taken.

18. REQUIREMENT FOR BOARD APPROVAL

- 18.1 A report shall be submitted to the Board 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 tenders has been issued under this bylaw and the award is not proposed to be made to the bidder submitting the lowest cost responsive bid or where there is an informality, irregularity or challenge that cannot be resolved by the Bid Review Committee;
 - (c) where a request for proposals has been issued under this bylaw and the total cost of the contract exceeds one million dollars (\$1,000,000.00);
 - (d) where a request for tenders has been issued under this bylaw and the total cost of the contract exceeds one million dollars (\$1,000,000);
 - (e) where the purchase is prescribed by statute to be made by the Board; where a request for proposals has been issued under this bylaw and it is not recommended that the award be made to the bidder submitting the highest scoring bid at the lowest total cost, or, if applicable, the lowest dollar cost per technical point;

- (f) where the purchase of any deliverable is not authorized by this bylaw; and
- (g) where otherwise specifically provided in this bylaw.

19. CONTRACT DOCUMENTS

- 19.1 Where the purchase of deliverables has been authorized under this bylaw, the contract may be executed by the person who authorized the award, and shall be in a form approved by the Corporate Solicitor.

20. BYLAW REVIEW

- 20.1 This bylaw shall be reviewed and evaluated for effectiveness at least every three (3) years from the date of its enactment.

21. REPEAL

- 21.1 Bylaw No. 6-14 is hereby repealed.

The undersigned, pursuant to a Shareholder's Direction dated June 26, 2014 and being the sole shareholder of the Corporation entitled to vote in respect of the foregoing bylaw, by its signature below resolves pursuant to Section 104(1)(a) and (b) of the *Business Corporations Act* (Ontario) that the foregoing bylaw shall be and is hereby made a bylaw of the Corporation.

Dated:

THE REGIONAL MUNICIPALITY OF YORK

Wayne Emmerson

Regional Chair & CEO

Comparison of Delegated Authorities

	York Region	Housing York Inc.		York Regional Police
	Current	Current	Proposed	Current
Council/Board	<i>Council</i>	<i>Board</i>	<i>Board</i>	<i>Board</i>
	Tender N/A	Tender > \$500,000	Tender > \$1.0 million	Tender N/A
	RFP > \$2.0 million	RFP > \$500,000	RFP > \$ 1.0 million	RFP > \$2.0 million
Highest Administrative Authority	<i>CAO</i>	<i>President</i>	<i>President</i>	<i>Chief</i>
	Tender Unlimited	Tender up to \$500,000	Tender up to \$1.0 million	Tender – Unlimited
	RFP – up to \$2 million	RFP up to \$500,000	RFP up to \$1.0 million	RFP up to \$2.0 million
Secondary Administrative Authority	<i>Commissioner</i>	<i>None</i>	<i>General Manager</i>	<i>Deputy Chief</i>
	Tender up to \$500,000		Tender up to \$500,000	Tender up to \$500,000
	RFP up to \$500,000		RFP up to \$500,000	RFP up to 500,000

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