

NPWC/NBCC "No Dispute" Paper 2A Tender Code and Code Of Ethics

A Tender Code was first proposed by AFCC to Standards Australia over ten years ago to rationalise tendering policies, practices and procedures in both private and public sectors of the industry. Several years ago, the National Public Works Conference and the National Building and Construction Council agreed to an AFCC proposal to develop a tender code for these reasons. Finalisation of the NPWC/NBCC draft tender code was delayed to ensure that it was in accord with the NPWC/NBCC Joint Working Party's deliberations. The NPWC/NBCC Tender Code and Code of Ethics (set out below) have now been published as part of the No Dispute report.

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TENDER CODE OF ETHICS

1. Tenders should not be called unless there is a firm commitment by the Principal to proceed with the work.
2. Any system used to select Contractors must not only be fair and equitable, but must be seen to be fair and equitable.
3. Tender documents should be clear, unequivocal and complete.
4. The tender period should be adequate for the complexity of the work and allow sufficient time for tenderers to visit the site, to study the tender documents, and prepare an offer.
5. Addenda should only be issued when amendments or clarification to tender documents are essential and should be issued to all prospective tenderers in sufficient time before the closing date for tenders, or the tender period extended.
6. Alternative tenders should be considered, provided a conforming tender is also submitted or the tenderer can provide satisfactory reasons for not doing so. If alternative tenders are to be prohibited, it must be clearly specified.
7. Confidentiality of tenders should be preserved.

CODE OF TENDERING

Statement Of Purpose

This code is issued as a guide to public authorities or private organisations proposing to call tenders for the construction of building or engineering works.

It is intended to encourage uniform procedures and ensure that bona fide tenders are received and properly analysed so as to eliminate the possibility of unethical tender practices.

The adoption of these procedures should minimise tendering costs, and ensure that all tenderers receive a fair and equal opportunity to submit their tenders on a reasonable and comparable basis.

Due to the range of terminology used in construction contracts, where the term "Principal" is used in this Code it shall also mean "Proprietor", "Client", "Owner", "Employer", and the like.

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1. Invitation Of Tenders

1.1 General

Tenders should not be called unless there is a firm commitment by the Principal to proceed with the work.

1.2 Types of Tenders

The three most commonly used tendering procedures which should be considered are:

Public Tenders

Tenders are invited by public advertisement on a common basis. No restriction is placed on the number of tenders sought.

Selected Tenders

A limited number of tenderers, selected because of their proven experience, or recognised ability to undertake particular work, are invited to tender on a common basis. Such invitations may be taken from established lists of tenderers or alternatively from a list established by an advertisement calling for registration of interest on a project basis.

Negotiated Tenders

A single tenderer is engaged in negotiation to arrive at an acceptable agreement. Shopping around of prices negotiated should not be permitted.

1.3 Public Advertisement of Tenders

- There should be a set day for advertising and a set day, time and place for closing of tenders.
- The closing date and time should be stated to be on a weekday but not on the day following a weekend or a public holiday.
- Advertisements should show:
 - an adequate description of the project, to allow tenderers to judge their interest,
 - where tender documents are available,
 - that tenders must be lodged in a tender box,
 - place of lodgement and closing time.
- Advertisements should be inserted in the most appropriate newspapers.
- Lists of projects for which public tenders are invited should be placed on a suitable notice board.
- Where public tenders have been invited and no offer has been received or no offer received is acceptable, selected tenders may be invited or a tender may be negotiated.

1.4 Pre-Registration of Tenderers

- Tenderers may be selected from a regularly reviewed pre-registered list, or on a project basis.
- The number of tenderers should be restricted to avoid excessive costs to the construction industry.
- The objective of pre-registration is to qualify tenderers in respect of their capacity and ability to undertake particular classes of works and so minimise the need for further investigation after tenders have closed. Refer 15.3.
- It should be possible to confidently recommend for acceptance any registered firm which subsequently submits the lowest acceptable tender, unless the circumstances under which the firm was registered have changed substantially subsequent to pre-registration.

1.5 Tender Period

The tender period should be adequate for the complexity of the work and allow sufficient time for tenderers to visit the site, to study the tender documents, and prepare an offer.

If, in particular circumstances, extension of the tender period is appropriate, all prospective tenderers who have been issued with tender documents should be notified in a suitable manner. It is preferable that the extension of time should be publicly advertised.

2. Tender Enquiries (NT 03)

The tender documents should clearly nominate a person with knowledge of the project and the ability to co-ordinate information to be provided to tenderers.

