

PROCUREMENT

BYLAW 2021-103

Supplier Suspension Protocol

EXTERNAL VERSION

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PROCUREMENT OFFICE



PROTOCOL 7: Supplier Suspension

PUBLISHED

1. PURPOSE AND INTERPRETATION

The Region is committed to following open, fair, and transparent procurement processes. This protocol details the process for suspending suppliers from participation in the Region's procurement processes and/or doing business with the Region. This Protocol should be read in conjunction with the Region's Procurement Bylaw 2021-103 or its successor and the Procurement Review Committee (PRC) Protocol.

2. DEFINED TERMS

Capitalized terms used in this protocol are defined in the Glossary of Commonly Used Procurement Terms document.

3. APPLICATION

The Supplier Suspension Protocol is applicable whenever the Region is required to make a determination in relation to the suspension of a supplier.

4. OBJECTIVES

The Supplier Suspension Protocol promotes the procurement of quality deliverables, value for public money, and conducting Regional business with suppliers that operate in a professional and ethical manner.

Under the Supplier Suspension Protocol, the Region may suspend suppliers from doing business with the Region, including participating in Regional procurement processes, for the prescribed duration of the suspension. The scope of the suspension may include a prohibition against accepting bids from, awarding contracts to, and/or granting any extensions or renewals to, the suspended supplier and any related parties, for the duration of the suspension. Such suspension may also include prohibiting the Supplier from being a subcontractor on a Regional project.

A decision to suspend a supplier must be supported by documented evidence and made based on at least one of the grounds set out below while following the specified suspension procedure. A decision to suspend a supplier shall be made at the sole discretion of the Region; however, such discretion must be exercised consistently and fairly.

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.

5. GROUNDS FOR SUSPENSION

The Region may suspend a supplier, in accordance with this Protocol, for any of the following grounds:

a. Crimes or Offences

If a supplier is convicted of a serious crime or offence, including bid-rigging, price-fixing or collusion, fraud, other statutory offenses, or if the Region determines that the supplier committed any violation of the Supplier Code of Conduct in Schedule 2 of the Procurement Bylaw, the Region may suspend that supplier.

b. False Declarations

If a supplier includes false or misleading information in its bid, the Region may suspend that supplier.

c. Conflicts of Interest

If a supplier fails to disclose a perceived, possible, or actual conflict of interest in connection with a procurement process or during the performance of a contract with the Region, as described in Schedule 2 of the Procurement Bylaw – Supplier Code of Conduct to the Procurement Bylaw, and the Region subsequently discovers that such a conflict of interest exists, the Region may, in addition to exercising its rights under any affected contract, suspend that supplier.

The following non-exhaustive factors should weigh in favor of suspension:

- (i) the supplier knowingly made misrepresentations or failed to disclose a conflict of interest
- (ii) the misrepresentation or undisclosed conflict of interest resulted or may result in the supplier having an unfair advantage with respect to, or otherwise compromise the integrity of, the Region's procurement process.

d. Unsatisfactory Performance

If a supplier has demonstrated unsatisfactory performance under any contract with the Region or any related entity, the Region may suspend that supplier. Unsatisfactory performance refers to performance by a supplier that is inconsistent with the expected standard of service delivery applicable in a commercial context.

A finding of unsatisfactory performance may be made in, but is not limited to, any of the following circumstances:

- (i) there were consistent or significant failures to adhere to specified schedules or delivery requirements;
- (ii) there were consistent or significant failures to follow specified contractual requirements or authorized directions;
- (iii) there were consistent or significant deficiencies, and/or failures to perform the contract, in accordance with generally accepted standards of good workmanship;

- (iv) the contract was terminated by the Region for performance issues prior to the originally anticipated termination date;
- (v) there were unrectified performance issues in relation to a contract that resulted in extra costs to the Region;
- (vi) the deliverables provided were defective or deficient, and either were not replaced or repaired, or required multiple repairs;
- (vii) there were consistent or significant failures to adhere to legislative requirements, including but not limited to applicable statutes, regulations, and bylaws;
- (viii) the Region commenced a litigation against the supplier in connection with performance or non-performance of the supplier's contractual obligations;
- (ix) the supplier failed to discharge, vacate, or otherwise dispose of a construction lien pursuant to its contractual obligations.

e. Professional Misconduct or Lack of Commercial Integrity

If a supplier engages in professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier, the Region may suspend that supplier.

