



MCPL National Tendering Guidelines and Procedures

Apartments and Commercial

This Document is for internal use only and as such should not be issued or disclosed to any third party.
(Unless authorised by the SCM)

Document Title: MCPL National Tendering Guidelines and Procedures

Guideline Authorised by: Simon Rose and Rino Tomasiello Title: Senior Commercial Manager - Construction	Date amended: 05.11.18	Page 1 of 21
Guideline Maintained by: National Construction	Current version : MCPLG-3.001	

Contents

1	OBJECTIVE.....	3
1.1	General Obligations	3
1.2	Applicability of the National Tendering Guidelines and Procedures.....	4
1.3	Note to all Employees	4
2	DEFINITIONS AND RESPONSIBILITIES.....	5
2.1	Definitions	5
2.2	Responsibilities	5
3	TENDER PROCESS #1: AGREEMENTS WITH AN ESTIMATED VALUE OF LESS THAN \$100,000	6
3.1	Tender Process #1.....	6
3.2	Tender Process #1: Agreements with an estimated value of less than \$100,000	8
4	TENDER PROCESS #2: AGREEMENTS HAVING AN ESTIMATED VALUE GREATER THAN \$100,000, OR THE WORKS ARE DEEMED CRITICAL, HIGH RISK OR INCLUDE DESIGN	9
4.1	Tender Process #2 (refer flowchart on page 19)	9
4.2	Pre-Tender: Stage 1	9
4.3	Tender Period: Stage 2.....	11
4.3.1	Clarification of Documents during Tender Period	11
4.3.2	Lodging of Tenders	11
4.3.3	Extension of Time for Closing of Tenders.....	11
4.3.4	Period for a Tender	12
4.3.5	Opening Tenders	12
4.3.6	Late Tenders	12
4.4	Consideration of Tenders (Vetting): Stage 3	13
4.4.1	Tender Vetting Process.....	13
4.4.2	Analysis and Evaluation	13
4.4.3	Single/Multiple Tender – Multiple/Single Agreements	15
4.4.4	Non-Conforming or Alternative Tenders	15
4.4.5	Qualified Tenders	15
4.4.6	Changes to Extent of Work Prior to Acceptance of Tender	16
4.4.7	Errors in Tenders	16
4.4.8	Clarification of Tenders	16
4.4.9	Tender Negotiation.....	16
4.4.10	Prohibition of ‘Bid Shopping’	16
4.4.11	Best and Final Offer Process (Addendum)	17
4.4.12	Pre-PEA Review Meetings	17
4.4.13	Debriefings	17
4.5	Acceptance of a Tender: Stage 4	18
4.5.1	Letter of Intent	18
4.5.2	Agreement.....	18
4.6	Tender Process #2: Agreements with an estimated value of greater than \$100,000	19
	APPENDIX 1- MASTER TENDER DOCUMENTS	21

1 Objective

The objective of this document is to set down the tendering guidelines and procedures to be adopted by each project team to ensure compliance with Mirvac legal and ethical requirements and policies; by testing the market to obtain the most competitive pricing and treating all tenderers equally in a transparent manner to meet the requirements of the project and the Mirvac Group Code of Conduct.

This document sets out the tendering guidelines and procedures to be adopted by each project team in the letting of trade contract and other packages. Its aim is to ensure that Mirvac constantly:

- Obtains the most competitive and commercial pricing for its projects;
- Treats all tenderers equally in a transparent and ethical manner; and
- Abides by Mirvac's policies and procedures in the procurement of tenders from, and the engagement of third parties.

This document has been divided into two processes:

- Tender Process # 1: Agreements having an estimated value of **less** than \$100,000; and
- Tender Process # 2: Agreements having an estimated value of **greater** than or equal to \$100,000 or the works are deemed critical, high risk or include design elements.

1.1 General Obligations

All parties participating in the tender process shall behave in accordance with the following standards at all times:

Honesty and Fairness:	Parties will conduct all procurement and business relationships with honesty and fairness.
Accountability and Transparency:	The process for awarding Agreements will be open, clear and auditable.
No Conflict of Interest:	A party with a potential conflict of interest shall declare and address that interest as soon as the conflict is known to that party.
Rule of Law:	Parties shall comply with all legal obligations.
No Anti Competitive Practices:	Parties shall not engage in practices that are anti-competitive.
No Improper Advantage:	Parties shall not engage in practices that aim to give a party an improper advantage over another.
Intention to Proceed:	Parties shall not seek or submit tenders without a firm intention and capacity to proceed with a subcontract.
Co-operation:	Parties shall maintain business relationships based on open and effective communication, respect, trust, and adopt a non-adversarial approach to dispute resolution.
WHS High Risk Service Provider:	means any service provider which meets any of the following requirements: - they have not previously performed works for Mirvac;

- they are proposing to use 'novel' technology or systems for the first time on a Mirvac project;
- they have been prosecuted or been involved in any workplace fatality in the last 2 years; or
- any other matters determined by the project team in consultation with the Regional HSE Manager.

1.2 Applicability of the National Tendering Guidelines and Procedures

Trade Packages:

All trade packages must be procured in accordance with the National Tendering Guidelines and Procedures.

