



Supplier Suspension Procedure

PROCEDURE

Responsible Division: Purchasing & Materials Management
Responsible Official: Chief Purchasing Officer

Effective Date: January 1, 2017
Last Revision Date: August 15, 2018

Description

This procedure provides guidance for suspending Suppliers from City of Toronto procurements under the Purchasing Chapter of the Municipal Code and the Procurement Processes Policy. For the purposes of this procedure, suspension means a determination of ineligibility or a disqualification of a Supplier's eligibility to bid on future City contracts for any duration.

A decision to suspend a Supplier should be considered independent of a decision to award any particular contract. Unless otherwise stated, this procedure does not apply to a decision to reject a Bid for failure to meet the City's evaluation criteria or the City's reserved rights applicable to any particular solicitation. However, any other actions by the City that may indirectly operate as a suspension of a Supplier for any duration, should be consistent with the fairness standards set out in this procedure.

The suspension of a Supplier shall not be exercised for the purpose of punishing a Supplier. It should be based on a balanced review of whether the Supplier's conduct presents a risk to the City's valid commercial or business interests. The scope and duration of any suspension should be consistent with what is necessary to ensure that the City's commercial interests are adequately protected. A Supplier must be notified of the reasons for the City's proposed suspension and be given an opportunity to respond in writing prior to any suspension decision taking effect.

The City may suspend Suppliers for one or more reasons from the City's Supplier Code of Conduct as further described below.

Related Bylaws & Policies

Municipal Code – Purchasing Chapter 195:

- **Article 2: Interpretation**
 - **Section 195-2.1 – Definitions**
- **Article 13: Supplier Code of Conduct (Generally)**
 - **Section 195-13.3 (Conflicts of interest or unfair advantage – disclosure of ongoing or proposed litigation)**
 - **Section 195-13.12 (Disqualification of Suppliers for non-compliance)**
 - **Section 195-13.13 (Suspension of Suppliers from future solicitations)**
 - **Section 195-13.14 (Review of Suspensions)**

Procurement Processes Policy

- **Article 19: Contract Establishment, Execution and Administration**

- Section 19.4.6 Contractor Performance Evaluation and Disqualification
- Article 21: Supplier Code of Conduct
- Article 22: Suspension of Suppliers from Future Solicitations

Procedure

1. Interpretation:

Definitions used throughout this procedure are based on definitions found in Chapter 195, Purchasing.

2. Approval Authority:

The decision to suspend a Supplier is discretionary, and must be exercised consistently and fairly and supported by a written memo from staff including evidence of one or more of the reasons set out in **Section 3 - Reasons for Suspension**. The City's discretion to suspend a Supplier shall be approved as follows, depending upon the proposed duration and reasons for suspension:

Level of Approval	Reason	Time Period	Scope
Chief Purchasing Officer (CPO) with annual report to Government Management Committee per §195-13.13(C)	- One or more Supplier Code of Conduct reasons for suspension exclusive of criminal offences	Up to 6 months	Total Suspension* including - affiliated persons - subcontracting - options, renewals or extensions of existing contracts, *suspension may be limited in scope to contracts of similar or greater value or classification, based on the particular memo.
CPO (Review of Evidence only)	- Evidence that Supplier or their affiliated persons have been convicted of an applicable criminal offence	Automatic 5 years from date of conviction	Total Suspension, including - affiliated persons - subcontracting - options, renewals or extensions of existing contracts.
City Council via Standing Committee	- One or more Supplier Code of Conduct reasons for suspension	Up to 5 years	Total Suspension* including - affiliated persons - subcontracting - options, renewals or extensions of existing contracts, *suspension may be limited in scope to contracts of similar or greater value or classification, based on the particular memo.

3. Reasons for Suspension:

3.1 Unsatisfactory Performance

If a Supplier performs inadequately on an existing or recent contract with the City, the City may consider suspending that Supplier in the following circumstances:

- Materially fail to perform in accordance with the terms of one or more contracts, including but not limited to
 - A contract was terminated for performance default issues prior to its normal expiry;
 - There were unrectified performance issues on one or more contracts that resulted in performance related contract amendments or in extra costs to the City;
 - Contract deliverables were defective or deficient and were not replaced or repaired, or required multiple untimely repairs; or
 - The City was required to call upon a performance bond or bring litigation¹ against the Supplier to remedy unsatisfactory contract performance issues;
- The Supplier over-billed, double billed, retained a known overpayment or failed to notify the City of an overpayment or duplicate payment within a reasonable time;
- The Supplier billed for goods or services not supplied;
- The Supplier billed for goods or services of one grade, while supplying goods or services of an inferior grade;
- The Supplier misrepresented the quality or origin of goods and services, their functionality or suitability for purpose, or their performance characteristics;
- The Supplier misappropriated any property or right of the City, in any form;
- The Supplier submitted false or exaggerated² claims to the City;
- The Supplier submitted misleading information to the City;
- The Supplier sought modifications to the price of a contract through false or misleading representations, including materially undervaluing their bid or any included unit prices to win the contract, and later seeking unnecessary contract modifications;
- Failure to pay debts to the City or indemnify the City upon reasonable demand;
- The Supplier acts in any manner that is a conflict of interest with the City without the knowledge and consent the City (Section 2.7 - Failure to disclose a potential conflict of interest or unfair advantage);
- Failure to maintain a satisfactory performance rating in accordance with the City's Performance Evaluation Procedure (See: **Contractor Performance Evaluation Procedure, February 25, 2015**); or
- Commit any other professional misconduct or omissions that adversely reflect on the commercial integrity of the supplier.

