Silviculture Solicitation and Award Practices

Special Review

Prince George Business Area

FINAL REPORT

August 2008

Table of Contents

Executive Summary 2

Introduction 3

Findings, Conclusions and Recommendations 4

1.0 Solicitations 4

2.0 Evaluation and Award 6

3.0 Option to Renew (Renewals) 7

4.0 Other Minor Areas for Improvement 7

Executive Summary

This report sets out the results of the Silviculture Solicitation and Award Practices Special Review undertaken in the Prince George Business Area (PGBA), August 2008. The review assessed the business area's silviculture solicitation, evaluation, and award practices for compliance with government and ministry policies, procurement principles, and to ensure that the processes are open, consistent, fair, and transparent.

Many sound practices were noted during the review. It was evident that staff were diligent in their efforts to ensure compliance with policy and principles. Overall the practices of the PGBA were found to be compliant with government and ministry policies and principles and were open, consistent, fair, and transparent. There was no evidence of any intention or actions to restrict bidders, be unfair or to obscure the process in the solicitation, evaluation or award of contracts by business area staff.

This said there were some instances where certain practices, while complying with policy, could reasonably be perceived by the silviculture contracting community as restrictive, unfair or lacking in transparency. For example, cancelling a solicitation after closing when the bids have been opened is sometimes necessary, as were the cases in the PGBA however, such practices may contribute to these perceptions.

Some areas for improvement were noted and the report contains a number of recommendations to continuously improve practices and address perceptions.

We want to thank the Prince George Business Area management and staff for their assistance and cooperation during the review.

Introduction

In May 2008 the Western Silviculture Contractors Association (WSCA) requested a review of the Prince George Business Area's solicitation and award practices for silviculture contracts. The WSCA made the request on behalf of its members to the BCTS Contractors Advisory Committee (BCAC). The WSCA is a member of BCAC.

The WSCA expressed concern that certain silviculture solicitation and award practices within the business area such as re-tenders and late tendering may not be transparent or fair to all bidders.

BCTS agreed to undertake an internal review rather than have the association file a complaint through the Vendor Complaint process as the issue was not related specifically to a single tender, but rather general solicitation practices.

The purpose of the review was to provide assurance to BCTS and BCAC that solicitation and award practices for silviculture activities within the Prince George Business Area are compliant with government and ministry policies and procurement principles.

The specific objectives of the review were:

- to assess the Business Area's solicitation and award practices to determine whether the processes used are open, consistent, fair, and transparent;
- to identify areas where solicitation and award practices could be improved;
- to identify any best practices and/or innovative practices; and
- make recommendations, where appropriate.

The field review work undertaken included:

- reviewing sixteen (16) silviculture solicitations and awards in the Prince George Business Area

Solicitations were selected from the population made up of solicitations advertised and awarded during the period from *April 1, 2006 to March 31, 2008*.

Conclusions, Findings and Recommendations

1.0 Solicitations

Overall solicitation practices within the Prince George Business Area (PGBA) were open, consistent, fair, transparent, and complied with policy. The solicitations reviewed were for the most part well written and informative. However, some instances noted, while complying with policy, could reasonably be perceived by the silviculture contracting community as restrictive, unfair or lacking transparency. There was however, no evidence to support that these instances were in anyway intended to restrict, bias or obscure solicitations.

There were also some good planning and solicitation practices observed during the review. Most notably:

- Questions and Answers posted as an addendum to a tender. This practice gives all bidders the same information at the same time, ensuring a fair and transparent process.
- The Planning Overview Checklist document used by PGBA has the cost estimate, background and market value built right into the form.
- Resource Clerk Contract checklists were in evidence on most of the contract files reviewed and was a good source of information and contract status.
- TSO "Timeline", an Excel document that reflects all the important dates for contracts and timber sales that will take place in the Business Area during the fiscal year to help in planning.

