Republic of Botswana
PUBLIC PROCUREMENT AND ASSET DISPOSAL BOARD

STANDARDED CONDITIONS
OF TENDER
Feb 2006

Contents:

1 General

2 Tenderer's obligations

3 The Procuring Department's undertakings

1 General

Actions
1 The Procuring Department and each tenderer submitting a tender offer shall comply with these Conditions of Tender. The Procuring Department will, in addition, act in a manner that is fair, equitable and transparent.

Tender documents
2 The documents issued by the Procuring Department for the purpose of a tender offer are listed in the Tender Data.

Interpretation and definitions
3 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

4 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.

5 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.

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

The Procuring Department's rights to accept or reject any tender offer
7 The Procuring Department 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 prior to the formation of a contract. The Procuring Department will not accept or incur any liability to a tenderer for such cancellation and rejection, but will give reasons for the action.

8 After the cancellation of a tender process or the rejection of all tender offers the Procuring Department may abandon the proposed procurement and have it performed in another manner, or re-issue a similar Tender Notice and Invitation to Tender at any time.
2 Tenderer's obligations

The tenderer shall comply with the following obligations:

<table>
<thead>
<tr>
<th>Eligibility</th>
<th>1</th>
<th>Submit a tender offer only if the tenderer complies with the criteria stated in the Tender Data.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of tendering</td>
<td>2</td>
<td>Accept that the Procuring Department will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer.</td>
</tr>
<tr>
<td>Check documents</td>
<td>3</td>
<td>Check the tender documents on receipt, including pages within them, and notify the Procuring Department of any discrepancy or omission.</td>
</tr>
<tr>
<td>Confidentiality &amp; Copyright of documents</td>
<td>4</td>
<td>Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the Procuring Department only for the purpose of preparing and submitting a tender offer in response to the invitation.</td>
</tr>
<tr>
<td>Standardised specifications and other publications</td>
<td>5</td>
<td>Obtain, as necessary for submitting a tender offer, copies of the latest versions of standardised specifications, conditions of contract and other publications, which are not attached but which are incorporated into the tender documents by reference.</td>
</tr>
<tr>
<td>Acknowledge addenda</td>
<td>6</td>
<td>Acknowledge receipt of addenda to the tender documents, which the Procuring Department 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.</td>
</tr>
<tr>
<td>Site visit and / or clarification meeting</td>
<td>7</td>
<td>Attend a site visit and / or clarification meeting at which tenderers may familiarise themselves with the proposed work, services or supply (and location etc.) and raise questions. Details of the meeting(s) are stated in the Tender Data.</td>
</tr>
<tr>
<td>Seek clarification</td>
<td>8</td>
<td>Request clarification of the tender documents, if necessary, by notifying the Procuring Department at least five working days before the closing time stated in the Tender Data.</td>
</tr>
<tr>
<td>Insurance</td>
<td>9</td>
<td>Be aware that the extent of insurance to be provided by the Procuring Department (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.</td>
</tr>
<tr>
<td>Pricing the tender offer</td>
<td>10</td>
<td>Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except VAT), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable 14 days prior to the closing time stated in the Tender Data.</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>Show Value Added Tax (VAT) payable by the Procuring Department separately as an addition to the tendered total of the prices.</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>13</td>
<td>State the rates and prices in local currency unless instructed otherwise in the Tender Data. The conditions of contract identified in the Contract Data may provide for part payment in other currencies.</td>
</tr>
<tr>
<td>Alterations to documents</td>
<td>14</td>
<td>Not make any alterations or additions to the tender documents, except to comply with instructions issued by the Procuring Department, 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.</td>
</tr>
</tbody>
</table>
### Alternative tender offers

15. May 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.

16. Accept that an alternative tender offer may be based only on the criteria stated in the Tender Data.

### Submitting a tender offer

17. Submit a tender offer for providing the whole of the works, services or supply identified in the Contract Data, unless stated otherwise in the Tender Data.

18. Return all Returnable Documents to the Procuring Department after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing in black ink.

