



SUBCONTRACTING

PROCEDURE

Responsible Division: Purchasing & Materials Management

Effective Date: January 12, 2021

Responsible Official: Manager, Corporate Purchasing Policy & Quality Assurance

Last Reviewed: April 26, 2022

Description

This procedure outlines the steps involved in identifying and maintaining a record of Subcontractors performing work on City projects. The procedure has been developed to mitigate potential risks arising from subcontracting and supply arrangements between competitive Suppliers and to ensure the City maintains a record of all Subcontractors approved for City projects.

Related Bylaws and Policies

Improving the Tendering Process for Paving Contracts - Auditor General Report 2016.AU6.11 adopted by Council at its meeting of July 12, 13, 14 and 15, 2016: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.AU6.11>;

Detection of Warning Signs for Potential Bid Rigging Should be Strengthened-Auditor General Report 2017.AU8.3 adopted by Council at its meeting on April 26, 27, and 28, 2017: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.AU8.3>

Procedure

Definitions

“Supplier” means a legal entity, being a person, partnership, Joint Venture, or firm that submits a bid in response to a formal solicitation and “Suppliers” shall have a corresponding meaning.

“Contractor” means the successful Supplier of the solicitation with whom the City enters into a Contract with to perform the Work.

“Subcontractor” means a person, partnership or corporation undertaking the execution of a part of the Work by virtue of an agreement with the Contractor.

"Joint Venture" is an association of two or more legal entities who combine their money, property, knowledge, expertise or other resources in a single joint business enterprise, to Bid together on a solicitation.

"Major Types of Work" means any item that is anticipated to be greater than 10% of the estimated value of the contract or \$100,000, or more unless otherwise specified in the solicitation.

1. Preparation of Solicitation Documents

- 1.1. As part of the solicitation development the Client Division must provide the PMMD Buyer with a list of all Major Types of Work expected under the contract which must be inserted in the List of Subcontractors Form, which is found in the Tender template.
- 1.2. The Client Division must email the PMMD Buyer with instructions as to whether default or alternative subcontracting language regarding participation in multiple bids should be included in the solicitation document.
 - 1.2.1. Default language pertaining to participation in multiple bids should stipulate that:
 - 1.2.1.1. "Submission or participation in more than one Bid by a Supplier will result in the disqualification of that Suppliers proposal. This does not limit the inclusion of the same Subcontractor from being named in more than one Bid as a Subcontractor only."
 - 1.2.2. Alternative language pertaining to participation in multiple bids may indicate that:
 - 1.2.2.1. "A firm that is a Supplier may participate in another Bid as a Subcontractor so long as the value of work they shall perform as the Subcontractor for the other Supplier does not exceed 25% of the total Bid value."
 - 1.2.2.2. In the event the Client Division instructs the PMMD Buyer to use the alternative Subcontractor language, they must provide the PMMD Buyer with written justification for its use (e.g.: market knowledge; specialization of the subcontracted work). Similarly, if the alternative language is used and a higher maximum percentage is requested, justification must also be provided by the Client Division and documented.
- 1.3. The Client Division must email the PMMD Buyer with instructions as to whether default or alternative subcontracting language regarding a maximum allowable portion of work for any individual Sucontractor should be included in the solicitation document.
 - 1.3.1. Default language pertaining to maximum allowable portion of work for any individual Sucontractor should stipulate that:

- 1.3.1.1. "At no time should the maximum bid value percentage allowed for any individual Subcontractor exceed 50% of overall bid value."
 - 1.3.2. Alternative language pertaining to maximum allowable portion of work for any individual Sucontractor may indicate that:
 - 1.3.2.1. "The maximum bid value percentage allowed for any individual Subcontractor shall not exceed XX% of the overall bid value."
 - 1.3.2.2. The maximum bid value percentage allowed for any individual Subcontractor in most cases should not exceed 50% of overall Bid value. However, in the case that a higher percentage is required the PMMD Buyer must consult with their PMMD Manager, Legal, and with the Client Division to understand if this should be accepted. Rationale must be provided to the PMMD Buyer following the consultation.
- 1.4. The List of Subcontractors Form is due at time of close and is a mandatory submission requirement.
 - 1.4.1. Failure to submit will render the bid non-compliant.
 - 1.4.2. Where rectification is permissible in the solicitation document, the submission / completion of the List of Subcontractor Form is subject to the rectification provision in the solicitation document.
- 1.5. The PMMD Buyer must include the Request to Modify/Change Subcontractor Form located on PMMD's Policy and Procedure web page, as an Appendix to the solicitation. In addition, The Request to Modify/Change Subcontractor Form must also form part of the Divisional manual for each project, which is housed by each respective Client Division.
- 1.6. Suppliers who bid as a Joint Venture must indicate clearly that it is a Joint Venture and provide the following information:
 - 1.6.1. the name of each member of the Joint Venture;
 - 1.6.2. the name of the representative of the Joint Venture, i.e. the member chosen by the other members to act on their behalf, if applicable;
 - 1.6.3. the name of the Joint Venture, if applicable.