Preliminaries Packages

The following is applicable for Preliminaries Subcontract Packages:-

- All preliminaries subcontractor packages that have an estimated value equal to or greater than \$100,000 must be procured in accordance with the National Tendering Guidelines and Procedures.
- All preliminaries Subcontract packages that have an estimated value less than \$100,000 may be procured without reference to these guidelines, noting that the Limits of Authority to commit and General Obligations (refer Item 1.1) must still be adhered to.

Consultant Packages

The following is applicable for Consultant Packages:-

- The National Tendering Guidelines and Procedures is tailored to Subcontracting so some items which have been noted in the tender guidelines will not be applicable or marked with **.

1.3 Note to all Employees

All employees are reminded of their conditions of employment, including their obligation to comply with the Mirvac Group Code of Practice which requires each employee to disclose any "Conflict of Interest".

These conditions apply to these guidelines and the tendering and awarding of trade and other project packages and they must be adhered to at all times. A failure to do so will result in disciplinary action in accordance with the conditions of employment.

2 Definitions and Responsibilities

2.1 Definitions

In this document:

Client means Mirvac Development or an external Client.

Mirvac Design means the Mirvac Design Project Architect or External Consultant.

Site Management means a member of the Mirvac Site Management Team.

Subcontractor means a Tenderer to which work or services the subject of a tender are awarded. It may be a supplier or a subcontractor or a consultant.

National Limits of Authority means the MCPL National Limits of Authority – Apartments and Commercial.

Agreement means the Mirvac National Subcontract Agreement, Mirvac National Minor Works Subcontract Agreement, Mirvac Supply Agreement and Mirvac Consultant Agreement; or a period Supply / Trade Agreement as applicable.

The abbreviations used within this document include:

- GM General Manager, Design Management & Construction
- OM National Operations Manager or Regional Operations Manager
- SCM Senior Commercial Manager
- PM Senior Project Manager, Project Manager, Design Manager or Cost Planning Manager
- PE Senior Project Engineer, Project Engineer or Site Engineer
- CA Contracts Manager. Senior Contracts Administrator, Contracts Administrator or any person that administers the contract or tenders the works.
- MD Mirvac Design or External Consultant
- SM Site Manager or Senior Site Manager
- NLM National Legal Manager
- LOA MCPL National Construction Limits of Authority

2.2 Responsibilities

Document Responsibilities:	
Implemented and Updated by:	SCM
Adhered to by:	All Construction employees
Monitored for Compliance and adherence by:	SCM and OM

Without limiting the abovementioned document responsibilities, strict compliance with and adherence to the National Tendering Guidelines and Procedures for Apartments and Commercial during all tendering activities remains the responsibility of all parties referred to above.

3 Tender Process #1: Agreements with an estimated value of less than \$100,000

3.1 Tender Process #1

If the works to be tendered are deemed by the Project Team to be critical, high risk or if there is a design component associated with the Works, then Tender Process # 2 must be followed; notwithstanding that the value of the tender may be less than \$100,000. Any works to be tendered to a WHS High Risk Service Provider must follow Tender Process # 2.

All Consultants may be engaged under Tender Process #1: however the standard Mirvac Consultant Agreement must be utilised.

The tender process where the value of the tender is estimated to be less than \$100,000 is as follows:-

A minimum of two quotes must be obtained in written form.

In exceptional instances (e.g. specialist subcontract works or specified proprietary items), a single quote or acceptance of a bid other than the lowest may be accepted; subject to independent verification of the submission and reasons for recommendation of a particular quote by a person not directly involved in the calling of the tender.

- The List of Proposed Tenderers shall clearly identify and record the reasons for selection or rejection of a tenderer. The rationale may include the following considerations:
 1. Financial stability;
 2. Industrial relations record;
 3. Capacity to complete;
 4. Past performance;
 5. Quality of work;
 6. Attitude to co-ordination;
 7. Attitude to pre-tender involvement;
 8. Nomination of project supervisor;
 9. Workload on other projects;
 10. Number of tenderers on the list;
 11. HSE record;
- The documents are to be issued to the tenderer via Aconex.
- Evaluation will be a simple check by the CA to confirm that the price quoted/tendered covers the relevant Scope of Works/Services and is fair and reasonable.
- Approval to commit orders must be sought from the appropriate level of authority in accordance with the MCPL National Construction Limits of Authority (LOA).
 - Where significant risk is involved or significant variations are likely, additional conditions to mitigate the risk must be included, or a Major Works Subcontract should be used if deemed necessary by the OM or SCM. Whilst not mandatory, it is recommended that a PEA form be utilised for commitment of this type of work.
 - Mandatory pre-qualification criteria for selection must include satisfactory completion of the Tender and High Risk Work HSE Assessment, (HSEF2.33) by the Tenderer during a tender interview. A copy of the checklist will be retained on site and will cover health, safety and the

environment (This is not mandatory for Consultants that are performing design services only where no works occur on site).

