



Principles of Tendering

The *Government Contract Regulations* require that all contracts exceeding \$1,000 in value must be competitively tendered. In this section, we discuss tendering methods, procedures and guidelines designed to assist the purchaser in tendering.

Objectives

The general goals and objectives of obtaining prices are to:

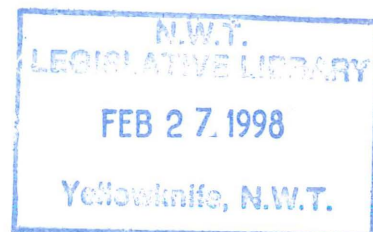
- complete the contract for the best value, on schedule, and within budget
- ensure that fairness is shown to all interested bidders
- support the involvement of Northern and local workers and businesses

The tender call is the first stage of the tendering process, and includes all activities from the preparation of the tender documents, up to the receipt of tenders from bidders.

Public Tendering

Tenders may be called formally or informally. A *formal tender*, which must be in writing and stipulate the format and the nature of the tender, is required for all contracts valued in excess of \$5,000. An *informal tender*, which may be verbal or written, can be used for contracts that do not exceed \$5,000.

Tenders may be obtained by public advertisement or private invitation. Within PWS, media-advertised tendering is referred to as *public tendering*. Generally, public or advertised tendering will only be used where high dollar value contracts are required. For example, a minimum threshold of \$25,000 to \$30,000 should be considered.



Advertised (Public) Tendering

Newspapers

When advertising tenders (or proposals), the primary vehicle to advise the public is the NWT newspaper media. In the future, developments in information technology may result in widespread use of Internet distribution of tenders.

For low value tenders (under \$100,000), tenders need only be advertised in the local newspaper. For higher value contracts, (eg. over \$100,000), also advertise in *News/North*, as well as in the local media.

Advertise in English. Ads placed in the *Nunatsiaq News* are automatically translated into Inuktitut and those placed in *L'Aquilon* will be in French only.

Public Notices

In addition to advertising, post public notices of advertised tenders, regardless of the value of the contract, in all Regional tender opening locations, and in the Hamlet or Settlement office in the community where the work will be done.

Invitational Tendering

All contracts for goods and services whose estimated value is less than \$25,000, and all construction contracts whose estimated value is less than \$100,000, may be tendered by invitation, as a matter of course, without going to public tender. Instead, the tender documents are sent to only those bidders selected by the purchaser.

Where practical, all qualified potential bidders in the area of the work should be invited to tender. The invitation to each bidder should include the same items normally appearing in a public tender call. The reasons for selecting the invitational process and a list of all bidders who were requested to bid should be recorded. This written explanation is important for future reference and to explain why an advertised tender process was not followed.

Unrestricted Invitational Tenders

Invitational tenders may be issued on an unrestricted basis. This means that, although tenders are sent only to selected contractors or suppliers, any other contractor or supplier is free to request tender documents and submit a tender. The use of unrestricted invitational tenders is limited by the *Business Incentive Policy*.

Restricted Invitational Tendering

For *restricted invitational tenders*, tender documents are sent only to contractors or suppliers specifically selected to submit bids. Tender documents will not be sent to, nor will bids be accepted from, bidders who have not been invited.

The *Business Incentive Policy*, 32.04 restricts tendering to qualified Northern businesses where the contract value is estimated to be less than \$30,000, and two qualified Northern businesses are available.

Facsimile Tendering

The use of facsimile equipment in tendering activities has become widespread and legally acceptable.

However, to preclude the possibility of claims for breach of confidentiality, technical breakdown and other issues related to the receipt of tenders, care must be exercised in drafting tender documents.

The *Instructions to Tenderers* section in PWS standard documents contains conditions under which facsimile tenders will be accepted.

Bid Security

The purpose of the bid security is to certify that the lowest acceptable tenderer will:

- execute (sign) the contract documents
- provide the specified contract security within the time specified in the contract (usually 14 days after the tenderer receives notice of the acceptance of tender)

Although bid security usually applies to construction contracts, it can also apply to other contracts, such as high value goods and services contracts.

