

CCDC 23

A Guide to Calling Bids and
Awarding Construction Contracts

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The Canadian Construction Documents Committee (CCDC) is a national joint committee responsible for the development, production and review of standard Canadian construction contracts, forms and guides. Formed in 1974 the CCDC is made up of volunteer representatives from:

Public Sector Owners
Private Sector Owners
Canadian Bar Association (Ex-Officio)
* The Association of Consulting Engineers of Canada
*The Canadian Construction Association
*Construction Specifications Canada
*The Royal Architectural Institute of Canada

*Committee policy and procedures are directed and approved by the four constituent national organizations.

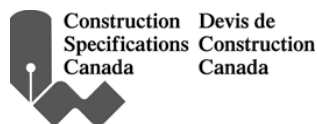
Comments and inquiries should be directed to:

The Secretary
Canadian Construction Documents Committee
400 - 75 Albert Street
Ottawa, Ontario K1P 5E7
Tel: (613) 236-9455
Fax: (613) 236-9526
www.ccdc.org

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PREFACE

This guide is produced by the Canadian Construction Documents Committee (CCDC) and is endorsed by the constituent organizations of the CCDC.

The primary purpose of the guide is to provide Owners and Consultants (referred to collectively as the “bid-calling authority”) with recommended “best practices” for procuring construction services by means of a competitive bidding process. The recommended practices reflect a broad consensus of Canadian construction industry participants, including Owners, and are intended to apply to any public or private sector project, large or small, where the “lowest bid” selection method is used.

The CCDC believes that all construction industry participants benefit when:

- bidders are provided with appropriate information and adequate time for bid preparation,
- there is a “level playing field” that ensures that no participant in the process gains an unfair advantage over another,
- risks are borne by the party best able to manage them,
- the bidding process is kept simple,
- contract award decisions respect principles of fairness, and
- bidding practices are standardized to the extent possible.

The recommended practices in the guide reflect these underlying principles. By following these practices, the potential for costly misunderstandings, disputes, delays, and other difficulties can be minimized. The guide generally avoids setting out practices in detailed, prescriptive terms, as these practices tend to vary somewhat based on local customs and over time, particularly in response to new technologies.

This guide complements the following CCDC guide documents:

- *CCDC 20 - A Guide to the Use of CCDC 2*
- *CCDC 43 - A Guide to the Use of CCDC 3*
- *CCDC 44 - A Guide to the Use of CCDC 4*
- *CCDC 48 - A Guide to the Use of CCDC 18*
- *CCDC 21 - A Guide to Construction Insurance*
- *CCDC 22 - A Guide to Construction Surety Bonds*

Use of the CCDC forms of contract is assumed. However, most of the recommended practices and the underlying principles conveyed in this guide are generally applicable, regardless of the form of contract used.

For more information on CCDC and its publications, visit <http://www.ccdc.org/>

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1.0 INTRODUCTION

This guide addresses the practices involved in the procurement of construction services using the “lowest bid”¹ selection method, whereby price is the primary determinant in Contractor selection.

The lowest bid method is not the only method by which an Owner can procure construction services, nor is it necessarily the best method for all situations. Other methods, such as direct negotiation and “best value” selection, which consider factors other than price alone, are commonly seen under such project delivery systems as design-build and construction management. Some practices recommended in this guide may apply to these other methods as well. However, this guide focuses primarily on “best practices” that apply when an Owner calls for competitive bids for a construction contract with the intent to award the contract to the bidder with the lowest price. This is the most common Contractor selection method under the traditional design-bid-build project delivery system.

This guide addresses all aspects of the bid calling and contract award process, beginning with the bid-calling authority’s preparation of the Bid Documents. It then addresses calling for bids, receiving bids, and, finally, awarding the contract.

Model forms, to be used by bid-calling authorities in preparing project-specific bid forms and bid form supplements, are included as appendices to the guide.

The bidding and contract award processes at the prime contract level determine, in many respects, the bidding and contract award processes at the subcontractor, sub-subcontractor, and supplier levels. Although some of the recommendations in this guide may also apply to the processes at the lower levels, they are beyond the scope of this guide, which is intended primarily as a guide for bid-calling authorities.

It should also be noted that guidance related to specific contractual terms, conditions, and specifications for the construction contract (as distinct from terms, conditions, and specifications for the bid call and contract award) are beyond the scope of this guide. They have been purposely omitted from this edition of CCDC 23. The guides to the various CCDC forms of contract (listed in the Preface) can be consulted for guidance on contract terms and conditions.

¹ The terms “bid” and “tender” (and their various forms, e.g. “bidder” and “tenderer”) are both used in the Canadian construction industry and are essentially synonymous. For consistency and brevity, the term “bid” (and its various forms) is used throughout this guide.

2.0 PRINCIPLES OF THE LAW OF COMPETITIVE BIDDING

In the bidding process, competition among interested bidders replaces negotiation between Owner and Contractor. This guide would be incomplete without mention of the uniquely Canadian law of competitive bidding, which confers on the parties involved in a competitive bidding process legal rights and obligations. These rights and obligations are normally applicable whenever an Owner receives binding offers simultaneously from multiple bidders, but will likely not apply where an Owner and Contractor simply negotiate a contract without a competitive process.

The law of competitive bidding is “judge-made” law, and has been evolving in the courts since the Supreme Court of Canada decision in the landmark *Ron Engineering*² case in 1981. It is a complex area of law and this guide makes no attempt to cover it in any depth. There are numerous books, newsletters, seminars, and other resources that cover this issue in considerable detail. And when circumstances dictate, there is no substitute for knowledgeable legal advice, which this guide does not purport to provide. Nevertheless, all participants in a competitive bidding process should have at least a general awareness of their legal obligations. Although the law continues to evolve with each new case decided by the courts, the following are some of the fundamental principles that are currently considered to be reasonably well established in the law of competitive bidding.

- In most competitive bidding situations, the bidding process gives rise to two separate and distinct contracts at law, which are commonly referred to as Contract A, the bidding contract, and Contract B, the actual construction contract. Most of the following principles flow from an understanding of this basic concept.
- Unless expressly stated otherwise in the Bid Documents, a binding Contract A is created between the Owner and each bidder that submits a bid in compliance with the Bid Documents.
- Where a valid Contract A is formed, it confers on both the bidder and the Owner legally enforceable rights and obligations.
- Where the Owner accepts a bid, the bidder’s principal legal obligation under Contract A is to enter into Contract B, in accordance with its bid. If the Bid Documents call for irrevocable bids (a term of Contract A), a bidder has no right to withdraw or change its bid during the specified acceptance period.

² *The Queen in Right of Ontario v. Ron Engineering & Construction (Eastern) Ltd.*, [1981] 1 S.C.R. 111

- The Owner’s principal legal obligation under Contract A is the implied duty to treat all bidders fairly and equally. This does not necessarily mean that the law requires that the “rules” governing the process, as specified in the Bid Documents, must be fair.³ Rather, it means the Owner must disclose the “rules” and not vary from them. The express terms of the Bid Documents will determine the full extent of this duty of fairness, but in the absence of express language in the Bid Documents to the contrary, this duty of fairness will generally require at least the following:
 - All bidders must receive the same information.
 - All information relevant to the bid call must be disclosed to the bidders and this information must not be misleading, inaccurate or incomplete. (This obligation may also extend to the Consultant that prepares information provided to bidders on the Owner’s behalf.)
 - The Owner may not unilaterally change any of the terms of the bid call (Contract A) after bid closing (e.g., by accepting a late bid).
 - All criteria applicable to the selection process must be disclosed to the bidders and thereafter consistently applied in the process.
 - Any preferences (e.g., in favour of local bidders) must be disclosed to bidders. Undisclosed preferences must not be applied in the selection process.
 - Only compliant bids may be considered for award. Non-compliant bids must be rejected.⁴

- Contract B is formed when the Owner accepts a bid in accordance with the terms of Contract A. The successful bidder’s primary legal obligation under Contract B is to perform the work in accordance with the Contract Documents.

³ Fairness is somewhat subjective, but preferably the “rules” established by the Contracting Authority should also be fair.

⁴ At the time of this writing, the law appears to be somewhat unclear as to whether a standard of “strict” compliance or merely “substantial” compliance is expected. Important implications of this legal principle are discussed in 4.3 – Instructions to Bidders, and in 8.1 – Bid Analysis and Evaluation for Compliance.

3.0 PREPARING THE BID DOCUMENTS – AN OVERVIEW

The Bid Documents are prepared by the bid-calling authority and made available to bidders for use in preparing and submitting bids. They are commonly considered to consist of “drawings and specifications”; however, it is useful to also think of them as comprising two distinct, and separate, categories of information, namely, the “bidding requirements” and the “contract requirements”.

The project manual⁵ should be organized in accordance with *MasterFormat*.⁶ This ensures that the distinction between “bidding requirements” and “contract requirements” is maintained, and assists bidders in more easily locating subject matter in a familiar format.

