

Vendor Performance Management Policy

<p>Policy Number: VPM Policy Author: Supply Chain Management Authority: Supply Chain Management Required by Legislation: N Effective Date: January 1, 2024 Review by Date: 4 years from Effective Date or on the Direction of Council</p>	<p>Related Documents</p> <ul style="list-style-type: none">• Procurement By-law• Vendor Management Procedures	<p>Relevant Legislation</p> <ul style="list-style-type: none">• N/A <p>Related Forms</p> <ul style="list-style-type: none">• Evaluation Forms
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1 Policy Statement

- 1.1 The Region is committed to purchasing Goods, Services and Construction from responsible Vendors that provide quality Goods, Services and/or Construction.
- 1.2 As described in this Policy, the Region proactively evaluates and manages Vendor contractual performance to reduce contractual risk, ensure value for money, and build positive Vendor relationships. Vendors are expected to exercise good judgement when doing business with the Region and to adhere to Contract terms.

2 Purpose

- 2.1 The purpose of this Policy is to outline the Region's process for evaluating Vendor performance of Contracts and the consequences resulting from "Unacceptable" performance.

3 Scope

- 3.1 As authorized by the Procurement By-law, this Policy shall apply to Contracts for Goods, Services and/or Construction, as determined at the sole discretion of the Region. Regional procurement solicitations and/or Contracts will contain clauses to inform Vendors that their performance will be subject to and will be Evaluated as set out in this Policy.

4 Definitions and Interpretation

4.1 Definitions

Unless the context otherwise requires, capitalized terms and phrases used in this Policy shall have the meanings set out below.

- (a) **"Amended Final Evaluation"** means, as applicable, a Final Evaluation amended by the Appeal Committee following an appeal process, in accordance with paragraph 8.4(a);

- (b) **“Appeal Committee”** means a committee comprised of the Contract Lead’s Commissioner, a Commissioner of a different Department, and the Treasurer;
- (c) **“Appeal Submission”** means, collectively, a Vendor’s completed Appeal Submission Form and all other documents and information submitted by a Vendor in support of an appeal of an Unacceptable Performance Rating and/or sanction;
- (d) **“Appeal Submission Form”** means the form to be completed by a Vendor as part of an Appeal Submission, available on the Region’s public website at www.halton.ca;
- (e) **“CAO”** means the Chief Administrative Officer of the Region, the Acting Chief Administrative Officer, or their designate;
- (f) **“Commissioner”** means the Commissioner of a Department, the Acting Commissioner, or their designate, and includes the CAO;
- (g) **“Conflict of Interest”** includes, in relation to an Evaluation, review or an appeal of an Unacceptable Performance Rating, where one or more individuals acting on behalf of the Region, including an employee of the Region:
 - (i) has a personal relationship or familial relationship with a Vendor, or has a material interest in a Vendor;
 - (ii) is a former employee of a Vendor, within the previous 12 months;
 - (iii) has a direct or indirect financial interest in a Vendor’s business or operations;
 - (iv) has given or received a direct or indirect personal gain or benefit, or a direct or indirect advantage or privilege by a Vendor; or
 - (v) has, or may be perceived to have, a vested interest in the outcome of an Evaluation or the outcome of a review or appeal of an Unacceptable Performance Rating that goes beyond the duty to be fair, objective and professional;
- (h) **“Construction”** means any construction, reconstruction, demolition, repair or renovation of a building, structure, road or other engineering or architectural work;
- (i) **“Contract”** means a written agreement, including a purchase order, between the Region and one or more Vendors for the supply of Goods, Services and/or Construction, or a combination thereof, and includes Standing Arrangements;
- (j) **“Contract Lead”** means an employee of the Region responsible for administering a Contract;
- (k) **“Corporate Records Management Program”** means the Region’s policies and procedures relating to the creation and maintenance of corporate records;
- (l) **“Critical Violation”** means where, during the course of a Contract, there is an occurrence of a fatality or critical injury as defined in O.Reg. 420/21, as amended, or a stop work order is issued by an authority having jurisdiction;
- (m) **“Day”** means a calendar day and includes weekends and statutory holidays;
- (n) **“Department”** means any department of the Region;

