

Procurement Protest Protocol

1. Purpose and Interpretation

The purpose of this protocol is to set out the process for Suppliers to make a formal complaint about any completed Procurement process. This protocol is not meant to deal with reviewing staff decisions that were made as part of the evaluation of a procurement process. Discussions related to a Supplier's specific Bid and evaluation scoring occur during the Request for Proposal (RFP) debriefing. Defined terms used in this protocol have the meaning assigned in the Glossary of Terms (Schedule A) in the Procurement Policy.

2. Scope of the Procurement Protest Process

The Procurement protest process set out in this protocol is meant to provide an opportunity for Suppliers to voice complaints and to assist the Town in identifying any gaps or shortcomings in its Procurement policies and practices. The Procurement protest process is intended to help resolve issues that involve no significant factual or interpretive disagreement between the parties. It is not intended to resolve fundamental disputes over facts or legal rights and obligations or to establish a mechanism to adjudicate such disputes.

3. Application

- a. Where the Supplier is a Bidder that is challenging a RFP Competitive Process, the Supplier must request and attend a debriefing prior to engaging in the Procurement protest process. The Town may waive the requirement for a debrief and provide a written response.
- b. The Procurement protest process set out in this protocol shall not be used to challenge a Procurement process in respect of which the Supplier has commenced legal proceedings against the Town.
- c. The process provided for in this protocol is separate and distinct from any dispute resolution processes that may be provided for under applicable trade agreements. If a Supplier wishes to dispute a matter or bring a complaint under an applicable trade agreement, the Supplier must follow the process set out in the trade agreement, which may differ from the process set out in this protocol.

4. Procurement Protest Process

A Supplier that wishes to challenge a Procurement process must do so by submitting a written request for review in writing within 60 days from notification of the outcome of the Procurement process. Requests for review are to not exceed 5 pages and will not be

addressed under this protocol until after the Town has publicly posted or otherwise provided formal notification of the outcome of the Procurement process.

A request for review of a Procurement process must be directed to Procurement Services and must contain the following:

- (a) a clear statement as to which Procurement the Supplier wishes to challenge;
- (b) a clear explanation of the Supplier's concerns with the procurement, including specifics as to why it disagrees with the Procurement process or its outcome; and
- (c) the Supplier's contact details, including name, telephone number, and email address.

Within 10 business days from receiving the Supplier's request for review, Procurement Services will send an initial response to acknowledge receipt and indicate the date by which the Town will provide the Supplier with a formal response. In general, the Town will endeavour to make a determination and provide a formal response within 45 business days from receipt of the Supplier's request for review.

Procurement Services will conduct an initial review of the Supplier's request for review and will consult with all other staff or representatives involved in the Procurement process in order to compile any background information and documentation relevant to the Procurement process and the Supplier's concerns.

Procurement Services will submit the Supplier's request for review and the compiled background information and documents to the Procurement Governance Committee (the "PGC"). The PGC is established in accordance with the Procurement Policy.

The PGC will convene a meeting to review and consider the Supplier's request for review and all internally compiled background information and documents. The PGC may seek any additional information it requires and may consult with other staff, legal counsel, or other advisors, as necessary.

Upon completion of its review, the PGC will make a determination and issue a response to the Supplier through the Procurement Manager, as follows:

- i If the PGC finds that the Supplier's rationale for requesting a review of the Procurement process does not have merit, then it will issue a response to the Supplier indicating that the PGC has reviewed its concerns and providing reasons for its determination; or
- ii If the PGC finds that the Supplier's concerns in respect of the Procurement process have merit, then it will further determine the appropriate resolution to the matter. In making its determination, the PGC may consider any factors it considers relevant, including:

- i. whether the Supplier participated in the Procurement process or was prevented from doing so;
- ii. the seriousness of any deficiency found in the Procurement process;
- iii. the degree to which the Supplier was prejudiced by any deficiency in the Procurement process; and
- iv. whether the parties acted in good faith.

Upon the PGC making a determination, the Procurement Manager will issue a response to the Supplier indicating its proposed resolution to the matter, if any, and indicating any changes that will be made to the Town's policies and practices to help prevent similar issues arising in future Procurement processes. Any such response will be provided to the Supplier on a without-prejudice basis.

If the Supplier is not satisfied with the response of the PGC, the Supplier may consider its other options, including challenges under the applicable trade agreements and/or governing laws. If the Supplier commences another process or challenge, apart from this Protocol, with respect to an issue under protest prior to the PGC issuing a determination pursuant to this Protocol, the Supplier's protest with respect to such issue shall be deemed to have been withdrawn and voided, and no determination or response shall be provided to the Supplier to such protest. Any decisions or determinations of the PGC shall be final without any further right to appeal or for reconsideration by the PGC or the Town.