

REVISED December 6, 2018

THE BID DEPOSITORY OF NEW BRUNSWICK

RULES OF PROCEDURE

CONSTRUCTION ASSOCIATION OF NEW BRUNSWICK INC.

{Important - Refer to Users Guide CANB Membership Directory}

GENERAL CONDITIONS

1. DEFINITION AND PURPOSES

- a) The Bid Depository of New Brunswick, referred to as "Bid Depository", was established as a system designed to improve tendering practices in the Construction industry. It provides for the reception of sealed tenders from Trade Contractors, whereby the sanctity of those bidding is protected, and the Prime Bidders receiving those tenders obtain firm sub-trade quotations in writing in adequate time to compile their bids, completely and accurately. Use of these procedures are in the best interests of Owners, Architects, Engineers and all Contractors.
- b) The use of the Bid Depository System for a project does not create any right of action against the Construction Association of New Brunswick Inc., the Bid Depository Committee, or any Officers, Directors or Members thereof.
- c) The use of this Bid Depository System in accordance with the Rules 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 his own benefit, and at his own risk and own liability.

2. MANAGEMENT

- a) The New Brunswick Bid Depository System is operated by CANB via three satellite committees, located at the Fredericton Northwest Construction Association, Moncton North-east Construction Association, and Saint John Construction Information Centre. Under the guidance of a CANB B-D Chair Person appointed by, and who is a member of CANB Board of Directors. This CANB B-D Chair Person shall oversee an operating Committee consisting of three satellite local association committee chairpersons and their local volunteers.

3. SCOPE

The Bid Depository will receive and transmit tenders to participating Prime Bidders for all construction trades as called for in the specifications of the project being tendered; or in the official news media Tender Advertisement, should the specifications not list the trades being called through the Bid Depository.

4. ELIGIBILITY

Any Owner, Person or Company may use the facilities of the Bid Depository of New Brunswick, **providing he/she/it adheres to all the Rules of Procedure** established by the Bid Depository.

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

These 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

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 the official Tender Form, and placed in official envelopes purchased from the Bid Depository.

- a) The Bid Depository Tender Form consists of three copies.
 - (1) The Pink copy is for the Prime Contractor and must be placed in the pink envelope and sealed. The pink envelope will be made available to the Prime Bidders by the Bid Depository.
 - (2) The Green copies of the bids to the Prime Bidders are to be placed in 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 Rule 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 otherwise specifically directed by the Owner, or his Tender Calling Agent. On, or before, the hour and day specified, Trade Contractors 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: "READ INSTRUCTIONS IN TENDER FORM "WITHDRAWALS ARE PERMITTED" – Rules (8f)(a)(1)

{See Guidelines for completion of Tender Submission}

Bidders shall indicate on their bid forms and envelopes all Section numbers being bid. These must agree with the listing specified for each Division. The primary tender price must be entered in the space provided in written and numerical format and must include all sections as specified. In the event of discrepancy, written value shall govern. Alternate and Separate prices may be in numerical format only.

Bidders may exercise the option of not listing all the specific Division and Section numbers by instead, using and declaring "As defined by the Tender Call 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 value of each of these separate prices shall determine if a Bid Bond is required as provided for in Rule 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 deduction from, or addition to, the separate prices quoted in 8(a) above, in the space provided for on the official tender form or an attached page should space not permit.
- c) Trade Contractors 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 Trade Contractor's tenders may be submitted to the Bid Depository, provided that each amendment, and the official large white envelope, are received

prior to the Bid Depository closing time. An original copy of each amendment shall be addressed separately to each Prime Contractor concerned, in care of the Bid Depository. Amendments received late shall be time-stamped and retained, but not transmitted. **Multiple amendments shall be calculated in the sequence of receipt, unless clearly directed otherwise by the bidder.**

(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 Contractors of a withdrawal of a bid, except to make available to Prime Contractors, letters or telegrams/fax of withdrawal addressed to each of them, that 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 Contractor in writing or delivered Telegram/Fax, to **ALL Prime Contractors** 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-Bidders responsibility to notify by Company Identifiable Telegram/Fax, or otherwise in writing, to **ALL Prime Contractors** 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 trade contractor bids separate prices on a category or categories of work specified, and he quotes a combined price for all the work bid, the validity of the combined price is dependent upon all separate prices remaining in bid. If the trade contractor bidding exercises his right of withdrawal of any one or more of the separate prices bid, his combined price is automatically negated. The trade contractor is precluded from withdrawing his combined price only.

"IF YOU MISSED SOMEONE"

(g) When a Sub-Bidder has inadvertently missed bidding to a Prime Contractor:

(1) They may, not later than four hours prior to the Main Tender closing time, send a Company Identifiable 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 CONTRACTORS: "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 Bidders should advise the Bid Depository of their intention to bid a particular project when accessing Tender Documents. They should also advise Trade Contractors of their intention to bid.

(b) The onus lies with the Prime Bidders to pick up their envelopes.