Bidding Requirements

The bidding requirements essentially specify for the bidders and bid-calling authority the “rules” governing the preparation, submission, receipt, and acceptance of bids. They set out the terms of Contract A (the bidding contract), which the law of competitive bidding says is created between the Owner and each bidder that submits a compliant bid. This is also where information relevant to the bidding process is made available to bidders. The individual documents comprising the bidding requirements may or may not, at the bid-calling authority’s discretion, be identified as Contract Documents in the Agreement.

Contract Requirements

The contract requirements set out the terms of what the law of competitive bidding refers to as Contract B, the actual construction contract created when one of the bids is accepted.

Figure 1 illustrates the two categories of documents (bidding requirements and contract requirements) along with their respective subcategories, which together comprise a typical set of Bid Documents. A more detailed discussion on the preparation of each of the document subcategories follows.

⁵ "Project manual" is the term recommended by Construction Specifications Canada and the Construction Specifications Institute in the U.S. for what is also commonly referred to as "the specifications".

⁶ *MasterFormat* is the North American standard that provides a master list of numbers and titles for organizing information about construction requirements, activities, and work results in a standard sequence of numbered divisions and sections. *MasterFormat* is jointly published by, and available from, Construction Specifications Canada and the Construction Specifications Institute in the U.S.

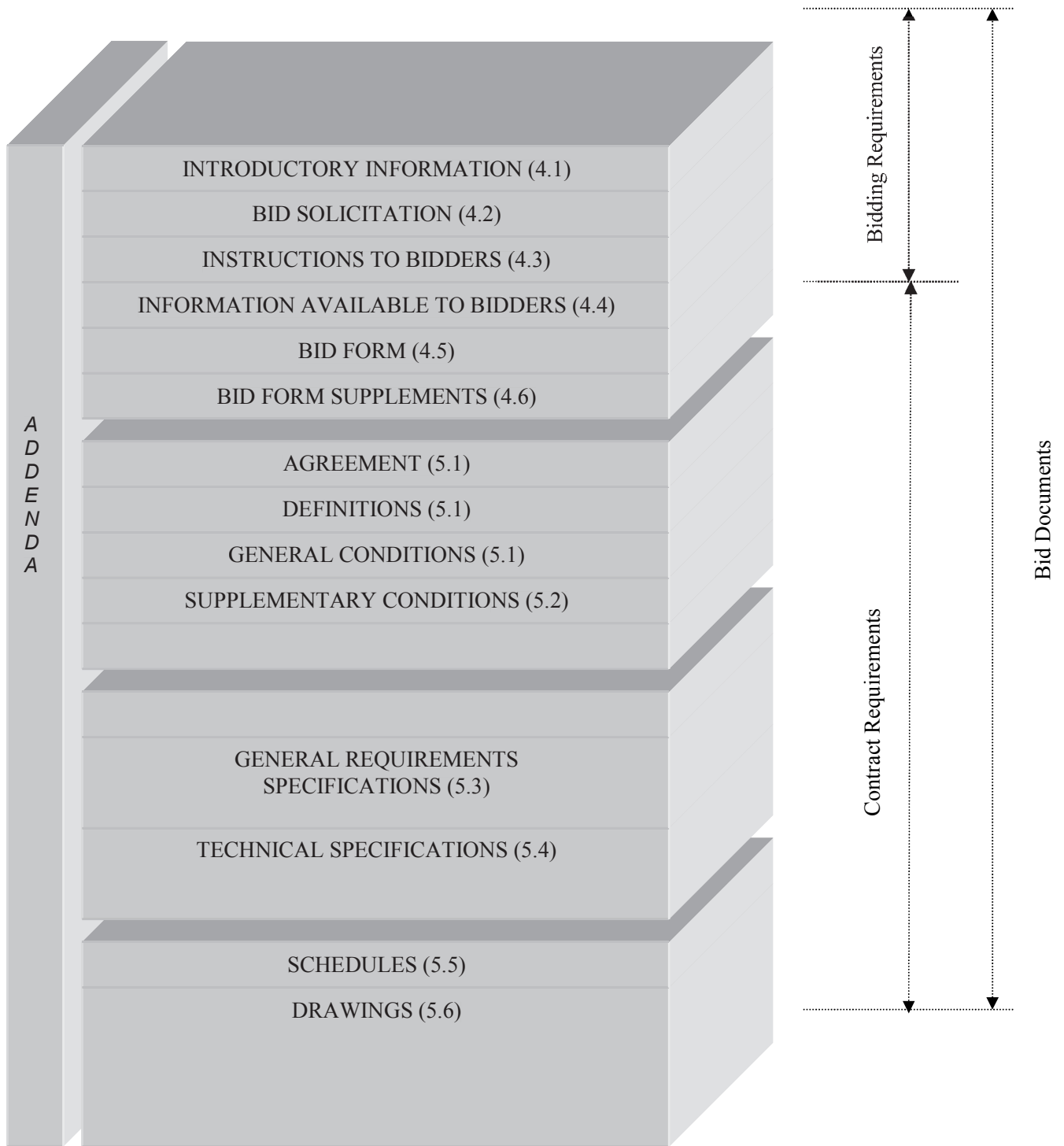


Figure 1. The Bid Documents

Note: The numbers refer to the specific sections in this guide where each subcategory is discussed.

4.0 PREPARING THE BIDDING REQUIREMENTS

4.1 Introductory Information

Every project manual (the specifications) should begin with a project title page and a table of contents. A certifications or seals page displaying the seal or stamp of each Consultant may also be included as introductory information, as well as a list of drawings and schedules, if not provided on the actual drawings.

4.2 Bid Solicitation

Generally, the bid solicitation documents are a letter of invitation to bid, in the case of an invitational bid call, or the public advertisement of the bidding opportunity, in the case of an open bid call. A letter of invitation to bid and a public advertisement should both provide the following information, as a minimum:

- Name and location of project.
- Name of Owner.
- Brief description of the work.
- Time and place for receiving bids.
- How and where to obtain Bid Documents, including any conditions for their acquisition (e.g., refundable document deposits, hard copy, electronic, or both).
- Bid security requirements, if applicable.
- Special qualification requirements (e.g., requirement for safety certification), if applicable.
- Use of a bid depository, if applicable.
- Mandatory pre-bid meeting or site visit requirements, if applicable.

Bid solicitation information should be brief, yet sufficiently detailed so that prospective bidders can realistically assess their interest in bidding and their capability in performing the work. This information should summarize, but not replace, more detailed bidding requirements specified elsewhere in the Bid Documents.

4.3 Instructions to Bidders

The Instructions to Bidders section of the project manual should specify the terms and conditions of the bidding contract, that is, all the bidders' and the Owner's rights and obligations with respect to the bid call. The Instructions to Bidders should always include the following as a minimum (in no particular order):

- Location and legal description of the work.
- Brief description of the scope of the work.
- Consultant's name and address.

- Owner’s legal name and address.
- Telephone number(s), fax number, and e-mail address of person or office designated to receive inquiries.
- Time and place for receiving bids.
- How and where to obtain Bid Documents, including any conditions for their acquisition.
- Procedures under which product substitutions proposed by a bidder may (or may not) be considered during the bid period.
- Instructions as to the method, form, and completeness of the bid submission (e.g., requirements for signing and sealing or witnessing the bid form, identifying information on the bid submission, method of bid submission – whether or not fax, e-mail, etc. are acceptable.)
- Instructions regarding acceptable methods of modifying a bid prior to the bid closing time.
- Number of days that the bid is to be irrevocable and open to acceptance by the Owner. Thirty days is recommended as appropriate.
- Disclosure of all criteria and preferences that will be applied in selecting the successful bidder.
- The means by which the Bid Documents may be modified (see 6.6 – Bidder Inquiries and Issuance of Addenda).
- A clause establishing the Owner’s intended response to common bidding irregularities, including the Owner’s right to waive, or allow correction of, minor and inconsequential irregularities in the bid submission. Examples of irregularities and intended responses that can be specifically addressed in this way include: late bids will be rejected, bidder’s signature missing from a bid bond will be waived, date missing from a bid form may be corrected within 48 hours, etc. The need for such a clause arises from the Owner’s legal obligation to not award to a “non-compliant” bidder (see 2.0 – Principles of the Law of Competitive Bidding). This legal obligation must be balanced with the Owner’s desire to accept the lowest priced bid, even though it may contain some minor and inconsequential irregularities. Bid-calling authorities are therefore advised to seek legal advice in drafting this type of clause. The list of potential irregularities can be lengthy. Owners with on-going construction programs may wish to establish and publicize a policy in this regard, which can then be referenced in the Bid Documents (see 8.1 – Bid Analysis and Evaluation for Compliance).
- A clause establishing the Owner’s right, or “privilege”, to not accept the lowest bid, or any bid (see 8.2 – Contract Award).
- A clause establishing the Owner’s right to negotiate a contract with the lowest compliant bidder (only) in circumstances where the Owner needs to request an extension to the bid irrevocability period or the bids exceed the Owner’s budget (see 8.2 – Contract Award and 8.3 – Post-Bid Negotiations and Re-Bidding).