Note 1 – Litigation includes other forms of adjudication.

Note 2 - what constitutes an exaggerated amount will have to be determined in context of the situation and should be done in consultation with the Chief Financial Officer, Treasurer or their respective delegate.

All performance issues in connection with the City's contracts must be effectively managed by the Project Lead, and take into consideration any factors outside of the Supplier's contractual control. Unsatisfactory performance by a Supplier must be supported by documentation evidencing the notification of the Supplier of the specific performance issues and the appropriate escalation of such issues.

Project Leads shall maintain records of Supplier performance on all applicable contracts, including proof that the Project Lead or delegate has communicated with the Supplier regarding the matter before taking any contract performance measure. Project Leads must

adequately document and report to PMMD any unsatisfactory performance for Suppliers where less than full performance of the City contract by the Supplier results in either:

- A termination of the contract due to the Supplier's default; or
- A conditional amendment of the contract due to the Supplier's default.

3.2 Bidding Practices Prohibited by Law

If the City has reason to suspect that a Supplier or Suppliers are engaged in bid –rigging, price fixing, collusion or other behaviours or practices prohibited by statute in connection with a City procurement, the City should contact the appropriate law enforcement authorities and provide any assistance as may be required to support an subsequent investigation by those authorities, and if applicable, a prosecution.

If a Supplier is convicted of an offence in connection with a City or any other public sector procurement, the City's Chief Purchasing Officer shall suspend that Supplier for (5) years from the date of the conviction.

3.3 Unethical Bidding Practices

A Supplier who engages in unethical bidding practices that do not amount to a criminal or statutory offense may still warrant suspension from City procurement opportunities.

Examples of such unethical bidding practices include:

- inappropriate offers of gifts or other inducements to the City employees or officials;
- misrepresentations contained in Bids or related submissions;
- failure to provide reasonable and timely Bid verification information;
- failure to pre-disclose to the CPO any affiliations, subcontracting or material supply arrangements with other prospective bidders;
- material alteration of Bid or submission information, not authorized by the solicitation process or the CPO;
- inappropriate in-process lobbying of City employees or officials;
- communications with non-designated City employees or officials during a procurement process;
- intimidation or interference with any City employee, public office holder or other Suppliers in relation to a procurement;
- obtaining or using the City's non-public confidential information in connection with a procurement process or contract performance in an unethical manner or without the City's consent;
- submitting materially unbalanced bid pricing that could reasonably distort the total or individual value of the proposed contract deliverables;
- **Section 3.4 Failure to honour a Bid**; or
- **Section 3.7 - Failure to disclose a potential conflict of interest or unfair advantage.**

The City must conduct a full review of the unethical practice in question and perform a contextual analysis to determine whether the Supplier in question should be suspended. Specifically, the City must review whether the unethical bidding practice not only warrants rejecting a particular bid or cancelling a call, but also that the Supplier presents an ongoing risk to the City's ability to run a fair procurement process in the future.

3.4 Failure to honour a Bid

Suppliers should only submit proposals if they are capable of delivering the goods or services. If a Supplier submits a Bid in response to a the City procurement opportunity and that Supplier

subsequently refuses to honour its Bid or the pricing included in that Bid, the City may consider suspending that Supplier from participating in future City procurements.

A Supplier should not be suspended if their failure to honour a Bid was a legitimate withdrawal of that Bid. The reason why a Supplier did not honour its Bid must be analyzed and considered in making a decision to suspend that Supplier. Factors that the City may consider in this analysis include, but are not limited to:

- If the City and a selected Bidder in a negotiated procurement process attempt to negotiate an agreement in good faith and for valid business reasons are unable to come to an agreement, that Supplier should not be suspended.
- If a Supplier fails to honour its submitted pricing because of a change in market conditions, the City should consider whether pricing fluctuations are common in the industry. If price increases are common, the City should consider whether the Supplier should have factored this into their pricing. For example, could the market conditions have been reasonably predicted within the industry?
- If the process for accepting the Bid took significantly longer than anticipated, the City should consider the impact of the delay on the Supplier's willingness to honour its submitted pricing.
- If a Supplier did not honour its submission because it was too busy on other contracts, and the City's award was within the time period for irrevocable bids set out in the solicitation, the City should consider suspending that Supplier.

