



## STAFF REPORT ACTION REQUIRED

### Contractor Performance Evaluation Procedure

<b>Date:</b>	October 3, 2013
<b>To:</b>	Public Works and Infrastructure Committee
<b>From:</b>	Director, Purchasing and Materials Management General Manager, Toronto Water
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2013\Internal Services\pmmd\pw13009pmmd (AFS 17901)

#### SUMMARY

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This report provides information regarding the implementation of the Contractor Performance Evaluation ("CPE") Procedure on all City construction projects. As part of the CPE Procedure, the CPE Form is designed to summarize a contractor's performance by the City's project manager, to encourage the contractor to improve its performance. The CPE Form also serves as documentation to support the suspension of a contractor from bidding on future projects for a period of time where the City is dissatisfied with the work undertaken by the contractor. The CPE Form will be included in all construction call documents commencing October 1, 2013. The CPE Form may be modified from time to time in consultation with other Divisions, and approved by the Director of Purchasing and Materials Management Division ("PMMD").

PMMD will work with City Divisions to create other evaluation forms and procedures for other types of goods and services procured.

In addition, this report addresses AU11.9, Toronto Water – Review of Construction Contracts recommendation 12, adopted by Council at its July 2013 Council meeting:

*City Council request the General Manager, Toronto Water, in consultation with the Deputy City Manager, to consider including the frequency of reviews, time of final evaluation, opportunities for feedback and required action as part of his current review of contractor performance management practices.*

## **RECOMMENDATIONS**

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The Director, Purchasing and Materials Management, and the General Manager, Toronto Water recommend that:

1. Public Works and Infrastructure Committee receive this report for information.

### **Financial Impact**

The recommendation in this report has no financial impact.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

### **DECISION HISTORY**

At its meeting held on September 25, 26 and 27, 2006, City Council adopted Administration Report 11 Clause 6 entitled "Contractors, Consultants and Supplier Performance Evaluations" which outlined various recommendations with respect to the City's approach to vendor performance evaluation. To view this report on-line follow the link below: <http://www.toronto.ca/legdocs/2006/minutes/council/cc060925.pdf>

At its meeting held on June 11, 12, and 13, 2013, City Council adopted AU11.9, "Review of Construction Contracts", requesting the General Manager, Toronto Water to implement 12 recommendations to strengthen controls, and improve the overall effectiveness of contract management and payment processes and also requesting the Deputy City Manager, Cluster B and the Director, Purchasing and Materials Management to report to the Public Works and Infrastructure Committee on October 21, 2013 on the proposed Contractor Evaluation Procedure and how it is being implemented for Toronto Water and Transportation Services Projects. To view this report on-line follow the link below: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.AU11.9>

### **ISSUE BACKGROUND**

Divisions who oversee construction contracts are responsible for maintaining records on the performance of contractors to ensure they perform in accordance with the terms and conditions of the contract. If a contractor does not do so, evidence of poor past performance can be used to justify not awarding future contracts and/or suspending that contractor from being eligible to bid on future construction calls for a period of time.

In the 2006 report to City Council mentioned above, the need for proper contract management was recognized. The report also identified that consistent evaluations conducted across all Divisions would assist the City in dealing with poor performing contractors.

In the fall of 2009, Toronto Water began the process of developing a contractor performance evaluation form for use on construction projects. Toronto Water met with

other Divisions for input on this centralized form and to attain general support for the new format, in consultation with Legal Services. Over the course of two and a half years, various Divisions were included in meetings for input on the form and feedback from testing it on projects. Toronto Water requested and PMMD agreed to be the liason between Divisions, including further developing, formalizing and implementing the form and procedure, as its success is dependent on City-wide use.

In June 2012, PMMD conducted a kick-off meeting with Division Heads of key divisions in construction and representation from Legal Services. The main purpose of the meeting was to discuss how to further develop the contractor performance evaluation form and ensure that the appropriate procedures were created to apply that form. While it was recognized that a standardized form was needed, Divisions also recognized that it was part of their responsibility to ensure that each contract was properly managed even if a standardized form was not created.

To implement this system, two working groups were created compromised of staff from various City Divisions, PMMD and Legal Services. One working group was tasked with further developing the form and the other working group was tasked to develop the appropriate procedures for contractor performance evaluation.

## **COMMENTS**

### **The CPE Form and Procedures**

The CPE Form (Attachment 1) includes a number of criteria that can be evaluated. The scores reflect the contractor performance and the form may link to documents, but the form is not meant to replace the project file.

