

LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
5TH COUNCIL, 32ND SESSION

RECOMMENDATION TO COUNCIL
NO. 5-32

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NORTHWEST TERRITORIES

RECOMMENDATION TO COUNCIL NO. 5
(First Session, 1966)

METHODS OF SELECTING SUCCESSFUL BIDDERS FOR NORTHWEST TERRITORIES PROJECTS

DISPOSITION

Accepted as Read.....
Amended.....See Text
Rejected.....See Text
Deferred.....See Text
Not considered.

METHODS OF SELECTING SUCCESSFUL BIDDERS FOR
NORTHWEST TERRITORIES PROJECTS

At its 30th Session held at Yellowknife in June, 1965, the N.W.T. Council suggested that improvements to the present methods of selecting contractors could possibly be made by adoption of some of the methods used in Scandinavian countries. (Debates Vol. 1, Page 160.) The Department of Northern Affairs and National Resources were subsequently requested by the Commissioner to comment on the Council's suggestion. The following are the comments and recommendations made by the Engineering Division, Department of Northern Affairs and National Resources:

1. Introduction

From the discussions that took place at the Council Session, there appears to be some similarity between the Scandinavian system and the pre-qualification system used in Ontario. Copies of the Ontario system were forwarded to the Commissioner on September 21, 1965, so that they could be made available to interested members of the Council.

2. The Ontario System of Pre-Qualification

The one large difference between the Scandinavian system as reported to Council, and that of Ontario, is the grouping and averaging process. The Ontario system does not set a grouping with upper and lower limits; nor does it use averages. Only the lower limit is used to establish a minimum requirement. Setting up "groups" with upper and lower limits would, in effect, provide a protective shield for each group against competition from higher groups who are generally better equipped and often more efficient in their operation. The effect of this type of protection would be a lessening of competition with reduced incentive for efficiency and technological advancement on the part of each group.

The net purpose of the pre-qualification system used in Ontario is to assure the owner that the bidders are fully qualified for the work; it is not designed to give greater protection to the contractor.

It is worthy to note that one of the factors affecting the qualification rating is the bidder's availability for the work. If he already holds a contract and his forces are tied up in its execution, he is less qualified for another job. This reduction in qualification would, of course, vary directly with the extent to which the contractor's resources are committed to the first contract. It has the effect then, of promoting a wider distribution of work amongst available contractors and one could probably say that it does give some protection to smaller contractors by preventing all work from going to the top contractor.

3. Our Present System

The Federal method of calling tenders and selecting bidders evolved from an initial study carefully made by top experts in the construction industry. Since its early inception, many amendments and refinements have been made to improve its application to the many varied forms of contract work while, at the same time, maintaining a high level of fairness and protection to both owner and contractor. It is not the product of ad hoc decisions.

Council stated that awarding contracts, almost invariably, to the lowest bidder had several undesirable side-effects. Federal contracts are not always awarded to the lowest bidder. Although the federal government does not employ a formal method for pre-qualification, it never awards a contract without first having the contractor's background thoroughly investigated to ensure that he is fully capable of satisfactorily

carrying out the contract work. The policy of awarding contracts to the lowest bidder is always conditional on the necessary qualifications being met.

In order to ensure responsible bidding when tendering, the federal system requires a 10% Bid Bond or Security Deposit to accompany the tender in order for it to qualify. (In the N.W.T., the Territorial Government requires only 5% in order to encourage local contractors.) This bond is forfeited if the bidder refuses to enter into contract at the prices bid when called upon to do so. This requirement ensures that the bidding is done in good faith and prevents unrealistically low bids.

Upon award of a contract, the successful bidder must post a performance bond and a labour and material payment bond each in an amount of at least fifty per cent of the amount payable under the contract or he may, in lieu of this, give a security deposit in an amount, or having a par value, of not less than (a) 10% of the amount payable under the contract where the amount payable does not exceed two hundred and fifty thousand dollars or, (b) twenty five thousand dollars plus 5% of the amount by which the amount payable exceeds two hundred and fifty thousand dollars and a labour and material payment bond.

Where a contractor is unable to obtain a labour and material payment bond after making application to at least two bonding companies, he shall provide a security deposit in an amount calculated in accordance with (a) and (b) above, together with an additional security deposit of at least 10% of the amount payable under the contract.

At the completion of the contract, before final progress payment is made or bonds released, the Contractor is required to sign a Statutory Declaration deposing to the fact that all his lawful obligations, and any claims arising out of the execution of the work in the contract, have been discharged and satisfied. This provision is made to safe-guard against the incurrence of bad debts.

In Territorial projects, the Commissioner of the Northwest Territories has requested that the following bid deposit and security deposit regulations apply to all Territorial construction contracts in the future.

- (1) A bid bond or a security deposit is not required when calling tenders on contracts valued at less than \$25,000.
- (2) The bid bond or the security deposit required when calling tenders for all other construction contracts exceeding \$25,000 will be 5% of the amount that will become payable under the contract.
- (3) A performance bond, a labour and material payment bond or security deposit will not be required when entering into construction contracts under \$25,000.
- (4) A 50% performance bond and a 50% labour and material payment bond are required for all construction contracts exceeding \$25,000; however, a security deposit in the amount of 10% of the amount that will be payable under the contract will be accepted in lieu of the bonds.

Territorial construction contracts in the past have generally been handled in the same way as Federal construction contracts in compliance with the Government Contract Regulations. These revised regulations will assist northern contractors by reducing the amount of cash tied up in contracts. For those supplying bonds, these regulations will reduce the instance when bonds are required.

4. Conclusions

In every system of bidder selection, there is always room for further improvement. Every system has its own peculiar advantages and disadvantages. It is not always possible to eliminate all the disadvantages without eliminating, at the same time, some of its advantages. It is essential that the system chosen provides an opportunity for new contractors to become established. Otherwise a monopoly would inevitably result. It is also essential, on the other hand, that no measure be implemented which would lessen a competitive spirit amongst established operators as this would foster inflation and reduce technological advancements and incentives toward good workmanship which is generally associated with healthy competition.

In the Northwest Territories the bulk of construction work is carried out by federal contract for which the above-described procedures must be followed. Bond requirement is not only an economic means of pre-qualification but it also provides protection for the government against faulty works during the execution of the contract. The setting up of a pre-qualification system in the N.W.T., similar to that of the Province of Ontario would be justified only if the volume of work and the number of contractors were great. It is felt that the work carried out by Territorial contracts is not of sufficient magnitude to justify this system.

5. Recommendations

Until the volume of work and number of contractors in the N.W.T. has reached a size that would justify a pre-qualification system, it is recommended that the present system approved by the Commissioner be continued.