

CityHousing Hamilton Corporation



CATEGORY		03	Procurement	DATE APPROVED:
SECTION		03		Contractor Performance
POLICY		02	Contractor Deficiency	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 any Contractor deficiencies as it relates to completing contract obligations and ensures that Contractor behaviour and/or actions abides by this policy and/or other related legislation.

All Contractors and/or Agents that enter into a business relationship with CHH must adhere to best practices related to the organization’s mission, vision and values.

2.0 SCOPE

This policy includes all Contractors, certified Contractors, non-certified Contractors and capital works Contractors. This policy does not describe the process for complaints for customer service against Contractors.

3.0 POLICY

A formal Contractor deficiency is any conduct that puts CHH’s assets, residents and/or finances at risk and must fall within the evaluation criteria outlined in section 3.1 of this policy.

The Vendor Complaint Form (Form 3) provides a record of a Contractor that has not fulfilled contract obligations outlined by CHH. The Form 3 should be completed if there is a complaint (verbal or written) related to the Contractor hired by CHH.

The information collected on the Form 3 will detail a Contractor’s behaviour and/or actions that contravenes with this policy and/or other related legislation. Any deficiencies determined by CHH of a Contractor may determine eligibility or ineligibility to bid on future CHH contracts and would provide justification for the non-award of contracts.

If the documented poor performance or non-performance has not been resolved to CHH’s satisfaction and has impaired the commercial relationship between CHH and the Contractor, the Contractor may be precluded from submitted bids on other contracts until the Contractor performance issues have been rectified.

Also, if a Contractor has been found to be in breach of a CHH contract and the breach has impaired the commercial relationship between CHH and where a ban has been in place, the Contractor is precluded from submitting bids on other contracts pending litigation or a final ban.

Should the complaint against a Contractor be related to Human Rights, harassment and/or discrimination the complaint is not required to be written and must be directed to the Direct Supervisor and/or the Human Resources Department, where the City of Hamilton's Corporate Harassment and Discrimination Prevention Policy and Procedure for Resolving Harassment and Discrimination Issues should be adhered to.

Record keeping and retention is done in accordance with the *Municipal Freedom and Protection of Privacy Act* (MFIPPA), where confidentiality will be maintained throughout the entire course of a complaint. Also, complaint records related to contacts received and any interactions between CHH staff and the individual complaining as well as the results will be documented

CHH's formal complaint process is in compliance with the *Accessibility for Ontarians with Disabilities Act*, where the process for reporting and feedback is accessible to persons with disabilities (i.e. providing or arranging accessible formats and communication supports)

If the complaint is related to Human Rights, harassment and/or discrimination, CHH's Harassment and Anti-Discrimination Policy should be followed.

3.1 EVALUATION CRITERIA

The evaluation criteria for deficiency for Contractors include, but are 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 Act Amendment Act*;
- Compliance with all applicable environmental legislation;
- Compliance with the Workplace Safety and Insurance Board (WSIB);
- Compliance with (where applicable) City of Hamilton's By-laws;
- The Contractor's conduct and behaviour (resulting in risk in CHH finances or assets and/or corporate image);
- Improper and/or fraudulent invoicing; and
- Any other requirements deemed necessary by the Asset Renewal, Operations 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 CONDITIONS FOR DISCIPLINE

There are a number of conditions for discipline that will be considered, that include:

- Poor performance based on scope of work outlined in contract documents;
- Deviation from the drawings and specifications without written consent of CHH;
- Performing unsatisfactory work (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/banning in any manner with CHH and/or the City of Hamilton;
- Failure to up keeping bonding, insurance, trade licences 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.

3.4 TYPES OF DISCIPLINARY ACTION

Disciplinary action may vary depending on the severity of the infraction listed in 3.3, that include:

- 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 barred 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;
- Levying of fines if applicable;
- Re-assignment of work orders;

- Cancellation of work orders until all work is completed for any outstanding work orders; and/or
- Progressive disciplinary action.

3.5 RIGHT TO APPEAL

A Contractor has the right to appeal decisions made at the Tender Evaluation Award Committee (TEAC), related to unsatisfactory performance. The appeal will be directed to the Chief Executive Officer.

3.6 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

When a Contractor is not performing satisfactorily, CHH staff should take progressive action to correct the situation. If the Contractor does not take corrective measures or if performance does not improve, disciplinary action may be taken.

A Form 3 is required to be completed when addressing a complaint filed against a Contractor. There are different processes for a CHH staff person receiving or initiating a complaint related to a Contractor that is outlined below.

