

TERMINATION OF CONTRACT / SUSPENSION AND DEBARMENT

May 2015

The decision to terminate a contract may be due to frustration, where it isn't possible for the Contractor to complete the work of the Contract due to circumstances that are beyond their control and out of their realm of responsibility. More often it is due to poor or non-performance, in which case it may be appropriate for the Termination to be followed by Suspension/Debarment. The reasons for suspension/debarment can be found in Clause B7.2 of the [Materials Management Policy](#) and are as follows:

B7.2 Causes of debarment include:

(a) conviction for a criminal offence of a person or a director or officer of such person relating to obtaining or attempting to obtain by the person of a contract or subcontract, or indicating a lack of business integrity or honesty which directly and seriously affects the responsibility of the person, or arising out of the submission of bids, proposals or other like procedures; or

(b) serious breach of contract indicating an unwillingness or inability to perform a contract in accordance with the terms and conditions or in accordance with the specifications, or a record of unsatisfactory performance of one or more contracts in accordance with the terms and conditions thereof, or in accordance with its specifications; or

(c) the breach of any ethical standard set out in Section B6.

B7.2.1 The cause of debarment may, but need not, relate to a solicitation, award or performance of a City contract.

B7.3 The Chief Administrative Officer shall issue a written decision to suspend or debar a person setting out the reasons for suspension or debarment.

B7.3.1 The decision of the Chief Administrative Officer shall be conclusive and not subject to appeal.

B7.3.2 The suspension or debarment shall take effect immediately upon the decision of the Chief Administrative Officer.

PROCEDURE FOR TERMINATION OF CONTRACT

1. The Contract Administrator has the authority to issue a verbal warning to a Contractor who is in default or whose performance does not conform to the terms of the Contract. This warning must give specific details, stating:
 - the nature of the default or deficiency;
 - dates and times that the deficiency was observed;
 - the clause in the [GCs](#), Supplemental Conditions or Specifications that is not being met;
 - the expected resolution; and
 - a timeline for resolution.

The verbal warning can be done by phone or in the form of a formal meeting, but there should always be a written note to file.

2. The Contract Administrator has the authority to issue a written warning to a Contractor who is in default or whose performance does not conform to the terms of the Contract. This will often be the second step, after a verbal warning has been issued. This warning must give specific details, stating:
 - the specifics of any previous warning, verbal or written
 - the nature of the default or deficiency or recurrence of same;
 - dates and times that the deficiency was observed or the recurrence was observed;
 - the clause in the [GCs](#), Supplemental Conditions or Specifications that is not being met;
 - the expected resolution;
 - a timeline for resolution; and

- close the letter by stating the City's action plan if the Contractor does not fulfil their contractual obligations, which could be termination of the contract or may include suspension/debarment.

This letter is cc'd to Legal Services and Materials Management. (samples attached)

3. The Contract Administrator has the authority to Take the Work out of the Hands of the Contractor. This involves a **STOP WORK** letter being sent by courier/registered mail/certified mail, to the Contractor advising that they are to Stop the Work of the Contract immediately and that a Report will be going forward recommending Termination of the Contract. This Administrative Report will go to the Chief Administrative Officer for approval.
4. The Contract Administrator must then, in a timely fashion, write an Administrative Report to the Award Authority of the Original Contract, recommending the termination of the Contract, (see sample attached).
 - This report requires comments from Legal Services and Materials Management
5. The Contract Administrator upon receipt of the Approved Termination Report should give notice to the Contractor via letter.

NOTE: If a contract is being terminated due to poor or non-performance of the work and there is a performance bond in place, the bonding company (surety) shall be copied on all written correspondence relating to the default. The bonding company (surety) must be given an opportunity to take control of the work of the contract in accordance with the applicable General Condition ([GCs](#)).

