

CHAPTER 2 TENDERING PROCEDURES — PHYSICAL WORKS

This table sets out the various tender evaluation methods available to tendering authorities for physical works as described in this Part B of the Manual.

PHYSICAL WORKS – METHOD SELECTION MATRIX			
Tender Evaluation Method	Contract \$ Value		
	\$0-50,000	\$50,001 to \$100,000	\$100,000 +
Expedited Procedures (Negotiation)	✓ (refer Section 2.3)	✗	✗
Expedited Procedures (Limited Invitation to Tender)	✓ (refer Section 2.3)	✓ (refer Section 2.3)	✗
Lowest Price Conforming Tender	✓ (refer Section 2.6)	✓ (refer Section 2.6)	✓ (refer Section 2.6)
Quality-Price Trade Off Method	✓ (refer Appendix J)	✓ (refer Appendix J)	✓ (refer Appendix J)
Weighted Attribute Method	✓ (refer Section 2.7)	✓ (refer Section 2.7)	✓ (refer Section 2.7)

Key (✗) = not permitted (✓) = permitted

Note: For projects with a dollar value of less than \$100,000 the expedited procedures are generally the most appropriate methods because administration costs will be less and hence a more reasonable proportion of total contract value.

CHAPTER 2 TENDERING PROCEDURES — PHYSICAL WORKS

2.1 Tendering Authority Procedures

- 2.1.1 Tendering authorities may submit to Transfund New Zealand for approval alternative CPPs which vary or replace mandatory sections of Parts A and B of this Manual but which are in conformance with section 26(3) of the Act.
- 2.1.2 Each tendering authority shall develop and document appropriate administrative procedures relating to all aspects of the tender process for these CPPs or any alternative CPPs approved under Section 2.1.1 of this Manual. These procedures shall be publicly available. Procedures for handling tenders from a business unit shall not disadvantage any tenderer.
- 2.1.3 As part of its procedures, each tendering authority shall establish a system for adequate recording of information in respect of each contract, for Transfund New Zealand audit purposes. Information recorded shall include:
- (1) The Request for Tender
 - (2) The Record of Tenders Received
 - (3) The Tender Evaluation and Recommendation

G2.1 Tendering Authority Procedures

It should be noted that Transfund New Zealand will consider for approval alternative CPPs or variations to the requirements contained in this Manual where these can be shown to be the best means of maximising the efficiency of the land transport system. One such example is the sole supplier CPP contained in Part D of this Manual.

In many cases tendering authorities will already have properly established and adequate administrative procedures for the tender process. In such cases, there is no requirement for tendering authorities to establish duplicate procedures. Each tendering authority should verify that its current administrative procedures fall within the procedures specified in this CPP and document its procedures so that they are available for Transfund New Zealand audit.

Transfund New Zealand audit would be facilitated if all information relating to the history of each contract was held on an individual contract file. It is recommended that the contract file begins with a Contract Information Sheet including the following information:

- (1) *Summary description of contract.*
- (2) *Item number in approved National Rooding Programme.*
- (3) *Account code to be charged in the Land Transport Disbursement Account.*
- (4) *Timetable showing:*

- (i) *Date and time by which any Statement of Interest and Ability must be received (where relevant).*
- (ii) *Date that tendering authority will complete screening to short-list (where relevant).*
- (iii) *Date that short-listed tenderers will be invited to submit full tender (where relevant).*
- (iv) *Date and time by which full tenders must be received.*
- (v) *Date by which final selection shall be made.*

(5) *Price estimate and main features.*

Where the contractor may have access to information contained in such a Contract File tendering authorities may wish to have two files; one containing all the record of tenders information and another containing the non-confidential information for the contractor's use.

The Record of Tenders should contain the following:

- (1) *Names of tenderers*
- (2) *Tender prices*
- (3) *Number of tenders received*
- (4) *Name of evaluating officer/s.*

2.2 Invitation to Tender

- 2.2.1 For each contract, an invitation to tender shall be advertised in appropriate print media. The extent of advertising shall bear a relationship to the size of the contract.
- 2.2.2 Every tendering authority shall make available on request a list of all parties who have uplifted documents. This requirement shall not apply on the tender closing day.
- 2.2.3 The requirements of Sections 2.2.1 and 2.2.2 of this Manual do not apply in relation to any contract subject to the Expedited Invitation to Tender Procedure (Section 2.3).

G2.2 Invitation to Tender

Tendering authorities should ensure that, wherever practical, their choice of newspapers is consistent for projects of similar type and size, and that the choice of newspaper does not advantage one potential tenderer over another.

