Section 2.7 Evaluating Tender Submissions

Overview

Introduction

This section deals with considerations and calculations the Employer has to make during the evaluation of the tender submissions in relation to rates and prices.

Purpose

The requirements and requests for information in the Invitation to Tender must be based on an understanding of how cost comparison is carried out and how the most economically advantageous tender price is calculated.

Checklist

At the outset and also before making the decision to award the tender, the Employer should review the checklist contained under *Tender Evaluation Checklist* in Appendix B.

In this section

This section deals with the following topics:

2.7.1 Comparing Tender Costs

Award criteria

The tender assessment must, where a tendered daily rate(s) for delay has been submitted, include the evaluation of the tendered delay cost and rates using the stated delay periods.

The award criteria can also include other things as listed in Article 53 (1) (a) of Directive 2004/18/EEC on public procurement and should take account of SI No. 329 of EC (Award of Public Authority Contracts) Regulations 2006 and Directive 2004/17/EC and SI No. 50 (Award of Utilities Contracts) Regulations 2007.

The Employer will need to consider some or all of the following:

- The values in the pricing document
- The tenderer's Works Proposals;
- The tenderer's management and supervision structure;
- The tenderer's proposed working methods
- The tenderer's initial programme,
- The tenderer's plant, labour resources and named specialist subcontractors;
- Rates for labour and delay costs with the percentage adjustment for material and plant costs and any other issues to be tendered in the Works Proposals;
- Value Engineering proposals submitted with tenders;
- Credits offered for owner-controlled insurance; and
- If time is tendered, its impact on tender prices.

Hence, the award criterion must be stated as being the 'Most Economically Advantageous Tender' (MEAT), and not 'the lowest cost tender'.

Adjusting the tender sum

Where daily rates are tendered the following should be added to each tender sum for the purpose of comparing tenders:

- The product of the provisional number of days' delay stated in the tender documents and the tenderer's daily rate of delay cost; and
- The product of the provisional number of hours for each category of craftsperson, apprentice and general operative stated in the tender documents and the tenderer's hourly rate for each.

Where percentages are tendered the following should be added to each tender sum for the purpose of comparing tenders:

- The provisional cost of materials and plant in relation to compensation events stated in the tender documents multiplied by the tenderer's percentage adjustment for each.

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Adjusting the tender sum (continued)

Where daily delay rates are not tendered (expenses unavoidably incurred as a result of a delay), the following should be added to each tender sum for the purpose of comparing tenders:

- The product of the provisional number of hours for each category of craftsperson, apprentice and general operative stated in the tender documents and the tenderer's hourly rate for each; and
- The provisional cost of materials and plant in relation to compensation events stated in the tender documents multiplied by the tenderer's percentage adjustment for each.

Where programme time is tendered the tender sum should be increased by the product of a daily sum stated by the Employer (in the tender documents) and the tenderer's programme period in excess of a minimum period stated in the tender documents, for the purpose of comparing tenders.

For example, an Employer requires a project to be constructed no earlier than 120 weeks (minimum time) and at latest 145 weeks (maximum time). This information is included in the Works Requirements and tenderers are asked to tender time between these two points. Along with the minimum and maximum times the Employer also includes the tender documents an amount per day (€10,000 for each week) which is to be used at tender evaluation stage and applied to the tenderers' excess over the minimum period. In this example, three tenders were received and the tendered times are as follows:

Name	Total time in weeks	Excess over minimum in weeks
Tenderer A	124	4
Tenderer B	130	10
Tenderer C	135	15

When the tender submissions are being evaluated, the amounts to be taken into account in relation to time, in order to determine which is the most economically advantageous offer are:

- Tenderer A, 4 x €10,000 = €40,000;
- Tenderer B, 10 x €10,000 = €100,000;
- Tenderer C, 15 x €10,000 = €150,000.

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2.7.1 Comparing Tender Costs, Continued

Comparing tenders with and without insurance

In cases where the Employer is considering using owner-controlled insurance, this is clearly indicated in the tender documents, and tenderers are asked to submit separate optional costs of insurances.

The Employer can then compare compliant tenders with and without the optional insurance element, and may award the Contract *either*:

- **Exclusive of the insurances** – in cases where it is financially advantageous to do so, the Employer takes on owner-controlled insurance; *or*
- **Inclusive of the insurance costs submitted by the winning tender** – usually where the insurance portion of the tender is competitive by comparison to the cost of owner-controlled insurance.

