

BUSINESS MANAGEMENT SYSTEM

CONTRACTORS (INFRASTRUCTURE WORKS)



1. OBJECTIVE:

To procure contractors for infrastructure works providing;

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

2. ACTIONS:

2.1. GENERAL

This procedure provides general guidelines for the procurement of infrastructure contractors. For further information refer to documents listed under Section 7 "References". 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

(i) General:

Prior to any 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.

(ii) Tendering Methods

There are 4x main methods of tendering;

- Open Tendering
- Selective Tendering (Using a Pre-Registered list)
- Limited Tendering - Invited (Establish a panel without preregistered EOI process)
- Limited Tendering - Direct Negotiation (single invitation)

Open Tendering: This is an invitation to tender by public advertisement with no restriction placed on who may submit a tender. It is generally used where there is a broad competitive market and;

- There is no established Selective tender panel;
- It's not efficient or cost effective to establish pre-qualified tenderer list.

Selective Tendering: This is an established list of pre-qualified service providers (initially established through an expression of interest process) capable of undertaking contracts for a particular program or category of works. In the second stage, tenders are sought for a particular contract from a limited number of those pre-qualified.

Limited Tendering (Invited): This represents an exemption from conducting an Open or Selective Tender, where MSB may contact a supplier or suppliers of its choice when certain circumstances apply. Invited Tendering (or quotations) may be justified for;

- low value, low risk procurement (< \$250,000);
- If no tender was received via a competitive tender process;
- If no conforming tender was received via a competitive tender process;
- When the goods or services can only be supplied by a particular supplier and no reasonable alternative exist.

BUSINESS MANAGEMENT SYSTEM

CONTRACTORS (INFRASTRUCTURE WORKS)



Limited Tendering (Direct Negotiation): Special circumstances may warrant entering into direct negotiations with a single selected service provider, without any competitive tendering process. Direct negotiations without a competitive tendering process should be avoided. Otherwise detailed records of negotiations must be maintained.

Refer NSW Procurements Procurement by Direct Negotiation guidelines for further information.

(iii) Procurement Strategy:

Where the task involves urgent or emergency work a "Directly Sourced" contractor may be used. Refer Section 5 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 option then consideration may be given to, "Invited Tendering" in lieu of "Open Tendering" where circumstances can be justified.

(iv) Procurement Requirements:

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

\$ Estimate (incl GST)	Documentation Requirements			Tender Option (Min Invitations)		
	P/Plan	TEP	Tender	Open	Selective	Invited
< \$15,000 (i)	Not req'd		RFT (ii)	Yes	Yes (1)	Yes (1)
\$15,000 to \$30,000	Not req'd		RFT (ii)	Yes	Yes (3)	Yes (3)
\$30,000 to \$150,000	Not req'd		RFT (ii)	Yes	Yes (3)	Yes (3)
\$150,000 to \$250,000	Required		RFT (ii)	Yes	Yes (3)	Yes (3)
\$250,000 to \$1M (iv)	Required		RFT (iii)	Yes	Yes (3)	-

Table Reference Notes:

- Ref (i); MSB has adopted \$15k and not \$30k as its threshold for single invited.
- Ref (ii); For MSB Selective Tenderers (in lieu of RFT), may instead issue a Letter referencing MSB's General Conditions of Contract together with a Brief & Annexure to the General Conditions of Contract.
- Ref (iii); Use RFT template (modified) from NSW Procurement website. See MSB's Procurement Officer for guidance.
- Ref (iv); For capital works > \$1M, use Accredited Gov't Agency or Prequalified Project Manager.
- RFT (Request for Tender Document); P/Plan (Procurement Plan); TEP (Tender Evaluation Plan).

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. This document shall be independently reviewed before their use.

A standard RFT document for Construction Procurement is available for simple contracts less than \$250,000 (Refer to Documap's templates). For other works a modified RFT document may be required. Consult with MSB's Procurement Officer for guidance.

2.4. TENDER PROCESS

(i) Pre-Tender Estimate:

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

(ii) 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.

BUSINESS MANAGEMENT SYSTEM

CONTRACTORS (INFRASTRUCTURE WORKS)



(iii) Inviting Tenders

General: Before inviting tenders;

- Approval is required before commencing. Refer MSB's Schedule of Delegations C.
- There must be a sufficient funds committed by the Board.
- There must be a firm commitment, intention and capacity to proceed.

Tender period: Nominate a reasonable tender period to enable tenderers to properly price and prepare tenders and ensure effective competition. As a guide, the period should be at least 2 weeks or more, depending on the circumstances, complexities or priorities.

Minimum Tenders: Refer Section 2.2, "Procurement Requirements" for various financial ranges and the minimum number of tenders required.

