

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 reduced restrictions on suppliers. Probation means that:

- the supplier is still permitted to bid on new open 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
- 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 serious measures. Suspension means that:

- the supplier cannot 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 cannot be used as a subcontractor for other suppliers for City contracts;
- All City's 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.

A supplier's probation or suspension status does not affect the City's contractual rights, including the right to terminate an agreement.

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. Typically, a supplier will be put on probation first; however, if the City determines that a supplier's conduct poses a significant risk to public trust, financial integrity, service delivery, or safety, it may bypass probation and impose a suspension without prior probation. This decision will be based on the seriousness of the issue, including factors such as the nature of the breach, its impact on City operations, City reputation, and the supplier's past performance or conduct.

Routine disagreements or issues resolved through regular discussions are not considered disputes under this process.

When Probation May Lead to Suspension

- **Continued Poor Performance:** If a supplier fails to meet the conditions of probation or continues to underperform, the City may proceed with suspension.
- **Serious Offences:** A supplier may be suspended while on probation if a severe instance of non-compliance requires immediate action. The City will determine what constitutes such an incident based on the scenarios outlined below.

Poor Performance on City Contract(s)

As per the [City of Edmonton Supplier Performance Management Program](#), the City monitors supplier performance on City contracts. City business areas may use SAP Ariba to record and score supplier performance. If the City determines that a supplier is failing to meet contractual performance requirements for one or more City contracts, 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.

Examples of poor performance could include:

- failure to meet critical terms of the contract, such as delivery deadlines for essential goods, adherence to agreed specifications, or failure to provide required services, especially for time-sensitive or safety-critical projects resulting in a material breach of contract;
- severe impact on City operations, resulting in critical disruptions to municipal services due to non-performance or poor-quality deliveries; and
- egregious single failure resulting in major financial loss, legal exposure, or public harm.

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

The City expects all suppliers to act ethically and comply with applicable legal standards (see the [Supplier Code of Conduct](#)). 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 (or its affiliates) 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 comply with any of the requirements in the Supplier Code of Conduct;
- involvement in safety and data breaches impacting the City;
- harm to the City's reputation, which causes public outcry or media scrutiny that damages the City's credibility or public trust;

- 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 body;
- offering money or gifts to elected or appointed officials or employees of the City or any other public body 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 unethical practices, 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 or repetitive;

- 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 current 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 Director (Business Area) regarding whether the supplier should be placed on probation or suspended.
2. If the Director agrees that the supplier should be placed on probation or suspended, the business area formalizes this with their Branch Manager and the business area sends a written recommendation for probation or suspension to the Corporate Procurement & Supply Services (CPSS) Director of Contract Strategy & Systems Solutions (CPSS Director). This document package and recommendation must include a Decision to Assign Standing form (Part 1) signed by the recommending Branch Manager with thorough documentation supporting the reasons 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, default notices, notices of non-performance/warning letters, and performance evaluation scorecards, and
 - iii. evidence that the supplier has continued to perform poorly despite City requests.
 - 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 impose on the supplier during that period, and any specific reinstatement requirements that the City should impose.

3. The CPSS Director will review the recommendation from the business area Branch Manager and may request additional information if required. If all required documentation is included (as outlined in #2 above) are met, the CPSS Director will inform the CPSS Branch Manager and proceed with the next steps noted below. If the CPSS Director has any concerns with the recommendation, the CPSS Director will inform the requesting Branch Manager, and a discussion will take place before proceeding.
4. If the supplier in question has any other in-progress City contracts at the time the CPSS Director makes the recommendation, CPSS may request that the contract managers for these other contracts complete interim performance evaluations to assist in the decision to impose probation or suspension.
5. CPSS will email the supplier the completed "Decision to Assign Standing - Part 1" form, copying the recommending Branch Manager.
6. If the City does not receive a valid appeal (in accordance with the [Supplier Performance Appeal Process](#)) within fifteen business days of emailing the "Decision to Assign Standing—Part 1" form to the supplier, it will implement the probation or suspension.
7. If the City receives a valid appeal within fifteen (15) business days of emailing the "Decision to Assign Standing—Part 1" form to the supplier, it will implement the appeal process per the Supplier Performance Appeal Process.
8. If the supplier requires more time to respond to the "Decision to Assign Standing—Part 1" form, they will request an extension by replying to the email address indicated in the form. The City will reply to the supplier, granting the extended timeframe if the City determines it is reasonable.

9. If the supplier is appealing being placed on probation or suspension, the City will not implement the probation or suspension until the conclusion of the appeal process, unless otherwise requested by the City, whose request must be reviewed and decided by the Appeal Committee Chair. If decided by the Appeal Committee Chair, the supplier may still be placed on probation or suspension throughout the duration of the appeal.

