

Purchasing Protocol – Procurement Protest

1. Purpose and Interpretation

The purpose of this protocol is to set out the process for suppliers to make a formal complaint about a particular procurement process. This protocol should be read in conjunction with the Town's Purchasing By-law.

2. Scope of the Procurement Protest Process

The procurement protest process set out in this protocol is meant to provide an opportunity for suppliers to submit complaints and to assist the Town in identifying any gaps or shortcomings in its procurement policies and practices. The procurement protest process is intended to help resolve issues that involve no significant factual or interpretive disagreement between the 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.

3. Restrictions

A supplier may follow the procurement protest process to challenge either a competitive process or a Non-Competitive Procurement. Where the supplier is a bidder that is challenging a competitive process, the supplier must request a debriefing (see Debriefing Protocol) prior to engaging in the procurement protest process.

The procurement protest process set out in this protocol shall not be used to challenge a procurement process in respect of which the supplier has commenced legal proceedings against the Town.

4. Dispute Resolution Under Trade Agreements or Construction Act

The process provided for in this protocol is separate and distinct from any dispute resolution processes that may be provided for under applicable trade agreements or the Construction Act. If a supplier wishes to dispute a matter or bring a complaint under an applicable trade agreement or the Construction Act, the supplier must follow the process set out in the trade agreement or Construction Act.

5. Procurement Protest Process

5.1 A supplier that wishes to challenge a procurement process must do so by submitting an e-mail to the Town at purchasing@caledon.ca within 60 days from notification of the outcome of the procurement process. Requests for review will not be addressed under this protocol until after the Town has publicly posted or otherwise provided formal notification of the outcome of the procurement process.

5.2 A request for review of a procurement process must be directed to the Purchasing & Risk Management Division, via e-mail to purchasing@caledon.ca and must contain the following:



Purchasing Protocol – Procurement Protest

- a clear statement as to which procurement the supplier wishes to challenge, including the procurement number and title;
- a clear explanation of the supplier's concerns with the procurement, including specifics as to why it disagrees with the procurement process or its outcome; and
- the supplier's contact details, including name, telephone number and email address.

5.3 Within 5 business days from receiving the supplier's request for review, the Purchasing Division will send an initial response via e-mail to acknowledge receipt and indicate the date by which the Town will provide the supplier with a formal response. In general, the Town will endeavor to make a determination and provide a formal response within 20 business days from receipt of the supplier's request for review.

5.4 Purchasing will conduct an initial review of the supplier's request for review and will consult with all Department staff involved in the procurement process in order to compile any background information and documentation relevant to the procurement process and the supplier's concerns.

5.5 Purchasing will submit the supplier's request for review and the compiled background information and documents to the Procurement Review Committee (the "PRC"). The PRC is established in accordance with the Purchasing By-law.

5.6 The PRC will convene a meeting to review and consider the supplier's request for review and all internally compiled background information and documents. The PRC may seek any additional information it requires and may consult with other staff, legal counsel or other advisors, as necessary.

5.7 Upon completion of its review, the PRC will make a determination and issue a response to the supplier as follows:

- (a) If the PRC finds that the supplier's rationale for requesting a review of the procurement process does not have merit, then it will issue a response via e-mail to the supplier indicating that the PRC has reviewed its concerns and providing reasons for its determination; or
- (b) If the PRC finds that the supplier's concerns in respect of the procurement process have merit, then it will further determine the appropriate resolution to the matter. In making its determination, the PRC may consider any factors it considers relevant, including:
 - whether the complainant participated in the procurement process or was prevented from doing so;



Purchasing Protocol – Procurement Protest

- the seriousness of any deficiency found in the procurement process;
- the degree to which the complainant was prejudiced by any deficiency in the procurement process; and
- whether the parties acted in good faith.

Upon making its determination, the Town will issue a response to the supplier indicating its proposed resolution to the matter, if any, and indicating any changes that will be made to the Town's policies and practices to help prevent similar issues arising in future procurement processes. Any such response will be provided to the supplier on a "without prejudice" basis.

- 5.8 The determination of the Town is final. If the supplier is not satisfied with the Town's response, the supplier may consider its other options, including challenges under the applicable trade agreements and/or governing laws.

