PROCUREMENT GUIDANCE NOTE

Opening and Evaluation of Tenders

1997

European Bank for Reconstruction and Development
GUIDANCE NOTE ON THE OPENING AND EVALUATION OF TENDERS

1. Introduction

1.1 This Procurement Guidance Note outlines how tenders are received, opened and evaluated under “open tendering” procedures for contracts financed by the European for Reconstruction and Development (“the Bank”). The procedures conform to the Bank’s Procurement Policies and Rules (“the Rules”) and are consistent with the Bank’s Standard Tender Documents.

1.2 The purpose of tender evaluation is to determine the lowest evaluated responsive tender from amongst the substantially responsive tenders received. The lowest evaluated responsive tender may not necessarily be the lowest priced tender. The lowest evaluated tender is determined by applying the evaluation criteria, which are specified in the tender documents. In order to determine the lowest evaluated responsive tender, a systematic evaluation process that follows a logical sequence should be applied. The following procedures are presented in the sequence in which the required activities should normally be carried out.

1.3 The note also follows the format of the standard evaluation report which has to be prepared for the Bank’s review. The report should reflect the logical stages of the process and should be prepared in parallel with the process.

1.4 The process outlined in this note covers:

- receipt and opening of tenders
- examination of tenders
- seeking written clarifications from tenderers
- rejection of tenders that are not substantially responsive
- evaluation and comparison of substantially responsive tenders
- determination of the lowest evaluated tender
- postqualification of the lowest evaluated tender
- award recommendation
- evaluation report
- notification of award.

1.5 The Bank’s Client (referred to as “the Purchaser” in this note) is responsible for carrying out all procurement activities and decisions in accordance with the Bank’s Rules. The Bank monitors the process and reviews critical documents and decisions to assure itself that the Rules are being followed. If the Bank determines that any procurement document, action or decision is not consistent with the Rules, it will inform the Purchaser and if the Purchaser fails to rectify the inconsistency, the contract in question would not be eligible for financing with the proceeds of the Bank's loan.
2. Preliminary actions and general concerns:

2.1 Contract data sheet

2.1.1 In order to keep a record of critical data for every contract, the Purchaser should maintain a contract data sheet substantially in accordance with the format in STD: Standard Tender Evaluation Format, Annex 1 - Contract Data Sheet. Some of this information will be required by the Bank for routine monitoring and as part of the evaluation report and other documentation (e.g. the conformed copy of the signed contract) which have to be submitted to the Bank.

2.2 Responsible staff:

2.2.1 For each project the Purchaser should delegate a specific professional as the project manager ("the PM") who will be responsible for overall management of the procurement and contracting process.

2.2.2 Prior to the receipt of tenders, the Purchaser should also appoint an evaluation committee which will be responsible for carrying out the evaluation and making an award recommendation for the consideration of the Purchaser’s senior management and the Bank. The committee should include experienced members having technical expertise relevant to the procurement in hand. Where the Purchaser’s staff do not have the necessary experience or expertise to carry out the evaluation on their own, the Purchaser should retain competent independent consultants to assist the committee.

2.2.3 Prior to the beginning of the evaluation process, all members of the evaluation committee must familiarise themselves fully with the tender documents, the Rules and this Guidance Note.

2.3 Receipt of tenders:

2.3.1 The Purchaser must make adequate provision for receiving tenders as follows:

- specify a clear address for submission of tenders including a contact name and room number;
- tenderers submitting tenders prior to the submission deadline must be issued with a numbered receipt recording the date and time the tender was received and the receipt number must be written on the outside of the tender envelope;
- tenders received prior to the submission deadline must be locked in a secure place, preferably in a safe with access only to specified individuals.

2.4 Confidentiality of the evaluation process:

2.4.1 The tender evaluation process up to the award of a contract is confidential and all members of the evaluation committee and other personnel involved in any way with the tender evaluation must be made aware that confidentiality must be respected and fully adhered to.

2.4.2 Information relating to the evaluation of tenders, including details in specific tenders, shall not, in any circumstances, be disclosed to tenderers or any other person not officially concerned with the process.
2.4.3 The evaluation committee must ensure that the tenders and all documentation related to the evaluation are made available only to those officials directly involved with the evaluation and who have a need to access such information in order to carry out the evaluation.

2.5 *Contacts with the tenderers or their agents:*

2.5.1 Contacts between the Purchaser’s officials, including the evaluation committee, and tenderers or their agents should be restricted to essential official communications only, such as the request for and receipt of clarification. All such communication must be in writing. Purchaser’s officials should not entertain calls or informal communication, meetings or other contacts with any tenderer or its agents.