The same process applies when the City determines that a supplier on probation should be suspended.

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 email indicated in the Decision to Assign Standing Form, including evidence that the supplier has met any conditions imposed as part of the probation or suspension, including requirements for reinstatement.
2. CPSS will distribute this request to the business area Branch Manager who initially recommended the probation or suspension to review the written request and evidence, and may ask the supplier to provide more evidence through CPSS.
3. If the business area Branch Manager determines that the supplier has met all conditions for reinstatement and has confirmed that the necessary minimum period has passed:
 - a. CPSS will record the decision to remove the probation or suspension in the "Decision to Assign Standing - Part 2" form, which will then be submitted for signature by the business area Branch Manager;
 - b. CPSS will email the updated and signed "Decision to Assign Standing - Part 2" form to the supplier, copying the business area Branch Manager;
 - c. if the supplier was suspended, 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).
 - 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 and the supplier still meets all requirements for pre-qualification.

4. If the business area Branch Manager determines that the supplier has not met all conditions for reinstatement, or that the necessary minimum period has not passed:
 - a. CPSS will record the decision to continue the probation or suspension of the “Decision to Assign Standing - Part 2” form, which will then be submitted for signature by the business area Branch Manager;
 - b. CPSS will email the updated and signed “Decision to Assign Standing - Part 2” form to the supplier, copying the business area Branch Manager;
5. If the City receives a valid appeal (in accordance with the Supplier Performance Appeal Process) within fifteen business days after CPSS emails the updated “Decision to Assign Standing - Part 2” form to the supplier, the probation or suspension will remain in place during the appeal process, as per the Supplier Performance Appeal Process. The appeal process is outlined in the Supplier Performance Appeal Process.

**DECISION TO ASSIGN STANDING
(PART 1)**

Supplier Information	
Supplier Name <i>(be specific as to which entities of the Supplier are in scope for this Decision)</i>	
Supplier Address	
Telephone Number	
City of Edmonton Vendor Number:	Decision Ref #:
Decision Details	
☐ SUSPENSION ☐ PROBATION ☐ EXTENSION	
Effective Date	Minimum Duration
Description <i>(include activities suspended such as bidding or responding to RFX's, restrictions on Contract awards and/or subcontracting)</i>	
Describe Goods, Services, Construction or Intellectual Property in Scope for this Standing	
Describe City Department(s) or Branch(es) in Scope for this Standing	
Attach Reason(s) for Decision	

- ☐ Document justification for the decision
- ☐ Indicate what the Supplier or Bidder's current Standing is and whether this decision is an extension of an existing Probation or Suspension

Reinstatement Requirements

Describe the requirements that **must** be met to the satisfaction of the Probation or Suspension to be lifted.

Authorization for Decision by City of Edmonton Business Area

Signature

Printed Name of Signatory Person and Title

Date (yyyy-mm-dd)

The Supplier may file an appeal within 15 business days of receipt of this form by following the steps provided in the [Appeal Process](#).

spmescalations@edmonton.ca

DECISION TO ASSIGN STANDING (Part 2 – Reinstatement Decision)

Request for Reinstatement Details	
Date Received from Supplier (yyyy-mm-dd):	
Reinstatement Decision Details	
☐ END Standing ☐ EXTEND Current Standing ☐ CONTINUE Current Standing as is ☐ CONTINUE Current Standing with modifications ☐ CHANGE to Suspension ☐ CHANGE to Probation	
Has Minimum Duration passed? ☐ YES ☐ NO	
Have Reinstatement Requirements been met? <i>Describe in detail</i>	
Effective Standing End Date (yyyy-mm-dd)	Modified Minimum Duration (if applicable)
Description <i>(include all details of the reinstatement decision, including any decision to continue or modify the current standing, an extension of the current standing, or a change to another standing)</i>	
Describe Goods, Services, Construction or Intellectual Property in Scope for this Decision	
Describe City Department(s) or Branch(es) in Scope for this Decision	

Attach Reason(s) for Decision

Document justifications for the reinstatement decision

Modified Reinstatement Requirements (if current Standing continues for extension or change to new Standing)

*Describe the requirements that **must** be met to the satisfaction of the Probation or Suspension to be lifted.*

Authorization for Reinstatement Decision by City of Edmonton

Signature

Printed Name of Signatory Person and Title

**Date
(yyyy-mm-dd)**

The Supplier may file an appeal within 15 business days of receipt of this form by following the steps provided in the [Appeal Process](#).

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