When is Bid Security Required

Bid security may be required, if the purchaser decides that bid security is necessary, for:

- services tenders estimated at less than \$100,000
- goods tenders estimated at \$100,000 and over

When is Bid Security Not Required

Bid security is not normally required for tenders valued at:

- less than \$100,000
- \$100,000 and over, if the purchaser decides to waive the requirements for bid security

Forms of Bid Security

The bid security can be either:

- a security deposit equal to at least 5% of the tender
- a bid bond equal to at least 10% of the tender

Security Deposit

A security deposit should be equal to at least 5% of the tender. The

deposit shall be either a certified cheque, bank draft, a bank *Irrevocable Letter of Guarantee*, or such other security acceptable to the GNWT. The security deposit shall be payable to the Government of the Northwest Territories.

The GNWT may keep the security deposit of the successful bidder as damages if the bidder:

- refuses to enter into a contract
- refuses or is unable to provide the required contract security
- withdraws the tender during the tender acceptance period and prior to the acceptance by the GNWT

Bid Bond

A bid bond should be equal to at least 10% of the tender. The bond will be in a form approved by the Federal Treasury Board, and from a company whose bonds are acceptable to the GNWT. The bid bond is payable to the Government of the Northwest Territories.

Once a bidder's tender is accepted by the GNWT, the surety (bonding company) is liable under the bid bond. The surety will be liable if the bidder:

- refuses to enter into a contract
- refuses or is unable to provide the required contract security
- withdraws the tender during the tender acceptance period and prior to the acceptance by the GNWT

The surety will be liable under the bid bond for damages suffered by the GNWT. These damages can be:

- the difference between the defaulting bidder's tender and the next lowest tender
- the inconvenience and expense of calling new tenders
- additional damages resulting from delays in the commencement of the work

The maximum damages payable under the bid bond, regardless of the actual loss, are the face value of the bond.

Return of Bid Security

The security deposits or bid bonds are returned at two different events:

- after the opening of tenders, and
- on award of the contract

After Tender Opening

After tender opening, it will be clear which bidders are low, and after review and application of the preference under the *Business Incentive Policy*, which bidder may be successful in receiving the contract. Therefore after opening the tenders, all security deposits, other than those of the tenderers still in the running, can be returned to the respective bidders.

The bid security of the tenderers still in the running is safely and securely retained.

After Contract Award

Upon award of the contract:

- return the bid security of the unsuccessful bidders
- if it's a security deposit, retain as part of the contract security
- if it's a bid bond, retain until the contract documents are executed, and all required contract security has been provided. At that time and if requested, return the bid bond to the contractor.

Preparing Tenders

This section deals with the preparation of tender documents, and includes discussions on standardized documents, tender periods, FOB (Free on Board) issues, and resources to research suppliers.

Approval to Tender

Undertaking the tender process introduces legal obligations upon the Government. Once tendered, contracts are formed between the Government and bidders; therefore, certain approvals and documents must be used in the process.

Requisition for Supplies and Services

A Requisition for Supplies and Services (NWT1673), when properly completed, including the commitment of funds, is the recommended document to use to obtain approval to commence tendering. In addition to providing funding and requirement information, this form also provides a unique reference number that can be used to identify the tender, contract and financial commitment.

Tender Documents

A standardized contract is a type of recurring contract approved by the Legal Division, Department of Justice, where the terms and conditions remain unchanged, except for the particulars of the parties involved, the work or description of it.

The table that follows outlines documents that have been prepared for PWS tendering and contracting activities. The documents have been reviewed and approved by the Department of Justice for the purposes indicated, and could be used by other departments.

Should requirements exist that are not covered by these documents, PWS Regional Support Services Division staff are available to help develop and implement appropriate documents.

TABLE: PWS STANDARD DOCUMENTS

Type of Tender	Standard Document
Goods Purchasing	<i>Purchase Order (NWT1125)</i>
Goods Purchasing	<i>Request for Tenders (NWT1394)</i>
Miscellaneous Services	<i>Request for Tenders (NWT4444)</i>
Maintenance Services - Quotations	<i>Request for Quotations - Services (NWT4359)</i>
Maintenance Services	<i>Request for Tenders - Construction and Services Contract (NWT4380)</i>
Aircraft Chartering - Under \$25,000	<i>Request for Quotations - Aircraft Chartering (NWT4379)</i>
Aircraft Chartering - Over \$25,000	<i>Request for Tenders - Aircraft Charters (NWT4445/0497)</i>

These tendering forms incorporate certain terms and conditions that have been developed for each specific purpose. As mentioned, each form has been approved by the Legal Division, Department of Justice.

