

ACCEPTANCE OF BID AND EXECUTION OF CONTRACT – SECTION 1200

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1200.1 IRREGULAR AND NON-COMPLIANT BIDS

1200.1.1 At Bid opening and during evaluation, all Bids will be assessed for compliance with Section 1100 and the Special Provisions.

1200.1.2 Subject to Subsection 1200.1.3, the Minister may waive or correct any non-compliance or irregularity in a Bid if the Minister is of the opinion that waiving or correcting the non-compliance or irregularity would not give that Bidder an unfair advantage over other compliant Bidders.

1200.1.2.1 Any non-compliant or irregular Bid that has been waived into the competition shall be deemed compliant and regular and the Minister may award the Contract to the Bidder. The Minister's decision is final and binding and shall not be open to review by any court.

1200.1.3 Bids will be rejected for any of the following reasons:

1200.1.3.1 The Bid has not been submitted on or before the closing date and time as stipulated on the Bid Form.

1200.1.3.2 A bid guaranty (if required) is not provided with the Bid.

1200.1.3.3 The Bid Form is not signed.

1200.1.3.4 The Bid Form has been materially altered.

1200.1.3.5 The Bid is conditional or qualified in any way.

1200.2 EVALUATION OF BIDS

1200.2.1 Following the opening of Bids, all compliant Bids or Bids deemed compliant pursuant to Subsection 1200.1.2 will be evaluated by the Minister in accordance with all or any of the following criteria:

1200.2.1.1 the Total Amount of Bid;

1200.2.1.2 the Bidder's past performance on previous projects with the Ministry;

1200.2.1.3 the Bidder's financial capacity to carry out the Work;

1200.2.1.4 the Bidder's experience and qualifications to perform the Work;

1200.2.1.5 the Bidder's equipment and its mechanical condition;

1200.2.1.6 the Bidder's plans for proceeding with the Work;

1200.2.1.7 the Bidder's occupational health and safety, and environmental compliance records; and

1200.2.1.8 the Bidder's references.

1200.2.2 In accordance with subsection 55(1) of *The Highways and Transportation Act, 1997*, (the Act) but subject to subsection 55(2) of the Act and the terms of this competition, the Contract will be awarded to the Bidder whose Bid, in the opinion of the Minister, offers the best value taking into consideration all or any of the criteria described in Subsection 1200.2.1. The lowest priced Bid will not necessarily represent best value.

1200.2.3 Unit Price shall govern in the event of any conflict between the Unit Price and the Extension of a Unit Price, except where it is clear that the Extension of a Unit Price is correct and the intended Unit Price can be determined with certainty.

1200.2.4 The Minister may reject a Bid due to unbalanced Unit Prices.

1200.3 CLARIFICATIONS

1200.3.1 At any time following the opening of Bids, the Minister reserves the right to seek clarification, explanation and/or supplemental information regarding the contents of any Bid for the purpose of determining whether the Minister should waive or correct any non-compliance or irregularity pursuant to Subsection 1200.1.

1200.3.1.1 Information provided by the Bidder will become part of the Bid.

1200.4 QUALIFICATIONS OF BIDDERS

1200.4.1 The Minister may require any Bidder to submit further information regarding its qualifications, including but not limited to detailed information supporting any of the criteria listed in Subsection 1200.2.1.

1200.5 BID DISCLOSURE

1200.5.1 The Minister may require the low Bidder to submit a breakdown of the following input costs, including key assumptions and associated risks, used to develop the price for any/all Bid Item(s):

1200.5.1.1 labour costs;

1200.5.1.2 equipment costs (including operating, maintenance and recapitalization);

1200.5.1.3 material costs;

1200.5.1.4 overhead costs;

1200.5.1.5 margins; and

1200.5.1.6 any other costs.

1200.5.2 Information provided pursuant to a request for input costs, key assumptions and associated risks will be held in strictest confidence.

