

Supplier Code of Conduct Procedure

1 Purpose and Interpretation

- 1.1 The purpose of this procedure is to outline the expectations and obligations for Suppliers and their sub-contractors who respond to Bid Solicitations and/or provide Goods and Services to Niagara Region.
- 1.2 This procedure should be read in conjunction with Niagara Region's **Procurement By-law**, the **Supplier Performance Evaluation Procedure**, and the **Supplier Suspension Procedure**.
- 1.3 Capitalized terms used in this procedure, and not otherwise defined herein, have the meaning assigned in the **Procurement By-law**.

2 Application

- 2.1 Niagara Region requires its Suppliers and their sub-contractors to operate lawfully and expects them to conduct their activities in a socially and environmentally responsible manner by, at a minimum, meeting the expectations and obligations set forth in this Supplier Code of Conduct Procedure.
- 2.2 The code is a statement of expectations and obligations for Suppliers and their sub-contractors.
- 2.3 This code may be amended periodically.
- 2.4 The code applies to all Suppliers and their sub-contractors who respond to Bid Solicitations and/or provide Goods and Services to Niagara Region or other Niagara Region Boards and Agencies. In fulfilling the terms of their contracts, Suppliers and their sub-contractors are required to comply with all applicable laws and regulations.
- 2.5 Suppliers are required to alert Niagara Region as soon as they are made aware that they may not be in compliance with the code.
- 2.6 Niagara Region will work with Suppliers to address potential instances of non-compliance with the code and ensure a sound understanding of expectations in order to address any apparent lack of compliance. If Suppliers or their sub-contractors are unable or unwilling to comply with the code, Niagara Region reserves the right to take appropriate actions including but not limited to seeking more information, deeming a Bid non-responsive, terminating the contract for default, setting aside the standing offer, suspending, or cancelling the supply arrangement.
- 2.7 Niagara Region expects Suppliers to share the expectations set forth in this code with their sub-contractors.

3 Act with Honestly and Good Faith

- 3.1 Suppliers must respond to Niagara Region's solicitations in an honest, fair, and comprehensive manner that accurately reflects their capacity to satisfy the requirements stipulated in the solicitation.
- 3.2 Suppliers shall submit a Bid only if they know they can satisfactorily perform all obligations of the contract in good faith.
- 3.3 Suppliers shall alert the Director, Procurement Services to any factual errors, omissions, and ambiguities that they discover in the solicitation as early as possible in the process to avoid the solicitation being cancelled.

4 Confidentiality and Disclosure

- 4.1 Suppliers must maintain confidentiality of any confidential Region information disclosed to the Supplier as part of the solicitation process.
- 4.2 Suppliers acknowledge that by submitting a Bid that their bid information will be subject to the confidentiality and disclosure requirements of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), 1990.

5 Conflicts of Interest or Unfair Advantage

- 5.1 Suppliers must not have or foresee any actual or potential conflict of interest or unfair advantage related to the preparation of their Bid or the performance of the contract. Such potential conflicts of interest or unfair advantages include, but are not limited to:
 - 5.1.1 Engaging current or former Niagara Region employees or other Niagara Region Boards and Agencies to take any part in the preparation of the Bid or the performance of the contract if awarded, any time within twelve (12) months of such persons having left the employ of Niagara Region;
 - 5.1.2 Engaging any family members, friends or private business associates of any public office holder which may have, or appear to have, any influence on the procurement process, or subsequent performance of the contract;
 - 5.1.3 Prior involvement by the Supplier or affiliated persons in developing the technical specifications or other evaluation criteria for the solicitation;
 - 5.1.4 Prior access to confidential Niagara Region information by the Supplier, or affiliated persons, that is materially related to the solicitation and that was not readily accessible to other prospective Suppliers; or

- 5.1.5 The Supplier or its affiliated persons are indebted to or engaged in ongoing or proposed litigation with Niagara Region.

6 Collusion or Unethical Bidding Practices

- 6.1 No Supplier may discuss or communicate, directly or indirectly, with any other Supplier or their affiliated persons about the preparation of the Supplier's submission including, but not limited to, any connection, comparison of figures or arrangements with, or knowledge of any other Supplier making a submission for the same work.
- 6.2 Suppliers shall disclose to the Director, Procurement Services any affiliations or other relationships with other Suppliers that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.