- All enquiries should be recorded.
- No one tenderer should be given information not conveyed to all other tenderers.
- Where an enquiry requires a clarification of the tender documents, the clarification should be conveyed in writing to all tenderers by means of an addendum. Any clarification not conveyed in writing should not be binding.
- It may be appropriate to arrange a meeting of tenderers during the tender period. When such a meeting takes place, the business of the meeting should be recorded and a copy of the minutes forwarded to all tenderers.

3. Nature Of Contract

The appropriate form of contract should be selected and clearly defined in the tender document.

Any amendments and/or special conditions to a standard form of contract should be fully set out.

4. Tender Documents (CT01)

Tender documents should be issued from, and if required returned to, the locations nominated in the tender invitation.

The number of sets of tender documents supplied to the tenderer should have regard to the complexity of the work. It may be appropriate to require deposits for tender documents. If they are required, terms of refund should also be stated.

A complete set of tender documents should be made available for perusal by interested parties.

The tender documents should list all the documents that are referred to or issued at the time of calling tenders including site and geotechnical reports. All relevant information which would be of assistance to tenderers in preparing their bids should be made available to them.

5. Amendments To Tender Documents (CT 01)

Where amendments or clarifications are required to tender documents, addenda should be issued to all prospective tenderers in sufficient time before the closing date for tenders, or the tender period should be extended.

The addendum should be forwarded to prospective tenderers and provision made for written acknowledge-

ment with the tender submission.

6. Provisional Sums For Nominated Or Designated Subcontractors

The tender documents may provide for provisional sums for nominated or designated subcontracts which form part of the work under the Contract.

The work covered by provisional sums should be adequately described and listed, e.g. Electrical Services, Mechanical Services, Lifts, etc.

Documents for nominated or designated Subcontracts should preferably be available when tenders for the main Contract are invited.

7. Site Inspection

The site should be available for inspection by all prospective tenderers at some appropriate time during the tendering period.

8. Alternative Proposals (OC 01)

Tender documents should clearly state if a conforming tender is essential.

Except in exceptional circumstances alternative tenders should be permitted. However, it should be made clear to tenderers that alternative tenders will be considered and the conditions under which they will be considered.

9. Documents To Be Lodged (NT 05)

The tender documents should detail which documents should be lodged with the tender.

10. Lodgement Of Tenders (CT 05)

Tenders submitted by hand and by prepaid post should be enclosed in a sealed envelope marked with the description of the work and should be lodged in a tender box provided at the nominated place for submission of tenders by the date and time for closing of tenders.

Tenders not so lodged, including tenders submitted by facsimile, telegraph, telex or other means should be admitted if received by the organisation calling tenders by the date and time for closing of tenders. The formal tender should be submitted as soon as practicable thereafter.

Tenders received after the date and time for closing of tenders may be considered only if it can be established that they were posted or transmitted before the date and time for closing of tenders.

11. Tender Validity Period (OC 03)

A period may be nominated from the expiration of the date of closing of tenders during which the tenders would remain valid.

If the award of a contract is delayed beyond the validity period, or where there is no such period nominated, beyond a reasonable time, tenderer(s) should be asked if the tender still remains valid.

12. Receipt Of Tenders (CT 05)

Adequate safeguards should be used to ensure the

preservation of the confidentiality of tenders, however received.

The tender box provided for the receipt of tenders should be double locked with the keys held by responsible officers, one of whom should be appointed as the "Receiving Officer" to receive and record tenders.

No tender price offered orally should be considered.

Except as provided in clause 10, late tenders should not be considered.

A tender received after the nominated closing time should be noted as being late and should be endorsed with the exact time of receipt. A person presenting a tender "over the counter" may be asked to initial the endorsement. A late tender delivered by hand may be accepted if it can be clearly established that the tender would have been received by the closing date under normal circumstances and that the delay was beyond the control of the tenderer.

A tenderer whose tender is rejected as being late should be advised promptly.

13. Tender Opening Procedures

Whether tenders are opened in public or privately, tenders should be opened, as soon as practicable after closing time, by two responsible persons, or where a more formal opening procedure is necessary, by a Tender Opening Committee consisting of at least two responsible persons.

Tenders may be opened publicly, in which case at the date and time fixed for the public opening of tenders, the person responsible for receiving the tenders should check and display the sealed condition of each tender prior to its opening.

The opening and recording of tenders received should follow a set procedure.

14. Publication Of Tenders

Where appropriate, a list of tenderers, preferably in ascending order of apparent tender value for each project, may be posted on a notice board accessible to the public or otherwise made available to tenderers by the close of business on the day following the closing of tenders.

The listing should include a disclaimer that review has not been finalised and listing should not be taken as advice of which tender, if any, will be accepted.

