

CONTRACTOR PERFORMANCE SYSTEM PROCEDURAL DOCUMENT

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1. DEFINITIONS

“Performance Evaluation Form” has the meaning set out in Section 4.1 of this procedure document, as amended.

“Probation” means the action that results when a Contractor receives a rating of **“NOT SATISFACTORY”** in any category, on a Final Performance Evaluation form, subject to the terms and conditions of this document

“Project Evaluator(s)” means one or more person(s) from the Owner’s user department(s) and/or a consultant to the Owner, that will be evaluating the Contractor’s performance by completing Performance Evaluation Forms in accordance with this procedural document, as amended.

“Suspension” means the action that results when a Contractor receives a rating of **“UNACCEPTABLE”** in any category, on a Final Performance Evaluation form, subject to the terms and conditions of this document

All other initially capitalized terms not defined above shall have the meanings given to such terms in the Owner’s Procurement Bylaw #2014-27, as amended.

2. PURPOSE

This procedure provides a framework for the Owner to evaluate and improve the performance of all Contractors awarded publicly bid Contracts by;

- (i) pro-actively managing the performance of Contractors during the term of awarded Contracts, and
- (ii) creating a record of past performance for use by the Manager, Procurement Services, in determining the award for future Solicitations.

Project Evaluator(s) may utilize this Contractor Performance Procedure for all other contracts including but not limited to; invitational bids, Single or Sole Source purchases, Emergency Purchases and wherever it is in the Best Interest of the Owner.

3. PROJECT EVALUATORS

- 3.1 Each Project Evaluator and Procurement shall confirm by signing off on the evaluation that he or she does not have a Conflict of Interest.
- 3.2 Project Evaluators and Procurement staff shall at all times abide by the Owner’s Employee Code of Conduct, as amended.

4. PROJECT EVALUATION FORMS

- 4.1 Project Evaluators are to use one of the following Project Evaluation Forms, as amended or updated:
 - i. Infrastructure Consultant Project Evaluation Form (includes Construction Admin)
 - ii. Consultant Performance Evaluation Form (no construction admin.)
 - iii. Equipment/Vehicle Supplier Project Evaluation Form
 - iv. Supplier of Goods/Services Project Evaluation Form
 - v. Contractor Project Evaluation Form

5. FREQUENCY OF PERFORMANCE EVALUATIONS

- 5.1 The Procurement Services Department strongly recommends that Project Evaluators perform an **Interim Performance Evaluation** using the applicable Project Evaluation form as stated in 4.1, as amended (the “Performance Evaluation Forms”) of this procedural document, at least every twelve (12) months for all Contracts with a term longer than one (1) year. Additional Performance Evaluation Forms may be completed and discussed with the

Contractor at any time throughout the term of the Contract, as needed, based on the Contractor's performance.

- 5.2 It is good practice to keep the Procurement Representative assigned to the Solicitation informed throughout the course of a Contract of any performance concerns with the Contractor. Departmental project managers should not hesitate to contact the Procurement representative for advice or assistance regardless of the significance of the problem or to attend a meeting with the Contractor.
- 5.3 Project Evaluators shall ensure that each completed Performance Evaluation Form is clearly marked as either "**Interim**" or "**Final**".
- 5.4 Project Evaluators should complete a **Final Performance Evaluation Form** for all Contracts using the **applicable Project Evaluation form** as stated in Item 4.1, as amended (the "Performance Evaluation Forms") of this procedural document, as amended, in a timely manner, preferably **within two (2) weeks** of the following occurrences, depending on the type of good, service or construction:
 - (i) For Construction contracts; upon the issuance of a Certificate of Final Completion or
 - (ii) For Consulting contracts; upon completion of the Contract or
 - (iii) For Goods; upon delivery and inspection of goods and/or after the expiry of any applicable deficiency or
 - (iv) for Services, upon completion of services and/or after the completion of deficiencies or
 - (v) for Vehicles and Equipment; upon deliver and inspection and/or after the expiration of the warranty period or
 - (vi) upon termination of a Contract for any reason prior to the Contract end date.
- 5.5 **Contractor's receiving an Interim** Performance Evaluation Form with a rating(s) of **CAUTIONARY OR BELOW**, in any category, should be requested in writing, to provide, a written response and appropriate corrective action within an acceptable timeframe, in accordance with the Terms and Conditions of the Solicitation and failure of the Contractor do so, in the sole opinion of the Owner, may lead to termination of the Contract.
- 5.6 Project Evaluators are not obliged to complete Performance Evaluation Forms for Contracts obtained through a non-competitive procurement process, but may do so at their discretion.
- 5.7 Project Evaluators shall complete all Performance Evaluation Forms, for approval, by their immediate Supervisor and the Manager, Procurement Services. The approved Evaluation form will be sent to the Contractor by Procurement Services. The Bid Review Panel, as defined in the Procurement Bylaw 2014-27, as amended, shall review Final Performance Evaluations, where, the Contractor has received a rating of "**NOT SATISFACTORY OR UNACCEPTABLE**" in any category(s) on a **Final** Performance Evaluation Form and to consider its options stated in this procedural document.

