



MUNICIPAL PROPERTY ASSESSMENT CORPORATION

Supplier Suspension Protocol

February 2019

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1. PURPOSE AND OVERVIEW

The purpose of this Supplier Suspension Protocol (the “Protocol”) is to set out the process for suspending suppliers from participation in MPAC’s procurement processes. This Protocol should be read in conjunction with the MPAC Procurement Policy (the “Policy”). Capitalized terms that are not otherwise defined in this Protocol have the meanings ascribed in the Policy.

2. SCOPE AND APPLICATION

- 1) This Protocol applies to any procurement within the scope of the Policy.
- 2) Unless otherwise stated, this Protocol does not apply to a decision to reject a submission due to a failure to meet the evaluation criteria, rating or methodology stated in any procurement documentation.
- 3) Unless otherwise stated, this Protocol does not amend or waive any rights reserved by MPAC pursuant to the Policy.

3. PRINCIPLES

- 1) For the purposes of this Protocol, a suspension means a determination of ineligibility or a disqualification of a supplier’s eligibility to bid on future MPAC procurement processes for any duration (a “**Suspension**”) up to the Maximum Suspension Period.
- 2) MPAC may issue a Suspension if any of the reasons for Suspension set out in Section 4 apply.
- 3) A decision to suspend a supplier must be:
 - a) made in accordance with this Protocol;
 - b) supported by evidence; and
 - c) based on the reasons and factors set out below.

A decision to suspend a supplier is discretionary; however, such discretion must be exercised consistently and fairly.

4. REASONS FOR SUSPENSION

In order to ensure that MPAC is receiving quality deliverables and value for public money by dealing with suppliers that conduct business in a professional and ethical manner, MPAC may suspend suppliers from participating in its procurement processes for any duration up to the Maximum Suspension Period for any of the following reasons.

4.1. Frivolous or Vexatious Litigation

- 1) MPAC may issue a Suspension to a supplier who has a history of litigious conduct against MPAC or bringing frivolous or vexatious claims in connection with MPAC’s procurement processes or contracts.
- 2) Litigation against MPAC in respect of matters unrelated to MPAC’s procurement processes or contracts shall not be considered under this Protocol.

4.2. Serious Crimes or Offences

- 1) MPAC may issue a Suspension to a supplier if the supplier has been convicted of serious crimes or other serious offences, including bid-rigging, price-fixing, collusion, fraud and other statutory offences.
- 2) MPAC shall cooperate with any investigation by law enforcement authorities if a supplier is suspected of engaging in any serious crime or offence in connection with a MPAC procurement.

4.3. Unethical Bidding Practices

- 1) MPAC may issue a Suspension to a supplier if the supplier is currently or has previously engaged in unethical bidding practices, even if such practices do not amount to a criminal or statutory offence. Such practices include, but are not limited to:
 - a) corruption, bribery, kick-backs, extortion, embezzlement or any business practices that are in breach of applicable laws or the MPAC Supplier Code of Conduct, or any conduct that would put MPAC at risk of breaching applicable laws;
 - b) including false or misleading information in bid proposals;
 - c) failing to disclose any actual, potential or perceived conflict of interest;
 - d) materially altering bid or submission information which has not been authorized by MPAC;
 - e) inappropriate or unauthorized communications with MPAC employees during a procurement process;
 - f) intimidation or interference with any MPAC employee or other supplier in relation to a procurement process;
 - g) obtaining or using MPAC Confidential Information in connection with a procurement process or contract performance in an unethical manner or without MPAC's written consent;
 - h) submitting materially unbalanced bid pricing that could reasonably distort the total or individual value of the proposed contract deliverables; and
 - i) failing to honour the terms of a contract award in the absence of good faith and valid business reasons for withdrawal, including making false or misleading misrepresentations in proposals and materially undervaluing bids and later seeking contract modifications.

4.4. Poor Performance

- 1) MPAC may issue a Suspension if any of the following circumstances occurs in a current or previous MPAC procurement awarded to the supplier:
 - a) the supplier failed to perform a contract in a professional and competent manner in accordance with the duty of honest performance;
 - b) there were significant or persistent unexcused material deficiencies in performance;
 - c) there were significant misrepresentations as to the quality, origin, function, suitability or performance of deliverables;

- d) there were excessive overbillings or overpayments which were not rectified within a reasonable time;
- e) there was a failure to comply with the MPAC Supplier Code of Conduct, including failing to address concerns around workplace practices;
- f) the procurement contract was terminated by MPAC due to a material breach by the supplier; and
- g) MPAC has brought a litigation proceeding against the supplier in connection with the performance or non-performance of the supplier's contractual obligations.

