



REPORT FOR ACTION

Procurement Policy 313

Date: September 8, 2022

To: The Board of Directors of TO Live

From: President and Chief Executive Officer

SUMMARY

The purpose of this report is to provide the Board with an update on TO Live's Procurement Policy 313.

RECOMMENDATIONS

The President and Chief Executive Officer recommends that the Board of Directors of TO Live:

1. Direct the President and Chief Executive Officer to:
 - a. Work with City of Toronto staff to update the TO Live Procurement Policy to include provisions similar to the City's policy for Contractor Performance and Evaluation;
 - b. Report to the Board with the updated Procurement Policy; and
 - c. Utilize the City of Toronto's Contractor Performance and Evaluation process, in conjunction with the current TO Live Procurement Policy, until updates are made to the policy.

FINANCIAL IMPACT

There is no financial impact.

DECISION HISTORY

At its Board meeting on March 31, 2022, the Board approved TO Live's updated policies, of which included Procurement Policy 313.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.CT31.5>

At its Board meeting on May 9, 2019, the Board approved TO Live's Finance & Administration Policies, of which included Procurement Policy 313

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CT3.3>

COMMENTS

Management undertook a review of its Procurement Policy 313 (Attachment 1), and in particular Section 20.2 (f) - Contractor Performance Evaluation and Disqualification.

TO Live currently uses the City's Contractor Performance Evaluation (CPE) form (Attachment 2), the purpose of which is to provide an evaluative record, both positive and negative, of a general contractor's performance on any given construction project that has been awarded to a general contractor by TO Live. At present, our current policy does not mirror the City's Action, Objections and Suspension steps to assess performance and consideration for a contractor's eligibility for future awards.

TO Live will work with the City to strengthen the current language in its Procurement Policy, and in the interim, TO Live wishes to use the City's [process](#) as a guideline for Actions, Objections and Suspensions.

Highlights of the City's Action, Objections and Suspension process is noted below:

ACTION:

Score	Action
<i>Any of the following</i> <i>Total score below 50% (weighted average)</i> <i>Criterion check of 20% or 40% for A1 "Compliance with OSHA / Legal Health & Safety requirements (applicable for CPE and PSPE)"</i>	<i>Warning letter to contractor indicating risk of suspension</i>

Score	Action
<i>Any one of the following:</i> • <i>A final score of 40% or less</i> • <i>Two interim/final scores below 50% within 5 years</i> • <i>Two interim/final criterion checks of “20” or “40” within 5 years for A.1 “Did the contractor comply with OHSA requirements?”</i> • <i>One final criterion check of “U” for A.1: “Did the contractor comply with OHSA requirements?”</i>	<i>May initiate report to Council recommending suspension for a minimum of one year.</i>

OBJECTIONS:

In the event that the Contractor does not agree with the CPE score they must submit objections in writing with supporting evidence within five (5) business days following receipt of the report to the attention of:

- *the Division Manager for Interim CPEs.*
- *the Division Director for Final CPEs.*

Based on the information provided, it shall be at the City’s sole discretion whether the score shall be amended, and a replacement completed CPE form issued.

In the event a staff report is submitted to Council recommending suspension, the Chief Purchasing Officer (CPO) shall inform the contractor of their right to make a deputation before the Standing Committee dealing with the suspension and shall advise the contractor to contact the Clerk’s Office for further information on the deputation process. Upon hearing the deputation and considering the staff report, the standing committee shall make a recommendation to Council with respect to the suspension.

SUSPENSION:

Other than contracts/subcontracts that the contractor is already performing work under at the time of suspension, the contractor is not eligible to bid on City construction contracts and may not perform work as a subcontractor for the duration of the suspension. The suspension of the contractor also applies to:

- *any legal entity that is affiliated with the contractor within the meaning of the Business Corporations Act;*
- *any related person of the contractor within the meaning of the Business Corporations Act; and*
- *other legal entities having the same operating mind as the contractor, as determined in consultation with Legal Services.*

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SIGNATURE

Clyde Wagner
President and Chief Executive Officer

ATTACHMENTS

Attachment 1 - TO Live Procurement Policy 313
Attachment 2 - Contractor Performance Evaluation Form (Sample)