- The Subcontractor/ Consultant Interview Checklist may be used as a guide to ensure that all facets of a subcontract are covered during the tender interview session. The information generally contained within this checklist is generally not exhaustive, and should be treated as a useful guide during the interview. This checklist may, with the prior approval of the PM, be modified to cater to the requirements applicable to each individual trade package including reference to the following considerations:

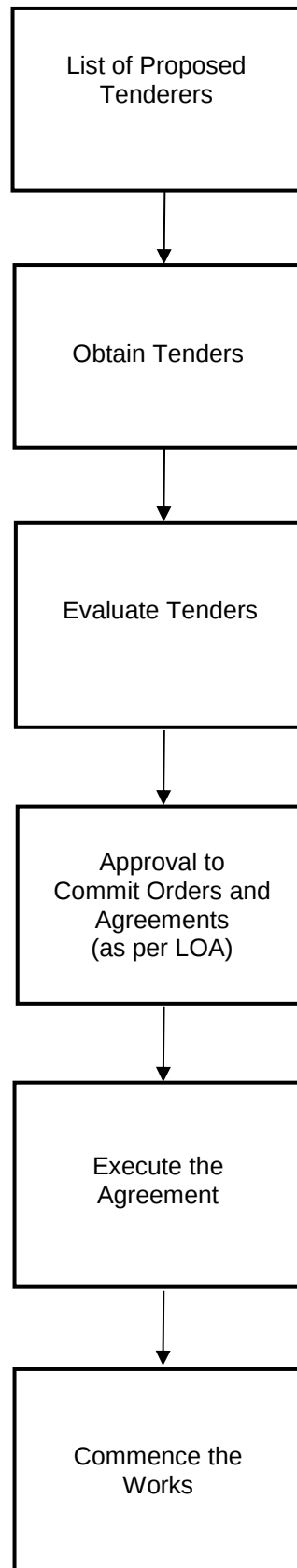
1. Tenderer's occupational health, safety and environmental management practices and performance;
2. Capability of Tenderer, including technical, management, human resource, organisational and financial capability and capacity;
3. Conformity of tender with requirements.
4. Experience of Tenderer and personnel proposed;
5. Previous performance of Tenderer;
6. Warranties and guarantees;
7. Quality offered;
8. Delivery times offered;
9. Value adding components such as economic, social and environmental development initiatives, if appropriate and relevant to the procurement; and
10. Tenderer's community relations practices and performance/

- All tenderers interviewed must sign the document/checklist as a true record of the matters discussed and agreed during the meeting. (The intent is that the Subcontractor/Consultant Interview Checklist is to be completed at the Final Interview with the remaining competitive tenderers).
- Agreement terms and conditions cannot be amended without approval by the NLM and SCM .
- Agreement to be executed in accordance with LOA.

Note: Exception to the above process may only be authorised by the OM or SCM; this authorisation must be documented on the List of Proposed Tenderers form.

It is recommended that the Tender Evaluation Report be utilised to provide a greater level of information where the proposed commitment is over budget or in circumstances where it is proposed to not engage the lowest tenderer.

3.2 Tender Process #1: Agreements with an estimated value of less than \$100,000



4 Tender Process #2: Agreements having an estimated value greater than \$100,000, or the works are deemed critical, high risk or include design

4.1 Tender Process #2 (refer flowchart on page 19)

The tender process has 4 key stages (with key parties involved nominated for each stage):

Stage 1.	Pre Tender	OM, SCM, PM, CA, PE, SM
Stage 2.	Tender Period	OM, SCM, PM, CA, PE, SM
Stage 3.	Consideration of Tenders (Vetting)	OM, SCM, PM, CA, PE, SM
Stage 4.	Acceptance of a Tender	OM, SCM, PM, CA, PE, SM

The documents to be used during the tender process and the point at which they are to be used are outlined in the Master Tender Documents (Refer Appendix 1). Where external consultants are involved in the design and/or technical aspects of the works being tendered, the utilisation of these consultants may also be procured. (This is optional based on Project criteria for consultant involvement in the tendering process).

4.2 Pre-Tender: Stage 1

During this part of the process the team responsible for the tender package must compile the tender documents.

Prior to the tender process commencing, the project team must review their procurement strategy with the OM, SCM and the Construction Procurement Manager and signoff the agreed OSAS strategy document.

Procurement options to be considered are as follows:

T: Competitive Tender
N: Negotiated Tender
S: Supply Agreement
O: Other

The outcomes of the above procurement strategy, along with the time frame for compilation of a tender must be coordinated and recorded within the Offsite Activity Schedule (OSAS). *(This may not apply to consultant tenders).*

Templates for the documents to be included in a tender package are summarised in the Tender Package Document Checklist; which serves as a guide checklist to compiling each tender package, and nominates which templates must be used, and which templates are optional. The templates are located on the Intranet.

The project team shall do everything within its collective power to ensure that a minimum of three (3) quotations, in written form, are obtained.

In exceptional instances (e.g. specialist subcontract works, specified proprietary items or as directed by the Client), a single quote or acceptance of a bid other than the lowest may be accepted; subject to independent verification of the submission and reasons for recommendation of a particular quote by a person not directly involved in the calling of the tender. In such instances, the Tender Evaluation Report must be completed to provide further information and clarification regarding the recommended engagement. Furthermore, this may only occur at the discretion and approval of the OM or SCM.

The Notes section of the List of Proposed tenderers must clearly identify and document the rationale for tendering outside the tender process in these exceptional circumstances; and be signed off by the OM or SCM.

During the pre-tender stage, a proposed list of tenderers must be compiled by the CA (and/or the PM/PE) and agreed with the PM. The List of Proposed Tenderers document must be prepared and formally signed off by the CA, PM, SCM and OM, and should contain a sufficient number of proposed tenderers.

