



Regional Municipality of Durham

Finance Department

Purchasing Policies and Procedures

Title: Vendor Performance Evaluation Policy (External)		
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Approved by: Mary Simpson, Director of Risk Management, Economic Studies and Procurement		
Responsibility: Supervisor/Manager of Purchasing		Section: Purchasing

1. Purpose

The Vendor Performance Evaluation Policy establishes a process that allows the Region to assess Vendor performance and, where appropriate, apply Corrective Measures (identified herein) where Vendors fail to meet their contractual obligations.

All documentation and information provided by the Region is subject to the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M-56 ("MFIPPA") and may be subject to release pursuant to the Act.

The intent of this policy is to improve the contractual performance of Vendors, and where problems exist, manage them in a fair and transparent manner.

2. Objectives

The Region has an obligation to assess and manage Vendor performance. This policy shall be utilized by the Region to assist in identifying unacceptable Vendor performance through the evaluation and management of Vendor performance, which may result in the implementation of Corrective Measures. It will also provide documented performance to support contract renewals and future contract award recommendations.

3. Definitions

Contract – the purchasing agreement between the Region of Durham and the Vendor.

Contract Administrator – the individual designated by the Regional department utilizing the Contract, to manage and administer the work.

Vendor Performance Evaluation Form – the document used by individual departments to measure and monitor Vendor performance. This form will be shared with the vendor upon completion.

Corrective Measure – action imposed on a Vendor relating to Poor Performance, including specific measures required to improve the performance, and, in some cases, a limitation placed on a Vendor's ability to contract with the Region based on the Region's assessment of their performance. A Corrective Measure can be applied to a Vendor overall, or with respect to certain products or services supplied by the Vendor.

Criminal Activity – an act committed or omitted in violation of a law forbidding or commanding the act and for which punishment is imposed upon conviction.

Poor Performance – anything less than satisfactory performance of a contract by a Vendor, measured against the scope, terms and conditions and performance measures defined within the Contract.

Termination – ending a contract prior to the expiration of its term.

Vendor(s) - includes suppliers, contractors, subcontractors, consultants, owners, directors, officers, employees, agents, parent corporation or subsidiary of a Vendor.

Vendor Incident Report – the documents, including email correspondence, used by individual departments to record details relating to a specific incident occurring during the Contract term for the purpose of discussion with the Vendor at the time of the incident to achieve corrective action. These documents will be shared with the vendor as incidents arise.

4. Procedure

4.1 Contract Administration Documentation

A **Vendor Performance Evaluation Form** will be filled out by the Contract Administrator and provided to the Procurement Officer at appropriate intervals such as annually, prior to the end of each contract term, and prior to any contract renewal, at minimum. The completed form will be shared with the Vendor.

A **Vendor Incident Report** may be completed by the Contract Administrator upon observation of a specific incident requiring immediate action. This report will be used as background information to prepare any required correspondence to the Vendor and during performance meetings with the Vendor.

Where Vendor Incident Reports have been issued to the Vendor and performance has not improved, the Contract Administrator will advise the Procurement Officer of the situation and an appropriate action plan to remedy the Vendor's Poor Performance will be determined.

4.2 Performance Monitoring

Where the Contract Administrator and the Procurement Officer have determined that formal monitoring of a Vendor's performance is necessary to remedy poor performance or determine if a Corrective Measure is appropriate, the following steps will be followed:

4.2.1 Step 1: Contract Monitoring by Contract Administrator

The Contract Administrator will do ongoing performance monitoring of the Vendor and document performance issues using Vendor Incident Reports. As incidents arise, they will advise the Vendor by sharing the Incident Reports and discussing remedies and expectations for improvement.

4.2.2 Step 2: Escalation to Procurement Officer

Where performance issues are not rectified through step 1, or the Contract Administrator believes that the issues are of a serious nature, the Procurement Officer, Purchasing Supervisor and Contract Administrator shall meet to discuss the issues, review any documentation sent to the Vendor and assess the situation.

