

Probation and Suspension Standard

INTRODUCTION

To safeguard the City and tax and utility payer dollars, the City may impose restrictions (probation or suspension) on certain suppliers.

This document outlines the nature of these restrictions, the reasons for their imposition, the implementation process, and the steps suppliers can take to have them lifted.

CONSEQUENCES OF PROBATION AND SUSPENSION

Probation and suspension are two separate levels of conditions. Each has different consequences.

Probation imposes less severe conditions on suppliers. Probation means that:

- the supplier can still bid on new City sourcing events;
- the supplier will be removed from any active pre-qualification lists;
- City business areas will be informed of the supplier's probationary status and may choose not to award any further non-competitive procurements to the supplier or include the supplier in any invitational procurements or standing arrangement call-up processes; and
- the City may impose further conditions on the supplier, requiring the supplier to rectify the issues that led the City to place the supplier on probation, failing which the City may suspend the supplier.

Suspension imposes more severe conditions. Suspension means that:

- the supplier may not bid on any new City sourcing events;
- the City will disqualify the supplier in any in-progress sourcing events for which the supplier has submitted a bid;
- the supplier will be removed from any active pre-qualification lists;
- the supplier may not be used as a subcontractor for other suppliers for City contracts;
- City business areas will be informed of the supplier's suspension;
- City business areas will not award any non-competitive contracts to the supplier;
- the supplier will not be included in any invitational procurements or standing arrangement call-up processes;

- the supplier and its personnel will not be permitted to enter any City-owned work sites; and
- the supplier's name will be included on the City's public List of Suspended Suppliers, located [here](#).

The probation or suspension period will last for a minimum time period determined by the City.

The fact that a supplier is or is not on probation or suspended does not impact any termination or other rights the City may have under its contracts with the supplier.

If a supplier is placed on probation or is suspended, this status applies to all of the supplier's affiliates (as defined in the *Business Corporations Act*, RSA 2000, c B-9), and any other company (regardless of that company's status with any government corporate registry) that has or had a shareholder or director who is also a shareholder or director of the supplier.

If the City considers a particular case serious, the City may bypass probation and suspend a supplier without first putting the supplier on probation.

REASONS FOR PROBATION AND SUSPENSION

Suppliers may be placed on probation or suspension for the following reasons:

- repetitive or continuous non-compliance and poor performance on one or more City contracts;
- a history of disputes that indicate a risk of increased financial, operational, or legal costs for the City; or
- other conduct deemed inappropriate by the City.

These are explained in further detail below.

Poor Performance on City Contract(s)

The City monitors supplier performance on City contracts. City business areas may use Ariba or other programs to record and score supplier performance. Should the City determine that a supplier's performance on one or more City contracts is below acceptable levels, and has not improved despite one or more City requests for improvement as directed in the agreed Performance Improvement Plan, the City may place the supplier on probation. In serious or repeated cases of poor performance or where the City placed the supplier on probation, and the supplier has not demonstrated improvement in the required time, the City may suspend the supplier.

Supplier Dispute History

Legal Services may review the dispute history between the City and a supplier with regard to one or more contracts. If the City determines that the dispute history indicates the City is, by contracting with the supplier, at

risk of significantly increased financial, operational, or legal costs in administering the contract, the City may place a supplier on probation or suspend the supplier.

In conducting its review, Legal Services may look at any of the following information:

- prior probations or suspensions of the supplier, including the length and when they occurred;
- number of disputes that have arisen under the contract(s);
- nature of the disputes that arose under the contract(s), especially relating to quality concerns, failure to perform, or warranty issues;
- whether the disputes required a formal dispute process to resolve, including:
 - number of disputes in total; and
 - number of disputes that went to a formal dispute process and the type of process;
- total amount paid for experts relating to the disputes;
- total amount paid for external legal counsel to handle the disputes;
- total amount paid to third parties to render decisions in the dispute process (e.g. mediator, referee, arbitrator);
- number and cost of operational resources required to process and deal with the disputes;
- for those disputes for which a third party decision has been received (e.g. judge, referee, arbitrator) that involved a monetary claim by the supplier, % of amount claimed by supplier compared to amount awarded ($\geq 50\%$);
- for those disputes for which a third party decision has been received (e.g. judge, referee, arbitrator) that did or do not involve a monetary claim by the supplier, % primarily in favour of the City, % primarily in favour of the supplier, and % with mixed results; and
- any further information deemed relevant to the decision.