7 Illegality

- 7.1 A Supplier shall disclose any previous convictions of itself or its affiliated persons for collusion, bid-rigging, price-fixing, bribery, fraud or other similar behaviours or practices prohibited under the Criminal Code, the Competition Act or other applicable law, for which they have not received a pardon.
- 7.2 A Supplier shall be deemed ineligible for an award for a minimum period of five (5) years from the date of the conviction, unless pre-approved by the Commissioner, Corporate Services/Treasurer.

8 Interference Prohibited

- 8.1 No Supplier may threaten, intimidate, harass, or otherwise interfere with any Niagara Region employee or public office holder in relation to their procurement duties.
- 8.2 No Supplier may likewise threaten, intimidate, harass, or otherwise interfere with an attempt by any other prospective Supplier to Bid for a Niagara Region contract or to perform any contract awarded by Niagara Region.

9 Gifts or Favours Prohibited

- 9.1 No Supplier shall offer gifts, favours, or inducements of any kind to Niagara Region employees or public office holders or otherwise attempt to influence or interfere with their duties in relation to the procurement process or management of a contract.

10 Misrepresentations Prohibited

10.1 Suppliers are prohibited from misrepresenting their relevant experience and qualifications in relation to any solicitation process and must acknowledge that Niagara Region's process of evaluation may include information provided by the Supplier's references as well as records of past performance on previous contracts with Niagara Region or other Niagara Region Boards and Agencies.

11 Prohibited Communication During the Solicitation

11.1 No Supplier, or affiliated person, may discuss or communicate either verbally, or in writing, with any employee, public office holder, or the media in relation to any solicitation between the time of the issuance of the solicitation to the award and execution of final form of contract, unless such communication is expressly permitted in the solicitation and in compliance with the Procurement By-law.

11.2 All Supplier communications shall be with the designated Purchasing Agent, or the employee specifically designated for that purpose in the solicitation.

12 Failure to Honour Bid

12.1 Suppliers shall honour their Bid, except where they are permitted to withdraw their Bid in accordance with the process disclosed in the solicitation.

12.2 Suppliers shall not refuse to enter into a contract or refuse to fully perform the contract once their Bid has been accepted by Niagara Region.

13 Supplier Performance

13.1 Suppliers shall fully perform their contracts with Niagara Region and follow any reasonable direction from Niagara Region to cure any default.

13.2 Suppliers shall maintain a "Satisfactory" performance rating on their previous contracts with Niagara Region and other Niagara Region Boards and Agencies to be qualified to be awarded similar contracts.

14 Disqualification for Non-compliance

14.1 Any contravention of the Supplier Code of Conduct by a Supplier, including any failure to disclose potential conflicts of interest or unfair advantages, may be grounds for the Director, Procurement Services to disqualify a Supplier from being awarded a contract.

14.2 The Director, Procurement Services, in consultation with the Director of Legal and Court Services, may also disqualify any Supplier who may otherwise have an unfair advantage or conflict of interest that cannot be resolved in relation to any procurement.

14.3 A contravention of the Supplier Code of Conduct may also be grounds for the division head to terminate any contract awarded to that Supplier and require the return of any advance payments.

15 Suppliers in Debt or in Litigation with Niagara Region

15.1 The Commissioner, Corporate Services/Treasurer, in their absolute discretion, may disqualify Suppliers, or their affiliated persons, who are indebted to Niagara Region or engaged in ongoing litigation for damages related to a contract awarded by Niagara Region.

15.2 In determining whether to disqualify a Supplier or their affiliated persons under this Article, the Commissioner, Corporate Services/Treasurer may consider the following non-exclusive factors, in consultation with Director of Legal and Court Services:

- a. The Supplier's history of making frivolous or vexatious claims, exaggerated damages claims, or other litigious conduct that has or may result in unnecessary additional administrative costs to Niagara Region or other public bodies;
- b. The outcome of any prior or interim litigation, including whether legal costs have been awarded against the Supplier or Niagara Region;
- c. The prospect of setting off Supplier debt against future contract payments;
- d. Where the Supplier is the only qualified Supplier or in cases of an emergency;
- e. The overall risk in relation to the total cost of the proposed contract;
- f. Subrogated insurance claims brought in the name of the Supplier, but not initiated by the Supplier; or,
- g. Claims by or against Niagara Region.

15.3 This Article does not apply to Bid disputes by Suppliers or their right to seek other corrective measures against Niagara Region under any administrative or judicial review procedure related to procurement.

16 Suspension of Suppliers from Future Solicitations

16.1 Without limiting or restricting any other right or privilege of Niagara Region, Niagara Region may suspend a Supplier's eligibility to Bid for a period of up to five (5) years due to a contravention of the Supplier Code of Conduct.