In general, large contracts should be advertised in at least one local and at least one metropolitan (Auckland, Wellington, Christchurch, Dunedin) daily newspaper; small contracts need only be advertised in local newspapers. Consideration should also be given to advertising in the Tenders Gazette.

When providing the list of parties who have uplifted documents, tendering authorities should make it clear that the list is only complete up to the time it is requested. There is no obligation on the tendering authority to forward subsequent updates. Tendering authorities

should provide the list by telephone or fax if requested to do so by tenderers who are not based in the same location as the tendering authority.

2.3 Expedited Tender Procedures

2.3.1 *Negotiation (work of \$50,000 or less)*

For contracts valued at \$50,000 or less, tendering authorities may adopt any procedure (including negotiation) that minimises administration costs and effort but still assures a satisfactory and competitive contract price. This provision does not apply to physical works contracts valued at more than \$50,000 and shall not be used to request tenders for a number of contracts which together form a single project with a total value equal to or greater than \$50,000.

When using the negotiation method, tendering authorities shall ensure that contract prices are competitive and must be able to demonstrate this in an auditable way.

2.3.2 *Limited Invitation to Tender (work of \$100,000 or less)*

(1) This Expedited Invitation to Tender Procedure shall only be used to invite tenders for contracts valued at \$100,000 or less, and shall not be used to request tenders for a number of contracts, which together form a single project with a total value equal to or greater than \$100,000.

(2) The procedure is conducted in two stages as follows:

(i) **Invitation to Tender**

Written quotations shall be sought from a minimum of three independent contractors. However, where advertising in the last 13 months indicates that three or more quotes cannot be obtained, quotes may be sought from the contractor(s) able to do the work that have been identified by the advertising in the last 13 months.

(ii) **Tender Evaluation Process**

Tender evaluation shall be conducted in accordance with the lowest price conforming tender method (see Section 2.6 of this Manual).

Notwithstanding this, the tendering authority is permitted to treat the tenderers from whom tenders are sought as being pre-qualified on non-price attributes and select the tenderer solely on the basis of lowest price if they are satisfied that the non-price attributes of all these tenderers are adequate.

2.3.3 *Permanent Reinstatement Following Emergency Works*

The procedure described in Section 2.3.1 above may be used to determine the price of the remaining permanent reinstatement work where emergency work, not subject to CPP (refer Sections 1.3(2) and 1.3(3) of this manual), has been completed at a site and the remaining work is valued at \$50,000 or less. Where the value of the remaining permanent reinstatement work at the site is valued at \$100,000 or less then the procedure described in Section 2.3.2 above may be used to determine the price.

G2.3 Expedited Tender Procedures

Tendering authorities are encouraged but not obliged, to use the negotiation and limited invitation to tender procedures for contracts with a value of less than \$50,000 and less than \$100,000 respectively.

Tendering authorities must be judicious in their use of the expedited procedures. Competition must be encouraged and new competent tenderers must be given the opportunity to tender for work.

When using the negotiation method, tendering authorities are required to ensure that contract prices are competitive and be able to demonstrate this in an auditable way. Examples of ways of testing the competitiveness of contract prices are to benchmark against prices paid by other tendering authorities or to compare with recent work of a similar nature that has been tendered.

To ensure auditability tendering authority actions must be recorded in writing. It is not necessary to communicate exclusively in writing, only to record actions taken in writing. For example when testing competitiveness, a conversation with another tendering authority or with an alternative contractor might simply be recorded via a file note. The initial invitation to tender may be verbal, but followed by a formal hardcopy invitation, tender information, and specification of work to be done.

Because these procedures can only be used for contracts valued at less than the stated limits, the tendering authority should only use them where it can be expected on the basis of a soundly derived estimate, that the price will be less than the stated limit.

Tendering authorities are advised to be careful when using these procedures; a number of related small contracts can quickly mount up to exceed either the \$50,000 or \$100,000 limit.

If a "limited invitation to tender" expedited procedure is being used and a tendering authority has advertised in the last 13 months for the type of work in question and received fewer than three quotes, then it may choose to just approach the one or two contractors that responded. However, before deciding to use this provision, tendering authorities should consider whether there are other contractors in the region who could perform the work but perhaps did not tender the previous time because they were already fully committed.

If a tendering authority knows from previous experience that some or all of the invited contractors have the necessary skills to do the type of work in question, the tendering authority may regard those tenderers as pre-qualified on the relevant attributes.

Tendering authorities may keep a register of contractors who are available to carry out the types of work they require. For further information see Guideline 2.13(1) in this Manual.

