

# TENDERS

## INDEX

### 1. INTRODUCTION

### 2. GENERAL

### 3. TENDER ADJUDICATION PROCEDURE

- 3.1 Opening and recording of tenders
- 3.2 Tender responsiveness
- 3.3 Price review
- 3.4 Award of points for price
- 3.5 Process review
- 3.6 Award of points for development objectives (process)
- 3.7 Summation of points
- 3.8 Risk analysis

### 4. REPORTS TO TENDER SUB COMMITTEE

- 4.1 Legal Considerations
- 4.2 Reports to the Committee

### 5. TENDER SPECIFICATION

---

## 1. INTRODUCTION

The Preferential Procurement Policy Framework Act, makes provision for the awarding of contracts on a points basis. The Council has adopted the following policy:

- 80/90 adjudication points for price
- 20 or 10 adjudication points for process (socio-economic deliverables, or development objectives)

This means that 80 or 90 points are awarded to the lowest tender, and proportionately fewer to those tenders which are higher in price. Up to 20 or 10 development (process) points are allocated to tenders which offer socio-economic deliverables, or which meet criteria set out in the tender documents.

The successful tenderer would, normally, be the one who is awarded the most points, subject, however, to technical factors, previous contractual performance, financial references, unit rates and prices, alternative offers, qualifications etc., being acceptable.

---

## 2. GENERAL

In the interest of transparency, it is imperative, when implementing the policy, that:

- Adjudication criteria, including the manner in which adjudication points are to awarded, are clearly and unambiguously stated in the conditions of the Tender.
- Adjudication points be awarded in such a manner that competent persons who were not part of the adjudication team would arrive at a similar result were they to perform the adjudication.
- Details regarding the awarding of adjudication points in respect of all contracts be recorded for audit and evaluation purposes.

Points for price should be scored only after tendered amounts have been corrected and adjusted to a common base. Where preferences in respect of local content are provided for, the scoring should be performed on prices which have been adjusted to reflect such preferences. Fixed price and adjustable price tenders should also be reduced to a common base for comparative purposes.

**NOTE:** The State Tender Board provides for the following preferences:

- Price preferences of up to 10 % are granted for local content as opposed to "imported content" which is defined as the portion of the tender price represented by the cost components, parts or materials which are imported inclusive of freight, importation, landing cost, taxes, etc.
- A price preference of 2,5 % for products bearing the SABS standardization mark.

Tenderers are required to furnish documentary evidence that they qualify for such preferences. The following remedies will be applied should it be found that claims for preference are unfounded, or excessive:

- Recover from the contractor all costs, losses or damages incurred or sustained as a result of the award of the contract
- Cancel the contract and claim damages arising from having to make less favourable arrangements after such a cancellation.
- Impose a penalty on the contractor not exceeding 5% of the value of the contract.

**\*These stipulations must be incorporated into the conditions of tender**

---

## **3. TENDER ADJUDICATION PROCEDURE**

### **3.1 Opening and recording of tenders**

When tenders are opened in public, the following features of each tender should be announced and recorded:

- Name of tenderer
- The tender price as stated on the form of tender (if practical)
- The number of PDI points claimed by the tenderer (if practical)

\*(Note: tenders shall be endorsed with the approved tender stamp and the officials shall endorse their initials next to the value on the form of acceptance).

### **3.2 Tender responsiveness**

After the opening of tenders, the responsiveness of each tender should be established by determining whether it:

- Complies with the conditions of tender
- Has been properly completed and signed
- Provides such clarification and / or substantiation as is called for
- Meets the minimum resource goals, if any laid down.
- Contains no material deviation from, or unacceptable qualification to, the terms, conditions and requirements of the contract, which could:

3.2.1 detrimentally affect the scope, quality, or performance of the works, or  
3.2.2 change the Employer's, or the contractor's risks and responsibilities under the contract,

and would detrimentally affect the competitive position of other, responsive tenders, if it were to be rectified.

There are several other reasons for the disqualification of tenders apart from the above. These should be clearly set out in the conditions of tender and may include failure to:

- Attend the site meeting
- Submit rates for items in the schedule of quantities/bill of quantities, on contracts which target more advanced contractors.