The List of Proposed Tenderers shall clearly identify and record the reasons for selection/ rejection of a tenderer. The rationale may include the following considerations:

1. Financial stability;
2. Industrial relations record;
3. Capacity to complete;
4. Past performance;
5. Quality of work;
6. Attitude to co-ordination;
7. Attitude to pre-tender involvement;
8. Nomination of project supervisor;
9. Workload on other projects;
10. Number of tenderers on the list; and
11. HSE record.

Before a tender is issued to the market, all packages should be reviewed by the PM, PE and CA to determine tender strategy and a check is to be made by the CA to ensure that the actions outlined in the Tender Package Document Checklist are executed.

Further to assessment against such criteria by the project team, the list may also be considered by the consultants concerned with the particular package. Concurrently, verification is to be made of any references or referees (as may be deemed necessary)

4.3 Tender Period: Stage 2

4.3.1 Clarification of Documents during Tender Period

All documents and tender packages issued to tenderers for a particular tender should be issued on Aconex tender module and must be the same.

All explanations and/or clarifications given in respect of a tender shall be in writing and **must be issued to all tenderers as an addendum prepared by the CA and authorised by the PM**, where the information materially affects the tender documents.

The Contract Administrator must exercise due care during issue of supplementary information to ensure that the details of other tenderers are not disclosed.

Addenda should be issued on Aconex.

Where it is considered necessary to re-tender, a reasonable period will, where possible, be allowed before re-tendering. The extent of the period allowed will depend upon circumstances prevailing at the time and is subject to approval by the PM, following consultation with the OM and SCM.

Where required, pre-tender meetings may be called for packages which are complicated and/or which may require significant design input. The objective of such meetings would be to clarify any uncertainties that tenderers may have with regard to the documents or other matters relating to the package.

Key tender and post tender vetting dates including addendums and post tender interviews dates must be tracked through the Quotation and Tender Bid Evaluation – Tender record.

4.3.2 Lodging of Tenders

Tenders are to be lodged using the Aconex tender module.

The CA shall ensure that the necessary facilities and safeguards are provided to enable confidentiality and security until the date of tender award.

Tenders received by hand, by mail or via email shall be endorsed with the date and time of receipt. Tenders received by hand or via mail shall be clearly marked Private and Confidential.

At closing time on the tender closing date, reasonable precautions shall be taken to ensure that late documents are identified. **A tender price offered orally shall not be accepted.**

4.3.3 Extension of Time for Closing of Tenders

Where circumstances arise that necessitate extending the closing date of tenders, authority to extend **must be issued to all tenderers as an addendum prepared by the CA and authorised by the PM**

Should it be necessary to issue an addendum to the tender documents, the nature of the changes involved may be such that a significant degree of pricing/re-pricing is required and the need for an extension shall be reasonably assessed and only granted with the approval of the PM at the time of issue of the addendum.

4.3.4 Period for a Tender

A specific time and date for closing of tenders will be stated in the tender documents. Selection of the date is the responsibility of the CA and/or the PM/PE. The urgency of the work required will also be taken into account and shall be in accordance with the Off Site Activities Schedule (OSAS).

Tenders must, unless otherwise approved by the PM, not have a closing date or time which is during the Christmas/New Year holiday period (i.e. between 24 December and 2 January).

4.3.5 Opening Tenders

Tenders, not received via Aconex tender module, must be opened by the CA in the presence of any one or two of the following:

1. PM; or
2. PE

The original of the tender documents must be scanned on receipt immediately and recorded on file.

Security of tender submissions is of paramount importance. Accordingly, all members of the Project Team must not disclose any details of submissions to any other tenderers.

4.3.6 Late Tenders

Where late tenders are submitted, the OM and SCM may use their discretion to determine whether the tender is to be accepted and considered.

Formal acknowledgement of the acceptance/rejection by the OM/SCM of a late tender must be documented by the PM/CA in Section C of the PEA document under the Comments column.

Subject to the foregoing and as a general rule, late tenders will not be accepted, except when either the OM or SCM (in their discretion) is satisfied that the integrity and competitiveness of the tendering process has not been compromised. By the OM or SCM signing the PEA, as approvers they are making their own assessment as to whether a fair tender process was executed.

Note: Refer section 4.4.11; “Best and Final Offer Process” as recommended procedure to be followed.

4.4 Consideration of Tenders (Vetting): Stage 3

4.4.1 Tender Vetting Process

The CA, in consultation with the PM and/or PE, will be responsible for evaluation and analysis of all tenders received and shall hold meetings with tenderers as necessary to clarify matters relating to the package. Other Mirvac resources, as required, may participate in these meetings.

The PM/PE and CA are responsible for ensuring that equity and probity is observed at all times in the processing and evaluation of tenders.

The successful tenderer may not necessarily have the lowest tendered price (provided that all reasons for adopting such a course of action are adequately documented).

4.4.2 Analysis and Evaluation

It will be a condition precedent to recommendation of tenders that all formal tenders received are compared and evaluated on a common and even basis. It is the responsibility of the CA, in association with other team members to undertake a full analysis of tenders to ensure that they are comparable, and that any shortfall or over-statement within the tender has been considered and evaluated by reference to the tenderer, interpretation, comparative estimation or by other means. Matters to consider when evaluating and assessing a tender may include:

1. Tenderer's occupational health, safety and environmental management practices and performance;
2. Capability of Tenderer, including technical, management, human resource, organisational and financial capability and capacity;
3. Conformity of tender with requirements.
4. Experience of Tenderer and personnel proposed;
5. Previous performance of Tenderer;
6. Warranties and guarantees;
7. Quality offered;
8. Delivery times offered;
9. Value adding components such as economic, social and environmental development initiatives, if appropriate and relevant to the procurement;
10. Tenderer's community relations practices and performance;
11. Tenderer's workplace and industrial relations management practice and performance; and
12. Whole-of-life costs, including costs of disposal.