Option to Renew Contracts

At times overall planning for silviculture contract solicitations and the resulting use of Option to Renew (OTR) contracts within the PGBA did not properly address the risks of future operational issues, such as changes in area, terrain, seedling types or new information beyond the first year of the contracts. Generally, OTR contracts are not the best type of contract where there is a high risk of material changes to the contract in option years due to future operational issues. This is because policy requires the business area not to renew and OTR contract when a material change is required in an option year.

Three OTR planting contracts[1] were identified as not having been renewed. These contracts were not renewed due to material changes required after the first year. These non-renewals may have contributed to the perception of unfairness by silviculture contractors. There was however, no evidence to support that the non-renewal of these contracts was unfair and the actions of the PGBA not to renewal the OTR contracts fully complied with policy.

In addition, a general lack of understanding of OTR contracts by the contracting community may have also contributed to their perception of unfairness. Such

perceptions may be reduced through increased communications between BC Timber Sales and its contracting community. This is a key objective of the BC Timber Sales Contractors Advisory Committee.

Advertising

While no issues were noted with most contract solicitations examined three[2] were advertised late in the season making site viewing more difficult. Planting contracts advertised in late November for spring planting such were the cases identified, make it difficult or impossible for prospective bidders to view the area due to snow cover and/or access problems. Generally it would not be effective procurement practice to seek contract bids without the potential bidders being able to physically view the site. As a result, such a practice could be perceived as giving one bidder an unfair advantage over the others if a bidder is familiar with the area and the other bidders are not. There was not evidence that such was the case for the three contracts advertised late. The late advertising of these solicitations were due in part to a lack of planning and could be avoided through improved planning practices.

Addendums

A large proportion of the sample of solicitation tenders reviewed had multiple addendums, most of which were due to errors in the tender documents or new information. This is a general indication of possible issues with planning and could be avoided through more rigorous checking of contract tender packages prior to posting to BC Bid. Multiple addendums to solicitation tenders significantly increases the risk of confusion by bidders and complications with the solicitation evaluations. Cancelling a Tender Call prior to the Closing Date is normally the method with the least risk to correct significant errors found after Tender Packages have been posted. We understand that the Business Area has taken steps to address this issue through a peer review process that was incorporated into all fiscal 2009 silviculture contracts.

Recommendations

The Business Area should:

1) **Avoid the use of Option to Renew contracts in situations where there is significant risk that a material change to a contract may be required in the option years due to future operational issues.**

2) **Ensure that sufficient advance planning goes into each solicitation as required by *Core Policy & Procedures Manual (CPPM) 6.3.1* to avoid the need for late tendering or multiple addendums.**

3) **Request the BCTS Contractors Advisory Committee examine options to increase communications with the contracting community about government contracting processes.**

[1] PL09TGF003, PL09TGF005, PL09TGF006

[2] PL09TGF004; PL08PGBAPG001, PL08PGBA002

2.0 Evaluation and Award

Overall the PGBA silviculture evaluation and award practices were open, consistent, fair, transparent, and complied with policy. However some practices are causing negative perceptions of the process by bidders.

Tender Opening

The most significant issue related to the evaluation and award of silviculture contracts and contributor to negative perceptions by bidders, was the cancelling and re-tendering contract solicitations after opening the bids. Four such tenders were identified and examined during the review[3]. Just cause and written approval by the Timber Sales Manager (TSM) are required to cancel a contract solicitation after opening bids. The solicitations examined that had been canceled and re-tendered after opening were all supported by just cause and were appropriately approved by the TSM.

This practice, while permitted in policy should generally be used only when all other options have been expended. There is significant risk of the perception of unfair tendering or "*Bid Shopping*" when cancelling a tender after opening the bids. As a result it is reasonable that bidders would perceive these situations as unfair. This said, there was no evidence that the PGBA was engaging in bid shopping or deliberately treating any bidders unfairly in the re-tendered solicitations examined. Future perceptions such as these may be reduced through greater communications by the Business Area and an increased understanding of government contracting processes by the contracting community. Both options should be explored to improve the overall effectiveness of BCTS contracting.