2.5.2 Any effort by a tenderer or its agents to influence the Purchaser’s evaluation of tenders or award decisions, including the offering or giving of bribes, gifts or other inducement, should be reported to the evaluation committee. Such action by a tenderer or its agents will result in the invalidation of its tender and the forfeiture of its tender security.

3. *Opening of tenders:*

3.1 Adequate procedures should be in place to allow the tenderers’ representatives who wish to attend the opening of tenders at the allotted place and time.

3.2 The opening of tenders should take place immediately after the deadline for submission and the following must be addressed:

- an accessible room of suitable size, specified in the tender documents, must be reserved for the opening of tenders;
- the PM or his delegate should chair the tender opening;
- copies of all receipts issued must be brought to the tender opening;
- all tenderer’s representatives present at the opening must sign a register of attendance (STD: Standard Tender Evaluation Format, Annex 4 - Register of Attendance at Tender Opening);
- all tenders received should be placed on a table and the number of tender envelopes must be consistent with the number of receipts issued. If there is a discrepancy **NO** tenders must be opened until the discrepancy is resolved and all tenders received are in the room;
- the envelopes received should be grouped into the following categories:
  * tenders received prior to the submission deadline
  * modifications received prior to the deadline
  * withdrawals received prior to the deadline
  * tenders, modifications and withdrawals received after the deadline;
• a checklist of the items to be inspected and recorded for each tender as it is opened is outlined in STD: Standard Tender Evaluation Format, Annex 2 - Checklist for Opening of Tenders;

• tenders, modifications and withdrawals received after the deadline must not be opened. The outer envelope of these late tenders and modifications should be opened and the names of the tenderers submitting late tenders or modifications read out and recorded. The inner envelopes of all late submissions must be returned unopened to the respective tenderers;

• withdrawal notices received prior to the deadline should be opened next and read out and recorded. Tenders subject to a withdrawal notice must not be opened and must be returned unopened to the respective tenderers;

• all tenders and modifications received prior to the deadline must be opened next;

• for each tender opened the items on the checklist (Annex 2) should be checked and read out aloud. The tenderers’ names, tender withdrawal or modification, tender price, discounts, alternatives, the presence or absence of requisite tender security and such other details as the Purchaser, at its discretion, may consider appropriate, should be announced and recorded at the opening. It is important for all discounts and alternatives to be read out. Tender prices and discounts which are not read out at tender openings cannot be considered in the subsequent evaluation;

• no tender shall be rejected or an opinion/judgement voiced as to its responsiveness, at the tender opening, except for late tenders;

• the Purchaser must prepare minutes of the tender opening. The minutes should be in the format outline in STD: Standard Tender Evaluation Format, Annex 3 - Minutes of Tender Opening;

• the minutes of tender opening should be completed as soon as possible after the tender opening and a copy must be sent to all tenderers which submitted tenders. If the contract is subject to the Bank’s prior review, a copy of the minutes must be sent to the Bank as soon as they are completed;

• immediately after the opening of tenders, all tenders which were opened must be stored safely and confidentially and be made available only to those directly involved in the evaluation process.

4. Evaluation of tenders:

4.1. Preliminary examination of tenders:

4.1.1 Each tender will be examined to determine if it:

• is properly signed and accompanied by a power of attorney;

• is accompanied by the required tender security;

• is complete and generally in order, if not any omission must be noted;
• is substantially responsive to the tender documents; if not, any deviations, omissions or variations must be noted;

• is free of computational errors; any such errors must be noted;

• requires any clarifications; any such clarification must be noted.

4.1.2 The tender documents will have specified how the above should be carried out. It is important that the relevant provisions in the Instructions to Tenderers be observed for each of the above.

4.1.3 The evaluation committee must decide which deviations (including omissions and variations) or reservations identified at this point in the process are material and, if so, the relevant tenders should be declared as not substantially responsive. If a tender is not substantially responsive, it must be rejected and cannot be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

4.1.4 At the end of this stage, the committee should be agreed on:

• those tenders which are substantially non-responsive and should not be considered further

• any clarification which should be requested from tenderers

4.1.5 The outcome of the examination should be summarised in STD: Standard Tender Evaluation Format, Form 2 - Examination of Tenders.

4.2 Requests for clarification:

4.2.1 All requests for clarification must be made in writing and the response must also be given in writing. A log of all requests for clarification and responses (STD: Standard Tender Evaluation Format, Annex 7 - Log of Clarifications Requested and Received) must be kept. Requests for clarification can be made at any time, up to the contract award decision.