- (o) **“Director”** means the Director of a Division, the Acting Director, or their designate;
- (p) **“Director of Supply Chain Management”** means the Director of Supply Chain Management, the Acting Director of Supply Chain Management, or their designate, or any other person appointed by the Treasurer from time to time;
- (q) **“Division”** means any division of a Department;
- (r) **“Evaluation”** means an evaluation of a Vendor’s performance of a Contract in accordance with performance criteria developed by the Region; and **“Evaluated”** has a corresponding meaning;
- (s) **“Final Evaluation”** has the meaning set out in paragraph 5.2(a)(ii);
- (t) **“Goods”** means material, furniture, merchandise, equipment, stationery and other supplies and goods, including any incidental services;
- (u) **“Halton Region Code of Conduct”** means the Region’s Code of Conduct, applicable to all employees of the Region;
- (v) **“Interim Evaluation”** has the meaning set out in paragraph 5.2(a)(i);
- (w) **“Legal Services”** means the Legal Services Division within the Region;
- (x) **“Manager of Supply Chain Management”** means a Manager, Acting Manager, or their designate within the Supply Chain Management Division;
- (y) **“Performance Rating”** means the rating of “Satisfactory” or “Unacceptable” that is assigned to a Vendor’s performance of a Contract;
- (z) **“Performance Score”** means the score assigned to a Vendor’s performance of a Contract following an Evaluation;
- (aa) **“Policy”** means this Vendor Performance Management Policy;
- (bb) **“Prequalification Process”** means an open process where multiple Vendors are asked to submit their competencies or qualifications for one (1) or more future Region procurement solicitations;
- (cc) **“Procurement By-law”** means the Region’s by-law establishing policies for the procurement of Goods, Services and/or Construction, as available on the Region’s public website www.halton.ca, and as may be amended from time to time;
- (dd) **“Record”** means a documented history of a Vendor’s contractual performance maintained by Supply Chain Management, which may include Evaluations, Performance Ratings, Performance Scores, Critical Violations and any other documents retained in accordance with this Policy;
- (ee) **“Region”** means The Regional Municipality of Halton;
- (ff) **“Review Committee”** means a committee comprised of the Contract Lead’s Director, a Director of a different Division, and the Director of Supply Chain Management;
- (gg) **“Sanction Date”** has the meaning set out in paragraph 9.1(a);
- (hh) **“Satisfactory”** means that the Vendor’s Performance Score meets or exceeds the threshold established by the Region for satisfactory performance of a Contract;

- (ii) **“Services”** means a non-physical, intangible product resulting from a Vendor’s performance of a Contract that cannot be stored or transported and that comes into existence at the time it is bought or consumed;
- (jj) **“Standing Arrangement”** means an arrangement with one (1) or more Vendors under which the Region may procure Goods, Services and/or Construction from the Vendor(s) on an as-required basis;
- (kk) **“Subcontractor”** means any supplier, subcontractor or subconsultant contracted by a Vendor to carry out a portion or all of a Contract;
- (ll) **“Supply Chain Management”** means the Division responsible for administering the Procurement By-law and the Region’s procurement processes, policies and procedures including this Policy;
- (mm) **“Suspension”** means that, for the specified duration of the Suspension, the Region may impose one or more or all of the following:
 - (i) the Region will not procure or purchase any Goods, Services and/or Construction pursuant to any Standing Arrangement(s) with a Suspended Vendor;
 - (ii) the Suspended Vendor will not be permitted to participate in any procurement solicitations, including Prequalification Processes, issued by the Region;
 - (iii) the Suspended Vendor that is on any Vendor of Record List will be removed from such Vendor of Record List,
 and **“Suspend”** and **“Suspended”** have corresponding meanings;
- (nn) **“Treasurer”** means the Treasurer of the Region or their designate;
- (oo) **“Unacceptable”** means that the Vendor’s Performance Score does not meet the threshold established by the Region for satisfactory performance of a Contract and/or that the Vendor has been subject to a Critical Violation;
- (pp) **“Vendor”** means any legal person or entity providing Goods, Services and/or Construction to the Region, including suppliers, contractors, consultants and other service providers;
- (qq) **“Vendor of Record List”** means a list of Vendors that have been prequalified to provide Goods, Services and/or Construction to the Region.

4.2 Interpretation

- (a) Words imparting a particular gender include all genders, and words imparting the singular number include more persons, parties or things of the same kind than one, and the reverse.
- (b) Whenever the words “include”, “includes” or “including” or other similar terms are used in this Policy, they are deemed to be followed by the words “without limitation”.
- (c) The headings contained in this Policy are for reference only.

5 Evaluation Process

5.1 Evaluations

- (a) A Vendor's performance of a Contract will be Evaluated by the Contract Lead based on the performance criteria developed by the Region.