6. RECOMMENDED STEPS TO RESOLVING CONTRACTOR PERFORMANCE

- 5.1 It is important to have open communication with the Contractor throughout the project and to inform the Contractor in writing when their performance is a concern and to request appropriate corrective action within an acceptable timeframe, in accordance with the Solicitation's terms and conditions. It is equally important to keep a written record of all correspondence with the Contractor.
- 5.2 If the Contractor's response or corrective action is still a concern, departmental staff should involve the Procurement Representative. Where it is deemed appropriate an Interim Performance Evaluation should be performed by the Project Evaluator(s) and provided to the Contractor by the Procurement department. The Contractor will be held responsible for the performance of its sub-contractors.
- 5.3 If the Contractor's response or corrective action continues to be a concern, the terms and conditions of the contract regarding non-performance may be enforced by the Manager, Procurement Services.

7. RECORD RETENTION

- i) Project Evaluators shall maintain the following documents and Bid records for seven (7) years or in accordance with the Owner's record retention procedures, as amended, following the completion of the Project warranty or maintenance period as supporting rationale to augment the Performance Evaluation Form:
- i. internal and external correspondence (e.g. emails, letters, telephone logs describing the issues discussed, copies of faxes);
 - ii. meeting minutes describing all issues discussed, decisions made, issues unresolved, and action items assigned;
 - iii. progress reports;
 - iv. project diaries which record significant daily events;
 - v. inspection and laboratory reports;
 - vi. photographs and video tapes; and
 - vii. rejected project deliverables.

8. PERFORMANCE EVALUATION SYSTEM

- 8.1 Project Evaluators shall assign Contractors one of the following ratings to each category set out on the Performance Evaluation Form. A critical aspect of the assessment rating system described below is the **second sentence** of each rating that recognizes the Contractor's resourcefulness in overcoming challenges that arise in the context of Contract performance.

Rating		Description of Rating
A	Exceptional	Performance <i>significantly exceeds</i> Contract requirements to the Owner's benefit, for example, the Contractor implemented innovative or business process reengineering techniques, which resulted in added value to the Owner. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the Contractor were highly effective.
B	Good	Performance meets contractual requirements and <i>exceeds in some area(s)</i> to the Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the Contractor were effective
C	Satisfactory	Performance <i>meets</i> contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which proposed corrective actions taken by the Contractor appear satisfactory, or completed corrective actions were satisfactory.
D	Cautionary	Performance did not quite <i>meet</i> contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which proposed corrective actions taken by the Contractor appear to be a continued minor concern, or completed corrective actions were slightly below satisfactory.
E	Not Satisfactory	Performance <i>does not meet some</i> contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the Contractor has submitted minimal corrective actions, if any. The Contractor's proposed actions appear only marginally effective or were not fully implemented.
F	Unacceptable	Performance <i>does not meet</i> contractual requirements and/or <i>recovery is not likely</i> in a timely or cost effective manner. The contractual performance of the element or sub-element contains serious problem(s) for which the Contractor's corrective actions appear or were ineffective.

9. IMPACT OF FINAL PERFORMANCE EVALUATIONS

- 9.1 In addition to the provisions set out in Item 9 Impact of Final Performance Evaluation, the Owner, at its sole discretion, may;
- terminate a Contract prior to completion of a project or prior to the expiration of a Contract period term due to Contractor performance issues or
 - Or take other action, in the Owner's best interest.
- 9.2 Final Performance Evaluation Forms shall be used by the Owner for consideration of award of Solicitations, (if a Final has **not** been performed at time a Solicitation award is under review, an Interim evaluation, if available, may be used by the Owner to:

- i. determine if a Bidder submitting a Bid is a Responsible Bidder, and/or
 - ii. To evaluate past performance in Proposal Solicitations.
- 9.3 A Contractor that has received an “**EXCEPTIONAL**” rating in the majority (50% or more) of the categories and at least a “**GOOD**” rating in all other categories (except for costs which may be at the “Satisfactory” rating); on the Contract’s **Final** Performance Evaluation Form:
- a) The Contractor may be considered a Responsible Bidder for future similar Bid submissions to the Owner,
 - b) For a multi-year term Contract, the Contract may be extended up to an additional two (2) year term, at the discretion of both the Owner and Contractor. Costs for the extension shall be based on either:
 - i. any inflationary contract annual increase stated in the Bid Call Document or any inflationary contract annual increase stated by the Contractor in their original Bid submission or
 - ii. The same costs as stated in a firm fixed price multi-year Contract.