4.2.3 Step 3: Notification and Performance Meetings with Vendor

Notice to the Vendor will be communicated in writing by the Procurement Officer (or the Purchasing Supervisor/Manager where deemed appropriate) and will include a meeting date to discuss the poor performance in detail with the Vendor, Contract Administrator and other departmental staff as necessary. During the meeting, those in attendance will discuss the issues in detail and will determine and agree on a corrective action plan, including a time-line for adherence to the plan. Minutes will be taken by the Procurement Officer.

Formal documentation will be issued to the Vendor by the Procurement Officer, detailing the performance issue(s), minutes of the meeting including any pertinent information discussed at the meeting, and the agreed-to action plan.

Once an action plan is applied, the Contract Administrator will monitor the Vendor to ensure adherence to the plan. The Contract Administrator will document and advise the Procurement Officer of all changes in the Vendor's performance. Corrective Measures may be applied.

4.2.4 Step 4: Follow-up Action and Application of Corrective Measures

Where there is a lack of improvement in Vendor's performance relating to the documented issue(s), additional meetings may take place with the Vendor to further discuss the Contract requirements and the consequences of poor performance. The number of additional meetings will be at the Purchasing Supervisor's discretion and will be dependent on the severity of the performance issue(s).

Additional formal documentation detailing the continuing performance issue(s), the agreed-to action plan and the recourse available to the Region in the event of continued poor performance shall be issued to the Vendor in writing by the Procurement Officer.

If satisfactory improvement in performance up to the level defined in the Contract specifications does not occur, a recommendation to apply further Corrective Measures will be made by the Contract Administrator to the Procurement Officer.

4.3 Corrective Measures

The Procurement Officer may impose the following Corrective Measures as deemed appropriate, in accordance with this procedure:

- a. **Probation** – the creation of a formal and specific probationary period for the Vendor during which performance is clearly tracked, measured and communicated to the Vendor. A Vendor will be removed from Probation once the Vendor has demonstrated improved performance and is meeting their contractual obligations. Vendors on probation are not automatically precluded from bidding on Regional contracts; however, their probationary status may be considered during qualitative bidding processes, and staff may choose to suspend them from bidding on price-based tenders during probation where the poor performance is of significant concern. Vendors who are suspended during probation must be notified of this in the letter outlining their Corrective Measure. Vendors on probation may also be suspended from bidding on the next Regional processes for the same or similar services due to their poor performance, for a period of one year. Vendors suspended from participating in Regional procurement processes as a result of Probation must demonstrate improved performance at the end of the suspension period in order to be eligible for bidding. Suspended Vendors are not included on the Disqualified Vendors' List.
- b. **Termination** – the creation of a formal notice of termination related to a specific contract where i) the Vendor was on Probation and has failed to improve their performance or ii) the Contract is being terminated due to a material breach. The

Vendor will be suspended from participating in Regional procurement processes for the same services due to their poor performance, or for a period of one year for contracts that are recurring in nature; however the Vendor may be considered for award of subsequent bidding opportunities with demonstrated improved performance. Demonstrated improved performance may be measured by the Region obtaining three references, as detailed in the bidding process, where work has been performed after the Regional contract has ended, or the Region requesting other improved performance related evidence at the time of bidding. This will be at the Region's discretion.

4.4 Notice of Corrective Measures

The Procurement Officer will notify the Vendor by emailing a formal letter of the Corrective Measure being imposed, extended or removed/expired.

The Notice of the Corrective Measure will include, as appropriate:

- a. the Corrective Measure and the extent to which it will be applied;
- b. a list of the instances of poor performance that form the basis for the application of the Corrective Measure;
- c. the reasons why the Vendor's performance merits the proposed Corrective Measure;
- d. when and how the Corrective Measure will end;
- e. In the case of Probation that can end when the Vendor satisfies the requirements noted for improved performance, who will decide how, and if, the requirements have been satisfied;
- f. The potential for Termination, where performance has not improved;
- g. In the case of Termination, details related to the subsequent bidding opportunity being issued for the services and details related to the Vendor not being considered for award of the bidding opportunity, including the specific timeframe, which will be short-term; and,

- h. The ability for the Region to consider the performance in other qualitative bidding processes.

Notice is considered to have been received by the Vendor at the time the correspondence is sent by the Region through email.