Where applicable, other items that should also be addressed include:

- Type and amount of bid security (for more detailed guidance refer to *CCDC 22, A Guide to Construction Surety Bonds*).
- Requirements for pre-bid meeting or site visit attendance, mandatory, or otherwise.
- Requirements for use of a bid depository.
- Any mandatory qualifications requirements (e.g., requirement for safety certification).
- Instructions concerning submission of alternative prices, unit prices or itemized prices.
- Where alternative prices are requested, the basis for determining the lowest bidder should be disclosed. That is, whether the lowest bidder will be determined based on the base bid only or by considering the selected alternative prices.
- Any extraordinary bid closing process requirements (see 7.6 – Two-Stage Bid Closing).
- If required by law, proof of authority of the person(s) signing the bid (e.g., a certified copy of a resolution naming the person(s) authorized to sign bids on behalf of a corporation or partnership is to be submitted with the bid).

For more detailed guidance on the preparation of Instructions to Bidders, refer to *Tek-Aid Division 0 - Bidding and Contractual Requirements* published by Construction Specifications Canada.

4.4 Information Available to Bidders

All available information concerning subsurface or concealed conditions or concerning physical conditions or constraints at the site that *could potentially affect a bidder's estimated costs* should be fully disclosed to all bidders regardless of the source or age of the information. Failure to fully disclose information that could affect a bidder's costs can lead to added costs, time, and performance difficulties with the successful Contractor. Most significantly, it can leave the Owner and Consultant legally liable to the Contractor for damages (see 2.0 – Principles of the Law of Competitive Bidding).

This information should be issued with the Bid Documents or, where it is impractical to do so due to the volume of the information, it should be made accessible to all bidders at a specified time and place during the bid period. Examples of information that could affect a bidder's costs include:

- Site investigation data of soil borings, test pits, and other explorations of subsurface or concealed conditions.
- Topographical and geological surveys.
- Information on existing buildings, utilities, or other structures.
- Environmental assessments, permits, and approvals.
- Toxic and hazardous materials locations and data.
- Easements and other site restrictions.

In providing this type of information, an equitable allocation of risk between Owner and bidder should be maintained, consistent with the provisions of the “Concealed or Unknown Conditions” article in the CCDC forms of contract. Bidders should be permitted to rely upon the information that is disclosed to them.

Refer to *Recommended Guidelines for Provision of Geotechnical Information in Construction Contracts*, jointly published by the Canadian Construction Association and the Association of Consulting Engineers of Canada, for further guidance on the provision of geotechnical information.

Note that “information available to bidders” is typically created by parties other than the Consultant. This *information* should not be confused with specification *requirements*, which may also relate to site restrictions that affect bidders’ costs (e.g., hours of work, site access, use of existing facilities). These types of *requirements* are typically written by the Consultant and should be specified in the contract requirements, not the bidding requirements.

4.5 Bid Form

The bid form is the project-specific form, initially prepared by the bid-calling authority. Each bidder is required to complete and submit the bid form, in a secure manner, to the bid-calling authority. This form should be simple and straightforward, and should require the bidder to provide only that information necessary to evaluate the bids and to create a legally binding bid (e.g., bidder’s name, signature, and seal).

Model bid forms for stipulated and unit price contracts are appended to this guide. Bid-calling authorities are advised to use these forms to create their own, project-specific, bid forms. The standard wording and format of the model bid forms should be retained to the extent practicable. The square brackets indicate where text is to be inserted or options selected by the bid-calling authority. For example, there are optional clauses that require bidders to determine and state a completion time in the bid form or, alternatively, require bidders to meet a completion time specified by the bid-calling authority. Bidders should not be requested to simply submit their bids on the “CCDC Bid Form” (by reference); the model bid forms are not intended for this type of use.

As indicated in the model bid forms, the bid price(s) should be stated only once, in figures only, and should exclude value added taxes (contractually, value added taxes are still payable). This keeps the bid form simple and reduces the possibility of errors.

4.6 Bid Form Supplements

Bid form supplements are additional documents required as part of the bid submission. This may include documents to confirm compliance with specified qualifications criteria or bidding conditions (e.g., bid security, proof of safety certification), a list of subcontractors, and additional pricing information (e.g., alternative prices and itemized prices).

Bidders may find the bidding process complex and time consuming under the best of circumstances. Requesting additional information in the form of bid form supplements increases the complexity. It becomes difficult and onerous for bidders to accurately prepare extensive additional information just prior to bid closing. This is when most subcontractor and supplier prices are received, and bidders are therefore under very strict time constraints. With this added pressure, the potential for errors or omissions, and non-compliant bids, increases. Requests for additional pricing information can also complicate the comparisons of bids and the determination of the actual lowest bidder, which can in turn have significant consequences for bidders and the bid-calling authority (see 4.8 Bid Form Supplements – Alternative Prices).

The use of bid form supplements and requests for additional information should be minimized, especially where the information will not be used to evaluate bids or can be readily obtained from a bidder after bid closing or after contract award.

Given their prevalent use in the industry, model forms for some of the more common bid form supplements are included in this guide. A more detailed discussion of each form follows.

The model bid form supplements, like the model bid forms, are intended for use by a bid-calling authority to create its own, project-specific, bid form supplement(s) for a particular bid call. The project-specific forms are then provided to bidders for completion and submission. Bidders should not be requested to submit CCDC bid form supplements simply by reference, nor should it be assumed that bidders will submit any applicable CCDC bid form supplements if the bid-calling authority has not provided project-specific forms for this purpose.

4.7 Bid Form Supplements – List of Subcontractors

Bidders may be requested to name their intended major, or critical, subcontractors (and sub-subcontractors and suppliers). This may be mandatory when using a bid depository system. Also, where the bid-calling authority has prequalified or nominated certain subcontractors, the List of Subcontractors verifies that the bidder will use the specified firms.

A model form for a List of Subcontractors is appended to this guide. The bid-calling authority should identify each Subcontractor's work item in the left-hand column of the form. Only major items of work, whose dollar value is significant in relation to the overall bid price, or which are otherwise critical to the project, should be requested.

Where alternative prices are requested, it may be necessary to identify additional, or different, items of work that may have different subcontractors than the base bid items of work.

4.8 Bid Form Supplements – Alternative Prices

An “alternative” is defined as *anything* for which bidders provide a price in a manner that gives the Owner options in determining the actual work of the contract. An alternative could be an optional product, system, installation method, design, requirement, scope of work, etc. An “alternative price” is defined as the amount stipulated by the bidder for an alternative, which can be stated as an addition, a deduction, or no change to the “base bid price”. The “base bid price” is defined as the amount stated in the bid form, without considering any alternatives or alternative prices.

This definition of alternative prices is broad enough to encompass what have, in the past, been defined as “separate prices.” Distinguishing between alternative prices and separate prices provides little, if any, benefit and contributes to the complexity of the bidding process. Use of the term “separate price(s)” is therefore no longer recommended. Where it is used, it should be considered synonymous with “alternative price(s)” as defined above. The term “alternate” (which appears in *MasterFormat*) is also considered synonymous with “alternative” when used in this context.

There are three basic variations of alternatives and alternative prices:

- Bid-calling authority identified and described alternatives: The *Bid Documents identify* and describe each of the alternatives for which an alternative price is requested.
- Bidder identified and described alternatives solicited by the bid-calling authority: The Bid Documents request *bidders to identify*, describe, and price alternatives in their bid submissions (usually for proposed cost reductions at the bidder’s discretion).
- Bidder identified and described alternatives that are unsolicited: A *bidder identifies*, describes, and prices alternatives in a bid submission, even though not requested to do so in the Bid Documents.

A model bid form supplement to facilitate the most common variation of alternative prices, bid-calling authority identified and described alternatives, is appended to this guide. It assumes that the bid-calling authority will identify the alternatives on a project-specific bid form supplement and that all bidders will complete and submit the form as part of their bid. The description of each alternative is at the bid-calling authority’s discretion and determines whether the alternative will require an addition or a deduction (or no change) to the base bid price. The Bid Documents should clearly describe and specify each alternative in sufficient detail to permit accurate pricing.

Requests for numerous or complex alternative prices should be avoided: The more there are, the greater the complexity and potential for problems in the bidding process. Problems may also result from unforeseen incompatibilities among various combinations of multiple alternatives.

When one or more alternative prices are received with a bid (regardless of which of the foregoing variations applies), a critical question arises: Will the bid-calling authority consider the alternative price(s) in determining the lowest overall bid price? There are two possible approaches.

Alternative Prices Not Considered

In this case, only *the base bid* is considered in determining the lowest bid. This is generally perceived as the fairer approach, for the reasons discussed below. The disadvantage of this approach, however, is that it provides no incentive for bidders to provide competitive prices for the alternatives, since the alternative prices will not be considered in determining the successful bidder. Consequently, the alternative prices may not reflect true market value, which is determined by competitive forces.