Where a Bid Call Document did not state or request any inflationary annual Contract increase or where the Contractor is not willing to hold pricing for a firm fixed price multi-year Contract, the Contract shall be re-bid by Procurement Services.

- 9.4 A Contractor that has received a “**GOOD**” rating or above in the majority (50% or more) of the categories and at least a “**SATISFACTORY**” rating in all other categories on the **Final** Performance Evaluation Form;
- a) The Contractor may be considered a Responsible Bidder for future similar Bid submissions to the Owner, and
 - c) For a multi-year term Contract, the Contract may be extended for an additional one (1) year term, at the discretion of both the Owner and Contractor. Costs for the extension shall be based on either:
 - iii. any inflationary contract annual increase stated in the Bid Call Document or any inflationary contract annual increase stated by the Contractor in their original Bid submission or
 - iv. The same costs as stated in a firm fixed price multi-year Contract.

Where a Bid Call Document did not state or request any inflationary annual Contract increase or where the Contractor is not willing to hold pricing for a firm fixed price multi-year Contract, the Contract shall be re-bid by Procurement Services.

- 9.5 A Contractor that has received at least a “**SATISFACTORY**” rating or above in all categories of the Performance Evaluation Form;
- a) The Contractor may be considered a Responsible Bidder for future similar Bid submissions to the Owner, and
 - b) For multi-year Contracts, is not eligible for an extension term to the current Contract.

- 9.6 A Contractor that has received at least a “**CAUTIONARY**” rating in any category of the **Final** Performance Evaluation Form;
- a) May or may **not** be considered a Responsible Bidder for future similar Bid submissions to the Owner, and
 - b) For multi-year Contracts, is not eligible for an extension term to the current Contract.
 - c) Prior to awarding the Contractor any future Contracts, the Owner may request the Bidder to demonstrate in writing or by other acceptable means to the Manager, Procurement Services that the Contractor has corrected all previously documented areas of “**CAUTIONARY**” performance concerns to a standard satisfactory to the Owner. In addition, a list of new references may be required by the Owner in respect of work

completed by the Contractor since the date of the Performance Evaluation Form where a rating of “**CAUTIONARY**” in any category was given. The Owner reserves the right, at its sole discretion not to award a Contract to any Contractor, for an indefinite period that fails to provide satisfactory evidence of correcting any documented past performance concerns by the Owner.

- 9.7 A Contractor that has received a “**NOT SATISFACTORY**” rating in any one category on the **Final** Performance Evaluation Form;
- a) The Contractor may or may **not** be considered a Responsible Bidder for future similar Bid submissions to the Owner;
 - b) The Contractor will receive an active “**Probation Letter**” advising the Contractor that if a second “**NOT SATISFACTORY OR WORSE**” rating in any category is received on the next Final Performance Evaluation Form the Contractor may be subject to a suspension period, as stated in 9.8 of this procedural document.
 - c) For a multi-year Contract, a Contractor receiving a “**NOT SATISFACTORY**” rating in any one (1) category on a Final Performance Evaluation, is **not** eligible for an extension term to the current Contract and
 - d) The Owner may terminate the current Contract due to poor performance.
 - e) Prior to awarding the Contractor any future Contracts, the Owner may request the Bidder to demonstrate in writing or by other acceptable means to the Manager, Procurement Services that the Contractor has corrected all previously documented areas of “**NOT SATISFACTORY**” performance concerns to a standard satisfactory to the Owner. In addition, a list of new references may be required by the Owner in respect of work completed by the Contractor since the date of the applicable Final Performance Evaluation Form where a rating of “**NOT SATISFACTORY**” in any category was given. The Owner reserves the right, at its sole discretion not to award a Contract, for an indefinite period, to any Contractor that fails to provide satisfactory evidence of correcting any documented past performance concerns by the Owner.
- 9.8 A Contractor that has received (i) an “**UNACCEPTABLE**” rating in any one category or (ii) a “**NOT SATISFACTORY**” rating in two or more categories, on a Final Performance Evaluation Form, or (iii) a “**NOT SATISFACTORY**” rating in at least one category on two consecutive Final Performance Evaluations;
- a) The Contractor shall not be considered a Responsible Bidder and shall be Suspended for at least a two (2) year period
 - b) For a multi-year Contract, a Contractor receiving an “**UNACCEPTABLE**” rating in any one (1) category on a Final Performance Evaluation, is **not** eligible for an extension term to the current Contract and
 - c) The Owner may terminate the current Contract due to poor performance and
 - d) The Owner will issue a letter to the Contractor confirming the Suspension Period setting out the requirements for reinstatement, which shall include at a minimum;
 - i. Expiration date of the Suspension Period, and
 - ii. Prior to awarding the Contractor any future Contracts after the above expiration date, the Owner may request demonstration by the Bidder in writing or by other acceptable means to the Manager, Procurement Services that the Contractor has corrected all previously documented areas of “**NOT SATISFACTORY**” or “**UNACCEPTABLE**” performance concerns to a standard satisfactory to the Owner. In addition, a list of new references may be required by the Owner in respect of work completed by the Contractor since the date of the Performance Evaluation Form which resulted in the Suspension. The Owner reserves the right, at its sole discretion not to award a Contract, for an indefinite period, to any Bidder that fails to provide satisfactory evidence of correcting any documented past performance concerns by the Owner.