The forms are currently produced on a PC-based program called *F3 Forms Fill for Windows*. Copies of this program have been made available to each Department and Region.

Future developments may include replacing this system with electronic distribution methods.

Non-standard Contracts

The *Financial Administration Manual, Directive 808 (3.4)* states that all contracts over \$50,000 in value that are non-standard contracts must be approved by the Legal Division, Department of Justice.

Tender Periods

The amount of time to be specified between issuing the tender and the closing date will vary depending upon a number of factors including:

- whether the tender will be invitational or advertised
- the type of contract (goods, construction or service)
- particulars of the requirement

Advertised Tenders

It's essential that the minimum tender period gives contractors sufficient time to prepare accurate bids.

The suggested minimum tender periods for advertised tenders depend on the contract value and are as follows.

Contract Value	Suggested Minimum Times
less than \$100,000	2 working weeks (10 business days)
\$100,000 and over	4 working weeks (20 business days)

Note that the GNWT's *Interim Measures*, pursuant to *NFA's Article 24* governing contracting in Nunavut, specifies minimum tender periods.

Invitational Tenders

The time period required to obtain tenders using invitational tenders is generally shorter than that required for publicly-advertised tenders.

Since there are no advertising restrictions, the time period allowed for submitting tenders should be reasonable and sufficient to ensure a reasonable bid response. Some factors to consider include:

- the marketplace
- availability of suppliers or contractors
- location of tenderers
- use of facsimile or sealed bids

As a general rule, the minimum time period to be allowed for invitational tendering is one week. This is acceptable in the case of simple, well-defined goods contracts, where there is a clearly identified supplier base capable of supplying the goods.

On the other hand, the maximum time to be allowed for tenders is judgmental and depends on what reasonable time period is required to enable prospective tenderers to properly prepare and submit a tender.

Bid and Contract Security

Bid and/or contract security may be required. For a discussion on that, see 2.1, *Principles of Tendering - Bid Security*.

FOB Points

The term 'FOB' means *Free on Board*. FOB is commonly used in pricing to establish the point at which title to purchased materials passes to the owner. FOB is relevant to, for example, responsibility for insurance coverage, taxes, transportation costs, etc.

Selection of FOB Terminology

It is important that the purchaser is fully aware of the correct definitions relating to FOB points. The following examples are provided to assist in the proper selection of FOB and freight terms.



Note that in applying these examples, the terms '*origin*' and '*destination*' would usually be replaced with specific geographic locations.

- **FOB Origin, Freight Collect:** The buyer owns the goods in transit, bears and pays the freight costs, and files any transportation claims.
- **FOB Origin, Freight Prepaid:** The buyer owns the goods in transit and files any transportation claims. The seller bears and pays the freight charges.
- **FOB Origin, Freight Prepaid and Charged:** The buyer owns the goods in transit, bears the freight charges, and files any transportation claims. The seller initially pays the freight charges, and invoices the buyer.
- **FOB Destination, Freight Collect:** The buyer bears and pays the freight charges. The seller owns the goods in transit and files any transportation claims.
- **FOB Destination, Freight Prepaid:** The seller bears and pays the freight charges, owns the goods in transit, and files any transportation claims.

Determining FOB Points - Costs/Benefits to GNWT

FOB points and freight cost responsibilities must be determined in each instance by using sound judgment based on procurement principles and policy. The purchaser is responsible for ensuring that the best value is obtained for the Government.

Specifying **FOB Destination** in contracts provides the following

benefits to the Government:

- risk to the Government of damage and loss in transit is minimized
- local and Northern suppliers have an advantage because they are more familiar with transportation links to the community and may have low cost, bulk arrangements with transportation companies

Conversely, using **FOB Origin** may hinder the Northern or local suppliers' ability to do business with the Government, particularly if southern suppliers are involved.

Resources for Researching Suppliers

There are a number of resources that can be used to determine sources of supply for goods. These include:

- Northwester's *Yellow Pages*
- the *Business Incentive Registry*
- a suggested supplier as provided by the originator of the requirement
- the Internet
- various industry catalogues and trade magazines

Authorization to Sell and Warranty Coverage

When selecting suppliers to invite to tender, it is important to consider whether or not they are authorized by the manufacturer to sell the particular goods. This is important so that the goods will be covered by the manufacturer's warranty.