5.2 **Timing of Evaluations**

- (a) A Vendor's performance of a Contract will be Evaluated:
 - (i) at least once each calendar year during the Contract term (each an "**Interim Evaluation**"); and
 - (ii) after the Vendor's completion of the Contract or after the Contract has been terminated ("**Final Evaluation**").
- (b) The Region reserves the right and discretion to carry out Interim Evaluations more frequently than set out in paragraph 5.2(a)(i). For certainty, the Region has the right and discretion to not carry out an Interim Evaluation where the Contract term is less than one (1) year.

5.3 **Interim Evaluations**

- (a) After completing each Interim Evaluation the Contract Lead will advise whether the Vendor's performance of the Contract to the date of the Interim Evaluation is Satisfactory or Unacceptable, based on the threshold established by the Region. The Contract Lead may consult with Legal Services at any point during the term of the Contract, including during the completion of the Interim Evaluation, as required. The Contract Lead will provide the Vendor with reasons for the Performance Rating and will provide the Performance Score.
- (b) If a Vendor receives an Unacceptable Performance Rating on an Interim Evaluation, the Contract Lead will work with the Vendor to create and document approaches to improve the Vendor's performance.
- (c) A Vendor may, within 30 Days of receiving an Unacceptable Performance Rating on an Interim Evaluation, provide a written response/comment to the Contract Lead. All Interim Evaluations and any responses/comments received from the Vendor will be maintained in the Vendor's Record.
- (d) There shall be no review or appeal of an Unacceptable Performance Rating on an Interim Evaluation and the Vendor will not be subject to any of the sanctions described in Section 9.

5.4 **Final Evaluations**

- (a) Upon completing a Final Evaluation the Contract Lead will determine a Vendor's Performance Score and Performance Rating, based on the threshold established by the Region. The Contract Lead may consult with Legal Services during the completion of the Final Evaluation, as required.
- (b) If a Vendor's Performance Score results in a Satisfactory Performance Rating, the Contract Lead will inform the Vendor of the Satisfactory Performance Rating in accordance with the Contract, but not later than 90 Days after completion of the Contract.
- (c) If a Vendor's Performance Score results in an Unacceptable Performance Rating:

- (i) the Contract Lead will refer the Unacceptable Performance Rating to the Review Committee for review;
- (ii) the Unacceptable Performance Rating will not be communicated to the Vendor; and
- (iii) the Vendor will not be subject to any of the sanctions described in Section 9 pending the completion of the Review Committee's review.

6 Other Unacceptable Vendor Conduct

6.1 Critical Violations

- (a) Notwithstanding any other provision in this Policy, the Contract Lead, in consultation with Legal Services as required, may, at any time during a Contract term, assign an Unacceptable Performance Rating to a Vendor as a result of a Critical Violation. The Contract Lead will immediately thereafter refer the Unacceptable Performance Rating to the Review Committee for review.

7 Review by the Review Committee

7.1 Review of Unacceptable Performance Rating

- (a) The Review Committee will review Unacceptable Performance Ratings assessed by the Contract Lead following a Final Evaluation or as a result of any Critical Violation.
- (b) As part of its review of an Unacceptable Performance Rating the Review Committee will review the Final Evaluation and any supporting documents submitted by the Contract Lead, any documents relating to any Critical Violation, as well as any other documents that the Review Committee may deem relevant, and will have an opportunity to meet with the Contract Lead.
- (c) The Review Committee may consult with Legal Services as part of its review of an Unacceptable Performance Rating.
- (d) Following its review of the Unacceptable Performance Rating and the information and documents provided pursuant to paragraph 7.1(b), the Review Committee will, where applicable:
 - (i) confirm or revise the Performance Score and the resulting Performance Rating;
 - (ii) confirm or revoke the Critical Violation and the resulting Performance Rating.
- (e) If the Review Committee's review confirms an Unacceptable Performance Rating, the Review Committee will also determine the appropriate sanction(s), which may or may not include Suspension. In determining the appropriate sanctions, the Review Committee may have regard to the Vendor's Record. The Review Committee will issue written reasons for its decision.

7.2 Communication of Review Committee's Decision Following a Final Evaluation

- (a) If the Review Committee's review following a Final Evaluation results in a Satisfactory Performance Rating the Vendor will be informed of such

Performance Rating by the Contract Lead in accordance with the Contract, but not later than 90 Days after completion of the Contract.

