

CAPITAL & INFRASTRUCTURE BUILDING CONTRACT DIRECTIVE

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PROCEDURES TO BE FOLLOWED DURING THE TENDER PERIOD AND THE ANALYSIS OF TENDERS

REFERENCE

1. **GENERALLY:**

As a public authority it is vitally important that openness and fairness is maintained and can be seen to be maintained throughout all of the Council's tendering procedures.

For this reason strict rules need to be applied, which are clearly understood by all those involved in the tendering process, and by the firms who are submitting tenders.

Some important issues which frequently give rise to difficulties in the analysis of tenders, together with guidance on the action that should be followed, are set out below:-

[BCD9](#)

[BCD25](#)

[BCD39](#)

2. **Queries Arising from Tender Documents**

Queries arising from the tender documents will not be answered on the telephone. Tenderers should submit all queries by e-mail to the electronic procurement portal to arrive a minimum of 5 working days prior to the date set for the return of tenders.

Queries arriving subsequent to this date will not be accepted.

The WSCC procurement officer will circulate all queries raised and forward on to the CA and return all answers to tenderers by the electronic procurement portal.

3. **Qualifications in Tenders**

Despite every effort to avoid circumstances which lead to the receipt of qualified tenders, they do still inevitably occur.

Tenders subject to accompanying statements need first to be analysed, to establish whether the statement or statements are merely a clarification of issues which can be considered should have been clearly interpreted from the tender documents; and where the other tenderers can reasonably be assumed to have tendered on the same basis.

In some instances this may require an approach to other tenderers; the responses to which should be confirmed in writing.

If this is not the case, the statement would no doubt be a qualification. If the point in question has not been raised, and the same assumptions made by other tenderers a situation exists where the tenders are not comparable.

JCT Tendering Practice Note 2012 includes the following statement:-

"A tenderer who submits a qualified tender should be given an opportunity to

NOTE:

THIS DIRECTIVE IS APPLICABLE TO THE MAJORITY OF SCHEMES BUT IT WILL NOT NECESSARILY BE APPROPRIATE TO ALL WORKS AND THEREFORE ON EACH SCHEME IT WILL BE NECESSARY TO CHECK THE SPECIFIC REQUIREMENTS.

withdraw the qualification(s) so as to produce a compliant tender, but without amending the price. If the tenderer refuses to withdraw the qualification(s), the tender may need to be rejected.'

Negotiation of a non-compliant tender is contrary to the principal of equal treatment and in most cases it is impractical at that stage to make other arrangements that would be fair both to the client and to the other tenderers.'

Acceptance of qualified tenders permits slackness to become an acceptable norm in the tendering process; both in the preparation of clear documentation in the first instance, and subsequently as a result of tenderers not addressing queries at an early stage during the tender period. It can give unscrupulous firms the opportunity to take advantage and give rise to claims of malpractice by the unsuccessful firms and others.

For the reasons given above only in very exceptional circumstances are qualifications or amendments considered acceptable; which would be by agreement with the Capital & Infrastructure Senior Management, and in consultation and agreement with Legal Services.

Tender amendments issued by the Consultant must be presented to WSCC for record purposes and acknowledged and signed by the Contractor indicating that they have included an amendment in the tender.

In situations where an acceptable way forward cannot be found in compliance with these procedures, re-tendering the scheme may be the only solution.

NOTE:- Strict adherence to the rules and procedures set out above provides a consistency of approach, which should reduce the number of qualified tenders being received. However, the aim is more difficult to achieve where the tender period is very short.

4. **Withdrawal of Tenders**

The reasons for firms withdrawing a tender after submission can be particularly contentious, and the matter needs to be dealt with in a manner whereby the circumstances surrounding the firm's decision to withdraw are clearly established and documented.

A file note is to be kept of any telephone or other exchanges that take place with the firm in the period leading up to the decision to withdraw; and firms withdrawing tenders must always be asked to confirm their decision with the reasons clearly given in writing.

5.

Final Caution

Due to the sensitivity of issues defined above, senior management support needs to be obtained to any proposed action which is of a contentious nature.

CONCLUSION