

Tender Evaluation

This section describes the process for evaluating tender bids. The tender review determines the lowest responsive bid submitted by a responsible bidder. The review may disclose errors, anomalies and omissions in the bids. The review may also point out weaknesses in the bid or contract documents, or improper tendering practices by bidders.

Administrative Review

Responsive and Non-responsive

Responsive means, in relation to a bidder, that the person has submitted a bid that conforms in all material respects to the invitation to tender.

If a requirement is not complied with (e.g., provision of bid security), the bid is non-responsive. If the tender documents are changed by the bidder, including not using the bid forms, or if the bid is qualified in some way, the bid is to be considered non-responsive. For example, if the bidder changes the requirement “Supply and install 16 **metal** windows” to “Supply and install 16 **wood** windows”, the bid is non-responsive.

Proposals, however, are treated differently. The nature of a *Request for Proposals* is that it requires a solution to a problem, not meeting specific specifications. If a proposal does not meet a mandatory condition, then the proposal will likely be rejected for that reason.

Disqualification of Non-responsive Bids

The decision to consider an improper or incomplete bid must be made only after due consideration has been given to all facts and conditions involved. Such a decision may require communication with the bidder to rectify or clarify the particular bid. If not carried out with tact, this might suggest to the bidder that the purchaser is inclined to deal lightly with tenders, particularly if it is to the

purchaser's advantage. Decisions to consider these bids further must result from exhaustive consideration of all the facts and conditions.

On the other hand, it may not be in the public interest to disqualify a bid because of an error that neither jeopardizes the integrity of the bidding process, nor is "material". For example, the bidder has signed the bid but has not provided a seal may not be sufficient grounds for automatic disqualification.

When dealing with tenders, whether at the opening or review stage, remember:

During the purchasing process, not only must all our actions always be beyond reproach, but they must also appear to be beyond reproach.

When in doubt as to whether a bid is responsive or not, you should seek assistance and clarification.

Incomplete Bid

A bid is *incomplete* and subject to disqualification if the bidder has neglected to include significant information as described below.

Incomplete Unit Price Table

In a unit price tender where the total bid price is not available, but the resulting contract value will depend on the quantity, the bid is actually the unit price, **not** the extension or total tender price.

Unit prices as bid govern, and after tender closing, may neither be changed nor added to if missing. In a unit price tender, the price that has been quoted on a firm basis is the unit price itself, and not the total tender price as in a stipulated price (lump sum) contract. The total tender price is merely an extension based on the quantity estimated by the purchaser.

Where the bidder has omitted a unit price in a unit price tender, the tender should be disqualified, since permitting the bidder to provide the missing unit price at this point would give the bidder an unfair advantage over other bidders. The only possible

exemption is if the missing unit price can be calculated based on the extensions.

If a detailed calculation and extension of all other unit prices prove beyond a doubt that the extension of the missing unit price is included in the total amount shown, then the tender may be considered. Confirmation of the missing unit price must then be obtained from the bidder, since it will be required for payment purposes.

Tender is Qualified

Qualified tender bids are those that contain qualifications and cannot be accepted. In April of 1999, the Supreme Court of Canada in its decision *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, ruled that the privilege clause (lowest or any tender not necessarily accepted) does not permit the acceptance of a non-compliant (not responsive) tender bid.

The proper procedure for the bidders to follow is to tender exactly as required and to provide their options on the specified form accompanying the tender. In this case, the tender is valid and the options can, if appropriate, be evaluated to see what benefits they may provide.

A tender is *qualified* or conditional when a bidder submits a bid that does not comply with the requirements of the call for tenders.

Examples of Qualified Tenders

Some examples of qualified or conditional tenders are when the:

- bidder does not accept the terms of payments
- bidder proposes different insurance coverage
- bidder proposes different guarantees than those specified
- bidder is not prepared to provide a certain component as specified in the call for tenders, but proposes something of

different quality and performance

Qualification is Material or Not Material

When a tender is qualified or conditional, it may be disqualified as being non-responsive. It is very easy to declare a bid as non-responsive when the qualification is significant or material, e.g., the low bidder is not prepared to provide a heating system to meet the specified requirements, but proposes something of substantially lower quality and performance.

When the qualification of the bid is not material, it is harder to disqualify the bid as being non-responsive.

If you think that the qualification is not material and the bid should be accepted, it is recommended that you seek advice before making such a decision. Recent changes in common law have reduced the amount of latitude in such decisions.

Other Factors

If all bids are qualified in one way or another, the situation is not as delicate. The GNWT may choose to negotiate with the lowest bidder, and the other bidders should not complain.

However, it is advisable to avoid having the negotiation result in a contract award at a price higher than the apparent second lowest bid. Again, seek legal advice before proceeding.

Identical Low Bids

According to the *Government Contract Regulations*, when two identical low bids are received, the Minister responsible for the contract will decide to whom the contract will be awarded.

The following factors should be considered:

- A bidder with an overall satisfactory **performance record** should be given preference over a bidder who is known to have an unsatisfactory performance record, or no record at all.

