



Supplier Discipline Policy

Department: Financial Services, Purchasing
Policy Number: FI-2019-09-09-3
Effective Date: September 10, 2019
Council Approval: September 9, 2019
Revision Date:

1.0 PURPOSE

The Corporation's Staff are responsible for managing Contracts and for identifying and controlling the risks associated with Supplier performance.

The purposes of this policy includes, without limitation:

1. The promotion of effective Supplier performance management, resulting in improved communication between the Corporation and its Suppliers and enhanced Supplier performance;
2. Outlining staff roles and responsibilities for managing Supplier performance throughout a Contract and excluding Suppliers;
3. Outlining criteria for evaluating Supplier performance;
4. Establishing the process for addressing Supplier performance;
5. Outlining the potential reasons for Supplier exclusion from participation in future Bid Solicitations;
6. Establishing the process for Supplier exclusion.

2.0 POLICY DESCRIPTION

This policy provides guidance for managing Supplier performance and potentially excluding Suppliers from the Corporation's procurements. For the purposes of this policy, exclusion means a determination of ineligibility or a disqualification of a Supplier's eligibility to Bid on or be Awarded future Corporation Contracts for any duration.

A decision to exclude a Supplier is unrelated to a decision to Award or refusal to Award any particular Contract. Unless otherwise stated, this policy does not apply to a decision to reject a Bid for failure to meet the Corporation's evaluation criteria or the Corporation's reserved rights applicable to any particular Bid Solicitation. This policy is in addition to any rights to reject a Bid on grounds of a Supplier's past conduct, behaviour or any other term or condition of a Bid Solicitation, which provides for rejection or evaluation of a Supplier or cancellation of a Bid Solicitation. This policy is in addition to all reserved rights that the Corporation may have under any Bid Solicitation or any other policy.

The exclusion of a Supplier shall not be exercised for the purpose of punishing a Supplier. It should be based on a review of whether the Supplier's conduct presents a risk to the Corporation's business, commercial and/or public interests. The scope and duration of any exclusion should be consistent with what is necessary to ensure that the Corporation's business, commercial and/or public interests are adequately protected. A Supplier must be notified of the reasons for the exclusion and be given an opportunity to respond in writing.

The Corporation may exclude Suppliers for one or more reasons listed in this policy, for any reason permitted under the Corporation's Procurement of Goods and/or Services Policy or any other policy or right the Corporation may have.

3.0 INTERPRETATION

Capitalized terms not otherwise defined in this policy have the meanings given in the Corporation's Procurement of Goods and/or Services Policy.

4.0 PERFORMANCE MANAGEMENT

Effective management of Supplier performance is important because a Supplier's failure to properly perform a Contract exposes the Corporation to, among other things, financial and operational risk and liability to claims from others.

The Corporation's expectations of Suppliers and the criteria on which they will be monitored should be communicated to the Supplier. Management of Supplier performance should generally begin when a Contract is Awarded to a Supplier and should generally continue, by means of measuring, monitoring, reviewing, and documenting, throughout the life of a Contract, being until all the obligations under the Contract have been completed, final payment has been made and warranties have expired. The Corporation's staff should notify Suppliers of performance issues as soon as practicable.

It is the Corporation's intent to monitor Suppliers in an appropriate manner and to work with Suppliers to promote a level of performance that conforms to the applicable Contract.

Supervisors, Division Managers and/or Department Managers should monitor Supplier performance against the Contract and determine if the Goods and/or Services are acceptable.

If the Supplier's performance is not in compliance with a Contract, an evaluation should be completed by the applicable Supervisor, Division Manager and/or Department Manager or the Purchasing Supervisor.

5.0 DOCUMENTATION

Documentation facilitates the monitoring and management of the risks associated with Contracts. Documentation is important when there is a recommendation to exclude a Supplier from bidding on future Contracts.

Documentation should be up to date and organized in a way that allows tracking and verification of matters such as, without limitation:

- the expected quantity and quality of Goods and/or Services, or both;
- timelines - delivery or schedule dates;
- performance review dates or intervals;
- service and performance levels;
- environmental or operational conditions which may affect or contribute to a performance issue; and
- performance issues and actions taken.

6.0 PERFORMANCE REVIEW CRITERIA

Where the Corporation deems it appropriate, the applicable Supervisor, Division Manager and/or Department Manager and Purchasing Supervisor should review the Supplier's performance to see if it meets the requirements and service level criteria specified in the Contract.

