

Nova Scotia Public Sector

Construction Contract Guidelines

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1.0 STATEMENT OF PURPOSE

The Construction Contract Guidelines (the Guidelines) describe the process for procurement of construction services and administration of construction contracts issued by public sector entities, as defined by the Public Procurement Act, 2011, c.12, s.1. (see references). The Public Procurement Act, applicable domestic and international trade agreements, as well as public procurement policy, provide the framework within which the Guidelines have been formulated.

The objective of the Guidelines is to maintain a high level of confidence in the procurement and contract administration process, by ensuring that processes are fair, equitable, consistent, efficient, and undertaken in an open and competitive manner.

The Guidelines are not a substitute for the specifications of a particular project, but instead they are intended to highlight key fundamental principles of the procurement and contract administration process.

All public sector entities are required to ensure their solicitation documents are consistent with the Guidelines, excluding reference documents which are included as appendices to the Guidelines. These reference documents are intended to describe industry accepted practices that Contracting Authorities are encouraged to incorporate into their solicitation documents.

In instances where a deviation from the Guidelines is deemed appropriate by a Contracting Authority, the Contracting Authority must be prepared to provide the rationale for such deviation from the Guidelines. Where a deviation from the Guidelines is identified in a solicitation document during the tendering period, the Contracting Authority shall provide clarification, and/or alter the solicitation documents via addendum, as prescribed in the Guidelines.

In the event of any deviation from these guidelines based on bona fide and demonstrable reasons, resulting in a conflict between these Guidelines and the solicitation documents, the solicitation documents shall prevail.

The guidelines have been developed in collaboration with representatives from a broad range of stakeholder groups:

- Department of Internal Services: Procurement
- Department of Transportation and Infrastructure Renewal
- Department of Health and Wellness
- Department of Education and Early Childhood Development
- Nova Scotia Housing Authority / Department of Community Services
- Nova Scotia Community College
- School Boards
- Municipalities
- Universities
- Construction Association of Nova Scotia
- General Contractors
- Nova Scotia Road Builders Association

2.0 PROCUREMENT PROJECT PLANNING

Effective procurement project planning is essential to ensuring an effective result and to limiting risk. When planning a construction project, Contracting Authorities should consider the following factors in the planning process:

a) Initial Business Case

Development of the business case, which should include:

- A clear and concise description of the procurement project
- An explanation for what gave rise to the need for the procurement project

b) Procurement Value

- To ensure that procurement projects are appropriately streamlined, it's important to accurately estimate the value of the procurement project and ensure it's aligned with the budget process and the availability of funds

c) Selection of the appropriate Procurement Methodology

- Some methods to consider which are explained in more detail in section 3.0, include the pre-qualification of bidders, the construction management process, the design build process, the design-bid-build process, or a unit price contract
- To balance the need to be open and competitive with the demands of urgent, specialized, or exceptional circumstances, Contracting Authorities may consider the use of Alternative Procurement Practices in accordance with circumstances as set out in applicable trade agreements. Alternative Procurement Practices must not be used to avoid competition between Suppliers or to discriminate against specific individual or groups of Suppliers.

3.0 PROCUREMENT METHODOLOGIES

The following outlines several commonly followed procurement and project delivery methodologies. The list does not include all possible solicitation methods.