Life cycle and operational cost review of tender may also be required for Mirvac assets.

Service Provider Tender / High Risk Work HSE Assessment

The criteria for selection must include satisfactory completion of the Service Provider Tender / High Risk Work HSE Assessment by the Tenderer during a tender interview on site. A copy of the checklist will be retained on site and will cover health, safety and the environment. (This is not mandatory for Consultants that are performing design services only).

Subcontractor/ Consultant Interview Checklist

This document/s must be used as a guide to ensure that all facets of an Agreement are covered during the tender interview session. The information generally contained within this checklist is generally not exhaustive, and should be treated as a useful guide during the interview. This checklist may, with the prior approval of the PM, be modified to cater to the requirements applicable to each individual trade package including reference to the following criteria:

1. Financial stability;
2. Industrial relations;
3. Capacity to complete;
4. Past performance;
5. Quality of work;
6. Attitude to co-ordination;
7. Attitude to pre-tender involvement;
8. Nomination of project supervisor; and
9. Workload on other projects.

All tenderers interviewed must sign the Subcontractor/ Consultant Interview Checklist. This should occur at the completion of the meeting.

Formality of the Tender

The tender recommended for acceptance should be in accordance with the tender documents and be submitted on the appropriate tender form. Clarification and further information may be required on submitted tenders. Such enquiries shall be carried out by the CA.

The CA shall arrange to interview the most suitable tenderer or tenderers depending on the initial analysis with a view to assessing the ability of the tenderer(s) to conform to any special circumstances, relating to the project or trade package.

Project Expenditure Approval (PEA) and Quotation and Tender Bid Evaluation

These documents are used when analysing the various bids submitted by the tenderers (including all relevant matters relating to safety performance). All adjustments are recorded so as that the comparison process at the completion of the exercise is simplified.

The CA has the role to complete the PEA form for approval by appropriate signatories in accordance with the current LOA, depending upon value or risk of the Agreement and whether it falls within the Approved Construction Budget parameters.

The CA must prepare the package of documents, in accordance with the Project Expenditure Approval – Signoff Checklist for submission to the OM and SCM for approval.

The successful tenderer must not be advised until the Project Expenditure Approval form has been executed under LOA.

NB: It is mandatory that the Tender Evaluation Report be utilised to provide a greater level of information where the proposed commitment is Over Budget or in circumstances where it is proposed to not engage the lowest tenderer. Additionally, a Tender Evaluation Report is mandatory whenever works are being tendered to a WHS High Risk Service Provider.

4.4.3 Single/Multiple Tender – Multiple/Single Agreements

Due to the scope and complexity of work included in several packages it is possible that individual tenderers will not be competitive over the full range of items covered in a package or alternatively several packages maybe combined into a single package should tender submissions indicate possible benefits. Tender documentation must therefore, in appropriate and relevant cases, be compiled so that separate or individual portions of a package may be accepted and others rejected and ensuring that Mirvac is able to secure the balance of the package by negotiation, re-tender or acceptance of tenders already submitted by others. Site recommendations to vary individual package scopes in this manner must be subject to independent verification of the submission(s) and reasons for recommendation by a person not directly involved in the calling of the tender. This can only occur at the discretion and approval of the SCM or OM; which must be noted on the PEA form.

4.4.4 Non-Conforming or Alternative Tenders

Non-Conforming or Alternative Tenders (without a corresponding Conforming Tender) will generally not be considered, unless specifically called for (or as approved by the PM).

An alternative proposal, however, may be requested of or submitted by the successful tenderer. The submission of a subsequent alternative may or may not be considered by the Project Team.

Where alternatives are to be considered, the Project Team may require further technical appraisal by an appropriate specialist Consultant, during the Tender Analysis process.

4.4.5 Qualified Tenders

Generally, amendments to Agreement terms and conditions and other qualifications to tenders will not be accepted and tenderers will be, unless otherwise approved in accordance with the LOA, required to withdraw the qualification or the tender.

Where the preferred Tenderer will not withdraw a tender qualification without adjustment to his tender sum/price and where the PM believes that:-

- The tender qualification is not unreasonable given the nature of the tendered works and the tenderers track record;
- The qualification does not alter the basic nature of the required works; and
- The tender adjustment does not result in the tenderer achieving an unfair advantage.

The SCM may accept the qualification without adjustment to the tender sum.

The SCM's decision will take into account the commercial basis of the tender, the principles of this document and the overall quality and budgetary constraints of the project.

4.4.6 Changes to Extent of Work Prior to Acceptance of Tender

In consultation with the OM and SCM, the PM can recommend that the work included in a tender package may be varied after close of tenders, subject to tender acceptance not been issued at that time. The PM reserves the right to negotiate the variation with the preferred tenderer if in his/her opinion the variation does not affect the selection process.

4.4.7 Errors in Tenders

In general, tenders will not be adjusted by the CA for anomalies, errors or omissions made by the tenderers in their analysis of tender documents. The CA shall liaise with tenderers to resolve, by way of clarification, any anomalies, errors or omissions in pricing such that no increase in tendered figures arises.