- Enter lump sum prices against individual schedules in the summary to the schedules of qualities on contracts which target novice contractors.
- Adhere to any qualifications which may be laid down
- Complete the tender documentation in ink.

Any tender not meeting the stipulated requirements should be regarded as being non-responsive. The reason for declaring a tender non-responsive should be recorded. Non responsive tenders should be eliminated from further consideration. All responsive tenders should proceed to the next stage of adjudication.

**3.3 Price review** The prices of all responsive tenders should be brought to a common base by the correction of arithmetic and other obvious errors. Note that in a fixed price contract the total amount tendered cannot be adjusted.

Every tenderer who has tendered an unrealistically low price should be interviewed to ascertain whether there is a valid reason for his tender price being unrealistically low. If there is no valid reason, the tender should be eliminated from further consideration.

If there is an upper limit on the price at which a contract may be awarded, tenders with adjusted prices higher than the limit should be eliminated from further consideration.

**3.4 Award of points for price** Points for price, rounded off to two decimal places, should be awarded to all tenders remaining in contention after the prices have been adjusted to a common base.

**3.5 Process review** The bona fides of the enterprises claiming HDI status should be examined.

The resource goals (if applicable) stated in the tenders remaining in contention should be critically examined in respect of their apparent feasibility and realism. Where the goal indicated in a tender goal calculation appears to be unrealistic for any reason or contains apparent inconsistencies, the tenderer should be interviewed to obtain clarification. If, following the interview, the goal is, clearly unattainable, or otherwise unrealistic, the tender should be eliminated from further consideration, or agreement reached on the actual tender goal calculation.

Reasons for eliminating tenders on the grounds of process review should be recorded.

**3.6 Award of points for development objectives(process)** Tenders remaining in contention should be awarded points, rounded off to two decimal places, for development objectives (process), i.e. for enterprise status or resource goals. It is necessary that tenderers submit documentation confirming how their status is derived, and such other documentation as may be called for.

**3.7 Summation of points** The points awarded for price and for development objectives (process) should be added for each tender and, subject to satisfactory risk analysis (see 3.8. below), the tender which has been awarded the highest total number of points should be recommended for acceptance. If the tender with the highest total number of points fails the risk analysis, it should be eliminated and the tender with the next highest total number of points should be subjected to risk analysis and, if satisfactory, be recommended for acceptance.

\*Note: In the event that one or more tenderer are awarded the same number of points, the contract should be awarded to the tenderer with highest number of development objective point (process points).

**3.8 Risk Analysis** Prior to being recommended for acceptance, a tender should be subjected to risk analysis to ensure that it would, if accepted, not place the Council or the tenderer, at undue risk. The following features of the tender and the tenderer should, inter alia, be considered:

- The tender price and its make up
- Unduly high individual rates
- Unduly low rates
- The tenderers ability to obtain the required performance guarantee, if applicable
- The tenderers previous experience
- The tenderers total resources
- The resources which the tender could mobilize for the contract
- The tenderers current commitments/availability of key staff
- The tenderers track record on previous similar contracts
- Ability to supervise and control labour and, if required, to supply materials and provide plant/transport
- Understanding of the scope of work required
- Imbalances in pricing

The risk analysis is best performed by interviewing tenders. Tenders may be overlooked if the price make up of portions of the work differ substantially from the estimated price and the tenderer is unable to account for such discrepancies.

**3.9 Preparation of estimated prices** The person responsible for either preparing the procurement documentation or providing the third party management support should prepare an estimated (shadow) price by, inter alia, considering the following:

- statutory obligations
- the quantities contained in the Schedule of quantities/Bills of Quantities
- the scope of the work
- site conditions
- production rates
- statutory wage rates
- contractual obligations and requirements
- levels of remuneration of staff
- profit
- overheads
- purchase and replacement of tools, etc.

---

## 4. REPORTS TO TENDER COMMITTEE

In order that the Committee may objectively review all reports submitted for consideration it is important that reports contain all relevant information and be structured in a uniform manner.

### 4.1 Legal Considerations

The Local Government Transition Act and the Municipal Systems Act provide that a Municipality shall award contracts for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

The last two criteria (i.e. competitive and cost effective) have already been dealt with under 3 above, and are also dealt with in the Preferential Procurement Policy Framework Act and the draft Regulations in terms of the Act.