3.1 PREQUALIFICATION OF BIDDERS

- a) The process where an open competition is advertised and conducted for the purpose of soliciting bidders to submit their qualifications to the Contracting Authority to be evaluated and selected to be invited to bid on a tender. The submitted qualifications are measured against predetermined evaluation criteria and those bidders meeting the minimum qualifications as outlined in the solicitation documents are invited to bid on the work.
- b) Where a Contracting Authority wishes to pre-qualify bidders before issuing an invitation to bid, it shall publicly advertise for bidders to submit their qualification for work of a specified nature for a specific contract.
- c) The submissions received are measured against a published, predetermined set of evaluation criteria usually consisting of three areas of interest:
 - i) Background information of the firm;
 - ii) Safety qualifications of the firm; and
 - iii) Project specific information, including but not limited to:
 - The contractor's past experience
 - Personnel to be assigned to the project
 - Approach to conducting the work
 - References (in addition to the references provided by the bidder, a Contracting Authority may conduct any background investigations that it considers necessary, and consider any relevant information resulting therefrom.)
- d) Contracting Authorities must publish the minimum acceptable score (often 70-80 out of a possible 100 points) to become qualified for the second phase.
- e) Only those bidders who are deemed as qualified shall be issued the second phase solicitation documents.
- f) The Contracting Authority shall not add the name of a bidder to the qualified bidder list except through the evaluation and acceptance of the bidder's qualification as submitted in response to the pre-qualification process.

3.2 CONSTRUCTION MANAGEMENT PROCESS

- a) A contracting methodology wherein the construction manager is responsible to provide the Contracting Authority with complete executive and administrative functions relative to the construction of the project, including the administration of all contracts entered into as:
 - i. Direct agreements between the construction manager and the trade contractors for various portions of the construction
 - ii. Direct agreements between the Contracting Authority and the trade contractors
- b) Generally, the Contracting Authority will engage where appropriate, the services of a design consultant to prepare the design of the project and to prepare discrete trade package solicitation documents.
- c) Typically, the Contracting Authority will engage the services of a construction manager, through pre-qualification and competitive bidding, or through a two (2) envelope system where the construction manager is evaluated on qualifications and price, to administer the trade packages and to have overall responsibility for all aspects of the construction project.
- d) The Contracting Authority will tender the trade packages for competitive bids. The solicitation documents will disclose the contract terms between the trade contractor and the construction manager. The Contracting Authority may either:
 - i) Assign the successful bidders to the construction manager's contract via change order. The construction manager then assumes responsibility for administering the assigned trade contracts; or
 - ii) Enter into direct agreement with the trade contractors and have the construction manager administer the contract.

3.3 DESIGN BUILD CONTRACT

- a) A contracting strategy wherein the Contracting Authority enters into a contract with a contractor, who will provide complete design, procurement and construction services for a specified price
- b) In the event of a pre-qualification process, the Contracting Authority will issue the solicitation document to those who were pre-qualified. In the absence of pre-qualification, the solicitation document will be issued through public advertisement.
- c) The design build contractor will be responsible to oversee and co-ordinate the activities of the prime consultant, sub consultants and all subcontractors that were named in the submission

3.4 UNIT PRICE CONTRACT

- a) A contract whereby both parties agree that the work will be carried out by the winning bidder as

described in the solicitation documents, based on individual work item bid prices

- b) Each item for which a bid amount is required shall be described in the solicitation documents.
- c) The estimate of quantities of work to be carried out and materials to be furnished will be as shown in the solicitation documents. These quantities are approximate and the Contracting Authority reserves the right to increase, decrease or omit quantities as required. A unit bid price must be entered, for each item where a quantity is shown.
- d) Contracting Authorities may include minimum and maximum unit prices as described in the invitation to bid documents.
- e) Contracting Authorities may include a clause describing unbalanced bidding, as described in the invitation to bid documents.

3.5 DESIGN-BID-BUILD

- a) A process in which the Contracting Authority contracts with separate entities for the design and construction of a project. In the initial design phase, the Contracting Authority retains an architect or consulting engineer to design and produce bid documents.
- b) The architect or consulting engineer remains involved in the process through the tendering process and acts as an agent for the Contracting Authority during the construction phase. This includes reviewing progress of the work, issuing site instructions, change orders, or other documentation necessary to facilitate the construction process and certify that the project is built to the approved construction drawings and specifications.