Alternative Prices Considered

This approach forces bidders to ensure that their alternative prices are competitive. However, its disadvantage, from the bidders' perspective, is that the bid ranking may not be readily apparent, because it may depend on which combination of alternatives the Owner accepts. There is the potential for manipulating the selection process, in that the Owner could conceivably accept certain alternative prices and reject others, so as to select a "favoured" bidder as the lowest bidder. The greater the number of alternative prices and the higher their dollar value, the greater the chance for multiple bid rankings and the potential for unfairness, whether real or perceived.

Where alternatives are identified and described by the bid-calling authority, this problem can be mitigated somewhat by specifying the alternatives in a particular sequence and specifying that they will be considered in this sequence only. (This would require appropriate modification of the *CCDC Model Bid Form Supplement for Alternative Prices*.) For example, if three alternatives are specified (#1, #2, and #3), the only options the Owner could consider would be to accept none, #1 only, #1 and #2 only, or #1, #2, and #3. It would not be permissible to accept #2 only, #3 only, #1 and #3 only, or #2 and #3 only. This reduces the number of potentially different bid rankings, but does not eliminate the problem entirely. Considering alternative prices complicates the bid evaluation process, regardless of how it is done.

Where the bid-calling authority identifies and describes alternatives, there is no consensus within the industry on which of the foregoing approaches is the "best practice," as each has some significant disadvantages. If the bid-calling authority believes the benefits of requesting alternatives outweigh the disadvantages, it has the discretion to employ either approach. However, the bidding requirements should always clearly specify which approach the bid-calling authority intends to employ. Failing to disclose to bidders the basis upon which their bids will be evaluated is unfair and cannot be condoned; it may also lead to confusion, reduced participation from potential bidders, and contract award challenges.

Therefore it is not considered good practice to include a clause in the bidding requirements that expressly permits the bid-calling authority to employ either approach after bid closing, or to remain silent on this critical question (thereby leaving the bid-calling authority free to employ either approach). To help ensure that the bidding requirements are not inadvertently left silent on this question, the *CCDC Model Bid Form Supplement for Alternative Prices* includes standard clauses for either option. The bid-calling authority should *always* select one of these clauses.

Where, in a “lowest bid” selection process, bidders identify and describe alternatives (whether solicited or unsolicited), the bid-calling authority should *never* consider alternative prices in determining the successful bidder. Bidder identified and described alternatives do not permit the bid-calling authority to compare “apples to apples” in the bid evaluation. Requiring all bidders to base their bids on the same scope and quality of work is intrinsic to the “lowest bid” selection process. Otherwise, there is the potential for one bidder to gain an unfair advantage over other bidders. Where the purpose of bidder initiated and described alternatives is to seek bidder “creativity”, a better approach would be to issue a “Request for Proposals” and use the “best value” selection method.

Alternatives may also impact the contract completion time. For example, an alternative involving a substantial increase or decrease in the scope of the work, or a critical product whose delivery time is substantially longer or shorter than that of the product in the base bid, could affect the completion date. In this case, the model form for alternative prices should be modified to include an additional column in which bidders are required to state the effect, if any, of each alternative on the base bid contract completion time.

4.9 Bid Form Supplements – Itemized Prices

An “itemized price” is the bidder’s price for a specific item of work included in the bid price *and is provided for information purposes only*. It is not intended to be used to adjust the scope of the work and the bid price. (Where it is intended for this purpose, it becomes an “alternative price”.)

It is customary for some bid-calling authorities to request a list of itemized prices (or a cost breakdown) to aid in comparing the bid prices to a detailed pre-bid estimate. Others sometimes require itemized prices for accounting purposes, in the event that different components of the work will be paid from different budgets, or funded by different parties.

Because itemized prices are provided for information purposes only and do not affect bid price(s), they are not considered when evaluating bids to determine the lowest bid.

Generally, requiring bidders to submit itemized prices with their bid submissions should be avoided, particularly if the list is extensive. This complicates the bidding process and bidders may have difficulty providing accurate itemized prices in the short time-frame just prior to bid closing, when trade prices are being received. However, if itemized prices are considered essential, and it is not acceptable to require only the successful Contractor to submit them following contract award, the following options are recommended, in order of preference:

1. Require only the lowest bidder to submit itemized prices within a specified time after bid closing and prior to contract award.
2. Require only the two (or three) lowest bidders to submit itemized prices within a specified time after bid closing and prior to contract award.
3. Require all bidders to provide itemized prices in the second stage of a two-stage bid closing (see 7.6 – Two-Stage Bid Closing).

A *CCDC Model Bid Form Supplement for Itemized Prices* is appended to this guide. This form assumes that the bid-calling authority will provide a project-specific form, identifying each item of work for which an itemized price is required. The wording of the model form should be modified or expanded, as necessary, to clarify whether the itemized prices should be, for example, subcontract prices (which would not include the prime Contractor's mark-up), or whether they should be for components of the work (including all mark-ups).

4.10 Bid Form Supplements – Unit Prices

The use of a “List of Unit Prices” bid form supplement (for use with a stipulated price contract) is no longer recommended. Instead, the recommended practice is to use a special combined stipulated and unit price bid form (see *CCDC Model Bid Form for Stipulated Price Contract with Unit Prices*, appended to this guide), for the following reasons.

A “unit price” is defined as a price for anything on a “per unit” basis (e.g., dollars per lineal metre, per square metre, per cubic metre, per hour, per item, etc.). Under a unit price contract such as *CCDC 4 – Unit Price Contract* or *CCDC 18 – Civil Works Contract* (which may be a unit price contract), all work under the contract is separated into a series of units, and bidders are required to provide a “per unit” price for each unit of work. The bid-calling authority provides an estimated quantity for each unit of work, which is then multiplied by the bidder's unit price to arrive at an extended amount for each item. The total of the extensions provides a total bid price, which is an estimate of the contract price. The actual contract price is ultimately determined by the actual quantities required in the performance of the work. The bids are evaluated and the lowest bidder is determined based on the total bid price. The *CCDC Model Bid Form for Unit Price Contract*, appended to this guide, incorporates a Schedule of Prices and is intended to facilitate this type of contracting arrangement and method of payment.

When a bid-calling authority requests a unit price under a stipulated price contract, that is, when *CCDC 2 – Stipulated Price Contract* is used, there is still a price for something on a “per unit” basis. However, there can be significant differences from a unit price under a pure unit price contract. The need to request unit prices under a stipulated price contract typically arises where the required quantity of a component of the work is unknown at the time of bidding.

There are at least three different basic approaches, plus several variations of each, to applying the unit price concept under a stipulated price contract. Although each is described below, only Approach 3 is recommended as a “best practice.” Approaches 1 and 2 have been commonly used in the past, and by describing them first, their shortcomings provide the rationale for recommending Approach 3.

Approach 1 (Not Recommended)

This approach requests a unit price that will be used to value an *addition or deletion* in the scope of the stipulated price work, *without* providing any estimated quantity for this work. The bid-calling authority may request a unit price to value an *extra* to the stipulated price work (or addition to the base bid price) should such additional work be required. Conversely, a particular scope of work can be included in the stipulated price and a unit price requested to value a *credit* to the stipulated price work (or deduction from the base bid price), should it be determined that such work is not required. A further (and preferable) variation is to request two separate (different) unit prices for a particular scope of work included in the base bid – one price for additions and one for deletions to that scope.

Approach 2 (Not Recommended)

Under this approach, an estimated quantity is specified for a component of work, the price of which (based on the estimated quantity) is specified as *included* in the stipulated (or base bid) price. A unit price is then requested for either an addition to or deletion from the specified estimated quantity. A preferable variation of this approach is to request two separate (different) unit prices – one for additions and one for deletions to the specified estimated quantity.

A common feature and shortcoming of both these approaches and their variations described thus far is that no estimated quantity is specified *for the unit price work*, and therefore *it is impossible to apply a unit price in order to determine the value of the unit price work* at the time of bidding. The unit prices cannot be considered in bid evaluation to determine the lowest bid, and consequently there is little incentive for bidders to provide competitive unit prices. Such unit prices may actually work to the Owner’s disadvantage, since in accepting the bid, the Owner may be accepting unit prices that do not reflect true market value, which is determined by competitive forces. And, unlike alternative prices, the Owner may not have the option to reject such unit prices.

For the reasons outlined above, neither of these approaches (nor any of their variations) are the recommended "best practice" for requesting unit prices under a stipulated price contract. There is, however, a third approach to requesting unit prices, whereby the unit prices can be considered in the bid evaluation to determine the lowest bid and be bid competitively.

Approach 3 (Recommended)

This approach creates a combined stipulated and unit price contract with two components: a stipulated price and a unit price. The unit price component is set up similarly to a schedule of unit prices in a pure unit price contract, using a Schedule of Unit Prices that provides for estimated quantities and extended amounts. The bids are then evaluated based on the sum of the stipulated price component and the unit price component, the latter being the extended total amount for the unit price items. The bid-calling authority can still request unit prices for additions or deletions to the stipulated price work, but the key difference from the other two approaches is that the bid-calling authority must provide *estimated quantities for those additions or deletions*.

