

## Tender Procedure- Criterion Influencing the Decision to Tender



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### Evaluation and identification of the criteria in the tender documents including the form of invitation to tender and their influence on decision to tender

#### Invitation to Tender

Invitation to tender is an important document containing valuable information which could influence the decision to submit the tender. The information contained in the tender invitation will reflect whether open tendering or selective tendering will be used in the tender procedure. Generally the information provided can be identified as follows;

#### The Client

The details of the client is vital as much can be learnt about credibility, attitude towards releasing payments, financial stability etc. by investigation. The necessary information will be readily available in case the tenderer has previous experience of working with a particular client. Furthermore, knowledge of client's practices with regard to dealing with variations claims or any contractual disputes will be quite useful and will influence the tender.

#### Type of Project

The type of work is another important factor that the Tenderer has to consider. He/she should be satisfied that he/she has the capacity and the competency to undertake the work defined by the scope of work.

Generally projects can be categorized into several fields as follows:

- Commercial
- Industrial
- Residential
- Healthcare

- Transportation
- Marine
- Educational
- Water supply & drainage

The identification of the project category would assist the Tenderer to evaluate the availability of suitable resources such as managerial & technical staff, plant & equipment of suitable type and capacity, skilled and unskilled workmen, special materials, specialist sub contractors etc. He/she has to take account of availability of his/her own resources and consider other arrangements such as hiring, procurement and leasing of items that are not available. He/she also has to consider any special requirements or conditions associated with construction of the specific type of the project. A project with many specialized items of work involving high level of technical expertise could be beyond the tenderer's capacity. The magnitude of the project and the period of construction dictate the scale of financing of the project and the tenderer should have a proven plan of funding.

#### Location of the Project

Factors related to the location of the project are numerous and should be observed and investigated by a site visit.

- Locality of the site such as urban, rural or isolated and details of nearest town, shops, hospital, police etc.
- Physical site conditions such as subsoil data, level of ground water table, terrain, proximity to rivers, lakes, sea etc., presence of nearby structures or obstructions.
- Availability of services such as electricity, telephone, water etc.
- Presence of highways, railways, airports, harbours and the distances to the nearest bus or rail terminals.

- Access to the site and the presence of bridges, tunnels or other highway structures restricting transport of equipment and material to site.
- Information on whether the site is situated within any restricted zone such as military or defense services etc. requiring working times, noise level etc. to be controlled, the need for personnel working within to be screened and issued with entry passes. Other types of special precautions may be necessary for working within airports where use of certain type of equipment and tools may be limited.

### **Time available to tender**

Time available for a tender affects the accuracy and the quality of the bid. During the tender period the Tenderer has to collect lot of information relevant to the project. Mainly, if it is a Lump Sum Contract, the Tender has to verify the accuracy of quantities of major items in the BOQ involving re-measurement of quantities from drawings. In instances where special materials are unavailable in the local market, it will be necessary to obtain overseas quotations for importation. In addition, quotations will be obtained from local suppliers and sub contractors and be scheduled for determination of lowest quotations. The normal practice in construction industry is to allocate a period of two to three weeks for tender submission. Tenderers can request for an extension of the closing date of the tender, if the given time is rendered insufficient due to the nature of work, magnitude of the project, or other valid reasons. Employer may consider the Tenderer's request and extend the tender closing date if they realize that the request is reasonable and would yield a realistic bid. But some times this may not be possible in case of a fast-track project depending on the type of tendering and the end users requirement.

### **The Consultant**

The Consultant is the representative or agent of the Employer. Consultant and his supervisory staff play a major role during project implementation. Information on consultant's performance with regard to quality of contract documents and working relationship with contractors could be used by the management in finalizing a tender. Many a contractor would favour working with a friendly and professional consultant.

### **Tender queries**

During the tender period tenderers may submit queries to the consultant to obtain clarifications on ambiguities

and inadequate details. The consultant may send notices to tenderers clarifying the issues raised by the queries and other important information related to the tender. These notices should be distributed among all the tenderers to ensure uniformity of the bids and will help in reduction of post tender disputes. All such notices and amendments should be incorporated in the Contract Document. During the construction period these correspondence may become useful in resolving disputes related to pre-tender issues. Sometimes a pre-bid meeting is held well before the closing time but after sufficient time has elapsed for tenderers to study the documents. Contractor's queries are discussed and an attempt is made to resolve whatever possible during the meeting. Minutes of this meeting together with answers to outstanding queries are circulated among all tenderers.