4.4.8 Clarification of Tenders

If information received in a tender is open to interpretation or is not clear, then clarification may be requested from the tenderer where this is material to identifying the successful tender. The clarification procedure will be managed in such a way so as not to give the tenderer an unfair advantage over other tenderers by allowing the tenderer to revise or enhance its original tender.

4.4.9 Tender Negotiation

Prior to entering into final negotiations, the project team must liaise with the OM and SCM regarding the Financial Auditing of Subcontractors and any potential requirements for "Additional Contracting Measures" for packages with higher risk or over \$1mil that may arise from completion of the financial audit. Additional contracting measures include but are not limited to the following:

- Parent Company Guarantee
- Unconditional Bank Guarantee in addition to retention security
- Deed of Guarantee
- Deed of Undertaking
- Deed of Indemnity
- Personal bonds
- Special terms of contract
- Performance Bonds

Note: If any of the above documents are utilised, execution of the subcontract agreement must be conditional on execution of the said documents.

Without limiting Mirvac's right to call new or fresh tenders or its decision not to proceed with or award a Agreement to any tenderer, which right must always be reserved and disclosed to tenderers, if after a competitive tendering process none of the tenders are acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, negotiations may be conducted with the tenderer that submitted the most acceptable tender based on the evaluation criteria (but Mirvac is under no obligation to do so).

The purpose of any such negotiations shall be made clear to all participants prior to the commencement of negotiations. The aim is to achieve a tender that is acceptable to Mirvac.

4.4.10 Prohibition of 'Bid Shopping'

Tender negotiations must not be used as an opportunity to trade-off one tenderers price against other tenderers prices in order to obtain lower prices.

4.4.11 Best and Final Offer Process (Addendum)

It is acknowledged that in certain situations, the Tender Vetting process as defined in Stage 3, (Consideration of Tenders – Vetting), may be drawn out as prolonged negotiations between MCPL and the tenderers are finalised. Where this situation occurs, (and at the discretion of the OM or SCM, or at the discretion of the PM following consultation with the OM or SCM), the following process should be adopted to ensure that all continuing tenderers are given an equal opportunity to submit a final binding offer:

- The tenderers must be issued with a formal Addendum to Tender Notice Letter that requests the tenderers to submit their “Best and Final Offer”;
- The Addendum to Tender Notice Letter must clearly state the **final tender closing date and time and to whom the submission must be sent**;
- The letter should also clearly state that any offers not submitted in accordance with the Best and Final Offer Addendum letter will not be acknowledged nor accepted; (unless at the discretion of both of the OM and SCM)
- The final offers should then be assessed in accordance with Stage 3 as identified above.

Note that the tenderers should be communicated with verbally prior to implementing the above process such that they clearly understand that the above process is final and binding; and no further opportunity will be afforded to them to submit another offer.

4.4.12 Pre-PEA Review Meetings

The project team is to hold a pre-PEA review meeting to examine the process to agree the successful tenderer. The meeting is to be held with the relevant member(s) of CMT as determined by the approval limits set out in the LoA's. This meeting is to be held only when the project team has obtained all of the following:

1. A final best offer; and
2. The results of a financial audit (if agreed to be necessary; refer section 4.4.9) are known; and
3. All Additional Measures (as relevant) have been agreed with tenderer; and
4. All changes to the standard Mirvac Subcontract proposed by the tenderer have been agreed.

It should be noted that under no circumstances can a tenderer be advised that they have been successful (even verbally) until all four steps above have been undertaken and reviewed with the relevant member of CMT.

4.4.13 Debriefings

If Mirvac does not accept any of the tenders submitted, the tenderers shall be advised of the reason. If fresh tenders are to be called, Mirvac may add other tenderers to an original list of invited tenderers; subject to the list of Proposed Tenderers being updated and in compliance with the process outlined in section 4.2.

Mirvac will aim to advise tenderers they have been unsuccessful and be available to debrief them on request. Debriefings will aim to explain how their tender performed against the evaluation criteria, rather than against the successful tender, with the objective of assisting them to improve future tenders. There should be no specific disclosure to unsuccessful tenderers of details of the successful bid (a relative indication maybe given; if the tenders request information).

4.5 Acceptance of a Tender: Stage 4

4.5.1 Letter of Intent

Generally, letters of intent should not be issued. However, where circumstances do not permit otherwise, a letter of intent may be issued as notification that an Agreement exists between Mirvac and the Subcontractor to whom the tender is awarded. It is necessary to ensure, therefore, that it is properly documented and issued.

The scope and extent of the works or services to be provided must be sufficiently disclosed in the letter of intent, including an absolute cap on Mirvac's liability if a contract is not concluded.

The Letter of Intent must be limited to offsite works only such as shop drawings, long lead time items etc.

A letter of intent is to be issued only after consultation with, and receipt of the written approval of the OM or SCM and after:

1. The CA has been duly authorised to enter into an Agreement for the Works (For clarity, the PEA form must be signed off in accordance with the Limits of Authority prior to entering into a Subcontract Agreement with a Subcontractor or issue of a Letter of Intent to a Subcontractor).
2. The tender submitted has been thoroughly checked and found to be totally acceptable.
3. Any qualifications or conditions submitted with the tender have been withdrawn or otherwise approved by the OM or SCM.

