

CATEGORY		03	Procurement	DATE APPROVED:
SECTION		03		Contractor Performance
POLICY		01	Contractor Performance Evaluation	INTERNAL AND EXTERNAL POLICY

1.0 POLICY STATEMENT AND PURPOSE

CityHousing Hamilton (CHH) is committed to ensure that the purchasing function meets the current and future needs of the organization by employing effective and innovative methods for procurement.

CHH evaluates Contractor performance as its related to completing contract obligations and ensures that Contractor behaviour and/or actions abides by this policy and/or other related legislation. This policy is intended to review performance of a Contractor at the end of a contract.

2.0 SCOPE

This policy includes all Contractors, certified Contractors, non-certified Contractors and capital works Contractors.

3.0 POLICY

A Vendor Performance Evaluation Form (Form 4) provides a record of performance on any given contract awarded by CHH. The information collected in the performance evaluations will serve the following purposes:

- Provide feedback to Contractors for performance improvements and/or acknowledge satisfactory performance; and
- Determine the Contractors' eligibility or ineligibility to bid on future CHH contracts.

A Form 4 is also used to document the details of a Contractor's behaviour and/or actions that contravenes with this policy and/or other related legislation and is required to be completed in the following circumstances:

- Before renewal or extension of the contract;
- At the end of the contract; and/or
- Before the fund are released.

Any Contractor deficiency will be considered in the Contractor performance evaluation. All staff who are assessing the Contractor Performance must ensure all applicable information is inputted into Northgate.

A Performance Evaluation is done in accordance with the *Municipal Freedom and Protection of Privacy*

Act (MFIPPA), where confidentiality will be maintained throughout the entire course of the evaluation.

3.1 EVALUATION CRITERIA

The Evaluation Criteria for vendors that include but not limited to:

- Compliance with all contract documents and conditions (i.e. adherence to committed schedules, execution and accuracy of work, fulfillment of all conditions of contract including general conditions, scope of work, material specifications and drawings, applicable licences, submittal and upkeep of bonding and insurance requirements, and compliance with specified invoicing and/or application for payment procedures);
- Meeting the conditions of assignments;
- Compliance with all regulatory agencies having jurisdiction;
- Compliance with safety requirements as per the *Occupational Health and Safety Act*;
- Compliance with the *Construction Lien Amendment Act*;
- Compliance with the Workplace Safety and Insurance Board (WSIB);
- The Contractor's conduct and behaviour; and
- Any other requirements deemed necessary by the Asset Renewal and/or Maintenance Departments.

3.2 CONFLICT OF INTEREST

Pursuant to the City of Hamilton's Corporate Code of Conduct for Employees Policy, Schedule A, Conflict of Interest, employees of CHH should not have a pecuniary interest, either directly or indirectly, in any CHH contract or with any person acting for CHH in the contraction of the supply of goods and/or services for which CHH pays or is liable, directly or indirectly to pay unless such interest has been declared.

Employees of CHH are required to declare any pecuniary interest, either direct or indirect, in writing to the Manager of Asset Renewal and/or to the Chief Executive Officer indicating the specific nature of the conflict.

Contractors awarded contracts with CHH should avoid any conflict of interest during the performance of the contract and are obligated to disclose any actual or potential conflict of interest during the performance of the contract.

3.3 POOR PERFORMANCE

A Contractor's poor performance, contract administration, or non-compliance with contract documents may result in disciplinary action, which will vary depending on the evaluation outcome. The Asset Renewal Department and/or the Tender Evaluation and Award Committee (TEAC) will determine the appropriate level of discipline, taking into account, but not limited to:

- Impact on ability to deliver on project requirements;
- Financial impact;
- Level of Contractor quality control;
- Customer service;
- Timing/scheduling;
- Safety;
- Repetition of non-compliance with the contract documents by the Contractor and it

- subcontractors; and
- Timely submission of all bonding, licence and insurance requirements.

Disciplinary action may vary depending on the severity of the infraction and pending investigations.

Where there is documented poor performance or non-performance that has not been resolved to CHH's satisfaction and which has impaired the commercial relationship between CHH and the Contractor, where the Contractor may be precluded from submitting bids on other contracts until the vendor performance issues have been rectified.

Where a Contractor has been found to be in breach of CHH contract and which the breach has impaired the commercial relationship between CHH and the vendor such that an interim ban is necessary in order to preclude the Contractor from submitting bids on other contracts pending litigation or a final ban.

3.4 CONDITIONS FOR DISCIPLINE

There are a number of conditions for discipline that will be considered, that include but not limited to:

- Poor performance based on scope of work outlined in contract documents;
- Deviation from the drawings and specifications without written consent of CHH;
- Performing work unsatisfactory (i.e. failure to meet the completion dates, failure to follow instructions, improper invoicing, failure to comply with health and safety requirements, etc.);
- Any Convictions under the *Criminal Code of Canada* that would detract from the ability of the vendor to perform their scope of work.
- Withdrawing a tender before a contract was awarded, but after a tendering opening;
- Withdrawing a tender after the contract was awarded;
- In litigation in any manner with CHH and/or the City of Hamilton;
- Failure to up keeping bonding, insurance, and WSIB requirements;
- Failure to obtain all permits, licences, and certificates required for performance of the work as outlined in the contract documents;
- Non-compliance with any of the general conditions, general requirements, or instructions to bidders included in the Contractor Documents; and
- Non-compliance with any legislation, by-laws, legal requirements, ordinances, rules, regulations, codes and orders of all authorities having jurisdiction relating to the work.