4.0 DOCUMENT DRAFTING

4.1 INFORMATION TO INCLUDE IN THE SOLICITATION DOCUMENTS

The solicitation documents should include the following information:

- Description of the full scope of work
- Date, time and place of bid closing
- Name and title of the designated Contracting Authority contact
- The completion date or other timing considerations
- Methods of bid submission
- Form on which bids are to be submitted
- Form to acknowledge addenda
- Form to amend bid
- Taxes (included or excluded in bid submission)
- Method of evaluation
- Description of bid evaluation criteria
- Bid/Performance/Payment Security Requirements
- Requirement to list the major subcontractors or any other trade section as part of tender submission and a statement advising bidders that this requirement will be part of tender evaluation.
- Contracting Authority's estimated contract value (if applicable)
- Material disclosures (including but not limited to consulting, environmental or site reports; Unusual conditions that may affect price such as soil conditions, delivery restrictions, timing requirements or restrictions, etc.)
- Requirements for submitting safety certification, insurance requirements, etc.
- Permit requirements (as applicable)
- Standard form of agreement/contract
- General terms and conditions of the contract
- Method of calculation of liquidated damages/early completion premium (as applicable)
- Payment terms
- Requirement that bids are to be without conditions that would modify the terms of the solicitation documents
- Any other information the Contracting Authority deems appropriate

4.2 ESTIMATION OF CONTRACT VALUE

- a) The Contracting Authority shall use its best reasonable efforts in the circumstances to establish the value of the work and have funds approved prior to invitation to bid.
- b) The Contracting Authority has the option to disclose the estimated contract value. For projects with an estimated contract value greater than \$1 million, Contracting Authorities are to include the estimated contract value in the tender call documents. The exception to this is in cases where doing

so could potentially compromise the competitive bidding process, or in cases where conditions are such that detailed estimates are not available at the time of tender call.

4.3 BID SECURITY/CONTRACT SECURITY

- a) When the value of a contract is estimated to be:
 - i) Equal to or greater than \$500,000, bonding is the recommended form of bid/contract security used.
 - ii) Equal to, or greater than \$100,000 but less than \$500,000, the bid/contract security shall be bonds on the Contracting Authorities prescribed forms, irrevocable standby letters of credit, money order, certified cheques or bank drafts in amounts and in the prescribed forms specified in the solicitation documents.
 - iii) Less than \$100,000:
 - Bid security may be required
 - The contract security shall be provided only by the successful bidder, after selection but prior to signing the contract. Contract security shall be either bonds on the Contracting Authorities prescribed forms, irrevocable standby letters of credit, money order or certified cheques in amount and in the prescribed forms specified in the solicitation documents.
- b) When a bidder enters into a contract(s) with a subcontractor in an amount of \$250,000 or more, the subcontractor should be required to provide contract security to the bidder.
- c) If a bidder is notified of the Contracting Authorities' intent to award a contract and fails to enter into the contract, the Contracting Authority may retain the bid security to an amount required to compensate for the extra costs incurred as a result of the bidder's failure to enter into the contract up to the limit specified in solicitation documents.

4.4 EQUIPMENT, PRODUCTS, MATERIAL SPECIFICATIONS AND STANDARDS

- a) Clear, detailed specifications and requirements must be drafted. Specifications may include any or all of the following:
 - Physical characteristics
 - Functional, performance, or expected results characteristics
 - Quality characteristics defined by recognized 3rd party standard bodies
 - Intended use descriptors such as consumer grade, industrial grade, medical or laboratory grade, or suitable for use under extreme conditions
- b) Specifications and standards shall not be written in a way that unduly restricts bidders and should encourage open, fair and transparent competition.
- c) If alternatives to specified products are to be permitted they will only be considered during the bidding period in the manner prescribed in the solicitation documents. Unless alternatives are submitted in accordance with the bid documents during the bid period and subsequently accepted, products are to be provided as specified.

4.5 FORM OF CONTRACT

The contract form shall be the standard form used by the Contracting Authority, or a **Canadian Construction Documents Committee (CCDC)** contract in the absence of a standard form.

4.6 RELATIONS OF CONTRACTOR AND SUBCONTRACTOR

All sub-contractors are bound to the terms and conditions of the standard form of contract between the Contracting Authority and contractor.

