



Operating Procedure

Section 2, P01.1

Contractors (Infrastructure Works)

1. Objective:

To procure contractors for infrastructure works in accordance with the Board's Procurement Guidelines, providing;

- value for money;
- efficiency and effectiveness;
- probity and equity; and
- effective competition.

2. Actions:

Following a decision to procure a contractor for infrastructure works, the nominated officer will implement the following procurement procedure;

2.1. General

This procedure provides general guidance for the procurement of infrastructure contractors. For detailed guidelines refer to MSB's *Procurement Manual*. Tasks associated with infrastructure contractors include but are not necessarily limited to;

- Elimination of Private/Public Danger.
- Urgent or Emergency Repairs.
- Temporary Repairs
- Prevention or Mitigation of Damage
- Other tasks involving contractors and infrastructure works.

2.2. Project Definition

Prior to any procurement process the project shall be defined. This includes describing;

- The scope, time, quality, budget, risks, communication, and stakeholder requirements.
- A suitable procurement strategy and process.

For works > \$150,000, this shall be documented in a Procurement Plan.

Procurement Strategy:

Where the task involves urgent or emergency work a "*Directly Sourced*" contractor may be used. Refer item 3 of this procedure for more details.

For other tasks, where a pre-qualified list of suitable contractors is available use "*Selective Tendering*", otherwise the default option is usually "*Open Tendering*".

If "*Selective Tendering*" is not an available option then consideration may be given to, "*Invited Tendering*" in lieu of "*Open Tendering*" where circumstances can be justified.

Price Range:

Procurement process requirements will differ depending on the estimated \$-value and strategy of the contract works. The requirements are summarised in the tabled below;

| \$ Estimate (incl GST) | Documentation Requirements | | | Tender Option (Min Invitations) | | |
|------------------------|----------------------------|-----|-----------|---------------------------------|-----------|---------|
| | P/Plan | TEP | Tender | Open | Selective | Invited |
| < \$10,000 | Not req'd | | Brief (*) | Yes | Yes (1) | Yes (1) |
| \$10,000 to \$30,000 | Not req'd | | RFT | Yes | Yes (3) | Yes (3) |
| \$30,000 to \$150,000 | Not req'd | | RFT | Yes | Yes (3) | Yes (3) |
| \$150,000 to \$250,000 | Required | | RFT | Yes | Yes (3) | Yes (3) |
| \$250,000 to \$1M | Required | | RFT (^) | Yes | Yes (3) | - |

Table Reference Notes:

- P/Plan: ie. Procurement Plan.
- TEP: ie. Tender Evaluation Plan.
- For \$-estimates > \$1M - Refer MSB's *Procurement Manual*

(*): May issue a Purchase Order together with a Brief, when using MSB's Selective Tenderer's panel. The order shall condition the engagement on "*full compliance with all terms and conditions in MSB's RFT document provided at the time of pre-qualification*".

(^): MSB's RFT template is only suitable for works < \$250k.

For more information refer to MSB's "*Procurement Manual*".

2.3. Tender Documentation

The preparation of a Request for Tender (RFT) document to suit the contract requirements shall be undertaken by persons with sufficient expertise. Appropriate reviews should be obtained before their use.

A standard RFT document for Construction Procurement is available for simple contracts less than \$250,000. For other works a modified RFT document may need to be used; refer to MSB's "*Procurement Manual*" for guidance.

2.4. Tender Process

2.4.1. Pre-tender Estimate

A pre-tender estimate must be prepared for proposed contract work (as distinct from the project) and approved before inviting tenders.

2.4.2. Tender Evaluation Plan

For tender estimates > \$150,000 or Expressions of Interest for prequalification, a Tender Evaluation Plan (TEP) shall be prepared before tenders are called.

2.4.3. Inviting Tenders

Before inviting tenders;

- Approval is required from the delegated authority before commencing.
- There must be a sufficient funds approved by the delegated authority.

Open Tenders shall be advertised in the public media. All other tenders including Selective and Invited may be directly invited without advertising.

The tendering process of distributing documents and closing tenders shall be either; (i) "manual" ie. using MSB's tender box; or, (ii) "electronic" ie. e-tendering.

E-tendering must be used for; (i) Open Tenders > \$50,000, or for other competitive tenders > \$150,000 (pre-tender est). All other competitive tenders must otherwise be lodged and closed in MSB's tender box. [This is MSB's policy which currently differs from NSW Gov't policy]

The property owner shall be supplied with a copy of the RFT and where appropriate a copy also sent to the local council for information (Letter C7). A copy of the RFT together with the pre-tender estimate is attached to the file.

Refer MSB's *Procurement Manual* – Section 5.2, for procedural guidance on;

- Changes to the RFT documentation;
- Tender period;
- Manual and e-tendering;
- Changes to the tender closing date;
- Tender enquiries and advice;
- Tender meetings; and
- Public Disclosure

2.4.4. Receipt and Evaluation of Tenders

Other than for e-tenders, all competitive tenders must otherwise be lodged and closed in an MSB tender box. All tenders shall be opened after the closing time and date.