When carrying out a performance review, the applicable Supervisor, Division Manager and/or Department Manager and Purchasing Supervisor may consider the following Supplier performance criteria, without limitation:

- Contract interpretation and implementation- Is the Supplier familiar with the Contract provisions? Does the Supplier adhere to the Contract requirements, including Change Order processes, delivery dates and service levels?
- Critical legislative and safety requirements - Does the Supplier comply with safe work practices, laws and regulations, and other applicable legislation, regulations and the Corporation's policies and procedures?
- Quantity - Does the Supplier comply with Goods and/or Services quantity and delivery requirements as specified in the Contract?
- Quality requirements - Does the Supplier comply with Contract requirements and standards? Meet specifications and service levels with minimal deficiencies? Does the Supplier resolve issues quickly and in a professional manner?
- Site supervision or project management - Does the Supplier plan effectively, anticipate issues and take pro-active action in order to comply with Contract requirements and contain costs?
- Documentation - Does the Supplier maintain and/or prepare complete documentation as required under the Contract and submit it as required?
- Financial Strength - Does the Supplier maintain financial solvency and integrity?
- Warranty - Does the Supplier provide warranty service as specified in the Contract? Does the Supplier resolve issues quickly and in a professional manner?

7.0 AUTHORITY LEVELS AND APPROVALS

1. **Approval Authority:** The decision to exclude a Supplier is discretionary, and must be exercised fairly and supported by a written memo from the Purchasing Supervisor, the General Manager, Financial Services, or the CAO. The Corporation's discretion to exclude a Supplier shall be approved as follows, depending upon the proposed duration and reasons for exclusion:

Level of Approval	Reason	Time Period	Scope
Purchasing Supervisor or General Manager, Financial Services	One or more Supplier Conduct reasons for exclusion exclusive of criminal offences	Up to one year	Total Exclusion* including - affiliated persons - subcontracting - options, renewals or extensions of existing Contracts.
CAO	Evidence that Supplier or their affiliated persons have been convicted of an applicable criminal offence	Up to 5 years from date of conviction	Total Exclusion, including - affiliated persons - subcontracting - options, renewals or extensions of existing Contracts.
Council	One or more Supplier Conduct reasons for exclusion	Up to 5 years	Total Exclusion* including - affiliated persons - subcontracting - options, renewals or extensions of existing Contracts.

*exclusion may be limited in scope to Contracts of similar or greater value or classification, based on the particular recommendations of the Purchasing Supervisor, General Manager, Financial Services, or CAO.

8.0 REASONS FOR EXCLUSION

1. Unsatisfactory Performance

If a Supplier performs inadequately on an existing or recent Contract with the Corporation, the Corporation may consider excluding that Supplier in the following circumstances:

- i. The Supplier materially fails to perform in accordance with the terms of one or more Contracts, including but not limited to:
 - 1. A Contract was terminated for performance default issues prior to its normal expiry;
 - 2. There were unrectified performance issues on one or more Contracts that resulted in performance related Contract amendments or in extra costs to the Corporation;
 - 3. Contract deliverables were defective or deficient and were not replaced or repaired, or required multiple untimely repairs; or
 - 4. The Corporation was required to call upon a performance bond or bring litigation or another form of enforcement or adjudication against the Supplier to remedy unsatisfactory Contract performance issues;
- ii. The Supplier over-billed, double billed, retained a known overpayment or failed to notify the Corporation of an overpayment or duplicate payment within a reasonable time;
- iii. The Supplier billed for Goods and/or Services not supplied;
- iv. The Supplier billed for Goods and/or Services of one grade, while supplying Goods and/or Services of an inferior grade;
- v. The Supplier misrepresented the quality or origin of Goods and/or Services, their functionality or suitability for purpose, or their performance characteristics;
- vi. The Supplier misappropriated any property or right of the Corporation, in any form;
- vii. The Supplier submitted false or exaggerated claims to the Corporation, as determined by the Purchasing Supervisor in consultation with the General Manager, Financial Services;
- viii. The Supplier submitted misleading information to the Corporation;
- ix. The Supplier sought modifications to the price of a Contract through false or misleading representations, including materially undervaluing their bid or any included unit prices to win the Contract, and later seeking unnecessary Contract modifications;

- x. The Supplier fails to pay debts to the Corporation;
- xi. The Supplier breaches the terms of the Corporation's Harassment Policy;
- xii. The Supplier acts in any manner that is a conflict of interest with the Corporation without the knowledge and consent of the Corporation;
- xiii. The Supplier commits any other misconduct or omissions that reflect adversely on the integrity of the Supplier; or
- xiv. Such other grounds that the Purchasing Supervisor, in consultation with the General Manager, Financial Services determines are appropriate.