- (b) If the Review Committee's review following a Final Evaluation results in an Unacceptable Performance Rating the Review Committee's decision and the reasons for the decision, along with a copy of the material that was available to the Review Committee pursuant to paragraph 7.1(b), will be sent to the Vendor by the Manager of Supply Chain Management within 90 Days after completion of the Contract.

7.3 Communication of Review Committee's Decision Arising out of a Critical Violation

- (a) If the Review Committee's review of an Unacceptable Performance Rating arising out of a Critical Violation results in a decision that the Critical Violation should be revoked, the Vendor will be immediately informed by the Contract Lead.
- (b) If the Review Committee's review of an Unacceptable Performance Rating arising out of a Critical Violation confirms the Unacceptable Performance Rating, the Review Committee's decision and the reasons for the decision, along with a copy of the material that was available to the Review Committee pursuant to paragraph 7.1(b), will be sent to the Vendor by the Manager of Supply Chain Management immediately following the Review Committee's decision.

8 Vendor Appeal of an Unacceptable Performance Rating and/or Sanctions

8.1 Vendor Right of Appeal

- (a) A Vendor that receives notice of an Unacceptable Performance Rating following a Final Evaluation or a Critical Violation may appeal the Performance Rating and sanctions to the Appeal Committee by delivering an Appeal Submission to "vendorperformance@halton.ca" addressed to the Manager of Supply Chain Management. The Appeal Submission must be received within 30 Days of a Vendor's receipt of the notice of an Unacceptable Performance Rating. Appeal Submissions that are not received within the time specified in this paragraph will not be considered and the Unacceptable Performance Rating and any sanctions imposed by the Review Committee will be final.
- (b) Upon a Vendor's timely delivery of an Appeal Submission, the Vendor's Unacceptable Performance Rating and any sanctions imposed by the Review Committee will be deferred pending the determination of the appeal by the Appeal Committee, and the Vendor will not be subject to any of the sanctions imposed by the Review Committee. For clarity, Vendors may participate in Region procurement solicitations and may be eligible for award of Contracts while the Appeal Committee's consideration of an Appeal Submission is pending.

8.2 Appeal Submission Contents

- (a) A Vendor's Appeal Submission must contain the following:
 - (i) a completed Appeal Submission Form, which must include the Contract number, the Contract name, the matters disputed by the Vendor, along

with the Vendor's position and reasons in support of each disputed matter; and

- (ii) any documents and information the Vendor considers relevant to its appeal.

The Appeal Submission shall not exceed ten (10) pages in length (excluding the Contract and supporting documents).

8.3 **Appeal Process**

- (a) A copy of the Vendor's Appeal Submission will be provided to the Contract Lead for comments. The Contract Lead may submit written comments and/or documents in response to an Appeal Submission, which will be provided to the Vendor and the Appeal Committee. If the Contract Lead submits any such comments and/or documents, the Contract Lead will not introduce any new grounds in support of the Unacceptable Performance Rating. After receiving the Contract Lead's comments and/or documents, if any, no further documents, information or submissions will be accepted for review by the Appeal Committee, unless requested pursuant to paragraph 8.3(b).
- (b) Vendors are cautioned that, unless the Appeal Committee requests additional information or clarification of an Appeal Submission, a Vendor's appeal will be considered solely on the basis of the information and documents included in an Appeal Submission, the information and documents that were available to the Review Committee pursuant to paragraph 7.1(b), and the Contract Lead's comments and documents provided pursuant to paragraph 8.3(a), if any. The Appeal Committee has no obligation to request additional information or clarification of the information and documents included in an Appeal Submission.
- (c) The Appeal Committee may consult with Legal Services as part of its review of material received in connection with an appeal.

8.4 **Appeal Committee Decision**

- (a) Following its review of the material received in connection with an appeal, the Appeal Committee will, where applicable:
 - (i) confirm or revise the Performance Score and the resulting Performance Rating established by the Review Committee;
 - (ii) confirm or revoke the Critical Violation and the resulting Performance Rating;
 - (iii) confirm, revise or cancel the sanctions imposed by the Review Committee.

In determining the appropriate sanctions, the Appeal Committee may have regard to the Vendor's Record. The Appeal Committee will issue written reasons for its decision.

- (b) The Appeal Committee's decision including the Amended Final Evaluation and the reasons for the decision will be sent to the Vendor by the Manager of Supply Chain Management within 30 Days of receipt of a Vendor's Appeal Submission. The decision will be final and not subject to further appeal or challenge.