Receiving Bids

The tender process must treat all potential bidders fairly and equally, so that the purchaser can be confident that competitive prices have been received from all interested bidders. This section describes how to ensure that tenders are properly handled to achieve this objective.

Receipt of Bids

Every tender call includes a closing date and time for the submission of tenders. As the closing time approaches, bidders will submit their bids. As soon as these bids are received, the date and exact time of their receipt must be confirmed and noted on the face of the tender envelope. The person receiving the envelope must also initial or sign beside the date and time.

It is extremely important **NOT** to accept a tender, unless it is intended for you, **OR** you are able to take responsibility for its receipt and can ensure its timely delivery to the person for whom it is intended. In most cases, a tender will be considered received as long as it has been knowingly accepted by any representative of the GNWT.

Disclosure of Tender Information

The following types of information must not be divulged before tender closing:

- budget estimates for the tender
- similar previous bids and contracts

Protection of Bids

All bids received must be kept in a private and secure area.

Information pertaining to bids that have been received is strictly confidential. For example, the number of bids received and the

names of bidders is confidential and must not, under any circumstances, be divulged to anyone before tenders are opened.

This information may affect the price a bidder submits, or may even convince a bidder not to bid at all. If a bidder learns, just prior to closing time, that no bids have been submitted, the bidder would then have the opportunity to submit a high price and be the successful bidder. This situation is unusual, but must be anticipated and avoided.

Sealed Bids

Every tender call will identify whether bids will be submitted in a sealed envelope, or if a facsimile submission is acceptable. If the tender must be submitted in a sealed envelope, then the bid **must** be submitted in the sealed envelope provided or any other envelope clearly marked as a 'Tender'. The envelope must also contain the following information:

- tender reference name and number
- closing date of the tender
- name and address of the person or firm who submitted the tender

The bidder is responsible for ensuring that the sealed envelope is delivered to the appropriate tender opening location or office. This location will be identified in the tender documents, and must not be changed by the purchaser except through a written addendum.

Facsimile Bids

In cases where facsimile tenders have been called for, the bids must receive the same degree of security and control as is afforded to sealed tender bids. These bids must be inserted into an envelope and sealed immediately upon receipt. The sealed envelope must be marked with the appropriate tender information details (listed above under *Sealed Bids*), and initialled by the person receiving the document.

The use of facsimile tender receipt procedures does not eliminate

the regulatory requirements for a public opening by a tender-opening committee. The envelopes containing the facsimile tenders should be opened in the same manner as for sealed bids.

Late Tenders and Amendments

Late Tenders

A late tender is one received after the official date and time set for the receipt of tenders. Bids received after the closing time should be date- and time-stamped, and returned unopened by registered mail, with a covering letter noting that the bid was received late.

Before returning a late tender, a photocopy of the tender envelope showing the date and time of receipt and the transmittal letter should be placed in the tender file.

If a tender is received late due to the negligence of the purchaser, the bidder who submitted the tender may be able to claim damages from the purchaser. If this happens, you should seek advice immediately.

Amendments

Amendments to tenders received after the official time set for receipt of tenders are treated in the same manner as a late tender, and are not accepted. However, the one major exception to this rule is an amendment reducing the value of the lowest acceptable bid.

An amendment reducing the low bid received after the tender closing time may be accepted as a post-tender negotiation. If the low bidder insists on withdrawing the late amendment that reduced the tender, we must comply with the request.

No Tenders Received

If no tenders are received by the time set for receipt of tenders, the Tender Opening Committee should prepare a *Register of Tenders* duly noted, 'No Tenders Received'. If no bids are received, the purchaser should try to identify why no bids were received, and should make appropriate changes to any future tender call for the same requirements.

Illegible or Unmarked Tenders

An illegible or unmarked envelope, which is received and appears to the recipient to be a tender, may be opened prior to the tender closing to determine its contents. **This should only be done in the presence of at least one witness.** If it is a tender, the envelope may be resealed after it is appropriately identified with the information required on the face of every tender (see *Sealed Bids* earlier in this section). The envelope may then be reopened with the other tenders in the usual manner. A note should be attached or made on the envelope that the document was received unmarked, and was opened, identified and resealed. This note should be signed by the person opening the envelope and by the witness.

