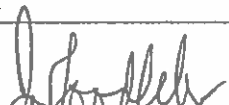


## Procurement Suspension Procedure

<b>Category:</b> Finance Division	<b>Policy:</b> FIN-F18-025
<b>Effective Date:</b> June 15, 2017	<b>Revision Date:</b>
<b>Supersedes:</b>	<b>Coverage:</b> All Town Departments
<b>Reviewed by:</b> Manager of Procurement	<b>Approved by:</b> Director of Finance/Treasurer
<b>Authorized Signature:</b> 	

### Procedure Statement

The Town is committed to following open, fair and transparent procurement processes and in doing so has created a procedure to set out the criteria and process for suspending Contractors from participation in the Town's Procurements.

### Scope

This procedure applies to all employees of the Town and any Contractor.

### Purpose

The purpose of this Procedure is to set out the criteria and process for suspending Contractors from participation in the Town's Procurements. This procedure was developed to ensure that the Town is receiving quality Goods, Services and Construction from Contractors that conduct business in a professional, ethical and responsible manner.

In accordance with this Procedure, the Town may suspend Contractors from participating in its Procurement processes for prescribed time periods for any of the following reasons:

- a. The Contractor was convicted of bid-rigging, price-fixing, collusion or other statutory offences;
- b. The Contractor engaged in unethical bidding practices;
- c. The Contractor brought previous litigation proceedings against the Town or the Town against the Contractor; or

- d. The Contractor demonstrated significant performance issues on a Contract with the Town.

The Town may consider a wide range of factors when determining whether or not a Contractor should be suspended under any of the above circumstances. The Town's decision to suspend a Contractor is discretionary; however, such discretion will be exercised consistently and fairly in accordance with this Procedure.

## **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.

**“Contractor”** means either a Bidder or a Contractor as the case may be.

## **Length and Scope of Suspension**

The maximum suspension period is three (3) years, with the exception of suspension of Contractors convicted of statutory offences, in which cases the suspension period will be five (5) years. The length of the suspension period will be proportional to the reasons for suspension, as determined based on the considerations set out in this Procedure. A suspension can be either a blanket suspension that applies to all Procurements or a limited suspension that applies only to Procurements for specific deliverables.

## **Reasons for Suspension and Determination of Suspension Period**

### **1. Illegal Bidding Practices**

If the Town has reasonable grounds to suspect that a Contractor or Contractors are engaged in bid-rigging, price-fixing, bribery, collusion or other behaviours or practices prohibited by federal or provincial statutes in connection with a Procurement with the Town or other third party, the Manager of Procurement will contact the appropriate authorities and provide such assistance as is required to support a subsequent investigation and, if applicable, prosecution.

If a Contractor is convicted of a statutory offence in connection with a Procurement, the Contractor will be suspended for the maximum suspension period of five (5) years from the date notice is given under this Procedure.

### **2. Unethical Bidding Practices**

Unethical bidding practices that do not amount to a criminal or statutory offense may still warrant the suspension of a Contractor. Examples of such unethical bidding practices include, but are not limited to:

- inappropriate offers of gifts to the Town's elected officials, officers or employees;
- misrepresentations in bids;
- inappropriate lobbying or prohibited communications during a procurement process; and
- failure to disclose potential conflicts of interest during the Competitive Bidding Process.

In considering the appropriate suspension period, the Town will consider the unethical practice in question, whether the unethical bidding practice compromised the Town's ability to run a fair Procurement and whether the Contractor has previously engaged in such practices in prior Procurements.

### 3. Litigation

If a Contractor commences litigation against the Town or the Town against the Contractor, the Town may consider whether or not such litigation warrants suspension of that Contractor from participation in future Procurements.

A Contractor will only be suspended in connection with litigation proceedings if the Town determines that there are valid commercial or business reasons for doing so, and the suspension will not be used to "punish" the Contractor for bringing a lawsuit. Litigation against the Town in respect of matters unrelated to a Procurement or to a Contract will not be considered under this Procedure.

In considering the appropriate suspension period, the Town will consider whether the litigation calls into question the Contractor's ability to provide Goods, Services or Construction to the Town under future Contracts and whether the Contractor has a history of litigious conduct or has previously engaged in litigation that was found to be frivolous or vexatious.

### 4. Poor Performance

If a Contractor performs inadequately under a Contract with the Town, the Town will consider suspending that Contractor in any of the following circumstances:

- the suspension of the Contractor has been recommended in accordance with the Town's Contractor Performance Procedure;
- the Contract was terminated for performance issues prior to expiry; or
- the Town brought litigation proceedings against the Contractor in connection with performance or non-performance of the Contractor's contractual obligations.

In considering the appropriate suspension period, the Town will consider the nature and the severity of the performance issues and the Contractor's prior performance on previous Contracts, if any.

## **Process for Suspension**

### **1. Suspension Recommendation Report**

Any decision to suspend a Contractor will be supported by a written Suspension Recommendation Report that contains all details including reasons for the suspension and the recommended length and scope of the suspension. The Suspension Recommendation Report will be submitted by the Manager of Procurement to the Town's Dispute Committee for review and consideration.

In the event of a recommended suspension for poor performance, Contractor Performance Report ("CPR") and any Contractor Performance Evaluation ("CPE") prepared in accordance with the Town's Contractor Performance Procedure will serve as the Suspension Recommendation Report. The CPR and/or CPE and any written response(s) received from the Contractor in accordance with the Contractor Performance Procedure, will be submitted by the Manager of Procurement to the Town's Dispute Committee for review and consideration.

### **2. Determination by Dispute Committee**

The Town's Dispute Committee will consider and decide whether or not to approve the Suspension Recommendation Report and issue a suspension. In making its determination, the Dispute Committee may seek any additional information it requires and may consult with other Town officers or employees, legal counsel or other advisors, as necessary.

The determination of the Dispute Committee is the final determination under this Procedure.

### **3. Notification**

If the Suspension Recommendation Report is approved, the Contractor will be notified in writing that it is suspended from participation in the Town's Procurements for the prescribed time period commencing on the date notice is provided to the Contractor.

## **Review of Suspension**

A suspended Contractor may apply for reinstatement upon the completion of half of the original suspension period. For example, if the original suspension period was two (2) years, the Contractor may apply for reinstatement after one (1) year. In order to be re-eligible for participation in the Town's Procurements, the Contractor 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.

Applications for reinstatement will be reviewed by the Town's Dispute Committee. If the Dispute Committee determines that allowing the Contractor the opportunity to participate in the Town's

Procurements would no longer expose the Town to risk, then the application for reinstatement will be approved.

The Contractor will be notified, in writing, of the final decision for reinstatement made by the Dispute Committee.

### **Suspended Contractors List**

The Procurement Division will maintain an up-to-date and current list of all suspended Contractors. Any Contractor that is owned or controlled by the same individual(s) that owned or controlled a suspended Contractor at the time it was suspended is also deemed suspended. Suspended Contractors will not be eligible to bid or otherwise participate in any Procurement and any Bid or response to a Procurement opportunity submitted by a suspended Contractor will not be considered.

### **Related Documents**

- Procurement Policy
- Contractor Performance Procedure