

The Bid Depository of New Brunswick Regulations and Rules of Procedure

REVISED: **March 2009.**

GENERAL CONDITIONS

1. DEFINITION AND PURPOSES

a) Depository", has been established as a system designed to improve tendering practices in the Construction industry. It provides for the reception of sealed tenders from Sub-bidders, whereby the sanctity of bidding is protected, and those receiving their tenders obtain firm quotations in writing and in adequate time to compile their bids, completely and accurately. These procedures are in the best interests of Owners, Architects, Engineers and Contractors.

b) The use of the Bid Depository System for any project does not create any right of action against the Construction Association of New Brunswick Inc., the Joint Advisory Board, or any Officers, Directors or Members thereof.

c) The use of this Bid Depository System in accordance with the Rules and Regulations herein set forth, and any supplementary instructions that may be issued, is intended to create a code of tendering practice, which each user voluntarily assumes for their own benefit, and at their own risk.

2. MANAGEMENT

a) The Construction Association of New Brunswick Bid Depository System is operated out of three offices, located at the Fredericton Northwest Construction Association, Moncton Northeast Construction Association, and Saint John Construction Information Centre. The operation is under the guidance of a Joint Advisory Board, herein and after called the "Board", which is responsible to the Construction Association of New Brunswick Inc., to ensure the System is managed in accordance with the Bid Depository of New Brunswick Regulations and Rules of Procedure.

b) The Board consists of one appointed Architect who is a member of the Architects Association of New Brunswick, one appointed Engineer who is a member of the Association of Professional Engineers of the Province of New Brunswick, three General Contractors and three Sub-Contractors (representative of, and appointed by, Fredericton Northwest Construction Association, Moncton Northeast Construction Association, and Saint John Construction Information Centre), and a Chairman appointed by the Construction Association of New Brunswick Inc. Five members comprise a quorum.

c) The Chairman shall vote only when votes are evenly divided, when he shall cast the deciding vote.

d) The existing Board will serve until the new Annual appointments are made.

3. SCOPE

The Bid Depository will receive and transmit tenders for all construction trades as called for in the specifications and requested by the Tender Calling Authority to close via the Bid Depository.

4. ELIGIBILITY

Any Owner, Person or Company may use the facilities of the Bid Depository of New Brunswick, providing they adhere to all the Regulations and Rules of Procedure established by the Bid Depository.

5. PRINTED REGULATIONS AND RULES AND "THOSE GIVEN ON TENDER FORMS"

These Regulations and Rules in printed form, covering all phases of the operation of the Bid Depository, shall be available for the information of all interested parties. They should be read in conjunction with requirements included on the official Bid Depository Tender Form BD2.

6. ENVELOPES, TENDER FORMS AND FEES

In all cases when the Bid Depository is used, the following procedures shall apply:

All tenders called through the Bid Depository shall be on official Tender Form BD2, and placed in official envelopes purchased from the Bid Depository.

- a) The Bid Depository Tender Form BD2 consists of three copies.
 - (1) The Pink copy is for the Prime Bidder and each must be placed in an individual pink envelope and sealed. The pink envelopes will be made available to the Prime Bidder by the Bid Depository.
 - (2) The Green copies of the bids to the Prime Bidder are to be placed in either a single green envelope or individual green envelopes and sealed. The green envelopes are to be left on deposit with the Bid Depository.
 - (3) The Buff copy is for the Bidder's own file.
- b) All the above envelopes shall be placed in the official Bid Depository large white envelope, sealed and delivered to the Depository. All blank spaces appearing on the envelopes must be completed. (See Regulation 12)
- c) Charges for Envelopes and Tender Forms: on application.

7. CLOSING TIME

The closing time for the Bid Depository shall be at 14:00 hours, two working days before the closing of the Main Tender, unless specifically directed otherwise by the Owner, or their Tender Calling Agent. On, or before, the hour and day specified, Sub-bidders Bidders shall deliver their sealed tenders to the Bid Depository in the official large white envelopes. The envelope will be time-stamped immediately on receipt by the Bid Depository, and a receipt issued, showing the name of the project and the time received. The sealed tenders shall then be deposited in a locked tender box, and under no circumstances can the tender be removed prior to the official Bid Depository closing time. Tenders received late shall be time-stamped and retained, but will not be transmitted. The Bid Depository Time Stamp shall be the official timing device governing a closing.

