

## CHAPTER 3      REQUEST FOR TENDER REQUIREMENTS — PHYSICAL WORKS: MANDATORY

### 3.1      General Requirements

3.1.1      No tendering authority shall, with respect to any RFT or contract, include any requirement that has the effect of unreasonably limiting competition, or which unreasonably favours one contractor or category of contractors over another.

### 3.2      Request for Tender Contents

3.2.1      RFT contents shall include, at a minimum:

- (1)      Appropriate standard contract terms and conditions.
- (2)      Safety and insurance requirements.
- (3)      Project scope and specification including quantum and completion date.
- (4)      Price model.
- (5)      Contractor quality assurance system requirements.
- (6)      The tendering authority's policy on late tenders.
- (7)      Where appropriate, a requirement for the provision of resources in times of emergency.

3.2.2      Notwithstanding the above requirement to include appropriate standard contract terms and conditions and safety and insurance requirements (Sections 3.2.1(1) and 3.2.1(2)), in the case of contracts valued at \$15,000 or less it shall be sufficient to refer to appropriate standard documents covering these items.

3.2.3      Where method specifications are used, the RFT shall not discourage alternative tender proposals.

<b>G3.2      Request for Tender Contents</b>
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<b>(1)      Standard Terms and Conditions</b>
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*The recommended standard terms and conditions are found in the New Zealand Standard Conditions Of Contract For Building and Civil Engineering Construction (NZS 3910:1987), together with addenda for Roading Construction Contracts, and for Roading Maintenance Contracts. These addenda are published as Standards Association of New Zealand Miscellaneous Publications (NZMP 3911 and NZMP 3912).*

<b>(3)      Project Scope and Specification</b>
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*Wherever practicable, tendering authorities should specify end results and should avoid specifying the methods to be used.*

*The reason for this is that results specifications promote the objectives of an efficient CPP better than methods specifications. A results approach requires the tendering authority to specify the target outputs to be achieved and it is then up to the tenderer to propose the method to be used to achieve the tendering authority's objectives. For example, a tendering authority would specify a project in terms of outputs such as:*

*"No potholes to remain unfilled for more than X hours".*

*The specification would not tell the contractor how to go about doing the job.*

*At the present time, there are some limitations on the practicality of a complete results-based approach. For example, a tendering authority's objective may be the construction of a road with X traffic flow capacity, Y load bearing capacity and Z life-span. Present techniques do not permit some of these features, particularly Z, to be definitively tested on the completed road; testing techniques have still to be developed that can determine durability of a work immediately after completion. In the early years of this CPP environment some tenderers may be disadvantaged or quality compromised if methods are not specified. As the confidence and skills of road contractors grows it will be possible to progressively adopt end result specifications without inhibiting competition.*

*When methods have been specified, tendering authorities should receive alternative tenders and properly evaluate them, providing the scope of the work specified in the RFT is not altered. However, note that Section 2.8.4 of this Manual states that a tendering authority is not bound to accept any alternative tender.*

#### **(4) Price Models**

*The following price models are considered efficient:*

- (1) Contractor-Specified Lump Sum (where the contractor submits a fixed dollar price to undertake the contract).*
- (2) Priced Schedule of Quantities (where the contractor submits a price based on a schedule of rates multiplied by the tendering authority's estimated quantities of each unit of input or intermediate output, summed to give an indicative lump sum).*
- (3) Schedule of Rates (where the contractor submits a unit price per unit of input or per unit of intermediate output).*
- (4) Any combination of the above.*

*It is expected that the most common form of price model will be one that combines lump sum for some components with priced schedule of quantities for other components. This gives an overall lump sum to enable comparison of tenders but moves some risk (in terms of quantities) to the tendering authority and also gives information which can be used to calculate variations to cost.*

*Transfund New Zealand has a preference for maximising the use of the contractor-specified lump sum price model. Tendering authorities should specify a lump sum price model where the work content can be reliably gauged in advance. When used appropriately, the lump sum pricing model brings greater competitive pressure to bear to minimise costs, and hence price. Another advantage is that the administration costs of a lump sum pricing model are comparatively low.*