### **Other participants of the tender**

The competitiveness of a tender depends on the climate of the construction industry. The other participants will price their bids depending on their work load and how badly they require a particular project. An understanding of their work load may help in submitting a successful bid. It is a good practice to maintain a record of tender results which can be used in identifying the bidding patterns of various competitors.

### **Tender Documents**

#### **Instruction to Tenderers**

Instruction to tenderers provides important information about preparation of the bid, packaging and submission. Closing time of tender, place and mode of submission, opening time if applicable, amount of bid bond if any, number of copies to be submitted etc. are given in this document. Therefore, the tenderer should carefully read and understand all the important information given in it, so that the tender may not be rejected due to carelessness. As per the FIDIC Conditions of Contract it is not a contractual document.

#### **Method of measurement**

The method of measurement governs the mode of pricing items in the BOQ. Normally in UAE 'POMI' or 'SMM7' is used for Building projects, while in civil engineering, projects are based on 'CESSM3'. A working knowledge of the relevant method of measurement is essential to price a tender properly. For instance, under SMM7, a margin is allowed as working space for excavation whereas in

CESSM3 it is measured net. So that in pricing an item for excavation under CESSM3, the allowance for working space should be included in the rate.

### **Amount of tender bond**

A tender bond of a certain amount which is valid over a period of normally 3 or 6 months is sometimes stipulated in the tender. The value of this bond could be a fixed sum or a percentage of the tender sum. This bond will be forfeited if the successful tenderer refuses to accept the tender. Some Employers insist that the tender bond be obtained from a specified bank of their choice. Tenderer may face difficulties in such a situation if he does not have any relationship with that bank and may be required to secure the amount of the bond in cash or another guarantee. Bank commission for the tender bond usually depends on the tenderer's relationship with the bank.

### **Number of copies to be submitted**

The number of copies of bid documents to be submitted is specified in the instruction to tenderers.

### **Documents to be submitted with the tender**

- The Tender Document Issued to the Tenderer with priced BOQ
- The Form of Tender
- The Tender Bond
- The Tender Appendix completed by the Tenderer
- Schedules of Subcontractors and Suppliers
- Schedule of Plants and Equipment
- Current Valid Trade License
- Schedule of Authorized Signatory
- Work Programme for proposed project
- Method statement
- Names and Qualifications of Key Personnel
- Statement of Site Visit / Inspection of Drawings
- Additional Information related to tender (Optional)
- Alternative Tender proposals (Optional)
- Notices to Tenderers and Addenda

### **Location and closing time of tender**

The tender has to be submitted to the specified location on or before the closing time indicated in the instruction to tenderers. Care should be taken not to delay the submission and risk the rejection of the tender. Delivery should be planned in advance considering the distance to be traveled, mode of transport, traffic and weather conditions etc.

### **Appendix to tender**

Generally appendix to tender includes applicable Clauses related to Insurance, performance bond, liquidated damages and its maximum limit, minimum amount of monthly interim valuation, percentage value of the material on site payable, percentage for Provisional Sums, time for issue of notice to commence, time period for completion of the works, defects liability period, names of Engineer and the Employer.

### **Form of tender**

Tenderer has to mentioned final value including markup in this form, get it signed by the person authorized by the origination and put the company stamp on that form. Then only it becomes a valid legal document according to Contract.

### **Milestone dates**

The milestone dates indicated are to be strictly taken into consideration by the tenderer in pricing the tender. The costs associated in fulfilling all his obligations to complete the project including the costs of carrying out maintenance during the Defects Liability Period as stated in the appendix to the tender, should be included in the tender. It should be noted that the maintenance certificate for the whole project will be issued on completion of the defects liability period of the last milestone as stated in the Appendix to the tender.

### **Tender and Conditions of Contract**

The Tenderer should be familiar with the general conditions of contract and study in detail the particular conditions of contract prior to pricing of the tender. Normally in UAE conditions of contract FIDIC 4th Edition or other locally/internationally accepted Conditions of Contract are used in contracts.

