

50 Nota Benes in Tender and Contract Documentation

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[Go to End](#)

Contents

- [Note](#)
- [General](#)
- [Documentation generally](#)
- [Tender documentation](#)
- [Tendering](#)
- [Tender analysis](#)
- [Contract award](#)

Note

21 Jan 2020: Expanded for HKIS QSD PQSL event on the same day.

25 Dec 2014: Posted on this website.

3 Mar 2012: Presented by Mr. K C Tang at One Day Seminar on Contract Management 2012.

General

1. Identify the ultimate purposes of preparing tender documents and serve the purposes

- Get a good contractor
- Get a good price
- Get the desired quality
- Permit sufficiency of time and price
- Reduce ambiguity, arguments and disputes
- Reduce unexpected cost and time overrun
- Reduce unexpected claims
- Allow for changes
- Allow easy calculation of costs of changes
- Share risks clearly
- Start work as soon as possible irrespective of degree of completion of design
- etc, etc

2. Comply with client's procedures

- Government departments
- Professional developers
- Contractors (when sub-letting)

3. Determine appropriate tender packages and tendering programme

- Site survey, ground investigation and demolition usually under separate advance contracts
- Split between site formation, piled foundations, substructure, basement and superstructure

- Split between main contract, nominated sub-contracts and supply contracts
 - Split into domestic sub-contracts and supply contracts
 - Design development in stages with separate tenders in stages
 - Full design development for single contract package for all
4. Choose appropriate contractual arrangement and understand their different implications
- Design-bid-build vs design and build (plus operate)
 - Nominated vs domestic
 - Supply only (sales contract) vs supply and install (works contract)
 - Collaborative, partnering
 - Lump sum, remeasurement, rates only, cost plus
5. Observe confidentiality
- Collusion and bribery
 - [Competition](#)
6. Avoid and declare conflict of interest
- Collusion
7. Ensure fair competition
- Waste of tendering time and resources
 - Loss of trust
 - Loss of tenderers
8. Do not trust computer and people
- Garbage in garbage out
 - Reliability of Client's staff
 - Change of Client's staff and challenge of past decisions
 - Decisions must be within reasons and rationale be properly documented

Documentation generally

9. Identify which standard documents and templates to use
- In-house
 - Client's
 - Lead consultant's
 - Changing standard
 - Lag time in releasing changes
 - Past projects
 - Most up to date standards preferred to past projects'
10. Ensure adequate representation
- Ensure sufficiency of price and time
 - Give all information to ascertain entire quality and quantities of the work and services required for the completion of the Contract
 - Give full knowledge of site conditions and problems which may affect price and time

- Give fewer items to reduce chances of adding prices vs give more items to ensure no shortfall
11. Avoid ambiguities, discrepancies, inconsistent terminology, etc.
- Client, Employer
 - Architect, Engineer, Lead Consultant, Project Manager, Contract Administrator, Supervising Officer
 - Sub-Contractor vs Contractor vs Builder in Technical Specification
 - Works, works, work
 - Rate for
 - Quantity of
 - Tender Documents, Tender Document
 - General Specification, Particular Specification, Technical Specification
 - Schedule of Rates and Summary of Tender in pre 2005/2006 Standard Forms of Building Contract
 - Schedule of Quantities and Rates in 2005/2006 Standard Forms of Building Contract
 - Damages, damage
 - Shall, will, should, would
 - Precedence of documents
 - Precedence of contents
12. Avoid repetition of same provisions at different parts of documents
13. Check correct page headers, footers, covers, contents, page numbers, item references, etc., correct use of units, correct cross referencing of document, page and clause numbers
- Who does what for Technical Specification

Tender documentation

14. State deviations from standard form of contract, standard specification, standard method of measurement, etc.
- Special Conditions of Contract
 - Particular Specification
 - Preambles
 - Standard Preambles and Special Preambles
 - Preamble notes in the Bills of Quantities, Schedule of Rates, Schedule of Quantities and Rates
15. Notify Client of important features and seek approvals
- Particulars to be specified in the Form of Tender: alternative tenders, times for completion, tender validity period
 - Particulars to be stated in the Appendices to the Conditions of Contract
 - Really special Special Conditions of Contract
16. Allocate risks appropriately
- Best one to manage?
 - Best one to bear?
17. Watch out that harsh terms may not be workable
- Harsh terms enforceable if clear beyond doubt and agreed by the contract parties voluntarily

- Except when forbidden by law
- Except when not clear enough to override common interpretation
- Harsh terms would diminish the authority of the Contract Administrator who is bound by the loss of authority
- "Impose harsh terms in contract and relax when the need arises" may turn out to be a deadlock.

