



## ACCEPTANCE OF TENDER AND EXECUTION OF CONTRACT - SECTION

1200

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### 1200.1 IRREGULAR TENDERS

- 1200.1.1 At the time of tender opening, tenders are assessed for obvious irregularities. Irregularities apparent at the time of opening and their cause shall be announced. Final verification of tenders shall be made by the Department within a reasonable time period.
- 1200.1.2 Irregular tenders are regarded as tenders which have unauthorized additions, deletions or other irregularities which make the tender incomplete, indefinite or ambiguous. A tender is regarded as irregular if more than one bid is submitted by a company or collusion exists among bidders.
- 1200.1.3 The Minister may, subject to Subsection 1200.1.4, waive defects or irregularities in a tender, if the Minister is of the opinion that waiving the defect or irregularity would not give that tender an unfair advantage in relation to other tenders. The Minister's decision is final.
- 1200.1.4 Tenders are considered irregular and will be rejected and the bid price will not be read at the tender opening if, without limitation, one or more of the following conditions is present:
- 1200.1.4.1 The bid guaranty is not enclosed.
  - 1200.1.4.2 The bid guaranty is not one of bid bond, certified cheque, bank draft or cash or is less than the specified amount.
  - 1200.1.4.3 The bid bond is not signed by both the surety and the bidder.
  - 1200.1.4.4 The tender form is not signed.
  - 1200.1.4.5 The tender is not submitted on the original tender form furnished by the Department or on a reproduction identical in content and substantially identical in format to the original tender form.
  - 1200.1.4.6 Receipt of addenda have not been acknowledged.
  - 1200.1.4.7 Unit bid price is left blank.
  - 1200.1.4.8 The estimated quantities shown on the tender form have been altered.
  - 1200.1.4.9 The tender is conditional or is qualified in any way.

- 1200.1.4.10 A notice of modification or correction of any unit price is in the opinion of the Department ambiguous, incomplete or unclear as to its intent; or, the notice is not specific as to which bid item(s) is being modified or corrected; or, the notice is not signed.
- 1200.1.5 Tenders are considered irregular and may be rejected and the total amount will be read at the tender opening if, without limitation, one or more of the following conditions is present:
- 1200.1.5.1 The bid bond is not on a form furnished by the Department, or a Canadian Construction Documents Committee document (CCDC form 220), or on a form substantially equivalent in content.
- 1200.1.5.2 Unit bid price is not shown in words for the dollars or cents.
- 1200.1.5.3 If any unit bid price is, in the opinion of the Department, unreasonably high or low.
- 1200.1.5.4 Failing to comply with any condition that is stipulated in advance of the tender opening.
- 1200.1.6 If a tender is considered irregular and/or rejected the bidder shall be notified of the irregularity.

## **1200.2 CONSIDERATION AND COMPARISON OF TENDERS**

- 1200.2.1 After the tenders are opened and read, the tenders will be compared on the basis of the total amount bid.
- 1200.2.2 In case of discrepancy between the unit bid price and the extension of the unit price, the unit bid price shall prevail.

## **1200.3 COMPETENCY OF BIDDERS**

- 1200.3.1 As a condition of the tender or as a condition before accepting any tender, the Minister may require the bidder to submit any or all of the following information:
- 1200.3.1.1 Proof that the bidder is financially capable of carrying out the project.
- 1200.3.1.2 Proof that the bidder has successfully carried out projects of a similar nature or is fully capable of performing the work required to be done on the project.
- 1200.3.1.3 A list showing the minimum amount of equipment, and its mechanical condition, that the bidder will have on the site of the project before commencing construction and which will remain on the project site until the contract is completed.
- 1200.3.1.4 A list of additional equipment, and its mechanical condition, that the bidder is prepared to use on the project if, in the opinion of the Engineer, it is needed.
- 1200.3.1.5 A statement outlining the bidder's plans for proceeding with the various phases of the project.
- 1200.3.1.6 Such other data as may be required by the Minister.
- 1200.3.2 The Minister reserves the right, in accordance with s.55 of *The Highways and Transportation Act, 1997*, to reject any tender if the Minister is of the opinion that the bidder lacks the experience, equipment,

qualifications or ability to successfully perform the work that will be required. The Minister's decision is final.