2.4 Tender Evaluation Specification

- 2.4.1 Each RFT shall specify the attributes to be considered by the tendering authority when evaluating competing tenders. The attributes shall comprise some or all of the following but no others:

- (1) Relevant Experience
- (2) Track Record
- (3) Technical Skills
- (4) Resources
- (5) Management Skills
- (6) Methodology
- (7) Price

Where the contract is for the supply of equipment or materials, tendering authorities may use some or all of the attributes listed in the Specialised Equipment CPP (refer Guideline 7.4 in this Manual) as alternative mandatory attributes.

- 2.4.2 Where the evaluation method requires that a weight be assigned to each attribute, the RFT shall also specify these weights.

When assigning weights the tendering authority shall ensure that:

- (1) All non-price attributes are assigned a weight between 0 and 30, inclusive;
- (2) The price attribute is assigned a weight between 70 and 100, inclusive;
- (3) The sum of all weights is 100.

G2.4 Tender Evaluation Specification

Whilst only these attributes may be considered, tendering authorities are able to interpret the terms flexibly. However each tendering authority should apply the same interpretation of each attribute when evaluating tenders for any single project, and also for different projects of similar size and type. Interpretation of these attributes is further discussed in Appendix E of this Manual.

Where a contract is for the supply of materials or equipment, the attributes specified in Section 2.4.1 of this Manual may not be appropriate. In such instances, tendering authorities are permitted to use some or all of the attributes contained in Guideline 7.4 in this Manual.

Where tenders are to be evaluated using the weighted attribute method, numerical weights or percentages should be assigned to each and every attribute to reflect each attribute's importance; the more important the tendering authority considers the attribute, the larger the share of total weighting points (100) that should be assigned to that attribute. The weightings to be used need to be specified in the RFT and each tendering authority should develop a consistent approach so that, for projects of a similar type and size, the same attributes are given similar weights. Those attributes that are not relevant to the project in question should be given a weighting of 0.

2.5 Tender Evaluation Process

- 2.5.1 The tender evaluation shall be undertaken using one of the two methods described in Sections 2.6 and 2.7 of this Manual.

- 2.5.2 Notwithstanding Section 2.5.1, where an alternative tender is submitted it shall be evaluated using the process described in Section 2.8 of this Manual.
- 2.5.3 Tenders shall only be evaluated as specified in the RFT.
- 2.5.4 Any tender that offers an end result which is outside the scope of the RFT shall be excluded from further consideration. Differences in the duration of period contracts are deemed to be outside the scope of the RFT.
- 2.5.5 If the tendering authority wishes to seek clarification of a tender for any reason, and/or modification such as removal of tags to ensure conformance with the RFT, it shall do so before or during tender evaluation, and prior to tender acceptance.
- 2.5.6 A tendering authority is permitted to carry out face to face interviews as a part of the tender evaluation process, if it deems this to be necessary, to obtain clarification of the tender and for no other purpose.
- 2.5.7 Minutes shall be taken at any interview and relevant minutes shall be incorporated in the contract documents. This documentation shall include the purpose of the interview.

G2.5 Tender Evaluation Process

There are two tender evaluation methods. Either the lowest price conforming tender method or the weighted attribute method is to be selected. Where appropriate, the alternative tenders method is used in addition to these. While interviews are permitted during tender evaluation, they should only be for the purpose of clarification of material contained in the tender. Where possible, such clarification is best obtained by writing to the tenderer in question. There is no compulsion for any tendering authority to carry out interviews. Indeed if such interviews become too common, it could encourage less precision in tender preparation.

If a tendering authority decides to undertake interviews, it should be conscious of the need for all tenderers to be treated fairly and for this to be perceived to be so.

Interviews may be particularly useful when the tendering authority does not know the individual personnel well and the contract in question requires significant contact with the public. Tendering authorities are not easily able to assess whether a tenderer has the necessary public relations and interpersonal skills for such contracts from a written proposal.

For all interviews, the tendering authority should have an explicit reason for undertaking interviews and this should be communicated prior to or early in the interview. Consideration should be given to using a common list of questions for all interviews.

Tendering authorities should be aware of the administrative cost to all parties associated with interviewing and should advise in the RFT if interviews are to be part of the evaluation process. Such advice would not compel tendering authorities to interview any or all tenderers. Tendering authorities should not interview tenderers who are clearly unlikely to be the successful tenderer. Particular care should be taken not to penalise tenderers who are not interviewed.

2.6 Tender Evaluation — Lowest Price Conforming Tender Method

2.6.1 This tender evaluation process shall be conducted in two stages as follows:

- (1) The first stage shall consist of ranking tenders in ascending order based on prices.
- (2) The second stage shall consist of determining tender acceptability when assessed against each of the non-price attributes and no others. Each attribute shall be scored on a pass/fail basis. Any attribute which scores a fail will exclude that tender from further consideration. Determination of acceptability shall commence with the lowest priced tender and shall cease when the first conforming tender is determined.
- (3) Notwithstanding (1) and (2) above, a tendering authority is permitted to ask for price in a separate envelope and to then assess the non-price attributes of all tenderers before opening the price envelopes.