Under this approach, it is possible that a bidder may provide “unbalanced” prices to the bidder’s perceived advantage. However, this is usually a calculated risk on the bidder’s part, and may not necessarily work to bidder's advantage.

Where unit prices are considered essential under a stipulated price contract, then this is the only recommended approach. The *CCDC Model Bid Form for Stipulated Price Contract with Unit Prices*, appended to this guide, is intended to facilitate this approach. Note that this approach also requires appropriate modification of the Agreement in *CCDC 2 – Stipulated Price Contract*, to incorporate the unit prices into what is otherwise a pure stipulated price contract.

4.11 Bid Form Supplements – List of Bid Documents

The bid-calling authority should provide a comprehensive list and description of the various documents that constitute the Bid Documents. Where such a list is included within the Bid Documents (typically in the Instructions to Bidders), bidders should not be required to submit a List of Bid Documents as a supplement to their bid form. However, for bid-calling authorities who require bidders to submit a List of Bid Documents, appended to this guide is a *Model Bid Form Supplement – List of Bid Documents* for this purpose.

5.0 PREPARING THE CONTRACT REQUIREMENTS

5.1 Agreement, Definitions, and General Conditions

Following is a brief description of the main characteristics that distinguish the four primary CCDC forms of contract intended for use under the traditional design-bid-build project delivery system:

CCDC 2 – Stipulated Price Contract

This contract should be used where the scope of the work is clearly defined, thereby permitting the bidder to accurately estimate costs, provide a fixed price bid, and enter into a stipulated price contract.

CCDC 3 – Cost Plus Contract

This contract should be used where the scope and quality of the work cannot be clearly defined and cannot be accurately estimated at the time the work is commenced. Under this contract, the Contractor is reimbursed for actual costs incurred in the performance of the work, plus a percentage or fixed fee (or combination thereof). This contract also provides the option of a guaranteed maximum price.

CCDC 4 – Unit Price Contract

This contract should be used where the type and quality of work is clearly defined, but the quantity is not. The bidder provides fixed prices for individual units of work (unit prices) based on *estimated* quantities provided by the bid-calling authority. The amount paid under the contract is determined by measuring the *actual* quantity of work performed for each item and then multiplying the unit prices by the *actual* quantities.

CCDC 18 – Civil Works Contract

This contract should be used for civil works such as roads, bridges, dams, utilities, etc. It provides for either a stipulated price or unit prices as the basis of payment and can be used when either method is desired.

These CCDC forms of contract are copyrighted and are familiar to the Canadian construction industry. The Bid Documents should identify the applicable CCDC form of contract by reference. However, each set of Contract Documents that is formally signed by the Owner and successful Contractor should include an original CCDC form of contract. This may be either a copy printed from an electronic version, which has been legitimately obtained and provided a CCDC copyright seal is affixed, or an original, which has been purchased.

5.2 Supplementary Conditions

Any additions, deletions, or other modifications to a CCDC form of contract should be clearly identified and included in the Bid Documents as “Supplementary Conditions.” Such modifications should be avoided, if possible; however, modifications will sometimes be necessary to suit the requirements of a particular project, the needs of a particular Owner, or the practicalities of a particular administrative process.

Modifications should be undertaken with great care and only by individuals with the appropriate expertise. Unnecessary or unsuitable modifications may have serious and unforeseen consequences. The CCDC contracts reflect the experience and knowledge of architects, engineers, Owners, Contractors, subcontractors, insurance advisors, surety advisors, legal advisors, and other experts. There is also a history of judicial precedents based on the language used.

The following modifications should be avoided:

- Modifications that may contradict other conditions of the contract, other provisions of the Bid Documents, the terms of the agreement between Owner and Consultant, or applicable laws and regulations.
- Modifications that add administrative details related to issues already addressed in the contract conditions (normally, administrative requirements should be amplified in Division 1 – General Requirements).
- Modifications that introduce new issues more appropriately specified elsewhere in the Bid Documents (e.g., in the Bidding Requirements, in Division 1 – General Requirements, or in the Technical Specifications).
- Modifications that shift risk from one party to the contract to the other.
- Inconsequential or editorial modifications that merely re-state an existing condition without changing its substance.
- Modifications that attempt to adapt the form of contract to a use for which it was never intended.

CCDC 20 – Guide to the Use of CCDC 2, CCDC 43 – Guide to the Use of CCDC 3, and CCDC 48 – Guide to the Use of CCDC 18 provide guidance on issues that may warrant Supplementary Conditions.

5.3 General Requirements Specifications

Division 1 – General Requirements specifications should include the following:

- a summary of the work,
- restrictions that will affect construction operations,
- detailed scheduling or phasing requirements,
- detailed payment procedures, including details of cash allowances,
- detailed administrative requirements,

- temporary facilities and controls,
- broadly applicable quality requirements,
- broadly applicable product and execution requirements, and
- other similar issues that affect the overall work.

Refer to *MasterFormat* for a more comprehensive list of issues that should be specified in Division 1.

5.4 Technical Specifications

Technical specifications should convey the detailed quality and performance requirements for products and for execution of the various parts of the work. Technical specifications should be organized and formatted to industry standards, that is, to *MasterFormat*, *SectionFormat*, and *PageFormat* published by Construction Specifications Canada.

Since many technical specifications for projects are derived from some type of master specification, it is important to ensure that the project specifications have been properly edited to reflect the particulars of the project and have been properly coordinated with the drawings and schedules.

If the Owner's requirements for a portion of the work are unknown and cannot be adequately defined at the time of the bid call, to permit accurate pricing, a cash allowance should be specified for such item(s). Any information that is known should be specified for each cash allowance item, particularly for "supply only" items whose installation costs are to be included in the bid price apart from the allowance.

5.5 Drawings and Schedules

The drawings should show graphically the scope of work, the location of various components of the work, and how they are to fit together. Drawings should be clear, accurate, complete, dimensioned, co-ordinated, numbered, and dated.

Schedules (of various types) are useful for providing information in a tabular format, and are commonly also part of the Bid Documents, either as drawing sheets or bound with the project manual.

5.6 Addenda

Addenda are modifications to the Bid Documents prepared after the Bid Documents have been issued for bidding but before the contract is signed. Addenda may modify the Bidding Requirements or the Contract Requirements components of the Bid Documents.

Addenda should be minimized by ensuring that the Bid Documents are as complete and correct as possible before being issued for bidding. However, questions raised by bidders or problems that arise during the bid period may require modifications, including clarifications, corrections, and additional information, to the previously issued Bid Documents. This information should be documented as addenda to the original Bid Documents, in written or graphic form.

Extensively modified drawings should be reissued, under cover of an addendum, with the modifications highlighted. Addendum items modifying the drawings should reference the number designation(s) of the appropriate drawing(s) or, if applicable, more specific drawing reference numbers.

Addendum items modifying the project manual should reference the specific section and paragraph number(s) of the appropriate text. All addenda should be consistently formatted and sequentially numbered and dated. All addendum items should be presented in the same order as in the original Bid Documents. The most recent addendum takes precedence over the original Bid Documents and any previous addenda.

The foregoing deals primarily with the *preparation* of addenda. Refer to 6.6 – Bidder Inquiries and Issuance of Addenda for additional information about the *issuance* of addenda.

6.0 CALLING FOR BIDS

6.1 Methods of Bid Solicitation

There are two basic methods of bid solicitation: open (or public) and invitational.

Open Bid Call

Under an “open” bid call, the bidding opportunity is publicly advertised, traditionally in newspapers and trade or association publications. However, many bid-calling authorities are increasingly using various electronic systems, accessible via the Internet, which facilitate posting of bidding opportunities electronically, usually at no cost to the Owner. It is recommended that bidding opportunities be posted on the most common and well-known electronic systems.

The *Agreement on Internal Trade*, to which most public-sector organizations in Canada must adhere, requires open bid calls for public-sector contracts over a certain value.

Invitational Bid Call

Under an “invitational” bid call, prospective bidders (typically a short list of no fewer than three and no more than six) are pre-selected by the bid-calling authority and invited to bid. In some cases, pre-selection may have been preceded by a formal prequalification process.

A formal prequalification process prior to the bid call is recommended for projects where the bid-calling authority has a particular concern about quality or performance and therefore wishes to limit the bidding to prequalified contractors. The request for qualification submissions may be publicly advertised or privately solicited. Use of CCDC 11 – Contractor’s Qualification Statement form is recommended for qualifications submissions. It is also recommended that clear prequalification criteria be established and disclosed to the respondents. The evaluation and selection process should be as fair, objective, and transparent as possible. Respondents should be informed whether all respondents meeting the qualifications criteria will be prequalified, or whether only a select number (usually predetermined) of the best-qualified respondents will be prequalified. Only the prequalified respondents should subsequently be invited to bid, with the successful bidder determined on the basis of the lowest compliant bid.

