BS ISO 10845-3:2021

BSI Standards Publication

Construction procurement

Part 3: Standard conditions of tender

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National foreword

This British Standard is the UK implementation of ISO 10845-3:2021.

The UK participation in its preparation was entrusted to Technical Committee CB/500, Procurement.

A list of organizations represented on this committee can be obtained on request to its committee manager.

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Construction procurement —

Part 3: Standard conditions of tender

Marchés de construction —

Partie 3: Conditions types normalisées des soumissions

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Foreword

ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

The procedures used to develop this document and those intended for its further maintenance are described in the ISO/IEC Directives, Part 1. In particular, the different approval criteria needed for the different types of ISO documents should be noted. This document was drafted in accordance with the editorial rules of the ISO/IEC Directives, Part 2 (see www.iso.org/directives).

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. ISO shall not be held responsible for identifying any or all such patent rights. Details of any patent rights identified during the development of the document will be in the Introduction and/or on the ISO list of patent declarations received (see www.iso.org/patents).

Any trade name used in this document is information given for the convenience of users and does not constitute an endorsement.

For an explanation of the voluntary nature of standards, the meaning of ISO specific terms and expressions related to conformity assessment, as well as information about ISO's adherence to the World Trade Organization (WTO) principles in the Technical Barriers to Trade (TBT), see www.iso.org/iso/foreword.html.

This document was prepared by Technical Committee ISO/TC 59, *Buildings and civil engineering works,* Subcommittee SC 18*, Construction procurement*.

This second edition cancels and replaces the first edition (ISO 10845-3:2011), which has been technically revised.

The main changes compared to the previous edition are as follows:

— definitions and parts of the text have been updated and aligned with other parts of the ISO 10845 series;

— the methods for evaluating tenders have been modified and the implications of choices made in applying such methods explained;

— an informative annex on the formulation of evaluation reports has been added.

A list of all parts in the ISO 10845 series can be found on the ISO website.

Any feedback or questions on this document should be directed to the user's national standards body. A complete listing of these bodies can be found at www.iso.org/members.html.

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Introduction

Procurement is the process which creates, manages and fulfils contracts. There are accordingly three phases to the procurement process associated with the delivery and maintenance of construction works, namely:

— a planning phase during which decisions are made as to what, where and when goods and services are required, how the market is to be engaged and what is the number, type, nature and timing of the required contracts;

— an acquisition phase during which contracts are entered into following the execution of a selection method; and

— a contract management (or contract administration) phase during which compliance with requirements, changes in requirements and risk events which manifest during the execution of contracts are managed.

Conditions of tender are required to establish procedures from the time that tenders are invited to the time that a contract is awarded. Such conditions document the procedures, the manner in which those engaged in the procurement process are to behave, the obligations of the tenderer and the undertakings of the employer.

Annex A provides background information on this document, guidance on its use and suggestions on good practice. Annex B provides guidance on how to develop the tender data for a procurement document using this document. Annexes C and E offer guidance on the evaluation of tenders and the structuring of evaluation reports, respectively. Annex D provides an example of a tender security. Annex F provides insights into the use of different formulae and weightings in the scoring of tender offers during the evaluation process,

ISO 10845-2 establishes the manner in which procurement documents should be formatted and compiled. The standard conditions contained in this document can by reference be incorporated in procurement documents formatted and compiled in accordance with the provisions of ISO 10845-2. ISO 10845-4 establishes requirements relating to pre-qualification of tenderers who are invited to submit a tender offer in terms of certain selection methods described in ISO 10845-1.

This document is part of the ISO 10845 series which covers various aspects of procurement within the construction industry. Each part of the ISO 10845 series relates to a different aspect of procurement. The objective of the ISO 10845 series is to provide a generic and standard set of processes, procedures and methods for a procurement system that is fair, equitable, transparent, competitive and cost-effective and which can be used to promote objectives additional to those associated with the immediate objective of the procurement itself.

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Construction procurement —

Part 3: Standard conditions of tender

1 Scope

This document sets out standard conditions of tender which

a) bind the employer and tenderer to behave in a particular manner,

b) establish what a tenderer is required to do in order to submit a compliant tender,

c) make known the evaluation criteria to tenderers, and

d) establish the manner in which the employer conducts the process of offer and acceptance and provide the necessary feedback to tenderers on the outcomes of the process.

This document is intended for use in procurements relating to goods, services and construction works and disposals other than by auction.

