

Pre-contract Phase – Preparing the Bid

Book 4



Procurement in Indigenous Communities



Contents

1. Introduction 4
2. Define your requirements..... 4
3. Define your budget 5
4. Plan the procurement process..... 5
4.1 Expertise level 5
4.2 Contract documents 5
4.3 Open request for bids or prequalified bidders 5
4.4 Enough bidders to ensure competitive pricing..... 6
4.5 Alternates and Substitutions 6
4.6 First Nations supplier considerations 6
4.7 Fiduciary trust 6
4.8 Period of modifications or withdrawals for bidders..... 6
5. Pre-tender (or pre bid) survey 7
6. Obtain necessary approvals 7
7. Bid solicitation (or issuing the tender)..... 7
7.1 Obtaining bids 7
7.2 Instruction to bidders 7
7.3 Bid closing time 8
7.4 Forms and supplements..... 8
7.5 Assessing Bids 9
7.6 Determining the successful bidder 9
8. Pre-bid conference..... 10
9. Examples and more information 10



About these books

The Procurement Books are a series of books to offer guidance to Indigenous communities who want to get better value for their money when they purchase goods and services. The books outline the general procurement principles, procedures and practices for those Indigenous communities interested to establish a procurement process. The books are designed to address many of the procurement challenges associated with Indigenous communities.

The goal of these books are to help Indigenous communities to purchase goods and services including the construction of homes are acquired by the Communities through a process that is fair, open, transparent (gifting) , non-discriminatory, geographically neutral and accessible to qualified suppliers, subject only to established procurement policies.

The Procurement Books include:

1. Introduction to Procurement in Indigenous Communities
2. Construction & Procurement in Indigenous Communities
3. Roles and Responsibilities, Construction Documents & Construction Contracts
4. Pre- Contract Phase – Preparing the Bid
5. Contracting Phase
6. Contract Administration Phase
7. Post-Contract Phase
8. Guides & Resources
9. Terms & Conditions/Definitions

Acknowledgements

FNNBOA wants to thank Indigenous Services Canada (ISC) for the funding of this project. The association wants to thank those individuals who provide comments to the development of the books.

Disclaimer

The views in these books are those of the authors and do not necessarily reflect the views and policies of ISC or the Board of FNNBOA. FNNBOA does not guarantee the accuracy of the information in these books and accepts no responsibility for any consequence of their use. The reference of specific websites does not imply that they are endorsing the information in the books. The information contained in these books are provided for general information purposes only and do not constitute legal or professional advice on any subject matter. FNNBOA does not accept any liability for actions arising from its use and cannot be held responsible for the contents of any pages referenced by an external link. Given the nature of procurement, it is recommended that Indigenous communities seek advice from legal counsel or a professional procurement expert regarding their procurement policies.

1. Introduction

This section introduces requirement definitions, preliminary procurement planning and issuing the bid (or tender) solicitation.

The pre-contract phase includes the planning required to issue a bid before a contractor is selected and a contract is signed.

Activities include:

- Defining and writing your requirements
- Defining your budget
- Defining and writing the procurement considerations
- Choosing the appropriate procurement approach
- Confirming approvals for the procurement process
- Identifying and writing environmental performance considerations
- If applicable, defining and writing the non-competitive justification
- Writing and verifying security requirements
- Writing and verifying intellectual property considerations
- Defining and writing the evaluation criteria
- Developing the bid solicitation document
- Writing and verifying the statement of work
- Defining and writing the appropriate contractor selection methodology

2. Define your requirements

Defining your requirements is where you describe and write the objectives for the project. The description can be detailed or general. A more detailed the description is likely to result closer to the chief and council's vision.

Brainstorm and write down a list of requirements.

What is the purpose of the building? What role will it play in the community? Is it multi-purpose, accessible and flood proof? Does it use green technology? What is the budget? What is the ideal construction schedule? Who will be living there? Do they have any accessibility needs?

Keep checking your list to make sure you have not missed anything.

The program requirements must also include drawings and specifications to convey the chief and councils' and designers' intentions. It must be clearly conveyed to the contractors responsible for constructing the project. Also be aware of constraints including limited resources, delivery limitations, weather related limitations, unknown soil conditions or environmental regulations.

It is important to understand the risks associated with the project. No construction project is risk free.

3. Define your budget

Every project can face constraints based on time and/or money. The budget is the money available to complete a project. While project costs can be overestimated, they should not go over budget. Surpassing the project's budget involves finding additional source of financing, which can hinder finishing the project.