4.3 Evaluation and comparison of tenders:

4.3.1 Tenders which have not been declared substantially non-responsive will then have to be evaluated in depth. Before a tender can be evaluated the following must be completed:

• computational errors must be corrected, in accordance with the relevant provision in the instructions to tenderers (STD: Standard Tender Evaluation Format, Form 4 - Correction, Conversion and Adjustment of Tender Prices);

• tender prices must be converted to a common currency in accordance with the relevant provision in the Instructions to Tenderers (STD: Standard Tender Evaluation Format, Form 4);

• adjustments should be made for any obvious omissions, deviations or variations which are not considered to be material and which can be quantified (STD: Standard Tender Evaluation Format, Form 4);
4.3.2 The detailed evaluation of a tender involves first checking that the commercial conditions, technical characteristics and functional performance of the tender are in accordance with the tender requirements.

4.3.3 The next step is to apply the evaluation criteria specified in the tender documents and adjust each tender as appropriate using the evaluation criteria. Only the criteria specified in the tender documents can be applied. No new criteria may be introduced at evaluation and all specified criteria must be applied. Specified criteria cannot be waived during evaluation.

4.3.4 Where there are a large number of tenders to be evaluated (over six) and the spread of tender prices is relatively wide, it is not necessary, in the first instance, to evaluate all tenders in detail. One can usually determine, from the specified evaluation criteria, the range of tender prices relative to the lowest tender price which stand a reliable chance of being the lowest evaluated tender. In such cases it is normally acceptable that, in the first instance, only those tenders within this range should be subjected to a detailed evaluation. If the lowest priced tender is rejected during evaluation, the range must be redetermined and all tenders in the revised range must be subject to a detailed evaluation.

4.3.5 The adjusted tender price of each tenderer will require to be modified in accordance with the evaluation criteria in the tender documents, in the manner and details specified therein, to arrive at the evaluated tender price (STD: Standard Tender Evaluation Format, Form 6 - Evaluation of Tenders).

4.3.6 The evaluated tender prices are compared and ranked in ascending order to determine the tenderer with the lowest evaluated price (STD: Standard Tender Evaluation Format, Form 7 - Comparison of Tenders).

4.4. Postqualification:

4.4.1 A successful tenderer must be qualified to satisfactorily perform the contract. Therefore, it must be determined whether the tenderer offering the lowest evaluated tender is so qualified (STD: Standard Tender Evaluation Format, Form 8 - Postqualification).

4.4.2 If tenderers were prequalified prior to tendering, a check should be made to determine that the lowest evaluated tenderer still satisfies the qualifying requirements specified for prequalification, and on the basis of its tender, has demonstrated that it is capable of performing the contract satisfactorily.

4.4.3 If no prequalification was done, then it must be determined that the lowest evaluated tenderer has the relevant previous experience, and financial, technical and production capability and capacity to perform the contract. This must be based on the qualifying criteria specified in the tender documents. A determination should also be made that, on the basis of its tender, the successful tenderer has demonstrated that it is capable of performing the contract satisfactorily.

4.4.4 A positive determination is a prerequisite for the award of the contract to the tenderer. A negative determination must result in rejection of the tender, in which event, the evaluation
committee must proceed to the next lowest evaluated tender to make a similar determination of the tenderer’s capabilities to perform the contract satisfactorily. Such a negative determination must be fully detailed and justified in the tender evaluation report, in terms consistent with the tender documents.

4.5  *Award recommendation:*

4.5.1 The evaluation committee must recommend award of the contract to the successful tenderer whose tender has been determined to be substantially responsive and to be the lowest evaluated tenderer and who has been determined to be qualified and capable of performing the contract satisfactorily.

4.5.2 A tender evaluation report with the award recommendation must be prepared for submission to the Purchaser’s senior management and the Bank prior to issuing the notification of award.

5.  *Tender evaluation report:*

5.1 The tender evaluation report should reflect the logical sequence of the tender evaluation process in the following manner:

- receipt and opening of tenders
- preliminary examination of tenders
- substantially non-responsive tenders
- correction of arithmetic errors
- currency conversion
- adjustment for non-material deviations
- tenders subject to detailed evaluation
- evaluation of tenders
- comparison of tenders
- lowest evaluated responsive tender
- postqualification
- award recommendation.

5.2 The tender evaluation should be prepared in accordance with the Bank’s Standard Tender Evaluation Format in the manner and detail outlined therein, including all forms and annexes. For complex contracts, additional forms and sections may be required.