#### **1200.4 ACCEPTANCE OF TENDER**

- 1200.4.1 As soon as practicable the successful bidder will be notified by letter, mailed to the address shown on his tender, that his tender has been accepted.
- 1200.4.2 The Minister reserves the right to delay acceptance for such time as is needed for concurrence from other governmental agencies whose concurrence may be required.
- 1200.4.3 The Minister reserves all rights under s. 55 of The Highways and Transportation Act, 1997. Section 55 provides: where in the opinion of the minister, it is not expedient or in the public interest to award the contract for the construction of a public improvement to the lowest bidder, the Minister shall report the matter to and obtain the authority of the Lieutenant Governor in Council before awarding the contract to any person other than the lowest bidder.
- 1200.4.4 The Minister reserves the right to refuse to accept any or all tenders.

#### **1200.5 CANCELLATION OF ACCEPTANCE OF TENDER**

- 1200.5.1 The Minister reserves the right to cancel the acceptance of any tender at any time before the execution of the contract by all parties, without any liability against the Department.

#### **1200.6 RETURN OF BID GUARANTY**

- 1200.6.1 When tenders have been compared, the Minister may at his discretion, return the bid guaranty accompanying such tenders as, in his judgment, will not be considered in making the award. All other bid guaranties will be held until the contract has been executed, after which they will be returned to the respective bidders whose tenders they accompanied, with the exception of the bidder whose tender has been accepted. After an indemnity bond has been furnished and the contract has been executed, the bid guaranty which accompanied the tender of the successful bidder will be returned.
- 1200.6.2 Unless otherwise directed by the bidder, all bid guaranties, except for bid bonds, will be returned by letter mailed to the address shown on the tender form. Bid bonds shall be retained by the Department.

#### **1200.7 INDEMNITY BOND REQUIRED**

- 1200.7.1 At the time the successful bidder is advised of acceptance of his tender, two copies of the contract will be sent for the necessary signature(s) and seal, if applicable. Upon returning the signed contracts to the Department, the bidder whose tender has been accepted shall furnish an indemnity bond in an amount specified in the Department's letter of acceptance. The amount will be not less than 50% of the total amount of the contract, unless otherwise stated in the special provisions.
- 1200.7.2 The bond shall be executed on the form furnished by the Department or on a form identical in content and substantially identical in format. The surety shall be acceptable to the Minister.

#### **1200.8 LIABILITY INSURANCE**

- 1200.8.1 The bidder whose tender has been accepted shall, prior to, or at the time of the execution of the contract, file with the Department a written declaration by his insurance company as evidence that he carries the following insurance, as well as any additional insurance or special coverage that is indicated in the special provisions.
- 1200.8.1.1 The Contractor shall maintain, at his 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 \$2,000,000 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 insured's liability.
- 1200.8.1.2 The insurance shall include coverage for all licensable vehicles used to perform the work, whether or not such vehicles are owned by the Contractor.
- 1200.8.2 Insurance shall not be cancelled by either party without notice by registered mail or personal delivery to the Department, and in no case until final acceptance 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.
- 1200.8.3 The cost of the above described insurance, as well as the cost of any additional insurance or special coverage required by the special provisions, will be considered as incidental expense and no direct compensation will be made therefore.

#### **1200.9 EXECUTION OF CONTRACT**

- 1200.9.1 The bidder whose tender has been accepted shall, within 15 calendar days after the date of mailing of the acceptance of tender as provided in Subsection 1200.4, execute his portion of the contract and return it to the Department.
- 1200.9.2 No work shall be performed until the contract has been executed by the Department.

#### **1200.10 FAILURE TO EXECUTE THE CONTRACT**

- 1200.10.1 If the bidder whose tender has been accepted fails to execute the contract and furnish an indemnity bond and the liability insurance within 15 calendar days as provided in Subsection 1200.9, the Minister may cancel the acceptance and retain the bid guaranty, not as a penalty but as liquidated damages.