4.5.2 Agreement

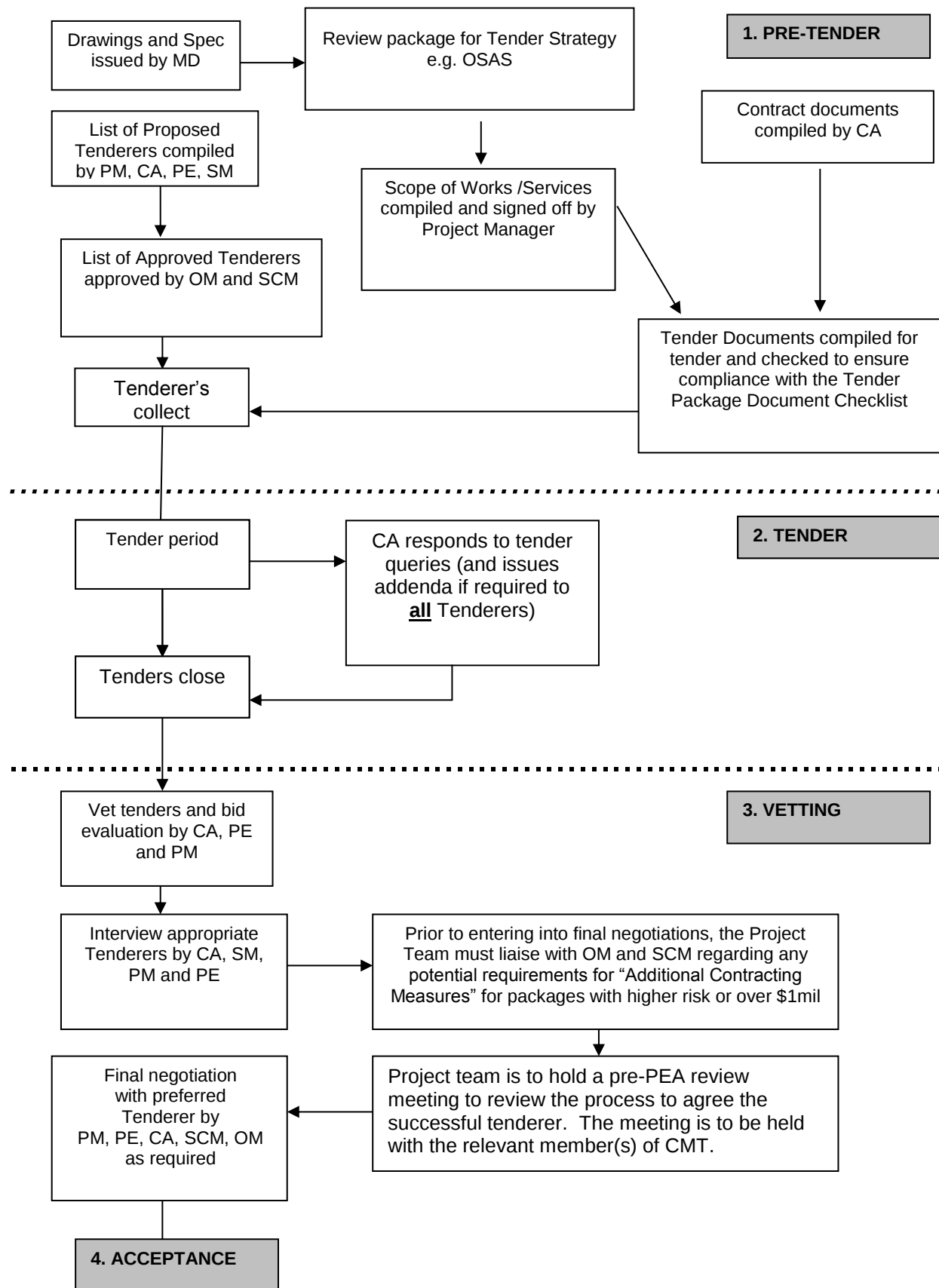
The Agreement must be completed and checked by the CA, agreed with the successful tenderer/Subcontractor and executed prior to any work commencing on site. (Refer to LOA for details of signatories). Any issues arising from or in connection with the documents prepared for execution and/or recording the terms of the agreement must be immediately brought to the attention of the SCM by the CA. The CA is responsible for checking all documents to ensure that no such issues exist.

A Subcontract must be issued promptly (and in any event within 10 days) upon awarding a Subcontract to a Tenderer.

