

Vendor Suspension Protocol

1. Purpose and Interpretation

The purpose of this protocol is to set out the process for suspending Vendors from participation in the Town's procurement processes. This protocol should be read in conjunction with the Town's Procurement By-law.

Vendors 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 Vendor under this Protocol include the actions of any individual or entity for whom the Vendor is responsible.

2. Overview

In order to ensure that the Town is receiving quality deliverables and value for public money, and is dealing with Vendors that conduct business in a professional and ethical manner, the Town may suspend Vendors from participating in its procurement processes for a period of up to five (5) years for any of the following reasons:

- (a) The Vendor was convicted of serious crimes or other serious offences, including bid-rigging, price-fixing or collusion, fraud or other statutory offenses.
- (b) The Vendor gave false declarations, including making misrepresentations in bids or failing to disclose conflicts of interest in connection with a procurement process or contract.
- (c) The Vendor had significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts.
- (d) The Vendor engaged in professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Vendor.
- (e) The Vendor is in adverse litigation with the Town in connection with the Town's procurement processes or contracts.

A decision to suspend a Vendor 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. A decision to suspend a Vendor is discretionary; however, such discretion must be exercised consistently and fairly.

3. Reasons for Suspension

(a) Crimes or Offences

If a Vendor is convicted of serious crimes or other serious offences, including bid-rigging, price-fixing or collusion, fraud or other statutory offenses, the Vendor should be suspended for the maximum suspension period.

(b) False Declarations

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

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

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

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

(c) Poor Performance

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

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

(d) Professional Misconduct or Lack of Commercial Integrity

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

- unethical bidding practices, such as inappropriate offers of gifts to the Town's officials, officers, employees or agents and inappropriate in-process lobbying or prohibited communications during a procurement process;
- 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;
- conduct that is prohibited under the Town's Vendor Code of Conduct; and
- a history of litigious conduct or bringing frivolous or vexatious claims in connection with the Town's procurement processes or contracts.

(e) Adverse Litigation

The Town may suspend a Vendor and any affiliate companies, common shareholders or subcontractors that engages in adverse litigation or potential adverse litigation against the Town. The suspension of a Vendor in connection with litigation proceedings will be considered on the basis of valid commercial or business reasons, where the litigation relates to a procurement process or contract. In evaluating whether a litigious Vendor should be suspended, the Town may consider:

- Whether the Vendor's litigation with the Town call into question the Vendor's ability to provide work or services to the Town under future contracts; and
- If there is a history of litigious conduct with the Vendor and that has resulted in increased costs to the Town.

4. Process for Suspension

- (a) Any decision to suspend a Vendor must be supported by a written Suspension Recommendation Report that contains all details connected with the analysis of factors set out above.
- (b) The Suspension Recommendation Report must also include the recommended length of the suspension. The maximum suspension period is five (5) years.
- (c) 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 in the most serious of cases. A suspension can be either a blanket suspension for all procurement processes or a suspension limited to procurement processes for specific deliverables. The Suspension Recommendation Report must clearly set out the scope of the suspension.
- (d) All decisions to suspend a Vendor must be approved by the Procurement Review Committee ("PRC"). The PRC is established in accordance with the Procurement By-law.
- (e) If the Suspension Recommendation Report is approved, a notification must be provided to the Vendor in question informing that Vendor that it is suspended from participation in the Town's procurement processes for the prescribed time period. The notification letter must contain:
 - full details as to the reasons for the suspension, including copies of any documents or correspondence to support such a suspension;
 - the length of the suspension period and the scope, if applicable; and
 - the Vendor's right to re-apply for eligibility within the prescribed time period and the process for requesting such a reinstatement.

5. Review of Suspension

- (a) A suspended Vendor 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 Vendor may apply for reinstatement after one year. In order to be re-eligible for participation in the Town's procurement processes, the Vendor 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 Town.

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

6. Suspended Vendors List

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

The list should contain, at a minimum:

- (a) the full name of the Vendor;
- (b) the names of the directors and officers of the Vendor;
- (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, Purchasing must check the suspended Vendors list to ensure that bids are not accepted from suspended Vendors.