2. Post Close Bid Review

- 2.1. When the solicitation closes, as part of the submission review process, the PMMD Buyer must inspect the List of Subcontractors Form to confirm that the Subcontractors listed are not currently suspended by the City by referring to the City of Toronto's webpage on [Suspended and Disqualified Firms](#)

(<https://www.toronto.ca/business-economy/doing-business-with-the-city/search-bid-on-city-contracts/suspended-disqualified-firms/>)

- 2.2. The PMMD Buyer must verify whether any of the Subcontractors listed are also Suppliers, and whether subcontracting between Suppliers was allowed under the solicitation.
 - 2.2.1. In the case where subcontracting between Suppliers was not allowed under the solicitation, any involved Suppliers are subject to disqualification.
 - 2.2.2. In the case where subcontracting between Suppliers was allowed under the solicitation, and the lowest Supplier/ highest scoring bidder has indicated another Supplier will be engaged as a Subcontractor, the PMMD Buyer must email a letter of clarification, which shall include a Certificate of Independent Bid Form (COIB) located on the PMMD Policy and Procedure web page; and an unpopulated pricing form to both the Supplier and the competing Supplier cited as Subcontractor. Each party is expected to attest and sign the COIB and indicate on the pricing form the items of work that the Subcontractor will be performing. Refer to the Letters to Supplier Procedure.
 - 2.2.3. The Supplier must return the signed COIB and pricing form to the PMMD Buyer (required within two (2) business days from date of clarification letter), at which time the PMMD Buyer must verify that:
 - 2.2.3.1. Both responses are consistent in the type of work and estimated percentage of contract value being performed;
 - 2.2.3.2. The percentage of the total contract value being performed by that Subcontractor does not exceed the amount allowable under the solicitation by comparing the submitted pricing form to the bid received at time of close and to the percentage of work indicated on the List of Subcontractors Form.
 - 2.2.3.3. In the event there is a discrepancy between the Supplier and Subcontractor responses further clarification may be required.
- 2.3. The PMMD Buyer should ensure that the List of Subcontractors Form is included with the bid information sent to the Client Divisional representative for review, and that the maximum allowable percentage of work allowable for any individual Subcontractor set in the solicitation has not been exceeded.
- 2.4. When submitting Supplier information to the Fair Wage Office the PMMD Buyer must always append the submitted List of Subcontractors Form to the Fair Wage Approval Form.
- 2.5. When Fair Wage approval is received from the Fair Wage Office, the PMMD Buyer must verify that the Subcontractor information provided by the Supplier

to the Fair Wage Office matches the Subcontractor information received in the bid submission.

2.5.1. In the event there are discrepancies between the Subcontractor information received in the original submission and that received by the Fair Wage Office the PMMD Buyer must send a clarification letter to the Supplier to confirm why there is a discrepancy, and whether the Supplier is seeking consent to amend their list of Subcontractors to have any additional / substitute Subcontractors prior to notification of contract award. Refer to the Letters to Suppliers Procedure.

2.5.2. The PMMD Buyer must verify eligibility of the Subcontractors listed, pursuant to steps 1.1, 2.1 and 3.1 of this Procedure.

2.6. The finalized List of Subcontractors Form must be included in the solicitation documents provided to the Client Division & Legal for the formation of the Contract Execution package.

3. Work Performance

3.1. The Project Manager (PM) should bring the finalized list of Subcontractors (as found in the contract execution package) to the Preconstruction Meeting and validate that it is still accurate before work commences. They should also explain the Request to Modify / Change Subcontractor Form and stipulate the following:

3.1.1. The Contractor must complete The Request to Modify/Change Subcontractor Form whenever there is a change or addition of Subcontractor(s) not disclosed in the Subcontractor list included in the agreement.

3.1.2. The Request to Modify / Change Subcontractor Form must be submitted to the PM 10 or more working days prior to the expected arrival of the proposed Subcontractor to a City work site. The PM must check completeness and accuracy of the Request to Modify / Change Subcontractor Form submitted from the Contractor and conduct verification to determine whether the proposed Subcontractor (the firm and/or personnel) for proposed Work Type meets or exceeds Certifications / Qualifications required in the Contract.

3.1.3 Although no request shall be unreasonably declined, the PM must complete the "City Verification" page of the Request to Modify / Change Subcontractor Form and circulate to Fair Wage Office prior to approval. Should the PM be unable to form a conclusion, consultation with Legal Services and/or PMMD is recommended.

3.1.4 No Subcontractor can enter a City work site until the Contractor has received City's written Approval for the request to Modify / Change Subcontractor.

- 3.2. In the event of an emergency request the Subcontractor approval must still be received. The PM will expedite return of the approval form. (Note: an emergency is considered to be response to a natural disaster or danger to the public and /or property).
 - 3.2.1. In the event an emergency request for a new Subcontractor is received the PM may authorize the change without Fair Wage Office approval so long as the request form is duly completed, approved and filed for Fair Wage audit purposes. A copy of the completed and approved form should be scanned and emailed to the Fair Wage Office for their records.
 - 3.2.2. All project progress meetings should include an agenda item to discuss Subcontractors. Topics can include but not limited to progress, deficiencies, changes/delays to deliverables and/or schedule etc.
- 3.3. City's Project Manager (PM)/Contract Administrator (CA) shall be responsible for managing the contract and adhering to PMMD Policies and Subcontractor Procedures and associated documents.
 - 3.3.1. In the event that the Subcontractor Procedure and/or Documentation requirements are not met by the Contractor, it is the responsibility of City's PM/CA to issue 'STOP Work' and follow up with the Contract to ensure all work is performed in compliance with applicable PMMD polices and applicable contractual requirements.
 - 3.3.2. The PM is responsible for completing Contractor Performance Evaluation form and for reporting any issues pertaining to performance of Contractor for PMMD's procurement records.
- 3.4. The Contractor's administration of Subcontractors should be accurately scored on the Contractor Performance Evaluation (criteria C6) and reflect whether the Contractor properly requested and received City approval prior to bringing Subcontractors to the work site.

Questions? Contact

Should you have any questions, please contact the Purchasing and Materials Management Division. If further interpretation is required, please contact the Manager, Corporate Purchasing Policy & Quality Assurance at 416-392-0387 or Supervisor, Policy, Training & Technology at 416-392-1305.