

Policy Title: Vendor Performance Management and Disqualification

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Section: Corporate Administration

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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 staff are responsible for managing Contracts and for identifying and controlling the risks associated with Vendor performance. Vendors may be disqualified from bidding on City Contracts under certain circumstances in order to minimize the City’s risk of losses.

Purpose

The purposes of this policy are:

- To promote effective Vendor performance management, resulting in improved communication between the City and its Vendors and enhanced Vendor performance
- To outline staff roles and responsibilities for managing Vendor performance throughout a Contract and for disqualifying Vendors
- To outline the criteria for evaluating Vendor performance
- To establish the processes to address concerns with Vendor performance
- To outline the reasons for Vendor disqualification from receiving consideration for the award of future Contracts, and
- To establish the process for Vendor disqualification

The Procurement Services “Vendor Performance Management Guidelines” (the Guidelines) that support this policy provide City staff with detailed information for managing Vendor performance and disqualification.

Scope

This policy applies to all Medium and High Value Acquisition Contracts for Good or Services or both, between the City of Mississauga and its Vendors.

The policy and the Guidelines are intended to supplement the Contract if the performance management or termination provisions in the Contract are incomplete or missing. If the Contract does not cover every aspect of performance management and termination, then the policy and Guidelines are to be used to fill in the gaps.

To be fair to Vendors, the City must inform them of this policy by referencing this policy in Instructions for Bidding and Proposing and in the Contract documents.

Completion of Evaluation Form

Completion of an Evaluation Form is mandatory where a Vendor's performance is unsatisfactory and/or if termination of a Contract or disqualification of the Vendor is being considered.

Where a Vendor's performance meets or exceeds the City's expectations, completion of an Evaluation Form is optional.

Legislative Authority

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

Details contained in the Evaluation Form must only be disclosed in accordance with this policy and in compliance with the *Municipal Freedom and Protection of Privacy Act* (MFIPPA). For additional information on MFIPPA refer to Corporate Policy and Procedure - Corporate Administration - Freedom of Information and Protection of Privacy.

Guidelines

The Guidelines provide detailed information to employees across all City departments who are involved in the procurement of Good or Services or both and in the ongoing management of Vendor performance. The Guidelines provide direction on the frequency of performance reviews, documentation requirements and the steps to take when handling poor or non-performance. The Guidelines are intended to be used in conjunction with this policy and the Contract and will assist staff in monitoring the Vendor's overall performance, as well as the specific performance provisions and/or service level criteria contained in the Contract.

The Guidelines are subject to review and amendment by the Manager, Procurement Services, in consultation with Legal Services and must be approved in writing by the Chief Procurement Officer. The Guidelines are available from Procurement Services, Corporate Business Services Division, Corporate Services Department or on Inside Mississauga.

Definitions

For the purposes of this policy

"Acquiring Director" means the Divisional Director with ultimate responsibility for the Bid and/or Contract.

“Bid” means an offer or submission from a Bidder, received in response to a Bid Request from the City.

“Bid Request” means a solicitation from the City to external suppliers to submit a quotation, tender, proposal or best and final offer.

“Bidder” means any legal entity submitting a Bid.

“Buyer” means a buyer in the City’s Procurement Services Section, Corporate Business Services Division who is assigned responsibility for a particular acquisition.

“Cancellation” means the early termination of a Contract with a Vendor as a result of the Vendor’s poor performance or non-performance.

“Chief Procurement Officer” means the City’s Director of Corporate Business Services, Corporate Services Department, or their designate, in writing.

“Contract” means a commitment to acquire or potentially acquire, Goods or Services or both.

“Contract Manager” means a City employee who has been authorized and assigned the responsibility of overseeing a particular Contract.

“Disqualification List” means a record kept by the City of any Bidder or Vendor who has been disqualified from submitting a Bid in accordance with this policy.

“Evaluation Form” (the “Form”) means the form created by Procurement Services, as amended from time to time, to be used in documenting and rating Vendor performance management.

“Frivolous or Vexatious” when used in relation to a lawsuit have the following meanings:

“Frivolous” means a lawsuit that, due to its lack of factual or legal merit, has little or no chance of success; and “Vexatious” means a lawsuit that is brought, regardless of its merits, to harass or subdue the other party or that is part of a pattern of bringing lawsuits or motions that are without merit.

