Notifications to Unsuccessful Tenderers

(including final revisions resulting from consultations with Procurement Function
May 2018)

Issue

Many procurement complaints are raised due to unsuccessful tenderers or consultants not having received a timely and/or sufficiently detailed notification of the result of the tender/proposal evaluation and/or the reasons why their tender/proposal was not successful.

In order to minimise the number of procurement complaints in this regard, it is proposed to amend the standard no-objection letter for tender and consultancy evaluation reports. Furthermore, the Guidance Note on No-objection Letters will need to be amended to accommodate these changes.

In addition, the relevant provisions in EBRD’s standard tender documents (STD) and Consultancy Procurement Document (CPD) concerning notification of contract award should be amended accordingly.

Proposed Action

1. The STD for Goods and Related Services as well as those for Simple Goods already include provisions in paragraph 36.3 (Notification of Award) of the Instructions to Tenderers, which oblige the Client to provide the unsuccessful tenderers, amongst others, with the reasons for the rejection of their tenders. However, it is proposed to introduce some revised wording which clarifies that the Client needs to provide all the listed information in the notification email to the unsuccessful tenderers (see highlighted section from the STD for Goods and Related Services in the following excerpt. The STD for Simple Goods would need to be amended accordingly):

36.1 Prior to the expiration of the period of Tender validity, the Purchaser shall notify the successful Tenderer, in writing, that its Tender has been accepted.

36.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

36.3 On the same date as notifying the successful tenderer, the Purchaser shall also notify all other Tenderers of the results of the Tendering, and shall publish on the Bank’s website the results identifying the Tender, the resulting contract title and the following information: (i) name of each Tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tender that was evaluated; (iv) names of Tenderers whose Tenders were rejected; and (v) name of the winning Tenderer, and the contract price, as well as the duration and the title of the contract awarded. At the same time, the Purchaser shall send the above information for publication on the Bank’s website.

In addition to the above information, the Purchaser shall provide each unsuccessful tenderer individually with the particularities of the calculation of their respective evaluated tender price or the detailed reasons for the rejection of their respective tender, as appropriate.

After notification of the award, unsuccessful Tenderers may request in writing to the Purchaser for a debriefing seeking further explanations on the grounds on which their Tenders were not
selected. Upon receiving such a request, the Purchaser shall promptly, and in any case within two weeks, arrange for a debriefing.

2. The STD for Works as well as those for Simple Works include the same provisions as those contained in the STD for Goods and Related Services. The same revised wording would need to be incorporated (see highlighted section in the following excerpt from the Instructions to Tenderers of the STD for Works. The STD for Simple Works would need to be amended accordingly):

36.1 Prior to the expiration of the period of Tender validity, the Employer shall notify the successful tenderer, in writing, that its Tender has been accepted.

36.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

36.3 On the same date as notifying the successful tenderer, the Employer shall also notify all other tenderers of the results of the Tendering, and shall publish in the Bank’s website the results identifying the Tender, the resulting contract title and the following information: (i) name of each tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tender that was evaluated; (iv) names of tenderers whose Tenders were rejected; and (v) name of the winning tenderer, and the contract price, as well as the duration and the title of the contract awarded. At the same time, the Employer shall send the above information for publication on the Bank’s website.

In addition to the above information, the Employer shall provide each unsuccessful tenderer individually with the particularities of the calculation of their respective evaluated tender price or the detailed reasons for the rejection of their respective tender, as appropriate.

After publication notification of the award, unsuccessful tenderers may request in writing to the Employer for a debriefing seeking further explanations on the grounds on which their Tenders were not selected. Upon receiving such a request, the Employer shall promptly, and in any case within two weeks, arrange for a debriefing.

3. The STD for Supply and Installation should be amended accordingly (see highlighted section in the following excerpt from the Instructions to Tenderers):

Single Stage Tender

30. Notification of award

30.1 Prior to the expiration of the tender validity period, the Employer will notify the successful tenderer in writing by registered letter or by fax, to be confirmed in writing by registered letter, that its tender has been accepted. The notification of award will constitute the formation of the contract.

30.2 As soon as the successful tenderer has furnished the Performance Security pursuant to paragraph 32, the Employer will promptly notify each unsuccessful tenderers and will discharge their Tender Securities, pursuant to paragraph Error! Reference source not found. On the same date as notifying the successful tenderer, the Employer shall also notify all other tenderers of the results of the Tendering, identifying the Tender, the resulting contract title and the following information: (i) name of each tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tender that was evaluated; (iv) names of tenderers whose Tenders were rejected; and (v) name of the winning
tenderer, and the contract price, as well as the duration and the title of the contract awarded. At the same time, the Employer shall send the above information for publication on the Bank’s website.

