
CITY OF CHICAGO

RULES



Notice to Cure and Notice of Default Procedures

UNDER 2-92-010

LAST UPDATED: April 21, 2022



Mayor Lori E. Lightfoot

Chief Procurement Officer Aileen Velazquez



This policy sets forth the steps that must be taken by a City of Chicago ("City") department ("Department") to request the Department of Procurement Services ("DPS") to issue a notice of default to a City contractor ("Contractor"), either in the form of a cure notice ("Cure Notice"), or, if no opportunity to cure will be granted, a notice of default ("Default Notice").

I. Monitor Contractor's Performance

Departments are responsible for managing their contracts, which includes monitoring a Contractor's performance. Departments should be familiar with the terms of their contracts, including the scope of work, deliverable requirements, and timelines for performance. Departments should document instances where a Contractor fails to comply with the terms and conditions of their Contracts.

II. Events of Default

If the Department believes an event of default has occurred, the Department may submit a formal memorandum to DPS ("Request"), signed by the Department's Commissioner, requesting DPS to issue a Cure Notice, if the Department desires to provide an opportunity to cure the default, or a Default Notice, if no opportunity to cure will be granted. The Department's Request must make a good faith showing that a default has occurred. Whether to issue the Contractor a Cure Notice, a Default Notice, or neither, is within the sole discretion of the CPO and neither the decision to issue either notice, nor the factual basis underlying the issuance of such a notice, is subject to review or challenge under the Disputes provision of a Contract.

Prior to submitting a Request, the Department should carefully review the Contract and consult with Department personnel responsible for managing the contract, and, if necessary, the appropriate division of the Department of Law ("DOL").¹ The Department should not send the Request to the Contractor; however, DPS may send a copy of the Request, along with any supporting documentation, to the Contractor as part of any Cure Notice or Default Notice issued as a result of the Request.

III. Request for Cure Notice

If the Department would like to provide the Contractor an opportunity to cure the default ("Cure"), it should submit a Request for a Cure Notice under this Section as soon as reasonably possible after the default.

- A. Submission Requirements: A Request for Cure Notice must include, at a minimum, the following information:
- i. A citation to the Contract provision(s) authorizing the issuance of a Cure Notice;
 - ii. A list of each category of default that the Department believes warrants issuance of a Cure Notice;
 - iii. Citation(s) to each Contract provision(s) that the Department believes the Contractor violated in committing the default;
 - iv. A detailed description of all relevant facts for each act or omission constituting the default, including identifying key dates, locations, and individuals involved;

¹ Most City Departments should consult with the Constitutional & Commercial Litigation Division of DOL; however, the Chicago Department of Aviation ("CDA") should consult with the Aviation, Environmental, Regulatory & Contracts Division.



- v. Supporting documentation establishing the finding that a default occurred; including, but not limited to, photos, audits, reports, and/or communications between the Contractor and Department;
 - vi. Specific action(s) the Department wishes the Contractor take in to effectuate Cure, and the period of time in which the Cure must be performed before the Contract will be terminated ("Cure Period"). The Cure Period shall depend on the nature of the default and the Contractor's ability to Cure. The CPO reserves the right to determine the appropriate Cure and/or Cure Period;
 - vii. A detailed description of any additional relief sought. If money damages are sought in addition to the Cure, the Department must provide a written explanation why and how the Cure is insufficient, citations to any Contract provisions authorizing damages, and supporting documentation establishing the amount of damages.
 - viii. The Department Commissioner's signature.
- B. Requests for Additional Information: DPS's review of a Request for a Cure Notice may require consultation with appropriate division of DOL and/or the request of additional information from the Department. If more time is needed to gather additional information, the Department must request an extension on or before any deadline to provide such information to DPS expires. Failure to provide the requested information in a timely fashion, or to timely request additional time, may result in the Request being deemed a Defective Submission pursuant to Section III.C.
- C. Defective Submissions: A Request for Cure Notice that does not comply with the submission requirements set forth above in Section III.A may be rejected as defective without prejudice to the Department's right to resubmit ("Defective Submission"). DPS reserves the right to reject Defective Submissions without first submitting a request for additional information to the Department under Section III.B.
- D. Determination of Default and Issuance of a Cure Notice: A Cure Notice will be issued only after the CPO has received a Request that complies with the submission requirements set forth above in Section III.A, and the CPO has made a determination that the Department has made a good faith showing that a default occurred and that a Cure Notice is warranted. Should the CPO determine that issuance of a Cure Notice is appropriate, DPS will issue a Cure Notice which shall declare the Contractor in default, identify the events of default, list the remedies sought by the Department, including any specific performance demanded as part of the Cure and/or damages sought, and provide for the documentation of Cure Efforts by the Contractor as set forth further below. DPS shall issue the Cure Notice to the Contractor, the Department, and any other interested parties, including any assignees, guarantors, and/or sureties of the Contractor, by email or certified mail with return receipt confirmation. DPS also reserves the right to immediately issue a Default Notice pursuant to Section IV in lieu of a Cure Notice, if appropriate.
- E. Close of the Cure Period
- i. Contractor Cure Efforts: The Cure Notice shall specify a time period after the Cure Period ends by which the Contractor must submit a written summary of all actions it took to effectuate the Cure to DPS and the Department ("Cure Efforts"). A Contractor's failure to submit its documentation of Cure Efforts may be deemed a failure to Cure, and result in the issuance of a Default Notice.
 - ii. Department Cure Evaluation: The Department should submit a written response to the Contractor and DPS within the time frame specified by DPS, or, if no time frame is specified, within five (5) days of the submission of the documentation of Cure Efforts stating whether the Contractor's Cure Efforts are satisfactory or unsatisfactory ("Cure Evaluation"). If the Department deems the Cure Efforts unsatisfactory, the Cure Evaluation should explain why