2.6.2 The tendering authority shall only enter into a contract for the conforming tender with the lowest price except as provided for in Section 2.8.2 of this Manual.

G2.6 Tender Evaluation — Lowest Price Conforming Tender Method

Tendering authorities should note that this does not mean that the tender with the lowest price has to be accepted, irrespective of all other factors; tenders offering unacceptable features will be excluded in the pass/fail process.

It is for the tendering authority to judge whether a feature of a tender for a particular contract is unacceptable when measured against one of the attributes. Because of this, it would be inconsistent for a tendering authority to judge a tender for a particular contract to have failed on any attribute and then still award the contract to that tenderer.

A feature that is acceptable, and thus obtains a pass, for one contract may be unacceptable if the tender was for a larger project or a project of a different nature.

Because price plays the major role in this form of evaluation, it will generally not be cost effective to examine the non price attributes of all tenders. However, Section 2.6.1(3) of this Manual allows tendering authorities to use a two envelope system and evaluate the attributes of each tenderer before knowledge of price if they consider that the extra time and effort required will be beneficial.

2.7 Tender Evaluation — Weighted Attribute Method

2.7.1 Tenderers shall submit tenders in two separate envelopes:

- Envelope 1 shall contain all tender information other than price

- Envelope 2 shall contain the tender price information.

2.7.2 Tenders shall be evaluated in three stages, as follows:

Stage 1 Open envelope 1 and assess the tender against the six non-price attributes. Grade each non-price attribute on a points basis, from 0 (completely inadequate) to 100 (excellent). Exclude from further consideration any tender that scores 35 or less on any single non-price attribute. Complete stage 1 for all tenders before starting stage 2.

Stage 2 Open envelope 2 and convert the tender price to a grade using the formula below. Remove any amount that has been fixed by the tendering authority from the tender price before calculating price grade. Do not consider prices of alternative tenders when determining the median conforming tender price.

$$\text{Grade} = 50 + 100 \times \frac{(\text{Median Conforming Tender Price} - \text{Tender Price})}{(\text{Median Conforming Tender Price})}$$

Price grade may be negative but shall not be greater than 100.

If the price is specified as a Schedule of Rates, first convert the unit price to a lump sum by multiplying the unit price by the tendering authority's estimate of required inputs or intermediate outputs.

Stage 3 Multiply the weight of each attribute (as previously specified in the RFT) by the grade of that same attribute. Divide this by 100 to give an index for each attribute. Add the indices to give an overall index for the tender. Round the overall index to the nearest whole number.

2.7.2 Tendering authorities shall only enter into a contract for the tender which scores the highest overall index. If more than one tender shares the top overall index, the contract shall be awarded to the one with the lowest price.

G2.7 Tender Evaluation - Weighted Attribute Method

There may be instances when the tendering authority does not have a fixed view on the quality of end result it desires; it may be prepared to pay a little more to get a contractor with more than the minimum necessary experience, or a contractor who is able to undertake the job with technology that results in much less disruption to the public than that proposed by the other contractors. The weighted attribute evaluation method may be more appropriate for such cases. This method should also be used in the case of "design and build" and "facilities management" contracts where quality is definitely a consideration.

*In stage 1 the tendering authority assigns a grade to each attribute to reflect the **quality** of the tender for each attribute. An industry working group decided on the fail threshold of 35 – it recognises that a tender may be inadequate even though it has some merit.*

In stage 2 the formula is used to assign a grade to each tender price. The median tender price is the median tender price of conforming tenders. If there is an even number of tenders the median tender price is the average of the two prices nearest the median.

*Any amount fixed by the tendering authority must be **excluded** from tender prices used in the formula. In most cases these are provisional sums, prime cost sums or contingency sums. Conversely, provisional sums etc priced by the tenderer (not by the tendering authority) must be **included** in tender prices used in the formula.*

The formula means that:

- The median price receives a grade of 50;
- A tender price that is higher than the median price receives a grade of less than 50, while a tender price below the median price receives a grade of more than 50;
- Tender prices that significantly exceed the median will receive a negative grade. This is considered appropriate and the grade is carried through to the calculation of the overall index;
- A cap of 100 helps prevent tenderers receiving an extremely high grade by tendering an unrealistically low price.

In stage 3 the grade and previously assigned weight for each attribute are multiplied together and then divided by 100 to give an index for each attribute. The indices are then summed to give an overall index out of 100. The tender with the highest overall index is then the preferred tender.