The mechanics for this comparison should be stated in the tender documents.

2.7.2 Adjusting Details within Tender Pricing

Why adjust the Pricing Document

Under normal circumstances there is a Pricing Document, which tenderers complete during the tendering period.

When a successful tenderer is selected and prior to issue of the Letter of Acceptance by the Employer, it may be necessary to correct errors (i.e. errors in the computation of the detailed tender figure), to deal with inconsistencies between rates (i.e. front loading of rates or imbalance between rates throughout the Pricing Document), and to rebalance the distribution of costs across elements of the Pricing Document. The outcome of this exercise must not alter the fixed-price lump-sum tendered by the Contractor.

This exercise is undertaken so that the valuation of interim payments and compensation events is fair to both the Employer and the Contractor. Furthermore, the exercise is also undertaken to enable realistic cash-flow projections. The exercise should be completed in consultation with the preferred tenderer and the outcome notified to and accepted by the preferred tenderer in advance of the issue to all tenderers of the notice of the Employer's intention to award the Contract.

How to adjust the Pricing Document

Any individual lump-sum included in the make-up of the preferred tender should be broken down in sufficient detail to be of use. This applies as much to traditional contracts as it does to design-and-build.

Normally the Pricing Document is a Bill of Quantities except in the case of design-and-build. Where a Bill of Quantities is not provided as the Pricing Document it will be replaced with some other document, such as an activity schedule, a list of milestone payments, or an analysis of the Contract Sum.

Rebalancing rates

In determining what the balanced or corrected rates should be, the Employer should consider the following:

- Rates for similar work which the Employer or its consultants have access to on other projects adjusted as necessary;
- Rates for similar work published in construction industry pricing books adjusted as appropriate for currency, time and location;
- Rates built up from first principles using labour constants, market prices of materials, labour hourly rates (based on REA) and an allowance for overheads and profit;
- Rates derived from a combination of some or all of the foregoing four bullet points.

It is important that the rationale behind the establishment of a revised rate is worked out logically and can be demonstrated, if necessary.

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2.7.2 Adjusting Details within Tender Pricing, Continued

Pricing Document without breakdown

In limited circumstances – only in the case of some design-and-build contracts – the Pricing Document may be very general and include a fixed-price lump-sum without a detailed breakdown. In such cases, however, the Employer should set down milestones for interim payments in the Works Requirements – for example when 10%; 20%; 30% (and so on) of a project is completed. Where this is done, any lump sum figures in a tender should, if necessary, be broken down and reflected in the milestone figures.

EU procurement requirement

In dealing with inconsistencies between rates, balancing of rates and errors, the Employer must ensure that the tendered lump-sum figure is not changed. Any change would be regarded as post-tender negotiations, and would be in violation of the EU procurement rules. Details of how the Employer intends to rebalance rates or milestone values may be included in the tender documents or alternatively in the Contract Notice or both. Also, the mechanism for rebalancing rates or milestone values may be detailed in the tender documents.

2.7.3 Considering VAT

VAT Inclusive

A lump-sum tender price is VAT-inclusive and should be evaluated on this basis. The Pricing Document should allow space for the tenderer to insert amounts (as provisional sums cannot be used) to which the VAT rates are added to establish the overall amount for VAT in the tender.

VAT example

When a successful tenderer is selected, the Pricing Document should be examined for inconsistencies, errors and imbalances in rates. If VAT has been calculated incorrectly (for example, using the wrong rate), the pre-VAT tender price should be adjusted so that the correct VAT calculation yields the submitted tender lump-sum price. This will probably require making adjustments elsewhere in the Pricing Document for consistency.

For example, the following table shows an extract from a tender submission:

Pricing	Amount
Tender Price excluding VAT	**€22,362,224**
VAT on €0 at 21%	**€**0
VAT on €22,362,224 at 12.5%	**€**2,795,278
VAT on €0 at 0%	**€**0
VAT Sub Total **€2,795,278**	
Total Tender Price including VAT	**€25,157,502**

In this example submission, the tenderer made a number of errors:

- The middle rate for VAT should have been 13.5%, not 12.5%; and
- Different rates should have been applied to different constituent elements of the contract sum.

