

Clause No. 23 in Report No. 13 of the Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on September 11, 2014.

23
ENACTMENT OF NEW HOUSING YORK INC.
PURCHASING BYLAW

Committee of the Whole recommends adoption of the recommendations contained in the following report dated August 13, 2014 from the Commissioner of Community and Health Services:

1. RECOMMENDATIONS

It is recommended that:

1. Council, in its capacity as the Sole Shareholder of Housing York Inc., enact a new Purchasing Bylaw for Housing York Inc. (see *Attachment 1*).
2. The Regional Chairman and Chief Executive Officer be authorized to execute the new Purchasing Bylaw on behalf of the Shareholder.

2. PURPOSE

This report recommends that new Purchasing Bylaw 6-14 for Housing York Inc. be enacted by The Regional Municipality of York in its capacity as the sole shareholder of Housing York Inc. (Housing York). The new Purchasing Bylaw will ensure consistency with the provisions of the Region's Purchasing Bylaw enacted by Council on June 26, 2014, incorporate amendments that reflect Housing York's operational experience and address additional administrative issues.

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 shareholder approval.

3. BACKGROUND

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

Housing York's existing Purchasing Bylaw 3-10 was adopted by the Board in September 2010. The purchasing bylaws 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 five years to evaluate its effectiveness.

Most goods and services purchased by Housing York are competitively procured either through a 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 "tender" or Request for Proposal (RFP) process.

The Regional Municipality of York has enacted a new Purchasing Bylaw

On June 26, 2014, Council enacted Bylaw 2014-53, a new Regional Purchasing Bylaw. The new bylaw incorporates a number of improvements such as updated expenditure limits, updated authorities to approve extensions to existing contracts, and clarification around the appropriate use of single and sole source procurements. The Region's new Purchasing Bylaw also incorporates amendments to strengthen and improve the wording of the bylaw and to enhance its clarity and ease of understanding.

The new Housing York Purchasing Bylaw incorporates these improvements and mirrors the provisions of the Region's new bylaw.

4. ANALYSIS AND OPTIONS

The substantive changes proposed by staff to be incorporated in the new Housing York Purchasing Bylaw are set out in Table 1 below.

Table 1
 Summary of Major Changes

Bylaw 3-10, 2010	New Bylaw 6-14, 2014
<ul style="list-style-type: none"> Schedule A – List of transactions and commodities exempt from the formal purchasing requirements of the Purchasing Bylaw (e.g. utility bills, payroll deductions, multi-year software applications). 	<ul style="list-style-type: none"> Various sections in the new bylaw are amended to include provisions for transactions and commodities formerly covered by Schedule A. As a result Schedule A is deemed redundant and therefore eliminated.
<ul style="list-style-type: none"> No formal process to award contracts which represent a revenue opportunity for Housing York. 	<ul style="list-style-type: none"> Section 3.9 requires that revenue generating contracts be awarded, subject to the procedures and authority limits set out in the bylaw.
<ul style="list-style-type: none"> Sole source and single source provisions for purchasing of goods and services where the compatibility with existing equipment, facility or services is the paramount consideration, or there is only one entity capable of providing the goods and services. 	<ul style="list-style-type: none"> Single source and sole source provisions consolidated to create a Direct Purchase provision.
<ul style="list-style-type: none"> Bylaw provides framework for monitoring and prohibiting contractors who have performed poorly from securing new contracts. 	<ul style="list-style-type: none"> Amended provisions transfer the responsibility to monitor contractor’s performance to the President and improve the framework for the implementation of a performance management strategy.
<ul style="list-style-type: none"> The preamble to the Purchasing Bylaw states the purpose and objective of the bylaw. 	<ul style="list-style-type: none"> The preamble to the Purchasing Bylaw is expanded to reference the environmentally sustainable procurement and the requirements of the <i>Accessibility for Ontarians with Disabilities Act</i>.