PROCEDURE FOR SUSPENSION/DEBARMENT

1. In the case of a Termination for breach of Contract, the Contract Administrator may, in consultation with Materials Management and Legal Services, prepare an Administrative Report to the Chief Financial Officer recommending suspension/debarment.
 - This report requires comments from Legal Services and Materials Management
2. Immediately upon writing comments with regards to the report recommending suspension/debarment Materials Management will send a letter by courier/registered mail/certified mail, to the Contractor with a copy of the Administrative Report notifying them of the Suspension/Debarment recommendation. (see Sample Attached) This letter will advise the Contractor:
 - That a recommendation for debarment is before the Chief Financial Officer
 - The period of the debarment (not more than three years)
 - The terms of the debarment (whether it is for specific Work or all Contracts)
 - That the Contractor has an opportunity to make representation to the Chief Financial Officer within 10 days of the receipt of the notification. These arrangements are made directly with the Chief Financial Officer's office.
 - If the Contractor does not arrange to make representation the decision will be made in their absence and they will be informed thereafter.
3. If the Contractor chooses to make representation a hearing will be conducted by the Chief Financial Officer. The Chief Financial Officer will determine the procedure for the hearing, but generally there will be a presentation by City Administration and then by the Contractor. The Chief Financial Officer will consider the relevant information and issue a written decision.
4. The Chief Financial Officer will advise the Contractor of his decision, in writing, after the hearing or the 10 day hearing period has elapsed.
5. The decision of the Chief Financial Officer is final and not subject to appeal.

SAMPLE STOP WORK LETTER

Using department letterhead

^
^
^

^

Attention: ^

Dear Sir/Madame:

RE: ORDER TO STOP WORK FOR ^

^, this is to advise you to stop the work immediately in accordance with the General Conditions for ^, clause ^.

If the Contractor disagrees with a determination or order of the Contract Administrator, the Contractor may appeal the determination or order in accordance with Clause ^ the General Conditions.

A report is being forwarded to the ^ with a recommendation to terminate this Contract. If termination is approved the City may claim for any additional costs that it sustains by going to the next lowest bidder. If the City is going to claim for additional costs, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Contractor under the Contract or take whatever other remedies against the Contractor that the City may have at law.

This letter shall represent written notice that you are instructed to stop work immediately.

Regards,

^
^

cc: Director of Legal Services
Manager of Materials
Corporate Risk Manager
^ Contract Administrator
^, Contracts Officer
^ (if applicable)

SAMPLE TERMINATION LETTER – CONSTRUCTION BID OPPORTUNITIES

In reply please refer to:

Insert Name of Award Authority here
204- 986-1234
Fax / Téléc. : 204- 123-4567

Insert Date

Company Name
Company Address
City, Province, Postal Code

Attention: Contact Name

RE: **CONTRACT TERMINATION CONFIRMATION**
PURCHASE ORDER NO. 1234567, BID OPPORTUNITY NO. ####-YYYY (1234-2009)
ENTER THE TITLE OF THE BID OPPORTUNITY DOCUMENT HERE

Further to our Notice of Contract Termination dated **Month, day, year**, this letter is to provide formal notice of the City's decision to terminate the contract between the City of Winnipeg and **Company Name** for the above referenced Purchase Order, effective immediately.

Further to the City of Winnipeg's General Conditions for **Construction Contracts Sections C18** Events of Default and **C19** City's Rights and Remedies, **Company Name** is in default (**or breach**) as it:

1. Has failed to submit any schedules, documents or information required by the Contract, which includes the Performance Security, as per **Section D6.2** of the Supplemental Conditions,
2. Has failed to commence the Work within seven (7) working days of receipt of the Purchase Order, as identified in **Section D8.3** of the Supplemental Conditions.

Therefore, pursuant to **C19** City's Rights and Remedies, if an event of default has occurred, the City may, without process or action at law, upon giving the Contractor notice, take the whole of the Work out of the hands of the Contractor.

In conjunction with this Contract Termination, your Firm shall perform no further services other than those reasonably necessary to close out this Contract.

Yours truly,

Original Signed

Contract Administrator or Award Authority's Name



On Department LetterHead

In reply please refer to:

^
204-986-####
Fax: 204-949-####

^
^
^

^

Attention: ^

**RE: CONTRACT TERMINATION CONFIRMATION
FOR ^
PURCHASE ORDER NO ^
BID OPPORTUNITY NO. ^**

Further to our Notice of Contract Termination date, this letter is to provide formal notice of the City's decision to terminate the Contract between the City of Winnipeg and for the above reference Purchase Order/Bid Opportunity, effective immediately.