Specific subcontract or supplier bidders can also be prequalified, in which case the specifications would name the prequalified subcontractor(s) or supplier(s) that the prime contract bidder must use in its bid.

6.2 Bid Depository

A bid depository is a system designed to collect and register subcontractors’ bids, and then transmit them to prime contract bidders. Normally, subcontractor's bids must be submitted to the bid depository by a closing time that is earlier than the prime contract bid closing time (e.g., 24, 48, or 72 hours in advance). To ensure the success of the bid depository system, all of its users must abide by its rules. Bid-calling authorities that use a bid depository should be familiar with its operations, including all rules and regulations. Bid depositories are typically managed and operated by local industry associations. For more information on bid depositories, contact the local construction association offices.

6.3 Bid Document Availability

It is recommended that bid-calling authorities make their Bid Documents available both in hard-copy and electronically.

At least two hard-copy sets of the Bid Documents (more for large or complex projects) should be made available to all prime contract bidders. Sets should also be made available at plan rooms operated by local construction associations and, upon request, to major subcontractors (e.g., mechanical, electrical, structural steel).

Bid-calling authorities may, if they wish, require a refundable deposit for hard-copy sets of the Bid Documents (other than for those provided to local construction association plan rooms). Where the Bid Documents are returned on time and in good, usable, condition, deposits should be promptly refunded. Requiring a non-refundable deposit, that is, charging for Bid Documents, discourages the return and re-use of specifications and drawings, and contradicts environmental objectives to reduce, re-use, and recycle. Depending on the amount charged, it could also discourage some bidders from bidding. Therefore, charging for Bid Documents is not recommended.

A complete set of the Bid Documents (drawings, specifications, and addenda) should also be made available electronically. Distribution of Bid Documents via “electronic plan rooms” is of particular benefit to subcontractors and suppliers who otherwise have to make a trip to their local construction association plan room to access a hard-copy. As well, increased and more efficient exposure of the Bid Documents to bidders at all levels indirectly benefits the Owner, through increased competition.

The electronic Bid Documents should be in a pure digital format, using common digital file formats that protect the integrity of the original source document. While recognizing that design Consultants normally own the copyright to the Bid Documents, any person or organization that reproduces and disseminates the Bid Documents in electronic (or hard-copy) form, for the limited and legitimate purpose of facilitating bid preparation, should be permitted to do so without incurring any liabilities or obligations to the owners of the copyright.

6.4 Bidding Period and Scheduling

To ensure sound and effective price competition, there should be adequate time for preparation of bids: four weeks is considered reasonable for most moderately complex projects. The bid-calling authority should confer with local construction associations before setting or changing the closing date to ensure it does not conflict with the closing dates for other projects. Selecting the day and hour for bid closing should consider local customs and preferences, as well as any applicable bid depository rules. Afternoon closings are customary, but should exclude the day immediately preceding or following a non-working day. Again, the bid-calling authority should confer with the local construction association if unfamiliar with local customs or preferences.

Where it is necessary to extend the bid closing date, bidders, plan rooms, and bid depositories should be notified by addendum as early as possible prior to the original closing date.

6.5 Pre-Bid Meetings and Site Visits

Where conditions warrant, a pre-bid meeting and, if appropriate, a site visit are recommended to provide an opportunity for bidders to ask questions and obtain additional information about the work or the bidding process. The Bid Documents should clearly indicate whether bidder attendance is mandatory at the pre-bid meeting or site visit. Where attendance is mandatory, there should be a process in place to verify bidder attendance, and any bidder who fails to attend should have their bid rejected.

6.6 Bidder Inquiries and Issuance of Addenda

To ensure the fairness of the bidding process, it is essential that all bidders base their bids on identical information, made accessible to them for the same period of time. Accordingly, any new information that changes or supplements the information in the Bid Documents should be issued as written addenda only, and made available to all bidders. When responding to individual oral or written inquiries, it is important to ensure that information is not provided to one bidder to the exclusion of all other bidders. Any written response to an inquiry should be issued as an addendum that has been prepared according to 5.6 – Addenda. No other form of written response or instruction, for example, memos, letters, or other documents entitled “clarifications” or “confirmations,” should be issued to bidders during the bid period.

All bidders affected by an addendum need adequate time to receive and act upon the information before bid closing. The bid-calling authority should therefore exercise good judgment in determining when, or if, to issue an addendum. The bid-calling authority should consider the size of the addendum, the complexity of the changes, which subcontractors will be affected by the addendum if the project is closing through a bid depository with earlier subcontractor closings, and the proximity of bidders to the closing location. If necessary, the bid closing time should be extended to accommodate late issuance of an addendum.

To avoid complicating the bidding process unnecessarily, only modifications that will significantly affect the bid price or schedule should be issued as addenda items; minor changes should be deferred until after contract award.

7.0 RECEIVING BIDS

7.1 Bid Closing Dates and Times

Bid closing dates and times should be clear and concise and should leave no room for interpretation. The following wording is suggested:

Bids will be received by [name of bid-calling authority] at [address] before [hour:minute:second a.m./p.m. - e.g., 3:00:00 p.m.] local time, as determined by the [description of time piece used, e.g., clock located in general office of secretary treasurer’s department] on the [date] day of [month], [year].

7.2 Receipt of Bids

All bids should be received at a single, designated desk or counter at the location specified in the Bid Documents, where a person authorized to receive bids will be present to physically receive and time stamp (or write the time of receipt on) the bid envelopes. Upon receipt, the bids should be kept in a secure location.

A clock, visible to bidders, should be located where the bids are received. This clock should be synchronized with the clock used to time stamp or record the time of receipt on the bid envelopes.

The foregoing assumes the traditional method of receiving bids, that is, bids are received physically, on paper, in a sealed envelope. Where the bid-calling authority employs a different method of receiving bids, for example, by fax or electronically, it is important to ensure that the fundamental principles underlying the traditional bid receipt process are maintained. These principles are listed in 7.8 – Electronic Receipt of Bids.

7.3 Late Bids

Bids received after the specified bid closing time should always be considered non-compliant and returned to the bidder unopened, with a note stating “Late Bid – Unopened.”

7.4 Bid Modifications

Bidders should be permitted to modify (or withdraw) their bids prior to the bid closing time, provided such modifications strictly conform to the requirements governing bid modifications, as specified in the Bid Documents. Any bid modification process should ensure that the fundamental principles underlying the bid receipt process (see 7.8 – Electronic Receipt of Bids) are maintained.

Bid modifications after the bid closing time should not be permitted.

7.5 Bid Closing

Bids should be opened immediately after the closing time, allowing bidders or their representatives to be in attendance. The names of bidders, bid prices, confirmation of receipt of the required bid security, and other critical information that will be used to evaluate the bids should be revealed. Where alternative prices will be considered in determining the lowest bid price, they should also be announced. The bid results should be recorded and made accessible to bidders not in attendance.

7.6 Two-Stage Bid Closing

Where the bid-calling authority considers it essential that all bidders provide specific bid form supplements with their bids, and the information so requested is extensive, a two-stage bid closing is recommended. A two-stage bid closing requires that only the bid form (and bid security, if required) be submitted at the time of the initial bid closing; however, the bids are not opened at that time. The bid form supplements are then submitted separately at a later, specified closing time. The two separate submissions from each bidder are collated and opened only after the second closing time. A two-stage closing provides bidders with additional time to prepare their supplementary information, thus improving its accuracy and comprehensiveness.

Although a two-stage bid closing is recommended where extensive bid form supplements are unavoidable, it can be problematic. A bidder's failure to submit the required bid form supplements prior to the second-stage closing would normally render the bid non-compliant (unless otherwise specified in the Bid Documents). Knowing that its bid would be rejected as non-compliant, a bidder could intentionally fail to submit the bid form supplements, should the bidder decide not to honour the bid price it submitted at the first-stage closing. This effectively negates the value of any bid security submitted at the first-stage closing and creates the potential for manipulation of the process.

This problem may be addressed by including a clause in the Bid Documents that expressly allows the Owner, at its discretion, to either reject or accept the bid and waive any bidder's failure to submit the required bid form supplements. The precise wording of such a clause and the possible legal ramifications of this approach should be carefully considered for the reasons discussed in 8.1 – Bid Analysis and Evaluation for Compliance.

7.7 Single Bids

Where only one bid is received, it should be accepted, providing it is compliant and within the Owner's budget. However, if the Owner is unable or unwilling to award a contract based on a single bid, this should be stated in the Instructions to Bidders and, in the event of a single bid, it should be returned unopened to the bidder.

