

This technical bulletin has been prepared jointly by the Manitoba Association of Architects and the Winnipeg Construction Association, and intended as guidelines to increase awareness of recommended practices

TECHNICAL BULLETIN #3

June 17, 1964 - Original, Revised December 24, 2001, Final Revision: Issued May 4th, 2020

SUBJECT: RE-TENDERING / POST TENDER ADDENDA

The joint MAA / WCA Committee has carefully considered the problems that can arise following tender closing. The recommendation by this Committee, approved by both the Council of MAA, and the Executive of the Winnipeg Construction Association, and in accordance with CCDC 23-2018 and CCA 51 2008 is as follows:

1. At such time that a tender closes, the competition is over.
2. Where the lowest compliant bid exceeds the Procurement Authority's budget, and the Procurement Authority cannot or will not award the contract at that price, but wishes to proceed with the Project, the following process should be followed:
 - a. If the lowest compliant bid exceeds the Procurement Authority's maximum budget by 15% or less:
 - i. The Procurement Authority should negotiate with the lowest compliant bidder only to investigate whether changes in the scope or quality of the Work may reduce the bid price. Where such changes can be agreed upon, a post-bid Addendum documenting the changes should be prepared and the contract should be awarded to the lowest compliant bidder.
 - ii. If changes and a reduced price cannot be agreed upon between the Procurement Authority and the lowest compliant bidder, then the Procurement Authority should modify the bid documents in an attempt to attract a lower price and invite the three lowest compliant bidders should be invited to re-bid on these modified bid documents.
 - b. Where the lowest compliant bid exceeds the Procurement Authority's budget by more than 15%, the Procurement Authority, at its option can take the steps described above. (i.e. it can proceed directly to the re-bid with no attempt to negotiate with the lowest compliant bidder).

While re-bidding may be an option which may be open to the Procurement Authority, it involves additional time and costs for all parties, and should therefore be avoided where possible. When re-bidding takes place, the Bid Documents (Drawing and Specifications) should be modified to change the project design to the extent necessary to

achieve a reduced Bid price acceptable to the Procurement Authority.

The Procurement Authority's flexibility to re-tender a Project is governed by the "privilege clause" in the Instructions to Bidders. Such clauses often provide the Procurement Authority the right to not accept any bid and to hold a re-bid on modified bid documents. In accordance with the recommendation that the Procurement Authority negotiate with the lowest compliant bidder in appropriate circumstances, the privilege clause should also include wording to allow negotiations with the lowest compliant bidder.

Reference:

CCDC 23 2018 – A Guide to Calling Bids and Awarding Construction Contracts

CCA 51 2008 – Guide to Calling Bids and Awarding Subcontracts