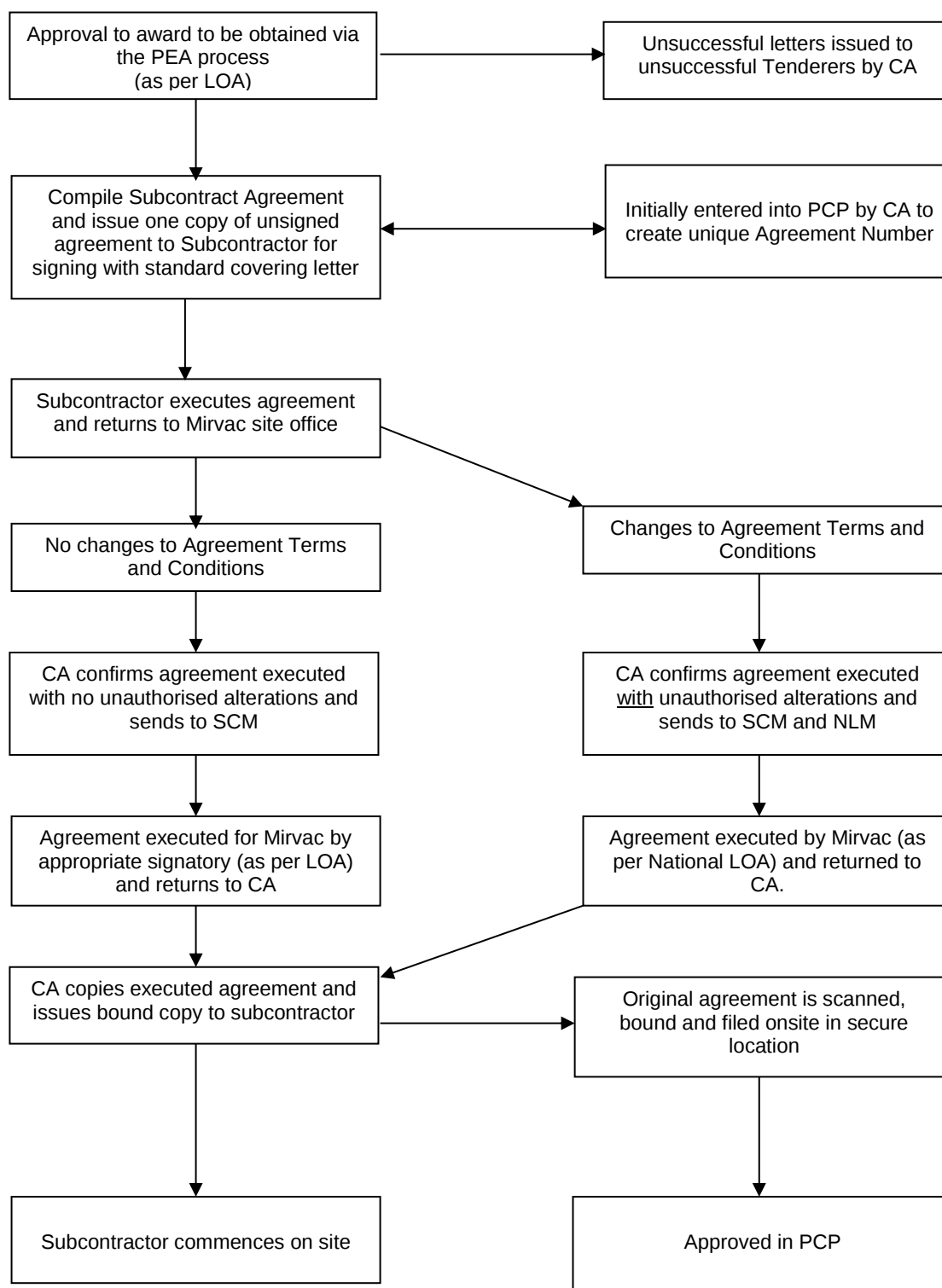
No Subcontractor must commence on site until an Agreement is correctly executed by the Subcontractor.

(Refer Administration Manual for further detail on managing Agreements)

4.6 Tender Process #2: Agreements with an estimated value of greater than \$100,000



4. ACCEPTANCE



Appendix 1- Master Tender Documents

Ref:	Documentation:	Stage 1	Stage 2	Stage 3	Stage 4
		Pre Tender	Tender Period	Vetting	Acceptance
1	Tender Package Document Checklist**				
2	List of Proposed Tenderers				
3	Invitation to Tender Letter & Conditions of Tendering**				
4	Scope of Works/ Services (signed off by PM)	Tender Revision			Subcontract Revision
-	Schedule of Documents / Specifications **	Tender Revision			Subcontract Revision
-	Schedule of Drawings **	Tender Revision			Subcontract Revision
-	Schedule of Rates **	Tender Revision			Subcontract Revision
-	Schedule of Subcontract Sum**	Tender Revision			Subcontract Revision
-	Program	Tender Revision			Subcontract Revision
5	Mirvac National Subcontract – Formal Instrument of Agreement – 1 of 3**	Tender Revision			Subcontract Revision
-	Mirvac National Subcontract – Terms – 2 of 3**	Tender Revision			Subcontract Revision
-	Mirvac National Subcontract – Schedules – 3 of 3**	Tender Revision			Subcontract Revision
	Or				
-	Mirvac National Consultant Agreement – Formal Instrument of Agreement and Schedules– 1 of 2	Tender Revision			Subcontract Revision
-	Mirvac National Consultant Agreement – Terms – 2 of 2	Tender Revision			Subcontract Revision
6	Addendums to Tender Notice				
7	Subcontractor/Consultant Interview Checklist				
8	Service Provider Tender and High Risk Work HSE Assessment**				
9	Quotation and Tender Bid Evaluation				
10	ASIC Company Search / ABN Lookup / Certificates of Currency (Insurance)				
11	Contract Review Checklist				
12	Tender Evaluation Report			(optional)	
13	Financial Audit			(optional)	
14	Letter of Intent**				(optional)
15	Unsuccessful Tender Letter				
16	Project Expenditure Approval Form				
17	Project Expenditure Approval – Signoff Checklist				

Cells shaded grey represent document required for specific stage