

SOUTH AFRICAN ROAD FEDERATION
SYMPOSIUM ON THE PREPARATION OF CONTRACT DOCUMENTATION
AND ADMINISTRATION OF CIVIL ENGINEERING CONTRACTS
CHAPTER 8: THE TENDERING PROCESS

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THE TENDERING PROCESS

1. INTRODUCTION

"Tendering is a formal procedure by which competing bids for a particular contract are invited, received and evaluated, whereupon the contract is awarded to the tenderer who has submitted the most advantageous bid". (Westring).

The tender process aims at obtaining the most favourable terms for the Employer for the carrying out of the project using a method that complies with any regulations binding the Employer and Contractor and which is acceptable in the long term to Employer/Contractor organizations.

The CIDB regulations now control the tender procedures relating to tenders invited in the public sector. Many private Employer bodies have their own self imposed rules and SAFCEC and BIFSA impose various controls on their members.

Invitations to tender will include Conditions of Tender setting out the tender rules applicable to the specific project. As has been discussed in Chapters 3 and 4 the CIDB has developed the Standards Conditions of Tender (SCoT), which, together with specifically drafted Tender Data, must be applied to any public sector tenders.

In preparing the tender documents and managing the tender process and subsequent adjudication and award it is important to take account of the relevant regulations. Of particular importance is to be aware of the reasons underlying many of the regulations so as to ensure that they are honoured in spirit, perhaps more so than in the letter – but at the same time we are entering a period where there is more and more exposure of tender reports and council deliberations to the public; Employers are being challenged with regard to tender awards and are becoming more and more cautious about departing from the issued Conditions of Tender.

It could be said that in the past the majority of tender conditions were very one sided in their application since the Employer could enforce them against any tenderer but had the right (as the controller of the 'Rules of the Game') to waive them with respect to any tenderer whenever he may have wished (subject of course to that tenderer's agreement). That possibility now has largely been removed by the introduction of stricter controls in the procurement process which have to be applied in the public sector. Bear in mind that the private sector is self-

regulating from the point of view of tender procedures and is not bound to follow the CIDB regulations.

In setting out Conditions of Tender great care must be taken to ensure that they say what it is intended to do so that there will be no apparent unfairness in the later process (eg. “compulsory site inspections”: is it really intended to enforce this or would it not be better to say “failure to attend the site inspection may prejudice the tenderer”?)

Conditions of Tender should give a good indication to tenderers as to how conflicting aspects of tendering should be resolved; how is cost balanced against time; will he be given a free hand with regard to the method or are some methods open to rejection.

2. TENDER ADVERTISEMENT

Tendering can be either open or selective. The procedure is called open when tenders are invited through advertisements or other forms of public notice from an eligible party. In the case of selective tenders a limited number of firms are invited by the Employer to submit offers. The tenderers can be selected either through the Employer's or Engineer's previous knowledge of the market or **prequalification** procedure, in which eligible firms are invited to provide evidence of their ability to perform the services or produce goods as required by the Employer.

The following information is normally requested for prequalifications:

- contractor's identification;
- experience and past performance;
- personnel;
- equipment;
- financial status;
- present commitments;
- personnel and equipment available for the proposed contract; and
- broad plan of the execution of the works.

To ensure uniformity of presentation, prequalification documents usually contain a set of questionnaires covering main areas of information required.

Generally in South Africa tenders are invited on an open basis and not “selective”; private firms are in a better position to follow the selected tendering option and State Departments are largely restricted to a system dictated by varying tender rules dependent upon the nature of the works and the essential need to offer opportunities for targeted sectors in the industry.

The cost of tendering is not recoverable from the Employer but it is an overhead cost for the contractors and therefore the cost is included in their overheads on any successful contract. Newspapers have their own set of conditions and a significant long delay often occurs between the submission of a notice and its appearance in the press. The Engineer needs to consider the need for using national and local papers as well as whether there are specialized publications more likely to reach the type of Contractor required.