The weighted attribute method is more subjective than the lowest price conforming tender method. Tendering authorities are recommended to test it on tenders received for existing contracts, in order to understand how it will work and the type of results it typically gives, before actually advertising an RFT incorporating this method.

2.8 Analysis of Alternative Tenders

2.8.1 Only alternative tenders which are within the scope of the RFT, and which meet the tendering authority's requirements, shall be considered. Tenders varying the duration of a contract shall only be considered where the RFT specified that such variations were acceptable and advised how they would be evaluated. The duration of period contracts may not be varied (see Section 2.5.4 of this Manual).

2.8.2 When the Lowest Price Conforming Tender Method is being used, alternative tenders shall be evaluated in two stages as follows, after the evaluation of non-alternative tenders has been completed:

- (1) The first stage shall consist of determining tender acceptability when judged on technical competence and assessed against the non-price attributes. Each attribute shall be scored on a pass/fail basis. Any attribute which scores a fail will exclude that tender from further consideration.
- (2) The second stage shall consist of assessing the difference in the present value of the end result offered by the preferred (lowest priced) non-alternative tender

and the alternative tender. The alternative tender price shall then be adjusted by this amount.

- 2.8.3 When the Weighted Attribute Method is being used, alternative tenders shall be evaluated as follows, after the evaluation of all non-alternative tenders has been completed:
- (1) The first stage shall consist of determining tender acceptability when judged on technical competence and assessed against the non-price attributes. Each non-price attribute shall be graded on a points basis, from 0 (completely inadequate) to 100 (excellent). Any tender that scores 35 or less on any attribute shall be excluded from further consideration.
 - (2) The second stage shall consist of assessing the difference in the present value of the end result offered by the preferred non-alternative tender (that which scored the highest overall index) and the alternative tender. The alternative tender price shall then be adjusted by this amount.
 - (3) The adjusted tender price shall be converted to a grade using the formula in Section 2.7.1(1) of this Manual, and the same median conforming tender price that was used when calculating a price grade for non-alternative tenders. (Note: the median is not revised to take account of alternative tender prices.)
 - (4) The fourth stage shall consist of multiplying the weight of each attribute as previously specified in the RFT by the grade of that same attribute and then dividing by 100 to give an index for each attribute. The indices for each alternative tender shall then be summed to give an overall index for each tender.
- 2.8.4 Alternative tenders shall then be compared with the preferred non-alternative tender to determine the top tender. If the preferred non-alternative tender remains the top tender following the evaluation of alternative tenders, tendering authorities shall only accept this tender. Tendering authorities shall not be bound to accept any alternative tender.

G2.8 Analysis of Alternative Tenders

As a means of encouraging or permitting innovation, it is desirable to allow alternative tenders to be submitted, especially where method specifications have been used. These tenders may propose alternative methods or materials which may alter the quality or durability, but not the scope, of the end result.

Present value of the end result means the "whole life" value of the project when all future benefits and costs (such as maintenance) are discounted at an appropriate discount rate.

In comparing the alternative tender with the conforming tenders, the required approach is to first determine the best non alternative tender and then compare the alternative tender against that tender. It should be noted that there is a separate procedure to follow depending on which tender evaluation method is used.

Where an alternative tender offers an end result, including quantum, which is outside the scope of the RFT, but the tendering authority considers it to be a desirable solution and within the scope of the approved project (as defined in the Act), the tendering authority has the option of declining all tenders and re-inviting tenders based on a revised specification.

To clarify the treatment of alternative tenders, tendering authorities may wish to include the following paragraphs in their RFT document:

"An Alternative Tender, as that term is defined in Section 1.4 of the Transfund New Zealand "Manual of Competitive Pricing Procedures, Volume 1" (CPP Manual), will be considered if its price is certain and it conforms in all other respects with the Request for Tender (RFT) documents. It will be evaluated in accordance with Section 2.8 of the CPP Manual.

"Each Alternative Tender is to contain a statement to the effect that it is submitted as an Alternative Tender and outline in what respects it differs from the original method, form or material specified in the RFT. It is to provide sufficient information to allow the alternative method, form or material to be evaluated."

2.9 Tender Negotiation

- 2.9.1 Where only one conforming tender is received, the tendering authority may negotiate with the tenderer, but shall not accept a negotiated price that exceeds the tender price.

G2.9 Tender Negotiation

In general, tender negotiation should be avoided because it reduces transparency for other bidders in the evaluation process, and can also result in tenderers not putting in their best price first time because of concern about being negotiated down.

