

SECTION 160

CONTRACTOR PERFORMANCE EVALUATION SYSTEM

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160.01 GENERAL

The Contractor Performance Evaluation System is a process designed to maintain an acceptable level of performance from Contractors carrying out work for the Department of Transportation and Infrastructure (hereafter the "Department"). It will also provide a means to identify contractors with acceptable performance records and to provide a means to identify and deal with contractors with deficient or unsatisfactory performance records.

A record of the performance of Contractors will be maintained to identify the following:

- a) Those Contractors who by virtue of satisfactory performance (as defined herein) will continue to be eligible to submit tenders for work with the Department.
- b) Those Contractors who by virtue of deficient performance (as defined herein) who may have their bidding privileges suspended based on an evaluation of their contract work on a particular project and other projects completed for the Department.
- c) Those Contractors who by virtue of unsatisfactory performance (as defined herein) may be subject to having their bidding privileges suspended by the Department for a period of time determined by the Department based on a review and an evaluation of their contract work on a particular project.

The Contractor Performance Evaluation System is not to interfere with, or substitute, the normal written communication that the Department would initiate when confronted with unsatisfactory performance during the execution of the work of the contract before the issuance of a Final Completion Certificate under the contract or during the execution of warranty work related to GC 31 of the contract. The Contractor is to be notified immediately through normal project communication if the work is not proceeding or being completed in a satisfactory manner.

160.02 PERFORMANCE RATING METHODOLOGY

The TI Site Representative or TI Project Manager will conduct the Contractor Performance Evaluation. The Evaluation will be conducted in two parts in accordance with the methodology provided in this document by using the Forms 160A and 160B. Form 160A being the “Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work” and as Form 160B being the “Contractor Performance Evaluation Report Part II: Warranty Work Under The Contract.”

An unsatisfactory performance (as defined herein) on a single project may result in the suspension of bidding privileges for a period to be determined by the Department.

A deficient performance (as defined herein) on a particular project subject to a review of Contractor performance on other projects for the Department may result in the suspension of bidding privileges for a period of time to be determined by the Department.

Performance Rating Methodology for Contractor’s Work Other Than Warranty Work (Form 160A) will be completed within thirty (30) days of the earlier of:

1. The issuance of a Final Completion Certificate for the project; or
2. The abandonment of the work by the Contractor; or
3. The termination of the work of the Contractor under the contract by the Department.

Performance Rating Methodology for Contractor’s Warranty Work under the Contract (Form 160B) will be completed within thirty (30) days of the earlier of:

1. The completion of warranty work under GC 31; or
2. Where the Contractor refuses to do warranty work under GC 31; or
3. Where the Contractor abandons the warranty work before completion; or
4. The Contractor is terminated by the Department pursuant to the contract.

The Contractor's performance will be evaluated on a point rating system relative to the six (6) category listed on the latest version of Form 160A and/or Form 160B at the time of tender of the contract.

- a) Project Execution and Timeliness (15 points)
- b) Leadership and Accountability (20 points)
- c) Project Administration and Management (15 points)
- d) Quality of Work Completed (20 points)
- e) Safety (25 points)
- f) Environmental Considerations & Compliance (5 points)

160.03 INTERPRETATION OF RATINGS

The interpretation of points rating under Form 160A will be as follows:

- a) 66 - 100 shall be defined as "Satisfactory Performance"
- b) 50 - 65 shall be defined as "Deficient Performance"
- c) 0 - 49 shall be defined as "Unsatisfactory Performance"

The interpretation of points rating under Form 160B will be as follows:

- a) 70 shall be defined as "Satisfactory Performance"
- b) < 70 shall be defined as "Unsatisfactory Performance"

160.04 COMPLETION OF THE EVALUATION

Completion of a Contractor Contract Performance Evaluation Report i.e., Form 160A and Form 160B being the Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work and the Contractor Performance Evaluation Report Part II: Warranty Work under the Contract is required for all publicly tendered roadwork contracts.

Part one (Form 160A) of the Evaluation Report will be completed by the TI Site Representative and/or TI Project Manager and will be reviewed and signed by the Regional Engineer and the Director of Highway Design and Construction. The Final Report will be distributed to the Contractor and to the Tendering & Contracts office.

Part two (Form 160B) of the Performance Evaluation Report will be completed by the TI Project Manager and/or the Regional Engineer if the Department makes a claim against the Contractor in respect of warranty work under GC 31.

The Project Manager will complete form 160B within thirty (30) days of the expiration of the GC 31 warranty period related to the work even if the Department does not make a

claim against the Contractor under GC 31. The Regional Engineer and the Director of Highway Design and Construction will sign this report and distribute it to the Contractor and Tendering & Contracts office.

