
SECTION 13

**CONTRACT SERVICES,
CONDITIONAL GRANTS
AND FUNDING AGREEMENTS**

13.04 SELECTION OF CONTRACTORS

AUTHORITY: DEPARTMENT OF FINANCE
TREASURY BOARD SECRETARIAT

ADMINISTRATION: DEPARTMENT OF FINANCE
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(1) SELECTION PRINCIPLES

The objective is to select the contractor who proposes to provide the best value. This is commonly referenced as the bid with the highest rating, unless otherwise approved by Treasury Board or Executive Council. Where non-cost factors are substantially equal, the lowest price should be the determining factor.

In situations where a competitive bidding process is not possible or is not held, the contractor's qualifications, methodology and terms of performance, as well as price, must be evaluated and considered acceptable by the contracting authority before the contract is awarded.

Contracts for intellectual products or where the work can be only broadly defined, with the onus on the contractor to propose a detailed workplan and approach to the work, will normally follow a selection process which places more emphasis on such things as qualifications, experience, understanding of the work and proposal content. Contracts for services which can be specifically defined or are more physical in nature, will place more emphasis on price as a selection criterion.

(2) APPLICATION

The application of this policy is referenced to the schedules of the *Financial Administration Act* (FAA) and applies as follows:

- Schedule "A" - Departments except the Legislative Assembly
- Schedule "B" - Crown corporations
- Schedule "C" - Education Authorities
- Schedule "D" - Commissions

except to the extent that their enabling legislation may incorporate alternate requirements such as Ministerial or Board Authority.

While this policy **does not apply** to the Legislative Assembly or to Reporting Entities subject to alternate legislation, the **spirit and intent** of the policy should serve as a **guideline** for these entities in developing their own policies. Reporting Entities that develop policies differing from Treasury Board policy require approval of Treasury Board.

The specific requirements of this policy do not apply to the following types of contract services:

- capital construction contracts;
- employment contracts (except for reporting);
- loan and lease contracts entered into by Crown corporations and agencies with respect to specific programs governed by various Acts and Regulations (administrative contracts are included under this policy);
- legal services; and
- snowplowing services by private contractors.

Notwithstanding these exceptions, managers are expected to ensure sound business practices are used in acquiring and managing all forms of contract services and ensure compliance with other policies (e.g., Capital Projects, Employment Contracts) where they apply. In the case of snowplowing services, the rates negotiated with the PEI Road Builders and Heavy Construction Association (including estimated cost details) must be approved by Treasury Board. Approval of the rate package would then serve as the authorization and the basis for the Department (Minister/Deputy Head) to enter into contracts with the private contractors.

(3) STATEMENT OF WORK (TENDER/RFP)

A clear and concise statement of work is an essential prerequisite in the selection of the appropriate contractor, as well as for efficient and effective contract management by the department. A “Statement of Work” is commonly referred to as:

- (a) a ‘Tender’ in the case of construction, service work, etc.; and
- (b) a ‘Request for Proposal’ (RFP) in situations where the work is intended to produce an intellectual product difficult to define in specific terms or where the department is looking for ideas from the proponents (contractors) as to ways to approach a task.

Basic information required by the RFP for contract services can be obtained through Procurement Services. RFPs for special projects involving a number of elements, such as design, construction and operations, would be developed to meet those particular needs by the client department.

(4) SELECTION METHODS

Given the number of factors which can impact on a decision to follow a competitive or non-competitive process when selecting a contractor for a specific project, Government has provided direction on when a competitive process should be used; however, there are exceptions that may warrant the use of a non-competitive process. The principles of best quality and most economical cost should be tempered with the private sector being given a fair and reasonable opportunity to provide the product or service. It is expected that the decisions taken will stand up to public scrutiny.

The Canadian Free Trade Agreement became effective July 1, 2017 and applies to Government procurement Canada-wide. The main provisions of the agreement are noted in Attachment 13.04-I. It is expected that departments will adhere to the provisions of the trade agreements, when appropriate.

(a) Competitive Process:

In keeping with Government’s basic objective of obtaining the best quality product/service for the most economical cost, the selection process provides for competitive bidding by qualified firms, organizations and individuals.

The competitive process normally takes two forms: (a) by an open competitive bidding process, or (b) by a limited competitive bidding process:

(i) Open Competitive Bidding Process:

Procurement Services will assist in posting tender notices and documents to the Government's Tenders website. In some cases, a public invitation may take the form of an advertisement in one or more newspapers and/or other forms of public communication.

(ii) Limited Competitive Bidding Process:

This method may be considered appropriate in the following cases:

- If the total contract value is under \$50,000.

As a minimum, proposals should be requested from three bidders (subject to sufficient vendors being capable of providing the service).

(b) Non-Competitive Process:

This process, although not frequently used, may be appropriate in certain circumstances. Some of these exceptions are as follows:

- (i) only one firm is capable to do the work due to proprietary or special services;
- (ii) the need is one of extreme urgency which precludes a survey of qualified consultants;
- (iii) due to a prior contract, the proposed consultant is the only one who can undertake the next phase without a serious loss of continuity, time or economy;
or
- (iv) due to the nature of the work, it would not be in the public interest to discuss the requirement with any other firm.

(c) Evaluation of Proposals:

It is the department's responsibility to ensure that proposals are evaluated by competent officers, using predetermined evaluation criteria to determine which proposal appears to offer the best value. In order to make a proper assessment of the considered value against the estimated cost of the work, the costs may be kept separate from the point rating. This allows the differences in costs between proposals to be compared with the differences in ratings.

The criteria for evaluating proposals should, as a minimum, determine:

- (i) whether the contractor has the necessary capability to carry out the work, bearing in mind:
 - the size, complexity and time constraints of the work;
 - the number, qualifications and experience of personnel to be assigned or made available to the work; and

- the contractor's experience and satisfactory performance on similar projects.
- (ii) whether the proposed approach to the problem will likely produce the desired results considering:
- the management of the work (delegation of responsibility, work plans, scheduling and cost-control reporting and quality control);
 - the methodology proposed (the technical methods to be utilized in the performance of the work); and
 - outside resources to be engaged.
- (iii) whether the estimated cost of the work is realistic, and the proposed fees are reasonable.

(5) DEBRIEFING OF UNSUCCESSFUL PROPONENTS

Proponents may request a debriefing after notification of the outcome of the procurement process. All requests must be in writing to the tender/RFP contact and must be made within sixty (60) days of notification of the outcome of the procurement process. The intent of the debriefing information session is to aid the proponent in presenting a better proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process or its outcome.

(6) INTERPRETATION

In cases where an interpretation is required, such should be referred to Procurement Services, Office of the Comptroller, or Secretary to Treasury Board, or their delegated officer, who will make the interpretation or refer the matter to Treasury Board, if a Board decision is deemed necessary.