Other Inappropriate Conduct

In order to protect the public interest and maintain the integrity of City procurement and contract management processes, the City may also place a supplier on probation or suspend a supplier where the supplier has been convicted of or found liable for, or where the City determines it has persuasive evidence of the supplier's participation in any of the following:

- failure to disclose a conflict of interest known to the supplier, contrary to a sourcing event's rules or a contract's requirements;
- lobbying of City Council members or other senior members of City administration with respect to a sourcing event contrary to the sourcing event's rules;
- collusion or bid rigging in a City sourcing event or a procurement process run by another public body;
- engaging in any other reviewable conduct or offences under the *Competition Act*, RSC 1985, c C-34;
- significant misrepresentations or misleading information or omissions in a submission for a City sourcing event or under a City contract;
- failure to pay taxes or comply with a payment arrangement with a taxation authority;

- use of forced labour or child labour in the work required under a City contract or in the supply chain used for a City contract, whether directly by the supplier or by a subcontractor of any tier;
- non-compliance with Canadian immigration laws, including hiring workers without proper work authorization or failure to comply with regulatory obligations with respect to temporary foreign workers;
- fraud, whether with respect to a City contract or a contract with another public authority;
- offering money or gifts to elected or appointed officials or employees of the City or any other public body in order to gain an advantage in a procurement process;
- intimidation or attempts to intimidate any other participants or potential participants in any procurement process;
- harassment or violence toward City employees, other contractors' employees, or the public;
- significant violations of occupational health and safety legislation;
- knowingly permitting employees to work if they are impaired or intoxicated, whether from legal or illegal substances, or otherwise not fit for work; or
- any other serious crimes or offences, whether in Canada or abroad, not mentioned above.

In addition, the City may place a supplier on probation or suspend a supplier where that supplier is:

- on the Environmental Offenders Registry and, in the City's opinion, the offence is serious, repetitive, or otherwise egregious;
- on the list of employers who have been found non-compliant with responsibilities under the Temporary Foreign Worker Program or International Mobility Program, with a status of "ineligible"; or
- subject to special economic measures (i.e. sanctions) under Canadian law.

PROBATION AND SUSPENSION PROCESS

Where a City employee believes that a supplier meets any of the criteria listed under ["Reasons for Probation and Suspension"](#):

1. The employee will consult with their Branch Manager (the **BA Branch Manager**) regarding whether the supplier should be placed on probation or suspended.
2. If the BA Branch Manager agrees that the supplier should be placed on probation or suspended, they will send a written recommendation for probation or suspension to the Corporate Procurement & Supply Services (CPSS) Branch Manager's Office. This recommendation should include thorough documentation supporting the reason for the recommendation, depending upon the relevant grounds for probation or suspension. The documentation should include:
 - a. where the recommendation is based upon poor performance:
 - i. evidence of the supplier's poor performance pertaining to the contractual requirements;

- ii. City requests to the supplier for performance improvements, including copies of Performance Improvement Plans; and
 - iii. evidence that the supplier has continued to perform poorly.
 - b. where the recommendation is based upon dispute history, the Legal Services analysis of the dispute history and conclusions recommending probation or suspension; and
 - c. where the recommendation is based upon other inappropriate conduct:
 - i. the nature of the alleged inappropriate conduct;
 - ii. evidence of any legal proceedings against the supplier related to the alleged conduct, including any results;
 - iii. where a legal process has not yet found the supplier guilty of the alleged conduct, evidence demonstrating to the City that the supplier likely engaged in the alleged conduct.