2. Bidding Practices Prohibited by Law

If the Corporation has reason to suspect that a Supplier or Suppliers are engaged in bid-rigging, price fixing, collusion or other behaviours or practices prohibited by statute in connection with a Corporation procurement, the Corporation may contact the appropriate law enforcement authorities and provide any assistance as may be required to support a subsequent investigation by those authorities, and if applicable, a prosecution. If a Supplier is convicted of an offence in connection with a Corporation or any other public sector or private procurement, the CAO shall exclude that Supplier for up to a maximum of 5 years.

The CAO may reverse an exclusion in respect of a criminal offence if the Supplier demonstrates that it or any of its affiliated persons has been granted an absolute discharge or a pardon. The Supplier must be notified, in writing, of the final decision for reinstatement made by the Corporation.

3. Unethical Bidding Practices

A Supplier which engages in unethical bidding practices that do not amount to a criminal or statutory offense may still warrant exclusion from Corporation procurement opportunities.

Examples of unethical bidding practices include, but are not limited to:

- i. Inappropriate offers of gifts or other inducements to the Corporation employees or officials;
- ii. Misrepresentations contained in Bids or related submissions;
- iii. Failure to provide reasonable and timely Bid verification information;

- iv. Failure to pre-disclose to the Purchasing Supervisor any affiliations, subcontracting or material supply arrangements with other prospective bidders;
- v. Material alteration of Bid or submission information, not authorized by the Bid Solicitation or the Purchasing Supervisor;
- vi. Inappropriate in-process lobbying of Corporation employees or officials;
- vii. Communications with non-designated Corporation employees or officials during a procurement process;
- viii. Intimidation of or interference with any Corporation employee, officials or other Suppliers in relation to a procurement;
- ix. Obtaining or using the Corporation's non-public confidential information in connection with a procurement process or Contract performance in an unethical manner or without the Corporation's consent;
- x. Submitting materially unbalanced bid pricing that could reasonably distort the total or individual value of the proposed Contract deliverables;
- xi. Failure to honour a Bid;
- xii. Failure to enter into a Contract after it has been Awarded;
- xiii. Failure to disclose a potential conflict of interest or unfair advantage; or
- xiv. Such other behaviours that undermine the Corporation's Bid Solicitation process.

The Corporation can conduct a review of the unethical practice in question and perform an analysis to determine whether the Supplier in question should be excluded. Specifically, the Corporation can review whether the unethical bidding practice warrants rejecting a particular Bid or cancelling a Bid Solicitation, but also whether that the Supplier presents an ongoing risk to the Corporation's ability to run a fair procurement process in the future such that an exclusion under this policy is warranted.

4. Failure to Honour a Bid

Suppliers should only submit proposals if they are capable of delivering the Goods and/or Services. If a Supplier submits a Bid in response to the Bid Solicitation and that Supplier subsequently refuses to honour its Bid or the pricing included in that Bid, or otherwise fails to enter into a Contract with the

Corporation following notification of the Award, the Corporation may consider excluding that Supplier from participating in future Corporation procurements.

A Supplier should not be excluded if their failure to honour a Bid was a legitimate and legal withdrawal of that Bid.

5. Failing to Disclose a Potential Conflict of Interest

If a Supplier fails to disclose a conflict of interest during a Corporation procurement opportunity or during the performance of a Contract with the Corporation and the Corporation subsequently discovers that such a conflict of interest exists, the Corporation may exclude that Supplier from participating in future procurement opportunities.

Suppliers must declare all potential and actual conflicts of interest before submitting their Bid and otherwise comply with the Corporation's Procurement Policy and the terms of the Bid Solicitation. For the purpose of managing any potential or actual conflict, the Purchasing Supervisor may set additional conditions on the Supplier's participation, including, without limitation:

- i. Setting additional disclosure requirements or safeguards; or
- ii. Excluding individuals from the Supplier's proposed team.

Without limiting the Corporation's right to reject a Bid under the terms or conditions of a Bid Solicitation or under any other policy, a Supplier may have their Bid rejected where the Purchasing Supervisor, in consultation with the General Manager, Financial Services, determines that a conflict of interest exists and is incompatible with a fair and open competitive procurement process or the performance of the proposed Contract with the Corporation.

9.0 EXCLUSION PROCESS

1. General

Any decision to exclude a Supplier should be supported by a memo that contains the details connected with the analysis using factors set out in Section 8 - Reasons for Exclusion.

All recommendations to exclude a Supplier must be reviewed by the Purchasing Supervisor in consultation with the General Manager, Financial Services, and be approved in accordance with the level of Approval set out in this policy.