At preferred tender stage, the Employer should consult with the Contractor after adjusting the makeup of the Total Tender Price including VAT. The table below shows how the figures might be adjusted following this consultation:

Pricing	Amount
Tender Price excluding VAT	**€22,055,787**
VAT on €2,555,787 at 21%	**€**536,715
VAT on €19,000,000 at 13.5%	**€**2,565,000
VAT on €500,000 at 0%	**€**0
VAT Sub Total **€3,101,715**	
Total Tender Price including VAT	**€25,157,502**

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2.7.3 Considering VAT, Continued

Adjustments to the Contract Sum

In adjusting the tender sum VAT calculations must be corrected without changing the fixed-price lump-sum in the same way as described for adjustments in 2.7.3 Adjusting Details within Tender Pricing.

Clause 11.7.1 of the Contract Conditions states that *'The Contract Sum includes value added tax (VAT).'* All other amounts stated in the Contract (unless otherwise provided) are exclusive of VAT. Post-contract adjustments to the Contract Sum are made on a net-of-VAT basis, and in line with clause 11.7.2 and the appropriate sum for VAT should be added to the adjusted Contract Sum.

2.7.4 Insurance Options

Options

There are two approaches to providing contract insurances; they are:

- Contractor-controlled insurances; and
- Owner-controlled insurances.

Contractor-controlled insurance is where the Contractor provides all the project insurances during construction. On the other hand, owner-controlled insurances is where the Employer is responsible for providing public liability, all risks and professional indemnity insurance, and the remainder are provided by the Contractor (for example, employer liability insurance). Owner-controlled insurance is used in exceptional circumstances where there is a transparent and justifiable case.

If owner-controlled insurances are required, the contract amendments must be set out in the Works Requirements; the Contract itself must not to be amended.

Disadvantages of owner-controlled insurance

The disadvantages of owner-controlled insurances include (this is not an exhaustive list):

- There is no reduction to contractor's overheads as these will not decrease very much if he is not required to provide insurance on a particular project. This is because the Contractor carries a block of insurance for all his projects and the premiums being charged will not significantly change because one project is excluded.
- There is no claims history and therefore the insurer is likely to load the premiums charged to the Employer as the policies taken out for owner-controlled insurances are a one-off.
- Similarly, the benefit of a discount for bulk continuous business will not arise.
- Owner-controlled insurances should not have large excesses as a means of reducing premiums. The excesses should be the same as those acceptable where the Contractor provides the insurance.
- The cost of site security tends to be higher on owner-controlled insurance. This is because insurers will seek to minimise risk exposure as much as possible with an Employer that has very little commercial clout.
- Owner-controlled insurances must be tendered for separately in an open transparent and competitive way which will involve an additional administrative function and cost.
- The scope of the insurance contract will be very difficult to define at tender stage as the Contractor will not be known and additional costs will probably arise later.

2.7.5 Tender Evaluation Example

Introduction

The following example illustrates how certain issues, in relation to price only, should be considered by the Employer at tender evaluation stage.

Sample project

The working assumption is a public works project with:

- A contract for Civil Engineering Works Designed by the Employer;
- An estimated value of €25 million; and
- A duration of 30 months to construct.

The following contingent items are included in the tender documents:

- 40 delay days;
- 1,800 hours for a craftsman;
- 1,800 hours for an apprentice;
- 2,400 hours for a general operative;
- €250,000 estimate for materials; and
- €100,000[7] estimate for plant, including rates of €120.30 per hour for special plant item 'A' and €125.30 per hour for special plant item 'B'.

Note: Ideally these should be Expected Values (in a statistical sense) of contingent items, estimated by professional judgement of similar projects.

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[7] The €100,000 estimate for plant in this example has been calculated by the Employer's designer as follows:

(i)	Rates in sterling for a selection of plant items in CECA publication converted to euro and multiplied by an estimated number of hours.	€50,880
(ii)	The rate of €120.30 per hour for special plant item 'A' multiplied by an estimate of 200 hours.	€24,060
(iii)	The rate of €125.30 per hour for special plant item 'B' multiplied by an estimate of 200 hours.	€25,060
Total		€100,000

2.7.5 Tender Evaluation Example, Continued

Sample pricing

The following tender prices were received:

	Contractor A	Contractor B	Contractor C
Tender Price €	25,100,000	25,200,000	24,900,000
Delay cost €	8,200	4,800	10,500
Craftsman's cost €	35 per hour	23 per hour	28 per hour
Apprentice's cost €	26 per hour	13 per hour	17 per hour
General Operatives €	30 per hour	18 per hour	21 per hour
Percentage on Materials	31%	18%	25%
Percentage on Plant	20%	8%	10%