The authority for the President to award contracts as the result of RFPs will be maintained at \$500,000

Under the current Purchasing Bylaw, the General Manager is authorized to award contracts as a result of an RFP process to a maximum of \$500,000. The Board may award contracts exceeding \$500,000. Although this limit is lower than the \$2,000,000 authority limit held by the Chief Administrative Officer, staff propose that the signing authority be maintained at \$500,000 given that Housing York’s purchases are generally much lower in value than the Region’s. Maintaining the lower authority levels rather than changing them to align with the Region’s will ensure that the Board is involved with strategic and high value purchases. Staff propose to change the General Manager title to President to align with the recently approved Housing York governance changes.

Staff be authorized to approve contract extensions and renewals provided the total cost is within their delegated authority

The provisions of the Purchasing Bylaw authorizing the award of contracts by staff do not permit any discretion to extend or renew a contract unless specific authority has been obtained from the Board. The bylaw also imposes a limit of a five-year term on contracts and agreements unless otherwise approved by the Board. In the absence of authority to renew or extend the initial term of contracts up to five years, all extensions and renewals of contracts must be reported to the Board for approval regardless of the contract value.

Accordingly, an additional provision is recommended authorizing the President to extend or renew contracts provided the total cost of the contract inclusive of the extension or renewal is within approval authority, the contractor has performed satisfactorily, and the total contract term will not exceed five years. This practice would be consistent with the intent of delegated authority in the Purchasing Bylaw and will contribute to streamlining contract administration.

The existing exemptions to the Purchasing Bylaw be revised to reflect current practices and to promote greater consistency

The existing Purchasing Bylaw provides for an exemption from the formal purchasing requirements for certain transactions and commodities. These exemptions are set out in Schedule A to the existing Purchasing Bylaw. Many of these items are administrative expenses that originated when the bylaw provided for payment of accounts e.g. utility bills, payroll deductions. These are now redundant and should be eliminated.

Certain business practices that were previously exempted from a competitive process would be subject to Board approval through specific reports

The exemptions in the existing Purchasing Bylaw also include certain arrangements which were originally exempted from a competitive process primarily because they did not readily fit a conventional procurement process. An example of such services includes maintenance agreements for proprietary software. To increase transparency, it is recommended that individual reports be submitted to the Board to set out the rationale for the business practice if staff seeks to exempt the service from a competitive process.

Include a formal RFP process to award contracts which represent a business opportunity to contractors that might generate revenue for Housing York

Agreements which represent a business and/or revenue opportunity to the service provider but which do not require the expenditure of Housing York funds are not clearly addressed in the existing bylaw. An example is Housing York's contract for the supply of laundry services, which generates income to Housing York. Although the current practice is to award these types of contracts pursuant to RFPs, it is proposed that the new Purchasing Bylaw formally require an RFP process to identify best value.

The provisions permitting "sole source" and "single source" purchases be consolidated to create a Direct Purchase provision

The terms "sole" and "single" source are consistent with conventional terminology used among procurement professionals; however, at times there is confusion in administering these provisions as the terms are often used interchangeably. It is proposed that the new Purchasing Bylaw consolidate these two concepts which would allow for purchases to be made without a competitive process if certain criteria are met. These criteria-based exceptions will be termed "Direct Purchases". This exception would be used when the compatibility with existing equipment, facilities or services is the paramount consideration or where there is only one legal entity capable of providing the goods or services. The existing requirement to obtain Board approval for Direct Purchases over \$100,000 will be retained in the new Purchasing Bylaw.

Include provisions in the new Purchasing Bylaw to provide a framework for prohibiting contractors who have performed poorly on Housing York contracts from securing new contracts

A continuing concern for staff in administering contracts is the lack of remedies available to deal with poor performance by contractors. The existing Purchasing Bylaw requires that senior staff be responsible for monitoring contractor performance. Unsatisfactory contractor performance may result in the contractor being prohibited from bidding on future Housing York contracts.