8. PROCEDURE FOR SUB-BIDDERS BIDDERS: "READ INSTRUCTIONS IN TENDER FORM"; "WITHDRAWALS ARE PERMITTED" - (8f)

(a)(1) Bidders shall indicate on their bid forms and envelopes, all Section numbers being bid. These must agree with the listing specified by the Tender Calling Authority for each Division. The tender price must include all specified sections.

Bidders may exercise the option of not listing the specific Division and Section numbers by instead indicating the Trade being bid, as named by the Tender Calling Authority, and declaring "As defined by the Tender Calling Authority" on the envelopes and forms, however, in doing so the Bidder assumes full liability for including the full scope of work as defined in the tender/specification documents.

Bidders acknowledge that, should they use the above method, all Section numbers, as listed in the specifications, are included in their tendered price.

(2) Separate prices must be provided for each complete division and/or trade section as officially requested in the tendering documents.

(3) The lump sum of combined prices may be quoted which need not be the aggregate of the separate prices for the two or more complete trade sections quoted, but only if separate trade section prices have been quoted as specified. The amount of each of these separate prices shall determine if a Bid Bond is required as provided for in Regulation 12 (Tender Security). When a combined price is quoted the requirement of tender security shall be determined on the basis of the combined price.

(b) Where alternatives are specifically called for in the tender document, the resultant price differential shall be clearly shown as a deduction from, or an addition to, the separate prices quoted in 8(a) above, in the space provided for on the official tender form.

(c) Trade Bidders are responsible for submitting their Bids all in accordance with the tender documents.

(d) Written advice (including facsimile or delivered telegrams) concerning amendments to a Sub-Bidder's tender may be submitted to the Bid Depository, provided that each amendment, and the official large white envelope, is received prior to the Bid Depository closing time. A copy of each amendment shall be addressed to the Prime Bidder(s) concerned, in care of the Bid Depository. Amendments shall clearly state the increase or decrease in the dollar amount only. Amendments received late shall be time-stamped and retained, but not transmitted.

(e) Tenders shall not be altered, or amended in any way, after the Bid Depository closing time. The Bid Depository shall take no action in notifying the Prime Bidder(s) of a withdrawal of a bid, except to make available to Prime Bidder(s), letters or telegrams/fax of withdrawal addressed to each of them, which may be deposited with the Bid Depository before the Bid Depository closing time.

(f) Tenders may be withdrawn up to twenty-four (24) hours prior to the Main Tender closing time. This must be confirmed by the Trade Bidder in writing or delivered Telegram/Fax, to ALL Prime Bidders originally bid, up to twenty-four (24) hours prior to the Main Tender closing time. The Responsibility of proof of time of effective withdrawal rests with the bidder. It is the Sub-Bidder's responsibility to notify by Telegram/Fax, or otherwise in writing, ALL Prime Bidders of their decision to withdraw. A copy of the written notice of withdrawal must be filed with the Bid Depository.

In an instance when a Sub-bidder quotes separate prices on a category or categories of work specified, and then quotes a combined price for the entire work scope, the validity of the combined price is dependent upon all separate prices remaining in the bid. If the trade Sub-bidder exercises their right of withdrawal of any one or more of the separate prices bid, any combined price containing one of the withdrawn separate prices is automatically negated. The Trade Sub-Bidder is precluded from withdrawing a combined price only.

"IF YOU MISSED SOMEONE"

- (g) When a Sub-bidder has inadvertently missed bidding to a Prime Bidder:
- (1) they may, not later than four hours prior to the Main Tender closing time, send a telegram/fax to the Bid Depository where tenders are being received, reading as follows: "We missed bidding to (Black Construction) on (ABC Project). Please consider our bid addressed to (White Construction) as if it were also submitted to (Black Construction).
(Signed) "Sub-bidder"
 - and
 - (2) they shall, after sending the telegram/fax to the Bid Depository, advise (Black Construction).