For various reasons tendering authorities may on occasion wish to reject all tenders with respect to any RFT. In such situations legal advice should be sought as case law is very fluid in this area. Some recent court cases are finding that a de-facto contract is established as soon as a tendering authority has invited tenders and suppliers have submitted tenders in response to this. Tenderers can successfully sue tendering authorities which break this contract by declining all tenders. Tendering authorities that wish to reject all tenders should seek legal advice that considers the specifics of their situation and the latest legal precedents.

2.10 Notification Procedures

- 2.10.1 All tenderers shall be provided with a summary of the tender evaluation and recommendation, but notification shall not extend to cover disclosure of the details of the tenders or the details of how the evaluation was arrived at.

G2.10 Notification Procedures

All parties should be notified of the tender result within seven working days of the tendering authority's decision. To avoid criticism tendering authorities should ensure consistency in notifying unsuccessful tenderers.

Under the Official Information Act 1982, tenderers are entitled to receive certain information. It is considered that the following should be provided:

- (1) Name of the successful tenderer*
- (2) Price of the successful tender*
- (3) Names and prices of all tenderers*
- (4) Range of scores for each non-price attribute*
- (5) For each tenderer, their individual attribute scores*
- (6) Reason for accepting other than the lowest priced conforming bid if this occurred.*

An important reason for supplying the above information is to help promote future competition. For example, if a tenderer notes that their score for a particular attribute is at the low end of the range of scores for that attribute, they can take steps to improve it in future tenders. They might do this by recruiting personnel with more relevant skills or joint-venturing with another organisation that has complementary attributes.

Tendering authorities should also be prepared, on request, to confirm that a particular tender has arrived if the tenderer in question is not locally based and therefore cannot hand deliver their tender.

2.11 Conformity with RFT

- 2.11.1 Except where the provisions of Section 2.8 of this Manual apply, no contract which is subject to this CPP shall be entered into by any tendering authority unless it is consistent with the relevant RFT.
- 2.11.2 In the case of period contracts, differences in duration are deemed to be outside the scope of the RFT. Extensions to period contracts after entering into such contracts are not permitted, except where Section 3.4.2 applies or in the circumstances defined by Section 2.11.3.
- 2.11.3 In cases where tendering authorities have encountered unexpected difficulties in completing the process of re-tendering prior to expiry of the existing contracts, period contracts may be extended on the same terms by the tendering authority for a maximum of 3 months.
- 2.11.4 Where the tendering authority is considering such an extension, the difficulties encountered and the justification for the extension shall be fully documented and signed by the authorised representative of the tendering authority for that contract. Where the extension is granted, this documentation shall be retained on the contract file for audit purposes.

G2.11 Conformity with RFT

Once a tenderer has submitted a tender, the tendering authority cannot then enter into a contract on different terms and conditions from those specified in the RFT, unless the tender process is repeated with a revised RFT. When seeking clarification of any issues before or during the evaluation process, tendering authorities will need to ensure that any clarification does not alter the requirements of the RFT.

An example of the situation that this Section 2.11 of the Manual seeks to prevent is a tendering authority issuing an RFT for a contract to build a small bridge on a rural road, and then signing up a contract, with the successful tenderer, for the construction of six small bridges because they offered a good price. This is not considered efficient because any of the other tenderers may have greater economies of scale and been able to submit an even better price for a six-bridge contract if given the opportunity to tender for it.

An exception to the above general rule may apply in situations where all tenders received are significantly in excess of the estimate on which funding approval was based. In such cases, provided that the contract has been tendered on a schedule of quantities and rates basis, the tendering authority may enter into a contract for a reduced quantity of work. This will not be deemed in breach of Section 2.10.1 of this Manual so long as:

- (1) The contract is with the tenderer who submitted the lowest priced conforming tender;*
- (2) That tenderer agrees to the adjustment; and*
- (3) The contract incorporates the tendered schedule rates, with the overall price reduction being achieved solely by a reduction in quantities.*

Another exception may occur in the situation where a tendering authority has let a contract for permanent restoration following a flood or other sudden unexpected event, and before the work can be completed a second event causes further damage at the same location. In this case the tendering authority may apply to Transfund New Zealand for a ruling on whether it can negotiate with the contractor to complete the work as a variation to the original contract without compromising its eligibility for financial assistance. Transfund New Zealand will consider such cases on their merits.

2.12 Use of Particular Inputs

2.12.1 A contract input shall only be made available by the tendering authority under the following conditions:

- (1) The availability of the contract input is notified in the RFT;
- (2) The contract input is available to all tenderers;
- (3) The terms (including terms as to price) on which the contract input is available are specified in the RFT;

- (4) The terms (including terms as to price) on which the contract input is actually made available are those specified in the RFT; and
- (5) There is no compulsion on any tenderer to use that contract input.