Staff recommend that the contractor performance provisions be significantly expanded in the new Purchasing Bylaw. Under the new Purchasing Bylaw a contractor could be banned, upon a recommendation of the Region's Director of Supplies and Services approved by the President, from bidding on future Housing York contracts if any of the following circumstances apply:

- Consistent or significant failure to adhere to project schedules or to follow contract requirements
- Consistent or significant failure to perform the contract in accordance with generally accepted standards of workmanship
- Failure to comply with legislative requirements
- Dishonesty or criminal actions in relation to or within the scope of a Housing York contract

These new provisions will provide a sound and objective framework for the implementation of a performance management strategy and will establish clear and defensible criteria against which performance may be evaluated. The right to ban contractors would be incorporated in Housing York's standard procurement documents. A training strategy would be put into place to ensure staff has the capacity and support to recommend and implement any proposed bans.

New preamble proposed to support Housing York strategic goals

The preamble to the existing Purchasing Bylaw states the purpose and objective of the Purchasing Bylaw. These are to:

- Encourage competition among contractors
- Obtain the highest quality goods, services or construction at the least possible cost
- Ensure fairness, objectivity, accountability and transparency in the procurement process

It is recommended that the preamble to the new Purchasing Bylaw be expanded to reference two additional strategic objectives: environmentally sustainable procurement and the requirements of the *Accessibility for Ontarians with Disabilities Act (AODA)*. Environmentally sustainable procurement will be undertaken provided the requirements to obtain best value and promote competition are also met. Many requirements under AODA are currently mandated by legislation and the incorporation of a specific reference to the AODA in the new Purchasing Bylaw would be an acknowledgment of this and also signal that enhancements may be proposed by bidders where appropriate.

Link to key Council-approved plans

The proposal to enact the new Purchasing Bylaw supports the 2012 to 2016 Strategic Plan which provides a commitment to Strengthen Governance and Organizational Capacity, and Manage Finances Proactively by applying continuous improvement activities to core business systems and practices.

5. FINANCIAL IMPLICATIONS

The proposed enhancements incorporated in Housing York's new 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 five years, staff have recommended a number of changes contained in the new Purchasing Bylaw to strengthen, improve and clarify Housing York's purchasing process. The proposed amendments are consistent with best procurement practice, and promote the purposes, goals and objectives of Housing York's existing Purchasing Bylaw.

For more information on this report, please contact Dean Horner, Senior Counsel, Corporate/Commercial & Leasing at Ext. 71408 or Carlene Jackson, Director Program Finance and Chief Financial Officer, Housing York Inc. at Ext. 76064.

The Senior Management Group has reviewed this report.

Attachment (1)

HOUSING YORK INC.

PURCHASING BYLAW

BYLAW NO. 6-14

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BYLAW NO. 6-14
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 proposal;

“**Bid Review Committee**” means the committee established under Section 15 of this bylaw;

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

“**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 of Supplies and Services” means the Director of Supplies and Services 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” ÷ “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*;

“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, or a threat of legal action has been made in writing;

“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” 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 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” means the full extent of the deliverables to be provided by a contractor, as set out in the contract, including the term of the contract;

“scope change” means any change to the scope of a contract to accommodate a need 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 under a contract and includes consulting and professional services;

“Shareholder” means The Regional Municipality of York;

“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; and

3. APPLICATION, RESTRICTIONS AND EXCEPTIONS

- 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 personal purchases shall be made by HYI directly or indirectly for members of the Board or any employee of HYI.
- 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 This bylaw 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.
- 3.8 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 bylaw.
- 3.9 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.

4. RESPONSIBILITIES AND AUTHORITIES

- 4.1 The President shall have responsibility for the procurement of deliverables in accordance with the terms of this bylaw.
- 4.2 HYI will use the Shareholder's Supplies and Services Branch as its agent to facilitate any call for bids. However, the President will make the award.
- 4.3 The Director of Supplies and Services 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;

- (e) the standardization of all procurement procedures;
- (f) the disposal of surplus assets; and
- (g) the preparation of reports to the Board when required under this bylaw.

4.4 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.

4.5 Where any authority has been granted to any officer or employee of HYI under this bylaw, such authority may be exercised by the President.