The bidder submitting the unmarked or illegible envelope should be advised of what happened, and warned that in future this may lead to a rejection of the bid. Rejection would occur because the insufficient or improper identification would mean that the bid would not be opened until it is too late.

Opening Bids

This section discusses procedures that should be used when conducting public openings of tenders and proposals.

Openings Done Publicly, Promptly, Professionally

In accordance with *Government Contract Regulations*, all publicly advertised tenders and invitational tenders over \$5,000 in value must be opened in public. Additionally, to be fair to all bidders, the tender opening process must be public, timely, and conducted in a professional manner. Tenders must be opened as soon as practical after the closing time.

If this process is not followed, this may be seen as a failure to respect the integrity of the bidding process. A late opening will prompt bidders to ask why the opening was delayed, and whether late bids were accepted. An official clock should be designated as the clock to be used for tender closures.

Tender Opening Committee

A *tender opening committee* presides over the tender opening. It should consist of at least two, but preferably three, members - a Chairperson, a Secretary and a Witness (usually the purchaser).

The committee opens all bids that have been received on time, and prepares and signs a *Tender Register* for each tender call.

Prior to opening tenders, the Chairperson should announce that all tenders received are subject to audit and review prior to any recommendation for award, and that no questions concerning tenders will be answered during the opening. The Chairperson should then announce the official name of the project for which tenders are being opened.

Information to be Announced

Upon opening each tender envelope, the Chairperson must announce:

- the name of the person or company who submitted the tender
- whether or not security, if required, was furnished with the tender (the type of security can be mentioned, but **never the amount of the security**)
- the amount of the tender
- any amendments to the total amount of the tender
- the final tender price, which would be the tender price plus or minus any amendments

No other announcements are made, nor should any other information be provided.

Completing the *Tender Register*

The Secretary records on the *Tender Register* the information announced by the Chairperson:

- the correct name of each bidder (occasionally the name appearing on the envelope is inconsistent with the name appearing on the tender)
- the amount of each tender originally announced, every change to the amount, and the revised tender amount. (When the amendment is expressed as a price reduction or increase, the revised amount is calculated; amendments not related to price are not recorded by the Secretary.)
- the type of security - certified cheque, bid bond, etc. (if any)
- the final tender price

Each member of the committee signs or initials every tender and related amendment (letter or facsimile), as well as the *Tender Register*. Tenders should be initialled on the page that indicates the total tender price.

Tender Evaluation

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

The tender review consists of 3 principal areas, detailed below:

- administrative review: is the tender responsive?
- technical review: is the tender responsive?
- bidder evaluation: is the bidder responsible?

Administrative Review

Responsive and Non-responsive

Responsive means, in relation to a bidder or tenderer, that the person has submitted a tender 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 tender is non-responsive. If the tender documents are changed by the contractor, or if the bid is qualified in some way, the bid is non-responsive. For example, if the contractor changes the requirement "Supply and install 16 **metal** windows" to "Supply and install 16 **wood** windows", the bid is non-responsive.

If a tender is non-responsive, this **may** be grounds to disqualify the tender; however, this is **not** so in every case. For example, if a tender requests an optional price for wood windows in place of metal windows, and the contractor does not provide a price for the option, the tender is non-responsive, but would not automatically be disqualified.

Disqualification of Non-responsive Bids

The decision to consider an improper or incomplete tender 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 tender. 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 tenders further must result from exhaustive consideration of all the facts and conditions.

On the other hand, it is **not** in the public interest to disqualify a bid because of an error that neither jeopardizes the integrity of the bidding process, nor compromises the position of the Government in obtaining the purchase at a reasonable cost. For example, the incorrect signature and sealing of a document is not 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.

Proposals

Proposers cannot be deemed non-responsive. 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 may be rejected for that reason.

Tender is Incomplete

A tender 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 tendered 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 may 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 exception is when **only one** unit price is missing, or 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

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

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 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. To determine if the qualification is material, consider the following:

- does the qualification make the bid substantially different from the other bids?
- does the qualified bid have a significant effect on the completed product?

If the answer to both these questions is negative, the qualification is likely not material.

