

# Purchasing Protocol – Supplier and Vendor Suspension

## 1. Purpose and Interpretation

The purpose of this protocol is to set out the process for suspending Suppliers or Vendors from participation in the Town's procurement processes. This protocol should be read in conjunction with the Town's Procurement By-law.

Suppliers and Vendors are responsible for any employees, representatives, agents or subcontractors that are acting on their behalf and all references to the actions or conduct of the Supplier or Vendor under this Protocol include the actions of any individual or entity for whom the Supplier or Vendor is responsible.

## 2. Overview

In order to ensure that the Town is receiving quality deliverables and value for public money, and is dealing with Suppliers and Vendors that conduct business in a professional and ethical manner, the Town may suspend Suppliers or Vendors from participating in its procurement processes for a period of up to 5 years for any of the following reasons:

- (a) The Supplier or Vendor was convicted of serious crimes or other serious offences, including bid-rigging, price-fixing or collusion, fraud or other statutory offenses.
- (b) The Supplier or Vendor gave false declarations, including making misrepresentations in bids or failing to disclose conflicts of interest in connection with a procurement process or contract.
- (c) The Supplier or Vendor had significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts.
- (d) The Supplier or Vendor engaged in professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Supplier or Vendor.
- (e) The Supplier or Vendor is currently or has been involved in an adverse Legal Action (as defined herein) over the last two years with the Town for any reason, whether commenced by the Supplier or Vendor or the Town.

A decision to suspend a Supplier or Vendor must be made in accordance with this protocol, must be supported by evidence and must be based on the reasons and factors set out below. A decision to suspend a Supplier or Vendor is discretionary; however, such discretion must be exercised consistently and fairly.

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## **3. Reasons for Suspension**

### **(a) Crimes or Offences**

If a Supplier or Vendor is convicted of serious crimes or other serious offences, including bid-rigging, price-fixing or collusion, fraud or other statutory offenses, the Supplier or Vendor should be suspended for the maximum suspension period.

### **(b) False Declarations**

If a Supplier or Vendor includes false or misleading information in its bids the Town may suspend that Supplier or Vendor from participating in future procurement processes.

If a Supplier or Vendor fails to disclose a conflict of interest in connection with a procurement process or during the performance of a contract with the Town, and the Town subsequently discovers that such a conflict of interest exists, the Town may suspend that Supplier or Vendor from participating in future procurement processes.

The following non-exclusive factors should weigh in favour of suspension:

- The Supplier or Vendor knowingly made misrepresentations or failed to disclose a conflict of interest.
- The misrepresentation or undisclosed conflict of interest resulted in the Supplier or Vendor having an unfair advantage or otherwise compromised the integrity of the Town's procurement process.

### **(c) Poor Performance**

If a Supplier or Vendor performs inadequately under a contract with the Town, the Town may consider suspending that Supplier or Vendor in any of the following circumstances:

- The deficiencies in performance were significant or persistent.
- The contract was terminated for performance issues prior to expiry.
- There were unrectified performance issues on a contract that resulted in extra costs to the Town.
- The deliverables provided were defective or deficient, and either were not replaced or repaired, or required multiple repairs.

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- The Town brought a litigation proceeding against the Supplier or Vendor in connection with performance or non-performance of the Supplier or Vendor's contractual obligations.
- The suspension of the Supplier or Vendor has been recommended in accordance with the Town's Supplier or Vendor Performance Evaluation Protocol or Vendor Code of Conduct.

## **(d) Professional Misconduct or Lack of Commercial Integrity**

Town may suspend a Supplier or Vendor for professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Supplier or Vendor. Such conduct includes, but is not limited to:

- unethical bidding practices, such as inappropriate offers of gifts to the Town's officials, officers, employees or agents and inappropriate in-process lobbying or prohibited communications during a procurement process;
- failing to perform contracts in a professional and competent manner in accordance with the duty of honest performance and all applicable laws, including safety and labour codes;
- conduct that is prohibited under the Town's Vendor Code of Conduct; and
- a history of litigious conduct or bringing frivolous or vexatious claims in connection with the Town's procurement processes or contracts.

## **(e) Adverse Legal Action**

The Town may suspend a Supplier or Vendor and any affiliate companies, common shareholders or subcontractors that is currently engaged in, or has in the previous two years engaged in, whether directly or indirectly through another corporation or legal entity, adverse Legal Action or potential adverse Legal Action against the Town, its elected officials, officers, or employees. For certainty, and without limiting the generality of the preceding sentence, "**Legal Action**" includes an action, lawsuit, litigation, arbitration, the threat of litigation or arbitration made in writing to the Town, mediation, or any application or motion made to an Ontario court, regardless of whether the Supplier or Vendor or the Town commenced the Legal Action, but does not include an adjudication commenced by a Supplier or Vendor or the Town in accordance with Part II.1 of the *Construction Act*, RSO 1990, c C.30, up until such time as a determination is made by an adjudicator. The suspension of a Supplier or Vendor in connection with a Legal Action will be considered on the basis of valid commercial or business reasons. In

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evaluating whether a litigious Supplier or Vendor should be suspended, the Town may consider:

- Whether the Supplier or Vendor’s Legal Action with the Town calls into question the Supplier or Vendor’s ability to provide work or services to the Town under future contracts; and
- If there is a history of litigious conduct with the Supplier or Vendor and that has resulted in increased costs to the Town.