The Promotion of Administrative Justice Act No 3 of 2000 provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights have been adversely affected by administrative actions has the right to be given written reasons. The Act further provides that administrative action which materially affects the rights or legitimate expectations of any person must be procedurally fair.

It is therefore clear that the reports laid before the Tender Committee must demonstrate procedural fairness.

### 4.2 Reports to the Committee

All reports to the Tender Committee must comply with the above principles. The reports should, insofar as is possible, be standard in format.

The suggested format is set out hereunder:

- Contract number and description
- Introduction
- Tenders received
- Evaluation of tenders
- Comparison of prices
- Additional information
- Cost benefit Analysis
- Recommendations

#### **4.2.1 Contract Number and description**

The full contract description must be set out in the heading of the report.

#### **4.2.2 Introduction**

This section should set out the authority to invite tenders as well as a brief background to the tender i.e. why the work is being done, who the works serve, the benefit to be derived, etc.

#### **4.2.3 Tenders Received**

This section must set out the date the tenders were advertised and the date the tenders were opened. Thereafter, all tenders received should be listed. Please note that the full name of the entity tendering must be shown including its legal standing e.g. close corporation, partnership, etc.

#### **4.2.4 Evaluation of tenders received**

The Council is required to consider all tenders received. Officials preparing tender reports must therefore consider and report on all tenders received. This does not mean that all tenders will be deemed to be responsive. The report must indicate which tenderers are being excluded from further consideration and document the reasons.

All remaining responsive tenders must then be examined and reported on. The evaluation includes the technical evaluation of the offer as well as financial and process evaluation. In this regard refer to sections 3.3 - 3.9 above. It is important that all documentation substantiating the nature of the entity tendering (as well as the partners, members or shareholders) be included in the report, as Annexures.

All documentation called for in the tender document e.g. VAT registration, income tax clearance, etc must also be checked to ensure that they are valid, and that the details coincide with the detail of the tenderer.

#### **4.2.5 Comparison of prices**

This section must clearly set out the amounts tendered and show the points calculated for price, the points calculated for process and the total points.

#### **4.2.6 Additional information**

Any other information which has an influence on the objective evaluation of the tenders should be included here.

It is important to note that certain information set out above could be sensitive e.g. income tax clearance and bank rating. If for example a tender does not have an income tax clearance or has a poor bank rating then the report must be considered "in -committee" (i.e. on pink paper).

It may not be prudent to include the Bank rating in the report to the Committee. The details should however be available for the Committee.

#### **4.2.7 Cost Benefit Analysis**

A detailed cost comparison of alternatives/option should be included in the report (unless this has been done previously e.g. when the capital Budget or Operating Budget was prepared) to enable the Council to ensure that it is achieving the best value for money. Where the cost benefit analysis was done previously this should be referred to in the report. Care should however be taken to ensure that the cost benefit analysis is still relevant given the pricing and structure of the tender under consideration. Other factors which require to be taken into consideration include all other costs associated with the project e.g. staffing, maintenance costs, further capital acquisitions e.g. equipment for a clinic or a library, etc.

The cost benefit analysis must effectively cover the expected life of the asset. For example, it may be that the cheaper capital option has much higher maintenance costs which will soon overtake the next highest capital costs.

#### **4.2.8 Recommendations**

The recommendations summarise the result of the process set out above.

They need to commence with the reasons for deeming certain tenders to be non-responsive. If only three or four tenders have been examined/evaluated in detail then the reasons for not evaluating the remaining tenders must also be recoded. The recommendation must however make it clear that they were considered but passed over for a particular reason e.g. price too high, etc.

The recommendation relating to the actual award must clearly indicate the full name of the tender (not abbreviated form), the value of tender (including if it is fixed or subject to final determination in terms of the contract) as well as the fact that the tenderer scored the highest points based on the points scoring system set out in the Council's Procurement Policy and the Tender Specification.

If the award is not made to the tenderer scoring the highest points then the reasons why the Council elected to award the tender to another tenderer must be fully set out.

The final recommendation relates to the funding for the project i.e. the vote number and the amount available.

Where the project is to be performed over two (or more) financial years then this fact needs to be incorporated into both the report (introduction) and the recommendation with specific recommendations relative to future funding