4.5 Enforcement of a Corrective Measure

For Vendors on Probation, the Contract Administrator involved in monitoring the Contract will ensure that the Corrective Measure is enforced and documented during the term of the Corrective Measure.

A Corrective Measure will continue to apply to a Vendor who has a company name change or a change in company ownership while the Corrective Measure is in effect.

4.6 Disqualification

When warranted, Disqualification may be imposed on a Vendor.

Disqualification of a Vendor is the refusal by the Region to do business with a Vendor, which disqualifies the Vendor from bidding on or being awarded all or specific types of contracts for a specified period of time.

Disqualification will be expressed in terms of a specific number of years and may be a result of poor performance (escalated after Probation and Termination) or one of the other instances in section 22.2 of the Purchasing By-law as noted below (and which may be amended by Regional Council from time to time):

“22.2 The Region reserves the right, in its sole and absolute discretion, not to accept a bid from any Bidder and/or award a contract to any Bidder where one of the following circumstances has occurred within the last five years:

- a. the Bidder or Supplier is or has been involved in litigation with the Region, its elected officials, officers or employees;

- b. the Bidder or Supplier has failed to pay an amount owed to the Region when due and owing;
- c. there is documented evidence of poor performance, nonperformance or default by the Bidder or Supplier in respect to any Region contract, and the Bidder has been made aware of such performance problems in accordance with the Region's policies and procedures;
- d. the Bidder or Supplier has withdrawn its bid on a previous bid solicitation after bids have been opened by the Region;
- e. the Bidder, Supplier or its personnel have demonstrated abusive behaviour or threatening conduct towards Region employees, their agents or representatives;
- f. the Bidder or Supplier has been convicted of any quasi-criminal offence pursuant to applicable legislation or regulations including but not limited to the Occupational Health and Safety Act, as amended, where the circumstances of that conviction demonstrate a disregard on the part of the Bidder or Supplier for the health and safety of its workers, Region employees or the general public.”

The notice of Disqualification will be issued by the Procurement Officer and include a provision for the Vendor to respond within 15 days as per the Vendor Dispute Resolution Process.

As per the Purchasing By-Law 16-2020, Section 23.3, prior to imposing Disqualification, approval of the Commissioner of Finance, in consultation with the Department Head and the Region's Solicitor must be obtained. Once the Procurement Officer is in receipt of the Vendor's response, staff's position, as well as the vendor's response, will be provided to the Commissioner of Finance for a decision. Their decision shall be final and will be communicated by the Procurement Officer in writing to the Vendor within 30 days of receipt of the Vendor's response and the Vendor shall be added to the Region's public website as Disqualified.

Where a Vendor is disqualified from acting as a subcontractor for the Region, the name of the Vendor will be posted on the Region's website to inform General Contractors which companies are not eligible as subcontractors for Regional work.

4.7 Vendor Recourse

The recourse available to a Vendor will follow the process established in Regional Procedure 10.01 –Vendor Dispute Resolution posted on the Regional website.

For Probation and Termination, a Vendor should make a Vendor Complaint, as described in section 3.2 of the Vendor Dispute Resolution.

For Disqualification, a Vendor should follow the Disqualification Appeal Process in Section 5 of the Vendor Dispute Resolution Process.

4.8 Rejection of a Bid

Submissions received from Vendors Disqualified from doing business with the Region or suspended from bidding on specific contracts as a result of Termination will not be considered for contract award.

Written notice of the bid rejection will be provided to the bidder by the Procurement Officer through email as a formal letter. The notice will be sent to the contact noted in the bid document. Notice is considered to have been received by the Vendor at the time the correspondence is sent.

Where Disqualification has been imposed on a Vendor, the Vendor will be removed from all relevant registry rotation systems for the duration of the Disqualification.

4.9 Removal or Extension of a Corrective Measure or Disqualification

Written notice of removal or extension of a Corrective Measure will be provided to the Vendor by the Procurement Officer (or the Purchasing Supervisor/Manager, where deemed appropriate) and sent by email as a formal letter.

5. Additional References:

- Purchasing By-law 16-2020
- Procedure 10.01 - Vendor Dispute Resolution Procedure

6. Purchasing Contacts

For additional Information regarding this policy please email at [general purchasing inquiries](#).