4.7 RELATIONS OF CONTRACTING AUTHORITY AND SUBCONTRACTOR

Nothing in the terms and conditions of the resulting contract shall create contractual relations between the subcontractor and the Contracting Authority.

5.0 OPEN COMPETITION PROCESS

5.1 ISSUANCE OF SOLICITATION NOTICE

All notices for an Open Competition must be posted on the Nova Scotia Procurement Web Portal

5.2 CONTENT OF SOLICITATION NOTICE

Tender notices shall contain the following information:

- a) A brief description of the procurement contemplated
- b) Contact person(s)
- c) The place where a person may obtain information and solicitation documents
- d) The conditions of obtaining solicitation documents
- e) The date, time and location for submitting bids
- f) In the event of a public opening, the time and place of the opening of the bids
- g) A statement that outlines which trade agreement(s) this procurement is subject to
- h) Site visit requirement details if applicable (date, time, location, mandatory or optional)
- i) Additional information as required (e.g. estimated contract value)

5.3 TIME PERIOD FOR BID SUBMISSION

Bidders must be given a reasonable amount of time to respond to the solicitation document. A longer response time should be provided for procurements of high complexity, risk, and/or dollar value. For procurements that are subject to international trade agreements, there may be a requirement that the solicitation document be publicly posted for a minimum of 40 calendar days.

5.4 COMMUNICATION WITH POTENTIAL BIDDERS AND ADDENDA PROCESS

- a) Under no circumstances shall a Contracting Authority provide verbal direction to any bidder. All communications with potential bidders after issuance of the solicitation document must be made in writing or electronic communication through a single contact person designated in the solicitation document.
- b) Any employee or any other individual who receive inquiries from potential bidders must direct those bidders to the designated contact person, and must not discuss the procurement project with any supplier.
- c) It is recognized that there may be instances where employees have ongoing relationships with suppliers with respect to existing contracts and that those suppliers may be potential bidders in other procurement projects. In such instances, employees are not prevented from speaking to such suppliers with respect to ongoing projects and contracts but must refrain from discussing upcoming or active procurement projects.
- d) Requests for changes or clarifications must be in writing or electronic communication, and the Contracting Authority will only be bound by its written response, which shall be by way of addendum.

- e) Solicitation documents may be modified by the Contracting Authority by the issuance of a formal addendum not less than five (5) business days for major changes and three (3) business days for minor changes before the bid closing time.
- f) Bidders are responsible for ensuring that they are aware of and have complied with any addenda, and acknowledge these addenda as per instructions in the solicitation documents.
- g) When an addendum is issued, the closing time shall, where necessary, be extended a minimum of one (1) business day to reasonably allow bidders to receive the addendum and adequately consider, prepare and submit their bids, taking into account the impact of the addendum.

5.5 RECEIPT OF BIDS

- a) Bids must be received by the Contracting Authority in the manner set out in the solicitation document.
- b) The Contracting Authority shall define the official time clock
- c) Physically submitted bids shall be submitted in an envelope which clearly identifies it as a bid submitted in response to the solicitation documents (including tender number where applicable)
- d) Physically submitted bids must be time and date stamped upon receipt, even if received after the submission deadline. Bids received prior to the submission deadline must be kept unopened until the submission deadline has passed.
- e) It is the bidder's responsibility to ensure that a bid bear an original signature and/or seal by the person or persons authorized to make the bid on behalf of the person, firm or corporation that is submitting the bid

5.6 BID AMENDMENTS

A bidder may amend a bid prior to the closing time. Amendments to a bid may be submitted on the provided form as set out in the solicitation document. An amendment to a price (either an increase or decrease amount to the price only), a change or withdrawal will be accepted up to bid closing in accordance with the requirements of the invitation to bid documents.

5.7 CANCELLATION PRIOR TO CLOSING

A solicitation may be cancelled at any time up to one (1) business day prior to tender closing. In an effort to promote fairness and transparency, Contracting Authorities are encouraged to provide as much notice as possible if a solicitation is being cancelled.