5. PRE-QUALIFICATION

Request for Expressions of Interest/Request for Information

5.1 The Director of Supplies and Services may issue a request for expressions of interest or a request for information for the purpose of determining the availability of any deliverable.

5.2 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.

5.3 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 of Supplies and Services 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

5.4 The Director of Supplies and Services may issue a request for pre-qualification for the purpose of selecting qualified bidders to respond to a call for bids.

5.5 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:

- (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.

5.6 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 of Supplies and Services is not

required to proceed with any further procurement process following a request for pre-qualification.

6. AUTHORIZATION OF PURCHASES

Purchases not exceeding \$50,000.00

- 6.1 Where the total cost of any deliverable does not exceed fifty thousand dollars (\$50,000.00), the President may authorize the purchase without issuing a call for bids, provided that the President is satisfied that the purchase of the deliverable represents best value.

Purchases not exceeding \$100,000.00

- 6.2 Where the total cost of any deliverable exceeds fifty thousand dollars (\$50,000.00), but does not exceed one hundred thousand dollars (\$100,000.00) a request for quotations shall be issued.
- 6.3 A minimum of three (3) written quotations shall be solicited, if available.
- 6.4 The President 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.

Purchases exceeding \$100,000.00

- 6.5 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.
- 6.6 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 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) 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 15 of this bylaw.

Request for Tenders

- 6.7 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.
- 6.8 The President 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.
- 6.9 A report shall be submitted quarterly to the Board to advise of the award of any contract under Section 6.8 of this bylaw.

Request for Proposals

- 6.10 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.
- 6.11 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.
- 6.12 The President 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 highest scoring bid at the lowest total cost, or, if applicable, the lowest dollar cost per technical point.

- 6.13 If the total cost of the contract exceeds five hundred thousand dollars (\$500,000.00), or if it is recommended that the award of the contract is not 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 the Board.
- 6.14 A report shall be submitted quarterly to the Board to advise of the award of any contract under Section 6.12 or 6.13 of this bylaw.

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

- 6.15 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.
- 6.16 A report shall be submitted to the Board as soon as reasonably possible setting out the details of any contract awarded under this authority.

7. PRICE AGREEMENTS

- 7.1 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.
- 7.2 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.

8. EMERGENCY PURCHASES

- 8.1 In the case of an emergency, the purchase of deliverables may be authorized without issuing a call for bids.
- 8.2 The Director of Supplies and Services 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.
- 8.3 The President may authorize any purchase in the case of an emergency.
- 8.4 As soon as practicable upon the conclusion of the emergency, the President shall submit a report to the Board describing any expenditures made under this authority.

9. DIRECT PURCHASES

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

- (a) the compatibility of a purchase with existing equipment, facilities or service is the paramount consideration;
- (b) in the opinion of the President there is only one entity reasonably capable of providing the deliverables;

9.2 The President may award any contract under Section 9.1 of this bylaw provided that the award of any contract under Section 9.1 (a) or 9.1 (b) having a total cost exceeding one hundred thousand dollars (\$100,000.00) shall be subject to Board approval.

10. CONTINGENCIES

10.1 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.

10.2 The President may authorize any expenditure under Section 10.1 of this bylaw, irrespective of the amount of the expenditure.

11. CHANGE IN SCOPE/ADDITIONAL DELIVERABLES

11.1 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.

11.2 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; 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.

11.3 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.

- 11.4 Any expenditure authorized under Section 11.2 of this bylaw may be made in addition to any expenditure for any contingency authorized under Section 10 of this bylaw and may be authorized by the President irrespective of the amount of the expenditure.
- 11.5 The Chair and the President may jointly authorize the purchase of additional deliverables 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.
- 11.6 A report shall be submitted quarterly to the Board to advise of any expenditures made under this authority.

