

## T1.3: STANDARD CONDITIONS OF TENDER

(As contained in Annexure F of the CIDB Standard for Uniformity in Construction Procurement)

### F.1 General

#### F.1.1 Actions

The employer and each Tenderer submitting a Tender offer shall comply with these conditions of Tender. In their dealings with each other, they shall discharge their duties and obligations as set out in F.2 and F.3, timeous and with integrity, and behave equitably, honestly, and transparently.

#### F.1.2 Tender Documents

The documents issued by the employer for the purpose of a Tender offer are listed in the Tender data.

#### F.1.3 Interpretation

**F.1.3.1** The Tender data and additional requirements contained in the Tender schedules that are included in the returnable documents are deemed to be part of these conditions of Tender.

**F.1.3.2** These conditions of Tender, the Tender data and Tender schedules which are only required for Tender evaluation purposes, shall not form part of any contract arising from the invitation to Tender.

**F.1.3.3** For the purposes of these conditions for the calling for expressions of interest, the following definitions apply:

- a) **Comparative offer** means the Tenderer's financial offer after the factors of non-firm prices, all unconditional discounts and any other Tendered parameters that will affect the value of the financial offer have been taken into consideration
- b) **corrupt practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the Tender process; and
- c) **Fraudulent practice** means the misrepresentation of the facts in order to influence the Tender process or the award of a contract arising from a Tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels
- d) **Quality (functionality)** means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs

#### F.1.4 Communication and employer's agent

Each communication between the employer and a Tenderer shall be to or from the employer's agent only, and in a form that can be read, copied and recorded. Writing shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a Tenderer. The name and contact details of the employer's agent are stated in the Tender data.

#### F.1.5 The employer's right to accept or reject any Tender offer

**F.1.5.1** The employer may accept or reject any variation, deviation, Tender offer, or alternative Tender offer, and may cancel the Tender process and reject all Tender offers at any time before the formation of a contract. The employer shall not accept or incur any liability to a Tenderer for such cancellation and rejection, but will give written reasons for such action upon written request to do so.

**F.1.5.2** The employer may not subsequent to the cancellation or abandonment of a Tender process or the rejection of all responsive Tender offers re-issue a Tender covering substantially the same scope of work within a period of six months unless only one Tender was received and such Tender was returned unopened to the Tenderer.

**F.2 Tenderer's obligations**

**F.2.1 Eligibility**

Submit a Tender offer only if the Tenderer complies with the criteria stated in the Tender data and the Tenderer, or any of his principals, is not under any restriction to do business with employer.

**F.2.2 Cost of Tendering**

Accept that the employer will not compensate the Tenderer for any costs incurred in the preparation and submission of a Tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer satisfy requirements.

**F.2.3 Check documents**

Check the Tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

**F.2.4 Confidentiality and copyright of documents**

Treat as confidential all matters arising in connection with the Tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a Tender offer in response to the invitation.

**F.2.5 Reference documents**

Obtain, as necessary for submitting a Tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached but which are incorporated into the Tender documents by reference.

**F.2.6 Acknowledge addenda**

Acknowledge receipt of addenda to the Tender documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the Tender data, in order to take the addenda into account.

**F.2.7 Clarification meeting**

Attend, where required, a clarification meeting at which Tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the Tender data.

**F.2.8 Seek clarification**

Request clarification of the Tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the Tender data.

**F.2.9 Insurance**

Be aware that the extent of insurance to be provided by the employer (if any) may not be for the full cover required in terms of the conditions of contract identified in the contract data. The Tenderer is advised to seek qualified advice regarding insurance.

**F.2.10 Pricing the Tender offer**

**F.2.10.1** Include in the rates, prices, and the Tendered total of the prices (if any) all duties, taxes (except Value Added Tax (VAT)), and other levies payable by the successful Tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the Tender data.

**F2.10.2** Show VAT payable by the employer separately as an addition to the Tenderer's total of the Prices.

**F.2.10.3** Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

**F.2.10.4** State the rates and prices in Rand unless instructed otherwise in the Tender data. The conditions of contract identified in the contract data may provide for part payment in other currencies.