2 Normative references

There are no normative references in this document.

3 Terms and definitions

For the purposes of this document, the following terms and definitions apply.

ISO and IEC maintain terminology databases for use in standardization at the following addresses:

— ISO Online browsing platform: available at https://www.iso.org/obp

— IEC Electropedia: available at https://www.electropedia.org/

3.1
bill of quantities
document for tendering, usually prepared in a standard form, comprising both a descriptive list of quantities of works and descriptions of the materials, workmanship and other matters required for construction works

[SOURCE: ISO 6707-2:2017, 3.5.11, modified — The preferred terms specific to the US have been removed.]

3.2
bond
sum of money or securities submitted to the *employer* (3.8) or placed in the hands of a third party to guarantee completion of the work and recovery of the sums which the contractor is recognized as owing under the terms of the contract

[SOURCE: ISO 6707-2:2017, 3.5.40, modified — "client" has been replaced by "employer"; "of the work" has been added after "completion".]

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3.3
comparative offer
tenderer's (3.18) financial offer after all tendered parameters that can affect the value of the financial offer have been taken into consideration to enable comparisons to be made on a comparable basis

3.4
conflict of interest
situation where business, financial, family, political or personal interests could interfere with the judgment of persons in carrying out their duties for the organisation

[SOURCE: ISO 37001:2016, 3.29]

3.5
contract data
document that identifies the applicable conditions of a contract and states the associated contract-specific data

[SOURCE: ISO 10845-1:2020, 3.8]

3.6
corrupt practice
offering, giving, receiving or soliciting of anything of value to influence the action of the *employer* (3.8) or his staff or agents in the tender process

[SOURCE: ISO 10845-1:2020, 3.10, modified — "the procurement process or the administration of the contract" has been replaced by "the tender process".]

3.7
eligibility criteria
criteria framed around the ability of a *tenderer* (3.18) to provide the required goods, services and construction works or disposals, or any combination thereof, which need to be satisfied in order for a submission to be evaluated

3.8
employer
person or *organization* (3.12) intending to or entering into a contract with the contractor to supply goods, carry out construction works and/or provide services

[SOURCE: ISO 10845-1:2020, 3.15]

3.9
form of offer and acceptance
document that formalizes the legal process of offer and acceptance

3.10
fraudulent practice
misrepresentation of the facts in order to influence the tender process, or the award of a contract arising from a *tender offer* (3.17) to the detriment of the *employer* (3.8), including collusive practices intended to establish prices at artificial levels

[SOURCE: ISO 10845-1:2020, 3.18, modified — "or the administration of the contract including compensation procedures" at the end has been removed.]

3.11
joint venture
two or more *organizations* (3.12) grouped together to carry out work and share the risks, where each is jointly and severally liable for the actions and work of the other

[SOURCE: ISO 6707-2:2017, 3.8.3]

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3.12
organization
company, firm, enterprise, association or other legal entity, whether incorporated or not, or public body

[SOURCE: ISO 10845-1:2020, 3.21]

3.13
quality
totality of features and characteristics of a product or service that bears on the ability of the product or service to satisfy stated or implied needs

[SOURCE: ISO 10845-1:2020, 3.27]

3.14
returnable document
document that a *tenderer* (3.18) is required to complete and submit to the *employer* (3.8) as part of his tender submission

3.15
scope of work
document that specifies and describes the goods, services, or construction works which are to be provided, and any other requirements and constraints relating to the manner in which the contract work is to be performed

[SOURCE: ISO 10845-1:2020, 3.29, modified — Notes 1 and 2 to entry have been removed.]

3.16
tender data
document that establishes the *tenderer's* (3.18) obligations in submitting a tender and the *employer's* (3.8) undertakings in administering the tender process and evaluating *tender offers* (3.17)

[SOURCE: ISO 10845-1:2020, 3.37]

3.17
tender offer
written offer to supply goods, carry out construction works and/or provide services under given conditions, usually at a stated price, and which is capable of acceptance and conversion into a binding contract

[SOURCE: ISO 10845-1:2020, 3.38]

3.18
tenderer
person or *organization* (3.12) that submits a *tender offer* (3.17)

[SOURCE: ISO 10845-1:2020, 3.39, modified — Note 1 to entry has been removed.]