160.05 SUSPENSION OF BIDDING PRIVILEGES

Tendering and Contracts will record the Contract Performance Evaluation rating on each contract and maintain a record of the Contractor's assessment on previous contracts.

Contractors receiving a "Deficient" rating on the Form 160A of the Contractor Performance Evaluation Report will be notified in writing by Tendering and Contracts that their performance needs to be improved. A Contractor in this category will be put on notice that a review of that Contractor's bidding privileges is to occur and that that Contractor's bidding privileges on work for the Department may be suspended based upon a review of the Contractor's performance on the current contract and on previous contracts for the Department.

Contractors receiving an "Unsatisfactory" rating on the Form 160A or form 160B of the Contractor Performance Evaluation Report will be notified of possible suspension of bidding privileges. The review will be based upon the Contractor's overall performance on previous contracts and, if necessary, a more detailed report from the Regional Engineer on the current contract including any warranty work related to that contract. The results of the review will be communicated to the Contractor in writing by Tendering and Contracts.

The decision to suspend the bidding privileges of a Contractor and for what period in any particular instance shall rest with the Deputy Minister of the Department. The decision will be based on the facts and circumstances, including all Contractor Performance Evaluation Reports related to the same and will be communicated to the Contractor concerned by a letter from the Deputy Minister copied to Tendering and Contracts.

If the Department approves a suspension of bidding privileges, then all future bids from the Contractor will be rejected prior to tender opening.

Alternatively, any tenders from a Contractor under suspension, discovered after tender opening, will be marked "disqualified". [PT Act Regulations 3.(4)]

Suspensions apply to all Department tendered projects. Attempts by suspended companies to submit tenders under a new company name or structure (successor corporations) are to be rejected. It is incumbent on the "new" company to establish the merits of having the opportunity to tender.

160.06 REINSTATEMENT OF BIDDING PRIVILEGES

The duration of suspensions may vary depending upon individual circumstances but will generally be for at least one (1) year and/or until the circumstances related to the suspension are addressed to the satisfaction of the Deputy Minister of the Department.

A Contractor's suspension may be lifted by the Deputy Minister of the Department upon written request from the Contractor. The Contractor shall demonstrate its ability to perform satisfactory work on future projects to the satisfaction of the Deputy Minister of the Department. This may be achieved by the successful completion of comparable projects for other jurisdictions completed after the time of suspension or the identification and correction of problems that led to the suspension. Where the suspension relates to the Contractor's failure to perform corrective work related to a GC 31 Warranty; the Deputy Minister may lift that suspension when the warranty work has been completed to the satisfaction of the Regional Engineer. The Contractor will need to satisfy the Department regarding the steps that that Contractor will take in future to avoid the reoccurrence of such defects.

In the event of reinstatement, the Contractor must achieve a "Satisfactory" rating on the first subsequent contract in order to retain eligibility to continue bidding Transportation and Infrastructure projects.

160.07 CONTRACTOR REQUESTED REVIEW OF EVALUATION

A Contractor may request a review be conducted by the Department of a Performance Evaluation in respect to a particular project by submitting a written request, with supporting documentation, to Tendering and Contracts.

A committee established by the Assistant Deputy Minister of the Department will conduct the review. The review is to be completed within sixty (60) days of the request and the results will be communicated in writing to the Contractor.

160.08 CONFIDENTIALITY OF INFORMATION

The Department intends the information compiled through the Contractor Performance Evaluation System to be solely for internal use. Evaluation information related to a particular contractor(s) will not be released to outside parties, such as reference checks from other tendering agencies, without the consent of the affected contractor(s).

SECTION 162

FAILURE TO COMPLY WITH REGULATORY STANDARDS

Contractor's failure to comply with the regulations of any authority having jurisdiction over the works, or part thereof, or any aspect of the performance of the work and the manner of carrying out the work, will entitle and result in the Owner appointing such engineer, engineers, compliance officer or officers as may be necessary to more fully cause compliance by the Contractor with the requirements of the relevant regulatory authority.

The Owner may thereafter, and for so long as the Owner may keep such engineer, engineers, compliance officer or officers, on the site of the works, deduct from the progress payments otherwise due to the Contractor the costs including but not limited to payroll, payroll burdens, accommodations, meals, and transportation costs associated with the work of such engineer, engineers, compliance officer or officers as the case may be. The Contractor shall have no right to dispute the Owner's right to appoint such engineer, engineers, compliance officer or officers, the reasonableness of the deduction of such costs or the amount thereof and the Engineer's certificate of the amount of such costs shall be final and binding upon the Contractor and the Owner.