5.8 WITHDRAWAL OF BID PRIOR TO TENDER CLOSING

A bidder may request that a bid submitted in response to a solicitation document be withdrawn, prior to tender closing. The withdrawal of a bid will be allowed if the request is submitted in writing to the place prescribed for the receipt of bids and is received before the tender closing time. The withdrawal request must be in an appropriate form on the bidder's letterhead including the signature of an authorized official. The withdrawal of a bid does not disqualify a bidder from submitting another bid on

that tender call, as long as the revised bid is received on time. Bid withdrawal requests may be communicated as described in the solicitation document.

5.9 LATE BIDS

- a) The Contracting Authority shall reject bids received after the closing time and date.
- b) Bidders will be contacted by the Contracting Authority for direction on whether or not to return/destroy late bids appropriately.

6.0 EVALUATION

6.1 BID EVALUATION

The evaluation process must be fair, defensible and transparent, and must comply with the evaluation methodology disclosed in the solicitation documents.

- a) **Review of Mandatory Submission Requirements** – Once the bids have been opened, all bids must be reviewed to ensure compliance with the mandatory submission requirements set out in the solicitation document. Those bids that do not meet the mandatory submission requirements are disqualified and must not be evaluated further.
- b) **Assessment of Mandatory Technical Requirements** – The evaluation team will assess whether the bids satisfy any mandatory technical requirements set out in the solicitation document. Bids that do not satisfy the mandatory technical requirements will be disqualified and must not be evaluated further
- c) **Lowest Price Evaluation** - In the case of a lowest price evaluation, the contract is awarded to the bidder that submitted a compliant bid with the lowest price
- d) **Rated Criteria Evaluation** - Where the competitive process involves the evaluation of price and other rated criteria, the contract is awarded to the bidder that submitted the compliant bid with the highest score.
 - i. A minimum of three competent and qualified evaluators must participate in the evaluation process. More than three evaluators may be required depending on the type of project being evaluated and based on its size and complexity
 - ii. Each evaluator should review each bid individually. Bids should not be compared to one another during the evaluation process, but each should be evaluated on its own merits. During this preliminary evaluation process, individual evaluators should make notes, including their scores and any comments supporting their scores based on the established evaluation criteria. Evaluators must evaluate using the pre-established evaluation criteria and weightings as set out in the solicitation document.
 - iii. Once all evaluators have conducted their individual evaluations, the entire evaluation team should meet to finalize their scores.
 - iv. During the meeting for the finalization of scores, any discrepancies in scoring between the individual evaluators must be discussed. Evaluators should explain how they arrived at the particular score they assigned and point out the relevant information in the bid that supports the score. Evaluators may adjust their scores based on these discussions, but should not feel compelled to do so if they feel the score they have

assigned is fair and supported by the content of the bid. The bidder's score for each of the criteria should be determined by taking the average, or median of the final scores assigned by each individual evaluator.

- v. Once the evaluation of non-price factors has been completed and the scores for the non-price factors have been totaled, the evaluation team must factor in the evaluation of price in accordance with the method set out in the solicitation document.
- vi. *Interviews and Presentations* - Where expressly set out in the solicitation document, interviews and presentations may be utilized during an evaluation process. Interviews and presentations should be scheduled in advance to allow bidders the opportunity to prepare properly. All bidders should be provided with the same amount of time for the interview and presentation and be provided with the same level of review. The evaluation of interviews and presentations must be consistent with the process set out in the solicitation document and is not an opportunity to repair or amend the bid.

6.2 NO COMPLIANT BIDS RECEIVED

As a result of a no compliant bid situation the Contracting Authority may proceed with an invitation to bid with revised requirements, or proceed with alternative procurement practices.

6.3 IDENTICAL BIDS

In the case of a lowest price evaluation, where two or more compliant low bids are identical, the successful bidder shall be selected by a coin toss by the Contracting Authority in the presence of the identical bidders.