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

“High Value Acquisition” means an acquisition of Goods or Services or both, having a value of more than \$100,000, exclusive of taxes.

“Medium Value Acquisition” means an acquisition of Goods or Services or both, having a value of between \$25,000 and \$100,000, exclusive of taxes.

“Procurement By-Law” (the “By-Law”) means the City’s By-Law 0013-2022, as amended, which pertains to the acquisition of Goods and Services and the disposition of surplus Goods.

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

“Vendor” means a legal entity, including an individual, with whom the City has entered into a Contract to acquire Goods or Services or both.

Vendor Performance Monitoring and Evaluation

Throughout the Contract

Effective management of Vendor performance is important because a Vendor’s failure to perform a Contract satisfactorily exposes the City to financial and operational risk and liability to claims from others.

To be effective, the City’s expectations of Vendors and the criteria on which they will be monitored must be clearly communicated to the Vendor. Management of Vendor performance must begin when a Contract is awarded to a Vendor and continue, by means of measuring, monitoring, reviewing and documenting, throughout the life of a Contract, i.e. until all the obligations under the Contract have been satisfactorily completed, final payment has been made and warranties have expired. City staff must notify Vendors of performance issues as soon as they arise if there is to be a satisfactory outcome.

Where extensive monitoring is not necessary, such as a one-time order for Goods, the Contract Manager should ensure that the Goods are satisfactory and in accordance with the Contract requirements by visually inspecting them before releasing payment.

Monitoring

It is the City’s intent to monitor all Vendors in a consistent and fair manner and to work with Vendors to promote a level of performance that conforms to the applicable Contract.

Contract Managers should monitor Vendor performance against the Contract and determine if the Goods and/or Services are acceptable. If yes, payment will be released in accordance with the Contract.

If the Vendor’s performance is not in compliance with the Contract, an Evaluation Form must be completed by the Contract Manager for every Medium or High Value Contract.

Completion of an Evaluation Form for those Vendors whose performance has met or surpassed the City’s expectations is optional.

Roles and Responsibilities

Chief Procurement Officer

The Chief Procurement Officer has the following responsibilities:

- Jointly decide whether to approve Cancellation of a Contract in consultation with the applicable Commissioner and the City Solicitor, and
- Decide whether to authorize recommendations for the disqualification of Vendors

Acquiring Directors

Directors who acquire Goods or Services have the following responsibilities:

- Ensure a Contract Manager is assigned for every Medium and High Value Acquisition Contract
- 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 cancel a Contract and initiate the process in accordance with the Cancellation section of this policy
- Ensure processes are in place to maintain essential supplies of Goods or Services in the event a Contract is cancelled, and
- Consult with Legal Services and Procurement Services when a Contract Manager recommends the disqualification of a Vendor

Manager, Procurement Services

The Manager, Procurement Services, has the following responsibilities:

- Assist staff with interpretation of the Contract, the By-Law and/or Corporate Policies and Procedures related to procurement and with the application of the Guidelines
- Provide advice on supply-related risks and strategies and procurement options in the event a Vendor does not appear to be complying with the Contract
- Provide assistance to senior management, when requested, 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 disqualification
- Notify Bidders and/or Vendors, in writing, that they are being disqualified, including the specific duration and reason(s) for the disqualification, and
- Update and maintain the Disqualification List as required, including the removal of Bidder or Vendor names at the end of the disqualification period

Contract Manager

Contract Managers have the following responsibilities:

- At the outset of a Contract, the Contract Manager must:
 - Be familiar with Corporate procurement requirements, such as the By-Law and this policy, and obtain a complete set of documents relating to the Contract, as outlined in the Guidelines
 - Review the Contract and become familiar with the key provisions, such as operational and technical requirements, delivery dates and schedules and performance and default provisions, such as termination, penalties and dispute resolution, and

