

## PMM Addendum No. 1 – replace word “Bid Opportunity” with “Tender”

– effective September 27, 2022 - replace word ‘bid opportunity’ with ‘tender’

The following PMM Sections or pages are impacted by this change:

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5-64	5.11.2	Contractor Safety & Health Program Evaluations
6.4	6.4	Conduct Procurement
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6-8	6.4.4	Prepare <del>Bid Opportunity</del> Tenders (6 changes)
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## †5.6.2.2 Contractor Selection

For the Design-Bid-Build method of delivery, the design, drawings, and specifications are prepared by the Consultant (or by the City for in-house projects) and packaged into a **Tender** for solicitation of competitive bids.

Construction Contracts are the largest component of the Capital Budget, and it is important to consider the contracting strategy when planning the work. Availability of Contractors, size of the contract packages, sequencing of the work, and even time of year are potential considerations for packaging and issuing **Tenders**.

## †5.11.2 Contractor Safety & Health Program Evaluations

The City's process requires bidders on affected **Tenders** to submit, within five business days as requested by the City, proof of an acceptable safety and health program. Bidders who do not provide proof will not be awarded the contract.

## †6.4 Conduct Procurement

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The City has a structured procurement decision process through the Materials Management Division for bid **opportunity** preparation, bid solicitation, bid evaluation, contract award and contract commencement, which is illustrated in Figure 6-2: Procurement: Decision Process for Procurement Planning.

### †6.4.1.1 How to Prepare a Request for Proposal

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**Insurance** – Consultants/Contractors are required to carry insurance policies, with the minimum requirements identified in the **Tender** or RFP template. The Corporate Finance, Risk Management Division, must be provided a copy of the **Tender** or RFP to review prior to posting on the Materials Management website.

...

The Project Manager is responsible for coordinating a submission deadline, advertising, and submission with the Materials Management Division. The procurement solicitation process is the same for all types of projects with some variation in the procedures depending on whether an RFP or **Tender** is used.

### †6.4.4 Prepare **Bid Opportunity Tenders**

The City uses a formal bidding process to solicit offers for a wide variety of purchases in addition to offers of Consultant services. These offers include bids for construction contracts, services, and the supply of goods. All these purchases fall under the FI-003 Materials Management Policy and are subject to the additional conditions stipulated under Administrative Standards. Refer to Figure 6-2: Procurement: Bid Preparation, Bid Solicitation, Receipt of Bids Processes for a high level view of the **Tender** preparation process.

Each department that is responsible for either preparing a **Tender** in-house or retaining a Consultant to prepare a **Tender** must ensure that the document has been prepared in accordance with the prescribed format, and that the approved forms have been used.

A further requirement is that each Project Manager thoroughly reviews the **Tender** before it is submitted to the Materials Management Division to ensure that it is clear and unambiguous, that the information it contains is accurate and complete, and that prescribed formats and forms have been used.

Guidance on **Tender** preparation and rules for advertising, handling enquiries, and issuing addenda are given in the following section.

#### †6.4.4.1 Forms and Documents Used in the Bidding Process

The City maintains standard documents, forms, and templates on a central website, including the items listed below.

- **Bidding Procedures**

Bidding procedure templates applicable to all **Tenders** are available from the City website at: [winnipeg.ca/matmgt/templates](http://winnipeg.ca/matmgt/templates)

- **General Conditions (GCs)**

GCs are requirements applicable to all **Tenders**. The GC area of the City website at: [winnipeg.ca/matmgt/gen\\_cond.stm](http://winnipeg.ca/matmgt/gen_cond.stm), must always be accessed to obtain the most current versions of the documents.

The GCs include contract clauses of general application which can be modified as required in the Supplemental Conditions. The GCs also define the respective roles and responsibilities of the City, the Contract Administrator, and the Contractor.

