

Supplier Disqualification Protocol

1. Purpose and Interpretation

The purpose of this protocol is to set out the process for disqualifying suppliers from participating in the City's procurement opportunities. This protocol should be read in conjunction with the City's Procurement By-law and the Procurement Procedures. Defined terms used in this protocol have the meaning assigned in the Glossary of Terms.

2. Overview

In order to ensure that the City is receiving quality goods and services, is receiving value for public money and is dealing with suppliers that conduct business in an ethical manner, the City may disqualify suppliers from participating in its procurement opportunities for prescribed time periods for the following reasons:

- a) The supplier brought previous litigation proceedings against the City;
- b) The supplier failed to honour a bid submitted in response to a procurement opportunity;
- c) The supplier failed to disclose conflicts of interest in connection with a procurement opportunity or contract;
- d) The supplier was convicted of bid-rigging, price-fixing or collusion or other statutory offenses;
- e) The supplier engaged in unethical bidding practices; or
- f) The supplier had significant documented performance issues on a contract with the City.

A decision to disqualify a supplier must be made in accordance with this protocol, must be supported by evidence and be based on the reasons and factors set out below. A decision to place a supplier on the disqualification list is discretionary; however, such discretion must be exercised consistently and fairly.

3. Reasons for Disqualification

a) Litigation

If a supplier engages in litigation against the City, the City may consider whether or not such litigation should disqualify that supplier from participating in future procurement opportunities. Note that litigation brought by the City against a supplier is addressed under para f below.

A supplier should only be disqualified in connection with litigation proceedings if there are valid commercial or business reasons for doing so. Disqualification should not be used to "punish" the supplier for bringing a lawsuit. Litigation against the City in respect

of matters unrelated to a procurement process or a contract for the provision of goods, services or construction should not be considered under this Protocol. In evaluating whether a litigious supplier should be disqualified, the following, non-exclusive, qualitative factors should be considered:

- Is the litigation in relation to a procurement process or a contract for the provision of goods, services or construction?
- Is there a history of litigious conduct with the supplier and has that history resulted in increased costs to the City?
- What was the outcome of the previous litigation? For example, was it found to be frivolous or vexatious or were damages awarded in favour of the supplier?
- Does the litigation call into question the supplier's ability to provide work or services to the City under future contracts?

b) Failure to Honour a Bid

If a supplier submits a bid in response to a procurement opportunity and that supplier subsequently refuses to honour its bid, the City may consider disqualifying that supplier from participating in future procurement opportunities. However a supplier should not be disqualified if their failure to honour a bid was a legitimate withdrawal of that bid. Accordingly, the reason why a supplier did not honour its bid must be analyzed and considered in making a decision to disqualify that supplier. Factors that should be considered 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 disqualified.
- 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 and could have been reasonably predicted, it would be reasonable to expect that the supplier should have factored this into their pricing.
- If the City's acceptance of the bid took significantly longer than anticipated, the impact of the delay on the supplier's willingness to honour its submitted pricing should be taken into account.
- Other reasons for a supplier's failure to honour a submission or pricing should be reviewed contextually and fairly.

c) Failure to Disclose a Conflict of Interest

If a supplier fails to disclose a conflict of interest in connection with a procurement process 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 disqualify that supplier from

participating in future procurement opportunities after considering 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;
- Whether the supplier knowingly failed to disclose such a conflict of interest; and
- The impact such a failure to disclose the conflict of interest has or may have on the City, including its reputation and its obligation to conduct a fair competitive procurement process.

d) Illegal Bidding Practices

If the City has reasonable grounds to suspect that a supplier or suppliers are engaged in bid-rigging, price-fixing, bribery or collusion or other behaviours or practices prohibited by federal or provincial statutes in connection with a procurement opportunity, the City should contact the appropriate authorities and provide such assistance as is required to support a subsequent investigation and, if applicable, prosecution. If a supplier is convicted of bid-rigging, price-fixing or collusion in connection with a procurement opportunity the City should disqualify that supplier for a minimum period of three (3) years from the date of the conviction.

e) Unethical Bidding Practices

Unethical bidding practices that do not amount to a criminal or statutory offense may still warrant the disqualification of a supplier. Examples of such unethical bidding practices include inappropriate offers of gifts to government employees, misrepresentations in bids and inappropriate in-process lobbying of or prohibited communications during a procurement process. 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 disqualified, including whether the unethical bidding practice compromised the City's ability to run a fair procurement process.

f) Poor Performance

If a supplier performs inadequately under a contract with the City, the City will consider disqualifying that supplier in the following circumstances:

- The contract was terminated for performance issues prior to expiry;
- There were un-rectified performance issues on a contract that resulted in extra costs to the City;
- The goods, services or construction provided were defective or deficient and were not replaced or repaired or required multiple repairs;

- The City brought a litigation proceeding against the supplier in connection with performance or non-performance of the suppliers contractual obligations; or
- The Contract Administrator has recommend disqualification of the supplier in accordance with the City's Supplier Performance Evaluation Protocol.

4. Process for Disqualification

- a) Any decision to disqualify a supplier must be supported by a written business case that contains all details connected with the analysis of factors set out above.
- b) The business case must also include the recommended length of the disqualification. The maximum disqualification period is three (3) years.
- c) The length of the disqualification period should be proportional to the reasons for the disqualification and the full three-year suspension should only be applied in the most serious of disqualifications. A disqualification can either be a blanket disqualification for all procurement opportunities or a disqualification to provide specific goods or services on a case by case basis. The business case must clearly set out the scope of the disqualification.
- d) All decisions to disqualify a supplier must be approved by the Procurement Review Committee. The Procurement Review Committee is established in accordance with the City's Procurement Bylaw.
- e) If the disqualification business case is approved, a notification must be provided to the supplier in question informing that supplier that they are disqualified from participating in the City's procurement opportunities for the prescribed time period. The notification letter must contain:
 - Full details as to the reasons for the disqualification, including copies of any documents or correspondence to support such a disqualification;
 - The length of the disqualification period and the scope, if applicable; and
 - The supplier's right to re-apply for eligibility within the prescribed time period and the process for requesting such a re-application.

5. Review of Disqualification

- a) Where a supplier has been disqualified the supplier may apply for reinstatement upon the completion of half of the original disqualification period. For example, if the original disqualification period was two years, the supplier may apply for reinstatement after one year. In order to be re-eligible for participation in the City's procurement opportunities, the supplier must submit a written case for re-instatement, including supporting documentation if necessary, that provides

reasons why the original reason for the disqualification would no longer prove a risk for the City.

- b) Applications for reinstatement are to be reviewed by the Procurement Review Committee. If the Procurement Review Committee determines that allowing the supplier the opportunity to participate in the City's procurement processes would no longer expose the City to risk, then the application for reinstatement may be approved.
- c) The supplier must be notified, in writing, of the final decision for re-instatement made by the Procurement Review Committee.

6. Disqualification List

The Purchasing Branch shall maintain an up-to-date and current list of all disqualified suppliers. Any supplier that is owned or controlled by the same individual(s) that owned or controlled a disqualified supplier at the time it was disqualified is also considered disqualified.

The 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 business case for the disqualification is filed; and
- the length of the disqualification period and the date of the expiry of the disqualification period.

Review of the disqualification list against a list of suppliers or bidders and their directors should be conducted for each Procurement Project to ensure that disqualified suppliers are not allowed to continue in the process.