and how the Cure is unsatisfactory, whether it is unsatisfactory in whole or in part, and whether the Department wishes to provide the Contractor for an additional opportunity to Cure or to otherwise proceed to a Default Notice. If the Department does not submit a Cure Evaluation to DPS within the specified period, the Contractor's Cure Efforts may be deemed satisfactory.

- iii. Should DPS determines that the Cure Efforts were unsatisfactory upon a review of any documentation of Cure Efforts and Cure Evaluation submitted to DPS, it may issue a subsequent Cure Notice or a Default Notice.

IV. Default Notice

If the Department does not wish to provide the Contractor an opportunity to Cure for good cause, or if a Cure is not practicable or possible, it may submit a Request for Default Notice under this Section.

A. Submission Requirements: A Request for Default Notice must include, at a minimum, the following:

- i. A citation to the Contract provision(s) authorizing the issuance of a Default Notice;
- ii. A list of each category of default that the Department believes warrants issuance of a Default Notice;
- iii. Citation(s) to each Contract provision(s) that the Department believes the Contractor violated in committing the default;
- iv. A detailed description of all relevant facts for each act or omission constituting the default, including identifying key dates, locations, and individuals involved;
- v. Supporting documentation establishing the finding that a default occurred; including, but not limited to, photos, audits, reports, and/or communications between the Contractor and Department;
- vi. A written statement from the Department explaining:
 - a. Why the Contractor should not or cannot be provided with the opportunity to Cure;
 - b. Whether the Department requests termination of the Contract as a remedy, and, if so, the termination request should address the following:
 - i. Why termination would be in the best interests of the City;
 - ii. Whether termination of the Contract is in whole or in part;
 - iii. The desired effective termination date of the Contract;
 - iv. Any specific actions the Contractor must take to wind down its activities on the Contract;
 - v. The impact termination will have on the Department, if any, including any steps the Department must take to replace the procured goods or services;
 - c. Any other remedies sought. If money damages are sought, the Department must identify the Contract provisions authorizing damages, and provide supporting documentation establishing the amount of damages.
- vii. The Department Commissioner's signature.

B. Requests for Additional Information: DPS's review of a Request for a Default Notice may require consultation with appropriate division of DOL and/or the request of additional information from the Department. If more time is needed to gather additional information, the Department must request an extension on or before any deadline to provide such information to DPS expires. Failure to provide the requested information in a timely fashion, or to timely request additional time, may result in the Request being deemed a Defective Submission pursuant to Section IV.C.



- C. Defective Submissions: A Request for Default Notice that does not comply with the submission requirements set forth above in Section IV.A may be rejected as defective without prejudice to the Department's right to resubmit ("Defective Submission"). DPS reserves the right to reject Defective Submissions without first submitting a request for additional information to the Department under Section IV.B.
- F. Determination of Default and Issuance of a Default Notice: A Default Notice will be issued only if: (i) the CPO has received a Request for Default Notice that complies with the submission requirements set forth above in Section IV.A and the CPO has made a determination that the Department has made a good faith showing that a default has occurred and that a Default Notice is warranted; or (ii) a Contractor's Cure Efforts have been deemed unsatisfactory after the issuance of a Cure Notice. Should the CPO determine that a Default Notice is appropriate, DPS will issue a Default Notice, which shall declare the Contractor in default, identify the events of default, and set forth any remedies deemed appropriate by the CPO, including termination of the Contract and/or any damages sought. In the event that the CPO determines that termination of the Contract is an appropriate remedy, the Default Notice shall also state the effective termination date and any wind-down instructions to close out Contract activities. DPS shall issue the Default Notice to the Contractor, the Department, and any other interested parties, including any assignees, guarantors, and/or sureties of the Contractor, by email or certified mail with return receipt confirmation.
- D. Termination of Contract: Terminations pursuant to a Default Notice are final. DPS reserves the right to terminate the Contract pursuant to a Default Notice, regardless of whether the Department requests a termination.



BY AUTHORITY VESTED IN THE CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF PROCUREMENT SERVICES PURSUANT TO 2-92-010, THE FOLLOWING RULES REGARDING THE NOTICE TO CURE AND NOTICE OF DEFAULT PROCEDURES ARE ADOPTED HEREIN.

By Order of the Commissioner:

Signed: 
Chief Procurement Officer

Date: 4/21/2022

Effective: April 21, 2022 