

City of Mississauga

Corporate Policy & Procedure



Policy Title: Contract Amendments and Termination

Policy Number: [Policy No.]

Draft Only – Clean Copy - October 25, 2021

Section:	Corporate Administration	Subsection:	Acquisition/Disposal of Goods And Services
Effective Date:	[Effective Date]	Last Review Date:	[Last Review]
Approved by: Click here to enter text.		Owner Division/Contact: Procurement Services, Corporate Business Services Division, Corporate Services Department	

Policy Statement

Contracts issued to Suppliers for the provision of Goods and/or Services may be amended or terminated, if required, only in accordance with this policy.

Purpose

This policy outlines:

- The conditions under which a Contract may be amended or terminated, and
- The specific authority delegated to Staff by Council to approve and execute Contract amendments

Scope

This policy applies to amendment or termination of High Value and Medium Value Contracts implemented and approved in accordance with the Procurement By-law XX, as amended.

Contracts are managed in accordance with Corporate Policy and Procedure - [Vendor Performance Management and Disqualification.](#)

Background

Contracts for the provision of Goods and/or Services are issued to Suppliers pursuant to procurement processes that are conducted and approved in accordance with the Procurement By-law and other relevant policies.

The approval to Award a Contract is obtained using a Procurement Authorization Request Form (PAR Form). The original PAR Form must, where applicable, clearly specify the Contract duration and all monies expected or estimated to be paid to the Supplier as a result of the Award. The

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total amount approved on the original PAR Form (including contingency, if applicable) will be the Original Contract value for calculating future increases.

If the Contract later requires amendment or termination, this policy will apply.

Definitions

For the purposes of this policy:

“Award” means the selection of the Bidder and the Bidder’s Goods and/or Services, as accepted by the City.

“Best Value” means the optimal balance of evaluated factors and cost to achieve the City’s objectives for the Procurement.

“Bid” means a proposal, offer or submission from a Bidder received in response to a Bid Request.

“Bid Request” means a solicitation from the City to potential Bidders to submit a Bid.

“Bidder” means any legal entity submitting a Bid.

“Buyer” means a Staff in Procurement Services who is assigned responsibility for a particular Procurement and who has delegated authority to approve Awards and execute Contracts in accordance with Schedule “B” of the Procurement By-law.

“Chief Procurement Officer” or “CPO” means the Director of Corporate Business Services, Corporate Services Department or, in their absence, the Commissioner of Corporate Services & Chief Financial Officer.

“City Manager” means the City employee with the title of City Manager and to whom the authority of the City Manager is delegated by Council and includes any person who has been authorized, in writing, to temporarily act as City Manager during absence or vacancy in that office.

“City Standard” means specific HVA Goods established competitively or approved by Council that best fill a long term City-wide or departmental requirement.

“Contingency” means an allowance to be included, where applicable, in the Award approval (PAR Form) to provide for possible future events or conditions that cannot be determined with certainty in advance.

“Contract” means an agreement between the City and a Supplier for the supply of Goods and/or Services issued to a Supplier following Award.

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“Contract Amendment” means any change to an Original Contract.

“Contract Manager” means a City employee to whom a divisional director has delegated procurement process responsibility and/or Contract management responsibility.

“Fixed Term” means the specific term applied to a Contract for regularly required Goods and/or Services, such as maintenance services, office supplies and other commonly used Goods.

“Goods” means tangible and intangible goods of all kinds, including but not limited to supplies, materials, equipment, structures and fixtures to be delivered, installed and/or constructed, and licences.

“HVA” (High Value Acquisition) means a procurement of Goods and/or Services having a value of more than \$100,000, exclusive of taxes, and that is not a Medium Value Acquisition.

“Legal Services” means the Legal Services Division of the City Manager’s Department.

“LVA” (Low Value Acquisition) means a procurement of Goods and/or Services having a value of \$25,000 or less, exclusive of taxes.

“Manager” means a City employee in Procurement Services, Corporate Business Services Division, Corporate Services Department with “Manager” in their title or their designate, in writing.

“MVA” (Medium Value Acquisition) means a procurement of Goods and/or Services having a value of more than \$25,000 and up to \$100,000, exclusive of taxes.

