

SOUTH AFRICAN ROAD FEDERATION
SYMPOSIUM ON THE PREPARATION OF CONTRACT DOCUMENTATION
AND ADMINISTRATION OF CIVIL ENGINEERING CONTRACTS
CHAPTER 9: TENDER EVALUATION AND AWARD

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1. INTRODUCTION

Whether one is working with the CIDB Standard Conditions of Tender (SCoT) (in the public sector) or with conditions of tender developed for a private sector tender, those conditions will describe in detail the tender evaluation process to be applied. Regardless of the provisions contained in the conditions of tender there are certain general principles that should be applied to any tender evaluation process.

The following notes provide what can best be described as a check-list to be gone through in the process of tender evaluation, it is as well to first consider the process in broad terms.

The evaluation of competitive tenders proceeds through three stages:

- examination;
- evaluation; and
- post-qualifications.

Examination serves to check that tenders are:

- complete;
- properly signed;
- arithmetically correct;
- responsive to the invitation to tender; and
- no deviation from instructions.

Examination is a filter to the subsequent evaluation exercise: only those tenders that are substantially **responsive** (conforming to the tender documents) are evaluated; the non-responsive tenders are rejected.

Evaluation serves to determine which is the most advantageous tender made by a **responsible** (reliable, trustworthy) tenderer. Unless all tenderers are pre-qualified and no reason exists to review their credentials before award, the Engineer needs to check,

before award, that the tenderer who has submitted the lowest evaluated tender has also the “capability and resources effectively to carry out the contract concerned”.

2. PURPOSE OF TENDER EVALUATION

The purpose of tender evaluation is to determine the cost of each tender in a manner that will permit comparison of tenders on the basis of their evaluated cost; the tender with the lowest evaluated cost, but not necessarily the lowest submitted price, should be selected for award. These expressions are analogous with those used in various regulations which refer to “the lowest satisfactory tender” or “the economically most advantageous offer”. The factors that may be considered in addition to the tendered price are, inter alia:

- time of completion of construction or delivery;
- operating costs;
- efficiency;
- availability of service and spare parts;
- reliability of construction or production method proposed; and
- compliance with preferential procurement requirements etc

In order to abide by the principle of objectivity, these factors should, as far as possible, be expressed in monetary terms. However, this may be easier said than done. To begin with, minor deviations from the tender documents, or minor differences within permissible margins, should be assessed in terms of their economic impact. If tenderers are given freedom to propose, within certain limits, a schedule of payments (advances, progress payments, retention during warranty period, etc.), different from that indicated in the tender documents, such differences should be noted and taken into account. Differences in delivery periods, to the extent at all acceptable, should be translated into monetary terms according to a specified formula. Similar corrective figures could be calculated in relation to different price-adjustment formulae. Another potential type of variation between different tenders which may be expressed in monetary terms is minor differences with regard to general conditions of contract. If the procurement entity has, for example, stipulated in the tender documents that the warranty period should be fifteen months and one tenderer offers twelve months only, such a difference may be penalized by a corrective sum attached to the tender price. If more important reservations are made to the tender documents, on the other hand, such as refusal to accept the dispute settlement mechanism specified in the invitation to tender, the procurement entity could and should reject the whole tender.

When it comes to quality and performance aspect which enter into the process of tender evaluation, there exist techniques to transform such factors into figures of money with

which to correct the submitted price. In this manner, the Engineer can bring such factors as operating cost, maintenance cost, performance and endurance under consideration in an objective manner.

Other important areas to be carefully examined are such things as:

- covering letters;
- other enclosures;
- tender deposit cheques (issues involved);
- forms completed;
- signatures consistent;
- alterations by tenderer: any amendments;
 - qualifications;
 - alternatives; can tenderer be stopped from offering them?
 - is it in the Employer's interest to stop this; need to preserve parity.
- Addenda acknowledged and taken account of

Arithmetic checking:

- extensions;
- sub-totals;
- section totals;
- carried forward; and
- summary.

The Engineer is now in a position to short-list likely candidates; this is on a competitive basis; if tender documents were clear and tenders were compliant then no one should be rejected on any other than a comparative basis. Tenderers have major decisions to make dependent on whether they get the project and, once a short list has been determined, it may be prudent to advise tenderers of where they stand. Unfortunately this is not always practiced by Employers.

