



Naming of Subcontractors and Suppliers

The Canadian Construction Association supports the principle of bidders naming major Subcontractors and Suppliers in their bids. The purpose of this bulletin is to provide recommended best practices that are acceptable to all parties.

BEST PRACTICES FOR BID-CALLING AUTHORITIES

Bid-calling authorities should require the listing of the names of Subcontractors and Suppliers who meet the following requirements:

- **Major trades**, e.g. mechanical, electrical, structural steel, concrete, masonry, curtain wall, insulated metal cladding, site services;
- **Critical to the project**, e.g. genset for hospitals, curtain wall for office buildings, M&E sub-subcontractors and suppliers for water treatment plants, controls systems; or
- **Significant in value with respect to the overall contract price**, e.g. more than a certain threshold value or percentage of contract price.

As part of the bid submission, it is recommended that the names of five or fewer Subcontractors and Suppliers should be listed.

In cases where the Owner has requested more than five listed names, it is recommended that a two-stage bidding process should be utilized for those submitted names that exceeded the initial five. A two-stage closing is intended to provide bidders with additional time to prepare the list of Subcontractors and Suppliers, therefore improving its accuracy and comprehensiveness.

In stage one—the initial bid closing—it is recommended that only the bid form (and bid security, if required) should be submitted by the bidder, including the names of the first five Subcontractors and Suppliers listed. Bids are not opened at that time.

In stage two, it is recommended that the list of these Subcontractors and Suppliers that exceeded the initial five names is submitted at a later, specified closing time (recommended within two hours of stage one and not exceeding the end of business day). The two separate submissions from each bidder are collated and opened only after the completion of stage two.

Bid-calling authorities should clearly specify the process in the Bid Documents.

BEST PRACTICES FOR RECEIVING SUBCONTRACT BIDS

- **Scope Letter** – Each Subcontractor and Supplier should submit a written scope letter to each Contractor at least 24 hours before the prime bid closing. The scope letter should contain all the information that the contractor require and information that the Subcontractor and Supplier consider relevant to the Contractor's evaluation of their bid, e.g. their proposed scope and if applicable, alternatives, unit prices and addenda. The scope letter should include reference to specific divisions or sections of the specification and specifically identify any exclusions or alternatives.
- **Trade Definitions** – Differences between specification sections, local trade definitions and scope bidding may cause omission or overlapping of subcontract work. Contractors are responsible for coordinating and verifying the scope of subcontract work. Trade definitions that are developed through regional/local construction associations through a consensus building process are recommended. They minimize misinterpretation in the bidding and construction process and as a result avoid disputes.
- **Receipt of Subcontract Bids** – Subcontract bids should be received in writing, i.e. delivered by hand, facsimile, or electronically. While oral agreements are generally enforceable, they are difficult to prove. In particular, in the absence of a written agreement, it is difficult to provide evidence of the actual details and terms of an oral agreement. Therefore, it is recommended that, at a minimum, the parties should subsequently record or confirm the terms of any oral agreement in writing.
- **Subcontract Bid Closing Time** – The Contractor should establish a preferred time for receiving subcontract bids and make it known. Subcontract bids received after the prime contract bid closing time should be rejected.

OTHER CONSIDERATIONS

- **E-Procurement** – Online bidding systems such as BCCA's BidCentral are viewed as one solution that provides an orderly system for contractors to receive subcontract bids and therefore provides sufficient time and information for Contractors to include a list of Subcontractors and Suppliers at the time of prime bid closing.
- **Own Forces/Own Estimate** – If the bid-calling authority requires, initially, the names of major or critical Subcontractors and Suppliers, the likelihood of encountering "Own Forces" and "Own Estimate" will be minimized or eliminated. The bid-calling authority should evaluate the validity of the own-forces and own-estimate claims before contract award. This evaluation should be based on the Contractor's proven ability to perform that trade work.
- **Legal Issues** – When a Contractor names, in its bid to the Owner, the Subcontractor to be used, a unilateral contract is formed between the Contractor and the nominated/named Subcontractor once the Contractor's bid is accepted by the Owner, without the need for any further communication with the nominated/named Subcontractor.