### F.2.11 Alterations to documents

Not make any alterations or additions to the Tender documents, except to comply with instructions issued by the employer, or necessary to correct errors made by the Tenderer. All signatories to the Tender offer shall initial all such alterations. Erasures and the use of masking fluid are prohibited.

### F.2.12 Alternative Tender offers

**F.2.12.1** Submit alternative Tender offers only if a main Tender offer, strictly in accordance with all the requirements of the Tender documents, is also submitted. The alternative Tender offer is to be submitted with the main Tender offer together with a schedule that compares the requirements of the Tender documents with the alternative requirements the Tenderer proposes.

**F.2.12.2** Accept that an alternative Tender offer may be based only on the criteria stated in the Tender data or criteria otherwise acceptable to the employer.

### F.2.13 Submitting a Tender offer

**F.2.13.1** Submit a Tender offer to provide the whole of the works, services or supply identified in the contract data and described in the scope of works, unless stated otherwise in the Tender data.

**F.2.13.2** Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing in black ink.

**F.2.13.3** Submit the parts of the Tender offer communicated on paper as an original plus the number of copies stated in the Tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.

**F.2.13.4** Sign the original and all copies of the Tender offer where required in terms of the Tender data. The Employer will hold all authorized signatories liable on behalf of the Tenderer. Signatories for Tenderers Proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the Tender offer.

**F.2.13.5** Seal the original and each copy of the Tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the Tender data, as well as the Tenderer's name and contact address.

**F.2.13.6** Where a two-envelope system is required in terms of the Tender data, place and seal the returnable documents listed in the Tender data in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the employer's address and identification details stated in the Tender data, as well as the Tenderer's name and contact address.

**F.2.13.7** Seal the original Tender offer and copy packages together in an outer package that states on the outside only the employer's address and identification details as stated in the Tender data.

**F.2.13.8** Accept that the employer shall not assume any responsibility for the misplacement or premature opening of the Tender offer if the outer package is not sealed and marked as stated.

### F.2.14 Information and data to be completed in all respects

Accept that Tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

**F.2.15 Closing time**

**F.2.15.1** Ensure that the employer receives the Tender offer at the address specified in the Tender data not later

than the closing time stated in the Tender data. Proof of posting shall not be accepted as proof of delivery. The employer shall not accept Tender offers submitted by telegraph, telex, facsimile or e-mail, unless stated otherwise in the Tender data.

**F.2.15.2** Accept that, if the employer extends the closing time stated in the Tender data for any reason, the requirements of these conditions of Tender apply equally to the extended deadline.

**F.2.16 Tender offer validity**

**F.2.16.1** Hold the Tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the Tender data after the closing time stated in the Tender data.

**F.2.16.2** If requested by the employer, consider extending the validity period stated in the Tender data for an agreed additional period.

**F.2.17 Clarification of Tender offer after submission**

Provide clarification of a Tender offer in response to a request to do so from the employer during the evaluation of Tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the total of the prices or substance of the Tender offer is sought, offered, or permitted. The total of the prices stated by the Tenderer shall be binding upon the Tenderer.

**Note:** Sub-clause F.2.17 does not preclude the negotiation of the final terms of the contract with a preferred Tenderer following a competitive selection process, should the Employer elect to do so.

**F.2.18 Provide other material**

**F.2.18.1** Provide, on request by the employer, any other material that has a bearing on the Tender offer, the Tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the employer for the purpose of a full and fair risk assessment. Should the Tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the Tender offer as non-responsive.

**F.2.18.2** Dispose of samples of materials provided for evaluation by the employer, where required.

**F.2.19 Inspections, tests and analysis**

Provide access during working hours to premises for inspections, tests and analysis as provided for in the Tender data.

**F.2.20 Submit securities, bonds, policies, etc.**

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

**F.2.21 Check final draft**

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

**F.2.22 Return of other Tender documents**

If so instructed by the employer, return all retained Tender documents within 28 days after the expiry of the validity period stated in the Tender data.