- Clearly communicate the City's requirements and expectations to the Vendor
- As the Contract progresses the Contract Manager must:
 - Regularly monitor the Vendor's performance, in accordance with the criteria set out in the Performance Review Criteria section of this policy
 - Notify the Buyer if Vendor poor or non-performance has been identified and is not being remedied or if the Contract Manager suspects that the Vendor may be experiencing financial difficulties, and
 - Determine, in consultation with the Buyer, whether to recommend Cancellation of the Contract and/or disqualification and advise the Acquiring Director of the recommendation
- At the completion of every Contract the Contract Manager must:
 - Ensure the Contract has been satisfactorily completed
 - Evaluate the Vendor performance in accordance with this policy and as outlined in the Guidelines, and
 - Consult with the Acquiring Director and the Buyer if disqualification of a Vendor may be recommended

Buyer

Buyers have the following responsibilities:

- Be familiar with and apply Corporate procurement requirements such as the By-Law, this policy and the Guidelines, where applicable
- Provide the Contract Manager with a complete set of documents relating to the Contract, as outlined in the Guidelines
- Consult with the Manager, Procurement Services and Legal Services if Vendor performance issues are not resolved or if there may be a significant risk to the City, such as financial loss or possible litigation
- Assist Contract Managers in the performance management and review process
- Forward all recommendations for disqualification to the Manager, Procurement Services
- Confirm whether Bidders are on the City's Disqualification List as follows:
 - Invitation only Bids - prior to engaging in the procurement process
 - Advertised Bids - at the close of the Bid, and
- Issue a notice of bid rejection if a Bidder is found to be on the Disqualification List

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 Vendor initiates or threatens legal action against the City at any time throughout the life of the Contract, or
- The Buyer receives notice of a Vendor's actual or pending bankruptcy or receivership, or
- Disqualification is being recommended

Legal Services is responsible for notifying the Manager, Procurement Services, of any Bidder who brings a lawsuit against the City.

Documentation

Proper documentation will facilitate the monitoring and management of the risks associated with Contracts. Documentation is critical when there is a recommendation to disqualify a Vendor from bidding on future Contracts.

Documentation should be up to date and organized in a way that allows tracking and verification of:

- The expected quantity and quality of Goods or Services or both
- Timelines – delivery or schedule dates
- Performance review dates or intervals (i.e. weekly, monthly)
- Service and performance levels
- Environmental or operational conditions which may affect or contribute to a performance issue, and
- Performance issues and actions taken

Refer to the Guidelines for detailed information on Contract Managers' and Buyers' documentation responsibilities.

Performance Review Criteria

Performance Reviews

As detailed in the Guidelines, the Contract Manager must regularly review the Vendor's performance to see if it meets the requirements and service level criteria specified in the Contract.

When carrying out a performance review, the Contract Manager must consider the following Vendor performance criteria:

Vendor Performance Criteria

1. Contract interpretation – Is the Vendor familiar with the Contract provisions? Does the Vendor adhere to the Contract requirements, including Change Order processes, delivery dates and service levels?
2. Critical legislative and safety requirements – Does the Vendor comply with safe work practices, laws and regulations and other applicable legislation, regulations and City policies and procedures?
3. Quantity – Does the Vendor comply with requirements as specified in the Contract?
4. Quality requirements – Does the Vendor comply with Contract requirements and standards? Meet specifications and service levels with minimal deficiencies? Resolve issues quickly?

5. Site supervision or project management – Does the Vendor plan effectively, anticipate issues and take pro-active action in order to comply with Contract requirements and contain costs?
6. Documentation – Does the Vendor maintain and/or prepare complete documentation as required under the Contract and submit as required?
7. Financial Strength – Does the Vendor maintain financial solvency and integrity?
8. Warranty – Does the Vendor provide warranty service as specified in the Contract? Resolve issues quickly in a professional manner?

Handling Performance Issues

The Guidelines provide City staff with direction on how to handle situations of Vendor poor performance or non-performance and illustrate how the management of Vendor performance should progress, particularly if performance issues persist. The steps used in managing Vendor performance depend upon the nature of the Vendor relationship, the scope and magnitude of the problem and the risks identified.

Notify Accounts Payable

If issues of non-performance or poor performance have been identified but are not being resolved as requested and/or happen again, the Buyer, with the prior agreement of the Contract Manager, may notify Accounts Payable, in writing, that the Contract is in default and that payments to the Vendor should be withheld until further notice from the Buyer.