3.5 TYPES OF DISCIPLINARY ACTION

Disciplinary action may vary depending on the severity of the infraction listed in 3.4, that include but not limited to :

- Restrictions on the dollar value of future bids that can be submitted by the Contractor;
- Restrictions on the type of work for which bids can be submitted by the Contractor;
- Limits on the number of contracts that can be awarded until satisfactory completion of any existing contracts with CHH;
- The Contractor, their principles and any other associated companies being banned from bidding for varying periods of time or number of projects, depending upon the circumstances. Legal Counsel may be sought to assist in the determination of 'associated company' ;
- Withholding of bid securities, reduction of payment;
- Suspension of work;

- Taking all or part of the work out of Contactor's hands, which will include use of performance security when applicable;
- Removal from the Certified Contractor List; and/or
- Levying of fines if applicable.

3.6 RIGHT TO APPEAL

A Contractor has the right to appeal decisions made by the TEAC, related to unsatisfactory performance.

3.7 CONTRACTOR REINSTATEMENT

Contractors seeking reinstatement at the end of the term of banning must make a request in writing to CHH's TEAC. The Contractor must provide evidence that all terms and conditions set out at the time of the disciplinary action have been satisfied.

CHH's TEAC reviews the request for fulfillment of the terms and conditions of the banning. If it has been found that the Contractor or associated companies have not met the terms and conditions, the TEAC will make recommendations to CHH's Board of Directors. CHH will notify the Contractor regarding the decision.

4.0 PROCEDURE

CHH staff will complete a Form 4 where deficiencies have been identified within the length of the contract.

4.1 UNACCEPTABLE CONTRACTOR EVALUATION

If through the evaluation of supporting documentation, inspection and evaluation forms that a Contractor's performance is deemed unacceptable, the Manager of Asset Renewal and/or designate will recommend the appropriate discipline to the TEAC.

Before bringing recommendations to the TEAC, the Asset Renewal and/or designate will notify the Contractor in writing of the disciplinary action being recommended. The notice will also inform the Contractor that they have the right to make representation to CHH as to why they should not be subject to the recommended discipline.

A mandatory meeting will be scheduled with the Manager of Asset Renewal and/or designate and the Contractor to discuss the discipline. If the Contractor does not attend this meeting, the Contractor forfeits the right to appeal any decision made by the TEAC.

If a recommendation for banning the Contractor is accepted, CHH provides a written notification to the Contractor that they will be precluded from bidding future work with CHH as for a specified period of time, including any other restrictions and conditions for reinstatement. A typical period of ineligibility would be for 1 to 5 years, based on CHH's discretion.

Any associated companies affiliated by ownership, board of directors or management personnel will be subject to the same terms and conditions imposed on the banned Contractor.

CHH's TEAC must use its discretion or retain legal counsel to determine whether a Contractor is an associated company or not.

If CHH decides that the Contractor's performance is unsatisfactory, but exclusion from bidding is not warranted, CHH will notify the Contractor, in writing, of any restrictions including dollar value, type or number of tenders that would be considered by CHH. Appropriate administrative areas at CHH will also be advised.

5.0 RESPONSIBILITY

It is the responsibility of the Manager of Asset Renewal and the Manager of Maintenance to ensure staff are properly trained on this policy.

6.0 DEFINITIONS

Accessibility for Ontarians with Disabilities Act, 2005: legislation that outlines mandatory accessibility standards with the goal of identifying, removing, and preventing barriers for people with disabilities in key areas of daily living.

Associated Company: is where the same person, or group of individuals controls two or more companies directly or indirectly.

Contract: any formal legal agreement between two or more parties for supplies, goods, services, equipment, or construction. Such agreements will consist in the form of a:

- a) Purchase Order;
- b) Purchase Order incorporating a formal agreement; or
- c) Formal agreement between two or more parties that creates an obligation to provide defined goods and/or perform defined services.

Contractor: means the Bidder to whom the Contract is awarded and undertaking the execution of the work under the terms of the contract.

Criminal Code of Canada, 1985: This legislation outlines criminal offences and procedures in Canada.

Procurement: means the combined functions of purchasing, inventory control, transportation, receiving and inspection, salvage and disposal operations.

Municipal Act, 2001: Legislation that outlines municipal governance and jurisdiction to administer and deliver services in respective areas.

Municipal Freedom of Information and Protection of Privacy Act, 1990: legislation that governs the collection of personal information about individuals by municipal governments, including libraries, and how the information must be protected from inappropriate access or disclosure.

Pecuniary Interest: is something that causes either a negative or positive financial impact for the individual. The term interest is not limited to a property interest and may be an interest that financially impacts the person through a personal or business relationship, or through a contract.

7.0 LEGISLATIVE REQUIREMENTS

- *Accessibility for Ontarians with Disabilities Act, 2005*
- *Criminal Code of Canada, 1985*

- *Construction Lien Amendment Act, 2017*
- *Municipal Act, 2011*
- *Municipal Freedom of Information and Protection of Privacy Act, 1990*

8.0 REFERENCES AND RELATED POLICIES

- Contractor Performance Evaluation Policy
- City of Hamilton's Corporate Human Resource Policy, Schedule A: Conflict of Interest

9.0 ATTACHMENTS

- [Form 4](#)