



**New South Wales Government
Procurement System for Construction**

Procurement Practice Guide

Tendering construction works

July 2008

Important notices

Current version

The current version of this Procurement Practice Guide is maintained on the Internet at:

<http://www.nswprocurement.com.au/Procurement-System-for-Construction/Reference-material/Procurement-practice-guides.aspx>

Amendments

Refer to the Procurement Practice Guide Amendments Log which is available on the Internet at:

<http://www.nswprocurement.com.au/psc/ppg/amendments.pdf>

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Tendering Construction Works

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Tendering construction works

1 Aim

The aim of this Procurement Practice Guide is to assist potential service providers¹ to understand the role of a Government client and the different types of tender processes.

It provides an at-a-glance description of some of the activities that occur from the decision to request tenders through to the award of a contract or engagement. It does not form part of any legal obligation.

It is limited to tender processes and contracts for construction work and for this purpose it has adopted the definition of construction work² seen in OHS Regulation 2001, Chapter 1, Section 3, Definitions, part (1), (a) (b) and (c) from WorkCover NSW.

2 Principal Reference Documents

2.1 NSW Government Procurement Policy

The NSW Government *Procurement Policy*, July 2004 assists agencies to make appropriate and informed procurement decisions that ensure best value for money and support the efficient and effective delivery of government services.

The NSW Government is available on the internet at:

www.treasury.nsw.gov.au/__data/assets/pdf_file/0004/3955/tpp04-1.pdf

2.2 Code of Practice for Procurement

The NSW Government *Code of Practice for Procurement*, January 2005, encourages ethical standards in tendering practice by all parties and outlines how the Government, as a major client, will conduct its procurement to achieve the best value for money whilst achieving economic, environmental and social outcomes for the community. It also sets the framework for doing business with the NSW Government. It defines the principles and standards of behaviour, which must be observed, and what is expected of service providers, Government agencies as clients, employers and industry associations and unions. The Code provides a benchmark for all industry participants.

Inherent in the adoption of this Code is the Government's willingness to deal only with those organisations and personnel whose standards of performance and behaviour conform to those expressed in the Code. The NSW Government *Code of Practice for Procurement* is available on the Internet at:

www.treasury.nsw.gov.au/__data/assets/pdf_file/0015/1356/code_of_prac-curr.pdf

¹ **Service Providers** – An organisation that undertakes a contract; provides a product or service to a client, often known as a contractor, subcontractor or consultant.

² **Construction work** means any of the following:

(a) Excavation, including the excavation or filling of trenches, ditches, shafts, wells, tunnels and pier holes, and the use of caissons and cofferdams,

(b) Building, including the construction (including the manufacturing of prefabricated elements of a building at the place of work concerned), alteration, renovation, repair, maintenance and demolition of all types of buildings,

(c) Civil engineering, including the construction, structural alteration, repair, maintenance and demolition of, for example, airports, docks, harbours, inland waterways, dams, river and avalanche and sea defence works, roads and highways, railways, bridges and tunnels, viaducts, and works related to the provision of services such as communications, drainage, sewerage, water and energy supplies.

3 Policy and types of tender

3.1 Types of Tender Processes

Open Tenders

Open tenders are invited by public advertisement and on the eTendering website with no restriction placed on who may tender. However, tenderers are required to demonstrate in their tender that they have the necessary skills, resources, experience and capacity, including financial capacity, to carry out the work.

As the Department of Commerce's preference is to prequalify contractors and consultants whenever warranted, open tenders are only called when there is no applicable prequalification scheme of tenderers in an appropriate work category and contract value range.

Selective Tenders

Selective tenders are called when a limited number of potential contractors or consultants are invited to tender for a particular work and tenderers are chosen from a list of contractors or consultants who are prequalified in particular work and contract value range, with prequalification being based on a proven record of relevant satisfactory performance and capacity. Prequalified tender lists are only established where there is a continuing workload in a particular category of work over a period of time, usually two years. Inclusion on a list of contractors or consultants invited to tender is based on past performance, tender opportunities, project location and other circumstances.

See Section 4: Prequalification as a Contractor or Consultant.

Expression of Interest

Expressions of Interest are used when preregistered tenders are required for particular works that only occur intermittently such as major dams, breakwaters and some pipelines.

Expressions of interest are called by public advertisement. Subject to maintaining the minimum level of competition, the tenderers that best meet the selection criteria detailed in the Expression of Interest document will be preregistered to tender.