The Tender Documents will include an “Invitation to Tender” which amplifies and augments the information set out in the tender advertisements. Where the Engineer is not responsible for the drafting of both the advertisements and the invitation ‘Murphy’s Law’ ensures that there are bound to be differences. The Engineer should check the advertisement as published and ensure that it is correct.

Tender period: care must be taken in determining the tender period. The tenderers have a considerable amount of input to formulate and must be given adequate time to assess their risks and costs. The timing of any site inspection within the tender period must take account of giving sufficient lead time for prospective tenderers to obtain the documents and decide whether they are interested or not and to make arrangements to attend the inspection. Provision must also be made for adequate time after the site inspection for any questions raised to be adequately dealt with, distributed to tenderers and having sufficient time to deal with the possibly new requirements. The ICE suggests a minimum of 4 weeks extending to 8 weeks for major projects. However, it is unfortunately a reality of the industry today, that all too often Employers inviting tenders do not appreciate the complexity of the tender pricing process and lay down tender periods that are sometime totally ludicrous. In the long term this can potentially be to the detriment of the Employer and the Contractor alike.

3. ISSUING OF DOCUMENTS

Some Employers prefer to issue documents themselves while others require their Engineer to do so; at times documents are issued by the Employer and the Engineer and situations arise where issuing will be done from a number of centres. Where the Employer does this the Engineer should check that his staff are familiar with the required procedure; it is not unknown for an Employer to issue incomplete documents eg with only portion of the drawings etc and not to have maintained a list of the names and addresses of recipients; this causes even more of a problem when an Addendum to the tender documents is to be issued.

The Engineer is responsible for ensuring that there is an adequate stock of documents and should be aware that the printing of additional sets is often a high risk activity with regard to the possible introduction of errors.

The conditions of tender will include a list of documents comprising the tender, identifying which elements are to be returned with the tender offer..

Issued documents will normally include drawings which must be legible; how often does the production process during the design stage forget that there will be a tender stage requiring reduced drawings and thus motivating careful selection of line thicknesses and font sizes.

A list must be maintained of those to whom documents are issued, including address, telephone and fax numbers, name of contact person etc. Receipt of document deposit cheques, must also be recorded. The list must also make provision for recording the return of documents whether with or without a tender. Document deposit cheques are normally retained by the Engineer (if he is issuing the documents) until the end of the tender process when they are returned to the tenderers or, if forfeited, forwarded to the Employer. Alternatively, and now more commonly practiced, the tenderers will be required to pay a non-refundable fee to the Employer in order to receive the tender documents.

Document deposits or non-refundable fees are required largely to ensure that those taking out documents are not doing so lightly; the cost of a set is significant; even higher is the possible cost to the Employer of the non-availability of a set for serious tenderer. From the consultant's point of view he would prefer not to have copies generally distributed around other than as strictly necessary.

The drive to open up tendering opportunities to the previously disadvantaged emerging contractors has led to a vastly increased demand for tender documents, often from unsuitable tenderers, unused to assessing the suitability of the project to their resources. As a result many Employer bodies, including State authorities, have increased the required document deposit or non-refundable fee.

4. GENERAL DUTIES OF THE ENGINEER

The main duty of the Engineer during the tender period is to ensure that he, or a defined deputy, is readily available to deal with any administrative or technical queries with the minimum of delay. He should be monitoring the issuing of documents, ensuring that all procedures are being complied with, and, in the interests of the Employer (his Client), checking that there is a positive response to the invitation to tender.

Where tenderers have queries because of ambiguities or lack of clarity the Engineer must resolve these; where practical this can be often done simply by reference to some portion of the document that the tenderer may have overlooked. Where rephrasing or additional text is called for the Engineer will have to issue an Addendum to tenderers. In some cases, as a last

resort it may be suitable to advise the tenderer to qualify his tender with regard to a specific interpretation of the point at issue.

During this period, if he has not already done so, the Engineer should be looking ahead to the construction stage and organizing site staff etc.