Client/ Owner: The property owner shall be supplied with a copy of the RFT Document and if appropriate a copy also sent to Local Council (Documap~Letter C7). A copy of the RFT Document together with the pre-tender estimate is attached to the file.

Inviting Tenders : 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;

- "manual" ie. using MSB's tender box; or,
- "electronic" ie. e-tendering.

E-tendering must be used for 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. [Note: This is currently MSB's policy which differs from NSW Gov't Policy]

Refer to Section 3, for details on the process for inviting tenderers from MSB's Prequalified Tender Panel (Selective Tenders). Refer to Section 4, for details on the management non competitive tenders.

Amendments to RFT: Where it's necessary to amend RFT documents, it must be done in a way that does not unfairly disadvantage or benefit tenderers. Amendments must be advised in a notice, usually called an addendum, issued to all tenderers. This must occur in sufficient time to allow tenderers to fully consider the addendum, modify and lodge their tender.

More Information: For more detailed information concerning the tendering process, refer to NSW Procurements Tendering Guidelines. This may include 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

(iv) Receipt and Evaluation of Tenders

Receipt 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.

Late tenders should not be considered unless MSB is satisfied that the integrity and competitiveness of the tendering process has not been compromised.

Tender Opening Committee (TOC): The TOC shall comprise a minimum of 2x independent persons, who must be present to open any tender box, and remove and record the tenders received. These persons must sign a confidentiality and conflict of interest agreement. As a minimum, upon removal of each tender from the tender box the following action shall be taken:

- Date stamp
- Tenders numbered in order of opening.
- Initialled on each page containing monetary references by not less than two members of the Opening Committee and the Convenor.

BUSINESS MANAGEMENT SYSTEM

CONTRACTORS (INFRASTRUCTURE WORKS)



The particulars of each tender received and opened shall be entered on a schedule and include:

- the names of the tenderers;
- the names of those who submit "no tender" and
- the pricing particulars of each tender.

All members of the Tender Opening Committee shall sign the schedule.

Evaluation Team: Tender evaluations can generally be undertaken by a single evaluator (for low value and low complexity procurements) however an evaluation team comprising at least 3 members are required for;

- Expressions of Interest: For prequalification.
- Contractors: Where the contract amount is estimated at more than \$150,000.
- Circumstances where the relativity or nature of the tenders received is less certain, or where the process was not fully complying or unusual or complex.

The team should include the person who prepared the tender document and the person who is to administer the engagement. It may include a technical person or a stakeholder. It may need to have independent members and members with no prior involvement.

Tender Evaluation: The objective is to identify the tender(s) offering the best value for money whilst achieving process probity and fairness. MSB is not bound to accept the lowest (or highest) priced tender, and may pass over, or not consider further, any tender not in contention or that is not acceptable.

Choosing the best value for money tender must take account of:

- If the tender is subject to qualifications;
- Any extra value offered such as better quality, better capacity, better management, early delivery or earlier completion.

The tender evaluation must proceed as defined in the Tender Evaluation Plan, which will involve an initial examination and assessment followed by a detailed evaluation. Qualifications, non-conformities and departures included in a tender should be considered for their effect on all tenders. It may be necessary to quantify the value of tender qualifications and departures in order to compare tenders.

Where there are no acceptable tenders, negotiations may be conducted with the tenderer submitting the least unacceptable tender, or the tender which conforms most closely to the requirements and provides best value for money (the 'best tender').

An initial examination and assessment of tenders should;

- Confirm the legal entity of each tenderer;
- Decide whether a late tender should be considered further in the evaluation;
- Identify non-conformances with the RFT requirements which can be rectified by the tenderer by providing omitted information or clarification;
- Identify non-conformances with the RFT requirements which are substantial or incapable of rectification and, therefore, justify not considering the tender further;
- Identify any indications of errors or discrepancies in the RFT documents or in the tenders, which may need to be corrected or taken into account in the evaluation and any contract.

For the next assessment stage each tender is considered in detail, evaluated and scored or otherwise ranked. The evaluation team must raise any questions with tenderers in contention or preferably only the preferred tender.

BUSINESS MANAGEMENT SYSTEM CONTRACTORS (INFRASTRUCTURE WORKS)



Late Tenders: Late tenders should not be considered, except when MSB is satisfied that the integrity and competitiveness of the tendering process has not been compromised.

Late tenders may be considered when verifiable circumstances are confirmed. Refer to NSW Procurements Tendering Guidelines for detailed information.

Tender Negotiation: Where there are no acceptable tenders, negotiations may be conducted with the tenderer submitting the least unacceptable tender, or the tender which conforms most closely to the requirements and provides best value for money. Any negotiation process should be transparent, recorded and conducted in a manner that does not disadvantage other tenderers.

Financial Checks: Consideration may be given to undertaking a financial check of a preferred tenderer for contract works > \$150,000. To undertake this assessment use the contractors available of the Government Contract for Financial Assessment Services.

