
Policy Title: Supplier Performance Management and Suspension

Policy Number: 03-08-04

Section: Corporate Administration

Effective Date: May 30, 2024

Approved by:

Leadership Team

Subsection: Provision of City Services

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Owner Division/Contact:

**Procurement Services, Corporate
Business Services Division, Corporate
Services Department**

Policy Statement

City of Mississauga (“City”) staff are responsible for managing Supplier performance throughout the term of the applicable Contract to ensure the City receives value for money and to minimize current and future financial and operational risks.

Purpose

This policy promotes effective Supplier performance management and describes:

- Staff roles and responsibilities
- Criteria for evaluating Supplier performance
- Tactics to address unsatisfactory Supplier performance, and
- Guidance for staff in the event that a Contract has incomplete or missing performance management and/or termination provisions

Scope

This policy applies to all staff involved in the procurement and/or management of Medium and High Value Acquisition Contracts for Goods and/or Services.

Role of Contracts

The applicable contract governs Supplier performance. Contract Managers must be familiar with the Contract and the associated scope of work, specifications, service levels and remedies for poor or non-performance.

Supplier performance is managed throughout the term of a Contract, beginning when a Contract is awarded, and ending when all the obligations under the Contract have been satisfactorily completed, final payment has been made and warranties have expired.

Transparency

This policy is referenced in the City’s Bid Request documents.

Contract Managers are responsible to ensure Suppliers are advised of the City's Contract management processes, including details on how Suppliers are monitored and evaluated.

Procurement Services is responsible for maintaining, and posting publicly, an up-to-date Suspension List.

Legislative Considerations

This policy is written in compliance with the City of Mississauga's Procurement By-Law 0013-2022, as amended.

Definitions

For the purposes of this policy:

"Acquiring Director" means the director of a division for which the Bid Request and/or Contract was issued.

"Bid" means a proposal, offer or submission from a Supplier received in response to a Bid Request.

"Bid Request" means a solicitation from the City to potential Suppliers to submit a Bid.

"Buyer" means a staff member in Procurement Services who is assigned responsibility for a particular procurement.

"Chief Procurement Officer" means the Director of Corporate Business Services, or, in their absence, the Commissioner of Corporate Services or their designate.

"Contract" means an agreement between the City and a Supplier for the supply of Goods and/or Services.

"Contract Manager" means a City employee to whom the Acquiring Director has delegated procurement process responsibility and/or Contract management responsibility.

"Goods" means tangible and intangible goods of all kinds, including but not limited to supplies, materials, equipment and licences.

"High Value Acquisition" means a procurement of Goods and/or Services having a value of more than \$100,000, excluding taxes.

"Medium Value Acquisition" means a procurement of Goods and/or Services having a value of more than \$25,000 and not more than \$100,000, excluding taxes.

"Procurement By-Law" (the "By-Law") means the City's By-Law 0013-2022, as amended, which pertains to the Procurement of Goods and Services.

“Services” means services of all kinds, including labour, construction, maintenance and professional and consulting services.

“Supplier” means a legal entity who is bidding on a City procurement and/or a legal entity with whom the City has entered into a Contract.

“Suspension List” means a list of Suppliers who have been suspended from submitting Bids for a specific duration of time.

“Termination” means the early termination of a Contract with a Supplier as a result of the Supplier's poor or non-performance.

Roles and Responsibilities

Staff roles and responsibilities are as follows:

Chief Procurement Officer

- Jointly decide whether to approve Termination of a Contract in consultation with the applicable department head and the City Solicitor, and
- Decide whether to approve the suspension of a Supplier

Acquiring Directors

- Ensure a Contract Manager is assigned for every Medium and High Value Acquisition
- Ensure that Contract Managers are aware of and comply with any applicable corporate requirements, including this policy
- Determine whether to accept the Contract Manager's recommendation to terminate a Contract and initiate the process in accordance with the Termination section of this policy
- Ensure processes are in place to maintain essential supplies of Goods and/or Services in the event a Contract is terminated, and
- Consult with Legal Services and Procurement Services when a Contract Manager recommends the suspension of a Supplier