### Information & data to be completed in all respects

19. 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 Procuring Department as non-responsive.

20. 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 Procuring Department.

21. Sign the original and all copies of the tender offer where indicated. The Procuring Department will hold all authorised signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as Joint Ventures shall state which of them is the lead partner whom the Procuring Department shall hold liable for the purpose of the tender offer.

22. 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 Procuring Department's address and identification details stated in the Tender Data, as well as the tenderer's name and contact address.

23. 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 Procuring Department's address and identification details stated in the Tender Data, as well as the tenderer's name and contact address.

24. Seal the original tender offer and copy packages together in an outer package that states on the outside only the Procuring Department's address and identification details as stated in the Tender Data.

25. Accept that the Procuring Department will 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.

### Closing time

26. Ensure that the Procuring Department 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 will not be accepted as proof of delivery. The Procuring Department will **not** accept tender offers submitted by telegraph, telex, facsimile or E mail, unless stated otherwise in the Tender Data.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>T1.3 Conditions of Tender</td>
<td></td>
</tr>
<tr>
<td>Tender offer validity</td>
<td>27 Accept that, if the Procuring Department 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.</td>
</tr>
<tr>
<td></td>
<td>28 Hold the tender offer(s) valid for acceptance by the Procuring Department at any time during the validity period stated in the Tender Data after the closing time stated in the Tender Data.</td>
</tr>
<tr>
<td></td>
<td>29 If requested by the Procuring Department, consider extending the validity period stated in the Tender Data for an agreed additional period.</td>
</tr>
<tr>
<td>Clarification of tender offer after submission</td>
<td>30 Provide clarification of a tender offer in response to a request to do so from the Procuring Department 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 and / or item prices. 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.</td>
</tr>
<tr>
<td>Provide other material</td>
<td>31 Provide, on request by the Procuring Department, any other material that has a bearing on the tender offer, the tenderer’s commercial position (including notarised Joint Venture agreements), or the preferencing and / or reservation arrangements considered necessary by the Procuring Department 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 Procuring Department’s request, the Procuring Department may regard the tender offer as non-responsive.</td>
</tr>
<tr>
<td>Submit securities, bonds, policies etc.</td>
<td>32 If requested, submit for the Procuring Department’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.</td>
</tr>
<tr>
<td></td>
<td>33 Check the final draft of the contract provided by the Procuring Department within the time available for the Procuring Department to issue the contract.</td>
</tr>
<tr>
<td>Return of other tender documents</td>
<td>34 If so instructed by the Procuring Department, return all retained tender documents within 28 days after the expiry of the validity period stated in the Tender Data.</td>
</tr>
</tbody>
</table>

### 1 The Procuring Department’s undertakings

The Procuring Department undertakes to:

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respond to clarification</td>
<td>1 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 attended the site / clarification meetings of those responses.</td>
</tr>
<tr>
<td>Issue Addenda</td>
<td>2 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 Procuring Department may grant such extension and, will then notify it to all tenderers.</td>
</tr>
<tr>
<td>Return late tender offers</td>
<td>3 Return tender offers received after the closing time stated in the Tender Data, unopened, to the tenderer concerned.</td>
</tr>
</tbody>
</table>
| Tender offer opening | 4 Unless the two-envelope system described below is to be followed, open valid tender offers in the presence of tenderers’ agents who choose to attend at the time and place stated in the Tender Data. Tender offers for which acceptable reasons for
withdrawal have been submitted will not be opened.

5 Announce at the opening 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.

Two-envelope system

6 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.

7 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.

Non-disclosure

8 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.

Grounds for rejection & disqualification

9 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 offered an inducement to or colluded with any person with a view to influencing the award of the contract.

Test for responsiveness

10 Determine, on opening and before detailed evaluation, whether each tender offer properly received:
   • meets the requirements of these Conditions of Tender,
   • has been properly and fully completed and signed, and
   • is responsive to the other requirements of the tender documents.
   A responsive tender as 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 Procuring Department’s opinion, would:
   • detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Contract Data,
   • change the Procuring Department’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.