5. SITE INSPECTION

The Engineer should always provide for a site inspection. It enables the Engineer to get feedback from tenderers on the adequacy of his document and enables the tenderers to get first hand impressions from the Engineer with regard to the project. Where the Site is distant from the main centres, or rather from the envisaged main source of prospective tenderers, the Engineer should take account of available plane flights and schedules in setting the day and time of the inspection.

Whether or not the inspection is compulsory depends on the circumstances. There is pressure from established contractors that it should be since there is a perception that often the lowest tender is the lowest because of a failure to have understood the scope of the works, something which would not have happened had he attended the site inspection. From the Engineer's point of view there are many projects where it is only through the medium of a site inspection that the Engineer can be sure that the tenderer is going to have an adequate understanding of the project and thus be able to put in a realistic tender. Whether or not it is compulsory is an option; it should not be stated as compulsory unless it is intended to enforce this requirement.

The Engineer must ensure that he is totally familiar with the site and its surroundings. Key features should be readily identifiable; if necessary they should be pegged and flagged. Consideration should be given as to whether provision of a bus would improve communications. Pre- and post- meetings assist in ensuring that all queries are dealt with. The Engineer should ensure that all matters are discussed openly and not with individuals. Wherever practical queries should be dealt with by reference to the relevant portion of the document; if further information or explanation is needed then all tenderers need to be formally notified.

Some Employers/Engineers issue minutes of site inspections; others consider that all matters dealt with were either references to the documents or are dealt with via notices to tenderers. If minutes are issued they should be incorporated in the final agreement.

In passing, note that there are often a number of tenderers arriving at Site Inspections who have not yet obtained tender documents, the Engineer should have a stock of spare documents at the inspection to cope with this.

6. ISSUING ADDENDA

It is unfortunate how often it is necessary to amplify or correct the issued documents with an Addendum. In the CIDB SCoT this is covered under Clause F.3.2.

Generally Addenda should not be issued later than 7 days before the closing date although the SCoT reduce this period to 3 days. If that is the case then the closing date should be extended as tenderers must be given a reasonable time in which to incorporate any changes in their tender..

The Addenda are best issued in the format of directed changes to the existing documents the aim being to amend the document to read as it should have read. It is only with this disciplined approach that one can avoid confusion and ambiguity. Tenderers will be working under pressure when they receive the Addendum; it is essential that the changes are highlighted without resulting in a confusing document. Bearing these principals in mind one has to choose between the formats of “replace the text of clause ?? with ... “ or “insert the following phrase in line 3 of clause //”; the former produces a clearer text but the latter highlights the change.

Amendments to the documents are highly disruptive to the tendering process from the tenderer’s point of view and should be restricted only to those matters which can significantly affect the pricing or planning. The Contract allows for variations and their valuation. In the case of major amendments, the need for which is recognized but which may require some significant time to detail or formulate, tenderers should be advised of the pending change.

7. RECEIPT OF TENDERS

Normally the Employer receives tenders either by post or by their being placed in a Tender Box; for public and private sector employers. In some circumstances the Employer may require that the Engineer receives the tenders.

The Engineer must ensure that whatever facilities are noted in the Invitation to Tender for the receipt of tenders are available and that staff who may be handling incoming tenders are aware that they are coming.

Late Tenders should be recorded and returned unopened to the Tenderer.

8. OPENING OF TENDERS

The Engineer should attend the tender opening and assist in whatever manner required by the Employer. Tender should normally be in public and the opening procedures explained to

those present prior to the commencement of the opening of tenders. It is essential that those persons responsible for the opening of the tenders know where in the document to find the information required.

Details contained in the tenders, other than the name of the tenderer, the total tender sum, and, if relevant, the time for completion, are confidential and only the details of the three items mentioned should be read out. Subsequent access to opened documents must be limited to those necessarily involved; where tenders are being opened in Engineer's office he must ensure his staff are aware of this requirement together with the full procedure for receipt and opening. Documents must be securely stored during the tender evaluation process.