In addition to the above information, the Employer shall provide each unsuccessful tenderer individually with the particularities of the calculation of their respective evaluated tender price or the detailed reasons for the rejection of their respective tender, as appropriate.

After notification of the award, unsuccessful tenderers may request in writing to the Employer for a debriefing seeking further explanations on the grounds on which their Tenders were not selected. Upon receiving such a request, the Employer shall promptly, and in any case within two weeks, arrange a debriefing.

Two Stage Tender

20. Invitation to submit Second Stage tenders

20.1 At the end of the First Stage evaluation and after holding clarification meetings, the Employer will:

(a) issue an amendment to the tender documents modifying inter alia and as needed, the evaluation criteria or other sections of the Instructions to Tenderers, the Special Conditions of Contract, and the Technical Specifications resulting from the First Stage evaluation and clarification meetings, with the objective of enhancing competition without compromising essential project objectives; and

(b) either

(i) invite a tenderer to submit an updated technical and commercial Second Stage tender based on the modifications (if any) listed in the “Changes Required Pursuant to First Stage Evaluation” Annex to the Memorandum of the clarification meeting held with the tenderer; or

(ii) invite a tenderer to submit an updated technical and commercial Second Stage tender based on an alternative proposed by the tenderer in its First Stage tender with the modifications (if any) listed in the “Changes Required Pursuant to First Stage Evaluation” Annex to the Memorandum of the clarification meeting held with the tenderer; or

(iii) On the same date as inviting Tenderers in accordance with paragraph 20.1 (b) (i) or (ii) above, notify a tenderer that its tender has been rejected as substantially non-responsive, or that the tenderer does not meet the
minimum qualification requirements set forth in the tender documents. This notification must also include the following information: (i) name of each Tenderer who submitted a First Stage Tender; (ii) names of Tenderers who are invited to submit Second Stage Tenders; and (iii) names of Tenderers whose Tenders were rejected and the generic reasons for their rejection.

In addition to the above information, the Employer shall provide each unsuccessful tenderer individually with the particularities of the detailed reasons for the rejection of their respective tender.

After this notification, unsuccessful Tenderers may request in writing to the Employer for a debriefing seeking further explanations on the grounds on which their Tenders were not successful. Upon receiving such a request, the Employer shall promptly, and in any case within two weeks, arrange a debriefing.

41. Notification of award

41.1 Prior to the expiration of the Second Stage tender validity period, the Employer will notify the successful tenderer in writing by registered letter or by fax, to be confirmed in writing by registered letter, that its Second Stage tender has been accepted. The notification of award will constitute the formation of the contract.

41.2 As soon as the successful tenderer has furnished the Performance Security pursuant to paragraph 3, the Employer will promptly notify all unsuccessful tenderers and will discharge their Tender Securities, pursuant to paragraph 3. On the same date as notifying the successful tenderer, the Employer shall also notify all other tenderers of the results of the Tendering, identifying the Tender, the resulting contract title and the following information: (i) name of each tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tender that was evaluated; (iv) names of tenderers whose Tenders were rejected; and (v) name of the winning tenderer, and the contract price, as well as the duration and the title of the contract awarded. At the same time, the Employer shall send the above information for publication on the Bank’s website.

In addition to the above information, the Employer shall provide each unsuccessful tenderer individually with the particularities of the calculation of their respective evaluated tender price or the detailed reasons for the rejection of their respective tender, as appropriate.

After notification of the award, unsuccessful tenderers may request in writing to the Employer for a debriefing seeking further explanations on the grounds on which their Second Stage Tenders were not selected. Upon receiving such a request, the Employer shall promptly, and in any case within two weeks, arrange a debriefing.

4. A new “Attachment 2 – Draft Letters to Tenderers whose Tenders were Rejected” will be added to the Standard Tender Evaluation Reports Format for Goods and
Related Services as well as for Works. These respective Letters include the information as required according to paragraph 36.3 of the Instructions to Tenderers (or paragraphs 30.2 (single stage), 20.1 and 41.1 (two stage) in the case of Supply and Installation tenders). As this Attachment will be an integral part of the Tender Evaluation Report, it has to be considered as part of the Bank’s no-objection to the report.