Further to the City of Winnipeg's General Conditions for Services/Goods/Construction ^ Events of Default and C18 City's Rights and Remedies, company name is in default (or breach) as it:

1. Has failed to submit any schedule, documents or information required by the Contract, which includes the Performance Security, as per Section ^ of the Supplemental Conditions,
2. Has failed to commence the Work within seven (7) working days of receipt of the Purchase Order, as identified in Section ^ of the Supplemental Conditions.

Therefore, pursuant to ^ City's Rights and Remedies, if an event of default has occurred, the City may, without process or action at law, upon giving the Contractor notice, take the whole of the Work out of the hands of the Contractor.

In conjunction with this Contract Termination, your Firm shall perform no further services other than those reasonable necessary to close out this Contract.

Regards,

Original Signed

^
^

cc: Director of Legal Services
Manager of Materials - purchasing@winnipeg.ca
^, Contract Administrator

SAMPLE DEBARMENT LETTER

In reply please refer to / Référence à rappeler :

Insert Name of Award Authority here
204-986-1234
Fax / Téléc. : 204-123-4567

Insert Date

Company Name
Company Address
City, Province, Postal Code

^

Attention: Contact Name

RE: DEBARMENT OF Company name

The **specify the appropriate City department name** Department has submitted the attached report to the Chief Financial Officer, dated **month, day, year**, recommending that **Company name** of **Company Address** be debarred for a period of **number (#)** years from participating in any City of Winnipeg bid solicitation, and from acting as a contractor, subcontractor or supplier to any person who is awarded a contract for the City of Winnipeg.

In accordance with The City of Winnipeg's Materials Management Policy and delegated authorities thereto, you will be given an opportunity to make representation to the Chief Financial Officer, if you so choose.

If you intend to make representation please advise **specify CFO's Admin Assistant name and phone number** at 204- 986-#### within ten (10) days of receipt of this letter to make arrangements for same. If we have not heard from you within this time frame, the Chief Financial Officer will proceed to consider the recommendation in your absence and will advise you of his decision thereafter.

Yours truly,

Barb D'Avignon, C.P.P.
Manager of Materials

File no. ####-YYYY

Enclosure

cc: Chief Financial Officer
Director of
Director of Legal Services
Manager of Materials
Corporate Risk Manager
^ Contract Administrator

ADMINISTRATIVE REPORT

Title: (subject matter)

Issue: (use only if Title exceeds 3 lines)

Critical Path: Chief Financial Officer

AUTHORIZATION

Author	Department Head	CFO	CAO

RECOMMENDATIONS

That the Chief Financial Officer approve the termination of contract XXX with ABC Company Inc.

REASON FOR THE REPORT

IMPLICATIONS OF THE RECOMMENDATIONS

EXECUTIVE SUMMARY

HISTORY

The CFO has the Authority to terminate the contract pursuant to the Administrative Standard FM-002 Materials Management is responsible for City contract for the provision of this service Contract was in effect from October 1, 2009 until April 30, 2011. ABC Company Inc. was awarded this contract.

*****Examples of information to include in the History section of the Report*****

ABC Company Inc. has not provided all of the necessary equipment and operators as required by the specifications of this contract, which has resulted in delays in the performance of the work and complaints from citizens and City staff.

ABC Company Inc. has not provided this service in a timely fashion or in accordance with the specifications of the contract.

ABC Company Inc. has been responsible for greater incidence of damage than has previously been experienced for this type of work. ABC Company Inc. has admitted responsibility for some of the damages, but in some cases where ABC Company Inc. has not admitted responsibility no other contractor or City forces were on site who may have caused the damages.

A meeting was held with ABC Company Inc. on January 6, 2009 to address these concerns. A letter was sent on January 13, 2009 advising that unless their performance improved by January 31, 2009, the Contract Administrator would recommend termination of the contract.

ABC Company Inc. is still not performing the work in accordance with the terms of that contract and is not completing the work in a timely fashion, partly caused by not having all of the required equipment and operators available to perform the work.

Materials Management Division recommends that the Award Authority terminate contract XXX pursuant to C8.04 (1)(e) and (m) for material, multiple and on going breaches of the contract.