- **Supplemental Conditions (SCs)**

The SCs are the project-specific provisions in the **Tender**. On projects with underground and surface works, the supplemental conditions section must incorporate the appropriate sections/specifications from the current *Standard Construction Specifications* available at: [winnipeg.ca/matmgt/Spec/Default.stm](http://winnipeg.ca/matmgt/Spec/Default.stm)

- **Drawings**

The drawings section consists of drawings that show the nature and scope of the work to be performed and that have been prepared or approved by the Project Manager and are referred to in the **Tender** documents.

- **Tender** ~~Bid Opportunity~~

The resultant **Tender** establishes the terms and conditions for the Contract.

### † 6.4.4.2 How to Select the Type of Pricing for a **Tender**

The City has traditionally used two types of pricing for **Tender** work:

- lump sum (or fixed price) contract; or
- unit price contract.

#### † 6.4.4.2.1 Lump Sum Contracts

The onus is on the bidder, rather than on the City, to determine the quantities of materials that will be required to complete the work. The test to determine whether or not the City should use a lump sum contract for **Tender** work is whether the work can be specified in precise-enough detail in the **Tender**, drawings and specifications to ensure that there will be no possibility of or necessity for additional work.

When preparing a **Tender** for a lump sum contract, the Contract Administrator or Project Manager (the in-house representative or a consultant) must ensure that:

#### † 6.4.4.2.2 Unit Price Contracts

When preparing the **Tender** for a unit price contract, the Contract Administrator or Project Manager (i.e.: the in-house representative or the Consultant) must ensure that:

### † 6.4.4.3 How to Prepare **Tenders**

For Design-Bid-Build (DBB) projects, the Consultant or in-house design staff develop designs, drawings, and specifications for products or components during the project planning phase and assembles the information and requirements into **Tenders** for advertising and receipt of bids.

The type of **Tender** to be used depends on what is being procured and whether there are any unique procurement requirements. The City's website has a page that helps users navigate the decision-making process to find the specific application developed to help in preparation of a **Tender**. Refer to [winnipeg.ca/matmgt/templates/decisions/Contract\\_Type\\_decision.stm](http://winnipeg.ca/matmgt/templates/decisions/Contract_Type_decision.stm)

The **Tenders** incorporate a set of the City's General Conditions (GCs). Like the GCs for Consultant services, other GCs are a set of standard terms and conditions for use in a specific area. They are periodically updated, and are available on the City's website at [winnipeg.ca/matmgt/gen\\_cond.stm](http://winnipeg.ca/matmgt/gen_cond.stm)

The website lists multiple versions of the GCs and the user must select the current version. Multiple versions of the same GCs may be posted. This is because revisions to the GCs are not retroactive to Contracts that have already been awarded, and whichever version was included in the Contract remains in effect. New **Tenders** must use the most recent version.

The City uses standard templates for each of the bid types. The website offers templates for various types of infrastructure that are applicable to DBB projects. A template for general construction (referred to as Construction Complex Projects Contract) and the conditions under which it applies can be found at:

[winnipeg.ca/matmgt/templates/Const\\_Gen\\_HighRisk\\_template.stm](http://winnipeg.ca/matmgt/templates/Const_Gen_HighRisk_template.stm)

The General Construction template and others are formatted with hidden instructions to guide the user through preparation. The document references the GCs and the specifications and drawings to be appended to the document to form the **Tender**.

The **Tender** documents include multiple terms and conditions and contractual requirements that impact the project management processes. The **Tender** document is normally prepared by the Consultant or in-house, however, the Project Manager and Project Team must review it and provide input.

Construction Contracts are normally structured as lump sum or unit price contracts. Evaluation criteria may be used, however, this occurs infrequently because the work is usually specifically defined with little opportunity for other criteria impacting the bids.

The Project Manager coordinates a review of the **Tender** prior to advertising. The review is to check conformance to the bidding process, bid documents, and procedures.

### † 6.4.5 Cardinal Rules for **Bid Opportunity Tender** Preparation

Five cardinal rules must be followed when preparing a **Tender**, as described below.

#### 1. **Provide Accurate Information**

The City is responsible for ensuring all information is included in the **Tender** is accurate.