(c) (1) A Prime Contractor need not accept an unsolicited sub-trade 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 must do that work with their own employees**, or in the event they are unable to do so, they must use one of the bidders who tendered through the Bid Depository, at the **sub-bidder's tender price**, and must not call bids from other sources.

(3) The "OWN FORCES" rule means that a Prime Bidder to bidding a sub-trade through the Bid Depository must be equipped to carry out, and in fact normally carries out, the 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.

(4) It is the responsibility of a Prime Contractor to provide compliance to Rule 9(3) either by affidavit or a copy of a license, in the case of a licensed trade. This must be submitted to the Bid Depository prior to, or included with the tender submission.

(d) After the closing time of the Bid Depository, the Prime Contractor shall pick up their bids from the Bid Depository and pay the stipulated fee. Any Prime Bidder who decides not to bid, shall advise the Bid Depository of his intention of withdrawing at least twenty-four (24) hours prior to closing of the Bid Depository. Failure to do so will make the Prime Contractor liable for the payment of the fee, whether or not he picks up their bid envelopes.

"NO TENDER RECEIVED?"

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

(f) In the event that no valid tenders are received by a Prime Bidder through the Bid Depository for any one trade, or trades, then the Prime Bidder becomes a free agent, to obtain tenders for that particular trade, or trades only, and subject to meeting all requirements of Rules 12 and 13.

(g) Rules 9(e), (f) are not applicable to a Prime Bidder who is under a CANB Bid Depository imposed temporary suspension.

"ONE BID RECEIVED BY A PRIME CONTRACTOR"

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

"ONE BID RECEIVED BY THE BID DEPOSITORY"

(i) When only one 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 bid. The Owner, or Tender Calling Agent should issue one of the following instructions to the Bid Depository:

- (1) Accept the bid and make it available to the Prime Bidders, or
- (2) Reject the bid and return it unopened to the Sub-Contractor 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 bid shall be returned unopened to the Sub-Contractor and Rule 9(f) would apply.

(3) When only two sub-bids are received, one of these bids being disqualified and/or rejected, does not create a "one bid" condition. Nor does an "Own Forces" bid plus one sub-trade create a one bid condition.

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 bidders and prices will be compiled and posted as soon after the tender closing as possible for the benefit of the Tendering Trade Contractors, Prime Contractors and the Tender Calling Agent if requested.

(c) In the event a Trade Section has a valid "Own Forces" bid, the names of the bidders only shall be posted. Prices will not be publicly posted until, at or after, the closing time of the Prime Tender. Tally sheets shall be completed and pink envelopes made available to the Prime Bidders as usual.

11. IRREGULARITIES AND COMPLAINTS

- (a) Failure by a Prime Contractor or a Trade Contractor to comply with the Rules of Procedure of the Bid Depository may result in reprimand or suspension from use of the Bid Depository for a defined period of time, or could result in a Prime Contractor's or Sub-Contractor'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 CANB B-D Chairperson c/o Construction Association of New Brunswick Inc., 59 Avonlea Court, Fredericton, NB E3C 1N8. Immediately upon receipt of a complaint. The CANB B-D Chairperson shall advise the Tender Calling Authority of the receipt of a complaint, and shall investigate the alleged complaint.
- (c) In situations involving a disputed tender rejection, or a rule violation, the complaint may be referred for review by the CANB B-D Chairperson. Should the CANB B-D Chairperson, at his or her sole discretion, determine the complaint involves a rule violation, the CANB B-D Chairperson may send the complaint for further review by a committee of the two non-involved satellite Chairpersons plus a CANB Board member, at which the CANB B-D Chairperson shall serve as non-voting advisor. Any decision of this Committee shall be final but there shall be no obligation on the committee to conduct any hearing in order to render its decision, or for the TCA to abide by the decision rendered by this Committee after the Prime Tender Closing.
- (d) If, after investigation of a complaint by the above CANB B-D Committee, a failure to comply with the Bid Depository Rules of Procedure is established, CANB 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. **Such a breach could disqualify the Sub-Contractor's Tender or the Tender Calling Authority could disqualify the Prime Contractor's Tender.**
- (e) The party or parties in breach of the Rules shall be notified by CANB of its recommendations, and that they 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 a CANB Board of Directors hearing shall be final.

12. BONDING - THIS SECTION APPLIES ONLY WHERE THE PRIME CONTRACTOR 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 Trade Contractor.

- (a) The Trade Contractor shall **separately enclose** in the large white envelope containing his bid either:
 - (1) A letter stating his 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 his 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 of Division 15, 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 Trade Contractor.
- (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 Contractor is submitting a trade tender to himself. (*Own Forces*)
- (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 Trade Contractor shall not be released or posted, but shall be retained by the Bid Depository for return to the Sub-Contractor.
- (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 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 trade contractor'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 Rules of Procedure.

15. INSTRUCTIONS FOR BID DEPOSITORY COMMITTEE AT TENDER OPENING

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

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