7.8 Electronic Receipt of Bids

Receipt of bids electronically (and formation of contracts electronically via the Internet) will no doubt become increasingly commonplace. Bid-calling authorities that create or use systems designed for this purpose should respect and maintain the principles that are intrinsic to the bidding process for construction contracts. These principles include the need to:

- ensure that bidders have easy access to the system at little or no cost,
- establish exactly *where* the bids will be received (e.g., web address) to minimize the possibility of confusion or bids going astray,
- establish precisely *when* a bid or a bid modification was received by the bid-calling authority (e.g., by means of an electronic time stamp) to ensure that it was submitted before the bid closing time,
- establish *who* submitted the bid, that it is authentic and has not been tampered with (e.g., by means of an electronic signature or seal),
- allow secure withdrawal or modification of a previously submitted bid, up until the bid closing time,
- provide a process for the submission of bid bonds and other ancillary documents (e.g., bid form supplements) in an acceptable format,
- maintain the security and confidentiality of bid submissions and bid modifications,
- ensure the reliability of the system to the extent possible and provide for an alternative back-up process in case of unforeseen system malfunctions, disruptions, or other problems.

- ensure the onus remains on the bidder for “delivering” the bid properly, in accordance with the specified bidding requirements,
- ensure the bidder can verify that the bid was properly received by the bid-calling authority, and
- ensure that bidders have access to the bid results promptly after the bid closing.

The basic principles of contract law and the law of competitive bidding must similarly be respected, as well as any applicable federal or provincial statutes pertaining to electronic commerce, protection of personal information, etc. Some purchasers use reverse auctions to receive bids via the Internet. These are live, on-line, auctions typically used for procuring commodities. Successive, competing bids are revealed to the participants as they are made, and the successful bid is determined by the lowest bid standing at the conclusion of the auction. This is an example of an electronic procurement method that violates widely accepted practices and principles of the bidding process for construction contracts, including the above-stated principle of confidentiality of bid submissions and bid modifications. Reverse auctions should not be used to procure construction services.

Until electronic systems become more commonplace, bid-calling authorities should consult industry stakeholders and legal counsel before creating or using systems designed to receive bids electronically.

8.0 CONTRACT AWARD

8.1 Bid Analysis and Evaluation for Compliance

The bid form, and any required bid form supplements, or other documentation that is to be submitted with the bid should be carefully analyzed and evaluated for compliance with all of the Bid Document requirements. Any irregularity, that is, *anything* that might cause the bid to be considered informal, non-responsive, incomplete, improper, or qualified (i.e., conditional) in any way should be identified, as any such irregularity could potentially render the bid “non-compliant”. As discussed in 2.0 – Principles of the Law of Competitive Bidding, the law suggests that only compliant bids may be considered for award and that non-compliant bids must be rejected.

If the Bid Documents clearly specify the Owner’s intended response to a specific irregularity (as recommended in 4.3 – Instructions to Bidders), the Owner’s response is clear. However, there will be situations where the Bid Documents do not clearly specify the response to a specific irregularity. In these situations, the Owner’s response, for example, determining what can or cannot be waived or corrected, becomes critical. If the Owner’s actions lead to an award decision that is, or is perceived to be, contrary to the Bid Documents, the Owner risks being sued by an unsuccessful bidder for improper award to a non-compliant bidder. Owners are therefore strongly advised to seek legal counsel before taking action.

Bid evaluation may reveal a mistake (error or omission) in the lowest compliant bid, or an unrealistically low bid. The mistake may be immediately apparent on the face of the bid or a bidder may inform the bid-calling authority, after bid closing and before contract award, of a mistake that is not apparent on the face of the bid. In either case, it is not unusual for a bidder to ask, in effect, that its bid be rejected because of a mistake.

If the bid-calling authority is satisfied as to the existence of a genuine and significant (in proportion to the bid amount) mistake, the bid should not be accepted, and the bidder should not be penalized, even though the Owner *may* have a legal right to accept the bid. Where the Owner accepts such a bid, the bidder may be forced to perform the contract with little or no profit or at a loss, particularly if the Owner intends to invoke a bid bond. Forcing an unwilling bidder to perform the contract substantially increases the risk that the work will not be performed satisfactorily, and is therefore unlikely to be in the Owner's best interests, despite the lower initial price.

8.2 Contract Award

As discussed in 2.0 – Principles of the Law of Competitive Bidding, Owners are obligated to treat bidders fairly. Accordingly, the contract award process must ensure that only compliant bids are considered, only disclosed criteria are applied, and no undisclosed preferences are applied.

Legal precedents suggest that a standard “privilege” clause (“the lowest or any bid will not necessarily be accepted”) will not negate these basic obligations. Attempting to write more elaborate “privilege” clauses, with the intent to override or circumvent these obligations, is contrary to industry “best practice” and may not stand up to a legal challenge.

It is important to note that, where the Bid Documents contain a standard “privilege” clause, the current law of competitive bidding does *not* necessarily obligate the Owner to award to the lowest compliant bidder (although award remains subject to the above Owner obligations). Nevertheless, although an Owner may be legally entitled to award the contract to other than the lowest compliant bidder, the construction industry's long-established and accepted “best practice” is to award to the lowest compliant bidder, and that practice should always be respected.

Where bidders have been prequalified and invited to bid, they should be equally qualified, and the contract should be awarded to the lowest compliant bidder. The prequalification criteria should not be applied a second time when selecting the successful bidder.

Although a standard “privilege” clause may give the Owner a legal right not to award the contract to any bidder, the Owner should not call bids without intending to award a contract (assuming that the lowest compliant bid will be within the predetermined budget). Bids should not be called to simply “test the market” or obtain cost information.

Bidders appreciate prompt award decisions, regardless of the length of time bids are specified to be open for acceptance. If, due to extraordinary and unforeseen circumstances, the Owner is unable to make an award prior to expiry of the bid acceptance period, the bid-calling authority may, prior to the expiry date, ask the lowest compliant bidder (only) to confirm, in writing, its willingness to extend their bid irrevocability period for a brief, specified period of time. The bidder can normally be expected to agree with this request unconditionally but may not agree, if the bidder anticipates a significant impact on cost or time as a result of the extension. It is important that the bidding requirements include a clause giving the Owner the right to negotiate with the lowest compliant bidder in this circumstance.

No bidder is obligated to honour its bid price or fulfil its security obligations, where the Owner does not accept a bid within the specified acceptance period or an agreed extension.

Unless the bidding requirements (Contract A) indicate otherwise, the construction contract (Contract B) is typically created when the Owner communicates its unconditional acceptance of the bid to the bidder. Subject to any provisions of the bidding requirements, this communication may take any form, including electronic; however, a “letter of bid acceptance,” signed by the Owner and accepting the bid as it stands without alterations or qualifications (conditions), is recommended. In this case, the subsequent signing of the Agreement by the parties is a mere formality.

However, where the Owner issues a “letter of intent,” which does *not* provide for unconditional acceptance of the bid, the contract may or may not be created at that point, depending on the wording of the letter. A letter of intent should only be used where significant issues are yet to be negotiated or where the bidder has not yet formally agreed to some conditions. Depending on the nature of the outstanding issues, the contract may not be created until the Agreement is signed. No bidder is obligated to commence work before being satisfied that the contract actually exists, and does so at its own risk. The Owner may also be at risk in this situation should a dispute arise.

8.3 Post-Bid Negotiations and Re-Bidding

If the lowest compliant bid exceeds the Owner's budget, and the Owner is unwilling or unable to award a contract at the bid price but is unwilling to abandon the project, the following guidelines are recommended:

- Where the amount by which the bid price must be reduced is *less than 15%* of the lowest compliant bid, the *first* step should be to negotiate with the lowest compliant bidder (only) to identify changes in the scope or quality of the work and their corresponding bid price reduction. Where the Owner and lowest compliant bidder agree on acceptable changes and a corresponding bid price reduction, the changes should be documented as a post-bid addendum and the contract, based on the negotiated reduced price, should be awarded to the lowest compliant bidder. However, where acceptable changes and a corresponding bid price reduction *cannot* be successfully negotiated with the lowest compliant bidder, the *second* step should be to invite the three lowest compliant bidders (only) to re-bid on modified Bid Documents under a new bid call. Negotiations should be limited exclusively to the lowest compliant bidder.
- Where the amount by which the bid price must be reduced exceeds 15% of the lowest compliant bid, the bid-calling authority may immediately undertake either of the preceding steps, at its discretion. That is, the Owner may negotiate with the lowest compliant bidder first or re-bid on modified Bid Documents without any attempt to negotiate.

Re-bidding should be avoided whenever possible because of the additional time and costs incurred by all parties. Where a re-bid is unavoidable, the Bid Documents should be sufficiently modified to achieve a reduced bid price acceptable to the Owner.

A standard "privilege clause" in the bidding requirements would give the Owner the right to not accept any bid, thereby permitting the Owner to either abandon the project or reject all bids, and subsequently invite a re-bid on modified Bid Documents under a new bid call. However, since it is recommended that the Owner negotiate with the lowest compliant bidder in some circumstances, it is important that the bidding requirements include a clause giving the Owner, if necessary, the right to negotiate a reduced bid price with the lowest compliant bidder.