When the City prepares a **Tender** in-house or retains a Consultant to prepare a **Tender** on its behalf, the City or Consultant must ensure the document includes the best information in the City's/Consultant's possession (and all of it), and that the information is accurate.

In addition, if the City and/or its Consultant become aware of an error or omission in the **Tender** during the **tender** process, the City/Consultant must bring that error or omission to the attention of the bidders, and correct it by issuing an addendum before the bidders submit their bids.

...

#### 3. **Provide Clear, Unambiguous, and Consistent Provisions**

The City must ensure that the provisions in the **Tender** are unambiguous and consistent. Special care should be taken to avoid the practices described below, which commonly result in an ambiguous **Tender**.

The “Copy and Paste” method of **Tender** preparation involves copying provisions from an existing **Tender** for a similar project and pasting them into the City’s standard form. In theory, this method saves time; however in reality, the problems that may result requires more time to resolve than the time that might have been saved.

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For example, the General Conditions may specify that dates for ‘Substantial and Total Performance’ will be specified in the Supplemental Conditions section of the **Tender**, however, the Supplemental Conditions section refers instead to ‘completion dates’.

In the ‘impossible’ method of **Tender**, preparation is when the Contract Administrator or Project Manager designs engineering or architectural rules without considering the realities of construction.

The result is that the **Tender** specifies things that cannot or should not be done such as:

...

In the ‘incomplete’ method of **Tender**, preparation is where the Contract Administrator or Project Manager fails to specify the work in enough detail to allow the bidder to understand the City’s expectations. This problem may appear anywhere in the **Tender**. Examples are notations such as “see specs” rather than “see Part 3, Clause 3.1, Section 15800, Air Distribution” and “Refer to soils information” rather than “Refer to soils information contained in Appendix A to this **Tender**.”

...

It is therefore imperative that each section of the **Tender** is carefully reviewed to ensure that the provisions are clear, consistent and complete.

#### **4. Include All Bid Evaluation Criteria.**

The City must include all criteria it intends to use to evaluate bids in the **Tender**, and must use only those criteria in its evaluation of the bids.

The evaluation criteria are in the bidding procedures section of the **Tender**.

...

#### **5. Request only Relevant Information in **Tender** Submission**

The City must ensure that bidders are not required to be submitting information with their **Tender** submissions that the City does not need to evaluate the bids. The **Tender** template specifies that the Award Authority may reject a Bid as being nonresponsive if the Bid is incomplete, obscure or conditional, or contains additions, deletions, alterations or other irregularities. The Award Authority may reject all or any part of any Bid, or waive technical requirements or minor informalities or irregularities, if the interests of the City so require.

The **Tender** specifies that a bidder must complete and return the enclosed **Tender** submission forms and documents with its **Tender** submission and if the bidder either does not return the specified forms or does not supply the specified documents (or, alternatively, completes the forms in part or supplies some however not all of the specified information), then in consultation with Materials Management, a determination needs to be made if the bid is acceptable or should be determined to be non-responsive.

### **† 6.4.6 How to Specify Insurance**

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The Insurance Branch will provide the insurance clauses to be included in the **Tender** and will arrange for the respective policies.

### † 6.4.9 How to Specify Bid and Contract Security

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Bid Bond, Agreement to Bond and Contract Security – The requirements for bid and contract security and the standard forms are set out in the **Tender** templates.

### † 6.4.10 How to Specify Liquidated Damages

...  
The City has elected to specify in the Contract, a genuine pre-estimate of the losses or damages that it will suffer, by including a liquidated damages clause in the supplemental conditions of the **Tender** template.

### † 6.4.13 How to Solicit and Receive Bids

- ...
- Any additional funds required to offset a projected contract or project shortfall based on the Pre-**tender** Estimate have been secured.
- ...
- The **Tender** has been thoroughly reviewed by the department, and approved by the Project Manager who then authorizes advertising. Materials Management reviews prior to advertising.

