

## ADMINISTRATIVE DIRECTIVE

Category: Purchasing

### Vendor Suspension

Directive Number: PUR-110

Approved by: CAO/CLT, March 29, 2018

Administered by: Purchasing, Corporate Services

Effective Date: April 1, 2018

---

#### 1. Purpose

The purpose of this Administrative Directive is to establish the circumstances that may result in the temporary suspension of Vendors from participating in City of Brampton ("City") procurements.

#### 2. Application and Scope

This Administrative Directive applies to all procurement of goods, services or construction for the City.

#### 3. Outcomes

- 3.1 Clearly defined circumstances in which the temporary suspension of Vendors is considered.
- 3.2 Demonstrate value for public money with goods, services and construction.
- 3.3 Mitigation of risk by conducting business with Vendors engaged in ethical and professional business practices.
- 3.4 Public trust in the procurement process.

#### 4. Mandatory Requirements

The City may temporarily suspend Vendors from participating in City procurement opportunities for any of the reasons noted below and described in more detail in section 5.0:

- a) Final judgements in respect of serious crimes or other serious offences;
- b) Bankruptcy or insolvency;
- c) False declarations;
- d) Professional misconduct, or acts or omissions that adversely reflect on the commercial integrity of the Vendor;

- e) Failure to pay taxes; or,
- f) Significant or persistent deficiencies in performance of any substantive requirement or obligation.

- 4.1 A Vendor may be suspended for a period of one year or three years;
- 4.2 The length of the suspension period should be proportional to the reasons for the suspension and the full three-year suspension should only be applied in the most serious circumstances;
- 4.3 A suspension can either be a blanket suspension or a suspension to provide specific goods, services or construction;
- 4.4 A suspended Vendor may apply for early re-instatement upon completion of half of the original suspension period;
- 4.5 A decision to suspend or reinstate a Vendor from participating in City procurement opportunities must be supported by evidence and exercised cautiously in accordance with the factors set out in this Administrative Directive;
- 4.6 A decision to place a Vendor on the suspension list is discretionary; however, such discretion must be exercised consistently and fairly;
- 4.7 In consultation with a Department Head and the City Solicitor, the Purchasing Agent has the final decision on whether to suspend a Vendor for a one year or three year period.

## **5. Reasons for Suspension**

### **5.1 Final Judgements in Respect of Serious Crimes or Other Serious Offences**

If a Vendor is found guilty by a court of competent jurisdiction of bid-rigging, price-fixing, collusion, bribery, fraud or other serious crimes or offences, the City may suspend the Vendor for a period of three (3) years from the judgement date.

### **5.2 Bankruptcy or Insolvency**

If a Vendor is formally declared bankrupt or insolvent as governed by the *Bankruptcy and Insolvency Act*.

### **5.3 False Declarations**

- a) If a Vendor knowingly makes a false declaration in respect to the Bidder's Declaration, Statutory Declaration of Progress Payment, or any other declaration; or,
- b) If a Vendor fails to disclose any actual or potential conflict of interest related to the preparation of its bid or during the performance of a contract with the City and the City subsequently discovers that such a conflict of interest exists.

An analysis is to be conducted considering the following non-exclusive factors:

- The nature of the conflict of interest, including whether it is a perceived or an actual conflict of interest and the materiality of the advantage that such a conflict may have given the Vendor.
- Whether the Vendor knowingly failed to disclose such a conflict of interest.
- The impact such a failure to disclose the conflict of interest has or may have on the City, including its reputation and the impact on its obligation to conduct a fair and competitive procurement.

#### 5.4 Professional Misconduct, or Acts or Omissions that adversely reflect on the commercial integrity of the Vendor

- a) If the City has reason to suspect that a Vendor or Vendors are engaged in bid-rigging, price-fixing, bribery, fraud or collusion, or other behaviours or practices prohibited by federal or provincial statutes in connection with a City procurement opportunity, the City should contact the appropriate authorities and provide such assistance as may be required.
- b) A Vendor's misconduct in non-compliance with workplace health and safety legislation such as Occupational Health and Safety Act (OHSA) and Workplace Safety and Insurance Act (WSIA) shall also be considered professional misconduct.
- c) A Vendor may engage in unethical bidding practices that do not amount to a criminal or statutory offense, but such practices may still warrant suspension. Examples of such unethical bidding practices include:
  - inappropriate offers of gifts or favours to City employees, elected officials, officers, agents, consultants, advisors or other representatives of the City from Vendors;
  - misrepresentations in relation to a City procurement;
  - failure to honour a bid; and,
  - inappropriate in-process lobbying of or communications with City employees, elected officials, officers agents, consultants, advisors or other representatives of the City by Vendors during a Procurement Process.