The recommendation should also include the proposed length of probation or suspension, any additional conditions that the City should place upon the supplier during the period of probation or suspension, and any specific reinstatement requirements that the City should impose.

3. If the supplier in question has any other in-progress City contracts at the time the BA Branch Manager makes the recommendation, the CPSS Branch Manager may request that the contract managers for these other contracts complete interim performance evaluations in order to assist in the decision on imposing probation or suspension.
4. The CPSS Branch Manager will issue a written decision with regard to whether the supplier will be placed on probation or suspended. The decision will also include the probation's or suspension's length and any other applicable terms.
5. If the decision is to place the supplier on probation or suspension, the CPSS Branch Manager's Office will then email the supplier the "Decision to Assign Standing" form with Part 1 completed, copying the BA Branch Manager.
6. If the City does not receive a valid appeal (in accordance with the Supplier Performance Appeal Standard) within seven business days after the City emails the "Decision to Assign Standing" form to the supplier, the City will implement the probation or suspension.
7. If the City receives a valid appeal within seven business days after the City emails the "Decision to Assign Standing" form to the supplier, the City will not implement the probation or suspension until the conclusion of the appeal process, as per the Supplier Performance Appeal Standard. The appeal process is outlined in the Supplier Performance Appeal Standard.

The same process above applies when the City determines that a supplier on probation should be suspended. This could happen where the supplier fails to meet the conditions of probation within the required timeframe as set out in the "Decision to Assign Standing" form.

REINSTATEMENT PROCESS

After the end of the minimum probation or suspension period, a supplier may apply for reinstatement (i.e. removal of the probation or suspension) through the following process:

1. The supplier submits a written request for reinstatement to the CPSS Branch Manager, including evidence to show that the supplier has met any conditions imposed as part of the probation or suspension, including requirements for reinstatement.
2. The CPSS Branch Manager and the BA Branch Manager will review the written request and evidence, and may ask the supplier to provide more evidence.
3. If the CPSS Branch Manager and the BA Branch Manager determine that the supplier has met all conditions for reinstatement, and have confirmed that the necessary minimum period has passed:
 - a. the CPSS Branch Manager will record the decision to remove the probation or suspension in Part 2 of the "Decision to Assign Standing" form;
 - b. the CPSS Branch Manager's Office will email the updated "Decision to Assign Standing" form to the supplier, copying the BA Branch Manager;
 - c. if the supplier was suspended:
 - i. the City may decide to put the supplier on probation for a minimum period of time (with the requirements for probation removal the same as outlined in this "Reinstatement Process" section); and
 - ii. the City will change the List of Suspended Suppliers to note the supplier's suspension removal; and
 - d. if the supplier was on probation, the supplier will be re-added to any pre-qualification lists it was on at the time it was put on probation, provided the pre-qualification lists have not yet expired.
4. If the CPSS Branch Manager and the BA Branch Manager determine that the supplier has not met all conditions for reinstatement, or that the necessary minimum period has not passed:
 - a. the CPSS Branch Manager will record the decision to continue the probation or suspension in Part 2 of the "Decision to Assign Standing" form;
 - b. the CPSS Branch Manager's Office will email the updated "Decision to Assign Standing" form to the supplier, copying the BA Branch Manager;
 - c. the City will wait for the appeal deadline to pass (seven calendar days after the City emails the material outlined in a. above).
5. If the City receives a valid appeal (in accordance with the Supplier Performance Appeal Standard) within seven calendar days after the City emails the updated "Decision to Assign Standing" form to the supplier, the probation or suspension will remain in place during the appeal process, as per the Supplier Performance Appeal Standard. The appeal process is outlined in the Supplier Performance Appeal Standard.