1200.6 CANCELLATION OF COMPETITION

1200.6.1 The Minister reserves the right to reject all Bids and cancel the competition without any liability.

1200.7 ACCEPTANCE OF BID

- 1200.7.1 The successful Bidder shall furnish the Performance Bond (if required), the Labour & Material Payment Bond (if required), and other required documentation in accordance with the requirements of the acceptance letter.
- 1200.7.2 Should the successful Bidder fail to furnish the Performance Bond (if required), the Labour & Material Payment Bond (if required), and other required documentation in accordance with the requirements of the acceptance letter, the Minister may deem the successful Bidder to be in breach of contract, cancel the Minister's acceptance of the Bid, retain that Bidder's bid guaranty as liquidated damages and accept the Bid of the next ranked Bidder.
- 1200.7.3 Upon receipt of the Performance Bond (if required), the Labour & Material Payment Bond (if required), and other required documentation, the Minister will endorse his acceptance of the Bid on the Bid Form and return a copy of the Bid Form and Contract documents to the successful Bidder.
- 1200.7.4 Work shall not be performed or paid for until the Minister has endorsed his acceptance of the Bid on the Bid Form.

1200.8 CANCELLATION OF ACCEPTED BID

- 1200.8.1 The Minister reserves the right to cancel the acceptance of an accepted Bid at any time prior to delivering the accepted Bid Form to the Bidder.
- 1200.8.2 The liability of the Minister as a result of the cancellation of an accepted Bid will be limited to the reasonable costs of the preparation of the Bid.

1200.9 RETURN OF BID GUARANTY

- 1200.9.1 During evaluation of Bids, the Minister may return the bid guaranties of any Bids which in his judgment will not be considered further for award. All other bid guaranties will be held until the Contract has been executed, after which they will be returned to the respective Bidders, with the exception of the Bidder whose Bid has been accepted. Following the execution of the Contract and receipt of the Performance Bond (if required), the Labour & Material Payment Bond (if required), and other required documentation, the bid guaranty of the successful Bidder will be returned.

1200.9.2 Unless otherwise directed by the Bidder, all bid guaranties, except for bid bonds, will be returned by regular mail to the Bidder's address on the Bid Form. Bid bonds will be retained by the Ministry.

1200.10 PERFORMANCE BOND AND LABOUR & MATERIAL PAYMENT BOND

1200.10.1 The successful Bidder shall furnish a Performance Bond (if required) and a Labour & Material Payment Bond (if required) by a surety acceptable to the Minister. Each bond shall be not less than 50% of the Total Amount of Bid excluding the Extension of a Unit Price for all site occupancy Bid Items, unless otherwise specified in the Special Provisions, on forms supplied by the Ministry.

1200.11 LIABILITY INSURANCE

1200.11.1 The Bidder whose Bid has been accepted shall, prior to or at the time of the execution of the Contract, file with the Ministry a written declaration by its insurance company as evidence that it carries the following insurance, as well as any additional insurance or special coverage that is indicated in the Special Provisions:

1200.11.1.1 The Contractor shall maintain, at its expense, general liability insurance in respect of injury to or death of persons or loss or damage to property in an amount of not less than \$5,000,000 per occurrence, with the Crown as an additional named insured and providing protection for each insured in the same manner and to the same extent as though a separate policy was issued to each, except as to the limits of the insurer's liability.

1200.11.1.2 The insurance shall include coverage for all licensable vehicles used to perform the work, whether or not such vehicles are owned by the Contractor, in an amount of not less than \$2,000,000 per occurrence.

1200.11.2 Insurance shall not be cancelled by either party without 30 days' notice by registered mail or personal delivery to the Ministry, and in no case until final acceptance of the Work as provided in Subsection 1400.10. If any of the insurance is cancelled, the Contractor shall cease operations on the date of cancellation and shall not resume operations until new insurance is in force.

1200.12 CONFIDENTIALITY

1200.12.1 Except as provided for in Subsection 1100.11.1, all Bids will be kept confidential.

1200.13 LIMITATION OF DAMAGES

1200.13.1 The liability of the Minister for any expense, cost, loss or damage incurred or suffered by any Bidder as a result of a breach by the Minister of the terms of this competition or its duties or obligations to a Bidder, express or implied, including the duty of fairness or resulting in any way from any action taken or not taken by the Minister in connection with this competition, will be limited to the reasonable costs of preparation of the Bid.