### † 6.4.14 The Bid Solicitation Process

...  
The Contract Administrator (CA) requests a **Tender** number using the forms on the City's website at [winnipeg.ca/matmgt/templates/bidoopp\\_num\\_request.stm](http://winnipeg.ca/matmgt/templates/bidoopp_num_request.stm)

...  
After receiving the completed **Tender** document, Materials Management begins their review and processing, including checking the following for conformance with the template:

...  
2. Check bid document for completeness:

- a. **Tender** submission forms

...  
3. Check forms in **Tender** submission for errors:

- ...
- The worst case scenario for the processing of the **Tender** evaluation and award period, especially if the recommendation for award has to go to Standing Committee or Council.

#### † 6.4.14.1 ~~Bid-Opportunity~~ **Tender** Enquiries

- ...
1. By satisfactory clarification in accordance with the **Tender** in the case of simple misinterpretations.

...  
The Contract Administrator must not disclose any confidential information related to the project, such as the pre-**tender** estimate or the project budget.

## † 6.4.14.3 ~~Bid Opportunity~~ Tender Opening

Materials Management will oversee the final receipt of bids and conduct the **Tender** opening in the Materials Management office immediately following the expiration of the time and date set for final receipt of bids. Any bid received after the deadline for final receipt will not be accepted.

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The Project Manager and Contract Administrator may attend the **Tender** opening to observe the process.

## † 6.4.14.4 ~~Bid Opportunity~~ Tender Submission Document Disposition

Materials Management forwards a PDF of all bids to the Contract Administrator. The Contract Administrator ensures that all bid information provided by each bidder in the **Tender** submission documents remains confidential.

After reviewing the bids, the Contract Administrator's recommendation for contract award is sent to the Project Manager for department record and contract preparation purposes. Four sets of the **Tender**, complete with all addenda, must also be returned to the applicable department for contract preparation purposes.

## † 6.4.14.5 How to Determine Whether a Bid is Responsive

A responsive bid is one that conforms to the invitation to **tender** in all material respects; that is, there is no non-conformity or irregularity in the bid that would materially affect the contractual relations of the parties or the Contractor's performance the waiver or correction of which would not reasonably be expected to cause prejudice against other bidders.

A non-responsive bid is one that fails to conform to the **tender** in a way that materially affects the contractual relations of the parties or the Contractor's performance, or for which the waiver or correction would reasonably be expected to cause prejudice against other bidders

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2. The determination depends on the unique characteristics (requirements, evaluation criteria, and so forth) of the particular **tender**.

3. A bid may be responsive even though it has one or more irregularities (items that do not conform exactly to the **tender** requirements).

...

5. Examples of irregularities in a bid that would not automatically render the bid non-responsive are:

a. The bidder fails to affix its corporate seal to its **tender** forms.

...

6. Examples of irregularities in a bid that may render the bid non-responsive are:

a. The bidder fails to submit bid security with their **Tender** submission

b. The bidder qualifies/conditions their bid; for example:

- Proposing commencement or completion dates other than those required by the **tender**;
- Failing to submit or complete forms required for evaluation of bids;
- Making the bid conditional on being awarded the whole contract when the **tender** states that the City may award the sections of work separately; or



- Proposing an alternative to the specified work (i.e.: an XYZ pump instead of the ABC pump specified in the Invitation to **Tender**) without obtaining the Contract Administrator's prior written approval.

### † 6.4.14.6 How to Determine Whether a Bidder is Responsible

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The **Tender** document sets out the requirements for a responsible bidder.

### † 6.4.15 Evaluate Bids and Award Contracts

Bids must be evaluated strictly in accordance with the criteria specified in the **Tender**.

#### † 6.4.15.2 Bid Mistakes

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2. The bid prices of the lowest bidder for one or more items of work on Form B: Prices—Unit Prices or for the work as a whole are substantially lower than the pre-**tender** estimate(s).

