



## **Alternative Dispute Resolution - Competitive Bid Protest Protocol**

### **1. Purpose**

The purpose of this protocol is to set out a process for proponents to follow if they wish to make a formal complaint about the Town of Innisfil's competitive bid process.

### **2. Scope of the Competitive Bid Protest Protocol**

The competitive bid protest protocol process provides an opportunity for proponents to voice complaints and to assist the Town in identifying any gaps or shortcomings in its competitive bid policies and practices. The process is intended to help resolve issues that involve no significant factual or interpretive disagreement between the parties. It is not intended to resolve fundamental disputes over facts or legal rights and obligations or to establish a mechanism to adjudicate such disputes.

The process provided for in this protocol is separate and distinct from any dispute resolution processes that may be provided for under applicable trade agreements. If a proponent wishes to dispute a matter or bring a complaint under an applicable trade agreement, the proponent must follow the process set out in the trade agreement, which may differ from the process set out in this protocol.

### **3. Restrictions**

Where the proponent is a bidder that is challenging a competitive bid process, the proponent must request and participate in a debriefing as outlined in the Call for Bid document prior to engaging in the Competitive Bid Protest Protocol process.

The process set out in this protocol shall not be used to challenge a competitive bid process in respect of which the proponent has commenced legal proceedings against the Town.

### **4. Bid Dispute Review Committee**

The Town will establish a Bid Dispute Review Committee (the "BDRC") for the purpose of making determinations under this protocol. The BDRC will consist of the Supervisor of Purchasing, Town's legal counsel, Manager of the respective department and the Chief Administrative Officer (CAO).

### **5. Competitive Bid Protest Protocol Process**

5.1 A proponent that wishes to make a formal complaint about a competitive bid process must submit a request for review in writing within thirty (30) days from notification of the outcome of the competitive bid process. Requests for review will not be addressed under this protocol until after the Town has publicly posted or otherwise provided formal notification of the outcome of the competitive bid process. The proponent's request for review will not result in the rescission of an awarded contract or delay the progress of any project, unless recommended by the BDRC.



5.2 A request for review of a competitive bid process must be directed to the Town's Supervisor of Purchasing or designate identified in the solicitation document for the associated process, and must contain the following:

- A clear statement as to which competitive bid process the proponent wishes to have reviewed;
- A clear and detailed explanation of the proponent's concerns with the process, including specifics as to why it disagrees with the process or its outcome;
- Any accompanying documentation relevant to the proponent's concerns; and
- The proponent's contact details, including name, telephone number and email address.

5.3 Within five (5) business days from receiving the proponent's request for review, the Town will send an initial response to acknowledge receipt and indicate the date by which it will provide the proponent with a formal response. The Town will endeavor to make a determination and provide a formal response within twenty (20) business days from receipt of the proponent's request for review, or as soon as it is able.

5.4 The Town staff involved in the competitive bid process will conduct an initial review of the proponent's request for review in order to compile any and all background information and documentation relevant to the competitive bid process and the proponent's concerns. The proponent's request for review and the compiled background information and documents will then be submitted to the BDRC.

5.5 The BDRC will convene a meeting to review and consider the proponent's request for review and all internally compiled background information and documents. The BDRC may seek any additional information it requires and may consult with other Town officers or employees, legal counsel or other advisors, as necessary.

5.6 Upon completion of its review, the BDRC will make a determination and issue a response to the proponent as follows:

- (a) If the BDRC finds that the proponent's rationale for requesting a review of the competitive bid process does not have merit, then it will issue a response to the proponent indicating that the BDRC has reviewed its concerns and provide reasons for its determination; or
- (b) If the BDRC finds that the proponent's concerns in respect of the competitive bid process have merit, then it will further determine the appropriate resolution to the matter. In making its determination, the BDRC may consider any factors it considers relevant, including but not limited to:
  - whether the proponent participated in the competitive bid process or was prevented from doing so;
  - the seriousness of any deficiency found in the competitive bid process;



- the degree to which the complainant was prejudiced by any deficiency in the competitive bid process; and
- whether the parties acted in good faith.

5.7 In addition to its determination with respect to the particular competitive bid process at issue, the BDRC may indicate in its response any changes that will be made to the Town's Purchasing By-Law, policies and/or practices to help prevent similar issues arising in future competitive bid processes. Any such response would be provided to the proponent on a "without prejudice" basis.

5.8 The determination of the BDRC is the final determination under the Competitive Bid Protest Protocol process. If the proponent is not satisfied with the response of the BDRC, the proponent may consider its other options, including challenges under applicable trade agreements and/or governing laws.