A budget is typically created in the initial phase of the project because money is available, or a council seeks funding to conduct a project. In some cases, the budget is an allocated resource, which will guide the design activities to limit the costs within the allocated budget. In other cases, a budget may be prepared to evaluate the costs for a specific construction requirement in order to secure the proper funding.

Budget costs can be calculated by using past project information. Past estimates of cost can provide a valuable resource to determine an approximate cost. Maintaining information on past project costs helps to document general costs per unit (e.g. dollar per square foot), which can be used to establish future budgets.

Chief and councilors can also seek costing expertise through consultants or design professionals who are familiar with construction costs. Budgets should include contingencies to allow for unforeseen cost increases during the construction.

4. Plan the procurement process

4.1 Expertise level

The approach to project delivery can vary. What level of expertise is required for the project? Can this contract work be accomplished under other professional expertise, or can it be based on a project similar in scope? (Architect, engineer, contractor, subcontractors or local builder)

4.2 Contract documents

Contract documents typically include drawings, specifications, change orders and other forms. **Accurate, complete drawings are a must.** Poorly prepared drawings and specifications can raise questions in the mind of bidders about what is required. To cover unforeseen items, a contractor is likely going to add extra costs into a bid to cover unknowns.

4.3 Open request for bids or prequalified bidders

Bidding may be open to any contractor or can be based on a limited list of bidders who have been prequalified by the council. Prequalification helps identify those contractors that meet a standard for reliability, experience, financial stability and performance.

4.4 Enough bidders to ensure competitive pricing

Knowledge of local market conditions and any limitations should be considered in advance of the project award. Costs of similar construction projects are useful to use as guidelines. A cost estimate for a project provides a translation of the design information detailed in the bidding documents. There should be enough bidders to encourage price competition.

4.5 Alternates and Substitutions

- Bidders may offer alternates and substitutions in their submissions. There are different ways to deal with alternatives and substitutions:
- Refuse all alternatives and substitutions - refuse any equivalent to what you have described on specifications or drawings, and eliminate any bids that offer alternatives and substitutions
- Accept alternatives only at bidding time
- Establish rules about when and how an alternative can be considered

4.6 First Nations supplier considerations

Another procurement consideration can be to whether or not to exclude private and band-owned business operations.

To be eligible to use their own labour, suppliers, equipment, etc., the First Nation must demonstrate that it has the capacity to fully complete all aspects of the subtrade work in accordance with the standards and specifications contained within the approved project submission, in providing skilled labour, appropriate equipment or the required material.

For off reserve contractors, requirements should be clearly specified for the project under consideration.

4.7 Fiduciary trust

Purchasing materials, equipment and services is a significant part of the overall cost of a project. Project procurement decisions require a high degree of legal obligations.

4.8 Period of modifications or withdrawals for bidders

A bid condition can specify that by submitting a bid, the bidder agrees not to modify or withdraw its bid for a specified period of time (i.e., typically 30 to 60 days).



5. Pre-tender (or pre bid) survey

Pre-tender refers to activities in the tendering process prior to the award of the project and includes:

- Budgeting and scheduling for the project
- Defining capable bidders
- Defining and writing project conditions such as soil reports and testing

A pre-tender survey should include:

- Council's ownership
- Responsibilities (who does what)
- A list of any specific chief and council's requirements
- A list of conditions that exist for the start of construction
- Accurate cost information to enable the council to make an informed decision about the feasibility of the proposed project
- Consideration about whether using local First Nations labour, equipment and materials is realistic for the project
- Proper bonds, insurance and worker's compensation (where/if required).

The pre-tender survey is opportunities to review and assess solutions that can benefit and deliver the project objectives in the most economic manner without adversely affecting the outcome of the project.

6. Obtain necessary approvals

Chief and councillors may need to have the necessary approvals to commence a build project. These include environmental assessments, zoning requirements and building permits. A building permit gives builders legal permission to start a construction project. Construction permits ensure that all building projects are studied and inspected, and that drawings and specifications are reviewed for compliance before the construction actually begins.

7. Bid solicitation (or issuing the tender)

7.1 Obtaining bids

At the outset of the project, the following must be determined:

- Form of project delivery
- Type of construction contract
- Method for awarding the contract

7.2 Instruction to bidders

The Instructions to Bidders document is a collection of instructions to all bidders, outlining specific criteria for preparing and submitting the bid form. It also outlines the intended process for bid evaluation.

It does not contain any information that would need to be enforced during the execution of the work. It is not necessary to include this document among the contract documents.