“Original Contract” means the Contract issued to a Supplier following Award, including Contingency if a Contingency was approved on the original PAR Form, and does not include any amendments, interim extensions and renewals.

“Procurement Authorization Request Form” (PAR Form) means an electronic form that is available in the Procurement Centre. A PAR Form is required to obtain authority to Award, increase the value or modify the terms and/or conditions of a Contract, to extend the term of a Fixed Term Contract or to terminate a Contract.

“Procurement By-law” (the “By-law”) means the City’s Procurement By-law XX, as amended.

“Procurement Centre” means the City’s workflow management system for HVA and MVA procurements.

“Public Body” means the municipalities, academic, schools and hospitals sector and any local board, commission, non-profit corporation or government entity and shall include any corporation

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of which the City is a shareholder or any one of them alone or in any combination of them acting together.

“Request for Change Form” (RFC Form) means an electronic form that is available in the Procurement Centre. An RFC Form must be prepared by the Contract Manager to initiate an amendment to increase the value or modify the terms and/or conditions of a Contract; to extend the term of a Fixed Term Contract; or to terminate a Contract.

“Services” means services of all kinds, including labour, construction, maintenance and professional and consulting services.

“Staff” means a City employee, or their designate, to whom Council has delegated authority to approve Awards and/or execute Contracts and Contract Amendments on behalf of the City, in accordance with this policy and Schedule “B” of the Procurement By-law.

“Supplier” means a legal entity with whom the City has entered into a Contract.

“Unforeseen Site Condition” means a pre-existing condition of the site (in which construction or maintenance work is to take place or is taking place in accordance with a Contract) that requires additional work to be conducted that was not anticipated, despite reasonable efforts in planning for the Procurement.

Roles and Responsibilities

Divisional Directors

Divisional directors requiring the procurement of Goods and/or Services are responsible for:

- Ensuring all applicable managers/supervisors are aware of this policy and of any subsequent revisions
- Ensuring compliance with this policy
- Assigning responsibility for managing Contracts and Supplier performance to a Contract Manager
- Ensuring that Contract Managers are logging, tracking and obtaining supervisor approval for changes to Contracts that affect specifications, the scope of work, deliverables and requirements but that do not necessarily affect the Contract value, and
- Authorizing PAR Forms to amend or terminate Contracts in accordance with this policy and Schedule “B” of the By-law

Chief Procurement Officer

The Chief Procurement Officer is responsible for:

- Authorizing PAR Forms for Contract Amendments, renewals and interim extensions, in accordance with this policy and the By-law
- Executing Contract Amendments in accordance with this policy and the By-law, and

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- Jointly authorizing Contract terminations, in accordance with this policy and Corporate Policy and Procedure - [Vendor Performance Management and Disqualification](#)

Managers/Supervisors

Managers/supervisors with staff who are Contract Managers are responsible for:

- Ensuring Contract Managers are trained on this policy, and
- Ensuring Contract Managers comply with this policy

Manager, Procurement Services

The Manager, Procurement Services, is responsible for:

- Providing guidelines, training, advice and support to staff and Buyers as appropriate
- Authorizing PAR Forms to amend Contracts and executing Contract amendments in accordance with this policy and the By-law
- Advising Buyers and Contract Managers in managing Supplier performance and documenting performance issues, in accordance with Corporate Policy and Procedure - [Vendor Performance Management and Disqualification](#), and
- Reviewing reports to Council, where applicable, for approval by the CPO

Contract Managers

Contract Managers are responsible for:

- Completing the required training offered by Procurement Services
- Ensuring they understand and comply with this policy
- Ensuring Supplier performance is being managed and performance issues documented in accordance with Corporate Policy and Procedure - [Vendor Performance Management and Disqualification](#)
- Approving payments to Suppliers in accordance with the Contract
- Monitoring Contract spending to ensure the approved Contract value is sufficient
- Monitoring fluctuations in currency exchange rates for US\$ Contracts to ensure the approved Contract value is sufficient
- Promptly contacting the Buyer if the approved Contract value is or will be insufficient
- Monitoring expiry dates of Fixed Term Contracts and planning for new procurement processes
- Ensuring that Supplier requests for Contract Amendments are justified and not in conflict with the Contract
- Preparing RFC Forms when a Contract Amendment is required and attaching supporting documentation
- Obtaining departmental approval in accordance with Schedule "B" for all Contract Amendments that increase the Contract value
- Obtaining supervisor approval for Contract Amendments that do not increase the Contract value
- Preparing reports to Council where required
- Uploading copies of all correspondence with Suppliers to the Procurement Centre, and