4 General requirements

4.1 Actions

The employer and each tenderer submitting a tender offer shall comply with the standard conditions of tender. In their dealings with each other, they shall discharge their duties and obligations, as set out in Clauses 5 and 6, in a timely manner and with integrity, behave equitably, honestly and transparently, and not engage in anti-competitive practices.

The employer and the tenderer, and all the agents and employees involved in the tender process, shall avoid conflicts of interest and, where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Tenderers shall declare any potential conflict of interest in their tender submissions. Employees, agents and advisors of the employer shall declare

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any conflict of interest to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

The employer shall not seek and a tenderer shall not submit a tender without having a firm intention and the capacity to proceed with the contract.

NOTE 1 A conflict of interest can arise due to a conflict of roles which can provide an incentive for improper acts in some circumstances or positions. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in said circumstance or position, even if no improper acts result.

NOTE 2 Conflicts of interest with respect to those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which can in any way affect any decisions taken.

4.2 Tender documents

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

4.3 Interpretation

The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of the standard conditions of tender in this document.

The standard conditions of tender contained in this document, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

4.4 Communication and employer's agent

Each communication between the employer and a tenderer shall be to or from the employer's agent only, and in a form that can be read, copied and recorded, and in the language stated in the tender data. The employer shall not take any responsibility for non-receipt of communications from or by a tenderer. The name and contact details of the employer's agent are stated in the tender data.

4.5 Employer's right to accept or reject any tender offer

The employer may accept or reject any variation, deviation, tender offer, or alternative tender offer, and may cancel the tender process and reject all tender offers at any time before the formation of a contract. The employer shall not accept or incur any liability to a tenderer for such cancellation and rejection, but shall give written reasons for such action upon written request to do so.

The employer may not, subsequent to the cancellation or abandonment of a tender process or the rejection of all responsive tender offers, re-issue a tender covering substantially the same scope of work within a period of six months unless only one tender was received and such tender was returned unopened to the tenderer.

4.6 Procurement procedures

4.6.1 General

Unless otherwise stated in the tender data, a contract shall, subject to 6.13, be concluded with the tenderer who, in terms of 6.11, is the highest ranked or the tenderer scoring the highest number of tender evaluation points, as relevant, based on the tender submissions that are received at the closing time for tenders.

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4.6.2 Competitive negotiation procedure

Where the tender data require that the competitive negotiation procedure be followed, tenderers shall submit tender offers in response to the proposed contract in the first round of submissions. Notwithstanding the requirements of 6.4, the employer shall only announce the names of the tenderers who make a submission. The requirements of 6.8, relating to the material deviations or qualifications which affect the competitive position of tenderers, shall not apply.

All responsive tenderers, or not less than three responsive tenderers that are highest ranked in terms of the evaluation method and evaluation criteria stated in the tender data, shall be invited in each round to enter into competitive negotiations, based on the principle of equal treatment and keeping confidential the proposed solutions and associated information. Notwithstanding the provisions of 6.17, the employer may request that tenders be clarified, specified and fine-tuned in order to improve a tenderer's competitive position, provided that such clarification, specification, fine-tuning or additional information does not alter any fundamental aspects of the offers or impose substantial new requirements which restrict or distort competition or have a discriminatory effect.

At the conclusion of each round of negotiations, tenderers shall be invited by the employer to make a fresh tender offer, based on the same evaluation criteria, with or without adjusted weightings. Tenderers shall be advised when they are to submit their best and final offer.

The contract shall be awarded in accordance with the provisions of 6.11 and 6.13 after tenderers have been requested to submit their best and final offer.

4.6.3 Proposal procedure using the two-stage tendering system

4.6.3.1 Option 1

In the first stage, tenderers shall submit technical proposals and, if required, cost parameters around which a contract may be negotiated.

The employer shall evaluate each responsive submission in terms of the method of evaluation stated in the tender data.

In the second stage, the employer shall negotiate a contract with the tenderer scoring the highest number of evaluation points and award the contract in terms of the standard conditions of tender.

4.6.3.2 Option 2

In the first stage, tenderers shall submit only technical proposals. In the second stage, the employer shall invite all responsive tenderers to submit tender offers, following the issuing of procurement documents.

The employer shall evaluate tenders received during the second stage in terms of the method of evaluation stated in the tender data, and award the contract in terms of the standard conditions of tender in this document.

5 Tenderer's obligations

5.1 Eligibility

5.1.1 Submit a tender offer

Submit a tender offer only if the tenderer satisfies the eligibility criteria stated in the tender data and if the tenderer, or any of the tenderer's principals, is not under any restriction to do business with the employer.