Other reasons for a Supplier's failure to honour a submission or pricing should be reviewed contextually and fairly with a view to maintaining healthy competition while protecting the City's ability to maintain a fair procurement process.

3.5 Failing to disclose a potential conflict of interest or unfair advantage

If a Supplier fails to disclose a conflict of interest during a City procurement opportunity 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 opportunities after conducting an analysis according to the following factors:

- The nature of the conflict of interest, including whether it is a perceived or an actual conflict of interest and the materiality of the advantage that such a conflict may have given the Supplier:
 - Does the conflict relate to a particular solicitation, such as having been retained to prepare technical specifications for a solicitation? or
 - Does the conflict have the potential to be more general in application, such as a Supplier engaging a former City employee in relation to proposed contracts for which the employee may have knowledge of confidential City information or influence with City officials involved in awarding or managing the contract?
- Whether the Supplier knowingly failed to disclose such a conflict of interest.
- The impact that failure to disclose the conflict of interest has had or may have on the City, including its reputation and its obligation to conduct a fair procurement process.

All Bids by Suppliers will include a declaration by Suppliers that they have no potential conflicts of interest and an acknowledgement and undertaking to comply with the City's Supplier Code of Conduct. Suppliers with potential conflicts of interest must declare them to the Chief Purchasing Officer before submitting their Bid. For the purpose of managing any potential conflict, the Chief Purchasing Officer may set additional conditions on the Supplier's participation, including

- Setting additional disclosure requirements or safeguards; or
- Excluding individuals from the Supplier's proposed team.

A Supplier may have their Bid rejected where the Chief Purchasing Officer determines that a conflict of interest exists and is incompatible with a fair and open competitive procurement process or the performance of the proposed contract with the City.

4. Suspension Process

4.1 General

Any decision to suspend a Supplier must be supported by a memo that contains all details connected with the analysis using factors set out in **Section 3 - Reasons for Suspension** provided by the appropriate Division and signed by the appropriate Division Head. The memo must demonstrate that the issues with the Supplier have been appropriately escalated and the Supplier has had an opportunity to address the reasons for the suspension.

The memo must also include and support a recommended maximum length of the suspension. The maximum suspension period is five (5) years under **section 195-13.13 (A) of the Purchasing Chapter**. The length of the suspension period should be proportional to the reasons for the suspension and the full five year suspension should only be applied to the most serious Supplier risk profile. The memo should also indicate whether the Chief Purchasing Officer should exercise the authority of the Chief Purchasing Officer for a suspension up to 6 months.

A suspension can either be a total suspension for all procurement opportunities or a suspension from providing specific goods or services or a certain value of goods and services. The memo must clearly set out the scope of the suspension.

All recommendations to suspend a Supplier must be reviewed by the Chief Purchasing Officer in consultation with the City Solicitor, and be approved in accordance with the **Level of Approval** set out in Section 2 of this Procedure.

4.2 Notification to the Supplier & Supplier Rebuttal

Prior to the Chief Purchasing Officer approving a temporary suspension (up to 6 months), or prior to submitting a report to the appropriate Standing Committee for a 1 year or longer suspension, the Chief Purchasing Officer will provide the Supplier with an advance notification letter that will contain:

- Notice of a temporary suspension of the Supplier, where approved by the CPO or Treasurer, if applicable;
- Notice of the proposed report to Council as to the reasons for the suspension, and may include copies of relevant documents or correspondence to support such a suspension;
- Details about the Standing Committee where the Report will be received, and the Supplier's opportunity to depute at that Standing Committee, if applicable; and
- The length of the proposed suspension period and the scope, if applicable.

For a temporary suspension, the advanced notification letter will request the Supplier to provide any additional information within 10 days of the letter that might be relevant in determining if the temporary suspension should be approved. If no information is received within 10 days, then the temporary suspension will come into effect for up to 6 months.

For a suspension that must be approved by Council, the advanced notification letter will request the Supplier to provide any additional information within 30 days of the letter, that might be relevant in determining if the report should be forwarded to the appropriate Standing committee. If no information is received within the 30 days, then the CPO and the relevant Division Head will proceed to the appropriate Standing Committee.

The CPO may call a meeting with the Supplier to discuss the information provided prior to approving the temporary suspension or prior to reporting to the appropriate Standing Committee.

4.3 Council Approved Suspensions

For suspensions that require City Council approval, a report will be sent to the appropriate Standing Committee and then to City Council. The report will be from the Chief Purchasing Officer, in consultation with the City Solicitor and the Division Head that would primarily contract with the Supplier, where appropriate. The report will indicate:

- the length of the proposed suspension period and the scope of the suspension;
- the reasons for the suspension;
- whether a temporary suspension was imposed by the Chief Purchasing Officer;
- may include copies of relevant documents or correspondence to support such a suspension; and
- provide any information obtained from the Supplier.