Invited Tenders

Invited tenders are used only in emergency situations or for specialist work when only a limited number of contractors are known to be capable of carrying out the work. In such cases, a contract may be awarded following the invitation of tenders from a limited number of tenderers without public advertisement, or a contractor may be engaged under an acceptable negotiated agreement without other contractors having been invited to tender.

4 Prequalification as a Contractor or Consultant

4.1 Contractor

The Department of Commerce prequalifies contractors for building contracts valued over \$500,000 under its Contractor Prequalification Scheme. The Department also prequalifies contractors for contracts generally valued up to \$500,000 for building works, building services, as well as single trade works under several regionally based contractor prequalification schemes in the Sydney metropolitan region, as well as the North Coast, South Coast and Hunter New England regions.

The Department of Commerce will only contract with trustee companies for small construction works valued under \$500,000, provided the trustee company satisfies all the specified requirements for contractors not trading as a trustee company.

Contractor Prequalification and Best Practice Accreditation Scheme 2008-2010 (for Construction and Related Works)

The Department of Commerce is implementing the Contractor Prequalification and Best Practice Accreditation Scheme 2008-2010 (for construction related works) for contracts valued greater than \$0.5M (prequalified contractors); greater than \$2.5M (Best Practice accredited contractors).

The Scheme prequalifies contractors for a range of Building works, contract systems, contract values and locations. The Scheme aims to promote initiatives and business practices by construction contractors that lead to a more competitive, innovative, productive and safe industry that is also socially and environmentally responsible.

The *Contractor Prequalification and Best Practice Accreditation Scheme 2008-2010* (for construction and related works) is available on the internet at:

http://www.nswprocurement.com.au/psc/service_provider_selection/2008_2010_contractor_scheme.doc

Following a successful application, the contractor's name is placed on a list of prequalified contractors. If there is no requirement to change the contractor's prequalification work categories, contract value ranges, financial capacity, performance record or business relationship with the Department of Commerce, the prequalification will be for the stated time of the particular prequalified list, which is generally between two to three years. The contractor will be eligible to be placed on the selective tender panel/s for particular contracts and invited to tender from time to time.

Prequalification for Minor Works or Trade Works

Construction and maintenance work valued at up to \$500,000 is covered by the Minor Works or Trade works category.

The Department of Commerce's Sydney metropolitan area and regional offices manage tender processes and contracts for this work. These offices also manage prequalification for these categories of work. Applications for new regional prequalification schemes are advertised in the press and on the Department's tenders web site <http://tenders.nsw.gov.au/commerce>.

4.2 Consultant

The Department of Commerce prequalifies consulting firms specialising in construction related disciplines such as architecture, project management and other related fields. To qualify, consultants must be a registered legal entity. The consultant seeking prequalification must show how it meets the criteria stated in the application form available on the internet at:

http://www.nswprocurement.com.au/psc/service_provider_selection/consultant_prequalification_scheme_2008_2011.doc

Following a successful application, the consultant's name is placed on a list of prequalified consultants. If there is no requirement to change the consultant's prequalification work categories, fee value ranges, performance record or business relationship with the Department, the prequalification will be for the stated time for the particular prequalified list, which is generally between two to three years.

Invitations to tender for consultancies valued over \$50,000 are generally issued to a panel of consultants from the applicable list selected on the basis of past performance. For consultancies valued from over \$30,000 to less than \$50,000 tenders are invited from a single consultant from the panel of prequalified consultants. For engagements valued up to \$30,000, a single invited tenderer is chosen from either the list of prequalified consultants or a consultant known to be experienced and qualified in the type of work. An Expression of Interest process is generally used to choose consultants to tender major consultancies for which there is no existing prequalification list for the work category.

5 Calling the Tender

Electronic tendering using the Department of Commerce's eTendering system is now the primary means of seeking and receiving tenders used by the Department of Commerce. All competitive Request for Tenders (RFT) are 'advertised' with access to RFT documents provided on the Department of Commerce eTendering website. Most RFTs are enabled for electronic response. In some cases an advertisement may go into the press as well.

When a tender is called, it will be placed on the Department of Commerce eTendering website³: <http://tenders.nsw.gov.au/commerce>

Tenderers using electronic tendering are able to view advertisement/ invitation information, browse summary details of RFT, view and download RFT documents and addenda/notices, lodge tender responses and view contract award information. Tenderers for selective and invited tenders are also contacted directly by the Department.