**F.2.23 Certificates**

Include in the Tender submission or provide the employer with any certificates as stated in the Tender data.

**F.3 The employer's undertakings**

**F.3.1 Respond to clarification**

Respond to a request for clarification received up to five working days prior to the Tender closing time stated in the Tender Data and notify all Tenderers who drew procurement documents.

**F.3.2 Issue Addenda**

If necessary, issue addenda that may amend or amplify the Tender documents to each Tenderer during the period from the date of the Tender Notice until seven days before the Tender closing time stated in the Tender Data. If, as a result a Tenderer applies for an extension to the closing time stated in the Tender Data, the Employer may grant such extension and, will then notify it to all Tenderers who drew documents.

**F.3.3 Return late Tender offers**

Return Tender offers received after the closing time stated in the Tender Data, unopened, (unless it is necessary to open a Tender submission to obtain a forwarding address), to the Tenderer concerned.

**F.3.4 Opening of Tender submissions**

**F.3.4.1** Unless the two-envelope system is to be followed, open valid Tender submissions in the presence of Tenderers' agents who choose to attend at the time and place stated in the Tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

**F.3.4.2** Announce at the opening held immediately after the opening of Tender submissions, at a venue indicated in the Tender data, the name of each Tenderer whose Tender offer is opened, the total of his prices, preferences claimed and time for completion, if any, for the main Tender offer only.

**F.3.4.3** Make available the record outlined in F.3.4.2 to all interested persons upon request.

**F.3.5 Two-envelope system**

**F.3.5.1** Where stated in the Tender data that a two-envelope system is to be followed, open only the technical proposal of valid Tenders in the presence of Tenderers' agents who choose to attend at the time and place stated in the Tender data and announce the name of each Tenderer whose technical proposal is opened.

**F.3.5.2** Evaluate the quality of the technical proposals offered by Tenderers, then advise Tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of Tenderers, who score in the quality evaluation above the minimum number of points for quality stated in the Tender data, and announce the score obtained for the technical proposals and the total price and any preferences claimed. Return unopened financial proposals to Tenderers whose technical proposals failed to achieve the minimum number of points for quality.

**.3.6 Non-disclosure**

Not disclose to Tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of Tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful Tenderer.

### F.3.7 Grounds for rejection and disqualification

Determine whether there has been any effort by a Tenderer to influence the processing of Tender offers and instantly disqualify a Tenderer (and his Tender offer) if it is established that he engaged in corrupt or fraudulent practices.

### F.3.8 Test for responsiveness

Determine, on opening and before detailed evaluation, whether each Tender offer properly received:

- a) Meets the requirements of these Conditions of Tender,
- b) Has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the Tender documents.

A responsive Tender is one that conforms to all the terms, conditions, and specifications of the Tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

- Detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,
- change the Employer's or the Tenderer's risks and responsibilities under the contract, or
- affect the competitive position of other Tenderers presenting responsive Tenders, if it were to be rectified.

Reject a non-responsive Tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

### F.3.9 Arithmetical errors

Check responsive Tender offers for arithmetical errors, correcting them in the following manner:

- Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.
- If a bill of quantities (or schedule of rates) apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate will be corrected.
- Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the Tenderer's addition of prices, the total of the prices shall govern and the Tenderer will be asked to revise selected item prices (and their rates if a bills of quantities applies) to achieve the Tendered total of the prices.

Consider the rejection of a Tender offer if the Tenderer does not correct or accept the correction of his arithmetical errors in the manner described above.

### F.3.10 Clarification of a Tender offer

Obtain clarification from a Tenderer on any matter that could give rise to ambiguity in a contract arising from the Tender offer.