5. The new Consultancy Procurement Document (CPD) includes relevant wording in the Instructions to Consultants and Data Sheet. The following amendments should be made (see highlighted sections):

Two Stage Open Competitive Selection – Request for Expressions of Interest

14.2 The shortlisted consultants shall be invited to submit a proposal.

14.3 At the same time as inviting the shortlisted consultants, the Client shall notify all consultants who were not shortlisted of the result of the evaluation of the Expressions of Interest, including (i) the names and nationalities of all consultants that have been shortlisted, and (ii) where applicable, the reasons for not being shortlisted. After such notification, consultants who were not shortlisted may request in writing to the Client for a debriefing seeking further explanations on the grounds on which they were not shortlisted. Upon receiving such a request, the Client shall promptly, and in any case within two weeks, arrange a debriefing.

Single Stage and Two Stage Open Competitive Selection – Request for Proposals

23.2 After the technical evaluation is completed and the Bank has issued its no objection (if applicable), the Client shall notify those Consultants whose Technical Proposals were considered non-responsive to the CPD (including the TOR) or did not meet the minimum qualifying technical score (and shall provide information relating to the Consultant’s overall technical score, as well as the scores obtained for the sub-criteria) that their Financial Proposals will be returned unopened after completing the selection process and Contract signing. The Client shall simultaneously notify in writing those Consultants that have achieved the minimum overall technical score and inform them of the date, time and location for the opening of the Financial Proposals. The opening date should allow the Consultants sufficient time to make arrangements for attending the opening. The Consultant’s attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the Data Sheet) is optional and is at the Consultant’s choice. Consultants who have been notified that their proposals are considered non-responsive may request in writing to the Client for a debriefing seeking further explanations on the grounds on which their proposals were considered non-responsive. Upon receiving such a request, the Client shall promptly, and in any case within two weeks, arrange a debriefing.

28.1 Prior to contract negotiations, the Client shall notify all unsuccessful consultants of the results of the consultant selection process, identifying the name of the assignment and the following information: (i) name of each consultant whose financial proposals were opened; (ii) combined technical and financial scores of all consultants whose financial proposals were opened (iii) prices of financial proposals as read out at financial proposal opening; (iv) if applicable, an explanation why the evaluated price differs from the price of the evaluated proposal; and (v) name of the winning consultant, and the agreed contract price, as well as the duration and summary scope of the contract signed. After receiving such notification, unsuccessful consultants may request in writing to the Client for a debriefing seeking further explanations on the grounds on which their proposals were not selected. Upon receiving such a request, the Client shall promptly, and in any case within two weeks, arrange a debriefing. At
the same time, the Client shall also arrange for the publication of the above information on the Bank’s website.

Where the electronic procurement platform is used, publication is made upon completion of the selection process, prior to contract negotiations.

30.1 After completing the negotiations the Client shall obtain the Bank’s no objection to the negotiated draft Contract, if applicable; and sign the Contract.

6. Section 24 of the Instructions for Applicants for a Prequalification already contains adequate wording concerning the notification of unsuccessful applicants (see in particular paragraphs 24.4 and 24.8 as highlighted below). No changes are necessary here.

24. Notification of Outcome of Prequalification

24.1 The Client shall notify all applicants about the outcome of Prequalification in writing.

24.2 The notification shall include, as a minimum: the names of the prequalified applicants and their nationality.

24.3 In addition to information to be sent in accordance with ITA 24.2, the notification to be sent to conditionally prequalified applicants shall list the specific conditions of their prequalification and the time period within which these conditions are to be met.

24.4 In addition to information to be sent in accordance with ITA 24.2, the notification to be sent to rejected applicants shall state the specific reasons for the rejection of their applications.

24.5 In all cases, the notification should state that Prequalification will be followed by verification of the applicants’ qualification at the time of tendering, and that tenders will be rejected by the Client, at its discretion, if the verification is unsatisfactory or if the tenderer is unable to confirm the requirements specified in accordance with ITA 24.3.

24.6 The applicants should be advised that only firms and JVCA that have been prequalified under this Prequalification will be eligible to tender.

24.7 The Client shall make publicly available to any interested party and shall publish on the Bank’s website the list of prequalified applicants immediately after information on the outcome of Prequalification is communicated to all applicants.

24.8 After publication of the outcome of Prequalification, unsuccessful applicants may request in writing to the Client for a debriefing seeking explanations on the grounds upon which their application was rejected. The Client shall promptly respond in writing to and arrange a debriefing of any unsuccessful applicant who, after publication of the outcome of Prequalification, requests a debriefing.
24.9 Subject to ITA 25.5, the Client will notify the applicants of any changes in the list of prequalified tenderers not later than 14 days prior to the tender opening.

Dirk Plutz
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