Sample calculations

The tender evaluation exercise would give rise to the following calculations:

Pricing	**Contractor A** **€**	**Contractor B** **€**	**Contractor C** **€**
Tender Price (including VAT)	25,100,000	25,200,000	24,900,000
Daily rate * delay days = Delay cost	8200* 40 =328,000	4800* 40 = 192,000	17,000 * 40 =680,000
Hourly rate * no. of hours = Craftsman's cost €	35 * 1800 = 63,000	23 * 1800 = 41,400	28 * 1800 = 50,400
Hourly rate * no. of hours = Apprentice's cost	26 * 1800 = 46,800	13 * 1800 = 23,400	17 * 1800 = 30,600
Hourly rate * no. of hours = General Operative's cost	2,400 * 30 = 72,000	2,400 * 18 = 43,200	21 * 2400 = 50,400
Materials cost * % tendered = Materials contingency	250,000 * 31% = 77,500	250,000 * 18% = 45,000	250,000 * 25% = 62,500
Plant cost * % tendered = Plant contingency	100,000 * 20% = 20,000	100,000 * 8% = 8,000	100,000 * 10% = 10,000
Total €	**25,707,300**	**25,653,000**	**25,683,900**

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2.7.5 Tender Evaluation Example, Continued

Traditional contract tender evaluation

For a traditional contract, the most competitive price offered is that of Contractor B. Where quality/price is to be the basis for the award, some examples of other criteria that might be included are:

- The tenderer's proposed management, supervision structure and personnel;
- The proposed working methods;
- The initial programme;
- The plant and labour resources that would be deployed; and
- Value Engineering proposals included with tender.

Award Rates and percentages to be listed

The following tendered rates and percentages should be included in the completed Schedule from the contract attached to the Letter of Acceptance and in the Schedule attached to the Agreement:

- €4,800 for the daily delay rate;
- €23 for a craftsman's hourly rate;
- €13 for an apprentice's hourly rate;
- €18 for a general operative's hourly rate;
- 18% on material costs; and
- 8% on plant costs.

The 8% percentage adjustment will be applied to the euro equivalent to the sterling plant rates in the Civil Engineering Contractors Association (CECA) publication at the time the work is done and to the rates of €120.30 per hour for special plant item 'A' and €125.30 per hour for special plant item 'B' that were supplied with the tender invitation. The adjusted rates will be used for valuing plant as authorised under clause 10.6.4 (3) of the Contract.

Design-and-build tender evaluation

In the case of a design-and-build contract, the quality criteria (if applicable) can include design and may include some or all of the foregoing qualitative criteria. In addition Whole Life Cost as a criteria will also be a factor. Separate weightings should be allocated to price and quality, with quality having an appropriate weighting relative to the project.

2.7.6 Letters of Intent and Acceptance

Contractor requirements

The Contractor is required to provide certain information to the Employer before the Starting Date. The Employer should ensure, before issuing the (binding) Letter of Acceptance, that bonds, insurances, any required parent company guarantees, tax clearance certificates, and other relevant documents are in place. The procedure for this should be specified in the tender documents.

Issuing Letter of Intent

If the Letter of Acceptance has issued, and the Contractor fails to provide the required documents, the Employer can terminate the Contract, but would have to commence a new procurement procedure to award a new contract. EU procurement rules do not allow Employers to move on and select the next placed tenderer after an award has been made.

This situation can be addressed by including in the instructions for tendering a provision that a Letter of Intent will be issued to the successful bidder. The instructions for tendering can specify that the Contractor must provide a performance bond, any required parent company guarantee, evidence of required insurance or other appropriate documentary conditions, within a stated period after issue of the Letter of Intent (30 days would be typical for building contracts, 60 days for civil engineering), failing which the Employer may go to the next bidder.

A form of Letter of Intent is included in the separately published *Model Forms* document. The issue of this model form does not have the effect of bringing a procedure to a close.

Binding nature of Letter of Acceptance

The issue of a Letter of Acceptance by an Employer to a tenderer forms a binding contract. The letter must be signed by a person authorised to sign contracts on behalf of the Employer. The Employer should make sure that all required approvals and supporting documents are in place before the letter is issued.