6.4 WORDS AND NUMBERS DIFFER

Where the bid is requested in both words and numbers, and the two do not represent the identical amount, words shall prevail.

6.5 ERRORS IN CALCULATION IN BID

a) Where unit prices are requested and the bid contains an error in calculating the bid amount, the aggregate of the product of estimated quantities and respective unit prices shall prevail.

b) Where price is tabulated from a specified price template, bids containing obvious arithmetic errors such as incorrect extensions or misplaced decimals will be accepted where the intent of the bidder is clear.

6.6 PERMISSION TO WITHDRAW BID AFTER TENDER CLOSING

The Contracting Authority may, upon receipt of bona fide evidence, permit the withdrawal of a bid without penalty within two business days after opening, prior to award if such evidence, in the sole

opinion of the Contracting Authority, clearly indicates a serious demonstrable error has been made in the preparation of the bid (or other extraordinary circumstances have occurred).

6.7 EFFECT OF BIDS HIGHER THAN THE ESTIMATED CONTRACT VALUE

- a) Where all bids submitted in response to a solicitation document are higher than the estimated contract value, bids shall not necessarily be invalidated for this reason.
- b) If the lowest compliant bidder is within 15% of the estimated contract value, the Contracting Authority may choose to proceed with one of the following:
 - i. Award the contract for the bid amount.
 - ii. Negotiate changes in the scope of work with the lowest compliant bidder (Within the framework of the original tender call, including all sub-contractors listed) to achieve an acceptable contract price. If negotiations are unsuccessful in achieving the desired cost reductions, the Contracting Authority can make changes to the scope of work and re-tender the work or invite the three lowest competent bidders to re-bid the work.
- c) If the lowest compliant bidder is greater than 15% over the estimated contract value, the Contracting Authority may choose to proceed with one of the following:
 - i. Award the contract for the bid amount.
 - ii. Make minor changes to the scope of work (less than 10% of the estimated contract value) and negotiate changes with the lowest compliant bidder to achieve an acceptable contract price.
 - iii. Make major changes to the scope of work (10% of estimated contract value or greater) and invite the three (3) lowest qualified and compliant bidders to re-bid.
 - iv. Make major changes to the scope of work (10% of estimated contract value or greater) and re-tender the work.
- d) If actions taken under b and c fail to bring the lowest bid to an acceptable value (at the discretion of the Contracting Authority), the Contracting Authority may take other actions it deems necessary, including cancellation of the solicitation; re-scoping or separating portions of the work and re-tendering them separately.

6.8 PRE-CONDITIONS OF AWARD

POST BID SUBMISSIONS

Within 48 hours of tender opening, bidders may be asked to submit:

- Safety certifications
- List of other subcontractors
- Breakout pricing included in tender price
- Separate pricing not included in tender price

- Other items as specified in solicitation documents

REGISTRATION REQUIREMENTS

Successful bidders are required to be registered to carry on business in accordance with applicable laws. The status of a bidder's business registration does not preclude the submission of a bid. A bid can be accepted for evaluations, regardless of (i) whether the bidder is registered, or (ii) whether its business registration is in good standing. However, a contract cannot be awarded unless the successful bidder is registered and in good standing in accordance with applicable laws. If the bidder is not required to register in Nova Scotia, the bidder will be required to submit registration from their applicable Provincial Jurisdiction.

SAFETY CERTIFICATION – LETTER OF GOOD STANDING

The Occupational Health and Safety Requirements of all contracts dictate that any prospective contractors and sub-contractors must meet the minimum standards of the Province of Nova Scotia. Prior to contract award, at the request of the Contracting Authority, the successful bidder must provide:

- a) Evidence of an independent third-party audit of their health and safety management system performed by an audit provider approved by the Workers' Compensation Board of Nova Scotia (WCB) or;
- b) Valid letter of good standing from a WCB-approved audit provider indicating the contractor is in the process of qualifying for WCB Safety Certified accreditation.

