

The Corporation of Loyalist Township



SUPPLIER DISQUALIFICATION PROTOCOL

Finance Department

VERSION 1 – FEBRUARY 21, 2018



Supplier Disqualification Protocol

Section 1 - Purpose and Interpretation

The purpose of this protocol is to set out the process for disqualifying suppliers from participating in the Township's procurement opportunities. This protocol should be read in conjunction with the Township's Procurement Policy By-law and Procurement Procedures. Defined terms used in this protocol have the meaning assigned in the Glossary of Terms.

Section 2 - Introduction

In order to ensure that Loyalist Township (the "Township") is receiving quality goods and services and value for public money and in the interests of increasing the efficiency of the procurement process, the Township may disqualify suppliers from eligibility to compete for or be awarded Township contracts for prescribed time periods for the following reasons:

- a) The supplier brought frivolous or vexatious litigation proceedings¹ against the Township.
- b) The supplier failed to honour a proposal submitted in response to a Township procurement opportunity.
- c) The supplier failed to disclose conflicts of interest in connection with Township procurement opportunities.
- d) The supplier was convicted of bid-rigging, price-fixing or collusion or other statutory offenses.
- e) The supplier engaged in unethical business practices.
- f) The supplier had significant performance issues on a prior contract with the Township.

The analysis and factors to be considered by the Township in making a decision to disqualify a supplier are set out in greater detail in this protocol. Generally, a decision to bar a supplier from submitting proposals or from being eligible for contract award must be exercised cautiously. The decision must be applied fairly, supported by evidence, exercised in accordance with the factors set out in this protocol and appropriately approved. While a decision to place a supplier on the disqualification list is discretionary, such a decision must be exercised consistently and fairly.

¹ For the purposes of this protocol, "litigation proceedings" shall mean all court proceedings and any other alternative dispute resolution processes, including arbitration, or any bid protest procedures under any applicable trade treaties.



Section 3 - Reasons for Disqualification

The Township may disqualify a supplier for one of the following five categories of reasons:

3.1 Litigation

If a supplier engages in litigation against the Township, the Township may consider whether or not such litigation should disqualify that supplier from participating in future procurement opportunities with the Township. Note that litigation brought by the Township against a supplier is addressed under Section 3.6 below.

A supplier who engages in litigation against the Township should only be disqualified in connection with litigation proceedings if there are valid reasons for doing so. Disqualification should not be exercised as retaliation against a supplier for bringing a legitimate lawsuit against the Township.

Litigation against the Township in respect of matters unrelated to a procurement process or a contract for the provision of goods, services or construction should not be considered under this protocol. In evaluating whether a litigious supplier should be disqualified, the Township should consider the following non-exclusive, qualitative factors in its analysis:

- Is the litigation in relation to a procurement process or a contract for the provision of goods, services or construction?
- Is there a history of litigious conduct with the supplier and has that history resulted in increased costs to the Township?
- What was the outcome of the litigation? For example, was it frivolous or vexatious or were damages awarded in favour of the supplier?
- Does the supplier's litigation with the Township call into question the supplier's ability to provide the work or services under future contracts?

3.2 Failure to honour a proposal

If a supplier submits a proposal or submission in response to a Township procurement opportunity and that supplier subsequently refuses to honour its submission or the pricing included in that submission, the Township may consider disqualifying that supplier from participating in future procurement opportunities with the Township. However, a supplier should not be disqualified if its failure to honour a proposal or submission was a legitimate withdrawal of that submission. Accordingly, the reason why a proponent did not honour its submission must be analyzed and considered in making a decision to disqualify that supplier. Factors



that the Township may consider in such analysis include, but should not be limited to, the following:

- If the Township and the highest-ranked supplier in a procurement opportunity attempt to negotiate an agreement and for valid business reasons are unable to come to an agreement, that supplier should not be disqualified.
- If a proponent fails to honour its submitted pricing because of a change in market conditions, the Township should consider whether pricing fluctuations are common in the industry. If price increases are common, the Township should consider whether the proponent should have factored this into their submitted pricing. For example, could the market conditions have been reasonably predicted within the industry?
- If a proponent does not honour its submission because it is too busy on other contracts at the time of award and the procurement opportunity was awarded according to the published timetable the Township should consider disqualifying that proponent because proponents should only submit proposals if they are capable of delivering the services.
- Other reasons for a proponent's failure to honour a submission or pricing should be reviewed contextually and fairly.

3.3 Failure to disclose a conflict of interest

If a proponent fails to disclose a conflict of interest during a Township procurement opportunity or during the performance of a contract with the Township and the Township subsequently discovers that such a conflict of interest exists, the Township may disqualify that supplier from participating in future procurement opportunities after conducting an analysis based on the following factors:

- The nature of the conflict of interest, including whether it is a perceived or an actual conflict of interest and the materiality of the advantage that such a conflict may have given the supplier.
- Whether the supplier knowingly failed to disclose such a conflict of interest.
- The impact such a failure to disclose the conflict of interest had or may have on the Township, including its reputation and the impact on its obligation to conduct a fair competitive procurement process.

3.4 Participation in bidding practices that are sanctioned by statute, including the *Criminal Code* or the *Competition Act*.

