



## BUSINESS MANAGEMENT SYSTEM 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 single invited "Directly Sourced" contractor may be used, where other procurement strategies are unsuitable (Ref Section 5)

For other procurement 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 (Ref Attachment 1 for conditions of use).

##### **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		SI or RFT	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)	Yes (3)(*)

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## Table Reference Notes:

- SI: Site Instruction.
- RFT: Request for tender.
- P/Plan: ie. Procurement Plan.
- TEP: ie. Tender Evaluation Plan.
- For \$-estimates > \$1M - Refer MSB's *Procurement Manual* and consult with Risk Engineer.

(\*): Minimum invitations may be reduced to [1], subject to CEO's approval

(\*\*): May issue a Site Instruction when using Mine Subsidence Board's Selective Tenderer's panel. This 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 standard RFT template is only suitable for works < \$250k. Consult with Risk Engineer for > \$250,000

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 works < \$10,000, a mini RFT document is available.

## 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. Refer to Mine Subsidence Board's "Procurement Manual" for guidance.

### 2.4.3. Inviting Tenders

Before inviting tenders;

Approval is required from the delegated authority before commencing.

There must be 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. 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



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### 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. 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 recall 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 Officer.

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

### 2.4.6. Tender Outcome

The successful tenderer is notified in writing and agreement arranged for a commencement date. Unsuccessful tenderers are also notified in writing of the tender outcome.

The owner is notified of the successful tenderer and agreement arranged for a 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.

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

For any variations the "officer" must issue a Site Instruction to the contractor. On receipt of the variation claim the "officer" must certify 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 and the contractor formally notified.

Any payments for work are to be made on the appropriate compensation Claim Payment Form

If the estimated cost of 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.

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### 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 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 of satisfactory completion of the contract. 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 the appropriate Compensation Claim Payment form 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 for all contractors on Mine Subsidence Board's selective tender panel; identifying;

- i) Contract Description;
- ii) Tender Invitations;
- iii) Tender Submissions;
- iv) Tender Successes; and
- v) Contractor Performance

For contract works less than \$50,000, District Managers may nominate the tender panel 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. Ref to Mine Subsidence Board's Procurement Manual for details.

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 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 ensure 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:

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.



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### 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 by District Managers. 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 has changed.

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; as per section 3.1.

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 sometimes 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*" for further information.

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### 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' – 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'
- File 3.66.01 – "Contractors Performance Reports" file.

### 8. ATTACHMENTS:

Attachment 1: Typical Procurement Flowchart – Contractor (Infrastructure)

### 9. LATEST REVISIONS:

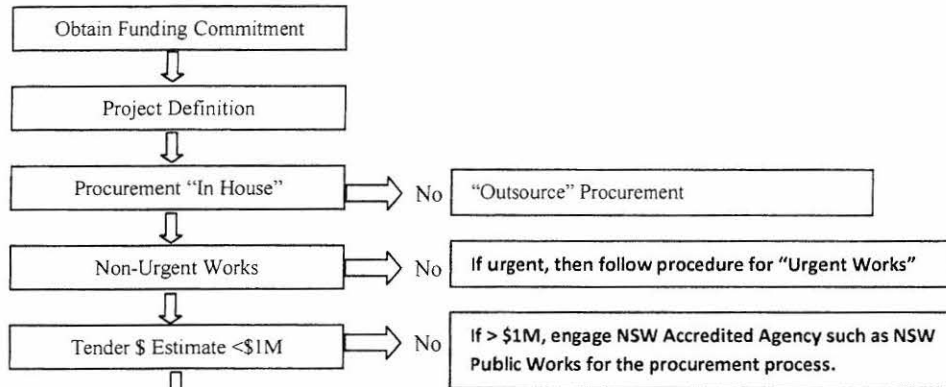
January 2012: New Procedure replaces old procedure P1, "Repairs to Properties".

Reviewed:	Approved:
Signature on File	Signature on File
Subsidence Risk Engineer	Chief Executive Officer

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## ATTACHMENT 1 BASIC FLOWCHART: CONTRACTOR [INFRASTRUCTURE WORKS]



### Tender Strategy:

		Tender Method: (Minimum Tender Invitations)				
Tender Estimate (incl GST)	Contract Conditions	Open	Selective	Invited	Negotiated	Evaluation Panel Min Numbers.
Up to \$10k	Site Instruction or RFT	No Restriction	1	1	No Minimum	1
\$10k to \$30k	RFT		3 (*)	3 (*)		1
\$30k to \$150k	RFT		3	3 (*)		1
\$150k to \$250k	RFT		3	3 (*)		3
\$250k to \$1M	RFT		3	3 (*)		3
>\$1M	RFT	Agency Accreditation Scheme applies: Consult with NSW Department of Finance and Services.				3

(\*) Minimum invitations may be reduced to [1], subject to low risk & CEO approval.