Such conduct includes, but is not limited to:

- (i) unethical bidding practices, such as inappropriate offers of gifts to the Region's officials, officers, employees, or agents or engaging in lobbying or prohibited communications during a procurement process;
- (ii) 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; or
- (iii) failing to accept a contract awarded by the Region.

f. Litigation with or Indebtedness to the Region

If a supplier is, or was, engaged in litigation with the Region or is otherwise indebted to the Region, the Region may suspend that supplier.

The following non-exhaustive circumstances may be considered in determining whether to suspend a supplier:

- (i) the supplier is engaged in litigation with the Region or is indebted to the Region, in relation to a previous or current contract with the Region or any related entity;
- (ii) the supplier has engaged in litigious conduct, or making exaggerated, frivolous, or vexatious claims or liens, in connection with the Region's contracts or procurement processes, that has resulted or may result in additional administrative or other costs to the Region or any related entity;

- (iii) the outcome of any prior or interim litigation the supplier has engaged in with the Region or any related entity, including consideration of whether legal costs were awarded against the supplier or the Region;
- (iv) the supplier has brought claims for unreasonable costs or expenses, or made unsubstantiated allegations impugning the integrity of the Region, its staff, consultants, or any related entity, in relation to a previous or current contract or a procurement process;
- (v) where the Region exercises its rights of set-off against any contract the supplier may have with the Region;
- (vi) where the Region has been named as plaintiff or as a defendant in any claim pursuant to the exercise of third party subrogated rights;
- (vii) where the supplier has failed or refused to enter into an agreement or arrangement which defends and/or indemnifies and/or otherwise adequately protects the Region's interests, pending resolution of the litigation; or
- (viii) where the supplier has failed or refused to agree to refer the litigation to an alternative dispute resolution process.

6. PROCESS FOR SUSPENSION

Suspensions made under this Protocol must follow the process outlined below:

a. Suspension Request

- (i) The Department seeking the suspension of a supplier shall submit a formal request to suspend a supplier to the Procurement Office.
- (ii) This request must be supported by a completed PRC Review - Request Form that contains all relevant details in relation to the request, following the PRC Review - Process Guide.

b. PRC meeting to Consider Suspension Request

- (i) A PRC meeting will be held, in accordance with the Procurement Review Committee Protocol, to consider the suspension request.
- (ii) At the PRC meeting, the PRC may seek any additional information it requires, including requesting a meeting with the supplier and may consult with other staff or other advisors, as necessary to make its decision.

c. PRC makes Determination Regarding Suspension Request

- (i) The PRC will make a determination as to whether or not the supplier will be suspended and, if a suspension is warranted, the PRC will determine the duration and scope of the suspension.
- (ii) The findings of the PRC, including the reasons for the determination, will be documented in a **PRC Decision Report**, which will be prepared by a lawyer who is a member of the PRC.
- (iii) If the PRC has determined that a suspension is warranted, the **PRC Decision Report** must also include the recommended length and scope of the suspension.

7. GUIDELINES FOR SUSPENSIONS

The following items should be taken into consideration by the PRC when issuing any suspensions in accordance with this Protocol:

7.1 Length of the Suspension

- a. 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;
- b. Suspensions made pursuant to the Supplier Performance Protocol should not exceed three (3) years;
- c. Suspensions for active litigations should be lifted upon the resolution of the unresolved litigation to the satisfaction of the Region.

7.2 Scope of the Suspension

- a. The scope of the suspension should be proportional to the reasons for the suspension and may include any or all of the following:
 - (i) a prohibition against accepting bids from the supplier or any related parties;
 - (ii) a prohibition against awarding contracts to the supplier or any related parties;
 - (iii) a prohibition against granting any extensions or renewals to the supplier or any related parties;
 - (iv) a prohibition against allowing the supplier, or any related parties, to bid or work as a subcontractor on Regional projects; and/or
 - (v) a direction to the Procurement Office to remove the supplier from a list of pre-qualified contractors or rosters.
- b. The scope of the suspension can be limited to procurements and contracts for specific deliverables.
- c. The scope of the suspension can be limited to the supplier or can include corporate entities and affiliates, or persons related to the supplier, including, but not limited to employees, agents, representatives, organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies and subsidiaries, whether partly or wholly owned, as well as individuals, directors, and corporate officers.