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Complete the eligibility declaration included in the tender documents (if any) and provide the required evidence of satisfying stated eligibility criteria.

5.1.2 Notify the employer

Notify the employer of any proposed material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used by the employer as the basis in a prior process to invite the tenderer to submit a tender offer, and obtain the employer's written approval to do so before the closing time for tenders.

5.2 Cost of tendering

Accept that, unless otherwise stated in the tender data, the employer does not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the tender offer comply with requirements.

5.3 Checking documents

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

5.4 Confidentiality and copyright of documents

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

5.5 Reference documents

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are incorporated into the tender documents by reference.

5.6 Acknowledging addenda

Acknowledge receipt of addenda to the tender documents, which the employer may issue, and, if necessary, apply for an extension to the closing time stated in the tender data, in order to take the addenda into account.

5.7 Clarification meeting

Attend, where required, a clarification meeting, the details of which are stated in the tender data, at which tenderers may familiarize themselves with aspects of the proposed work, services or supply, and raise questions.

5.8 Seeking clarification

Unless otherwise notified in the tender data, request clarification of the tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the tender data.

5.9 Insurance

Be aware that the extent of insurance to be provided by the employer (if any) may not be for the full cover required in terms of the conditions of contract identified in the contract data.

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5.10 Pricing the tender offer

Include in the rates, prices, and the tendered total of the prices (if any), all duties, taxes which the law requires to be paid [except value added tax (VAT)], and other levies payable by the successful tenderer, that are applicable 14 days before the closing time stated in the tender data.

Show the VAT payable by the employer separately as an addition to the tendered total of the prices.

Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

State the rates and prices in monetary value of the contract unless otherwise instructed in the tender data.

NOTE The contract data can provide for part payment in other currencies.

5.11 Alterations to documents

Do not make any alterations or additions to the tender documents, except to comply with instructions issued by the employer or to correct errors made by the tenderer and ensure that all signatories to the tender offer initial all such alterations.

Do not make erasures using masking fluid.

5.12 Alternative tender offers

Unless otherwise stated in the tender data, submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted, as well as a schedule that compares the requirements of the tender documents with the alternative requirements that are proposed.

Accept that an alternative tender offer may be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

5.13 Tender submissions

5.13.1 General submission requirements

Submit one tender offer only, either as a single entity or as a member in a joint venture, to provide the whole of the works, services or supply identified in the draft contract, unless otherwise stated in the tender data.

Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.

Submit

a) the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with a translation of any documentation in a language other than the language of communication established in 3.4, and

b) the parts communicated electronically in the same format as they were issued by the employer.

5.13.2 Signatures

Sign the original and all copies of the tender offer where required in terms of the tender data.

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State in the case of a joint venture which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

NOTE The employer holds all authorized signatories liable on behalf of the tenderer.

5.13.3 Tender securities

Submit, if instructed in terms of the tender data, a tender security from a bank or insurer that is in a strong enough commercial position to carry such security in the name of the tenderer, or in the names of each of the members of a joint venture, in the amount, for the period and in the form specified in the tender data.

5.13.4 Inclusion of certificates

Include in the tender submission, or provide the employer with, any certificates as stated in the tender data.

5.13.5 Sealing of documents

Seal the original and each copy of the tender offer as separate packages, marking the packages as “ORIGINAL” and “COPY”. Unless otherwise specified in the tender data, seal the “ORIGINAL” and “COPY” packages in a single package and state on the outside of such package the employer's address and identification details specified in the tender data, as well as the tenderer's name and contact address.

Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked “FINANCIAL PROPOSAL” and place the remaining returnable documents in an envelope marked “NON-FINANCIAL PROPOSAL”. State on the outside of each envelope the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address. Seal the original tender offer and copy packages together in an outer package that states, on the outside, only the employer's address and identification details as specified in the tender data.

5.13.6 Employer's acceptance of tender submissions

Accept that the employer does not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

Accept that the employer shall not accept tender offers submitted by telegraph, telex, facsimile or e-mail, unless otherwise stated in the tender data.

5.14 Information and data to be completed in all respects

Accept that tender offers which do not provide all the data or information requested, completely and in the form required, may be regarded by the employer as being non-responsive.

5.15 Closing time

Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Proof of posting or couriering shall not be accepted as proof of delivery.

Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of the standard conditions of tender in this document apply equally to the extended deadline.

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5.16 Tender offer validity

5.16.1 Period of validity

Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period, with or without any conditions attached to such extension. Extend the period of the tender security, if any, to cover any agreed extension requested by the employer.

5.16.2 Withdrawal of tenders

Accept that a tender submission that has been submitted to the employer may only be withdrawn or substituted by giving the employer's agent written notice before the closing time for tenders that a tender is to be withdrawn or substituted.

Where a tender submission is to be substituted, submit a substitute tender in accordance with the requirements of 5.13 with the packages clearly marked as “SUBSTITUTE”.

5.17 Clarification of tender offer after submission

Provide clarification of a tender offer during the evaluation of tender offers, in response to a request from the employer to do so.

NOTE Such clarifications can include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.

5.18 Other material

Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials considered necessary by the employer for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as being non-responsive.

Dispose of samples of materials as provided for the employer's evaluation.

5.19 Inspections, tests and analysis

Provide access during working hours to premises for inspections, tests and analysis, as provided for in the tender data.

5.20 Submitting securities, bonds, policies, etc.

If requested, submit for the employer's acceptance before formation of the contract all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

5.21 Checking final draft

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

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5.22 Returning other tender documents

If so instructed by the employer, return all retained tender documents within 28 days of the expiry of the validity period stated in the tender data.

6 Employer's undertakings

6.1 Responding to requests from the tenderer

6.1.1 Requests for clarifications

Unless otherwise notified in the tender data, respond to a request for clarification received up to five working days before the tender closing time stated in the tender data, and notify all tenderers who obtained procurement documents.

6.1.2 Requests to change qualifying requirements

Consider any request to make a material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used to pre-qualify a tenderer to submit a tender offer in terms of a previous procurement process.

Deny any such request if, as a consequence,

a) an individual firm, or a joint venture as a whole, or any individual member of the joint venture fails to comply with any of the collective or individual qualifying requirements,

b) the new partners to a joint venture were not pre-qualified in the first instance, either as individual firms or as another joint venture, or

c) in the opinion of the employer, acceptance of the material change would compromise the outcome of the pre-qualification process.

6.2 Issuing addenda

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date that tender documents are available until, unless otherwise notified in the tender data, three working days before the tender closing time stated in the tender data.

If, as a result of the issuing of addenda, it is necessary to extend the closing time stated in the tender data, grant such extension and notify all tenderers accordingly.

6.3 Returning late tender offers

Return tender offers received after the closing time stated in the tender data unopened, unless it is necessary to open a tender submission to obtain a forwarding address to the tenderer concerned.

6.4 Opening of tender submissions

Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers who choose to attend, at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted are not opened.

Announce at the meeting held immediately after the receipt of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened and, where applicable, the total of the tenderer's prices, preferences claimed and time for completion, for the main tender offer only.

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Make available, upon request, to all interested persons the record of tender parameters that are announced in respect of each tender received.

6.5 Two-envelope system

Where stated in the tender data that a two-envelope applies, open only the non-financial proposal of valid tenders in the presence of tenderers' agents, who choose to attend, at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.

Evaluate the non-financial proposals offered by tenderers and then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals are to be opened.

Open only the financial proposals of tenderers who, in the quality evaluation score, have more than the minimum number of points for quality stated in the tender data, and announce the score obtained for the non-financial proposals and the total price and any preferences claimed. Return unopened financial proposals to tenderers whose non-financial proposals failed to achieve the minimum number of points for quality.

6.6 Non-disclosure

Do not disclose to tenderers, or to any person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

6.7 Grounds for rejection and disqualification

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and said tenderer's offer) if it is established that the tenderer engaged in corrupt or fraudulent practices.

6.8 Test for responsiveness

Determine, after opening and before detailed evaluation, whether each tender offer that was properly received

a) complies with the requirements of the standard conditions of tender in this document,

b) has been properly and fully completed and signed, and

c) is responsive to the other requirements of the tender documents.

A responsive tender is one that conforms to all the terms, conditions, and scope of work of the tender documents, without material deviation or qualification. A material deviation or qualification is one which, in the employer's opinion, would

d) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the scope of work,

e) significantly change the employer's or the tenderer's risks and responsibilities under the contract, or

f) unfairly affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and do not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

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6.9 Arithmetical errors, omission and discrepancies

Check responsive tenders for discrepancies between amounts in words and amounts in figures. Where there is a discrepancy between the amounts in figures and the amount in words, the amount in words shall govern.

Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers in accordance with 6.11 for

a) the gross misplacement of the decimal point in any unit rate,

b) omissions made in completing the pricing schedule or bill of quantities, or

c) arithmetical errors in

   1) line item totals resulting from the product of a unit rate and a quantity in bill of quantities or schedules of prices, or

   2) the summation of the prices.

Notify the tenderer of all errors or omissions that are identified in the tender offer and either confirm the tender offer as tendered or accept the corrected total of prices.

Where the tenderer elects to confirm the tender offer as tendered, correct the errors as follows:

d) If a bill of quantities or pricing schedules apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.

e) Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer shall be asked to revise selected item prices (and their rates if bill of quantities apply) to achieve the tendered total of the prices.

Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of errors in the required manner.

6.10 Clarification of a tender offer

Obtain clarification from a tenderer on any matter that can give rise to ambiguity in a contract arising from the tender offer.

6.11 Evaluation of tender offers

6.11.1 General

Appoint an evaluation panel to evaluate submissions. Ensure that not less than three persons evaluate quality in terms of 6.11.9.

Reduce each responsive tender offer to a comparative offer and evaluate submissions using the tender evaluation methods and associated evaluation criteria and weightings that are specified in the tender data.

6.11.2 Method 1: financial offer

In the case of a financial offer

a) rank tender offers from the most favourable to the least favourable comparative offer, and

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b) recommend the highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Re-rank all tenderers should there be compelling and justifiable reasons not to recommend the tenderer with the highest ranked tender, and recommend the highest ranked tenderer, unless there are compelling and justifiable reasons not to do so, in which case the process set out in this subclause shall be repeated.

6.11.3 Method 2: financial offer and quality

In the case of a financial offer and quality,

a) score each tender in respect of the financial offer made and quality offered in accordance with the provisions of 6.11.7 and 6.11.9, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any,

b) calculate the total number of tender evaluation points (T_{EV}) in accordance with the following formula:

$$T_{EV} = f_1 \ N_{FO} + f_2 \ N_Q$$

where

f_1 and f_2 are fractions, f_1 equals 1 minus f_2 and f_2 equals the value stated in the tender data;

N_{FO} is the number of tender evaluation points awarded for the financial offer made in accordance with 6.11.7;

N_Q is the number of tender evaluation points awarded for quality offered in accordance with 6.11.9,

c) rank tender offers from the highest number of tender evaluation points to the lowest, and

d) recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Rescore and re-rank all tenderers should there be compelling and justifiable reasons not to recommend the tenderer with the highest number of tender evaluation points, and recommend the tenderer with the highest number of tender evaluation points, unless there are compelling and justifiable reasons not to do so, in which case the process set out in this subclause shall be repeated.

6.11.4 Method 3: financial offer and preferences

In the case of a financial offer and preferences

a) score each tender in respect of the financial offer made and the preferences claimed, if any, in accordance with the provisions of 6.11.7 and 6.11.8,

b) calculate the total number of tender evaluation points (T_{EV}) in accordance with the following formula:

$$T_{EV} = N_{FO} + N_P$$

where

N_{FO} is the number of tender evaluation points awarded for the financial offer made in accordance with 6.11.7;

N_P is the number of tender evaluation points awarded for preferences claimed in accordance with 6.11.8,

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c) rank tender offers from the highest number of tender evaluation points to the lowest, and

d) recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Rescore and re-rank all tenderers should there be compelling and justifiable reasons not to recommend the tenderer with the highest number of tender evaluation points and recommend the tenderer with the highest number of tender evaluation points, unless there are compelling and justifiable reasons not to do so, in which case the process set out in this subclause shall be repeated.