Refer MSB's *Procurement Manual* – Section 5.2, for procedural guidance on;

- Tender Opening Committees;
- Tender Evaluator or Evaluation Teams;
- Tender Evaluation Steps
- Late Tenders
- Post Tender Communications

All tenders received and their evaluation shall be placed on the appropriate property file.

2.4.5. Tender Recommendation

The file with tenders is forwarded to the delegated authority for acceptance of tenders (Letter C 10). For tenders exceeding the Chief Executive Officer's delegation, a submission is made to the Board Members.

If the preferred tender exceeds the pretender estimate by more than 15%, a report shall be prepared for the consideration of the Chief Executive Officer to accept or recalling tenders. [Note: where the tender is >150k and > 15% of the pretender estimate, this report should be referred to the Board for approval to accept or recall tenders]

After the recommendation has been actioned by the delegated authority, the claim file is returned to the District Manager/District Supervisor.

Successful tender data is entered into Property Management System (PMS).

2.4.6. Tender Outcome

The successful tenderer is notified in writing by Letter C 11B. Unsuccessful tenderers are notified in writing by Letter C 11C.

The claimant is notified of the successful tenderer by Letter C 11A. The contractor and owner are to arrange an agreed commencement date.

Once the approving authority makes an award decision, a contract award document must be prepared and the contract awarded.

Contracts may be awarded by issuing a notification of acceptance or letter of award. This notice must be consistent with the proposed contract details identified in the evaluation and recommendation report.

Refer MSB's *Procurement Manual* for procedural guidance on;

- Contract Award;
- Public Disclosure;
- Debriefing Tenderers; and
- Complaints.

2.5. Contract Administration

After commencement of contract work, MSB's nominated contract representative is to carry out regular supervision of the works and issue site instructions, as required. Notes of site visits / meetings are to be recorded with the transaction in Documap.

The "officer" will also liaise with the owner at regular meetings, and any involved authorities.

For any variations the "officer" must issue a C 6M Instruction form to the contractor. On receipt of the variation claim the "officer" must certify on form C6N that the amount is reasonable.

Approval is required by the Board's delegate based on the cumulative sum of this and previously approved variations. A copy is to be retained in Documap and the contractor formally notified.

Any payments for work are to be made on compensation Claim Payment Form C11D. Complete payment details, Section 'Commitment and Variations'.

Note: Total claim costs for variation relates to the 'Variation Allowance' or the 'Variation Estimated Cost', whichever is the greatest from the (FO26). Adjustments should also be made to your commitments to cover the cost of the variations.

The commitment should also be adjusted and recorded in the PMS. If the estimated cost of this work exceeds the officer's delegation, then a report is to be prepared for approval by the Chief Executive Officer.

Refer MSB's "*Procurement Manual*" for guidance on contract administration processes.

2.5.1. Contract Completion

On completion MSB's contract representative is to;

Carry out a final inspection of the contract works in the company of the owner of the property.

Advise the claimant in writing (Letter c 12A) of the satisfactory completion of the repairs. Final payment is not to be made to the contractor until the owner and MSB representative are completely satisfied with the works.

Subject to completion of the repairs, advise the contractor (Letter C 12B) of satisfactory completion of the contract. *Note: This letter should be sent two weeks after the C 12A is sent to the claimant.*

Certify satisfactory completion of works and arrange payment (or progress payments) to the contractor. Contractors must have an Australian Business Number (ABN) shown on the 'Tax Invoice'.

Claims for such payments should be made on a Compensation Claim Payment form (FO15) and forwarded for payment to the Finance Officer.

Note: Complete payment details, including commitment, tender details and variations, previous payments and outstanding balances.

A Contractor's Performance Report, which includes 'Customer Satisfaction' report, is to be completed with relevant details, with one copy for file and the other copy to Newcastle Office for attachment to contractor's tender file (File 3.66.01).

Claim is finalised with final payment voucher (Compensation Claim Payment form) made out and referred to Finance Section. After payment is made, the file is returned to storage.

3. Management of Selective Tender Panels

3.1. Tenderer Selection:

District Managers shall maintain a register of tender opportunities for contractors on a selective tender panel;

Register 1: Details of Tender Opportunities

| Contract Description | Invitation to tender (Who /When) | Accept of Decline | Tender or Not | Successful or not | Performance Score |
|----------------------|----------------------------------|-------------------|---------------|-------------------|-------------------|
|----------------------|----------------------------------|-------------------|---------------|-------------------|-------------------|

Register 2: Summary of Tender Opportunities & Performance

| Preregistered Contractors | No. Opportunities to tender | Performance Score Average |
|---------------------------|-----------------------------|---------------------------|
|---------------------------|-----------------------------|---------------------------|

For contract works less than \$50,000, District Managers may nominate the tenderers for each tender process from a current prequalification panel. The number of tenderers selected may include reserves that can be called on to tender if a prospective tenderer declines the invitation.