*Where the work cannot be precisely defined prior to tendering, a priced schedule of quantities price model will be more appropriate. A pure schedule of rates price model is generally inappropriate for physical works.*

*Where the work content of some components of a contract can be reliably gauged prior to the contract, but the work content of other components cannot, a tendering authority may specify a combination of lump sum, schedule of rates and/or priced schedule of quantities within any one RFT. Tendering authorities should ensure that RFTs for different projects of a similar type and size are consistent and specify price in the same way whenever practicable.*

*Inefficient price models such as cost-plus should not be used.*

*The use of provisional sums should be minimised so that as many parts of the job as possible are competitively priced. Any provisional sums must be removed when calculating the price grade under Section 2.7.2(2) of this Manual.*

**(5) Quality Assurance**

*Contractors undertaking physical works that are financially assisted by Transfund New Zealand must be quality assured suppliers. Transfund's quality assurance system requirements for physical works suppliers are found in Transfund's Programme and Funding Manual.*

**(6) Late Tenders**

*Tendering authorities should have an established policy on late tenders. It is recommended that this policy be to not accept late tenders under any circumstances.*

*If a tendering authority's policy is to accept late tenders, then such tenders should only be accepted in exceptional circumstances which are clearly specified in their late tenders policy.*

*One major reason for this wariness in accepting late tenders is that competing tenderers may disclose the contents of their tender to the "late" tenderer who could then alter their tender accordingly.*

*This refusal to accept late tenders unless there are exceptional circumstances ensures that the onus remains on the tenderer to do everything possible to ensure that the tender is received on time.*

*If a late tender is accepted this should be clearly indicated in the tender evaluation details recorded on the contract file.*

### **3.3 Basis of Tender Evaluation**

- 3.3.1 Each RFT shall include a description of the basis of tender evaluation, consistent with the requirements of Sections 2.4 to 2.8 of this Manual.

#### **G3.3 Basis of Tender Evaluation**

*It is important for tenderers to know from the outset how their tender will be assessed and compared with other tenders.*

*If a tendering authority uses a detailed marking sheet for tender evaluation, it should be included in the RFT to ensure that no particular tenderers have an unfair advantage.*

### **3.4 Contract Duration**

- 3.4.1 For non-period contracts, except in the case of single large construction projects, no RFT shall specify a contract duration of more than 3 years.
- 3.4.2 For period contracts no RFT shall specify an initial contract duration exceeding 3 years. Period contracts may be extended beyond the initial contract duration where the RFT makes specific provision for the contract to be renewed annually (on completion of the initial contract duration) to a maximum total duration of 5 years. Contract renewal will be subject to satisfactory performance by the contractor (as defined in the RFT) and any other conditions specified in the RFT.

#### **G3.4 Contract Duration**

*For many physical works contracts 3 years is considered to be the optimum duration to strike a balance between competition and stability. Longer contract periods may also expose the tendering authority to risks associated with changes in the level of funding. However, where the RFT makes specific provision for extension beyond the initial contract duration and the performance of the contractor has been satisfactory (satisfactory performance being defined in the RFT) the contract can be extended annually to a maximum length of 5 years. Section 3.4.2 envisages a contract with an initial contract duration of up to 3 years being extended to a maximum of 5 years (therefore a 3+1+1 year contract term would be acceptable as would contract terms of 2+1+1 or 2+1+1+1 etc).*

*Each tendering authority should ensure that contract durations are arranged wherever possible to establish a future rolling programme of new contracts. A rolling programme of expiry dates and new contracts provides greater stability and certainty for contractors and can thereby encourage competition and reduce risk premiums in prices. If all contracts are programmed to expire simultaneously contractors will be reluctant to gear up for them unless they expect sufficient profit to compensate for the downsizing that may be needed at the end of the contracts. This problem is reduced if there are a regular supply of new contracts*

*available. Tendering authorities can thus expect to obtain lower prices over the longer term by adopting a rolling programme of expiry dates.*

*Section 2.11.3 allows period contracts to be extended beyond the period specified in the RFT (for a maximum of 3 months) under certain circumstances.*

### **3.5 Contract Area**

(No mandatory requirement.)