6  *Notification of award:*

6.1 When the award recommendation has been accepted by the Purchaser’s management and the Bank, a notification of award (letter of acceptance) in the form and detail specified in the tender documents must be sent out immediately to the successful tenderer.

6.2 Negotiations must not be held with the successful tenderer with the intention of getting a reduction in price or a change in the scope of the contract, except in exceptional circumstances.

6.3 Negotiations are only allowed under exceptional circumstances and only after the Bank has been consulted and has agreed to such negotiations.

7.  *The Purchaser and the Bank:*
7.1  The Purchaser's obligations to follow the Rules:

7.1.1 The Purchaser is entitled to accept any tender or to reject any or all tenders. However, if the Purchaser carries out procurement or makes a procurement decision that is, in the Bank’s opinion, not in accordance with the agreed procedures under the terms of the Loan Agreement, the contract would not be eligible for financing with the proceeds of the Bank's loan and the portion of the loan allocated to the contract would be cancelled.

7.1.2 For contracts which are subject to the Bank’s review, the Purchaser is responsible for ensuring that the documentation submitted is complete, conforms to the Rules and is submitted in a timely manner. Decisions or actions taken by the Purchaser prior to the Bank giving its “no objection” to such decision or action, can lead to the contract not being eligible for financing with the proceeds of the Bank’s loan, if the Bank does not concur with the Purchaser's decision or actions.

7.2  Extension of tender validity:

7.2.1 The tender evaluations, reviews and award decision should be completed so that the award can be made within the original period of tender validity.

7.2.2 In exceptional cases, it may turn out that the evaluation and award decision is unavoidably delayed. In such cases it would be necessary to seek an extension of the validity of tenders as follows:

- the request to extend the validity of tenders must be sent to all tenderers who submitted tenders within the submission deadline and opened at the tender opening;

- the request for extension must specify a reasonable period for the extension which would allow adequate time for completing the evaluation and arriving at an award decision and obtaining the Bank’s “no objection”; 

- a tenderer is free to turn down the request and not extend the validity of its tender without losing its tender security;

- the Bank must be informed of any such requests for extension of validity. If more than one such extension is proposed, the Bank should be consulted well in advance of the second or any subsequent requests for extension;

- tenderers extending the validity of their tenders must arrange to extend the period of their tender security for the relevant period and submit the revised tender security with their notice of extension of validity;

- in fixed price contracts the adjustment factor specified in the tender documents for such extension of tender validity must be applied;

- the request for extension must clearly specify:

  * the period of extension requested;
the deadline for responses to the request for extension (a minimum of fourteen (14) days should be allowed, but for large contracts a longer period, say twenty-one (21) days, would be more appropriate);

* in the case of a fixed price contract, the adjustment for the period of extension should be spelled out;

* the request should be sent to the tenderer’s official address with a request for a confirmation of receipt by return;

* tenderers agreeing to such an extension cannot be required or permitted to otherwise change the price, scope or any other aspect of their tender as a condition of the extension.

7.3 Cancellation of the tender:

7.3.1 The Purchaser should only reject all tenders and cancel a tender if:

- there is evidence of collusion;
- there has been unsatisfactory competition;
- tender prices substantially exceed the cost estimates or available funds;
- the specifications, or other conditions, inadvertently fail to reflect the Purchaser’s requirements, reduced competition or generated substantially non-responsive tenders or very high prices.

Before cancelling a tender, the Purchaser must obtain the Bank’s concurrence to the cancellation and clearance of the procedures to follow to procure the contract.

7.4 Tenderers’ appeals and complaints:

7.4.1 The Purchaser is responsible for addressing and responding to all complaints relating to the conduct or outcome of a tender, including those submitted to the Bank. When a complaint regarding any aspect of a tender procedure is received by the Bank, the Bank will immediately send a copy to the Purchaser. The Bank will ensure that the complaint is fully reviewed to its satisfaction and, pending the outcome of such review, no decisions should be made or approvals given which could prejudice the outcome of the review.

7.4.2 All complaints or appeals received by the Purchaser, prior to the completion of the evaluation, must be logged and attached to the evaluation report (STD: Standard Tender Evaluation Format, Annex 8 - Log of Complaints and Appeals Received). The evaluation committee must ensure that the evaluation report addresses all such complaints and appeals in a satisfactory manner. Failure to do this will lead to the Bank seeking clarification on the complaint or appeal, and delay the Bank’s review process.

7.4.3 In exceptional cases, the Bank may require an independent review or audit of the tender and/or evaluation process, in order to address tenderers’ complaints and appeals which are of a serious nature, in the most transparent and fair manner.