7.3 Bid closing time

Problems have been encountered with certain wordings associated with construction bid closing time. Here is an example of a well-worded instruction: ***Bids must be received before 3:00 P.M. local time on Thursday, February 19, 2020.***

7.4 Forms and supplements

Developing a bid form for a project requires careful planning and assessment of the council's needs. The bid form is the project-specific form, initially prepared by the bid-calling authority. Each bidder is required to complete and submit the bid form, in a secure manner, to the bid-calling authority.

This Bid Form has been developed for use with the CCDC 2, Stipulated Price Contract. With minor modifications, it is useful when implementing either project specific or other CCDC standard forms of contract.

A sample of bid forms is available in the annex portion of this document – “Guide to Calling Bids” http://www.marant.ca/media/CCDC_23_Guide_to_Bidding.pdf

The bid form should include:

- The project name
- The project identifying number, if any
- The legal name of the council and its legal address on the reserve
- A place for the bidder to insert its legal name
- The name of the consultant, project manager or other project leader
- A place for the bidder to insert and identify any addenda issued during bidding, and issued during the preparation of their bid
- A place for the bidder to insert the bid price, in both words and numbers
- A listing of any allowances, taxes (including a description of how Value Added Taxes are to be dealt with) and any duties that may be applicable
- A statement confirming that the bidder agrees to perform the work within the identified time period, or a blank line for bidders to indicate the proposed project or task completion schedule
- Special criteria, such as a preference to use local labour, environmental standards, security requirements, etc.
- A series of appendices, allowing the bidder to submit any requested supplemental information
- A listing of the bid documents upon which the bid is based on
- The time period for which the bid will remain open to acceptance
- A place for a bidder to apply its signature(s) and either its corporate seal or a witness signature, as appropriate to its individual business requirements

Supplements to a bid form may include:

- A form or listing that identifies all the bid documents
- A form for a bidder to identify primary subcontractors/suppliers being proposed
- A form for a bidder to identify the value of requested unit prices
- A form for a bidder to identify the value of requested alternative prices and
- A form for a bidder to identify the value of requested itemized prices

Bid-calling authorities sometimes issue specially prepared bid forms to subcontract mechanical, electrical or other special portions of the work. However, this practice is neither supported nor recommended by Construction Specifications Canada or the Canadian Construction Documents Committee (CCDC).

Since the bid calling authority is only awarding a contract with a primary or singular contractor, and not with subcontractors, subcontract bid forms are neither appropriate nor of any real or legal value.

7.5 Assessing Bids

The bidding process usually involves three criteria for a council's consideration:

1. Price
2. Time
3. Competency of the bidder to perform the work

Other criteria, such as a preference to use local labour could be used to evaluate bids, provided these criteria have been identified in the bid documents.

7.6 Determining the successful bidder

Bids should be opened immediately after the closing time, allowing bidders or their representatives to be in attendance. Once the bids are received and have been opened, the bid calling authority requisite work begins to carefully review each bid. They must determine that all conditions have been met. Provided the bid conditions have been met and that no errors in the bid are identified, and with all other considerations being equal, the contract is generally awarded to the lowest bidder.

Note that public sector bid calling authorities often have policies where selection of the successful bidder is based solely on the lowest price submitted. Using the lowest cost to award a contract may not always be in the best interest of the parties, particularly when the selected bidder may have made an error, either mathematical or as a result of incorrect assumptions, on which the bid price has been based.

The form of construction contract which the successful bidder is required to enter into should be stated in the bid documents. Where the Council issues a "letter of intent," which does not provide for unconditional acceptance of the bid, the contract may or may not be created at that point, depending on the wording of the letter. A letter of intent should only be used where significant issues are yet to be negotiated or where the bidder has not yet formally agreed to some conditions.

8. Pre-bid conference

On some projects it is useful to hold a conference or “on site meeting” prior to bid submission. This gives bidders an opportunity to become familiar with the site and to ask the council and/or architect/engineer/designer questions.

During this session, notes should be taken to help bidders get a better understanding of the project, site conditions and any other related requirements. All bidders should receive a copy of the session notes to provide the latest bidding information.

9. Examples and more information

For CCDC documents:

[http://csc-dcc.ca/ccdc+\(canadian+construction+documents+committee\)/](http://csc-dcc.ca/ccdc+(canadian+construction+documents+committee)/)

For Government of Canada – The Procurement Rules and Process, see Chapter 2 and Chapter 3.

<https://buyandsell.gc.ca/for-government/buying-for-the-government-of-canada/the-procurement-rules-and-process/phases-of-the-procurement-process>

Stipulated Price Bid Form (Ottawa Construction Association):

<http://www.o.ca/docs/resources/modelbid/Stipulated%20Price%20Bid%20Form.pdf>