4.1 ADDRESSING CONTRACTOR DEFICIENCIES – CAPITAL WORK COMPLAINTS

Contractor Administrators are responsible for addressing complaints related to capital work, where the following steps must be followed:

1. Investigate the complaint and determine if the complaint can be resolved informally. If the complaint can be resolved informally, no further action is required. If the complaint cannot be resolved informally proceed to Step 2.
2. Complete a Form 3 and provide a copy to the Manager of Asset Renewal.
3. Submit the Form 3 to the Operations Administrative Assistant for input into Northgate (NG).
4. If the complaint is resolved through informal mediation, the Operations Administrative Assistant should be notified to close the complaint in NG.
5. If the complaint is not resolved, the complaint will be brought to the TEAC for review and decision. The TEAC will determine the corrective action.

Refer to Schedule A for a detailed process flow of addressing a Contractor complaint.

4.2 ADDRESSING CONTRACTOR DEFICIENCIES – OPERATING CONTRACTS

Property Managers (PM), Property Management Assistants (PMA) and Maintenance Administrators (MA) are responsible for addressing complaints related to operating contracts.

A) If you are a PMA/RAR or MA the following step should be followed:

1. Should the complaint involve workmanship, quality or types of materials used, and/or timeliness of the repairs, complete a Form 3 and forward it to the PM.

B) If you are a PM and have received or creating a Form 3, the following steps should be followed:

1. Investigate the complaint through routine and quality assurance inspection related to the non-compliant or poor workmanship. Once investigation is complete and a deficiency has been determined, the original Contractor will be contacted to discuss the deficiency.
2. If the deficiency is resolved, complete the Form 3 and forwarded it to the Operations Administrative Assistant to log and close in NG.
3. If the deficiency is not resolved the PM tries to resolve the complaint, if not resolved, discuss and submit Form 3 to the Maintenance Manager and/or designate.
4. Maintenance Manager and/or designate will have the work order placed on hold in NG.
5. Maintenance Manager and/or designate will follow up with the Contractor.
6. After discussion with the Contractor and it has been determine that the Contractor is at fault or if the Contractor's work is still deficient, the Contractor will be requested to bring the work to standard of service and workmanship acceptable to CHH. The Contractor will be advised to contact CHH staff once the deficiency has been addressed.
7. Conduct follow up inspection once the Contractor has indicated that the deficiency repair has been completed and determine:
 - (a) If work correction completed is acceptable the hold on the work order will be removed in NG and the Form 3 must be signed and completed, and forwarded to the Operations Administrative Assistant with all documentation (i.e. pictures, etc.). The Operations Administrative Assistant will log and close the compliant in NG and forward the documentation of information to the Asset Renewal Department to include on the Contractors file.; or
 - (b) If the work correction completed is unacceptable the Manager of Maintenance will advise the Contractor of the unacceptable completion of work and the work order will be cancelled. In health and safety situations only the Manager of Maintenance will request that the PMA/RAR issue a work order to another Contractor to complete the work; or
 - (c) All other situations, TEAC should be forwarded the information of decision. The original work order will be cancelled, and the original Contractor will not be paid for work completed. The Form 3 must be completed to indicate incomplete resolution of the deficiency along with back-up documentation to be forwarded to the TEAC for follow-up and decision.

Refer to Schedule A for a detailed process flow of addressing a Contractor complaint.

4.3 TENDER EVALUATION AND AWARD COMMITTEE – DECISIONS RELATED TO CONTRACTOR DEFICIENCIES

Escalation of any Form 3 will be reviewed by the Manager of Asset Renewal, a disciplinary letter will be sent to the Contractor. Should the discipline require suspension, cancellation or banning, the Form 3 will be brought to the TEAC for review and decision.

Follow up with the Operations Administrative Assistant is required for update of decision to be documented into NG.

5.0 RESPONSIBILITY

It is the responsibility of the Manager of Asset Renewal, Manager of Operations and the Manager of Maintenance to ensure staff is 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.

Contractor Deficiency: is where a Contractor has not fulfilled contract obligations outlined by CHH

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*
- *Construction Act Amendment Act, 2017*
- *Criminal Code of Canada, 1985*
- *Municipal Act, 2011*
- *Municipal Freedom of Information and Protection of Privacy Act, 1990*

8.0 REFERENCES AND RELATED POLICIES

- City of Hamilton's Corporate Harassment and Discrimination Prevention Policy
- City of Hamilton's Procedure for Resolving Harassment and Discrimination Issues
- City of Hamilton's Corporate Human Resource Policy, Schedule A: Conflict of Interest
- Contractor Performance Evaluation Policy

9.0 ATTACHMENTS

- [Form 3](#)
- [Schedule A](#)