The Materials Management Division has contracted with XYZ Limited to perform the work on an interim basis until such time as a new Bid Opportunity can be posted and awarded.

FINANCIAL IMPACT

Project Name:

First Year of Program

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
Capital					
Capital Expenditures Required					
Less: Existing Budgeted Costs					
Additional Capital Budget Required	\$ -	\$ -	\$ -	\$ -	\$ -
Funding Sources:					
Debt - Internal					
Debt - External					
Grants (Enter Description Here)					
Reserves, Equity, Surplus					
Other - Enter Description Here					
Total Funding	\$ -	\$ -	\$ -	\$ -	\$ -
Total Additional Capital Budget Required	\$ -				
Total Additional Debt Required	\$ -				
Current Expenditures/Revenues					
Direct Costs					
Less: Incremental Revenue/Recovery					
Net Cost/(Benefit)	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Existing Budget Amounts					
Net Budget Adjustment Required	\$ -	\$ -	\$ -	\$ -	\$ -
Additional Comments: There may be a financial impact relative to having another, more costly contractor perform the work.					

 Manager of Finance & Administration

CONSULTATION

In preparing this report there was consultation with:

OURWINNIPEG POLICY ALIGNMENT

SUBMITTED BY

Department:
Division:
Prepared by:
File No.
Date:

DEBARMENT HEARING GUIDELINES FOR CONTRACT ADMINISTRATORS

As part of the Termination of Contract (Suspension/Debarment) process which is available at: http://www.winnipeg.ca/matmgt/templates/contract_administration/Contract_Administration.stm the Debarment Hearing is **Number 4.** of the procedure.

PROCESS FOR SUSPENSION/DEBARMENT

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3. If the Contractor chooses to make representation a hearing will be conducted by the Chief Financial Officer. The Chief Financial Officer will determine the procedure for the hearing, but generally there will be a presentation by City Administration and then by the Contractor. The Chief Financial Officer will consider the relevant information and issue a written decision.
4. **The Chief Financial Officer will advise the Contractor of his decision, in writing, after the hearing or the 10 day hearing period has elapsed.**
5. The decision of the Chief Financial Officer is final and not subject to appeal.

The hearing will probably take place at a location at 510 Main Street. The CFO's Administrative Assistant will send out a meeting request to all those required to be at the meeting. The individuals requested to be at the meeting will be the CFO, a representative from Legal Services, the Contract Administrator and a representative from Materials Management, the Contractor and if they so wish their legal representation.

CONTRACT ADMINISTRATOR - PREPARATION FOR DEBARMENT HEARING

Prior to the hearing the Contract Administrator should gather in point form (with the back up files) the reasons for the debarment. This is your source document to speak from when asked. It should contain the following:

- Contract information including contract duration, scope of work , specifications;
 - Bid Opportunity #####- YYYY
 - Duration e.g., February 1, 2006 to January 31, 2009
- Dates and times of poor performance (examples below)
 - failed to provide _____
 - insufficient and inadequate _____
 - failed to remedy _____
 - failed to fulfil promises made to improve and maintain the work
 - did not meet specification on _____
 - walked out on the work when ___% complete
 - shortage of goods, supplies, products, at work site
 - caused damages to _____
 - other defective work _____
- Documentation of poor performances
 - State approx number of emails, meetings, letters, faxes, inspections reports, phone calls etc., all correspondence relevant to the poor performance.
- Financial information (estimated cost of someone else doing the work);
 - Invoices held for non-payment
- Any other important information to support the Administrations case for debarment of the company/individual.

Have a copy of the following as reference:

- The stop work letter
- The Termination report
- The Debarment report

THE HEARING PROCESS

At the debarment hearing the CFO will introduce himself and state the following (not necessarily in order):

- The CAO has delegated the authority to the CFO for debarments,
- The CFO will hear from the contractor/company/individuals that are appealing the debarment,
- The CFO will hear from Administration,
- The CFO will hear rebuttal from the contractor/company/individuals that are appealing the debarment,
- The CFO will hear rebuttal from Administration,
- The CFO will address questions to the contractor and Administration as necessary,
- The CFO will state the he will advise the Contractor of his decision, in writing after the hearing of his decision via letter. The CFO states that his determination is final and cannot be appealed.

§