Manager, Procurement Services

- Ensure that the Buyer and Contract Manager are complying with this policy and any other corporate requirements, as applicable, in the management of Supplier performance issues
- Support the Buyer and Contract Manager as appropriate/required when issues of poor or non-performance result in escalation
- Consult with senior management as appropriate with respect to managing risk and developing strategies
- Notify the Chief Procurement Officer and Legal Services of any non-performance that poses a serious risk to the City and of any recommendations for suspension of a Supplier
- Notify Suppliers, in writing, that they are being suspended, including the specific duration and reason(s) for the suspension, and

- Update and maintain the Suspension List as required, including the removal of Supplier names at the end of the applicable suspension period

Contract Manager

At time of Contract award:

- Consult with the Buyer to determine the appropriate schedule of Supplier performance evaluations, in accordance with the Contract and this policy, and
- Inform the Supplier of the performance evaluation schedule and expected outcomes

At the commencement of the Contract:

- Be familiar with Corporate procurement requirements, such as the By-Law and this policy, and obtain a complete set of Contract documents
- Re-read the Contract and become familiar with its contents, and
- At the initial project kick-off meeting, reiterate the City's requirements and expectations to the Supplier, as set out in the Contract, including milestones, deliverables and scheduled evaluation dates

As the Contract progresses:

- Regularly monitor the Supplier's performance in accordance with the Contract and this policy
- Complete Supplier performance evaluations in a timely manner, ensuring comprehensive feedback is included that refers back to the Contract requirements
- Notify the Buyer if Supplier poor or non-performance has been identified and is not being remedied or if the Contract Manager suspects that the Supplier may be experiencing financial difficulties, and
- Determine, in consultation with the Buyer, whether to recommend Termination of the Contract and/or Supplier suspension and advise the Acquiring Director of the recommendation

At the completion of every Contract the Contract Manager should:

- Ensure the Contract has been satisfactorily completed, and
- Complete a final Supplier performance evaluation

Buyer

- Review the Suspension List prior to award recommendation to ensure Bids are not accepted from suspended Suppliers
- Provide the Contract Manager with a complete set of Contract documents
- After consulting with the Contract Manager regarding the frequency of evaluations, set up the evaluation module in the City's e-bidding system
- Assist Contract Managers with managing Supplier poor or non-performance, as required, and

- Consult with the Manager, Procurement Services and Legal Services if Supplier performance issues are not resolved and escalation is required

Legal Services

Contract Managers, Buyers and the Manager, Procurement Services may seek guidance from Legal Services at any time. Legal Services must be promptly advised, and take appropriate action, if:

- A Supplier initiates or threatens legal action against the City
- City staff receives notice of a Supplier's insolvency, bankruptcy or receivership
- Termination is being recommended, or
- Suspension is being recommended

Monitoring Supplier Performance

It is important to evaluate and document both good and poor Supplier performance.

Supplier performance evaluations should be completed objectively and professionally and should be supported by all relevant supporting documentation, which may include but is not limited to:

- Notes of meetings and telephone discussions
- Reports and letters
- Change order totals and impact, and
- Invoice samples and comments

The Contract Manager may consult with other City staff who have information relevant to the Supplier's performance.

Contract Managers shall:

- Promote a level of Supplier performance that conforms to the applicable Contract
- Monitor all Suppliers in a fair, consistent and transparent manner
- Release payment in accordance with the terms of the applicable Contract

Note: Where ongoing monitoring is unnecessary, such as a one-time order for Goods, Contract Managers should ensure that the Goods are satisfactory and in accordance with the Contract requirements by inspecting them before releasing payment.

- Where Supplier performance is unacceptable (i.e. not in compliance with the applicable Contract), address performance issues in accordance with the Contract provisions and applicable legislation

Evaluation Frequency

Where the Contract specifies a frequency for evaluation, the Contract Manager must follow the terms of the Contract.

In addition, where it does not conflict with the Contract, the Contract Manager should perform the following evaluations, at minimum, as applicable:

- For fixed term contracts, a Supplier performance evaluation must be completed every twelve (12) months for the entire duration of the term, or at contract completion if the term is less than twelve (12) months
- For construction contracts, a Supplier performance evaluation must be completed every twelve (12) months, at time of substantial performance and at the end of the warranty period, or at contract completion if the contract is less than twelve (12) months and at the end of the warranty period
- For construction consulting contracts, a Supplier performance evaluation must be completed at completion of the design phase and at substantial performance of the related construction contract, as applicable, or
- For consulting contracts, a Supplier performance evaluation must be completed every twelve (12) months, and upon deliverable completion and acceptance by the City, or at contract completion if the contract is less than twelve (12) months.

