

Procedure



Contracting with Parties in Dispute

This Procedure falls under the Procurement Administrative Policy.

Approved By: Deputy City Manager, Financial and Corporate Services **Date of Approval:** 06/25/2020

Program: Financial Management **Next Scheduled Review:** 06/25/2023
The City of Edmonton’s resilient financial position enables both current and long-term service delivery and growth.

Purpose

The purpose of this Procedure is to protect the City from incurring significant financial, operational or legal costs due to disputes.

Definitions

All definitions contained in the Procurement Administrative Policy apply to this Procedure, except as otherwise indicated in this Procedure.

In addition:

“dispute” is a dispute between the City and a supplier, adverse in interest, which is, has, or may become the subject of a formal dispute process.

“formal dispute process” means a dispute that has become the subject of litigation or an alternative dispute resolution process, including a process set out in the contract between the City and the supplier.

“supplier” is as defined in the Procurement Administrative Policy but shall also include associates and affiliates of the supplier as defined in the *Business Corporations Act*, RSA 2000, c. B-9.

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Processes

Principle

It is in the City's best interests to enter contracts with suppliers with a history that suggests they work collaboratively with the City to resolve disputes in a reasonable, timely and cost effective manner. It is not in the City's best interest to enter contracts with suppliers where there is a likelihood of the City incurring significant increased financial, operational, or legal cost based on the supplier's history of disputes with the City.

This Procedure does not apply if the supplier is already on the list of suppliers that are currently suspended under the Contract Management Administrative Policy. This Procedure does not apply to servicing agreements or contracts relating to the provision of utilities.

Process

1. Recommendation to review dispute history

Legal Services Branch will recommend to the Branch Manager of the area overseeing the most recently executed or current contract with the supplier and the Director of Contract Management (the "Reviewers") that a supplier be reviewed for suspension under this Procedure.

Legal Services Branch will make the recommendation for review on the basis that one or more recent contract(s) with the supplier involved disputes requiring the City to incur significant increased financial, operational, or legal cost due to disputes.

2. Evaluating dispute history

Upon receipt of the recommendation to review a supplier's dispute history, Legal Services will supply the Reviewers the following information that is applicable to make a decision as to whether or not to suspend the supplier:

- Prior suspensions of the supplier including the length and when they occurred;
- Number of disputes that have arisen under the contract(s);

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- 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:
 - # of disputes in total
 - # 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 (eg. 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 (eg. judge, referee, arbitrator) that involved a monetary claim by the supplier, % of amount claimed by supplier compared to amount awarded (□ 50%);
 - For those disputes for which a third party decision has been received (eg. 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;
 - Any further information deemed relevant to the decision.

3. Decision to suspend a supplier

After reviewing the dispute history of the supplier, the Reviewers will decide whether to suspend the supplier on the grounds that the City will be at risk of significant increased financial, operational or legal costs in administering a subsequent contract with the supplier. The decision will include details as to whether the suspension relates to specific types of contracts or all contracts.

The length of the suspension to be applied will be at the sole discretion of the Reviewers based on the significance of the dispute history and extent of increased financial, operational, or legal cost. However, as a guideline only, the Reviewers may, in the alternative, give the following length of suspensions:

- 1st suspension = 1 year
- 2nd suspension = 2 years
- 3rd suspension = 5 years

4. Appeal procedure

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A supplier who has been suspended under this Procedure may appeal the decision to the Supplier Management Appeal Committee.

The City's decision may be provided to the supplier by either registered mail to the registered corporate office or as provided in the notice provisions of the most recent contract with the supplier and is deemed received within 7 calendar days. The same definitions and standards as provided pursuant to the Manage Supplier Performance Procedure under the Contract Management Administrative Policy A1205 will apply.

The decision of the Contract Management Appeal Committee is final and binding. There is no further right to appeal within the City or the courts.