Non-responsive tender offers

11 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.

Arithmetical errors

12 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 quantities or schedule of rates) applies 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 bill of quantities applies) to achieve the tendered total of the prices.

13 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.

Clarification of a tender offer

14 Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

Evaluation of responsive tender offers

15 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

0) Rank tender offers from the most favourable to the least favourable comparative offer.
0) Recommend highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Method 2: Financial offer and preferences

1) Score tender evaluation points for financial offer, in the manner outlined below.
2) Confirm that tenderers are eligible for the preferences claimed in the Preference Schedule and if so, score tender evaluation points for preferencing.
3) Calculate total tender evaluation points.
4) Rank tender offers from the highest number of tender evaluation points to the lowest.
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.

Method 3: Financial offer and quality

1) Score for quality in the manner described below, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender Data.
2) Score tender evaluation points for financial offer, in the manner outlined below.
3) Calculate total tender evaluation points.
4) Rank tender offers from the highest number of tender evaluation points to the lowest.
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.

Method 4: Financial offer, quality and preferences

1) Score for quality in the manner described below, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender Data.
2) Score tender evaluation points for financial offer, in the manner outlined below.
3) Confirm that tenderers are eligible for the preferences claimed in the Preference Schedule, and if so, score tender evaluation points for preferencing.
4) Calculate total tender evaluation points.
5) Rank tender offers from the highest number of tender evaluation points to the lowest.
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.

Scoring of financial offers

Score the financial offers of remaining responsive tender offers using the following formula:

\[ N_{FO} = W_1 \times A \]

where:

- \( N_{FO} \) = the number of tender evaluation points awarded for the financial offer.
- \( W_1 \) = the maximum possible number of tender evaluation points awarded for the financial offer as stated in the Tender Data.
- \( A \) = a number calculated using either formulas 1 or 2 below, as appropriate.
<table>
<thead>
<tr>
<th>Formula</th>
<th>Comparison aimed at achieving</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Highest price or discount</td>
<td>( A = \frac{1 + (P - P_m)}{P_m} )</td>
</tr>
<tr>
<td>2</td>
<td>Lowest price or percentage commission / fee</td>
<td>( A = \frac{1 - (P - P_m)}{P_m} )</td>
</tr>
</tbody>
</table>

where:
- \( P_m \) = the comparative offer of the most favourable tender offer.
- \( P \) = the comparative offer of tender offer under consideration.

### Scoring quality

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

### General Scoring Rules

Score financial offers, preferences and quality, as relevant, to two decimal places. Where two or more tender offers score an equal number of tender evaluation points, recommend the award of the contract to the tenderer with the highest number of:

- Preference points when tender evaluation method 2 is used.
- Quality points when tender evaluation method 3 is used.
- Preference points when tender evaluation method 4 is used.

### Insurance provided by the Procuring Department

If requested by the proposed successful tenderer, submit for the tenderer’s acceptance the policies and / or certificates of insurance which the conditions of contract identified in the Contract Data, require the Procuring Department to provide.

### Acceptance of tender

Notify the successful tenderer of the Procuring Department'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 Procuring Department and the successful tenderer as described in the Form of Offer and Acceptance.

### Notice to unsuccessful tenderers

After the successful tenderer has acknowledged the Procuring Department’s notice of acceptance, notify other tenderers that their tender offers have not been accepted.

### Prepare contract documents

If necessary, revise documents that will form part of the contract and were issued by the Procuring Department as part of the tender documents to take account of:

- addenda issued during the tender period,
- inclusion of some of the Returnable Documents,
- other revisions agreed between the Procuring Department and the successful tenderer, and
- the Schedule of Deviations attached to the Form of Offer and Acceptance.

### 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 Procuring Department's execution of the Form of Offer and Acceptance (including the Schedule of Deviations). Only those documents that the Conditions of Tender require the tenderer to submit, after acceptance by the Procuring Department, will be included.

### Complete Adjudicator’s Contract

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

### 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.