Contract Securities

At the same time as notifying Accounts Payable, contract securities, in the form of cash, certified cheque, money order, etc. which provide the City with recourse to offset potential losses in the event of Vendor default, may be drawn down or redeemed. Refer to Corporate Policy and Procedure – Finance and Accounting – Procurement Securities for more information on contract securities.

Cancellation

If the Acquiring Director accepts the Contract Manager's recommendation that a Contract should be cancelled, the Acquiring Director must direct the Contract Manager to prepare a Vendor Evaluation Form and recommendation and seek the joint approval of the acquiring Department Head, Chief Procurement Officer and City Solicitor. Once unanimous approval is granted for Cancellation, the Chief Procurement Officer issues the Cancellation notice to the Vendor.

Disqualification Related to Vendor Performance

Non-performance or Poor Performance

If the outcome of the Vendor evaluation is a “fail” and/or the Contract Manager determines that the Vendor’s poor performance or non-performance in a critical aspect of the Contract is sufficient to warrant disqualification, the Contract Manager must consult with the Acquiring Director and the Buyer to determine whether to recommend that the Vendor be disqualified from future Bids on the basis of poor or non-performance.

If further discussion with the Vendor is warranted, the Acquiring Director may request that the Buyer send a letter notifying the Vendor that disqualification is being considered, together with a summary of the City’s reasons for disqualification. The Buyer may then arrange a face to face meeting or teleconference to discuss the evaluation with the Vendor and other applicable staff as required.

The Acquiring Director must consult with Legal Services and Procurement Services before recommending disqualification to the Chief Procurement Officer who has the responsibility under the By-Law for making the final decision.

Additional Reasons for Bidder or Vendor Disqualification

Disqualification under this Policy may also occur for any of the following reasons:

- A Bidder is in violation of Section 18 of the By-Law - Point of Contact
- A Bidder is undermining the integrity of the bidding process
- A Bidder fails to enter into a Contract with the City after being notified of the Contract award, or
- A Vendor or Bidder has brought at least one Frivolous or Vexatious lawsuit against the City in connection with past procurement(s)

Violation of Section 18 of the By-Law

A Bidder is in breach of Section 18 of the By-Law - Point of Contact if the Bidder is found to be contacting City employees, elected officials or consultants engaged by the City, other than the official contact person, during the time a Bid Request is in progress.

Undermining the Integrity of the Bidding Process

Any Bidder who is found to be engaging in or who has engaged in, corrupt tendering practices such as Bid rigging, conflict of interest, bribery or other serious non-compliance with the By-Law will be disqualified from submitting a Bid in accordance with the By-Law.

Failure to Enter Into a Contract Post-Award

A Bidder who successfully bids for a Contract with the City and subsequently fails to enter into the Contract may be disqualified from future Bids. The Manager, Procurement Services, must consult with the Acquiring Director, the Chief Procurement Officer and Legal Services. The

Chief Procurement Officer has the responsibility under the By-Law for determining whether the Bidder is to be disqualified.

Frivolous or Vexatious Lawsuit against the City

If a Bidder or Vendor brings a suit against the City, the City Solicitor must be consulted. The City Solicitor will determine if the suit is Frivolous or Vexatious and will provide their legal opinion, in writing, to the Chief Procurement Officer. The Chief Procurement Officer will determine if the Bidder or Vendor should be disqualified and for how long. In making this determination, the Chief Procurement Officer will take into account whether the Bidder or Vendor has brought any previous Frivolous or Vexatious lawsuits against the City with respect to procurements. The Chief Procurement Officer's decision will be final. The Manager, Procurement Services, will notify the Bidder or Vendor of the decision.

Disqualification Notice

Once the decision to disqualify a Bidder or Vendor has been made, the Manager, Procurement Services, must notify the Bidder or Vendor, in writing, that they are being disqualified and the reason(s) for the disqualification. Disqualification will be in accordance with the By-Law.

Note: Bidders in violation of Section 18 of the By-Law may be disqualified from participating in the current Bid Request only.

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 Vendor Performance Management and Vendor 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.