If a late tender is under consideration as to admissibility, the list should be so qualified.

15. Evaluation Of Tenders/Tenderers

15.1 Qualifications - Formality of Tender

Any tender may be rejected which does not comply with the requirements of, or which qualifies, the tender documents. However, a tenderer should be given the opportunity to comply with the tender documents but only without alteration to the submitted tender price, that is, withdrawal of any qualification, error or omission which renders the tender informal.

15.2 Alternative Offers

Where a particular alternative is offered by a tenderer, that alternative should not be subsequently priced by any other tenderer or used as a basis for recall of tenders.

15.3 Evaluation of Tenders/Tenderers

Evaluations should be undertaken at the pre-registration stage or following the receipt of tenders and should consider but not be limited to the tenderers':

- technical, management, physical and financial resources
- current commitments
- reputation within the industry
- record of performance
- ability to perform the subject project
- industrial relations and safety record
- price compared with estimated cost.

It may be necessary to obtain additional information from the tenderers.

15.4 Equal Tenders

Where two or more tenders are equally acceptable and the prices are identical, preference may be given to the tender opened first. Alternatively, selection may be made by drawing lots or toss of a coin. This procedure should be carried out by at least two responsible persons.

15.5 Acceptance of other than the lowest

Where it is proposed to pass over one or more tenderers, the reasons for such action should be clearly established and documented.

15.6 Retendering

Should it be decided following the receipt of tenders not to accept any tender and to recall tenders, an opportunity should be given to each original tenderer to submit a new tender unless there are sound reasons for not doing so.

15.7 Post Tender Negotiations

Should none of the submitted tenders be acceptable, negotiations may be considered for an amended tender. Such negotiations should preferably be conducted in the first instance with one tenderer, normally the lowest.

16. Acceptance Of Tender (CT 08)

The tender documents may indicate that there is no obligation to accept, nominate or designate the lowest, or any tender.

17. Particular Policies

Where the Principal has particular procurement policies these should be clearly defined in the tender document.

18. New Policies

Where new policies are introduced, or it is desirable to draw the tenderer's attention to particular aspects of tendering, an explanatory notice should be issued to tenderers.

NOTICE TO TENDERERS, CONDITIONS OF TENDERING AND OPTIONAL CLAUSES

Statement Of Purpose

The following are recommended clauses for Notice to Tenderers and Conditions of Tendering and also included are some optional clauses and a Form of Tender. In the interests of uniformity it is suggested that users conform to these clauses as closely as practicable having regard to local conditions.

Due to the range of terminology used in construction contracts, where the term "Principal" is used in these clauses it shall also mean "Proprietor", "Owner", "Employer", "Client" and the like.

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NOTICE TO TENDERERS

The Notice to Tenderers is provided as a guide and will not form part of the Contract.

NT 01 Description Of The Works

(Include a short, positive and concise description of works to be carried out).

NT 02 Description Of The Site

(Include items as required).

- Location
- Separate Contracts
- Investigations

The work is/is not subject to Cost Adjustment for labour and materials.

NT 03 Contact Officer

Refer requests for information or advice regarding documents only to Tel:.....

- Separable Parts
The work is divided into Separable Parts. Refer to Separable Parts Schedule - Preliminaries.

NT 04 General Conditions Of Contract

These documents do not include a copy of the General Conditions of Contract. Tenderers shall make their own arrangements in obtaining a copy which is available from

- Nominated and Designated Subcontracts
The work contains Nominated and/or Designated Subcontracts. Documents relating to Nominated and/or Designated Subcontracts are available for examination at the following locations:
.....
.....
(Include only in Main Contract tender documents).

These documents include a copy of:

- (a) Appendices
- (b) Amendments to the General Conditions of Contract
- (c) Special Conditions of Contract
(Delete if inappropriate).

- Selected Subcontracts
The work contains Selected Subcontracts. Tenders which are qualified by the inclusion of a proposed Subcontractor not on the list of Selected Subcontractors included in these documents for Selected Subcontract work will/will not be considered.
(Delete as appropriate).

NT 05 Tender Documents

Listed below are the tender documents which need to be completed and lodged with the tender:

-
-
-

- Separate Contracts
Contracts shown in the Separate Contracts Schedule - Preliminaries are not included in this Contract but will be carried out concurrently by others on the site.

NT 06 Discrepancies, Errors And Omissions

Should the Tenderer find any discrepancy, error or omission in the tender documents, the Tenderer shall notify the Contact Officer before the date and time for closing of tenders.

NT 11 New Policies

The tenderers attention is drawn to the following new policy:

.....
(Include a statement outlining any new policy).