#### **G3.5 Contract Area**

*In general the works included in any RFT should be confined to the geographic boundaries of the tendering authority issuing the RFT. This does not prevent two tendering authorities from each preparing independent RFTs and inviting tenderers to submit tenders for any combination of the RFTs. In special cases it may be more practical for two adjacent tendering authorities to combine an activity in a single contract, and this is not prevented.*

### **3.6 Price Adjustment**

3.6.1 Each RFT shall specify the basis for calculation of future contract price adjustments, if any, due to cost fluctuations, but such price adjustments shall not be more than the movement in a relevant price or cost index approved by Transfund New Zealand.

#### **G3.6 Price Adjustments**

*Tendering authorities do not need to provide for price adjustment in any contract. They can make contractors accept all price risk. However this can be excessively costly when inflationary expectations are high. In allowing for price adjustments, tendering authorities should ensure that any proposed price adjustment formula results in a price increase no greater than that allowed for in the relevant Transfund New Zealand approved index formula based on Department of Statistics indices. Transfund New Zealand's price indices are contained in Appendix F of this Manual. Alternatively, the requirements of Section 3.6 of this Manual may be satisfied by incorporating NZS 3910 as part of the RFT.*

### **3.7 Labour Practices**

3.7.1 No tendering authority shall, with respect to any RFT, specify any arrangement concerning labour rates, labour practices or any other labour agreement.

#### **G3.7 Labour Practices**

*It could be anti-competitive, and therefore contrary to the intent of the legislation, for any tendering authority to specify labour practices.*

### **3.8 Errors and Omissions**

3.8.1 Each RFT shall specify the procedures to be used in the event of errors and/or omissions in tender documents.

#### **G3.8 Errors and Omissions**

*The procedures must be equitable and must not permit material changes to tenders. This requirement can be satisfied by the inclusion of NZS 3910 or an equivalent document in the RFT.*

*Transfund New Zealand recommends that the procedure provide that, in the event of errors and/or omissions in tender documents being discovered by the tendering authority, the tenderer should be requested to either confirm the tender without correction, or to withdraw.*

### **3.9 Bonds and Retentions**

3.9.1 No RFT shall specify a bond payable by the contractor which is greater than the reasonably expected loss to the tendering authority in the event of the contractor defaulting.

3.9.2 No RFT shall specify unreasonably high retentions.

#### **G3.9 Bonds and Retentions**

*The specification of unnecessarily high bonds and retentions can deter some otherwise capable contractors from participating in the tender.*

*An example of the appropriate use of bonds is as follows:*

- (1) For contracts with an estimated cost of less than \$100,000, no bond be required.*
- (2) Except as set out in (4) below, contracts with an estimated cost in excess of \$100,000 and less than \$1,000,000, a 10% bond be required.*
- (3) Except as set out in (4) below, contracts with an estimated cost in excess of \$1,000,000, a 10% bond on the first \$1,000,000 and a 5% bond thereafter be required.*
- (4) No bond be required for maintenance contracts including reseal contracts.*

*A requirement for prospective tenderers to make substantial non-refundable deposits when uplifting contract documents can also disadvantage some tenderers. Non-refundable deposits for contract documents should not exceed the marginal cost of producing a set of documents.*

### **3.10 Other RFT Requirements**

3.10.1 Each RFT shall include a statement as to how any variations in the signed contract are to be handled.

#### **G3.10 Other RFT Requirements**

*Preferably each RFT should include a proposal "shell" clearly delineating the requirement for submitting a conforming tender, including:*

- (1) A numbered listing of all questions and aspects to be described in the tender, and*
- (2) A form for submitting contract price proposals.*

*Each RFT should also include:*

- (1) A proposed schedule for the tendering process, including contract award and contract commencement dates.*
- (2) A statement as to the procedure that will be followed if only one conforming tender is received.*

*Each RFT also has to specify how variations to the size of the project will be handled. Variations should not unreasonably change the scope of the work. Transfund New Zealand considers that variations of up to plus 50% of the initial contract cost may be possible in certain circumstances without unreasonably changing the scope of the work. This requirement can be satisfied by the inclusion of NZS 3910 or an equivalent document in the RFT.*