

Performance Evaluation and Appeal Process and Referral for Probation, Suspension and Debarment

1. Definitions.

- a. "Construction" is the industry, process, trade, or work of building and constructing.
- b. "Contact Person" means the individual that serves as the primary contact for the Contractor (as defined below). The Contact Person is also the recipient of the completed Performance Evaluation under this rule.
- c. "Contractor" is an individual or business firm contracted to provide goods, services and/or supplies to the City.
- d. "Consultant - Construction Related Professional Services" is the individual or business firm indicated on the Performance Evaluation summary page as performing the work on a City project. The Consultant is a person or business firm engaged to provide construction-related professional services as defined in Texas Government Code Section 2254.021 et seq. and exempt from the competitive bid requirements of the Purchasing Act, Chapter 252 of the Local Government Code. Examples of these professional service providers include architects, engineers, surveyors, and geologists.
- e. "Construction Contractor" is the individual or business firm contracted to perform a construction project for the City.
- f. "Days" means any period of time expressed as days will be understood to be City calendar days unless otherwise stated.
- g. "Non-Professional Services" means consulting and other services that are not subject to the Texas Government Code Chapter 2254, and/or which are not subject to the professional, personal or planning services exemptions stated in Texas Local Government Code Chapter 252, Section 252.022.
- h. "Owner", "City" or "City of Pflugerville" means the City of Pflugerville, Texas, a municipal corporation, home rule city and political subdivision, organized and existing under the laws of the State of Texas, acting through the City Manager or his/her designee, officers, agents, or employees.
- i. "Performance Evaluation" means a detailed City performance evaluation process that evaluates and scores a Contractor's performance on a City contract that is ongoing, terminated, or expired.
- j. "Professional Services - Construction Related" are services directly related to professional practices as defined by the Professional Services Procurement Act, Texas Government Code, Section 2254.002, such as architecture, engineering, and surveying.

- k. "Project" means the scope of work identified in a particular agreement and its amendments between the Owner and Consultant/Contractor/Supplier/Vendor.
 - l. "Rebuttal" means the Vendor and/or Contractor's written answer in response to the City's performance evaluation that includes the Contractor's request for the City's consideration of an adjustment of an evaluation score. (This process includes the City's determination of the evaluation score and what evaluation materials are retained or discarded, subject to City's document retention requirements and determination of final evaluation score).
2. Performance Evaluation.
- a. Construction-Related Professional Services Consultants. The City will complete a Performance Evaluation for each Construction- Related Professional Services Consultant at the end of each project phase, or at project completion for Capital Improvement Projects or other projects that do not have construction phases. At the City's discretion, multiple project assignments with similar scopes of work completed by the same Construction-Related Professional Services Consultant will require the completion of (1) one performance evaluation for all assignments at project completion. Please refer to the individual solicitation and contract for further specific information about evaluation criteria and measures.
 - b. Construction Contractors. The City will complete a performance evaluation for each Construction Contractor at the end of each construction phase or project completion. Please refer to the individual solicitation and contract for further specific information about evaluation criteria and measures.
 - c. Performance Evaluation of Contractors contracted with as a result of a sole-source justification will be conducted. (However, in the event of an adverse Performance Evaluation, the City may continue the sole-source contract with this Consultant, Contractor, or Vendor subject to the needs of the municipality.).
3. Rebuttal Meeting.
- a. An authorized City official, typically the City's Project or Contract Manager, will forward the completed Performance Evaluation to the Contact Person. The Contact Person may request a Rebuttal Meeting (in-person review) with the City concerning the score provided, by taking the following steps:
 - i. The Contact Person must contact the City official providing the performance evaluation within (10) ten days of the date the evaluation was provided. The Contact Person must request an in-person review. Request must be in writing, and should state if an attorney has been retained and will be present at the meeting.

ii. City will schedule a Rebuttal Meeting within (10) ten days of receipt of the Contact Person's written request. The following individuals may attend the Rebuttal Meeting:

1. The Contact Person and other representatives of the Consultant/Contractor. If an attorney representing the Contractor is included, the Contact Person must advise the City in advance; and
2. City staff appropriate to the project, such as:
 - a. Project Manager and/or Construction Manager;
 - b. City Engineer or designated staff
 - c. Financial Support Staff
 - d. Representatives of the City department receiving goods, services, and or supplies from the Contractor; and
 - e. Legal Counsel

The City has the final authority to determine who may attend the Rebuttal Meeting.

b. The Rebuttal Meeting will be informal and may not include parties other than City staff and representatives of the Contractor. Staff may, but is not required, to decide on the Contractor's evaluation during the Rebuttal Meeting. Staff may request additional information from the Contractor or City staff. City staff may maintain the Contractor's original Performance Evaluation score or revise the score based on information received at or subsequent to the Rebuttal Meeting. The modification of a score by the City, whether for a phase or final evaluation review, will depend on the factual supporting documentation provided by the Contractor, and will be determined on a case-by-case basis. All materials provided by the Contractor will be considered during the Rebuttal Meeting.