Similarly, subcontractors must provide certification within the period of time as stipulated in the solicitation documents (if applicable).

WORKERS' COMPENSATION ACT

The Contracting Authority shall obtain proof of good standing prior to work starting and require upon request the contractor to furnish evidence of coverage under the *Workers' Compensation Act*, R.S.N.S. and a clearance certificate indicating the contractor, sub-contractor(s) and other contractor(s) are in good standing.

7.0 AWARD

7.1 NOTICE OF AWARD / REJECTION / UNSUCCESSFUL

- a) The successful bidder will be notified in writing. The letter of award constitutes a final binding letter of acceptance and obligates the contractor to sign the formal contract documents.
- b) Notices of award will be posted on the NS Procurement Web portal.
- c) The bid security of the unsuccessful bidders will be returned within thirty (30) days of award to the successful bidder.

7.2 CONTRACT SECURITY

- a) Within ten (10) days of award of contract, the contractor shall provide the contract security in the form of a bond, irrevocable standby letter of credit, money order, certified cheque or bank draft in the amount specified.
- b) A contractor may request to replace the contract security provided the replacement security is in the appropriate form.
- c) Where a deposit held as contract security is no longer required by the terms of the contract, the Contracting Authority shall return any unused portion of the deposit to the contractor.

8.0 POST AWARD MANAGEMENT

8.1 PAYMENTS UNDER CONTRACT

- a) The contract shall provide the basis on which payments under the contract will be made.
- b) Progress draws to be submitted monthly on tender authority form with mutually agreed upon schedule of values to be paid within 30 days from Contracting Authority approval.
- c) Proof of payment to subcontractors and suppliers is required and will be in the form of a Contracting Authority approved statutory declaration provided by the general contractor with each progress draw.
- d) Progress payments shall include compensation for the value of approved products delivered and stored on the place of the work or other approved facility as outlined in the bid documents.

8.2 BUILDERS' LIEN HOLDBACKS

The Contracting Authority shall release all funds due and payable to the contractor and maintain any holdbacks in accordance with the *Builders' Lien Act*.

8.3 BIDDER DEBRIEFING

A bidder debriefing session is available to any proponent who submitted a bid upon written request to the Contracting Authority

8.4 PROCUREMENT COMPLAINT PROCESS

The procurement complaint process will be conducted in accordance with regulations created under the *Public Procurement Act*.

GLOSSARY

The following definitions may be found in this document or related solicitation or contract documents.

“Alternative Procurement Practices” means the practices that may be used to procure goods, services, or construction in circumstance that allow for deviation from the procurement process that the value or nature of the goods, services or construction would normally require and can include a Non-Competitive Procurement in the place of a Competitive Process, and a Limited Competition in the place of an Open Competition.

“Bid” means a submission in response to a Solicitation Document.

“Bid closing time:” means the time up to which bids will be accepted and beyond which bids will be rejected.

“Bidder” means a Supplier that submits a Bid.

“Bidding period” means a time provided to prospective bidders to assemble and submit their bid.

“Bid security” means a promise to pay to the Contracting Authority its costs of accepting another bid, up to a limit, specified in the bid document, if it is the Contracting Authority’s intent to award a contract and the bidder fails to enter into the required contract.

“Canadian Construction Association (CCA)” means the National Association of construction practitioners

“Canadian Construction Documents Committee (CCDC)” means the national joint committee responsible for the development, production and review of standard Canadian construction contracts, forms, and guides

“Completion of the contract” means completion of the contract shall have been reached when the work has been certified as being complete and any deficiencies documented during the specified warranty period have been corrected and so certified by the consultant and/or the Contracting Authority on behalf of the public sector.

“Completion of the work” means completion of the work shall have been reached when all construction and all deficiencies documented at the time of Substantial Performance have been corrected, and so certified by the consultant and by the Contracting Authority on behalf of the public sector excluding warranty items as defined in the contract documents.