If the Township has reason to suspect that a proponent or proponents are



engaged in bid-rigging, price-fixing, bribery or collusion or other behaviours or practices sanctioned by federal or provincial statutes in connection with a Township procurement opportunity, the Township should contact the appropriate authorities and provide such assistance as is required to support a subsequent investigation and, if applicable, prosecution. If a supplier is convicted of bid-rigging, price-fixing or collusion or other behaviours or practices sanctioned by federal or provincial statutes in connection with a Township procurement or in connection with other public sector procurements, the Township may disqualify that proponent for a minimum period of three (3) years from the date of conviction.

3.5 Unethical bidding practices

A proponent may engage in unethical bidding practices that do not amount to a criminal or statutory offense, but such practices may still warrant disqualification from bidding on the Township procurement opportunities. Examples of such unethical bidding practices include inappropriate offers of gifts to Township employees from potential suppliers, misrepresentations in proposals and inappropriate in-process lobbying of or communications with Township employees by proponents during a procurement process. The Township must conduct a full review of the unethical practice in question and perform a contextual analysis to determine whether or the proponent or supplier in question should be disqualified, including consideration as to the impact the unethical bidding practice had on the Township's ability to run a fair procurement process.

3.6 Poor performance

If a supplier performs poorly on an existing contract with the Township, the Township may consider disqualifying that supplier in the following circumstances:

- The contract was terminated for performance issues prior to expiry.
- There were un-rectified performance issues on a contract that resulted in extra costs to the Township.
- The goods were defective and were not replaced or repaired or required multiple repairs.
- The Township Brought a litigation proceeding against the supplier in connection with performance or non-performance of the supplier's contractual obligations; or
- A disqualification was recommended in accordance with the Township's Supplier Performance Evaluation Protocol.

Section 4 - Process for Disqualification



- 4.1 Any decision to disqualify a supplier must be supported by a written business case that contains all details connected with the analysis of factors set out above.
- 4.2 The business case must also include the recommended length of the disqualification.
- 4.3 The maximum disqualification period is three (3) years.
- 4.4 The length of the disqualification period should be proportional to the reasons for the disqualification and the full three-year suspension should only be applied in the most serious of disqualifications. A disqualification can either be a blanket disqualification for all procurement opportunities or a disqualification to provide specific goods or services on a case by case basis. The business case must clearly set out the scope of the disqualification.
- 4.5 All decisions to disqualify a supplier must be approved by the Bid Review Committee. The Bid Review Committee is established in accordance with the Township's Procurement Bylaw. The Bid Review Committee must consider the written business case, together with all documentation associated with the business case and the specific facts leading up to the proposed disqualification. The Bid Review Committee should consider seeking external legal advice where appropriate. In addition, the Bid Review Committee should consider seeking written representations from the supplier in question and factoring such written representations into the decision-making process where the documentation supporting the business case is unclear or where it is important to consider the suppliers' perspective on the particular matter.
- 4.6 If the disqualification business case is approved, a notification must be provided to the supplier in question informing that supplier that they are disqualified from participating in the Township's procurement opportunities for the prescribed time period. The notification letter must contain:
 - 4.6.1 Full details as to the reasons for the disqualification, including copies of any documents or correspondence to support such a disqualification;
 - 4.6.2 The length of the disqualification period and the scope, if applicable; and
 - 4.6.3 The supplier's right to re-apply for eligibility within the prescribed time period and the process for requesting such a re-application.

Section 5 - Review of Disqualification

Where a supplier has been disqualified the supplier may apply for reinstatement upon



the completion of half of the original disqualification period. For example, if the original disqualification period was two years, the supplier may apply for reinstatement after one year. In order to be re-eligible for participation in the Township's procurement opportunities, the supplier must submit a written case for reinstatement, including supporting documentation if necessary, that provides reasons why the original reason for the disqualification would no longer prove a risk for the Township.

5.1 Applications for reinstatement are to be reviewed by the Bid Review Committee. If the Bid Review Committee determines that allowing the supplier the opportunity to participate in the Township's procurement processes would no longer expose the Township to risk, then the application for reinstatement may be approved.

5.2 The supplier must be notified, in writing, of the final decision for re-instatement made by the Bid Review Committee.

Section 6 - Disqualification List

The Finance Department shall maintain an up-to-date and current list of all disqualified suppliers. Any supplier that is owned or controlled by the same individual(s) that owned or controlled a disqualified supplier at the time it was disqualified is also considered disqualified.

The list should contain, at a minimum:

- the full name of the supplier;
- the names of the directors and officers of the supplier;
- the reasons for the suspension;
- the file number where the business case for the disqualification is filed;
- and the length of the disqualification period and the date of the expiry of the disqualification period;
- if the disqualification is a blanket disqualification for all procurement opportunities or a disqualification to provide specific goods or services.

Review of the disqualification list against a list of suppliers or bidders and their directors should be conducted for each Procurement Project to ensure that disqualified suppliers are not allowed to continue in the process.

Section 7 - Disqualification List

The Township Finance department shall maintain an up-to-date and current list of all disqualified suppliers. The list should contain the full name of the supplier, the reasons for the suspension, the file number where the business case for the disqualification is filed, the length of the disqualification period and the date of the expiry of the



disqualification period. Review of the disqualification list against a list of proponents or respondents should be conducted for each procurement to ensure that disqualified suppliers are not allowed to continue in the process.