9 Sanctions

9.1 Effective Date of Sanctions

- (a) Any sanctions imposed as a result of an Unacceptable Performance Rating will take effect:
 - (i) on the Day that is 30 Days after the Vendor receives notice of the Unacceptable Performance Rating established by the Review Committee and no Appeal Submission is received as provided in paragraph 8.1(a); or
 - (ii) immediately after the Appeal Committee's decision is sent to the Vendor.

The Day on which any sanctions take effect is referred to as the "**Sanction Date**".

9.2 Sanctions

- (a) Without in any way limiting the discretion of the Review Committee or the Appeal Committee to determine the appropriate sanction(s), the Review Committee or the Appeal Committee may Suspend a Vendor for a maximum period of up to 3 years.

9.3 Consequences of a Suspension

- (a) Without limiting the discretion of the Review Committee and/or the Appeal Committee, as the case may be, a Vendor subject to a Suspension may, from the Sanction Date and for the duration of the Suspension:
 - (i) be limited in participating or may not be permitted to participate in some or all Region procurement solicitations, including Prequalification Processes; and/or
 - (ii) be limited in participating or may not be permitted to participate in some or all Region procurement solicitations as a Subcontractor, including Prequalification Processes; and/or
 - (iii) be removed from some or all Vendor of Record Lists and may or may not be reinstated to such Vendor of Record Lists at the end of the Suspension; and/or
 - (iv) may not receive or may receive only limited orders for the procurement or purchase of Goods, Services and/or Construction pursuant to any Standing Arrangement(s).
- (b) Where a Suspended Vendor has one or more Contracts in progress with the Region at the Sanction Date, the Vendor shall continue performance of all such Contracts.

10 Records Retention

10.1 Information to be Retained

- (a) All:
 - (i) Interim Evaluations and any information received from a Vendor in response;
 - (ii) Performance Scores and Performance Ratings;

- (iii) Critical Violations;
 - (iv) Appeal Submissions;
 - (v) decisions of the Review Committee and the Appeal Committee,
- will be retained by Supply Chain Management in a Vendor's Record in accordance with the Corporate Records Management Program.

10.2 Use of the Record

- (a) As authorized in the Procurement By-law, the Region may use a Vendor's Record to support:
 - (i) the evaluation of a Vendor's submission in response to future Region procurement solicitations, including Prequalification Processes, and to determine a Vendor's eligibility for award of a Contract;
 - (ii) the determination of appropriate sanctions by the Review Committee and/or Appeal Committee.

11 Disclosure

- (a) Supply Chain Management shall maintain a current list of Suspended Vendors on the Region's public website at www.halton.ca. At a minimum, the list will contain the full name of the Vendor and the date of the expiry of the Suspension period.

12 Conflict of Interest

- (a) Every person who participates in an Evaluation or who, as a member of a Review Committee or an Appeal Committee participates in a review or appeal of an Unacceptable Performance Rating, shall declare any potential, actual or perceived Conflict of Interest in accordance with the Halton Region Code of Conduct and, if a Conflict of Interest exists in connection with a Vendor, shall refrain from participating in an Evaluation of such Vendor or in the review or appeal of such Vendor's Unacceptable Performance Rating as a member of the Review Committee or an Appeal Committee.
- (b) Every person who participates in an Evaluation or who, as a member of a Review Committee or an Appeal Committee participates in a review or appeal of an Unacceptable Performance Rating, shall complete an attestation declaring no potential, actual or perceived Conflicts of Interest exist. Supply Chain Management shall maintain all completed Conflict of Interest attestations in the project file.
- (c) No member of Region Council and no appointed officer or employee of the Region shall influence any Evaluation or any review or appeal by the Review Committee or the Appeal Committee.
- (d) The Director of Supply Chain Management, in their sole discretion, has the right to annul and remove from the Vendor's Record any Evaluations and the results of any reviews or appeals and, if applicable, any sanctions imposed by the Review Committee or the Appeal Committee where there is a Conflict of Interest.

13 Confidentiality

- (a) The Region shall treat a Vendor's Performance Scores as commercially confidential information, subject to the *Municipal Freedom of Information and Privacy Act*.

14 Halton Region Code of Conduct

- (a) All employees of the Region involved in the Evaluation of Vendors and in the reviews and appeals of Unacceptable Performance Ratings as members of the Review Committee or an Appeal Committee shall perform their duties or functions in accordance with this Policy and the Halton Region Code of Conduct.

15 Approval

- (a) This Policy has been approved by Management Committee on June 21, 2022.