### F.3.11 Evaluation of Tender offers

#### F3.11.1 General

Appoint an evaluation panel of not less than three persons. Reduce each responsive Tender offer to a comparative offer and evaluate it using the Tender evaluation method that is indicated in the Tender Data and described below:

Method 1: Financial offer	<ol style="list-style-type: none"> <li>1) Rank Tender offers from the most favorable to the least favorable comparative offer.</li> <li>2) Recommend highest ranked Tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.</li> </ol>
Method 2: Financial offer and preferences	<ol style="list-style-type: none"> <li>1) Score Tender evaluation points for financial offer.</li> <li>2) Confirm that Tenderers are eligible for the preferences claimed and if so, score Tender evaluation points for preferencing.</li> <li>3) Calculate total Tender evaluation points.</li> <li>4) Rank Tender offers from the highest number of Tender evaluation points to the lowest.</li> <li>5) Recommend Tenderer with the highest number of Tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.</li> </ol>
Method 3: Financial offer and quality	<ol style="list-style-type: none"> <li>1) Score quality, rejecting all Tender offers that fail to score the minimum number of points for quality stated in the Tender data.</li> <li>2) Score Tender evaluation points for financial offer.</li> <li>3) Calculate total Tender evaluation points.</li> <li>4) Rank Tender offers from the highest number of Tender evaluation points to the lowest.</li> <li>5) Recommend Tenderer with the highest number of Tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.</li> </ol>
Method 4: Financial offer, quality and preferences	<ol style="list-style-type: none"> <li>1) Score quality, rejecting all Tender offers that fail to score the minimum number of points for quality stated in the Tender data.</li> <li>2) Score Tender evaluation points for financial offer.</li> <li>3) Confirm that Tenderers are eligible for the preferences claimed, and if so, score Tender evaluation points for Preferencing.</li> <li>4) Calculate total Tender evaluation points.</li> <li>5) Rank Tender offers from the highest number of Tender evaluation points to the lowest.</li> <li>6) Recommend Tenderer with the highest number of Tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.</li> </ol>

Score financial offers, preferences and quality, as relevant, to two decimal places.

### F.3.11.2 Scoring Financial Offers

Score the financial offers of remaining responsive Tender offers using either formulas 1 or 2 below as stated in the Tender Data:

Formula	Basis for comparison	Option 1	Option 2
1	Highest price or discount	$(1 + \frac{P - P_m}{P_m})$	$P/P_m$
2	Lowest price or percentage commission/fee	$(1 - \frac{P - P_m}{P_m})$	$P_m/P$

where:

P<sub>m</sub> = the comparative offer of the most favorable Tender offer.

P = the comparative offer of Tender offer under consideration.

### **F.3.11.3 Scoring quality (functionality)**

Score quality in each of the categories stated in the Tender Data and calculate total score for quality.

### **F.3.12 Insurance provided by the employer**

If requested by the proposed successful Tenderer, submit for the Tenderer's information the policies and / or certificates of insurance which the conditions of contract identified in the contract data, require the employer to provide.

### **F.3.13 Acceptance of Tender offer**

**F.3.13.1** Accept Tender offer only if the Tenderer satisfies the legal requirements stated in the Tender Data.

**F.3.13.2** Notify the successful Tenderer of the employer's acceptance of his Tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the Tender data, or agreed additional period. Providing the form of offer and acceptance does not contain any qualifying statements, it will constitute the formation of a contract between the employer and the successful Tenderer as described in the form of offer and acceptance.

### **F.3.14 Notice to unsuccessful Tenderers**

After the successful Tenderer has acknowledged the employer's notice of acceptance, notify other Tenderers that their Tender offers have not been accepted.

### **F.3.15. Prepare contract documents**

If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the Tender documents to take account of:

- a) Addenda issued during the Tender period,
- b) Inclusion of some of the returnable documents,
- c) Other revisions agreed between the employer and the successful Tenderer, and
- d) The schedule of deviations attached to the form of offer and acceptance, if any.

### **F.3.16 Issue final contract**

Prepare and issue the final draft of contract documents to the successful Tenderer for acceptance as soon as possible after the date of the employer's signing of the form of offer and acceptance (including the schedule of deviations, if any). Only those documents that the conditions of Tender require the Tenderer to submit, after acceptance by the employer, shall be included.

### **F.3.17 Complete adjudicator's contract**

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

### **F.3.18 Provide copies of the contracts**

Provide to the successful Tenderer the number of copies stated in the Tender Data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.