Other Factors and Options in Qualification

When the qualified bid is the low bid, other factors may also be considered for not disqualifying the bid. Examples include:

- if there is a significant price difference between the lowest and the second lowest bidder so that even if the qualification had not been made, it would still be the low bid
- if the other bids are responsive and responsible

Other options or possibilities available to the GNWT in the case of a qualified or conditional bid are as follows:

- to allow the bidder to withdraw the qualification, with no change to the overall price of the bid
- to accept the qualified bid as is, provided that it gives better quality than specified at the bid price, or gives the same required quality at a lower price (but only if in doing so, no other bidder is treated unfairly)

If all bidders are qualified in one way or another, the situation is not as delicate. The GNWT can 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.

There is no easy formula or equation available to solve the problem of qualified tenders. Sound judgment must be applied and the following considered:

- what is fair
- what is ethical
- what is reasonable
- what is in the interest of the public purse
- what is the industry position

Identical Low Tenders Received

According to the *Government Contract Regulations*, when two identical low tenders 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.
- In the case of goods contracts within **Nunavut**, if one of the bidders is an **Inuit** firm, they must be awarded the contract.

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 proposer or a tenderer, 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 proposer or tenderer 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 tenderer that is invited to tender cannot normally be deemed not responsible. The act of inviting a firm to submit a tender presupposed that the firm is qualified to bid.

A tenderer or proposer should be deemed not responsible only by the Deputy Minister.

Inadequate Tenders (Price Too Low)

When the lowest price tender 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 cooperative (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 either:

- 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:

- **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.
- **Acceptance of a reduced offer based on minor changes to the scope of the work** (up to 15% of dollar value) - 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.
- **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
 - scope has been changed to an amount greater than 15% of the initial tendered dollar value.

The fundamental intent of the original tender call remains the same. Tenders may be re-invited by reducing the scope of the work. However, there may be other ways as well.

Technical Inconsistencies in the Tenders

The technical review may reveal that a tender is not in strict accordance with all the requirements and specifications. That tender is then subject to disqualification. For example, say the tendered specifications require that metal windows be supplied, but the bidder indicates that they will not supply metal, but wood windows instead. In this case, the bid is non-responsive and subject to disqualification, because the bidder proposes something entirely different from the specifications.

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.

In all cases where a tender 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 the purchaser receives only one bid, it 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 the time permitting
- 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.

Tender Award

This section describes awarding the contract and notifying bidders. Once the tender review process has been completed, the purchaser should be in a position to either award the contract, or to obtain approval to make the award.

Once internal authority or approval has been obtained to award a contract, the successful bidder must be notified of the acceptance with minimum delay.

Tender Acceptance Period

Although an award may be made at any time after the tender closing, the bidder is not bound to accept the award after the specified tender acceptance period. If it appears unlikely that an award will be possible before the tender acceptance period expires, the bidders may either be notified that the acceptance period has been extended, or requested to extend the terms of their tender bids beyond the acceptance period. The procedures for extending the acceptance period depends on the type of tender/contract that is used.

While a formal acceptance period does not apply to proposals, they too can be time sensitive. The evaluation and contract negotiation should be concluded without undue delay.

Methods of award notification used for PWS contracts are a *Purchase Order, Letter of Acceptance* and *contract*.

Purchase Order

The *Purchase Order* is used to notify successful bidders for all goods tender awards. In addition to acceptance of the tender, the *Purchase Order* serves to provide specific information relative to shipping and invoicing.

Letter of Acceptance

Letters of Acceptance may be used to notify successful bidders of contract awards for all service and consulting contracts. A *Letter of Acceptance* is a formal acceptance of an offer; it constitutes a legal agreement or contract between the GNWT and the contract party.

Contract

A formal contract incorporating the terms described in the tender may be sent to the successful bidder for execution.

Important Points of Notification

The award notification should be reviewed carefully to ensure the following details are accurate:

- the award is made to the approved bidder
- the bidder's name and address are identical with those under which the offer was made
- the description of the goods/service/project and the delivery location is identical to that quoted in the tender or proposal
- the contract price shown conforms with the bidder's offer, including any amendments (which should be noted)
- the offer being accepted is correctly identified - i.e., options or alternatives need to be identified if they are being accepted, etc.

Notification of contract award is normally sent by facsimile. It is important that a confirmation of transmission is received and kept on file. In most situations, the original award document should also be sent by mail.

Letters of Regret

Letters of Regret are used to notify the unsuccessful bidders or proposers that a contract has been awarded to another party.

Letters of Regret should be used for:

- all proposal calls
- all tenders greater than \$25,000

The attached sample letters are provided for the purchaser's information and use.

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