

SOUTH AFRICAN ROAD FEDERATION
SYMPOSIUM ON THE PREPARATION OF CONTRACT DOCUMENTATION
AND ADMINISTRATION OF CIVIL ENGINEERING CONTRACTS
CHAPTER 4: DOCUMENTATION COMPRISING THE TENDER

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1. INTRODUCTION

With the introduction of the CIDB Standard for Uniformity (SFU) and the SANS 10403: 2003¹ the structure of the tender documents now commonly prepared in South Africa generally follows the form prescribed in SANS 10403: 2003. This means that only documentation relevant to the tender has to be returned by a tenderer when submitting his tender offer.

Chapter 3 deals with the general structure of the tender documentation and in this Chapter 4 some further notes are provided to discuss in more detail the purpose and importance of the various documents that comprise the tender.

2. THE CONDITIONS OF TENDER

2.1. Key elements of Tender Process

The whole procedure of calling for tenders has to be conducted with care. Once the documentation has been completed there are several key elements in the tender process which must be adhered to if a successful and impartial tender process is to be achieved.

These elements are:

1. Good documentation – GCC. Specifications, Drawings etc.
2. Clear instructions of what is required in the preparation of the Tender.
3. Time to study the documents and seek clarifications.
4. Well planned site inspection.
5. Rapid dissemination of additional information to all tenderers by means of Addenda.
6. Ensuring that all tenderers have an equal chance.
7. Correct procedures for receipt of tenders.
8. Impartial adjudication.

2.2. Basic Requirements for Conditions of Tender

The following key issues need to be covered in the Conditions of Tender:

1. When and where must the tender be submitted?

¹ SANS 10403: 2003 – Formatting and compilation of construction procurement documents

2. Are telegraphic tenders accepted?
3. What tender deposit or tender bond is required?
4. How are the tender documents to be completed?
5. When will the Site Inspection be?
6. Are alternative tenders acceptable?
7. What additional information is required?
8. What is the validity period of the Tender?
9. What other information is available for inspection?
10. Any special factors which may be taken into account in the adjudication.

There can be other issues which may have to be covered but these will become obvious as the documents are prepared.

Annex F in the CIDB SFU contains the “Standard Conditions of Tender” (SCoT) that are to be applied to tenders being implemented in accordance with the CIDB prescripts (see also Chapter 3 – Section 3). These standard conditions have been carefully drafted to cover all of the “Rules of the Game” that need to be spelled out to Employer and tenderers alike. Together with the Tender Data (which will be drafted specifically for each tender) they form an essential element of the tender document and anyone responsible for the administration of the procurement process must take care to follow and apply the conditions meticulously. Failure to do so may potentially lead to an award of the contract being contested by an unsuccessful tenderer (or tenderers).

3. THE TENDER

3.1. Main Components

The Tender itself consists of the following primary documents based on the three volume approach².

1. The completed and signed Form of Offer (and Acceptance)
2. The returnable documents
3. The Contract Data (Part 2 – Data provided by the Contractor)
4. The priced Activity Schedule or Bills of Quantities
5. The returnable schedules

3.2. Form of Offer (and Acceptance) – GCC 2015

This should be in the form contained in Appendix 1 in GCC 2015 containing the Tenderer's offer to “...perform all of the obligations and liabilities of the Contractor under the Contract

² See Chapter 3 – Table 3.1

including compliance with all its terms and conditions..." (i.e. principally to undertake and complete the specified works and to remedy defects). The Price tendered is inclusive of Value Added Tax and is stated in the Offer.³

Note that the final paragraph of the 'Acceptance' portion of the form of Offer and Acceptance makes the formal statement that *"...this Agreement comes into effect on the date when the Tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the Tenderer (now Contractor) within five days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract between the parties..."*⁴

It is commonly thought that the formal signing of the contract document must have occurred before the contract comes into force. This is totally incorrect as the contract comes into force when the Tender Offer has been accepted by the Employer as stated in the excerpt above.

3.3. The Returnable Documents

The tender document should contain a List of Returnable Documents listing the documents that are returned with, or constitute, a tender. Whilst many of the returnables are required for the purpose of evaluating tenders, some will form part of the subsequent contract (generally the returnable schedules), as they form the basis of the tender offer. For this reason, it is very important that all tenderers return all information requested.

Forms and certificates that are to be completed after the award of the contract must not be included in the returnable documents, for example site appointments for compliance with health and safety legislation.

Typical returnable documents are briefly discussed below.

3.3.1. Certificate for Authority of Signatory⁵

This is an essential document that confirms that the person signing the Form of Offer submitted with the tender is *"...authorised to sign all documents in connection with this tender and any contract resulting from it..."* The form of Annexure C as referenced in the footnote provides examples of the structure of the certificate for the various trading possibilities (company, partnership, joint venture, sole proprietor, close Corporation).

³ GCC 2015 – Appendix 1

⁴ GCC 2015 – Appendix 1

⁵ SAICE – Practice Manual #1: The use of South African National Standards in Construction Procurement – March 2004 – Annexure C

It is essential that the person signing the tender is authorised to do so by the organisation on whose behalf he is signing the tender. In view of the importance of the tender and the fact that it acts as an interim contract agreement once it has been accepted it is imperative that the Employer has the assurance that the person signing the tender is duly authorised and that the contractor is who he says he is.

3.3.2. Certificate of Attendance at Site Meeting⁶

Annexure D referenced in the footnote provides an example of the form of certificate of attendance at a compulsory site meeting in which the tenderer is required to “...*acknowledge that the purpose of the meeting was to acquaint ourselves with the site of the works and/or matters incidental to doing the work specified in the tender documents in order for us to take account of everything necessary when compiling our rates and prices included in the tender.*”

The wording above makes it clear that the person attending the site meeting on behalf of the tenderer should be someone who is able to understand the technicalities of the work involved in the proposed contract.

