

## Supplier Suspension Protocol

### 1. Purpose and Interpretation

The purpose of this protocol is to set out the process for suspending suppliers from participation in the City's procurement processes. Defined terms used in this protocol have the meaning assigned in the Glossary of Terms in Schedule A of the City's Procurement Procedures.

### 2. Application

In order to ensure that the City is receiving quality deliverables and value for public money, and is dealing with suppliers that conduct business in a professional and ethical manner, the City may suspend suppliers from participating in its procurement processes for prescribed time periods.

A decision to suspend a supplier must be made in accordance with this protocol, must be supported by evidence and must be based on the reasons and factors set out below.

Suppliers are responsible for any employees, representatives, agents or subcontractors that are acting on their behalf and all references to the actions or conduct of the supplier under this protocol include the actions of any individual or entity acting on behalf of the supplier.

### 3. Reasons for Suspension

#### 3.1 Crimes or Offences

If a supplier is convicted of serious crimes or other serious offences, including (without limitation) bid-rigging, price-fixing or collusion, fraud or other statutory offenses, the City will suspend that supplier from participating in future procurement processes.

#### 3.2 False Declarations

If a supplier includes false or misleading information in its bids the City may suspend that supplier from participating in future procurement processes.

If a supplier fails to disclose a conflict of interest in connection with a procurement process or during the performance of a contract with the City, and the City subsequently discovers that such a conflict of interest exists, the City may suspend that supplier from participating in future procurement processes.

The following non-exclusive factors should weigh in favour of suspension:

- The supplier knowingly made misrepresentations or failed to disclose a conflict of interest.
- The misrepresentation or undisclosed conflict of interest resulted in the supplier having an unfair advantage or otherwise compromised the integrity of the City's procurement process.

### **3.3 Poor Performance**

If a supplier performs inadequately under a contract with the City, the City may consider suspending that supplier in any of the following circumstances:

- (a) The deficiencies in performance were significant or persistent.
- (b) The contract was terminated for performance issues prior to expiry.
- (c) There were unrectified performance issues on a contract that resulted in extra costs to the City.
- (d) The deliverables provided were defective or deficient, and either were not replaced or repaired, or required multiple repairs.
- (e) The City brought a litigation proceeding against the supplier in connection with performance or non-performance of the supplier's contractual obligations.
- (f) The suspension of the supplier has been recommended in accordance with the City's Supplier Performance Evaluation Protocol.

### **3.4 Professional Misconduct or Lack of Commercial Integrity**

City may suspend a supplier for professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier. Such conduct includes, but is not limited to:

- (a) unethical bidding practices, such as inappropriate offers of gifts to the City's officials, officers, employees or agents and inappropriate in-process lobbying or prohibited communications during a procurement process;
- (b) failing to perform contracts in a professional and competent manner in accordance with the duty of honest performance and all applicable laws, including safety and labour codes; and
- (c) engaging in litigious conduct or bringing frivolous or vexatious claims in connection with the City's procurement processes or contracts, including but not limited to, unreasonable cost or expense claims or unsubstantiated allegations impugning the integrity of the purchasing institution or its staff in relation to a procurement process.

## **4. Process for Suspension**

### **4.1 Suspension Recommendation Report**

Any decision to suspend a supplier must be supported by a written Suspension Recommendation Report that contains all details connected with the analysis of factors set out above.



#### **4.2 Length and Scope Suspension**

The Suspension Recommendation Report must include the recommended length and scope of the suspension.

The length of the suspension period should be proportional to the reasons for the suspension and, in most cases, should not exceed a maximum of five (5) years. In the most serious of cases involving convictions criminal or quasi-criminal offences, a suspension period of up to ten (10) years may be considered.

The scope of the suspension can be either a blanket suspension for all procurement processes or a suspension limited to procurement processes for specific deliverables.

The scope of the suspension can apply to both corporate entities as well as individuals.

#### **4.3 Supplier Notification and Opportunity to Respond**

The Manager of Procurement will notify the supplier of the decision to recommend suspension and will provide the supplier with a copy of the Suspension Recommendation Report setting out the reasons for the suspension. The notice will advise the supplier of its opportunity to respond to the recommendation for suspension by sending written submissions to the Manager of Procurement within 10 business days of the date of the notice.

#### **4.4 Decision of Procurement Review Committee**

All decisions to suspend a supplier must be approved by the City's Procurement Review Committee ("PRC"). The PRC is established in accordance with the City's Procurement Procedures.

In making its decision, the PRC will consider the Suspension Recommendation Report and any response submitted by the supplier.

The PRC may seek any additional information it requires and may consult with other staff, legal counsel or other advisors, as necessary

#### **4.5 Notice of Decision**

The supplier must be notified, in writing, of the final suspension decision made by the PRC.

If the recommendation for suspension is approved, the notification letter must contain:

- (a) the length of the suspension period and the scope of the suspension;
- (b) full details as to the reasons for the suspension, including copies of any documents or correspondence to support such a suspension; and



- (c) notice of the supplier's right to apply for reinstatement within the prescribed time period and the process for requesting such a reinstatement.

## **5. Application for Reinstatement**

A suspended supplier may apply for reinstatement upon the completion of half of the original suspension period. For example, if the original suspension period was two years, the supplier may apply for reinstatement after one year.

In order to apply for reinstatement, the supplier must submit a written case for reinstatement, including supporting documentation if necessary, that provides reasons why the original reason for the suspension would no longer prove a risk for the City.

- (a) Applications for reinstatement are to be reviewed by the PRC. If the PRC determines that allowing the supplier the opportunity to participate in the City's procurement processes would no longer expose the City to risk, then the application for reinstatement may be approved.
- (b) The supplier must be notified, in writing, of the final reinstatement decision made by the PRC.

## **6. Suspended Suppliers List**

The Procurement Section must maintain an up-to-date and current list of all suspended suppliers. Any supplier that is owned or controlled by the same individual(s) that owned or controlled a suspended supplier at the time it was suspended is also considered suspended.

The list should contain, at a minimum:

- (a) the full name of the supplier or individual, where an individual is suspended;
- (b) the names of the directors and officers of the supplier, if applicable;
- (c) the reasons for the suspension;
- (d) the file number where the Suspension Recommendation Report is filed;
- (e) the scope of the suspension (i.e. blanket suspension or specific deliverables); and
- (f) the length of the suspension period and the date of the expiry of the suspension period.

For any competitive procurement process, the Procurement Section will be reviewing the suspended suppliers list to ensure that bids are not accepted from suspended suppliers.