18. Check that specified brands and models are still in production

- Government contract would not specify brands and models without prior approval

19. Be specific as to which one to choose out of the different choices available from the standard

20. Define possession, commencement and completion times and phases properly

- Date for possession
- Date for commencement
- Date for completion
- Site phasing vs works phasing
- Zones/ phases / sections / stages
- "for" vs "of"

21. Estimate genuinely the rates of liquidated damages for delay

- "of" not "for"
- Avoid double penalty
- Suppose the rate of LD for Section 2 is the same as that for the earlier Section 1
- If the rate is equally applicable for a delay occurring before or after the completion of Section 1, this is very likely to be a double penalty because the loss and expense before or after the completion of Section 1 should be different.

22. Specify procurable types of bonds and set affordable level of bond amounts

- Conditional bond (on-default) bond
- On-demand bond

23. Set procurable levels of insurance excesses

24. Check that descriptions of Bills of Materials or Schedule of Rates or Schedule of Quantities and Rates or Schedule of Works sufficiently cover and match with requirements on Specification and Drawings

25. Divide into smaller items for pricing if a bigger item is likely to be partially varied

26. Avoid small provisional quantities

27. Ensure that prime cost rates are set at appropriate levels

- Implication of excessive deviations of rates on wastage and profit and overheads

28. Ensure that the correct Prime Cost and Provisional Sums are carried forward to the Summary

29. Specify as optional if firm quantity items are likely to be omitted or added

- "optional" <> "provisional"

Tendering

30. Choose suitable tenderers

- Experience
- Specialty

- Technical capability
 - Financial capability
 - Safety, claims and disputes track records
 - Innovation
 - Pre-qualifications
 - Newspaper advertisement
 - Open tendering
 - Selective tendering
31. Give sufficient time for tendering
- Watch out long holidays
 - Give sufficient time after tender addendum
 - Extend tender return date
32. Permit site visits individually
- Site visits in groups only if essential
33. Arrange for tender briefing only if really necessary and in groups
34. Give common answers to queries raised by one to all tenderers
35. Disregard late tenders

Tender analysis

36. Check tenders returned
- Sufficiency of tender submissions
 - Correctness of arithmetic
 - Compatibility of submitted programmes with specified requirements
 - Suitability of specifically stated delivery and installation periods
 - Qualifications and deviations
 - Missing or duplicated items or unreasonable quantities in case of Schedule of Rates and Schedule of Quantities and Rates prepared by the Tenderers
 - General price levels
 - Front loading
 - Rates for items with small quantities
 - Rates for dayworks and mark-ups
 - Incorrectly priced high or low rates
37. Consider reasonable qualifications
38. Rationalize incorrectly high or low rates
38. Issue post clarifications to clarify or rectify with no change to the tender sums
39. Conduct tender interviews with no indication of tender priority
40. Do not accept uninvited changes to tender sums or rates and prices, and post tender exclusions
41. Handle post tender changes and best offer invitation with care and fairness
- Revised offer and best offer in sealed envelopes

- Treatment of discounts

Contract award

42. Award to tenders financially and technically capable
43. Award within the tender validity period
 - Extend tender validity period
44. Choose properly between letter of intent and letter of acceptance
45. Ask for signed Form of Warranty before accepting a sub-contract tender
46. Specify how discounts should be applied, and ensure discounted all-in rates not lower than prime cost rates
47. List out documents to form the Contract Documents
48. Ask for counter-signature of letter of intent and letter of acceptance since they may be regarded as counter-offers requiring acceptance
49. Sign formal contract documents before things go sour
50. Note that there are actually more than 50 Nota Benes

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