Evaluation Form

For HVA contracts, Contract Managers must complete all Supplier performance evaluations using the City's e-bidding system.

Suppliers receive an automated notice of completed performance evaluations and can access the evaluations using the City's e-bidding system. Suppliers have the opportunity to add comments and/or to request a reconsideration of the evaluation.

For MVA contracts, Contract Managers must complete the applicable Supplier performance evaluation forms and provide them to Procurement Services in accordance with the prescribed timelines.

Details contained in the evaluation form may be shared with staff and management as appropriate, but not with the public unless disclosure is required or permitted under *Municipal Freedom and Protection of Privacy Act* (MFIPPA).

Supplier evaluations may be considered when awarding Contracts resulting from future bid opportunities.

Addressing Performance Issues

Where the Contract specifies a particular process or timeline for addressing performance issues, the Contract Manager must follow the terms of the Contract. Where applicable, and as permitted by the Contract, staff may have discretion in implementing appropriate performance management tactics based on the nature of the Supplier relationship, the scope and magnitude of the problem and the risks identified. In the event of uncertainty, Procurement Services and Legal Services must be consulted.

Provided there is no conflict with the terms of the Contract, typical steps in addressing performance issues are:

Step 1: Informal Discussion

When a Contract Manager has evidence that a Supplier is exhibiting poor performance, or that the Supplier's performance is unsatisfactory, the Contract Manager must contact the Supplier as soon as possible to clearly explain the deficiencies and any corrective action(s) the City expects the Supplier to take, including timelines for rectification.

The Contract Manager must document all discussions with the Supplier, including the date(s), any steps the Supplier agreed to take to correct the performance issue and avoid a recurrence, and the timelines.

Step 2: Formal Meeting

If poor performance persists (i.e. an issue addressed in an informal discussion is not corrected within the agreed timeframe, or if a new issue arises) the Contract Manager must notify their manager and shall arrange a formal meeting with an appropriate representative of the Supplier.

The Contract Manager must appropriately prepare for a formal meeting with a Supplier by assessing any role the City may have had in the poor performance and by identifying any remedies that are available in the Contract.

During the formal meeting, the Contract Manager must:

1. Clearly identify areas of deficiencies, ensuring all deficiencies can be linked to the Bid Request document and/or subsequent Contract
2. Establish any corrective action(s) the City expects the Supplier to take, including timelines for rectification, and
3. Reinforce the provisions and consequences outlined in the Contract, as applicable, with the Supplier

Step 3: Written Notice

If the Supplier does not resolve the performance issue(s) within the agreed-upon timeframe or the identified issue(s) is of substantive concern (such as a health & safety infraction), the Contract Manager must notify their manager, Procurement Services and Legal Services. Where appropriate, Procurement Services may proceed to issue a formal written 'Cure Notice' containing the following:

1. Confirmation of the poor performance, with examples and dates
2. Reference to (earlier) informal discussions and formal meeting, if applicable
3. Any new timeframes/due dates
4. The actions the Supplier must take to resolve the issue(s)
5. Confirmation that failure to comply with the written notice within the timeframe specified may result in the City pursuing a formal default and remedies against the Supplier

Step 4: Notice of Default

If the Supplier does not comply with the written notice, the Contract Manager must consult with Procurement Services and Legal Services to determine if the City will pursue a formal default and remedies against the Supplier. In such event, Legal Services will issue a formal written Notice of Default.

Note: At this stage, the Contract Manager, Procurement Services and Legal Services must begin to formulate a contingency plan in case the Contract is terminated due to default, if there are applicable performance bonds that will be called upon and if it is necessary to obtain emergency supplies from other Suppliers. The Contract Manager must inform the Acquiring Director (and others as appropriate) of the contingency plan, and if warranted, seek prior approval.

Note: In certain instances where it is not practical to take a step-by-step approach to resolve issues (e.g. health & safety infractions), Steps 1 and 2 may be skipped, allowing Contract Managers to move straight to Step 3 or 4. This course of action will depend, in part, upon the terms of the Contract and therefore the Contract Manager must engage in prior consultation with Procurement Services and Legal Services.