- 9.9 Any Bidder that refuses or fails to execute a Contract awarded to that Bidder by the Owner may be subject to a Suspension Period, at the discretion of the Owner based on the recommendation of the Bid Review Panel.
- 9.10 The Owner may apply the Suspension or Probation period, where it is in the best interest of the Owner, based either on:
- i. **Commodity Basis:** this will be specific to the commodity of good(s) and/or service or construction evaluated on the applicable Final Performance Evaluation or on a
 - ii. **Blanket Basis:** this will cover all contracts regardless of the type of good, service or construction evaluated on the applicable Final Performance Evaluation.
- 9.11 If a Bidder has multiple Performance Evaluation Forms on record with the Owner, the Owner will consider the most recent Final Performance Evaluation completed for similar contracted goods, services or construction.

Where a Bidder has a Performance Evaluation for an unrelated good/service/construction, the Owner reserves the right to consider this Evaluation amongst other sources in determining if a Bidder is Responsible.

Furthermore the Owner reserves the right to consider Interim Performance Evaluation(s), in determining if a Bidder is Responsible, if a Final Performance Evaluation has not been completed, or in addition to a completed Final Performance Evaluation.

Where a Contract has multiple departments or facilities completing an Evaluation (either Interim or Final), the Contractor's overall performance rating for either an Interim Evaluation or Final Evaluation shall be based on the lowest evaluation rating received by a department or facility.

10. CONTRACTOR RESPONSE PROCESS

The Contractor shall have ten (10) calendar days to:

- i. Submit a written response to an Interim or Final Performance Evaluation, utilizing the Owner's response form and /or
- ii. Submit a written request to appeal a **Final** Performance Evaluation rating, utilizing the Owner's response form.

If no response is received within that timeframe the Evaluation rating shall be final.

11. APPEAL PROCESS

- 11.1 Within two (2) weeks of receiving an appeal response form in respect of a Final Performance Evaluation Form where the Contractor received a rating of "**SATISFACTORY**" or **better** in any category(s), the Manager, Procurement Services and the head(s) of the functional area(s) which worked directly with the Contractor shall have sole discretion to decide if any rating should be adjusted in any or all categories, based on information received in the appeal response form. The Owner may render a final decision based on the appeal information or request additional information of the Contractor. The Owner's decision shall be final and binding on all parties.
- 11.2 Within two (2) weeks of receiving an appeal response form in respect of a Final Performance Evaluation where the Contractor received a rating of "**CAUTIONARY**" or **below** in any category(s), the Manager, Procurement Services will arrange a meeting with the Bid Review Panel as defined in the Procurement Bylaw 2014-27, to review the appeal response form. The Owner may render a final decision based on the appeal information or request additional information of the Contractor. The Probation or the Suspension Period shall be upheld during any appeal under review by the Owner. The Owner's decision shall be final and binding on all parties.

12. OTHER INCENTIVES FOR CONTRACTORS

The Owner may consider other incentives in future Bid projects to ensure satisfactory and above Contractor performance and/or to provide a financial bonus for completing a project on time. These types of incentives are to be used at the discretion of the Manager, Procurement Services upon approval of the Director or Commissioner or C.A.O., depending on the value of the incentive, in accordance with the Staff authority limits stated in the Procurement Bylaw # 2014-27.

13.AWARD OF EXTENSION YEAR(S)

The Manager, Procurement Services or designate with the approval of the authority position(s) that originally approved the Contract shall have authority to award up to two (2) extension year(s) (as per Item 9.3 or 9.4 of this procedural document) to a multi-year Contract in compliance with this Contractor Performance System Procedural Document, as amended.