Evaluation should not include criteria which Tenderers could not have anticipated. They must be told, pre-tender submission the factors that will be taken into account and, where practical, how the different factors will be weighted.

Analyze rates:

- unbalanced rates: why? Probable effect (some Employers have a "balancing clause");
- rates for items where quantity may vary;
- anomalous rates:

- has tenderer understood specification?
 - has he slipped?
 - has he noticed a loophole?
- Preliminary and General items as a percentage of the total tender sum (some Employers require a justification);
- impact of time related items with respect to extension of time;
- missing rates:
 - analyze sub-totals not only individual rates;
 - some check of this sort to be made on all tenderers; there may be a major arithmetic error in the highest tender which if corrected could make him a favourable tenderer.

Who is the Contractor?

- financial standing;
- resources (personnel and equipment) available;
- method statements;
- proposed sub-contractors.

Time for completion:

- cash flow: programme: discounted costs
- cost of site supervision/laboratory: how will time differences be valued?

Compliance with tender rules:

- consider purpose (eg endorsement of envelope)
- qualifications, amendments, alternatives; clear and unambiguous; express in formal terms; involve Employer; is it complete ie. PVC in lieu of AC, who pays for flexible bedding?

Other evaluation schedules:

- unsolicited enclosures (e.g. programme)
- errors and incomplete tenders: if an error located (given all the different pricing policies, difficult to identify) what are consequential effects for the Employer; errors may be plus or minus; negotiation weakens the tender system; provision often made (as per CIDB SCoT) to adjust rates keeping tender sum fixed.

Maintaining the tender system and the parity of tenders is important; perhaps what is more important is to remember the whole purpose of the exercise and to assess when it is necessary and warranted to depart from the standard system; again it is the Employer's rules which govern.

It is generally considered that where negotiation is necessary, these should first be with the most favourable tender received and only if the Employer considers the requirements of the tenderer to be unreasonable should negotiations commence with the next most favourable. The guiding principle must be to ensure that the confidentiality and fairness of tendering is preserved and that no one tenderer is given an unfair advantage over others.

Whenever possible within the Employer's tender rules, the Engineer should apply the rules of natural justice with regard to evaluation aspects not clearly set out in the documents:

- The tenderer should be informed of the considerations weighing against him;
- The tenderer should be given the opportunity to reply to these points; and
- The Engineer must be and must be seen to be unbiased.

Aborted process: if tenders received are all unsatisfactory the Employer may elect to re-advertise. This in itself may prove to be problematic given the public sector time restrictions relating to a re-tender process.

The Engineer's report to Employer should be professional and factual and must detail all of the various analyses undertaken, bearing in mind that price is not always the only consideration (particularly on the bigger projects). Importantly the report must make a definite recommendation for the Employer to consider. This should be along the lines of "...it is recommended that Tenderer A be awarded the contract, subject to the following points being satisfied (provide a list of points for potential negotiation). Should negotiation with Tenderer A be unsuccessful then it is recommended that Tender B be invited to negotiate the following points in his tender (provide a list of points for potential negotiation) and, if negotiation is successful Tenderer B should be awarded the contract."

Form of Offer and Acceptance (second portion – 'Acceptance' by the Employer)

- The legal position is that this is the acceptance of an offer:
 - by person to whom the offer was made;
 - of the person who made the offer;
 - acceptance must correspond to the offer or else it constitutes a counter offer;
- normally the acceptance will come from Employer with details later from Engineer but it can sometimes be from the Engineer acting as Employer's agent – but ensure that the Employer has delegated the relevant authority to the Engineer in writing to accept the offer;
- ensure that the acceptance is unqualified and unequivocal;
- detail all final decisions;

combine with request for insurances and surety etc; does contractor have a document?

Unsuccessful Tenderers:

- one successful, many unsuccessful;
- formally notify the unsuccessful tenderers and thank them for their interest and participation – they may be required for future projects;
- if relevant, return tender deposit cheques either at end of validity period or after receipt of Surety from successful tenderer;
- if project is aborted advise and thank all tenderers preferably with explanation for no award.

Agreement:

- Not essential; the tender offer together with the written acceptance forms a binding contract until such time as the formal contract has been signed by both parties....