9. PROCEDURE FOR PRIME BIDDERS: "DID YOU ADVISE THE DEPOSITORY?"

The procedure to be followed by the Prime Bidders receiving bids from the Bid Depository is as follows:

- (a) The Prime Bidder should advise the Bid Depository of their intention to bid a particular job when they pick up plans. They should also advise Sub-bidders of their intention to bid.
- (b) The onus lies with the Prime Bidders to pick up their envelopes.
- (c)
 - (1) A Prime Bidder need not accept an unsolicited sub-bid tender and in such a case shall return it unopened to the Bid Depository.
 - (2) Where a Prime Bidder lists their own forces for the work to be performed, it is mandatory that they do that work with their own employees, or in the event they are unable to do so they must use one of the sub-bidders who tendered through the Bid Depository, at the sub-bidder's tender price, and must not call sub-bids from other sources.
 - (3) The "OWN FORCES" rule means that a Prime Bidder, bidding a sub-trade through the Bid Depository, must be equipped to carry out and in fact normally carries out the sub-trade work concerned in their own direct employment; prior to the time of their bid through the Bid Depository. Verification may be requested by the Bid Depository Committee.
- (d) After the closing time of the Bid Depository, the Prime Bidders shall pick up their sub-bids from the Bid Depository and pay the stipulated fee. Any Prime Bidder, who decides not to bid, shall advise the Bid Depository of their intention of withdrawing at least twenty-four (24) hours prior to closing of the Bid Depository. Failure to do so will make the Prime Bidder liable for the payment of the fee, whether or not they pick up their bid envelopes.

"NO TENDER RECEIVED?"

- (e) When a Prime Bidder has not received any sub-tenders in a certain sub-trade, they must contact the Bid Depository and obtain the names of sub-bidders in that trade and solicit tenders from them as outlined in Regulation 8(g).

- (f) In the event that no valid sub-tenders are received by a Prime Bidder through the Bid Depository in any one sub-trade, or sub-trades, then the Prime Bidder becomes a free agent, to obtain tenders for that particular sub-trade, or sub-trades only, and subject to meeting all requirements of Regulations 12 and 13.
- (g) Rules 9(e), (f) are not applicable to a Prime Bidder who is under a Joint Advisory Board imposed suspension.

"ONE BID RECEIVED BY A PRIME CONTRACTOR"

- (h) When only one sub-bid is received by a Prime Bidder then it must be used by that Prime Bidder, subject to Regulations 8(g) and 9(c).

"ONE BID RECEIVED BY THE BID DEPOSITORY"

- (i) When only one sub-bid is received by the Bid Depository, then the Owner or Tender Calling Agent is to be contacted prior to the opening of the one sub-bid. The Owner, or Tender Calling Agent should issue one of the following instructions to the Bid Depository:
 - (1) Accept the sub-bid and make it available to the Prime Bidders,
 - or
 - (2) Reject the sub-bid and return it unopened to the Sub-Bidder and Rule 9(f) would apply.

In the event the Owner or the Tender Calling Agent cannot be contacted within a 24-hour period, then the sub-bid shall be returned unopened to the Sub-Bidder and Rule 9(f) would apply.

10. DISPOSITION OF ENVELOPES AND PRICE INFORMATION

- (a) Not later than two hours after the closing of the Bid Depository, the Tender Box shall be opened by an official of the Depository and the white envelopes shall be opened. All pink envelopes shall be placed in a separate envelope for each Prime Bidder; the green envelope shall be opened by the Depository.
- (b) A list of sub-bidders and prices will be compiled and posted as soon after the tender closing as possible for the benefit of the Tendering Sub-bidders, Prime Bidders and Tender Calling Agent if requested.

11. IRREGULARITIES AND COMPLAINTS

- (a) Failure by a Prime Bidder or a Trade Bidder to comply with the Regulations and Rules of Procedure of the Bid Depository may result in reprimand or suspension from use of the Bid Depository, or could result in a Prime Bidder's or Sub-Bidder's bid being declared invalid.
- (b) Any user of the Bid Depository who wishes to lodge a complaint, must do so in writing, to the Chairman of the Joint Advisory Board, c/o Construction Association of New Brunswick Inc., 59 Avonlea Court, Fredericton, N.B. E3C 1N8.
- (c) Immediately upon receipt of a complaint, CANB will take action to ensure investigation of both sides of the alleged complaint.
- (d) If, after investigation of a complaint by the Joint Advisory Board and a failure to comply with the Bid Depository Regulations and Rules of Procedure is established, the Joint Advisory Board shall advise the Tender Calling Authority of the rule infraction, and may recommend to the Directors of the

Construction Association of New Brunswick Inc., that the party in breach be reprimanded or suspended for a certain period from the use of the Bid Depository. The Tender Calling Authority could disqualify the Prime Bidder's or Bidder's bid or both.