2. Notification to the Supplier and Supplier Rebuttal

Prior to the Purchasing Supervisor approving an exclusion, or prior to submitting a report to the Council for an exclusion, the Purchasing Supervisor will provide the Supplier with an advance notification letter that will contain:

- i. Notice of an exclusion of the Supplier, where approved by the Purchasing Supervisor, General Manager, Financial Services or CAO, if applicable;
- ii. Notice of the proposed report to Council as to the reasons for the exclusion, and may include copies of relevant documents or correspondence to support such an exclusion; and
- iii. The length of the proposed exclusion period and the scope, if applicable.

For an exclusion that is approved by the Purchasing Supervisor or General Manager, Financial Services, the advanced notification letter will request the Supplier to provide a response within 10 days of the letter. If no response is received within 10 days, then the exclusion will come into effect for up to one year.

For an exclusion that is approved by the CAO, the advanced notification letter will request the Supplier to provide a response within 10 days of the letter. If no response is received within 10 days, then the exclusion will come into effect for the time period specified in the notice.

For an exclusion that must be approved by Council, the advanced notification letter will request the Supplier to provide a response within 15 days of the letter. If no response is received within the 15 days, then the Purchasing Supervisor and the relevant Division Manager may proceed to the appropriate Council meeting.

3. Council Approved Exclusions

For exclusions that require Council approval, a report should be sent to Council. The report will be from the Purchasing Supervisor, in consultation with the General Manager, Financial Services and the Department Manager that would primarily Contract with the Supplier, where appropriate. The report may:

- i. Indicate the length of the proposed exclusion period and the scope of the exclusion;
- ii. Note the reasons for the exclusion;

- iii. Include copies of relevant documents or correspondence to support such an exclusion; and
- iv. Provide a copy of the response if obtained from the Supplier.

4. Notice of Exclusion

If an exclusion is approved, a notification must be provided by the Purchasing Supervisor, General Manager, Financial Services or CAO to the Supplier in question informing that Supplier that they are excluded from participating in the Corporation procurement opportunities for the prescribed time period.

The notification letter should contain the length of the exclusion period and the scope, if applicable.

5. Extension of the Exclusion

Any exclusion decision may be extended or renewed at the Corporation's discretion.

6. Post Exclusion

Once the period of full exclusion has expired, the Supplier will again be eligible to Bid on Corporation Contracts without further notice.

7. Exclusion List

The Purchasing Supervisor should maintain an up-to-date and current list of all excluded Suppliers. A Supplier's affiliated persons, including any director or officer who was a director or officer of a Supplier on the exclusion list at the time it was excluded are also considered excluded.

For this purpose, the Exclusion List should contain:

- i. the full name of the Supplier;
- ii. the names of the directors and officers of the Supplier;
- iii. the reasons for the exclusion;
- iv. the file number where the memo for the exclusion is filed;
- v. the scope of the exclusion, where applicable (if less than total exclusion); and
- vi. the length of the exclusion period and the date of the expiry of the exclusion period.

Review of the Exclusion List against a list of Suppliers or respondents and their directors should be conducted by the Purchasing Supervisor for each Bid Solicitation to ensure that Suppliers are not allowed to Bid or continue in the process. In particular, Bids from Suppliers on the Exclusion List, or their affiliated persons, should not be opened or otherwise evaluated.

8. Scope of Exclusion and Related Exceptions

Unless the memo supports an exclusion limited in scope to Contracts of a particular type or value, the exclusion will apply to all Contracts procured by the Corporation from that Supplier.

Unless the memo supports an exclusion limited in scope to Contracts of a particular type or value, the exclusion will apply to all Contracts procured by the Corporation from Suppliers who have the same officer(s), director(s) or other affiliated person(s) of the Supplier that has been excluded.

A Supplier cannot subcontract with an excluded Supplier. A Supplier cannot subcontract with a Supplier whose officer or director or other affiliated person of the Supplier is an excluded Supplier. A Supplier is required to verify that their prospective subcontractors are not on the Exclusion List prior to Bid submission.

Any existing Contract may not be renewed, extended or expanded without the approval of the CAO, in consultation with the General Manager, Financial Services.

The CAO may decide that it is in the public interest to approve the use of an ineligible or excluded Supplier where it is in the interests of the Corporation, including in the following possible circumstances, without limitation:

- i. An emergency where delay would be injurious to the public interest;
- ii. The Supplier is the only person capable of performing the Contract;
- iii. The Contract is essential to maintain sufficient emergency supplies; or
- iv. Not entering into the Contract or extending the Contract with the Supplier would have a significant adverse impact on the health, security, safety, public security or economic or financial well-being of the Corporation.

The exception is applied on a case-by case basis by the CAO.

X

Bernadette Clement
Mayor

X

Maureen Adams
Chief Administrative Officer