For contract works > \$100,000 a "*Tenderer Selection Committee*" of 3 senior officers shall be established to select the tenderers.

Any selection shall identify the best Tenderer Panel to maximise the potential for optimum time, cost and quality results. It shall ensure that all prequalified contractors are given opportunities to tender for work within their work or service category, geographic areas of operations and expertise. The need for unbiased selection cannot be overemphasised.

Each District Manager is responsible for administering the prequalification panels and ensures that each prospective tenderer's performance has been monitored and that past and current performance warrants the tenderer's consideration for selection; and the Subsidence Risk Engineer is notified of any unsatisfactory performance.

3.2. Performance Reporting:

During the term of a contract, the Contractor Performance Reports shall be prepared for all works >\$10,000 or otherwise for unsatisfactory performance. Copies shall be placed on the Selective Tender file and in DOCUMAP under Administration/Library/Performance Reporting.

3.3. Unsatisfactory Performance:

Unacceptable levels of performance by any contractor on an MSB selective tender panel shall be reported immediately to the Subsidence Risk Engineer (SRE) for review. If the SRE considers it appropriate, a panel of assessors will be convened (CEO, SRE, District Manager) to consider whether any action should be taken such as issuing a caution, limiting work opportunities or removing the contractor from the panel.

If the recommendation is to take further action the following steps shall be followed;

- Ask the contractor in writing to show cause within 14 days why it should be permitted in the future to continue doing work with MSB.
- If there is no reply, remove the contractor from the preregistered list.
- Decide within 14 days of receipt of the reply whether to take action and limit work opportunities or remove the contractor from the preregistered list.
- Advise the contractor of the decision.
- If the contractor requests a review of the decision, refer the matter to the Board.

3.4. Annual Review:

All contractors on prequalified lists are to be reviewed annually. The review shall take into account changes to a Contractors status since the last review and any changes to criteria requirements.

Contractors will also be reviewed when MSB becomes aware that the Contractors status with performance or any other factor.

Contractors may at any time at the discretion of MSB be removed from or downgraded on a prequalification list.

4. Management of Non Competitive Tender Selection

The administration of *non competitive tenders* needs to be managed carefully to comply with NSW Government Code of Practice for Procurement requirements. To enable this, each District Manager shall maintain a register of all non competitive contractor engagements;

Register 1: Summary of Non Competitive Tender Opportunities

| Contract Description | Invitation to tender (Who /When) | Accept or Decline |
|----------------------|----------------------------------|-------------------|
|----------------------|----------------------------------|-------------------|

Any non competitive engagement shall where possible be chosen from a *Pre-Qualified list or otherwise a contractor with a good performance history*. The need for an unbiased and broad selection opportunity process cannot be overemphasised. The selection history shall be managed by District Managers to demonstrate tender opportunities are shared and probity is maintained.

5. Emergency Actions

For matters other than procurement refer to MSB “Emergency Procedures” P6.1.1.

If an emergency situation occurs it may be necessary for MSB to implement urgent procurement to meet it’s obligations in regard to health, safety and infrastructure protection. Such events demand immediate action which cannot be met through normal procurement procedures.

Emergency procurement should otherwise comply, to the maximum extent possible, with the policies and procedures that would normally apply.

If such an event arises then the most senior officer available may approve an emergency procurement exercise. Otherwise comply with delegated authorities where possible.

All emergency procurement (and the circumstances leading to them) shall be documented and reported to the CEO within 48 hours.

For urgent construction work a single invited “Directly Sourced” contractor may be used when other procurement methods are unsuitable. It is always preferable to use a contractor from a Pre-Qualified list where possible.

Refer MSB’s “*Procurement Manual*” Section 5.2 for further information.

6. Process Performance Indicators:

- Complying with the procedure.
- Contractor works completed within a reasonable time, in consultation with the owner, and meeting acceptable quality and cost criteria.

7. References:

- ‘*Procurement Policy*’ – Section 4, P1.11 : Policy and Procedures Manual.
- ‘*Delegations*’ – Section 4, P4.2 : Policy and Procedures Manual.
- ‘*Selective Tender Panels (Prequalification)*’ – Section 2, P29 : Policy and Procedures Manual.
- ‘*Procurement Manual*’ & documents: Ref K:\MSB Corporate\MSB Manuals\Procurement
- Template for “*Request for Tender Documentation*” (RFT): Contractor (Infrastructure).
- File 3.66.01 – “*Contractors Performance Reports*” file.

8. Attachments:

Attachment 1: Typical Procurement Flowchart – Contractor (Infrastructure)

9. Latest Revisions:

January 2012: New Procedure replaces old procedure P1, “*Repairs to Properties*”.

Attachment 1

Basic Flowchart: Contractor (Infrastructure Works)