#### † 6.4.15.3 Procedure to Follow when Bidder Advises of Bid Mistake

A bidder seeking to withdraw a bid on the grounds that it contains a bid mistake usually does so within hours of the **tender** closing.

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Immediately following a decision of the Award Authority not to allow the bidder to withdraw the bid without forfeiting the bid security and in no event later than the time period specified in the **tender** form, the Department Head must issue a Letter of Intent (LOI) to the bidder advising that the bidder has been awarded the contract.

#### † 6.4.15.4 Withdrawal of Bids Prior to the Award of Contract

Bidders are only entitled to withdraw their bids without forfeiting their bid securities at any time prior to the time and date set for final receipt of bids specified in the **tender**.

#### † 6.4.15.6 Pre-Award Meeting with Lowest Evaluated Responsive Bidder

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"that it is not the intent of this meeting to award the contract or make any changes however only to confirm the intent and ability of the Contractor to undertake and perform the work in accordance with the **Tender** documents and the Bid."

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The Contract Administrator should then review the scope and schedule of the work to ensure that the bidder has no misunderstanding about the extent of the work and to confirm that they have no reason to believe that they cannot perform the contract in accordance with the **Tender** documents.

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Further, the Contract Administrator should discuss any site investigations carried out by the bidder to ensure that the bidder's findings were consistent with the site information disclosed in the **tender**.

### † 6.4.16 Contract Administrator's Final Recommendation of Award

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The letter of recommendation must be accompanied by the Summary of Bids and Tabulation of Bids forms, and the **Tender** submissions of all bidders.

### † 6.4.16.2.2 Legal Services, Materials Management, and Controller Approvals

...

3. Known informalities or irregularities in the recommended bidder's **Tender** submission have been identified and that a correct determination has been made about their materiality.

### † 6.4.17.1 How to Form a Contract

After all approvals have been obtained, a contract must be formed. There are three options for this identified in one or more of the RFP and **Tender** templates and general conditions:

### † 6.5.3 Manage Design-Bid-Build Construction Contract

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The GCs define the Contract Administrator as the City's representative throughout the duration of the Contract, and state that the Contract Administrator shall have authority to act on behalf of the City to the extent expressly provided for in the Contract. The person or firm filling the role is identified in the supplemental conditions of the **Tender**.

### † 9.1.1.1 Contract Records

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- Bid Documents and Job Diaries
- These are to be included as part of the permanent Contract record:
- Contract documents - the **Tender** submission

### † 9.5 Schedule of Work

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The Contract schedule to be provided by the Contractor is dependent on the complexity of the Contract. It may vary in format from a reproduction of the Schedule of Work contained in the **Tender** submission, to more detailed Gantt Charts or a detailed Critical Path Method (CPM) Chart for individual critical activities.

## † 9.11.3 Professional Liability Insurance Policies (Errors and Omissions)

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The City RFP or **Tender** requires the architect or engineer to continue their professional liability insurance or to provide an extended reporting period from 12 – 36 months after total performance. This period of time allows for discovery of any defect or deficiency and for reporting to the City Claims Branch.

## † 9.11.5 Contractor's Equipment and Automobile Insurance Policies

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City **Tenders** or RFPs require evidence of automobile liability from the Contractor, if their vehicles will be operated on the roadways or City property. Evidence of insurance is provided by a certificate.

## † 9.11.7 Material Variation in the Terms of the Contract

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### 1. Alterations in the Nature or Scope of the Work

The key word under this heading is “material.” If the alteration in the work is so material that the Contractor would no longer be performing the type of work described in the **Tender**, the surety will be discharged.

## † 9.12 Liquidated Damages

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The amount of liquidated damages is the amount as stated in the **Tender**, regardless of the actual loss or damages. Liquidated damages become payable immediately upon breach and must be deducted from progress estimates payable to the Contractor.

## † Glossary

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<b>Supplemental Conditions (SC)</b>	A section of the <b>Tender</b> or Request for Proposals that supplements or modifies the General Conditions, and sets out terms and conditions specific to the Contract.
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