#### 5.5 Failure to pay taxes

If a Vendor fails to pay taxes in accordance with the Canadian Income Tax Act, or any local, regional, provincial or federal taxes.

#### 5.6 Significant or persistent deficiencies in performance of any substantive requirement or obligation

If a Vendor performs poorly on an existing or previous contract with the City, the City may consider suspending that Vendor from participating in future procurement opportunities in the following circumstances:

- a) The Contract was terminated for performance issues prior to expiry;
- b) There were un-rectified performance issues on a Contract that resulted in extra costs and or delays to the City;
- c) Materials and equipment were defective and were not replaced or repaired or required multiple repairs;
- d) The City brought a litigation proceeding against the Vendor in connection with issues related to the Contract;
- e) The City's Contract Administrator has recommended suspension of the Vendor in accordance with the City's Vendor Performance SOP; or,
- f) The Vendor fails to honour its Bid or the pricing included in the Bid.

All performance issues in connection with the City contracts must have been effectively managed by the appropriate City staff. Performance issues must be supported by documentation evidencing the notification to the Vendor of performance issues and all escalation of such performance issues.

## **6. Roles and Responsibilities**

### **6.1 Staff:**

- a) Fully understand and comply with this Administrative Directive, the Vendor Suspension SOP and Vendor Performance SOP and the associated responsibilities;
- b) Ensure effective management of the Contract and Vendor performance; and
- c) Provide sufficient documentation to support a recommendation to temporarily suspend a Vendor.

### **6.2 Department Head:**

- a) Ensure employees are in compliance with this Administrative Directive, the Vendor Suspension SOP and Vendor Performance SOP and take appropriate corrective actions when required;
- b) Provide recommendation to the Purchasing Agent to temporarily suspend a Vendor in accordance with this Administrative Directive; and
- c) Review Vendor's application for early re-instatement.

### **6.3 Purchasing Agent:**

- a) Provide advice and direction on interpretation and application of this Administrative Directive, the Vendor Suspension SOP and Vendor Performance SOP;
- b) Approve or reject recommendation to suspend a Vendor from Department Head, in consultation with the City Solicitor;
- c) Inform the Vendor of decision to suspend and appeal process;
- d) Review Vendor's application for early re-instatement; and
- e) Maintain an up-to-date list of all suspended Vendors.

## 7. Monitoring and Compliance

7.1 The Department Head is responsible to monitor and ensure their staff is in compliance with this Administrative Directive.

Monitoring and compliance of the Administrative Directive will be conducted by Purchasing through maintenance of an up-to-date list of suspended Vendors and suspension periods with a review of the list for each procurement.

7.2 Consequences of non-compliance

Failure to follow this Administrative Directive may result in:

- a) Unethical and unprofessional Vendors contracting with the City;
- b) Poor performing Vendors contracting with the City;
- c) Project delays and cost overruns;
- d) Ineffective use of public money; and
- e) Loss of public trust and confidence.

## 8. Definitions

8.1 Vendor means an individual or entity that may offer goods, services or construction or who has submitted a Bid in response to a Procurement Process.

Except as otherwise defined in this Administrative Directive, the capitalized words shall be given the meaning ascribed to them in the City's Purchasing By-law.

## 9. References and Resources

### References to related by-laws, Council policies, and administrative directives

- Purchasing By-law
- Corporate Fraud Prevention Policy No. GOV-110

### References to related corporate-wide procedures, forms, and resources

- Vendor Performance SOP
- Vendor Suspension SOP

## Revision History

Date	Description
2018/04/01	Replaces Policy 13.15.0 Vendor Disqualification
2019/04/01	Next Scheduled Review