There are two parts in Conditions of Contract

- a. Part I – General Conditions of Contract
- b. Part II – Conditions of Particular Application

The Part II – Conditions of particular application takes precedence over the general conditions of contract. The contents and their true meaning should be grasped for proper interpretation of these conditions and their effect on the tender. It may contain some clauses beneficial to the employer. The financial impact on the tender arising from these conditions should be considered in the pricing of the tender

Tenderer should be fully aware of the Conditions of Contract for the particular project and especially those related to following commonly used Clauses:

- Extension of time
- Payments
- Liquidated damages
- Fluctuation
- Variations
- Dispute Resolution
- Defects Liability period
- Materials at Site
- Nominated sub contractors
- Retention
- Provisional sums & prime cost sums
- Insurance

## Specifications

This section can be divided in to two parts.

- A. General Specification
- B. Particular Specification

## General Specification

Classified into four major elements

- i. Site Regulation, Safety and Security
- ii. General
- iii. Design, Supervision & Contractor's Drawings
- iv. Deliverables from the Contractor

## Particular Specification

This section needs careful attention. Particular specifications deal with special technical requirements, special construction techniques, special materials etc. Proper understanding of these specifications is essential in preparing a realistic bid. Often much time will be required to obtain pricing information related to items covered by these particular specifications

## Bills of Quantities

For a specimen BoQ format, the sections of the BoQ based on 'CESMM3' shall consists of following parts:

- i. Principal quantities
- ii. Preamble
- iii. Day work schedule
- iv. Measured work items (Grouped in to parts)
- v. Grand summary

The pricing preamble is one of the most important & critical sections in the BOQ. It provides information on

the method of measurement, details of items deviating from the standard method of measurement, details on pricing general & preliminary items and guide lines for pricing certain items. Proper understanding of this section will provide a tenderer with an opportunity to identify items that could become variations whilst executing the contract and the pricing of which need not be included in the tender.

## Drawings

A list of Tender Drawings issued with the tender is included in the tender documents. In general, it may contain the following drawings.

- a. Location Plan
- b. Site Plan
- c. Detail Plans
- d. Sections
- e. Elevations
- f. Any special features

Tenderer should be satisfied that the issued Drawings are sufficient for the purpose of pricing the respective items in the BOQ. Tenderer is at liberty to request required additional details in order to respond to a tender query from the Engineer when the drawings do not give adequate details.

## Current Work Load in the Estimating Department

A first step in the tendering process is to study the feasibility of submitting a bid. This involves understanding of details of other tenders under preparation, any tenders that may be issued in the immediate future, expected profitability of the tenders in hand etc. This information will help the management to select tenders that offer better returns and will be in the best interest of the organization.

## Current Workload in the Construction Department

Evaluating the current construction work load is also a part of the feasibility study mentioned in the previous section. This study should include the work load of the respective construction divisions, availability of managerial & technical staff, availability of plant, machinery etc. Based on this information a decision will be taken by the management about taking part or declining to take part in the tender.

### Conclusion and Recommendation

The client, the conditions of contract, type of project, value of project, project duration, works in hand, current situation in the construction industry as well as current workload in the organization should be considered before submitting a tender. In practice, the circumstances will not always be favourable to the contractor for submitting a particular tender, but an experienced contractor will use his/her judgment in taking a decision.

### Bibliography

- “Contract and Tender procedure” book provided by International College of Business and Technology
- The Surveyors’ Construction Handbook – by RICS
- Contractual Procedures in the Construction Industry – by Allan Ashworth
- Various web site relevant to the subject
- Various journals on the subject

### *Caparo Industries Plc -v- Dickman and others [1990]*

*The plaintiffs sought damages from accountants for negligence. They had acquired shares in a target company and, relying upon the published and audited accounts which overstated the company’s earnings, they purchased further shares.*

*Held: The purpose of preparing audited accounts was to assist company members to conduct business, and not to assist those making investment decisions, whether existing or new investors in the company. The auditors did not owe a duty of care to the plaintiffs. Liability for economic loss for negligent mis-statement should be limited to situations where the statement was made to a known recipient for a specific purpose of which the maker was aware, and upon which the recipient had relied and acted upon to his detriment. The law has moved towards attaching greater significance to the more traditional categorisation of distinct and recognisable situations as guides to the existence, the scope and the limits of the varied duties of care which the law imposes. The House laid down a threefold test of foreseeability, proximity and fairness and emphasised the desirability of incremental development of the law. The test was if “the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other”. Lord Bridge of Harwich: “What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of ‘proximity’ or ‘neighbourhood’ and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other.”*