## **4. Process for Suspension**

- (a) Any decision to suspend a Supplier or Vendor must be supported by a written Suspension Recommendation Report that contains all details connected with the analysis of factors set out above.
- (b) The Suspension Recommendation Report must also include the recommended length of the suspension. The maximum suspension period is 5 years.
- (c) The length of the suspension period should be proportional to the reasons for the suspension and the full 5 year suspension should only be applied in the most serious of cases. A suspension can be either a blanket suspension for all procurement processes or a suspension limited to procurement processes for specific deliverables. The Suspension Recommendation Report must clearly set out the scope of the suspension.
- (d) All decisions to suspend a Supplier or Vendor must be approved by the Procurement Review Committee (“PRC”). The PRC is established in accordance with the Procurement By-law.
- (e) If the Suspension Recommendation Report is approved, a notification must be provided to the Supplier or Vendor in question informing that Supplier or Vendor that the Town intends to suspend the Supplier or Vendor from participation in the Town’s procurement processes for the prescribed time period. The notification letter must contain:
  - full details as to the reasons for the proposed suspension, including copies of any documents or correspondence to support such a suspension; and
  - the length of the proposed suspension period and the scope, if applicable.

(the “**Notice of Intention to Suspend**”)

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- (f) The Town must provide the Supplier or Vendor with 5 business days to respond to the Notice of Intention to Suspend (the “**Response Period**”). If the Supplier or Vendor does not provide a response to the Notice of Intention to Suspend within the Response Period, the Supplier or Vendor shall be deemed to have waived its right to respond.
- (g) Following receipt of a response from the Supplier or Vendor to the Notice of Intention to Suspend (or if a response is not provided in the Response Period), as early as the sixth business day following delivery of the Notice of Intention to Suspend, the Town may:
- proceed to render its final determination to suspend (the “**Notice of Suspension**”); or
  - rescind the Notice of Intention to Suspend.

Any decision to issue a Notice of Suspension or rescind the Notice of Intention to Suspend is within the sole and absolute discretion of the Town.

- (h) If the Town issues the Notice of Suspension to the Supplier or Vendor, it shall contain, at a minimum, the following:
- a response to the Supplier or Vendor’s response to the Notice of Intention to Suspend (if any);
  - full details as to the reasons for the suspension, including copies of any documents or correspondence to support such a suspension;
  - the length of the suspension period and the scope, if applicable; and
  - the Supplier or Vendor’s right to re-apply for eligibility within the prescribed time period and the process for requesting such a reinstatement.

## 5. Review of Suspension

- (a) A suspended Supplier or Vendor may apply for reinstatement upon the completion of half of the original suspension period. For example, if the original suspension period was two years, the Supplier or Vendor may apply for reinstatement after one year. All requests for reinstatement must be sent via email to [purchasing@caledon.ca](mailto:purchasing@caledon.ca). In order to be re-eligible for participation in the Town’s procurement processes, the Supplier or Vendor must submit a written case for reinstatement, including supporting documentation if necessary, that provides reasons why the original

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reason for the suspension would no longer prove a risk for the Town.

- (b) Applications for reinstatement are to be reviewed by the PRC. If the PRC determines that allowing the Supplier or Vendor the opportunity to participate in the Town's procurement processes would no longer expose the Town to risk, then the application for reinstatement may be approved. It is within the sole and absolute discretion of the Town to shorten the original suspension period.
- (c) The Supplier or Vendor must be notified, in writing, of the final decision for reinstatement made by the PRC.

## **6. Suspended Supplier or Vendor List**

Purchasing must maintain an up-to-date and current list of all suspended Supplier or Vendor. Any Supplier or Vendor that is owned or controlled by the same individual(s) that owned or controlled a suspended Supplier or Vendor at the time it was suspended is also considered suspended.

The list should contain, at a minimum:

- (a) the full name of the Supplier or Vendor;
- (b) the names of the directors and officers of the Supplier or Vendor;
- (c) the reasons for the suspension;
- (d) the file number where the Suspension Recommendation Report is filed;
- (e) the scope of the suspension (i.e. blanket suspension or specific deliverables); and
- (f) the length of the suspension period and the date of the expiry of the suspension period.

For any competitive procurement process, Purchasing must check the suspended Suppliers or Vendor list to ensure that bids are not accepted from suspended Supplier or Vendors.

## **7. Period Following Suspension**

- (a) Before participating in a procurement process following the suspension period, a suspended Supplier or Vendor shall provide the Town with a letter demonstrating how the Supplier or Vendor has improved (so that the reasons for suspension are

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no longer an issue), including any relevant supporting documentation (the “**Improvement Letter**”). The request and Improvement Letter must be sent to the Town via email at [purchasing@caledon.ca](mailto:purchasing@caledon.ca).

- (b) A suspended Supplier or Vendor who fails to provide the Town with the Improvement Letter in advance of participating in a procurement process following the suspension period will be barred from participating in future Town procurements until such time as the Supplier or Vendor provides the Improvement Letter to the Town.