The project manager will evaluate performance in five categories:

- A. Safety & Compliance – Laws & Standards
- B. Quality – Compliance with Contract Standards & Specifications
- C. Organization – Work Plan and Management
- D. Execution – Work Performance
- E. Administration – Contractor Performance and Diligence

The working group, following the rational Analytic Hierarchy Process<sup>1</sup>, created a hierarchy of categories and questions that encompassed all essential elements of contractor performance. The working group then conducted pair wise comparisons on the five categories and thirty questions. Each criterion was compared to each other in turn and considered of equal importance, slightly more importance, or much more importance. A unique numerical weight was then derived for each category and each question and the entire process recorded for transparency and review. (Attachment 2 - Contractor Performance Evaluation Pair wise Matrix)

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<sup>1</sup> [http://en.wikipedia.org/wiki/Analytic\\_hierarchy\\_process](http://en.wikipedia.org/wiki/Analytic_hierarchy_process)

Each category has its own set of questions that require ranking as follows:

- 1 – Unsatisfactory
- 2 – Improvement Needed
- 3 – Meets Expectations
- 4 – Exceeds Expectations
- 5 – Exceptional

The discrete numerical weighting for each category and question allows for sub-scores for each category and a final score for the entire slate of questions.

The median score is 3. A score of 2.5 is considered a very modest threshold below which a warning would result. A total or aggregate score below 2 means performance is in the Unsatisfactory range as a whole and is grounds for suspension.

Definitions, developed by the working group, are provided for each question to guide the project manager in selecting an appropriate ranking that will be consistent across all Divisions.

Project managers are responsible for completing the CPE Form in consultation with the site supervisor and/or Contract Administrator. All criteria must be evaluated or marked N/A. Weighting is automatically adjusted for those questions marked N/A.

The project manager must submit completed interim CPE Forms to their manager for approval and completed final CPE Forms to their Director for approval. The approved CPE Forms must be saved by the Division in electronic pdf format with references to all relevant documents. After approval, project managers shall (i) forward an electronic copy of the CPE Forms to PMMD, who will store the score in a database; and (ii) provide the first page of the CPE Form to the contractor immediately in accordance with the contract notice provisions.

The project managers will review the performance of the contract with the contractor at progress review meetings and shall ensure this item is on the agenda. Any concerns or issues raised by the contractor should be recorded by City staff or its Contract Administrator. City staff may amend the CPE Form. If the contractor has further concerns with the evaluation, the contractor may utilize the dispute resolution mechanism in the contract, with necessary modifications.

The number of CPE Forms to be completed by the project manager is dependent on the complexity and duration of the project. Project managers are expected to adhere to the guidelines below when determining the number of CPE's to conduct for interim and final evaluations:

<b>Project Duration</b>	<b>Evaluations</b>
up to 1 month	A final evaluation to be conducted.
1 – 3 months	A final evaluation at the end of the project with the option to conduct an interim evaluation.
3 – 6 months	A final evaluation at the end of the project with the option to conduct one to two interim evaluations.
6 – 12 months	A final evaluation at the end of the project with the option to conduct one to three interim evaluations.
over 12 months	A final evaluation at the end of the project; one mandatory interim evaluation per year, with the option to conduct up to three interim evaluations per year.

### **Suspending Contractors for Poor Performance**

The following action is to be taken after a completed CPE Form is approved:

<b>Score</b>	<b>Action</b>
Interim/Final Score below 2.5 (out of 5)	A warning letter indicating areas of improvement needed and, in rare circumstances, risk of suspension if not corrected
Final Score of 2 or less	May initiate a report to Council recommending suspension for a minimum of one year
Two Interim/Final Scores below 2.5 within 5 years	May initiate a report to Council recommending suspension for a minimum of one year
Two criterion checks (Interim or Final) of Improvement Needed (I) or Unsatisfactory (U) within 5 years for A.1 "Did the contractor comply with the Occupational Health and Safety Act (OHSA) requirements?"	May initiate a report to Council recommending suspension for a minimum of one year.
One criterion check (Final) of Unsatisfactory (U) for A.1. "Did the contractor comply with OHSA requirements?"	May initiate a report to Council recommending suspension for a minimum of one year

Once a contractor has reached or exceeded the poor performing threshold score, the Division will submit all documentation supporting the CPE score to PMMD and Legal Services. If the Division, PMMD and Legal Services agree that the documentation and other evidence is sufficient to support the unsatisfactory score, a joint report will be

prepared for Council approval (through the appropriate standing committee), to suspend the contractor for a period of one or more years from being awarded future contracts. The report will set out the following:

- i. the recommended duration of the suspension;
- ii. the scope of projects included in the suspension, which may include a total suspension all City projects including subcontractor work;
- iii. the reason(s) for suspension;
- iv. that the suspension will not relieve the contractor of performing any existing contracts;
- v. Any legal entity that is related to or has the same operating mind as the contractor may also be prohibited from bidding or from being awarded construction contracts for the duration of the suspension, where PMMD (in consultation with Legal Services) determines that such entity was created or its being used for the purpose of avoiding the City's decision to suspend the contractor; and
- vi. any other matter deemed pertinent to the recommended suspension.

PMMD will notify the contractor of the report, and their right to depute at the appropriate standing committee. If Council approves the suspension PMMD shall issue a formal suspension letter to the contractor, confirming the decision of Council and its effective date. At the end of the suspension period, the contractor will again be eligible to bid on City construction contracts, subject to any conditions City Council may have imposed when initially suspended.

### **Bypassing Low Bidder**

PMMD, in consultation with the Division and Legal Services, may use the CPE Form to supplement a report to Council to bypass the low bidder on a procurement call based on past poor performance.

### **Purchasing and Materials Management**

PMMD shall be responsible for maintaining approved interim and final CPE Forms and scores received from Divisions in a centralized electronic database. This will allow PMMD to monitor the performance status of contractors to ensure suspension thresholds have not been exceeded, ensuring bids from suspended contractors are rejected or not accepted at the tender closing, and expiry dates of suspensions. In addition, PMMD will be assisting the Divisions in collaboration with Legal Services to prepare written notifications and store electronic records of all correspondence sent to the poor performing contractor(s) such as warning letters. Furthermore, upon request from the contractor, PMMD will be able to provide their status.

### **Training**

Project managers from all Divisions who oversee construction projects were identified to be trained on the CPE Form and procedures. Over the summer, eight information sessions were held for those project managers. To date, 295 out of the 310 staff identified, have attended the sessions. PMMD will be arranging one more session to

accommodate the remaining staff whom have yet to attend the presentation and will be working with Human Resources to set up a webinar training tool to accommodate any future training requirements.

### **Discussions with the Associations**

PMMD along with the Executive Director of Engineering & Construction Services, and Toronto Water, held two meetings with various construction associations (April 18 and September 9, 2013). At these meetings, staff provided information to the construction associations on the implementation of the CPE Procedure, its importance, how it works, and the potential for suspension of contractors that are poor performing. Staff made it clear to the industry/association that the intention of the CPE Procedure was not to suspend contractors but instead to ensure that contracts were performed properly. The industry had some concerns which were addressed either by the CPE Form itself, or will be dealt with through the dispute resolution provision in the contract that allows escalation, with necessary modifications. In addition the associations requested the City to have more direct consultation with them regarding the CPE Form. Staff are in agreement with this request and the CPE Form will be a regular agenda item to address any questions and concerns brought forward at the quarterly Construction Services meetings held by Engineering & Construction Services.

### **Roll-Out and Communication**

A communication was prepared and sent September 18, 2013 to all construction firms registered with PMMD's Vendor Registration System notifying them of the implementation of the CPE Procedure and that the CPE Form will be inserted in each construction related call document commencing October 1, 2013. The notification also included a link to the CPE Form. In addition, notification of the CPE Form was also posted on PMMD website under "What's New". Finally, an e-mail address has been established so that contractors can ask any questions directly relating to the CPE Form.

PMMD has also met with Toronto Transit Commission, Toronto Police Services, Toronto Public Libraries, Exhibition Place and Toronto Community Housing in our joint co-operative purchasing meeting and provided a copy of the CPE Form and Procedures. In addition, PMMD requested participation from these agencies in the upcoming development of performance evaluation tools for other procured goods and services.

### **Next Steps**

PMMD will continue to work with City Divisions to establish standardized evaluation forms for other types of goods and services procured that will integrate with the database that has been developed. This will further enhance the City's ability to properly evaluate contractor performance. As part of PMMD's e-Procurement Project, staff will be investigating whether there is a more robust database or other types of services that can host the data collected from the CPE Forms than the current ACCESS database that PMMD is utilizing.

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**SIGNATURE**

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**ATTACHMENTS**

Attachment 1: Contractor Performance Evaluation Form  
Attachment 2: Contractor Performance Evaluation Pair wise Matrix