6.11.5 Method 4: financial offer, quality and preferences

In the case of a financial offer, quality and preferences

a) score each tender in respect of the financial offer made, the preference claimed, if any, and the quality offered in accordance with the provisions of 6.11.7 to 6.11.9, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any,

b) calculate the total number of tender evaluation points (T_{EV}) in accordance with the following formula, unless otherwise stated in the tender data:

$$T_{EV} = f_1 (N_{FO} + N_P) + f_2 N_Q$$

where

f_1 and f_2 are fractions, f_1 equals 1 minus f_2 and f_2 equals the value stated in the tender data;

N_{FO} is the number of tender evaluation points awarded for the financial offer made in accordance with 6.11.7;

N_P is the number of tender evaluation points awarded for preferences claimed in accordance with 6.11.8;

N_Q is the number of tender evaluation points awarded for quality offered in accordance with 6.11.9,

c) rank tender offers from the highest number of tender evaluation points to the lowest, and

d) recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Rescore and re-rank all tenderers should there be compelling and justifiable reasons not to recommend the tenderer with the highest number of tender evaluation points, and recommend the tenderer with the highest number of tender evaluation points, unless there are compelling and justifiable reasons not to do so, in which case the process set out in this subclause shall be repeated.

6.11.6 Decimal places

Score financial offers, preferences and quality, as relevant, to two decimal places.

6.11.7 Scoring financial offers

Score the financial offers using the following formula:

$$N_{FO} = W_1 \times A$$

where

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N_{FO} is the number of tender evaluation points awarded for the financial offer;

W_1 is the maximum possible number of tender evaluation points awarded for the financial offer which equals 100 in method 2 (see 6.11.3) and 100 minus the maximum possible points for preference stated in the tender data in methods 3 and 4 (see 6.11.4 and 6.11.5);

A is the number calculated using the relevant formula described in Table 1, as stated in the tender data.

Table 1 — Formulae for calculating the value of A[a]

Formula number	Basis for comparison	Formula
1	Highest price or discount	P/P_m
2	Lowest price or percentage commission or fee	**Option 1**: P_m/P **Option 2:** $1-\frac{(P-P_m)}{P_m}$
Key P_m the comparative offer of the most favourable comparative offer P the comparative offer of the tender offer under consideration		

6.11.8 Scoring preferences

Confirm that tenderers are eligible for the preferences claimed in accordance with the provisions of the tender data and reject all claims for preferences where tenderers are not eligible for such preferences.

Calculate the total number of tender evaluation points for preferences (N_P) claimed in accordance with the provisions of the tender data.

6.11.9 Scoring quality

Score each of the criteria and subcriteria for quality in accordance with the provisions of the tender data.

Calculate the total number of tender evaluation points for quality (N_Q) using the following formula so that the maximum possible tender evaluation points awarded for the quality:

$$N_Q = 100 \times S_O / M_S$$

where

S_O is the score for quality allocated to the submission under consideration;

M_S is the maximum possible score for quality in respect of a submission which equals 100.

6.12 Insurance provided by the employer

If requested by the proposed successful tenderer, submit, for the tenderer's information, the policies or certificates of insurance (or both) which the conditions of contract identified in the contract data require the employer to provide.

6.13 Acceptance of a tender offer

Accept a tender offer should it be considered not to present any unacceptable risk, only if the tenderer

a) is not under restrictions, or has principals who are under restrictions, preventing participation in the employer's procurement,

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b) can, as necessary and in relation to the proposed contract, demonstrate the possession of the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and personnel, to perform the contract,

c) has the legal capacity to enter into the contract,

d) is not insolvent, in receivership, bankrupt or being liquidated, does not have affairs administered by a court or a judicial officer, does not have suspended business activities, or is subject to legal proceedings with respect to any of the foregoing,

e) complies with the legal requirements, if any, stated in the tender data, and

f) is able, in the opinion of the employer, to perform the contract free of conflicts of interest.

6.14 Preparing contract documents

If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of

a) addenda issued during the tender period,

b) inclusion of some of the returnable documents, and

c) other revisions agreed between the employer and the successful tenderer during the process of offer and acceptance.

Complete the schedule of deviations attached to the form of offer and acceptance, if any.

6.15 Completing adjudicator's contract

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete the formalities for appointing the selected adjudicator at the same time as the main contract is signed.

6.16 Notice to successful and unsuccessful tenderers

Notify the successful tenderer of the employer's acceptance of the tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period.

After the successful tenderer has been notified of the employer's acceptance of the tender, notify other tenderers that their tender offers have not been accepted.

6.17 Providing copies of the contracts

Provide to the successful tenderer the number of copies stated in the tender data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

6.18 Returning of tender securities

Return tender securities to the successful tenderer and unsuccessful tenderers before the expiry period stated in the tender data or in the tender security.

6.19 Providing written reasons for actions taken

Provide, upon request, written reasons to tenderers for any action that is taken in applying any of this document, but withhold information which in the employer’s opinion is not in the public interest to be

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