NT 07 Assessment Of Tenders

Assessment of tenders may take into account but not be limited to capital cost, economy of operation, life of equipment, equipment standardisation and maintenance costs.

NOTE: In addition, include in this section of the tender documents all matters which should be specifically brought to the Tenderers attention. Examples of other matters would be:

NT 08 Award Of Contract

Tenders may be accepted for the whole of the work or specific sections as follows:

(Include if sections of work may be awarded separately and indicate what contracts may be awarded separately).

- Government Apprenticeship Employment Policy
- Government Preference Policy
- Government South Africa Policy
- Employment of Union Labour
- Existing Site Allowances
- Restricted Access to Site
- Restrictions on Construction Activity
- Restrictions in the Workplace e.g. smoking
- Insurance Arrangements
- Code of Conduct

NT 09 Site Visit

Tenderers shall attend a site meeting to be held on

(Include if such a meeting is considered appropriate).

NT 10 Contract Details

The following refer to some of the particular provisions applicable to the Contract/s proposed to be awarded. They are not exhaustive and Tenderer's attention is drawn to the need to fully consider all provisions of the tender documents in compiling their tender.

- Cost Adjustment

CONDITIONS OF TENDERING

CT 01 Tender Documents

The tender documents shall comprise:

- Form of Tender
- These Conditions of Tendering
- General Conditions of Contract
- Special Conditions of Contract
- Specification
- Drawings
- Bill(s) of Quantities
- Schedule of Prices
- Schedule of Rates

.....

and any other documents as are issued by the Principal for the purpose of tendering.

No explanation or amendment to the tender documents shall be recognised unless it is in the form of a written addendum issued by the Principal, receipt of which shall be acknowledged in writing by tenderers.

Any tender documents marked with the classification "Restricted", "Confidential" or "Secret" shall not be disclosed to any person except with prior consent in writing.

- A tender documents deposit is not required.
- A tender documents deposit of \$..... in the form of must be lodged at
- (Delete as appropriate).

CT 02 Tenderer To Acquire Information

It is the responsibility of Tenderers to obtain all information relevant to a tender conforming with the tender documents.

CT 03 Evidence Of Builders Registration Of Builders Registration Or Licensing

Where an Act or Ordinance of the State or Territory in which the site of the Works is located requires that a builder (as defined by the Act or Ordinance) be registered or licensed to carry out the work described in the tender documents, evidence of registration or licence shall be produced by the Tenderer.

CT 04 Submission Of Tender

(i) The tender shall be submitted on the tender form provided.

The Tenderer shall set forth:

- If a person - the name in full and address of the person.
- If a firm - the name of the firm and the name in full and address of each member of the firm.
- If a corporation or company - the name of the corporation or company and its registered office.

(ii) The Tenderer shall include an address for service of notices for the purposes of this tender and any subsequent contract arising out of this tender.

(iii) The tender shall be accompanied by any other documents required by the tender documents to be submitted with the tender.

(iv) The Tenderer shall sign the tender form, or if the Tenderer is a corporation or company shall comply with the relevant provisions of the Companies Code.

(v) The tender shall be for the whole of the work described in the tender documents unless the tender documents otherwise provide.

(vi) The documents referred to in the sub-clauses (i) and (iii) of this clause shall be completed in full by the Tenderer.

(vii) The Tenderer shall not alter or add to any tender document except as may be required by these Conditions of Tendering.

CT 05 Lodgement Of Tender And Other Documents

(i) Tenders shall be enclosed in a sealed envelope marked with the description of the work and tender item (if any) and shall be lodged in the tender box at, or sent by prepaid post to the place named in the advertisement or other invitation for submission of tenders by the date and time for closing of tenders.

(ii) Notwithstanding sub-clause (i) of this clause electronically transmitted tenders received by the date and time for closing of tenders may be admitted for consideration subject to the submission of a conforming tender in the form required by the appropriate clause of these tender conditions within a reasonable time.

(iii) Tenders submitted by prepaid post, or electronic transmission received after the date and time for closing of tenders may be considered only if it can be established to the satisfaction of the Principal that they were posted or transmitted before the date and time for closing of tenders and in the ordinary course of post or transmission would have been received at the place named in the advertisement or other invitation for submission of tenders by that date and time.

Impressions of franking machines are not acceptable evidence of timely posting or despatch.

(iv) Oral tenders shall not be considered.

(v) No other form of transmission will be considered for tenders received after the date and time for closing of tenders.

CT 06 Informal Tenders

Any tender may be rejected which does not comply with the requirements of or which contains provisions not required or allowed by the tender documents.