- (e) The party or parties in breach of the Regulations shall be notified by the Joint Advisory Board of its recommendations, and shall have the right to appear before the Directors of the Construction Association of New Brunswick Inc., to make representations regarding the matter at such time as directed by the Directors, but, in any event, prior to the imposition of any disciplinary action. Failure of the party in breach to attend at the time and place established by the Directors shall constitute a waiver by that party of its right to appear and make representations.
- (f) The decision of CANB/Joint Advisory Board shall be final.

12. BONDING - THIS SECTION APPLIES ONLY WHERE THE PRIME BIDDER IS REQUIRED TO PROVIDE BONDING. "DID YOU READ INSTRUCTIONS TO BIDDERS?"

The Bid Depository recommends the procedure and use of Bid Bonds as defined in the publication, "A Guide to Construction Surety Bonds" (latest edition), as published by the Canadian Construction Documents Committee and which has been endorsed by R.A.I.C., A.C.E.C., C.C.A., and C.S.C.

The following clauses in respect to tender security will apply, unless otherwise stipulated by the Owner or Tender Calling Authority.

The purchase and payment for all bonding requirements shall be the responsibility of the Sub-bidder.

- (a) The Sub-bidder shall separately enclose, in the large white envelope containing their bid, either:
 - (1) A letter stating their tender is \$50,000.00 or less, or in the case of a Mechanical, Electrical or Structural Steel tender, it is \$100,000.00 or less.
- OR
- (2) A Bid Bond and a Letter of Consent to Bond, if their tender exceeds \$50,000.00, or in the case of a Mechanical, Electrical or Structural Steel tender, exceeds \$100,000.00.

The limit for bonding in respect of Mechanical Trades will apply to any Section, or comparable section in any specification, as may be indicated by the Tender Calling Authority, i.e. Plumbing, Heating, Ventilation and Air Conditioning, Sprinklers, Refrigeration, Controls, etc.

- (b) If the tender exceeds \$50,000.00 or \$100,000.00, as the case may be, a Bid Bond and a Letter of Consent of Agreement to Bond is required, and the Bid Bond shall cover 10% of the tender price submitted by the Sub-bidder.
- (c) The Bid Bond and the Letter of Consent of Agreement to Bond shall be in the standard Bid Bond form of a Surety (or as otherwise required by the tender documents) approved by the Bid Depository of New Brunswick, and shall provide that the Surety will issue a good and sufficient Performance Bond and Labour and Materials Bond, each for not less than 50% of the accepted tender price.
- (d) The Bid Bond shall cover as obligee: The "Successful Prime Contractor".
- (e) A Bid Bond or Letter is not necessary in a case where a Prime Bidder is submitting a trade tender to himself.
- (f) In the event that no Bid Bond, Letter of Consent of Agreement to Bond, or other specified surety or letter is deposited, the tender of that Sub-bidder shall not be released or posted, but shall be retained by the Bid Depository for return to the Sub-bidder.

- (g) Letters of intent or certified cheques in lieu of Bid Bonds will not be accepted unless otherwise specified in the Tender Documents.
- (h) Disposal of Bid Bonds will take place in the following manner: All Bid Bonds directed to the successful Prime Contractor shall be forwarded to him following official award.

13. CONTRACT CONDITIONS AND PAYMENT

It is a condition of all sub-bids submitted through the Bid Depository that a subsequent contract will be made on the basis of the CCA standard sub-contract form (latest version). A Sub-bidder's refusal to sign any other contract form offered to him would not be deemed to be a withdrawal of the tender and would not be subject to a withdrawal penalty for this reason.

14. SUPPLEMENTARY INSTRUCTIONS

Instructions may be issued from time to time from the Bid Depository which will be available to all interested parties, and such instructions will form part of the Regulations and Rules of Procedure.

15. INSTRUCTIONS FOR BID DEPOSITORY COMMITTEE AT TENDER OPENING

At tender openings, the Bid Depository Committee is to reject sub-bids for any one of the following reasons:

- (a) Late receipt of tender documents (Reference Regulation 7).
- (b) Where Bid Bond is incorrect or no Bid Bond or letter has been submitted (Reference Regulation 12).
- (c) A Tender has been qualified or is other than the Tender package called by the Tender Calling Authority (e.g. Section numbers do not correspond).
- (d) When instructed by Tender Calling Agent (Reference Regulation 9(h)).
- (e) A Tender that does not comply with the Bid Depository Rules.