2.12.2 Notwithstanding Section 2.12.1, the tendering authority may make a contract input available to a particular tenderer provided that the contract input is made available on terms which are usual for a contract of that type and at a price which is fair in the prevailing market. In this case the contract input need not be mentioned in the RFT.

2.12.3 Notwithstanding Section 2.12.2 where the successful tender did not contemplate or allow for the provision of a contract input by the tendering authority, this may still occur during the course of the contract, provided that the contract input is made available on the terms described in Section 2.12.2.

2.12.4 Where contract inputs are provided by a business unit which may also submit a tender, the tendering authority shall ensure that the bases on which the contract inputs are provided do not disadvantage any tenderer.

G2.12 Use of Particular Inputs

It is generally not efficient for the contractor to be required to use certain inputs and is inconsistent with the emphasis on end result specifications. Most efficient results will be obtained if the contractor is permitted to choose whether or not to use tendering authority provided inputs.

Transfund New Zealand audit in respect of these provisions would be facilitated if the tendering authority was able to produce from its records the following information relating to resources provided for the contract by the tendering authority.

- (1) *Details of all tendering authority resources used by a contractor in relation to a particular contract.*
- (2) *Details of the terms under which such resources were made available (in particular the price).*
- (3) *Copies of relevant contracts between the tendering authority and the contractor.*

These provisions only apply to contract inputs made available by tendering authorities. As far as LATEs are concerned, they are not a tendering authority, and are in the same position as any other contractor. Like private contractors they may seek competitive advantage through ownership of depots and quarries, or by negotiating special materials and plant rates with private sector suppliers. Where a tendering authority is contemplating making a contract input available to a private sector contractor, it should be aware of, and seek appropriate expert advice on the provisions of the Local Government Act (1974) with respect to the inadvertent constitution of a LATE.

The following examples illustrate the intent of this Section 2.12 of the Manual.

- (1) *Transit New Zealand owns a machine for shifting the movable median barrier on the Auckland Harbour Bridge. In the RFT for traffic management on the bridge, Transit*

New Zealand may state that this machine is available for use by the successful tenderer. If it is to be made available to any particular tenderer then it must be made available to all tenderers and this must be stated in the RFT. However no tenderer is obliged to use the machine. If a tenderer can propose a method that satisfies the barrier moving specification including all safety and traffic requirements, but which doesn't use the machine, then their tender is a conforming tender and must be considered.

- (2) *A tendering authority enters into an agreement with a contractor for the contractor to hire plant and personnel from the tendering authority to carry out a contract for that tendering authority. If the contract input is made available on terms which are usual for a contract of that type and at a price which is fair in the prevailing market then it is permissible for it to be exclusive to that contractor. An exclusive agreement is not permitted if the input is not made available on these terms except if it was made available on similar terms to other tenderers, in the RFT.*

2.13 Other Guidelines

(No mandatory requirement.)

G2.13 Other Guidelines

(1) Registers

A tendering authority can choose to operate a register of contractors in order to generally reduce administration costs for both themselves and contractors.

A register should provide for contractors to submit their non-price attribute information. This means that contractors who repeatedly perform contracts of a similar nature do not need to submit their non-price attribute information each time and can instead refer to the information held in the tendering authority's register. However tendering authorities may choose to specify that a contractor provide new information on some particular attributes (eg methodology, personnel) for each contract and similarly a contractor can supply new or additional information.

Where a tendering authority maintains a register of contractors, it should advertise no less than annually in appropriate newspapers inviting contractors to register or revise their information on the register. Contractors should be permitted to submit a new entry to the register, or update their existing entry, at any time.

(1a) Pre-Qualification Register

Tendering authorities can also choose to establish a pre-qualification register for physical works contracts that are to be evaluated using the Lowest Price Conforming tender evaluation method. The difference between a pre-qualification register and a general register is that for a pre-qualification register the non-price attributes are evaluated before the contractor is placed on the register.

There can be advantages in operating a pre-qualification register and, where it is practical to do so, tendering authorities are encouraged to consider its use.

The register evaluation team shall comprise a minimum of two people, if the register is used by only one tendering authority and a minimum of three people if used collectively by more than one tendering authority.

Inclusion of contractors on a pre-qualification register is on the basis of a pass/fail evaluation of the following non-price attributes:

- *Relevant Experience*
- *Track Record*
- *Technical Skills*
- *Management Skills*
- *Resources*
- *Methodology (generic)*

Contractors on the pre-qualification register are then able to tender for physical works projects without having to re-submit their non-price attributes

If a contractor is failed for inclusion on the pre-qualification register, they would be entitled to seek information from the tendering authority(s) as to why they have failed and what they need to do in order to be included on the register. A contractor not on the pre-qualification register is still able to bid for work that is tendered using the lowest price conforming tender method, however, they will have to submit their non-price attribute information with their bid.