- i. If the City modifies the original scoring decision as a result of this meeting, the City will issue a written notification to the Contact Person and all meeting attendees within (5) five days after the Rebuttal Meeting. The notification will include the revised Performance Evaluation score. The City will update the Contractor's Performance Evaluation records accordingly.
- ii. If there is no change to the Contractor's Performance Evaluation score, the City will issue a letter to the Contact Person and all meeting attendees that confirms the score. The City will send an email within (5) five days from the date of the Rebuttal Meeting.

c. If issues remain unresolved after the Rebuttal Meeting, the firm may request a formal appeal in accordance with paragraph 4, Evaluation Score Appeal Process. The City will

document the status of the Contractor Performance Evaluation when the decision is formalized.

4. Evaluation Score Appeal Process.

- a. If issues remain unresolved after the Rebuttal Meeting and the Contact Person for the Contractor desires to appeal the final Performance Evaluation score decision (as stated in paragraph 3c above), the following steps are required:
 - i. The Contact Person must provide a written Notice of Intent to Appeal to the City official providing the Performance Evaluation score decision within (4) four days of the City's rendered Rebuttal Meeting decision. A complete, written Appeal must be submitted to the City within (10) days of the rendered Rebuttal Meeting decision. The Appeal must request a hearing.
 - ii. The Appeal Hearing is informal. The City will establish the Appeal Hearing Team. Members may include, but are not limited to:
 1. City Engineer and other staff;
 2. Project Manager or Construction Manager;
 3. Director or staff from the supported department;
 4. Legal counsel representative; and
 5. Other appropriate City staff.

The City has the final authority to determine who may attend the Appeal Hearing.

- b. The City must be notified in advance if an attorney has been retained and will be present at the meeting.
- c. The Appeal Hearing will be an opportunity for the Contact Person and other representatives of the Contractor to present the factual grounds of their Appeal.
- d. After consideration of all materials presented, as well as input from meeting attendees, the City Engineer shall render the final decision on the Appeal. City will notify Contact Person of the final decision and evaluation performance score via email no later than (10) ten days after the Appeal Hearing. The decision is final and no further appeal is allowed.
- e. When an Appeal is filed, the City will not finalize the Contractor's Performance Evaluation until a decision on the Appeal is made. However, the City will not delay an award of an unrelated solicitation for which the Contractor has submitted a bid, proposal or response pending an Appeal, if it is determined that:
 - i. The City urgently requires the supplies or services to be purchased, or
 - ii. The City's failure to promptly make a contract award will unduly delay a Contractor's delivery or performance under a City contract.

- f. In those instances, the City Engineer or Director of the Department will notify the Contact Person and make every effort to resolve the Appeal before the award.
 - g. The individual award document will identify the contact and address information of the person who will receive notices for the City. In all cases, an email will serve as written notice.
 - h. When an Appeal is filed, the City will not unnecessarily delay performance by the Contractor.
5. Use of Evaluation Reports; Records Retention.
- a. Performance Evaluation report will be used for the purpose of subsequent contract award decisions for a period of (5) five years from the date that the award of contract was made.
 - b. Many Contractors provide goods and services in specialized as well as general scopes. When a Contractor provides multiple scopes of goods and services to the City, only "like" scoped evaluations will be considered for subsequent award recommendations.
 - c. Evaluation reports will not be considered for contract award decisions after (5) five years and 1 day from the due date for the solicitation; however, evaluation reports will be retained subject to the City's document retention schedules.
 - d. For contracts with multi-year performance periods, evaluations will be conducted annually or at the applicable contract phase.
6. Request for Contractor Performance References; Open Records.
- a. From time to time, the City is contacted for contractor performance references.
 - b. Information that is generally available to the public via City of Pflugerville documents such as the adopted budget, reports, web pages, or by means of the City's transparency resources such as description of purchase order, amount awarded, amount spent, and dates of payment is not considered to be a "contractor performance reference", and may be furnished to anyone asking for this information in conformance with the Public Information Act.
 - c. Performance Evaluation reports are presumed to be public information under the Texas Public Information Act.
7. Reporting of Adverse Performance to Other Entities.
- a. Federally-funded or "conditionally-funded" projects with adverse Contractor Performance Evaluations or records will be reported to grantors or other interested parties to the extent required by the funding instrument.
8. Probation, Suspension and Debarment (P/S/D).
- a. Before a Contractor is placed on probation, suspended, or debarred, the City's evaluation process here within will be followed.