5. SUSPENSION PROCESS

- 1) A decision to issue a Suspension to a supplier shall be supported by a written report (a "**Suspension Recommendation Report**"), which shall include the following:
 - a) the relevant facts which led to the Suspension;
 - b) the reasons for the Suspension;
 - c) the recommended length of the Suspension up to the Maximum Suspension Period (the length of the Suspension must proportionate to the reasons for the Suspension); and
 - d) the scope of the Suspension, including whether it is a blanket Suspension or whether it only applies to certain procurements.
- 2) All decisions to suspend a supplier must be approved by be approved by the Strategic Sourcing and Contract Management and the General Counsel.
- 3) If the Suspension Recommendation Report is approved, a notification must be provided to the supplier as soon as practical informing the supplier that it is suspended from MPAC's procurement processes for the prescribed time period. The notification shall contain:
 - a) full details as to the reasons for the Suspension, including copies of any documents or correspondence to support the Suspension;
 - b) the length and scope of the Suspension; and
 - c) the supplier's right to re-apply for eligibility within the prescribed time period and the process for requesting such a reinstatement pursuant to Section 6.
- 4) Once the Suspension has expired, the supplier will be eligible to bid on MPAC contracts without further notice.

6. REVIEW OF SUSPENSION AND REINSTATEMENT

- 1) A suspended supplier may apply for reinstatement upon the completion of half of the original Suspension length. For example, if the original Suspension length was two years, the supplier may apply for reinstatement after one year.
- 2) In order to be re-eligible for participation in MPAC's procurement processes, the supplier shall submit a written application for reinstatement with supporting documentation. The supplier shall provide reasons for why the reasons for the original Suspension are no longer a material risk to MPAC.

- 3) The Manager, Strategic Sourcing and Contract Management and the General Counsel shall review the reasons for reinstatement. If the Manager, Strategic Sourcing and Contract Management and the General Counsel determine that there is no longer a material risk to MPAC, then the application for reinstatement may be approved.
- 4) MPAC shall notify the supplier in writing of the final decision for reinstatement.

7. **SUSPENDED SUPPLIERS LIST**

- 1) MPAC shall maintain a current list of all suppliers who are suspended. The list shall contain:
 - a) the supplier's full name;
 - b) the names of the supplier's directors and officers;
 - c) the reasons for the Suspension;
 - d) the scope of the Suspension; and
 - e) the length of the Suspension.
- 2) The Manager, Strategic Sourcing and Contract Management shall be responsible for ensuring that suppliers on the Supplier Suspension List are not permitted to participate in any MPAC procurement process from which they are suspended. Notwithstanding that a supplier is suspended, the General Counsel may permit such suspended supplier to bid on an MPAC procurement in the following exceptional circumstances:
 - a) there is an emergency and delay would be injurious to the public interest;
 - b) the supplier is the only entity capable of performing the services;
 - c) the contract is essential to maintain sufficient emergency suppliers; or
 - d) not entering into the contract or extending an existing contract with the supplier would have a significant adverse impact on the health, security, safety, public security or economic or financial well-being of MPAC.

8. **DEFINITIONS**

- 1) In this Policy, except where a contrary meaning is clearly intended, the following expressions have the following meanings:
 - a) "**Maximum Suspension Period**" means ten (10) years.
 - b) "**MPAC**" means the Municipal Property Assessment Corporation.
 - c) "**MPAC Confidential Information**" means all information that a supplier receives from MPAC, which by its nature is or should be considered confidential, including without limitation, information concerning customers, suppliers, technology, businesses, works, research results, product plans, processes, formulae, designs, drawings, specifications, notes, forecasts, maps, reports, market information, products, product developments markets, software (including source and object code), hardware configuration, computer programs, algorithms, inventions, trade secrets, financial information, business plans, policies or practices and agreements with third parties, as well as any personal information

that is protected by the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), the *Assessment Act* (Ontario), and any other applicable laws or regulations.

Notwithstanding the foregoing, MPAC Confidential Information does not include information that:

- i) is or has become publicly available through no fault of the supplier;
 - ii) was already been known to the supplier at the time of its disclosure to the supplier;
 - iii) is independently developed by the supplier without use or reference to the MPAC Confidential Information;
 - iv) becomes known to the supplier, without restriction, from a source other than MPAC, which is not in violation of MPAC's rights; or
 - v) is disclosed pursuant to the order or requirement of a court administrative agency, or other governmental body.
- d) **"Policy"** has the meaning given in Section 1(1).
- e) **"Protocol"** has the meaning given in Section 1(1).
- f) **"Suspension"** has the meaning given in Section 3(1).
- g) **"Suspension Recommendation Report"** has the meaning given in Section 5.

9. DOCUMENT CONTROL

The electronic version of this document is recognized as the only valid version.

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Review Frequency: This document will be reviewed every three (3) years or as required.

Document Prime* Manager, Strategic Sourcing and Contract Management

**Enquiries relating to this document should be referred to the responsible Document Prime.*

Revision History

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