Generally, instructions for completing tenders will appear in the Notice to Tenderers. Tenderers may also view RFT documents at the location(s) nominated in the tender advertisement or on the website.

6 Preparing a tender response⁴

Priority should be given by the tenderer to respond fully to all evaluation criteria seen in the tender document from the Department of Commerce.

Any instructions from the Department of Commerce to tenderers need to be followed.

Care should be taken to provide and complete all the requested tender schedules and other material as and when requested.

Ensure that the documents lodged include the company name, Australian Business Number (ABN) and suitable identification to assist in the processing of the tender documents.

Submit your tender response as instructed in the main tender document from the Department of Commerce.

6.1 Pre-Tender briefings and site meetings

For some projects, a pre-tender briefing or site meeting may be held to brief prospective tenderers.

Attendance at the pre-tender briefing(s) or pre-tender site meeting(s) may be mandatory and tenderers must attend to allow for their tender to be considered a conforming tender. When attendance is mandatory, it is advisable to enquire beforehand about any security arrangements and access limitations that may be in place at the location of the meeting particularly at Government agency sites, offices and institutions.

Details of pre-tender briefings and site meetings will be included in the tender advertisement and in the RFT documents.

³ The NSW Government eTendering website is where the most recent information about NSW Government business opportunities is listed.

⁴ **Tender Response** - Means the submission/bid/price/expression of interest in response to what was sought in the advertised RFT documents.

7 Receiving Tenders

7.1 Hard copy and electronic tenders

Hard copy tenders are lodged directly into locked tender boxes. Electronic tenders are accessed through dedicated computers that have coded security access. A Tender Opening Committee opens tenders at the designated time, date and place. The Opening Committee has a convenor who is a senior officer in Commerce. The Convenors who attend are randomly rostered from a pool of Commerce staff in a way that supports probity. Generally a different Convenor is rostered from a pool of officers on each tender opening day.

At the time for closing of tenders, the members of the Tender Opening Committee assemble to witness the opening of the Tender Box by the Convenor and the Secretary of the Tender Opening Committee. All tenders received, including tenders received electronically, are opened in the presence of a quorum of the Tender Opening Committee.

Members of the public may ask to be present at the opening of the tenders, but they are prevented from seeing details of the tenders received.

8 Assessing Tenders

A tender evaluation committee will assess each tender against the requirements stated in the RFT documents. When tenderers have been required to submit their offer in two envelopes (one envelope for price and one envelope for supporting information), the technical evaluation will be performed separately and in advance of, consideration of the price. The price envelope will remain sealed and is retained by the Tenders Section until completion of the evaluation of the supporting information.

The Department of Commerce seeks the best value for money in all its procurement activities for clients. The assessment of tenders is based on all of the evaluation criteria. Contracts and consultant engagements are awarded to the service provider who offers the best value for money, not necessarily to the lowest price.

9 Awarding of a Contract or Engagement

If your tender is successful a Letter of Acceptance, which will detail the particulars of the contract, will be issued. Once the Letter of Acceptance has been issued you will be deemed to have entered into the contract or consultant engagement.

10 Debriefing unsuccessful Tenderers

Unsuccessful tenderers may request a debriefing on their tender from the contact person nominated in the RFT documents. The debriefing will provide factual information regarding how the tender addressed the requirements of the RFT documents, including comments on the strengths and weaknesses of the tender.

11 Performance Reporting

To facilitate improvements in and to monitor project performance, Government agencies acquire, maintain and exchange information about the performance of contractors and consultants.

During the term of a contract or consultant engagement, **Contractor Performance Reports** or **Consultant Performance Reports** will be prepared.

The Contractor Performance Reports and Consultant Performance Reports are an effective and consistent means of measuring performance. Performance reports, including those prepared for other NSW Government agencies, are used as part of

the assessment process for prequalification, selective tender lists and tender evaluations.

11.1 Exchange of Information

NSW Government agencies may share information on the performance, prequalification status and financial capacity of contractors and consultants. Refer to the respective NSW Government guidelines for contractor and consultant performance reporting and exchange of reports between government agencies which are available on the Internet at:

<http://www.nswprocurement.com.au/Procurement-System-for-Construction/Reference-material/Procurement-Guideline-Documents.aspx>

12 Further information

For further information contact the NSW Procurement Client Support Centre:

Telephone: 1800 NSW BUY (1800 679 289)

Email: NSWP_Support@commerce.nsw.gov.au