



Alternative Dispute Resolution – Procurement Protest Protocol

1. Purpose

The purpose of this protocol is to set out a process for the suppliers to formally challenge a procurement process. This protocol should be read in conjunction with the Town's Procurement By-law and the Procurement Procedures.

2. Scope of the Procurement Protest Process

A supplier may follow the procurement protest process to challenge either a Competitive Process or a Non Standard Procurement. Where the supplier is a bidder that is challenging a Competitive Process, the supplier must request and attend a debriefing prior to engaging in 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 opportunities for improvements 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.

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.

3. Procurement Protest Process

- i. A supplier that wishes to challenge a procurement process must do so by submitting a request for review in writing within thirty (30) days from notification of the outcome of the procurement process. Requests for review 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
- ii. A request for review of a procurement process must be directed to the Finance Department to the attention of the Procurement Coordinator and must contain the following:
 - A clear statement as to which procurement the supplier wishes to challenge;
 - A clear explanation of the supplier's concerns with the procurement, including specifics as to why they disagree with the procurement process or its outcome; and
 - The supplier's contact detail, including name, telephone number and email address.

- iii. Once a supplier's request for a review has been received by the Procurement Coordinator, it shall be initially reviewed by the Department responsible for initiating the procurement.
- iv. The Procurement Coordinator must coordinate with the Department to send an acknowledgement of receipt of the supplier's concerns within five (5) business days of receipt of the supplier's request for review. This correspondence must also set out a date by which the Town anticipates contacting the supplier with a response to its procurement protest. This date must be within twenty (20) business days of receipt of the supplier's concerns.
- v. The Department shall prepare an internal memo outlining the background and history of the procurement at issue.
- vi. Once finalized, the memorandum, together with the supplier's correspondence, must be submitted to the Bid Review Committee (the "BRC"). The BRC is established in accordance with the Town's Procurement By-law # 2018-52.
- vii. The BRC must convene a meeting and, as a group, review the correspondence outlining the supplier's concerns, together with the internal memorandum setting out details of the procurement. The Town solicitor should serve as an adviser to the BRC.
- viii. Upon review of the materials and, if applicable, the supplier's presentation, the BRC has two options:
 - If the BRC is satisfied that the supplier's rationale for requesting a review of a Procurement Project does not have merit and that the Town proceeded in accordance with its Procurement Bylaw and Procurement Procedures and acted in an open, fair and transparent manner that reflects its values as a public institution, then the BRC will instruct the Finance Department to write to the supplier and indicate that the BRC has reviewed its concerns and that the BRC is of the opinion that the procurement process was conducted properly; or
 - If the BRC finds that the supplier's concerns in respect of the procurement process have merit, then they will instruct the Procurement Coordinator to write to the supplier setting out the BRC's response including any changes that will be made to the Town's policies and practices to help prevent similar issues arising in future procurement processes. In this case, Town solicitor should be consulted in the preparation of the response and the response should be provided on a "without prejudice" basis.
- ix. If the supplier is not satisfied with the response of the BRC, the supplier may, at that point, consider its other options, including challenges under the applicable trade agreements and/or governing laws.