Tender Estimate vs Market Price: Avoid recommending the acceptance of tenders that are priced below the estimate or under a fair market value. Where a preferred tenderer's price is > 15% below the pre-tender estimate, the following steps should be taken:

- Re-evaluate the estimate in detail and compare, and where possible, reconcile it with the tender price and with other tender prices;
- Revise the estimate where appropriate; and
- Following a review of the estimate, if the tenderer's price is still considered to be low ask the tenderer to confirm in writing that the nature and extent of the contract is fully understood, the tender price properly reflects all contractual

Where a preferred tenderer's price is > 15% above the pre-tender estimate, it shall be referred to the CEO. Unless the tender is >150k then it shall instead be referred to the Board.

(v) Tender Recommendation

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

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).

(vi) 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 agree on a commencement date.

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.

(vii) Public Disclosure:

Tenders : For all open tenders, or expressions of interest which may result in a contract, public disclosure is required at the time of calling tenders. Disclosure information includes a list of the tenderers and the accepted price.

Contracts: For all contracts > \$150,000, public disclosure of contract information is to be made within 60 days of the contract coming into existence via the e-tender web site. Disclosure information includes the contractor, date of contract and the accepted price.

BUSINESS MANAGEMENT SYSTEM

CONTRACTORS (INFRASTRUCTURE WORKS)



(viii) Miscellaneous

Tender Debriefing: An unsuccessful tenderer shall, on request be provided with the reasons for its tender not being selected. A record should be kept of the persons involved in the debriefing and the comments made.

Tender Complaints: Tenderer complaints should initially be directed to MSB's CEO before investigating and responding to such complaints.

More Information: For more detailed information concerning the tendering process, refer to NSW Procurements Tendering Guidelines. This may include procedural guidance on;

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

2.5. CONTRACT ADMINISTRATION

After commencement of contract work, MSB's 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. Also liaise with the owner.

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 of contract variations is required 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'.

During the course of a contract it is usual for the parties to meet regularly to review progress and performance, ensure a common understanding of any issues and to facilitate the actions required.

Topics for discussion may include;

- Peoples roles and their work and after hours contact details
- Program and milestone dates.
- Site access issues and any restrictions
- Location and frequency of further meetings
- Communications management.
- Evidence of insurance cover.
- WHS management documentation.
- Process for verifying and accepting the work
- Quality management documentation.
- Environmental management documentation
- Community relations and public information management
- Electronic funds transfer details for payments
- Procedures for managing variations and extensions of time.

On completion, MSB's contract representative is to;

- Carry out a final inspection of the contract works in the company of the owner.
- Advise the claimant in writing (Letter c 12A) of the satisfactory completion of the repairs.

Final payment is not to be made until the owner and MSB representative are completely satisfied with the works.

Subject to completion of 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'.

BUSINESS MANAGEMENT SYSTEM

CONTRACTORS (INFRASTRUCTURE WORKS)



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

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. This shall include tender opportunities, tenders submitted, and performance scores.

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 Tender Panel to maximise the potential for optimum time, cost and quality results. It shall ensure that all prequalified contractors are given EQUAL 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 CEO is notified of any unsatisfactory performance.

3.2. PERFORMANCE REPORTING:

A Contractor Performance Report only needs to be prepared 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 CEO for review. If the CEO 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.

BUSINESS MANAGEMENT SYSTEM

CONTRACTORS (INFRASTRUCTURE WORKS)



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 poor performance is reported.

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;

Example Register 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 its 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.

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.

**BUSINESS MANAGEMENT SYSTEM
CONTRACTORS (INFRASTRUCTURE WORKS)**



7. REFERENCES:

- 'Procurement Policy': Section 4, P1.11 : MSB Policy and Procedures Manual.
- 'Schedule of Delegations': Section 4, P4.2 : MSB Policy and Procedures Manual.
- Construction Procurement valued to \$1M (NSW Procurement : V2 Jan 2011)
- Tendering Guidelines (NSW Procurement: V3.1 Dec 2011)
- NSW Procurement Web Site: <https://www.procurepoint.nsw.gov.au>
- 'Selective Tender Panels (Prequalification)'– Section 2, P29 : Policy and Procedures Manual.
- File 3.66.01 – "Contractors Performance Reports" file.

8. ATTACHMENTS:

Attachment 1: Procurement Flowchart – Contractor (Infrastructure)

9. LATEST REVISIONS:

January 2012: New Procedure replaces old procedure P1, "Repairs to Properties".

Reviewed:	Approved:
Subsidence Risk Engineer	Chief Executive Officer

BUSINESS MANAGEMENT SYSTEM CONTRACTORS (INFRASTRUCTURE WORKS)



Attachment 1

BASIC FLOWCHART: CONTRACTOR (INFRASTRUCTURE WORKS)

