

## 2.1.2. Running the tender for the contract by the client

### TRADITIONAL METHOD OF PROCUREMENT FOR DESIGN

The first major Procurement Procedure for the Client is the appointment of the Consultant or Designer to undertake the design of the project and to prepare the Tender Documentation for competitive tendering by contractors.

The size and complexity of the proposal will determine the method of procurement to be used.

However, in all cases the same principles apply to preparing the appropriate documentation for the Consultant or Designer to compete to win the contract fairly.

The documentation should contain:

- the Letter of Invitation to Tender,
- the Terms of Reference including the Scope of the Works,
- the Contract Conditions,
- additional Relevant Technical Information.

The extent and complexity of the documentation will be determined by the following factors:

- size and technical complexity of the project,
- funding sources,
- client's procurement procedures,
- urgency for the work to be undertaken.

These factors will determine whether the procurement process will be open to any Consultant or Designer with the appropriate skills and qualifications, or whether there will be a selection process before tendering, to select only a limited number of Consultants or Designers to be eligible to tender for the work. This latter process is called the *Pre-qualification Process*.

Although there is no worldwide, universally used tender documentation for Consultant's or Designers, the Federation Internationale des Ingenieurs-Conseils (FIDIC) have produced model documentation with respect to contract conditions. These documents are called the *Clients/Consultant Model Services Agreement*, and are known as the FIDIC *White Book*, due to the colour of the cover. Organisations such as the World Bank and the EBRD (European Bank for Reconstruction and Development) use this documentation as part of the tender documentation for Consultants and Designers.

The *Public Sector* Client, will normally require tenders to be submitted by Consultants and Designers to a named address by a given date and time. Failure to meet with this deadline will mean rejection of the tender. The proposal will then usually be returned without having been opened.

The tender may be required to be submitted in two parts namely:

- Technical Proposal.
- Financial Proposal.

The *Technical Proposal* will detail the Consultant's or Designer's methods of undertaking the work as set out in the *Terms of Reference* (TOR). It will also include details of the programme, staff inputs and Curricula Vitae of staff to be employed on the project.

The *Technical Proposals* from all Consultant or Designer Tenderers may be assessed ahead of the *Financial Proposal*, and only those tenders that technically meet the requirements of the Client will be also considered financially, via their *Financial Proposals*.

At tender stage the Client may advise Tenderers what importance he puts on the *Technical Proposal* and likewise the *Financial Proposal*, in determining the winner of the tender or competition. This is called *Weighting* of the two proposals. For instance the Client may put a 70% value on the *Technical Proposal* and hence a 30% value on the *Financial Proposal*, or some other proportion or weighting.

The Client has the right to determine who the successful Tenderer is, and may call several of the Tenderers for discussion, to clarify their proposals.

*Public Sector* Clients will be required to announce who is the successful Tenderer, but do not have to provide reasons for the success or failure of bids.

On the award of a contract by the Client to a Consultant or Designer, both parties complete the formal documentation within the Tender Documentation, and a contract is signed. This contract is binding in terms of all the conditions set out in the Contract Documentation.

## **GENERAL PRINCIPLES FOR TENDER DOCUMENTATION FOR DESIGNER**

For the Employer, the preparation and presentation of tender documentation to Tenderers is a critical element within the life of a project. The standard of tender documentation will, to a large extent, determine the standard of response from the Tenderers.

Prior to the issuing of tender documentation, the Employer will have had to consider and prepare both the technical standard and scale of information to be provided as well as the financial and contractual standards. An evaluation of risk for the Employer will apply to all these factors and a prudent Employer will have undertaken a risk analysis of the factors most relevant to the specific project.

The emphasis on each factor will be different for each project, and the tender documentation as a whole will provide an appropriate balance between these factors. For instance, if the very highest quality is required within a construction project, irrespective of the time spent, then the tender documentation, through the Specification, will reflect this requirement. Conversely, if the time is the most important factor, then the emphasis will be on a quick programme period and high penalties for being late.

Where an Employer is using his own funds then the tender documentation will be according to his standards. *Public Sector* Clients will have prescribed procedures, which are within the public domain for inspection. *Private Sector* Clients can decide the relevant tender documentation according to their needs.

Where an Employer is using funds in whole or part from an International Funding Agency such as the World Bank or EBRD, then in addition to his own procedures and documentation, the procedures and documentation of the Agencies must also be incorporated into the tender process. Section 10 of this manual gives further details of these procedures and documentation.

### **Tender Documentation for Consultants or Designers.**

The tender documentation is normally prepared in the language of the Employer, but where International Funding Agencies or international *Private Sector* Clients are involved, the documentation is most probably in the English language.

For a consulting service required by the Employer the tender documentation will contain the following:

- The Invitation to Tender,
- Description of Project,
- The Instructions to Tenderers,
- General Regulations of the Funding Authority, if applicable,

- The Draft Contract and its Annexes.

The draft contract as prepared by the International Funding Agencies is such that it is applicable to most projects and has Appendices that enable the particular details relating to the specific project to be entered. The format of such a Contract is as follows:

- Terms of Reference,
- Form of Organisation and Methods,
- Form of List of Staff,
- Form of Breakdown of Prices,
- The General Conditions for Service Contracts,
- Any additional information.

The tender documentation is to be assessed and understood by the Tenderer as a whole, as well as understanding the individual components. Where there is a conflict in the documentation, the Tenderer should seek clarification, in writing, from the Employer; normally within 15 days of the deadline from the submission of offers.

Where the Employer wishes to clarify, change, or amend the tender documentation, then he must write to all Tenderers providing the amendments.

The tender submissions by Tenderers for Consulting Service Contracts are normally required in two separate parts, as set out in the Instructions to Tenderers and in the General Regulations and are composed of:

TECHNICAL PROPOSAL including:

- Statement as requested
- Terms of Reference
- Organisation and Method
- List of staff including Curriculum Vitae for each person

FINANCIAL PROPOSAL including:

- A detailed breakdown of prices including as appropriate: fees, accommodation, direct costs and reimbursables
- The time when payments are to be made

- The bank account to which payment may be made
- The currency of payments

The Tenderers submission is called the Tender.