8. NOTICE OF DECISION

If the PRC determines that a supplier will be suspended, the Director of the Procurement Office will notify the supplier of the PRC's decision by email, providing the supplier with a copy of the **PRC Decision Report** setting out the reasons for the suspension.

8.1 Details of Notice of Decision

The notice provided to the supplier must include the following items:

- 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 relied on to support such a suspension;
- c. Notice of the supplier's right to apply for reinstatement in accordance with Section 11 of this Protocol; and
- d. Notice of the supplier's right to request reconsideration of the of the decision within ten (10) days of receipt of the notice of decision.

9. REQUEST FOR RECONSIDERATION

- a. If the supplier wishes to have the PRC's decision reconsidered, the supplier must:
 - (i) issue a formal request for reconsideration to the Director of Procurement within ten (10) days of the date upon which the notice of decision was provided to the supplier.
 - (ii) include the reasons why the PRC's decision should be changed, and any information which the supplier relies on to support its request.
- b. If a request for reconsideration is received within ten (10) days, then the PRC will:
 - (i) review the request along with any information received from the supplier;
 - (ii) render a final decision within fifteen (15) days of receipt of the request for reconsideration
 - (iii) seek any additional information it requires, request a meeting with the supplier and may consult with other staff or other advisors, as necessary, in order to make its decision.
- c. No further requests for reconsideration will be granted to suppliers. However, suppliers may request reinstatement, when they are eligible for reinstatement, in accordance with Section 10 of this Protocol.

10. EFFECTIVE DATE OF SUSPENSION

- a. If no request for reconsideration is submitted within ten (10) days, the suspension will be effective on the 11th day after the date upon which the notice of decision was provided to the supplier by email.
- b. If a timely request for reconsideration is received, the suspension will not be effective until PRC makes its final decision.

11. SUSPENDED SUPPLIERS LIST

The Procurement Office will maintain an up-to-date list of all suspended suppliers and related corporate entities that are owned or controlled by a suspended supplier at the time it was suspended, if applicable. The Suspended Suppliers List will:

- a. Be published on the Region's public website.
- b. Should contain, at a minimum:
 - (i) the full name of the supplier or individual who is suspended;
 - (ii) the names of the directors and officers of the supplier, if the supplier is a corporation and the scope of suspension includes directors and officers of the supplier;
 - (iii) the length of the suspension period and the date of the expiry of the suspension period.

12. REQUESTS FOR REINSTATEMENT

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

- a. To apply for reinstatement, the supplier must submit to the Procurement Office via email a written request for reinstatement which demonstrates/explains why the original reason(s) for the suspension would no longer pose a risk for the Region. This request should also include any documentation in support of the request.
- b. All requests for reinstatement will be considered by the PRC.
- c. If the PRC determines that allowing the supplier the opportunity to carry on business with the Region would no longer expose the Region to risk, then the application for reinstatement may be approved.
- d. The PRC may seek any additional information it requires, request a meeting with the supplier and may consult with other staff or other advisors, as necessary, to make its decision.
- e. The findings of the PRC in relation to the request for reinstatement, including the reasons for the PRC's decision, will be documented in a **PRC Decision Report**, which will be prepared by the lawyer participating in the PRC meeting(s) held to review the suspended supplier's request for reinstatement.
- f. The Director of the Procurement Office will notify the supplier of the PRC's final reinstatement decision by email and will provide the supplier with a copy of the **PRC Decision Report** setting out the reasons for the decision.
- g. The PRC's decision in relation to reinstatement requests are not subject to reconsideration.

13. LIMITED EXCEPTIONS TO DO BUSINESS DURING SUSPENSION

In certain limited circumstances, it may be in the best interest of the Region to accept a bid from, award a contract to, or grant the extension or renewal of a contract to, a supplier who is currently under suspension.

These circumstances include:

- a. Where there is only one qualified supplier for the deliverables;
- b. In the case of an emergency;
- c. Where there is a legal obligation on the part of the Region to enter into the contract; or
- d. Where the proposed contract is pursuant to the co-operative purchasing provisions of the Procurement Bylaw or where another public agency will be party to the contract and has approved the award.

Should any such circumstances arise, the Department seeking to do business with the suspended supplier must obtain the approval of the PRC. If the PRC grants approval, the approval applies only to the specific limited circumstances at hand and does not constitute a general restatement of the supplier.

APPROVALS

This Protocol has been approved by the Director, Procurement Office, and where applicable, by Legal Services.