

Supplier Suspension Protocol

1. Purpose and Interpretation

The purpose of this protocol (the “Protocol”) is to set out the process for suspending Suppliers from participation in the Town’s Procurement processes. Defined terms used in this protocol have the meaning assigned in the Glossary of Terms (Schedule A) in the Procurement Policy.

2. Application

To ensure that the Town is receiving quality Deliverables and value for public money and is dealing with Suppliers that conduct business in a professional and ethical manner, the Town may suspend Suppliers from participating in its Procurement processes for prescribed time periods.

A decision to suspend a Supplier 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.

Suppliers 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 under this protocol include the actions of any individual or entity acting on behalf of the Supplier.

3. Reasons for Suspension

3.1 Crimes or Offences

If a Supplier is convicted of serious crimes or other serious offences, including bid-rigging, price-fixing or collusion, fraud, or other statutory offences, the Town will suspend that Supplier from participating in any Procurement processes.

3.2 False Declarations

If a Supplier includes false or misleading information in its Bids, the Town may suspend that Supplier from participating in any Procurement processes.

If a Supplier 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 from participating in any Procurement processes.

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

- (a) Whether the Supplier knowingly made misrepresentations or failed to disclose a conflict of interest.
- (b) Whether the misrepresentation or undisclosed conflict of interest resulted in the Supplier having an unfair advantage or otherwise compromised the integrity of the Town's Procurement process.

3.3 Poor Performance

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

- (a) The deficiencies in performance were significant or persistent.
- (b) The Contract was terminated prior to expiry or completion due to performance issues, default, or for failure to perform.
- (c) There were unrectified performance issues on a Contract.
- (d) The Deliverables provided were defective or deficient, and either were not replaced or repaired, or required multiple repairs.
- (e) The Town commenced or became subject to a litigation proceeding in connection with performance or non-performance of the Supplier's contractual obligations or unresolved claims.
- (f) The suspension of the Supplier has been recommended in accordance with the Supplier Performance Evaluation Protocol.

3.4 Professional Misconduct or Lack of Commercial Integrity

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

- (a) 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.
- (b) Failing to enter into a Contract as required pursuant to a Procurement process, withdrawing a Bid in breach of a Procurement process or failing to honour a Bid submitted to the Town.
- (c) 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.

- (d) Engaging in litigious conduct or bringing frivolous or vexatious claims in connection with the Town's Procurement processes or Contracts, including but not limited to, unreasonable cost or expense claims or unsubstantiated allegations impugning the integrity of the purchasing institution or its staff in relation to a Procurement process.

4. Process for Suspension

4.1 Suspension Recommendation Report

Any decision to suspend a Supplier must be supported by a written Suspension Recommendation Report that contains all details connected with the analysis of factors set out above.

The Suspension Recommendation Report will be prepared by Town staff, and provided to the Procurement Manager. The report is to include copies of any documents or correspondence to support such a suspension. The Suspension Recommendation Report will meet the requirements of this Protocol and be on a form as prescribed by the Procurement Manager.

4.2 Length and Scope Suspension

The Suspension Recommendation Report must include the recommended length and scope of the suspension. When there are multiple reasons for suspension, the suspension term will be based on the suspension reason that has the longest suspension term.

The length of the suspension period should be proportional to the reasons for the suspension and, in most cases, should not exceed a maximum of five years. In the most serious of cases involving convictions for criminal or quasi-criminal offences, a suspension period of up to ten years may be considered. The below Table 1 lists the applicable minimum suspension term and suggested reinstatement process to be applied based on the reason for the suspension. In the case of a suspension instituted pursuant to a Council directive, the Council directive shall govern the suspension term and, unless stated otherwise, shall not be subject to automatic reinstatement, shall require an application for reinstatement, and may only be terminated on further Council directive. The scope of the suspension can be either a blanket suspension for all Procurement processes or a suspension limited to Procurement processes for specific Deliverables.

The scope of the suspension can apply to corporate entities, companies and/or individuals.

TABLE 1 - SUPPLIER SUSPENSION TERM AND REINSTATEMENT		
Suspension Reason	Minimum Suspension Term	Reinstatement Process
3.1 Crimes or Offences	10 years	To apply for Reinstatement at End of suspension term
3.2 False Declarations	2 years	Automatic Reinstatement at End of suspension term
3.3 Poor Performance	5 years	Automatic Reinstatement at End of suspension term
3.4 Professional misconduct or Lack of Commercial Integrity	5 years	Automatic Reinstatement at End of suspension term

4.3 Supplier Notification and Opportunity to Respond

The Procurement Manager will notify the Supplier of the decision to recommend suspension and will provide the Supplier with a copy of the Suspension Recommendation Report setting out the reasons for the suspension. The notice will advise the Supplier of its opportunity to respond to the recommendation for suspension by sending written submissions to the Procurement Manager within ten business days of the date of the notice as per Section 5. If there is no response from the Supplier, the Town will proceed to review the recommendation with the PGC.

4.4 Decision of Procurement Governance Committee

All decisions to suspend a Supplier must be made by the Town’s PGC. The PGC is established in accordance with the Procurement Policy.