STIPULATED PRICE BID FORM

Project/Contract: [name and location of the Work]

Project/Contract No.: []

From (Bidder):

_____ *company name*

_____ *street address or postal box number*

_____ *city/town, province, and postal code*

To (Owner):

[name of Owner]

[address where bids will be received]

We, the undersigned, having examined the Bid Documents for the above-named project/contract, including Addendum Number(s) _____, and having visited the Place of the Work, hereby offer to perform the Work in accordance with the Bid Documents, for the stipulated [base bid] price of:

\$ _____ in Canadian dollars, excluding Value Added Taxes.
amount in figures

We, the undersigned, declare that:

- [(a) we agree to perform the Work within the required completion time specified in the Bid Documents,]
[or]
- [(a) we agree to attain Substantial Performance of the Work within _____ [months] [weeks] [days] after receiving notice of contract award,]
- (b) we have arrived at this bid without collusion with any competitor,
- (c) this bid is open to acceptance by the Owner for a period of [30] [] days from the date of bid closing, and
- (d) all bid form supplements called for by the Bid Documents form an integral part of this bid.

Signatures:

Signed and submitted by:

company name

name and title of authorized signing officer

signature of authorized signing officer

name of witness

signature of witness

name and title of authorized signing officer

signature of authorized signing officer

name of witness

signature of witness

Dated this _____ day of _____, 20 _____.

Note: Affix corporate seal as required by Bid Documents.

UNIT PRICE BID FORM

Project/Contract: [name and location of the Work]

Project/Contract No.: []

From (Bidder):

company name

street address or postal box number

city/town, province, and postal code

To (Owner): [name of Owner]
[address where bids will be received]

We, the undersigned, having examined the Bid Documents for the above-named project/contract, including Addendum Number(s) _____, and having visited the Place of the Work, hereby offer to perform the Work in accordance with the Bid Documents, for the Unit Prices set out in the Schedule of Prices. The Unit Prices are in Canadian dollars and exclude Value Added Taxes. It is understood that:

- (a) the quantities in the Schedule of Prices are estimated and may vary,
- (b) the Unit Prices and actual quantities will form the basis for payment of the Contract Price,
- (c) the total amount of our bid is the estimated Contract Price, which is the sum of all unit price extensions, including any lump sum, and allowance items,
- (d) the extensions of unit prices and addition of unit price extensions, including any lump sum and allowance items, will be checked by the Consultant and where arithmetical errors are discovered, the Unit Prices will be considered as representing our intentions, and the Unit Price extensions and total amount of our bid will be corrected accordingly.

We, the undersigned, declare that:

- [(a) we agree to perform the Work within the required completion time specified in the Bid Documents,]
[or]
- [(a) we agree to attain Substantial Performance of the Work within _____ [months] [weeks] [days] after receiving notice of contract award,]

- (b) we have arrived at this bid without collusion with any competitor,
- (c) this bid is open to acceptance by the Owner for a period of [30] [] days from the date of bid closing, and
- (d) all bid form supplements called for by the Bid Documents form an integral part of this bid.

SCHEDULE OF PRICES

Item No.	Description of Work	Unit	Estimated Quantity	Unit Price	Extended Amount
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
Total Extended Amount					\$ _____

Signatures:

Signed and submitted by:

company name

name and title of authorized signing officer

signature of authorized signing officer

name of witness

signature of witness

name and title of authorized signing officer

signature of authorized signing officer

name of witness

signature of witness

Dated this _____ day of _____, 20 _____.

Note: Affix corporate seal as required by Bid Documents.

COMBINED STIPULATED AND UNIT PRICE BID FORM

Project/Contract: [name and location of the Work]

Project/Contract No.: []

From (Bidder): _____
company name

street address or postal box number

city/town, province, and postal code

To (Owner): [name of Owner]
[address where bids will be received]

We, the undersigned, having examined the Bid Documents for the above-named project/contract, including Addendum Number(s) _____, and having visited the Place of the Work, hereby offer to:

(a) perform the stipulated price component of the Work in accordance with the Bid Documents, for the stipulated price of:

\$ _____ in Canadian dollars, excluding Value Added Taxes,
amount in figures

and

(b) perform the unit price component of the Work in accordance with the Bid Documents, for the unit prices set out in the Schedule of Unit Prices, which are in Canadian dollars, excluding Value Added Taxes, the Total Extended Amount of which is:

\$ _____ .
amount in figures

It is understood that:

(a) bids will be evaluated and the lowest bidder will be determined based on the sum of the amounts entered above,

(b) the quantities in the Schedule of Unit Prices are estimated and may vary,

CCDC Model Bid Form for Stipulated Price Contract with Unit Prices

- (c) the unit prices in the Schedule of Unit Prices and actual quantities will form the basis for payment of the unit price component of the Work, and
- (d) the extensions of unit prices and addition of unit price extensions will be checked by the Consultant and where arithmetical errors are discovered, the unit prices will be considered as representing our intentions and the unit price extensions and the total amount entered above for the unit price component of the Work will be corrected accordingly.

We, the undersigned, declare that:

- [(a) we agree to perform the Work within the required completion time specified in the Bid Documents,]
[or]
- [(a) we agree to attain Substantial Performance of the Work within _____ [months] [weeks] [days] after receiving notice of contract award,]
- (b) we have arrived at this bid without collusion with any competitor,
- (c) this bid is open to acceptance by the Owner for a period of [30] [] days from the date of bid closing, and
- (d) all bid form supplements called for by the Bid Documents form an integral part of this bid.

SCHEDULE OF UNIT PRICES

Item No.	Description of Work	Unit	Estimated Quantity	Unit Price	Extended Amount
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
[]	[]	[]	[]	\$ _____	\$ _____
Total Extended Amount					\$ _____

CCDC Model Bid Form for Stipulated Price Contract with Unit Prices

Signatures:

Signed and submitted by:

company name

name and title of authorized signing officer

signature of authorized signing officer

name of witness

signature of witness

name and title of authorized signing officer

signature of authorized signing officer

name of witness

signature of witness

Dated this _____ day of _____, 20 _____.

Note: Affix corporate seal as required by Bid Documents.

Appendix [] – LIST OF SUBCONTRACTORS

Project/Contract: [name and location of the Work]

Project/Contract No.: []

From (Bidder): _____
company name

We, the above-named bidder, propose to use for the above-named project/contract, the Subcontractors named below:

<u>Item of Work</u>	<u>Name of Subcontractor</u>
[]	_____
[]	_____
[]	_____
[]	_____
[]	_____
[]	_____
[]	_____
[]	_____
[]	_____
[]	_____

Appendix [] – ALTERNATIVE PRICES

Project/Contract: [name and location of the Work]

Project/Contract No.: []

From (Bidder): _____
company name

We, the above-named bidder, offer below the requested alternative prices. The amount to be added to, or deducted from, our base bid price (as entered in the Bid Form) is entered for each requested alternative. All alternative prices exclude Value Added Taxes. If there is no change to the base bid price for an alternative, we have so indicated. It is understood that:

- (a) the Owner may accept any of the alternatives and corresponding alternative prices in any order or combination, including all or none,
- [(b) the lowest bidder will be determined solely from the base bid, without considering any alternative prices,
 [or]
- [(b) alternative prices will be considered in determining the lowest bidder,]
- (c) alternatives and alternative prices are open for acceptance by the Owner for the same period of time as the base bid price,
- (d) the Work of the Contract and the Contract Price will reflect the alternatives and alternative prices, if any, accepted by the Owner at the time of contract award, and
- (e) acceptance of any alternatives will not affect the base bid contract completion time, unless we have specifically indicated an increase or decrease in time, in number of days, on account of a particular alternative.

<u>Description of Alternative</u>	<u>Effect on Base Bid Price</u>	
	<u>Add</u>	<u>Deduct</u>
Alternative No. 1:		
[]:	\$ _____	\$ _____
Alternative No. 2:		
[]:	\$ _____	\$ _____

Appendix [] – ITEMIZED PRICES

Project/Contract: [name and location of the Work]

Project/Contract No.: []

From (Bidder): _____
company name

We, the above-named bidder, provide below the requested breakdown of items of Work included in our bid price (as entered in the Stipulated Price Bid Form). It is understood that these itemized prices are provided for information purposes only and will not be used to modify the scope of the Work and adjust our bid price.

<u>Item of Work</u>	<u>Itemized Price</u>
[]:	\$ _____
[]:	\$ _____
[]:	\$ _____
[]:	\$ _____
[]:	\$ _____
[]:	\$ _____
[]:	\$ _____
[]:	\$ _____

Appendix [] – LIST OF BID DOCUMENTS

Project/Contract: [name and location of the Work]

Project/Contract No.: []

From (Bidder): _____
company name

We, the above-named bidder, have based our bid on the following Bid Documents.

- []
- []
- []
- []
- []
- []
- []
- []

[Note: Do not require bidders to submit this Bid Form Supplement if a list of Bid Documents is provided elsewhere in the Bid Documents (e.g., in the Instructions to Bidders).]