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- Seeking Procurement Services and Legal Services advice in the event of Supplier non-performance and/or if Contract termination is being recommended

Buyers

Buyers are responsible for:

- Ensuring they understand and comply with this policy
- Providing Contract Managers with six months written notice of expiring Contracts (e.g. Contract expiry is July 30, notice is provided by January 30)
- Reviewing RFC Forms and supporting documentation and ensuring that requested amendments are compliant with this policy
- Preparing PAR Forms for approval in accordance with, and including accurate references to, this policy
- Preparing Contract Amendments and obtaining approval in accordance with Schedule “B” of the By-law
- Ensuring that Supplier submittals required under the Contract are current at the time of Contract Amendment execution
- Ensuring that the executed Contract Amendment, Supplier submittals and all supporting documentation are maintained electronically in the procurement file
- Working with the Contract Manager to ensure Supplier performance is being managed and performance issues are being documented in accordance with Corporate Policy and Procedure - [Vendor Performance Management and Disqualification](#)
- Providing guidance and support to Contract Managers to facilitate Contract and Supplier performance management, and
- Seeking Legal Services advice in the event of Supplier non-performance and/or if Contract termination is being recommended

Legal Services

Legal Services is responsible for:

- Assessing legal risk and providing legal advice and support to Contract Managers and/or Buyers in the event of Supplier non-performance and/or Contract termination
- Signing off on internal Contract termination recommendations
- Interpreting the legal terms and conditions of Contract documents, and
- Drafting amending agreements, as required

Finance

- The departmental Financial Analyst is responsible for reviewing PAR Forms and verifying availability of funds, the budget amount and account number for Contract Amendments

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Contract Amendments to Increase the Contract Dollar Value

General

This policy is not applicable to LVA, however, increases to LVA that cause the original purchase to exceed \$25,000, exclusive of taxes, must be treated as MVA.

A Contract Amendment to an HVA or MVA Contract must be authorized on a PAR Form before the Contract is amended.

MVA and HVA Contracts may be amended in accordance with this policy if the amendment, interim extension or renewal meets the conditions of this policy and:

- Is not contrary to the By-law
- Funding is available within existing approved budgets, and
- Additional Goods and/or Services are within the scope of the Original Contract

MVA Contracts

- MVA Contracts (competitive or single source) must not exceed \$120,000 (\$100,000 MVA threshold plus a maximum increase of 20%, if required post Award).
- MVA Contracts exceeding \$120,000 require Council approval
- The term of an MVA Contract may be extended only if additional time is necessary to complete requirements in progress at the time of the Contract's expiry and to make final payments, and
- Interim extensions do not apply to MVA Contracts

HVA Contracts

- The dollar value of HVA Contracts may be amended in accordance with the conditions described in the tables below
- Refer to Schedule "B" of the Procurement By-law for the specific authority delegated to Staff by Council to approve and execute Contract Amendments, and
- The approval level for a Contract Amendment must be for the new total Contract value, including the Original Contract value and all previous Contract Amendments

A. If the total value of one or more increases to the Original Contract value is:	Then authority is by: (Ref. Schedule "B")
1. Within 20% of the Original Contract value	Staff
2. More than 20% of the Original Contract value and up to and including \$100,000	Staff
3. More than 20% of the Original Contract value and more than \$100,000	Council