“Compliant bid” means a bid that meets all requirements stipulated in the solicitation. Bids are deemed to be non-compliant if they fail to meet any mandatory requirements set out in the bid solicitation documents.

“Construction” means a construction, reconstruction, demolition, repair or renovation of a building, structure, road, bridge or other engineering or architectural work. It does not include professional consulting services related to the construction contract, unless they are included in the procurement.

“Construction management contracts” means a contracting strategy wherein the construction manager is responsible to provide the Contracting Authority with complete executive and administrative functions relative to the construction of the project, including the administration of all contracts entered into as:

- Direct agreements between the construction manager and the trade contractors for various portions of the construction.
- Direct agreements between the Contracting Authority and the trade contractors.

“Contract price” means the set amount of money considered and agreed to by both parties for the execution of the work as described in the contract documents.

“Contracting Authority” means a body authorized to enter into a contract.

“Contractor” means the person, firm or corporation identified as such in the contract. The term contractor means the contractor or his authorized representative as designated to the Contracting Authority.

“Design build contracts” means a contracting strategy wherein the Contracting Authority enters into a contract with a contractor, who will provide complete design, procurement and construction services for a specified price.

“Estimated contract value” means the estimated total value of the work being tendered as determined by the Contracting Authority

“Evaluation criteria” means the methods, standards and measures used to assess the degree to which a bid has addressed the requirements identified in the solicitation documents.

“Irrevocable standby letter of credit” means a form of Bid, Performance, Payment and Warranty Security issued by a certified financial institution subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500), for a sum as specified in the Invitation to Bid. The Irrevocable Standby Letter of Credit will remain in effect until the Certificate of Completion of the Contract is issued.

“Major change of scope” means changes in scope of work of 10% or greater, of estimated contract value.

“Major Sub-Contractor” means one who takes a portion of a contract from the principal contractor or from another subcontractor worth 10% or more of the contract value.

“Minor change of scope” means changes in scope of work of less than 10% of estimated contract value.

“Pre-qualification of bidders” The process where an open competition is advertised and conducted for the purpose of soliciting bidders to submit their qualifications to the Contracting Authority to be evaluated and selected to be invited to bid on a tender. The submitted qualifications are measured against predetermined evaluation criteria and those bidders meeting the minimum qualification as outlined in the solicitation documents are invited to bid on the work.

“Public advertisement” means advertising a public tender notice on the Nova Scotia Procurement Web Portal.

“Rejected bid” means a bid that is not considered on the basis that it does not meet the requirements specified in the Invitation to bid documents.

“Solicitation Document” means a document that will be used to solicit competitive bids. A solicitation document is used when the requirement is adequately defined to permit the evaluation of bids against clearly stated criteria and specifications. The solicitation document describes the specifications to be met and the terms and conditions that will apply.

“Subcontractor” means a person, firm or corporation having a direct contract with the contractor to perform a part or parts of the work, or to supply products worked to a special design according to the contract documents, but does not include one who merely supplies products not so worked.

“Substantial performance of the work” shall have been reached when the work to be done under the contract is capable of completion or correction at a cost of not more than two and one half percent of the contract price, and is ready for use or is being used for the purpose intended, and is so certified by the consultant and/or the Contracting Authority.

“Supplier” means a person carrying on the business of providing goods, services or construction.

“Unbalanced bidding” is where a bidder places a high price on some items and a low price on other items in a unit price contract.

“Unit price contract” A contract whereby both parties agree that the work will be carried out by the winning bidder as described in the solicitation documents, based on individual work item bid prices.

References

[Public Procurement Act. 2011, c.12, s.1.](#)

[Workers' Compensation Act. 1994-95, c.10, s.1.](#)

[Builders' Lien Act. R.S., c.277, s.1; 2004, c.14, s.2](#)

For entities that do not have an established change order process, a [Change Order Guideline](#) has been developed by Construction Association of Nova Scotia. This document is a reference only. The Contracting Authority reserves the right to adopt all or parts of this guideline at their discretion.