Performance Reporting

Reporting of contractor performance should be undertaken based on an Engineer's Report which should be prepared at the practical completion of a contract. The reporting system should offer the contractor the opportunity to comment on any adverse performance that is recorded.

Poor performance by a contractor is to be fed back to the contractor and the register evaluation team and could result in a contractor being removed from the pre-qualification register. Such a contractor is not prevented from tendering for projects but would be excluded from the pre-qualification register.

The pre-qualification register of contractors can be held jointly by a group of tendering authorities. A group of authorities would need to agree on who would manage the register, keep it up to date, provide access etc. Tendering authorities may choose to use an agent to manage the register.

Pre-qualification registers should be segmented – contractors should be registered only for their areas of expertise and only for contracts up to a specified size. Areas of expertise for which separate sub-registers might be kept include:

- *Road Maintenance*
- *Earthworks*
- *Drainage*
- *Pavement Construction*

- Signs
- Street lighting
- Resurfacing
- Major Structures (bridges)
- Line marking

A pre qualification register should not be used for projects which have features that make use of the lowest price conforming tender method inappropriate.

When requesting tenders for a contract (of a size and type covered by the pre-qualification register) registered tenderers would only need to supply the tendering authority with limited information for evaluation.

That information may (for example) be limited to:

- supplementary resources required for the contract
- job specific methodology
- confirmation of ability to secure a bond if the bond is unique to the tender in question and its requirement is specified in the RFT
- price.

Tenders would be evaluated in accordance with section 2.6. Assuming price had not been requested in a separate envelope (refer 2.6.1 (3)) and assuming the lowest price tenderer was pre-qualified then the evaluation process would be limited to establishing that the lowest price tender “passed” – that is supplementary resources and methodology were acceptable etc. If it “passed” then evaluation would cease at that point and the contract would be awarded to the lowest priced tenderer.

(2) Short-Listing Procedures

Any tendering authority which usually receives a large number of responses in respect of any individual RFT advertisement may adopt a two-part selection process, involving a short-listing procedure.

The purpose of this procedure would be to limit the need for the tendering authority to evaluate more than the four or five most likely successful tenders.

Tendering authorities wishing to use this procedure in respect of physical works are referred to Section 4.4 of this Manual. However, the procedure described in Section 4.4 is not mandatory for physical works. Tendering authorities should choose a short-listing method that is appropriate, fair and efficient.

It would be unreasonable to fail a tenderer who had been short-listed.

(3) Design and Build Projects

Procedures for selecting consultants that focus on the price of the professional services are criticised for not recognising that savings in price at this stage might result in designs that are more costly to build. The end result would then be a less satisfactory completed work and

a total cost that is higher than it would have been if a little more had been invested in the design phase.

Design and build projects are seen as a way to overcome this problem. The tendered price includes the design and construction, so each tenderer determines the optimum balance of design effort and construction cost to minimise total cost.

However at the tendering stage many details of the final design are obviously not yet known so the tendering authority may not be able to determine precisely the likely serviceability and durability of the finished work. From the client's point of view a successful design and build is also particularly reliant on the contractor being responsible and co-operative. For these reasons it is recommended that the weighted attribute method be used for evaluating design and build tenders.

These two aspects are captured in the methodology and track record attributes and it is considered that these should comprise a substantial weighting of the non-price attributes. Track record in this instance should take account of client satisfaction with any previous design and build efforts by each contractor. Methodology should attempt to determine the extent to which, and efficiency with which the completed work will perform the required function. It should also differentiate between proposals that will result in completed works having different service lives.

It is also important to give a significant weighting to the management attribute. This is to reflect both the importance of a good relationship between the consultant and the contractor, and the need for the tendering authority to be satisfied that the person(s) nominated to manage this relationship has the necessary competence to ensure smooth progress of the contract.

A minimum weighting of 70% for price is considered appropriate for most design and build tender evaluations. However, combined with this there is a need for stringent assessment of the quality attributes. Tendering authorities that are doubtful on any contractor's attributes should grade them at 35 or less. The risks associated with unproven or sub-standard contractors are greater with design and build projects than with conventional contracts.

Consideration should be given to requiring the successful tenderer for a design and build contract to put in place a bond that lasts beyond the completion of the project and gradually diminishes to zero over a period of up to, say, 5 years. This gives the client some security in the event of deficiencies in the design and/or construction which only become evident sometime after the contractor has completed the work.