CT 07 Prerequisites To Acceptance

Notwithstanding any other requirements of the tender documents, a Tenderer shall if so required submit additional information to allow further consideration of the tender before any tender is accepted or a Tenderer is nominated or designated (as the case may be).

Should the Tenderer fail to submit any of the information so required by the date and time stipulated the tender may be treated as informal.

CT 08 Acceptance Of Tender

- (i) The Principal shall not be bound to accept, designate or nominate the lowest or any tender.
- (ii) A tender shall not be deemed to have been accepted unless and until notice in writing of such acceptance is handed to the Tenderer or is sent by prepaid post to or is left at the address stated in the tender form for service of notices or facsimile notice of such acceptance is received by the Tenderer.
- (iii) On acceptance of the tender, the tenderer if required to do so shall execute a Formal Instrument of Agreement in accordance with the General Conditions of Contract.
- (iv) Unless and until a Formal Instrument of Agreement is executed in accordance with the General Conditions of Contract the tender and the tender documents together with the notice in writing of acceptance of the tender shall constitute the Contract between the Principal and the successful tenderer.
- (v) A Tenderer who is nominated or designated by the Principal to carry out the work described in the tender documents shall be notified in writing by the Principal of that nomination or designation. A Tenderer who is so nominated or designated and who is acceptable to the main Contractor will be required to enter into a subcontract with the main Contractor.

OPTIONAL CLAUSES

OC 01 Alternative Proposals

Alternative 1

A tender shall be submitted strictly in accordance with the tender documents and no alternative will be considered.

Alternative 2

The Tenderer may submit alternative proposals for consideration, but must also submit a conforming bid.

Where an alternative is tendered, a Tenderer shall include a fully detailed description and shall state clearly the manner in which it differs from that specified.

Alternative 3

The Tenderer shall submit a conforming bid AND shall submit prices for the following alternatives:

-
-
-

The Tenderer may submit further alternatives.

Where an alternative is tendered, a Tenderer shall include a fully detailed description and shall state clearly the manner in which it differs from that specified.

Alternative 4

Tenderer may submit alternatives for only those items nominated hereunder:

-
-
-

Where an alternative is tendered, a Tenderer shall include a fully detailed description and shall state clearly the manner in which it differs from that specified. A Tenderer submitting alternatives shall also submit a tender that complies completely with the tender documents.

OC 02 Alternative Time For Practical Completion

The Annexure to the General Conditions of Contract specifies the time for Practical Completion and the liquidated damages applicable to the Contract. The Tenderer shall submit a tender in accordance with these requirements.

Consideration will however be given to additional tenders which offer different times for Practical Completion. The specified liquidated damages will apply to those different times.

OC 03 Tender Validity Period

Tenders shall remain valid for a period of days from the expiration of the date of closing of tenders.

OC 04 Working Hours And Working Days

If a tender includes an allowance for work under the contract outside the working hours, or on other than the working days, prescribed in these documents, then the tender shall state the working hours and days proposed.

In comparison of tenders, regard may be had to the working hours and days proposed by the Tenderer and to the costs to the Principal attributable to supervision of work under the contract outside the prescribed working hours and/or on other than the prescribed working days.

OC 05 Tender Program

The Tenderer shall submit with the tender a program of work in the form of a preliminary time-scaled network, clearly showing:

- the order of and the periods allowed for all significant activities;
- details of the programmed Works, and the time relationship to the Works of all significant tasks specified to be undertaken or proposed to by subcontractors and suppliers both on and off site;
- all relevant time, site or the like restraints imposed by the contract documents and all significant milestones including separable portions, if any;
- the sequence of the activities which form the critical path for the project;
- the estimated value of work completed for each month.

FORM OF TENDER

Name of Principal

Address for lodgement of tenders

I/We
(In block letters)

the undersigned, do hereby tender to perform the work for
the
.....

Alternative 1
as described in the tender documents referred to in the
Conditions of Tendering and in accordance with the said
tender documents for the sum of
.....(\$.....)
(State amount in words and figures - the amount must
include any provisional sums specified).

Alternative 2
at the rates stated in the completed Schedule of Rates
attached hereto.

Alternative 3
for the lump sum stated above and for the rates stated in the
completed Schedule of Rates attached hereto.
(Delete as applicable).

Dated this day of 19

Signature or Common Seal of Tenderer

Address or Registered Office of Tenderer

Address for service of notices

Telephone number

Facsimile number

Signature of Witness

Tenderer's Bank(Name)
.....(Branch)

If a firm, the names and address of the individual members:
(1)
(2)
(3)

FOR OFFICE USE ONLY
This is the Tender marked "....." referred to in the
Agreement with the

dated the day of 19....

.....Contractor

Witness