3.3.3. Record of Addenda to Tender Documents⁷

The Tenderer is required to confirm that all Addenda issued during the tender period have been received and that any amendments introduced in to the tender documents have been taken into account in the tender offer.

3.3.4. Form of Intent to Provide a Performance Guarantee

This document will normally take the form of a letter from the tenderer's proposed financial institution confirming that, if the tenderer is awarded the contract, the institution concerned (bank or insurance company) will provide the Performance Guarantee required in terms of the contract within the prescribed time.

3.3.5. Curriculum Vitae of Key Personnel⁸

In this schedule the tenderer will indicate the skilled manpower resources available within his organisation that he intends to assign to the contract. It is essential that this information is carefully and correctly compiled in order to enable the Employer to reasonably assess whether or not the tenderer has resources with the skills and experience necessary to successfully implement and complete the contract.

⁶ SAICE – Practice Manual #1: The use of South African National Standards in Construction Procurement – March 2004 – Annexure D

⁷ SAICE – Practice Manual #1: The use of South African National Standards in Construction Procurement – March 2004 – Annexure H

⁸ SAICE – Practice Manual #1: The use of South African National Standards in Construction Procurement – March 2004 – Annexure B

3.3.6. Health and Safety Plan

This is an indication from the tenderer of the structure of the health and safety policies and practices implemented within the organisation in compliance with current legislation.

3.3.7. Proposed sub-contractors⁹

The purpose of this is to ensure that where specialist work is to be done the tenderer has access to suitably qualified sub-contractors. Another indication is the extent to which the tenderer may wish to sub-let the work.

3.3.8. Schedule of estimated monthly expenditure

This document becomes extremely important in larger contracts where financing and financing costs can become a major issue. It enables the Employer to arrange borrowing in such a way as to minimise interest on capital during construction. It is also an indication of the care with which the Contractor has analysed the requirements of the project.

3.3.9. Quality Plan

An essential element of the subsequent contract is the quality management and control of the works to ensure that the Employer gets the product that he expects. It is common practice therefore to require the tenderer to provide an indicative Quality Plan with his tender offer, which will be assessed during the evaluation process.

3.3.10. Construction Equipment¹⁰

This schedule will list the major items of construction equipment that the tenderer intends to assign to the contract and should therefore identify major equipment that is owned by the tenderer and is immediately available as well as that which he would intend to hire if the tender is successful

3.3.11. Experience of Tenderer¹¹

This schedule will list the tenderer's **relevant** work experience providing details of previous Employer's and their contact details, descriptions and values of the works successfully completed and the date of completion.

⁹ SAICE – Practice Manual #1: The use of South African National Standards in Construction Procurement – March 2004 – Annexure E

¹⁰ SAICE – Practice Manual #1: The use of South African National Standards in Construction Procurement – March 2004 – Annexure F

¹¹ SAICE – Practice Manual #1: The use of South African National Standards in Construction Procurement – March 2004 – Annexure G

3.3.12. Provisional Programme of Work

It is considered that this document should be included in all tenders. In many instances it may even be worthwhile for the Engineer or the Employer to break the work down into its various sub-headings on a draft programme and require the tenderer to indicate the sequence in which the various activities will be carried out. The inclusion of a programme in sufficient detail has two primary effects:-

- a) A tenderer cannot draw a proper programme unless he has fully assessed the scope of work that has to be done and the risks attendant in the execution.
- b) It gives the Employer an indication of whether or not the tenderer has considered all the possible risks and understood what the contract involves.

It is also now commonly requested that the tenderer presents with his tender a fairly comprehensive method statement of how the work is to be executed.

3.3.13. Tax Clearance Certificate or Application for Tax Clearance Certificate

It is a standard requirement that all tenderers provide a valid tax clearance certificate.

3.3.14. Other Documents

The various documents listed above are the commonly requested returnables, generally required for tender evaluation purposes. Depending upon the nature of the work for which tender offers are being invited, or depending upon the particular requirements of the Employer concerned, other returnables may be specified in the Tender Data. These may include proof of registration with the CIDB, parent company guarantee, detailed technical schedules, break down of certain tendered rates, contract price adjustment coefficients, construction rates of advance (typically for earthworks related to pipe laying) and others. These latter returnable schedules will generally be incorporated in the final contract as they have relevance to the way in which the contractor will undertake the works.

3.4. The Contract Data (Part 2 – Data provided by the Contractor¹²)

The data provided by the contractor (actually the tenderer at the time) is simply the legal (i.e. registered) name and the address of the contracting company that will enter into agreement with the Employer if the tender is successful. The address is important as this is the address to which any notices issued in terms of the conditions of contract will be served. Appendix 2 in GCC 2010 referenced in the footnote also identifies certain other information that may be required from the tenderer if such information has not already been predetermined by the

¹² GCC 2010 – Appendix 2 – Part 2

Employer during the preparation of the tender document (time for completion, portions of the works, type of security to be provided, percentage allowance to cover overhead charges, schedule of special materials and unit rates or prices for these).

3.5. Priced Activity Schedule or Bills of Quantities

The Bills of Quantities should have been compiled in a manner that clearly identifies all of the work items to be undertaken and for which the contractor will be compensated following measurement of the quantities of work satisfactorily completed. The unit rates entered by the tenderer when preparing his tender are intended to represent fair compensation for the nature of work and the complexity (or simplicity) of execution thereof. These rates will remain fixed for the duration of the contract, subject to any contract price adjustment conditions that may be applicable.

3.6. The Returnable Schedules

Refer to 3.3.14 above for comment on the returnable schedules.