In making its decision, the PGC will consider the Suspension Recommendation Report and any response submitted by the Supplier. The PGC may establish a suspension term that is different from the minimum recommended period and require a Supplier to apply for reinstatement, regardless of the category under which the suspension issued.

The PGC may seek any additional information it requires and may consult with other staff, legal counsel, and other advisors, as necessary.

4.5 Notice of Decision

The Supplier must be notified, in writing, of the final suspension decision made by the PGC.

If the recommendation for suspension is approved, the notification letter must contain:

- (a) the length of the suspension period and the scope of the suspension;
- (b) full details as to the reasons for the suspension, including copies of any documents or correspondence to support such a suspension; and
- (c) notice of the Supplier's right for automatic reinstatement or right to apply for reinstatement.

5. Application for Reinstatement

A suspended Supplier may apply for reinstatement at the end of the suspension unless the suspension was designated to expire automatically.

To apply for reinstatement, the Supplier must submit a written case at the end of the suspension term for reinstatement to the Procurement Manager, in the form of a letter and can include supporting documentation that provides reasons why the original reason for the suspension would no longer prove a risk for the Town and the reason they should be considered for reinstatement. The length of the letter with any supporting documentation is to not exceed 5 pages and is to be signed by the signing officer. If the application exceeds 5 pages, only the first 5 pages will be considered.

- (a) Applications submitted earlier than the end of the suspension term will not be considered or reviewed by PGC.
- (b) Applications for reinstatement are to be reviewed by the PGC. If the PGC determines that allowing the Supplier 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.
- (c) The Supplier must be notified, in writing, of the final reinstatement decision made by the PGC.

If the PGC determines that a Supplier should not be reinstated, the suspension shall continue until such time as the PGC determines to reinstate the Supplier. A Supplier cannot apply for reinstatement, and such applications will not be considered by the PGC, more than once in any twelve-month period, unless as part of a decision to deny reinstatement the PGC establishes a different minimum period before another application for reinstatement could be submitted.

6. Suspended Suppliers List

Procurement Services must maintain an up-to-date and current list of all suspended Suppliers. Any Supplier that is owned or controlled by the same individual(s) or corporate entity that owned or controlled a suspended Supplier 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 individual, where an individual is suspended;
- (b) the names of the directors and officers of the Supplier, if known and applicable;
- (c) the reasons for the suspension;
- (d) the file number where the Suspension Recommendation Report is filed;
- (e) the scope of the suspension (in other words, blanket suspension, or for specific Deliverables); and
- (f) the length of the suspension period and the date of the expiry of the suspension period.

For any Procurement process, employees must check the suspended Suppliers list to ensure that Bids are not requested, accepted or awarded from suspended Suppliers.

7. Existing Suspensions and Transition

Notwithstanding anything else in this Protocol, any suspensions that were established, put in place, or otherwise issued by the Town prior to January 1, 2023 (“Existing Suspensions”), shall be established and be subject to the terms and conditions outlined in this Section 7, which Section 7 shall supersede other provisions and requirements of this Protocol. For clarity, the provisions of this Section 7 shall not apply to any suspensions that are established, put in place, or otherwise issued by the Town on or after January 1, 2023. In the event that an Existing Suspension is subject to reasons set out in Subsection 3.1 and also subject to other reasons for the suspension, such Existing Suspension shall be subject to Subsection 7.2.

7.1 Existing Suspensions under Subsections 3.2, 3.3 and 3.4

Upon implementation of this Protocol, any Existing Suspensions that fall under Subsections 3.2, 3.3 and 3.4 of this Protocol, shall automatically become subject to the length of suspension outlined in Table 1 that corresponds to the reason for the suspension from the time that such suspension was established, put in place or otherwise issued by the Town. Any such suspensions:

- (a) Shall not be subject to review or reconsideration by the PGC and shall not be eligible for an application for reinstatement.
- (b) Shall automatically expire at the end of the suspension term established pursuant to this Section.

In the event that any such Existing Suspension would have expired prior to January 1, 2023, in accordance with the term of suspension outlined in Table 1 and the time of commencement, any such Existing Suspension shall be deemed to expire upon the implementation of this Protocol.

7.2 Existing Suspensions under Subsection 3.1

Upon implementation of this Protocol, any Existing Suspensions that fall under Subsection 3.1 shall automatically become indefinite and not be eligible for automatic reinstatement. Any Supplier subject to such Existing Suspension shall be permitted to apply for reinstatement upon implementation of this Protocol. An application for reinstatement shall follow the process outlined in Section 5. However, upon consideration of an application for reinstatement pursuant to this Section 7.2, if the PGC determines not to reinstate the Supplier, then it may impose a new suspension term, at the end of which the Supplier shall be required to follow the reinstatement process pursuant to this Protocol.

8. Decisions of PGC Final

Any decisions or determinations of the PGC, including any suspension or reinstatement decisions, shall be final without any further right to appeal or for reconsideration by the PGC or the Town. Suppliers are not permitted to apply for reinstatement, unless otherwise provided under Section 5.