

CHAPTER 5 REQUEST FOR TENDER REQUIREMENTS — PROFESSIONAL SERVICES : MANDATORY

5.1 General Requirements

5.1.1 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 consultant or category of consultants over another.

5.2 Request for Tender Contents

5.2.1 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) The tendering authority's policy on late tenders.

5.2.2 Notwithstanding the above requirement to include appropriate standard contract terms and conditions and safety and insurance requirements (Sections 5.2.1(1) and 5.2.1(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.

G5.2 Request for Tender Contents
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<p>(1) Standard Terms and Conditions</p>
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<p><i>Transfund New Zealand has published a Model Agreement for Professional Services which includes appropriate general conditions of contract.</i></p>
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<p>(2) Safety and Insurance Requirements</p>
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<p><i>Section 5.2.2 of this Manual means that contracts valued at \$15,000 or less can be arranged with a simple exchange of letters.</i></p>

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

<p><i>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</i></p>
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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 client would specify a project in terms of outputs such as:

"To determine the average speed of vehicles in the inner city".

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

At the present time, there are some limitations on the practicality of a complete results-based approach where present techniques do not permit an assessment of the quality of the end result immediately after project completion.

(4) Price Models

The following price models are considered efficient:

- (1) Consultant-Specified Lump Sum (where the consultant submits a fixed dollar price to undertake the contract).*
- (2) Priced Schedule of Quantities (where the consultant submits a price based on a schedule of rates multiplied by the tendering authority's estimated quantities of each unit of input, summed to give an indicative lump sum).*
- (3) Schedule of Rates (where the consultant submits a price per unit of input or per unit of intermediate output).*
- (4) Client-Specified Lump Sum (where the tendering authority specifies the maximum funds available for the contract).*
- (5) 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 consultant-specified lump sum price model where this model is feasible. 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 increase efficiency and hence minimise price. Another advantage is that the administration costs of a lump sum pricing model are comparatively low.

Where the work cannot be readily defined prior to tendering, then either the schedule of rates or priced schedule of quantities price models may be more appropriate.

A client-specified lump sum may be particularly suitable for research or investigatory projects. In such cases, prices are likely to be very similar and can be given a low weighting. Tender evaluation will focus on differences in quality attributes such as methodology.

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 projects of a similar type and size are consistent and specify price in the same way whenever practical.

If a tendering authority wishes to let a consultancy assignment with both design and supervision components, it needs to carefully consider the most appropriate price model for the subsequent supervision phase. It will often be hard to judge the amount of work involved in that supervision until the design is completed and the contractor is engaged. It is therefore suggested that the RFT contain an estimate of the number of hours of supervision required and that this be used by consultants to provide a priced schedule of quantities. See Guideline 5.2(4)(2) above.

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 are removed when calculating the price grade under Section 4.8.2(2) of this Manual.

(5) Late Tenders

Tendering authorities should have an established policy 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.

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.

5.3 Basis of Tender Evaluation

5.3.1 Each RFT shall include a description of the basis of tender evaluation, consistent with the requirements of Sections 4.5 to 4.9 of this Manual.

G5.3 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.

5.4 Contract Duration

5.4.1 For non-period contracts, except professional services contracts for a single large construction project, no RFT shall specify a contract duration of more than 3 years.

5.4.2 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 consultant (as defined in the RFT) and any other conditions specified in the RFT.

5.4.3 In the case of period contracts, the RFT shall specify that the contract duration may not be extended, except in the circumstances defined by Section 4.12.3 of this Manual, in which case the duration may be extended for a maximum of 3 months.

G5.4 Contract Duration

For many professional services 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 consultant has been satisfactory (satisfactory performance being defined in the RFT) the contract can be extended annually to a maximum length of 5 years. Section 5.4.2 envisages a contract of 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 or 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 consultants and can thereby encourage competition and reduce risk premiums in prices. Refer to Guideline 3.4 in this Manual for further discussion.

Section 4.12.3 allows period contracts to be extended beyond the period specified in the RFT (for a maximum of 3 months) under certain circumstances.

5.5 Contract Area

(No mandatory requirement.)

G5.5 Contract Area

In general the services included in any RFT should be confined to the geographic boundaries of the tendering authority issuing the RFT.

This Section 5.5 does not prevent two or more tendering authorities from each preparing independent RFTs and inviting consultants 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.

5.6 Price Adjustment

5.6.1 Each RFT shall specify the basis for calculation of future contract price adjustments, if any.

G5.6 Price Adjustment

Tendering authorities do not need to provide for price adjustment in any contract. They can make consultant's 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 a Transfund New Zealand approved formula, based on Department of Statistics indices.

5.7 Errors and Omissions

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

G5.7 Errors and Omissions

The procedures must be equitable and must not permit material changes to tenders.

It is recommended 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. The procedure should not, however, impose an obligation on the tendering authority to advise tenderers of errors and/or omissions.

5.8 Liability Conditions

5.8.1 Each RFT shall specify a Limitation Sum which represents a limit on the consultants' liability.

5.8.2 No tendering authority shall set the Limitation Sum so that it will unreasonably discriminate between consultants or potential consultants, or so that it will unreasonably advantage any consultant or type of consultant over any other consultant or type of consultant.

G5.8 Liability Conditions

The tendering authority should set the Limitation Sum in the light of the circumstances surrounding the particular project.

Tendering authorities should also note the requirement that they must ensure that the preferred tender is in accordance with all aspects of the RFT, which includes ensuring that the preferred tenderer carries adequate and appropriate insurance to cover the Limitation Sum.

5.9 Other RFT Requirements

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

G5.9 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 100% of the initial contract cost may be justified in certain circumstances without unreasonably changing the scope of the contract.

Bonds serve no useful purpose in professional services contracts and should not be required. The specification of bonds can act as a barrier to competition and deter some otherwise capable consultants from participating in the tender.

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