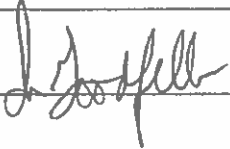


Procurement Protest Procedure

Category: Finance Division	Policy: FIN-F18-014
Effective Date: October 22, 2016	Revision Date: June 15, 2017
Supersedes:	Coverage: All Town Departments
Reviewed by: Manager of Procurement	Approved by: Director of Finance/Treasurer
Authorized Signature: 	

Procedure Statement

The Town is committed to following open, fair and transparent Procurement processes and in doing so has created a procedure for review of Procurement complaints and resolution of disputes with respect to the Competitive Bid Processes conducted by the Town.

Scope

This procedure applies to all employees of the Town, members of Council and any Bidder or potential Bidder that is or may become engaged in Procurement activities with the Town.

Purpose

Article 518 of the Canadian Free Trade Agreement requires government agencies engaged in Procurement activities to “provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a Canadian supplier may challenge: (a) a breach of the Chapter”. Furthermore, Article 19.17 of the Comprehensive Economic and Trade Agreement and Article 9.19 of the Trade and Cooperation Agreement Between Ontario and Quebec require government agencies to allow international suppliers the right to file a dispute with the procuring entity.

The purpose of this procedure is to allow the Town to handle complaints in an organized, consistent manner, and to carry out the analysis and reporting requirements in order to improve its Competitive Bid Processes.

The Procurement Protest Procedure is intended to help resolve issues that involve no significant factual or interpretive disagreement between parties. It is not intended to resolve fundamental disputes over facts or legal rights and obligations or to establish a mechanism to adjudicate such disputes. This procedure shall not be used to challenge a Competitive Bid Process in respect of which the Complainant has commenced legal proceedings against the Town.

Disputes arising between a Contractor and the Town with regards to contractual matters will be handled through the Town's Alternate Dispute Resolution Procedure, FIN-F18-013, as amended.

Definitions

All capitalized terms used in this procedure shall have the meaning given to them in the Procurement Policy, unless otherwise defined in this procedure.

"Complainant" means a Vendor that is protesting a Procurement process under this procedure.

"Protest Committee" means the Town's Procurement Protest Resolution Committee consisting of the following staff positions:

- Chief Administrative Officer
- Treasurer
- Department Head(s) responsible for the relevant Procurement
- Manager of Procurement

Roles and Responsibilities

1. Procurement Division

It is the role of the Procurement Division to:

- a. facilitate and manage the Procurement protest process;
- b. maintain Competitive Bid Process documentation;
- c. maintain a log of protests received; and
- d. monitor and report to the Director of Finance/Treasurer on Procurement protest activities and the outcome of protest reviews.

2. Director of Finance/Treasurer

It is the role of the Director of Finance/Treasurer to:

- a. ensure compliance with this procedure and resolving incidents on non-compliance;
- b. review and approve responses to the Complainant; and
- c. implement changes to the Town's Procurement Policy, standard operating procedures, training methods and tools in response to issues identified through the Procurement protest process.

3. Project Manager

It is the role of the Project Manager to:

- a. ensure information and documents required by the Procurement Division in connection with a Procurement protest are provided in a timely manner; and
- b. respond to any questions or requests for information from the Protest Committee.

Procedure

1. Debriefing

A Complainant must have requested and received a telephone debriefing prior to initiating a formal protest under this procedure.

2. Notice of Protest

In order to initiate a formal Procurement protest under this procedure, the Complainant must submit a written notice of protest to the Manager of Procurement within fourteen (14) working days from the date of the debriefing.

The notice of protest must clearly state the nature of the complaint, giving full details and history of the events leading to the complaint, including relevant dates, Competitive Bid Process numbers, previous discussions with Project Manager and actions being requested of the Town.

3. Acknowledgement of Receipt

The Manager of Procurement will make every effort to acknowledge the notice of protest within two (2) working days of receipt.

4. Initial Review

On receipt of the notice of protest, the Manager of Procurement will review the complaint to determine if further action is appropriate. A complaint may be dismissed without further consideration, where:

- a. the Complainant has not requested and received a debriefing;
- b. the notice of protest is received more than fourteen (14) working days after the debriefing; or
- c. the complaint is, in the opinion of the Manager of Procurement, frivolous or invalid or otherwise inappropriate for consideration.

If the complaint is dismissed, the Manager of Procurement will notify the Complainant of the reason for the dismissal.

5. Protest Committee Review

Unless the complaint has been dismissed in accordance with section 4, the Procurement Division will work with the Project Manager to prepare a report setting out any background information and documentation relevant to the protest.

The Manager of Procurement will convene a meeting of the Protest Committee to review and consider the Complainant's notice of protest and the report prepared by the Procurement Division and Project Manager. The Protest Committee may seek any additional information it requires and may consult other Town officers and employees, legal counsel or other advisors, as necessary.

6. Protest Committee Determination

Upon completion of its review, the Protest Committee will make a determination and issue a response to the Complainant.

If the review extends longer than thirty (30) working days, the Complainant will be advised, in writing, when they may expect a response.

The determination of the Protest Committee is the final determination under this procedure. If the Complainant is not satisfied with the response of the Protest Committee, the Complainant may, at that point consider other options, including challenges under the applicable trade agreements and/or governing laws.

General Terms of the Procurement Process Procedure

1. Delay

The award of any Contract shall not be rescinded nor the progress of any project delayed by a notice of protest received under this procedure, unless recommended by the Town.

2. Information

All exchanges of information between the Complainant and the Town shall be regarded as "without prejudice" communications and shall be treated as confidential by the parties and their representatives, unless otherwise required by law.

3. Time

Time is of the essence, and all protests shall be communicated without delay and resolved in a timely manner. Email correspondence may be used by the parties in the Procurement protest process.

Related Documents

- Procurement Policy
- Alternate Dispute Resolution Procedure