- Where **time** is an important factor, the bidder offering the best completion or delivery date may be given preference.
- Preference may be given to the **local bidder**, only if the tender documents included the provision for local preference. Generally, local preference should only be considered as additional support for a recommendation of choice between two identical tenders, and not as the sole criteria.
- Preference may be given to the bidder who has been operating for the past one or two years and has received the **smallest volume of work** during that time.
- Re-tendering may be the only choice available if:
 - no decision is possible
 - time allows for re-tendering
 - a change of scope is possible

However, since this can cause extra expense to the bidders, re-tendering should only be used where absolutely necessary.

Technical Review

Responsible

Responsible means, in relation to a bidder, the capability in all respects to perform fully the contract requirements and the integrity and reliability to assure performance of the contract obligations.

In deciding whether a bidder is responsible, factors to be considered include:

- financial resources
- organization, plant and equipment

- personnel - managerial and technical
- experience on similar types of contracts
- record on previous projects with the GNWT
- references from previous purchasers / owners

To assist in this assessment, financial and technical reports should be obtained on the bidders under consideration (usually the low bidder only).

A bidder that is invited to tender cannot normally be deemed not responsible. The act of inviting a firm to submit a bid presupposed that the firm is qualified to bid.

Inadequate Tenders (Price Too Low)

When the lowest price bid is obviously inadequate, and/or the bidder does not appear to have the necessary resources to complete the work, the bidder must be made fully aware of the situation, and requested to review the tender. Following this review, the possible outcomes are as follows:

- If the bidder agrees that the tendered price is unrealistic and requests that the tender be withdrawn, the bidder should be permitted to withdraw the tender without penalty.
- If the bidder insists that the tender is correct and is in strict accordance with the tender documents, the two courses of action are as follows:
 - If we agree with the bidder's review of the price and the explanation of why the price is lower than the estimate, and if we consider the bidder to be responsible, **we should request confirmation of the tender price in writing** and award the contract accordingly.
 - If we do not agree with the bidder's review of the price and the explanation of why the price is lower

than the estimate, and if we consider the bidder to be non-responsible, we should disqualify the bid, and award the contract to the next lowest responsible and responsive bidder.

Under no circumstances may the bidder be permitted to increase the offer originally submitted.

Excessive Tenders (Prices Too High)

When the lowest tender is obviously excessive, and a review of the scope of work required by the contract confirms that the Government estimate appears to be correct, the lowest bidder should be requested to review the estimate on which the tender was based.

Provided the bidder is co-operative (remember that the offer is the lowest in the competition, so the bidder is not required to prove the offer), the review may be accomplished by having the bidder:

- submit the estimate/tender for review by departmental personnel, or
- meet with qualified, knowledgeable departmental personnel

This review should result in:

- a revised departmental estimate
- a reduction of the offer by the bidder
- a combination of both
- no change in position

Following this review a report to the responsible manager should be made. The report should summarize the events and the findings, and should recommend a course of action, which could be one of:

1. Acceptance of the original offer - This should only happen where we can fully justify increasing our estimate to a point

where the original offer can be considered acceptable and the best price that can be obtained under the circumstances. The additional funding requirement must be reviewed and approved by the client department.

2. Acceptance of a reduced offer based on **minor** changes to the scope of the work - This will result from negotiations with the low bidder to reduce the bid amount. Scope changes must be clearly defined in writing and agreed to by both parties.
3. Cancel the Tender and re-invite the three low bidders to submit bids - This occurs when the GNWT is unable to secure a satisfactory reduction in price from the low bidder in relation to the proposed minor changes in the scope of the work, or

The fundamental intent of the original tender call remains the same. Tenders may be re-invited by reducing the scope of the work.

Technical Inconsistencies in the Tenders

The technical review may reveal that a bid is not in strict accordance with all the requirements and specifications. That bid is then subject to disqualification.

The bidder may offer alternatives; however, the bidder must also provide a base bid that conforms to the tender specifications.

All bids must be based on the same information so that no bidder has an unfair advantage. This is essential to maintain the integrity of the tendering process and protect the Government from legal liability.

In all cases where a bid is officially disqualified as a result of the tender review (administrative or technical), the bidder should be notified by letter. The cover page or signature page of the tender should be clearly marked '**Disqualified**' and placed on the file with a copy of the letter.

Sole Bid Received

If only one bid is received, you must consider whether the:

- Potential bidders had enough time to prepare and send their bids
- bid amount is reasonable and within the budget
- delivery of the requirement can be made in time
- local and Northern content is maximized

If one or more of the above concerns have not been met through the tender process, the purchaser must decide if it is in the best interests of the Government to accept the sole bid, or reject it and issue a new tender.

If a decision is made to cancel the tender and reissue it, the reasons must be documented, and the *Memo to File* should also explain possible reasons why only one bid was received.

No Bids Received

On occasion tender are closed and no bids have been received. When this situation occurs two options are available

- if the value of the tender is large enough and time permits the purchaser may consider retendering the procurement. In this instance the purchaser may expand the field of advertisement to attract bids or is aware of a change in the market which would now attract bidders to the procurement.
- sole source the procurement to a suitable contractor.