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4. Approved previously by Council under item 3 above but an increase is required to make the final payment	CPO - up to and including \$100,000 Council - more than \$100,000
B. Notwithstanding items 3 above, Council authority is not required, regardless of dollar or percentage increase, when a Contract Amendment is:	Then authority is by: (Ref. Schedule "B")
1. Required to increase the value and/or renew the term of a Contract for which the procurement was intended to create a relationship with a Supplier to provide Goods and/or Services over multiple years, only if: (a) the Contract is for Goods and/or Services for a technology software, system or solution; or (b) the Contract is for a City Standard; and (i) the Bid Request and Contract provide for renewing the term and/or increasing the value; and (ii) funding for the increase has been approved in annual capital budgets by Council; or (iii) additional quantity is required due to increases in staffing levels and/or number and/or size of City facilities or lands; and (iv) the basis for determining price was established in the Contract or continues to represent Best Value	Staff
2. Required to increase the value of a Fixed Term Contract, only if: (a) additional quantity is required due to increases in staffing levels and/or number and/or size of City facilities or lands; and (b) price is unchanged, or the basis for determining price was established in the Original Contract, or continues to represent Best Value	Staff
3. Required to increase the value and/or extend the Contract term for Goods and/or Services related to extreme weather, or other acute condition, such as a pandemic, only if: (a) the Contract Amendment is required due to operations or maintenance requirements; and (b) the conditions at any time during the term of the Contract are/were worse than expected; and (c) price is unchanged, or the basis for determining price was established in the Original Contract	Staff

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<p>4. For an interim extension, which shall apply, if:</p> <ul style="list-style-type: none"> (a) additional time is required to fulfill all obligations in progress at the time of the Contract's expiry and to make final payments; or (b) additional time and/or an increase to value is required to develop and complete a procurement process; and/or (c) it would be advantageous to wait before proceeding with a Bid Request, and/or (d) market conditions are significantly disrupted due to circumstances beyond the City's control; <p>And:</p> <ul style="list-style-type: none"> (i) the CPO and Manager are jointly of the opinion that an interim extension is justified, and (ii) the term of the interim extension does not exceed one year (i.e. interim extensions exceeding one year require Council approval) 	CPO
<p>5. For a Contract Amendment for which the CPO had specific authority to approve and execute the Original Contract, only in the cases of:</p> <ul style="list-style-type: none"> (a) it is advantageous to the City to acquire the Goods and/or Services directly from another Public Body (b) for construction services provided by utilities, railway companies or adjacent property owners required by the City as a result of City construction 	CPO
6. Due to Unforeseen Site Conditions	City Manager
7. Required to increase a Contract for construction if the City has been ordered to pay an adjudicated amount pursuant to the <i>Construction Act</i>	Staff
8. For work requested and paid for by a Public Body/Bodies with whom the City has entered into a co-operative procurement and the City holds the Contract with the Supplier on behalf of itself and the Public Body/Bodies	Staff
9. For work requested and paid for by property owners adjacent to construction or maintenance projects performed by Suppliers under Contract with the City	Staff

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Contract Amendments with No Increase to Contract Dollar Value

Departmental approval by the Contract Manager's supervisor is required for amendments to specifications or scopes of work and/or Contract terms that may result in discounts, credits or offsets but do not increase the approved Contract value.

The details of these types of changes to a Contract must be tracked and readily available for review and verification by Procurement Services, Internal Audit, Legal Services and others, as may be required. Template forms for this purpose are available in the Procurement Centre for use by Contract Managers. Divisions with their own contract management forms and procedures, such as those responsible for construction, are to use their departmental forms and procedures.

The objectives for tracking zero dollar value increases are to ensure that:

- Contract Amendments do not undermine or substantially change the Original Contract
- Contract Amendments are not material to the Original Contract
- The City has a record of all amendments, demonstrating what it actually bought, and
- Secondary sign-off is obtained to ensure segregation of duties between the Contract management and approval functions

Zero dollar Contract Amendments that significantly change a term or condition of a Contract, such as payment terms or supplier name, or that significantly change the specifications or requirements, must be authorized on a PAR Form and approved in accordance with Schedule "B".

Contract Terminations

Contracts may be terminated for reason of:

- (a) Non-performance of the Supplier
- (b) Default of a Contract term by the Supplier
- (c) The Goods and/or Services are no longer required
- (d) The Contract funds are spent and/or additional funds are not approved, or
- (e) Other circumstances which may arise where the contractual provisions allow the City to terminate the Contract

The Contract Manager shall consult with Procurement Services and Legal Services to receive direction. Contracts may only be terminated upon the joint approval (via PAR Form) of the applicable department head, the Chief Procurement Officer and the City Solicitor or their respective designate, or as otherwise authorized by Council.

Revision History

Reference	Description