12. CO-OPERATIVE PURCHASING

- 12.1 HYI may participate with the Shareholder, other government agencies or public authorities, including but not limited to recognized housing provider affiliations such as the Ontario Non Profit Housing Association, and the Social Housing Services Corporation, or private sector entities in co-operative purchasing where the President determines it is in the best interests of HYI to do so.
- 12.2 If HYI participates with another agency in co-operative purchasing, HYI shall adhere to the policies of the agency calling the co-operative bid.
- 12.3 Any contract proposed to be entered into as a result of co-operative purchasing shall be authorized in accordance with the authority limits set out in Section 6 of this bylaw.

13. UNSOLICITED PROPOSALS

- 13.1 Where an unsolicited proposal is received by HYI, the President may determine if the proposal shall be evaluated in accordance with Section 9 of this bylaw.
- 13.2 If the President determines that the unsolicited proposal should be considered a direct purchase, the award may be made in accordance with Section 9 of this bylaw.

14. CONTRACTOR PERFORMANCE AND LITIGATION

- 14.1 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.

- 14.2 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 a subrogated interest and where, in the discretion of the Corporate Solicitor, an appropriate arrangement has been made to indemnify HYI or the Shareholder; or
 - (f) where the matter has been referred to alternative dispute resolution in a form or format approved by the Corporate Solicitor and where an agreement has been entered into which adequately protects the interests of HYI or the Shareholder, as may be determined in the sole discretion of the Corporate Solicitor.
- 14.3 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 in entering into a contract with the bidder.
- 14.4 The President shall be responsible for monitoring the performance of contractors and documenting evidence of such performance and shall advise the Director of Supplies and Services in writing where the performance of a contractor has failed to comply with the terms of the contract or other HYI requirements.
- 14.5 The Director of Supplies and Services 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.

- 14.6 For the purpose of this Section 14, 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:
- (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.
- 14.7 A report shall be submitted to the Board by the Corporate Solicitor annually to advise of the disposition of any matter under this Section 14.

15. BID REVIEW COMMITTEE

- 15.1 The Chief Financial Officer shall establish a Bid Review Committee composed of, at a minimum, the following members of HYI staff:
- (a) the Director of Supplies and Services;
 - (b) a representative of the HYI department requesting the procurement of the deliverables; and
 - (c) the Corporate Solicitor.
- 15.2 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.
- 15.3 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.

16. REQUIREMENT FOR BOARD APPROVAL

- 16.1 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 total cost of the contract exceeds five hundred thousand dollars (\$500,000.00);
 - (c) 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 or irregularity that cannot be resolved by the Bid Review Committee;
 - (d) where a request for proposals has been issued under this bylaw and the total cost of the contract exceeds five hundred thousand dollars (\$500,000.00);
 - (e) 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 deliverables is not authorized by this bylaw; and
 - (g) where otherwise specifically provided in this bylaw.

17. SURPLUS ASSETS

- 17.1 The President shall submit to the Director of Supplies and Services reports of surplus assets, which have exceeded their useful or expected life or which are no longer required by HYI.
- 17.2 The Director of Supplies and Services shall have the authority as agent for HYI to transfer such surplus assets to the Shareholder, or to a local municipality, and shall have the authority to sell or dispose of such surplus assets or to exchange or trade the same for replacement assets.
- 17.3 No Board member, officer or employee of HYI or the Shareholder shall personally obtain any items that have been declared surplus unless through a public process.
- 17.4 Where surplus assets are offered to but not required by the Shareholder or any local municipality, such assets shall be disposed of by means of public auction or advertised for public tender and sold to the bidder submitting the highest priced bid, or, at the discretion of the President, where the estimated value is nominal, donated for a charitable or benevolent purpose.

17.5 A report shall be submitted annually to the Board by the Chief Financial Officer to advise of the sale or disposition of surplus assets under this Section 17.

18. CONTRACT DOCUMENTS

18.1 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.

18.2 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 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.

19. BYLAW REVIEW

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

20. REPEAL

20.1 Bylaw No. 3-10 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 September 11, 2014

THE REGIONAL MUNICIPALITY OF YORK

Bill Fisch

Regional Chairman & CEO

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