Remedies Available to the City**Notify Accounts Payable**

When issues of poor or non-performance have been identified but are not being resolved and/or in the event of recurring performance issues, the Contract Manager may, in consultation with Legal Services, notify Accounts Payable, in writing, that the Contract is in default and that payments to the Supplier should be withheld until further notice.

Note: Payments on construction and construction consulting contracts must not be withheld without prior consultation with Legal Services.

Contract Securities

In addition to withholding payments to the Supplier, contract securities, which provide the City with recourse to offset potential losses in the event of Supplier default, may be redeemed upon the advice of Legal Services. Refer to Corporate Policy and Procedure – Finance and Accounting – Procurement Securities for more information.

Contract Termination

The Contract Manager may recommend that a Contract be terminated. The decision whether to terminate shall be made by the Chief Procurement Officer, in consultation with the applicable department head and City Solicitor, or their respective designate, or as otherwise authorized by Council. Refer to Corporate Policy and Procedure – 03-06-12 - Contract Amendments and Termination.

The Manager, Procurement Services shall issue Termination notices to Suppliers, as required.

Supplier Suspension

Reasons for Suspension

A Supplier may be suspended from current and/or future Bid opportunities for reasons including, but not limited to:

- The Supplier contacted a City employee, other than the official point of contact, during a Bid Request process, in violation of Section 18 of the By-law
- The City has reasonable grounds to believe the Supplier has engaged in professional misconduct or has committed acts or omissions that adversely reflect on its commercial integrity including, but not limited to bid-rigging, price-fixing, collusion, fraud or other statutory offenses
- The Supplier gave false declarations, including making misrepresentations in Bids or failing to disclose a conflict of interest in connection with a procurement process or Contract
- The Supplier failed to enter into a Contract after being recommended for award
- There is documented evidence of poor performance or non-performance under a Contract
- A Contract with the Supplier was terminated due to poor performance or non-performance
- The Supplier brought a legal action against the City which the City Solicitor considers to be frivolous or vexatious

Supplier's Opportunity to Respond

Prior to imposing a suspension, the Supplier must be provided notice of the intention to suspend and the proposed length of suspension, a summary of the grounds for the proposed decision, and an opportunity to respond.

Length of Suspension

The maximum suspension period is 5 years. The length of the suspension period will be proportional to the reasons for suspension, as determined by the Chief Procurement Officer. A suspension can either be a blanket suspension that applies to all procurements or a limited suspension that applies only to procurements for specific deliverables.

Subcontracting

A suspended Supplier may not act in the capacity of subcontractor for another Supplier.

Suspension of Associated Suppliers

A suspension may extend from an identified Supplier to other Suppliers owned/controlled by the same individuals.

Suspension Decisions

If justified, a Contract Manager may recommend suspension to the Acquiring Director. To proceed, the Acquiring Director must consult with Legal Services and Procurement Services before obtaining approval from the Chief Procurement Officer who has the responsibility under the By-Law for determining if a Supplier should be suspended and for the duration of the suspension.

Suspension Notice

Once a decision to suspend a Supplier has been made, the Manager, Procurement Services, must notify the Supplier, in writing, and identify the reason(s) for and duration of the suspension.

Early Reinstatement

A suspended Supplier may apply for reinstatement upon the completion of half of the suspension period. In order to be considered for reinstatement, the Supplier must submit a written request to the Manager, Procurement Services, including supporting documentation that demonstrates why the reason(s) for the suspension would no longer prove a risk for the City. Decisions on early reinstatement shall be made by the Chief Procurement Officer.

Recordkeeping

To support effective Contract management and Supplier performance, Buyers and Contract Managers must maintain comprehensive records. All records must be maintained in accordance with the applicable contract and in compliance with the Records Retention By-law, as amended.

Revision History

Reference	Description
LT – 2009 12 02	Policy effective with Council approval of revisions to the By-Law – GC - 2010 05 05
GC-0557-2011 – 2011 09 14	Revised to incorporate Supplier Performance Management and Supplier Disqualification
July 05, 2012	Housekeeping – revised MVA definition to \$10,000
December, 2015; January, 2020	Scheduled review – no changes required
March 15, 2022	Housekeeping due to reorg and new Procurement By-law.
LT – 2024 05 30	Scheduled review. Substantial revision to modernize the policy, reflect current practice, and include additional guidance for staff.