4.3 Final Notice of Suspension

If a final suspension is approved, a notification must be provided by the Chief Purchasing Officer to the Supplier in question informing that Supplier that they are suspended from participating in the City procurement opportunities for the prescribed time period.

The notification letter must contain:

- Reasons for the suspension, and may include copies of relevant documents or correspondence to support such a suspension; and
- The length of the suspension period and the scope, if applicable.

4.4 Extension of the suspension

Apart from a temporary suspension, any final suspension decision should not be extended or renewed, unless additional reasons come to light that were not known to the City at the time the final suspension was approved.

4.5 Post Suspension

Once the period of full suspension has expired, the Supplier will again be eligible to Bid on City contracts without further notice.

5. Review of Suspension

Within 15 days of a suspension authorized by the Chief Purchasing Officer (§195-13.13(B) - suspensions up to 6 months), a Supplier may request in writing a review of the suspension by

the Chief Purchasing Officer. The CPO, in consultation with Legal Services shall take into consideration any arguments and relevant supporting documentation provided by the Supplier in determining whether to uphold, amend, or revoke the suspension.

Where Council has authorized the suspension (§195-13.13(A) - suspensions 1 year to 5 years or otherwise determined by Council), a suspended Supplier may not apply for an additional review until the completion of half of the original suspension period, unless additional information is to be presented that was not reasonably available when the initial decision was made. For example, if the original suspension period was two years, the Supplier may apply for review of the suspension after one year. To be eligible to be reinstated thereafter, the Supplier must submit a written case for reinstatement, including any supporting documentation that provides reasons why removing the suspension would no longer prove a risk for the City.

Applications for review of suspensions are to be reviewed by the Chief Purchasing Officer and Legal Services. If the CPO and Legal Services are satisfied that the reasons for the original suspension will no longer present risk for the City by the Supplier in question, then a memo supporting the reinstatement of the Supplier may also be provided to the appropriate **Approval Authority** as set out in **Section 2**.

In addition, the Treasurer may reverse a suspension in respect of an offence listed in **Article 195-13.5(A) of the Purchasing Chapter** if the Supplier demonstrates that it or its affiliate person has been granted an absolute discharge, conditional discharge (and has satisfied the conditions), a pardon or a record suspension (See: **Section 21.2.2 of the Procurement Processes Policy**).

The Supplier must be notified, in writing, of the final decision for reinstatement made by the City.

6. Suspension List

PMMD shall maintain an up-to-date and current list of all suspended Suppliers.

A Supplier's Affiliated Persons, including any director or officer who was a director or officer of a Supplier on the suspension list at the time it was suspended are also considered suspended.

For this purpose, the Suspension list should contain, at a minimum:

- the full name of the Supplier;
- the names of the directors and officers of the Supplier;
- the reasons for the suspension;
- the file number where the memo for the suspension is filed;
- the scope of the suspension, where applicable (if less than total suspension); and
- the length of the suspension period and the date of the expiry of the suspension period.

Review of the suspension list against a list of Suppliers or respondents and their directors should be conducted by PMMD for each Procurement to ensure that Suppliers are not allowed to Bid or continue in the process. In particular, Bids from Suppliers on the Suspension List, or their affiliated persons, should not be opened or otherwise evaluated.

7. Scope of Suspension and Related Exceptions

Unless the memo supports a suspension limited in scope to contracts of a particular type or value, the suspension will apply to all contracts procured by the City of Toronto under the authority of the Purchasing Chapter of the Municipal Code.

A Supplier cannot subcontract with a suspended Supplier. A Supplier is required to verify that their prospective first-tier subcontractors are not on the Suspension List prior to bid submission. Any existing contract may not be extended or expanded without the approval of the Treasurer, in consultation with the City Solicitor.

The Treasurer may decide that it is in the public interest to approve the use of an ineligible or suspended Supplier in the following possible circumstances:

- An emergency where delay would be injurious to the public interest;
- The Supplier is the only person capable of performing the contract;
- The contract is essential to maintain sufficient emergency supplies; or
- Not entering into the contract or extending the contract with the Supplier would have a significant adverse impact on the health, security, safety, public security or economic or financial well-being of the City.

The exception is applied on a case-by case basis by the Treasurer (See: **Section 22 of the Procurement Processes Policy**).

Questions? Contact

Should you have any questions, please contact the Purchasing and Materials Management Division. If further interpretation is required, please contact the Manager, Corporate Purchasing Policy & Quality Assurance at 416-392-0387 or Supervisor, Policy, Training & Technology at 416-392-1305.