Mandatory Requirements

Substantially all mandatory requirements in the solicitations examined were clear, measurable, and had been evaluated consistently in compliance with policy. One small

solicitation[4] reviewed had mandatory requirements that were unclear and in our opinion, not related to relevant risk. While an isolated case, assessing bidders against mandatory requirements that are unclear or open to interpretation makes it difficult to consistently determine whether bidders have met the requirements during evaluation. In addition to being clear and measurable mandatory requirements must be reasonable for the work being tendered and related to the risk(s) or they will be seen as overly restricting the potential bidder pool.

Bid Prices

In all but one case there were no issues related to the evaluation of bid prices. For one contract[5] an unbalanced bid was accepted when it should have been rejected. This appears to be an isolated incident and no other issues with the evaluation of bid prices were noted during the audit. We understand the Business Area was already aware of this instance and has taken steps to address the issue.

[3] BR08TGF005, SU08TGG001, SU2007TPGMA006, PL09TGF004

[4] SU2007TPGMA006

[5] PL08TPGPG002

Recommendations

The Business Area should:

4) Ensure there is sufficient communications with all bidders involved in the cancellation of a solicitation after the closing date to demonstrate transparency and reduce potential negative perceptions.

5) Consider having its contract champions conduct information/training sessions with staff to reinforce knowledge and skills related to developing clear and measurable mandatory requirements for solicitations.

3.0 Option to Renew (Renewals)

Two OTR contract renewals were examined during the review. A brushing contract renewed for the second term and a planting contract renewed for the third and final term. No issues were noted with these renewals. Both of these renewals were completed as per ministry and government policy with no change in unit prices above 3% and had good documentation on the files.

4.0 Other Minor Areas for Improvement

Some other areas for improvement were noted during the review. These findings were generally minor in nature and did not directly impact the open, consistent, fair, and transparent solicitation, evaluation and award of silviculture contracts.

a) Some solicitation documents were posted to BC Bid in Word format. These documents should always be converted to PDF format prior to posting.

b) Incorrect contract naming convention was being used. The Business Area should be using the convention put in place by the e-invoice Provincial Working Group and Records Management.

c) Some of the solicitations viewed on BC Bid had a Conditions of Tender document which had no contract number on page 1. The Business Area should ensure all contract documents are completed prior to posting to BC Bid.

d) The summary information on BC Bid at times contained details. The summary should be used to "*summarize the project*" only. Details about the area should be in the Information to Bidders document and the mandatory requirements in the Conditions of Tender document.

e) It was not always clear to bidders that they are responsible for keeping up with any addendums to a solicitation. The following statement should be included in the BC Bid solicitation summary information to let bidders know of their responsibility:

> "Tender Packages will be available online from BC Bid at http:\\www.bcbid.gov.bc.ca. The Electronic Package is made up of PDF documents including the Tender Envelope. BC Timber Sales may post any addendum to the Tender Documents on the BC Bid® website at http://www.bcbid.ca.
> Bidders are strongly encouraged to select "Send Me Amendments" that is included as an option on the Opportunity Notice published on BC Bid®. By selecting this option a registered Bidder will be automatically notified of any amendment that may be issued. Bidders that are not registered with BC Bid® may register by selecting Start your e-Service, Supplier Registration on the BC Bid® home page, www.bcbid.ca. Bidders who do not register with BC Bid® are solely responsible to continually monitor the BC Bid® website on an ongoing basis to keep themselves informed of any addendum."

f) The footer on contract and tender documents was removed. The Business Area should ensure that the footer on these documents is not removed as it shows the form number and revision date.

g) OTR contract files did not contain contractor evaluations for each year of the contract. A copy of the previous year's contract evaluation should be placed on all OTR contract files to support the renewal decision.

h) Ministry cost estimates were found on the files reviewed which did not have the Planning Overview Checklist, however, not all of the estimates had information as to where the estimate came from (i.e. last year's contract – no changes in access etc so low bid backs up the estimate). This information should be included in the contract file.

Recommendation

6) The Business Area should take action to address the minor areas for improvement a) to h) noted in Section 4.