

A PQSL Talk on
A Walkthrough from Tender Invitation to Binding of the Contract
by Mr. K C Tang FHKIS, FRICS, RPS(QS), AVS, Director of K C Tang Consultants Ltd.
on Monday 13th August, 2007 (7:00 pm - 8:30 pm) and
again on Saturday 31st May, 2008 (2:00 pm - 5:30 pm) at SLC, HKIS

The following is the framework of a PQSL talk given by Mr. K C Tang on the captioned topic covering the whole process from tender invitation to binding of the contract documents, including issuing tender documents, issuing tender addenda, answering queries, receiving and opening tenders, tender analysis and reporting, tender interviews, awarding the contract, and preparing the formal contract documents.

APC Candidates should expand the framework with greater details, sample documents, and most importantly the rationale behind, in preparation for the APC.

It should be noted that Government practice is more stringent and private practice is a bit flexible. Different private consultants have their own practice. APC Candidates are advised to visit the Government web sites to view their Technical Circulars and Practice Notes and to source as much private consultants' documents as possible to understand their differences.

1. Selection of Tenderers

1.1 Open tendering

- (a) Invitation through newspaper advertising
- (b) Invitation through gazette notice with restrictions to approved list of tenderers
- (c) Invitation through web portal
- (d) Expression of interest and pre-qualification of tenderers required if tenderers are not invited from an approved list

1.2 Selective tendering

- (a) From an approved list
- (b) Suggested by the Project Team
- (c) Pre-qualification of tenderers required if tenderers are not familiar to the Project Team or the nature of the Works is special to the criteria for the approved list
- (d) Expression of interest required to see whether the tenderers are willing and able to tender
- (e) Invitation by letter

1.3 Negotiation with single tenderer

- Based on past project relationship and prices

2. Expression of Interest and Pre-qualification of Tenderers

2.1 Purpose

2.2 Information to prospective tenderers

- (a) Scope of the Project
- (b) Scope of the Works to be tendered for
- (c) Particulars of the Client and Employer for the project

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- (d) Particulars of Architect, Engineers, AP, RSE, Quantity Surveyor
- (e) Type of contract
 - (1) Lump sum or remeasurement
 - (2) With or without Bills of Quantities, or with standard schedule of rates
 - (3) With or without fluctuation clause
- (f) Payment terms
- (g) Expected date for issuance of tender documents
- (h) Tendering period
- (i) Construction programme

2.3 General company information required to be submitted

- (a) Descriptions on past and current experience in similar works, together with a job reference list
- (b) Current and anticipated work load for the coming 12 months
- (c) Experience in working on restricted areas similar to the proposed site
- (d) Business registration certificate
- (e) Certificate of incorporation, if a company
- (f) Contractor's registration certificates
- (g) Audited accounts for the last <> years (strict confidence to be observed by the Client and the Consultants)
- (h) Statement of all convictions or no convictions under the Immigration Ordinance (Cap. 115) for last <> years
- (i) Statement of all convictions or no convictions under the Factories and Industrial Undertakings Ordinance (Cap. 59) for last <> years
- (j) Statement of all convictions or no convictions under the Employment Ordinance (Cap. 57) for last <> years
- (k) Statement of involvement in arbitration or litigation in the last <> years or foreseeable in the next <> months

2.4 Project specific information required to be submitted

- (a) CV of key professional or technical staff which are capable of undertaking the Works and may be assigned to the Works
- (b) Details of the fabrication yards which may be used for the Works
- (c) Financial capability to adopt the payment terms mentioned above
- (d) Estimation of the delivery and installation periods required for the Works
- (e) If an alternative tender based on Contractor's design is considered:
 - (1) Descriptions of past experience and capability in undertaking the design work
 - (2) Names of the prospective designers
 - (3) Preferred tendering period

2.5 Time and mode of submission

2.6 Client is not bound to invite any contractors who have expressed interest to tender

2.7 Contact person in case of queries

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3. Selection Criteria

- 3.1 Technical and financial capability of the company
- 3.2 Technical capability of the proposed project staff
- 3.3 Past experience
- 3.4 Track records
- 3.5 Workload
- 3.6 Claims history (not apparent from the pre-qualification submissions)
- 3.7 Qualitative judgment
- 3.8 Selection by marking scheme

4. Invitation Letter

- 4.1 Confidential list of tenderers
- 4.2 Invitation letter to be marked confidential
- 4.3 Description of the Works
- 4.4 Documents and drawings issued
- 4.5 Place and time for collection of documents and drawings
- 4.6 Time and mode of submission
- 4.7 Tender submissions to be in sealed envelope marked confidential
- 4.8 Specified tender label or envelope for submission
- 4.9 Contact person in case of queries
- 4.10 Terms and conditions intended to form part of the Contract should be given in the Tender Documents rather than in the Invitation Letter

5. Tender Documents issued

- 5.1 Tender Booklet containing:
 - (a) Conditions of Tendering / Conditions of Tender / Instructions to Tenderers
 - (b) Form of Tender with various kinds of appendices:
 - (1) Appendix to the Conditions of Contract (if not included in the Specification or Preliminaries)

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- (2) Pro-forma Surety Bond
 - (3) Form of Warranty (for Sub-Contracts)
 - (4) Statement of all convictions or no convictions under the Immigration Ordinance (Cap. 115) for last <> years
 - (5) Statement of all convictions or no convictions under the Factories and Industrial Undertakings Ordinance (Cap. 59) for last <> years
 - (6) Statement of all convictions or no convictions under the Employment Ordinance (Cap. 57) for last <> years
 - (7) Statement of involvement in arbitration or litigation in the last <> years or foreseeable in the next <> months
 - (8) Declaration of no conflict of interests
 - (9) Declaration of no collusion
 - (c) Amendments to the Standard Form of Main Contract / Special Conditions of Contract
 - (d) Amendments to the Standard Form of Sub-Contract / Special Conditions of Sub-Contract
 - (e) Specification
 - (1) Preliminaries (if not included as Bill No. 1 in full)
 - (2) Technical Specification
 - (3) General Specification
 - (4) Particular Specification
 - (5) Technical Schedules
 - (f) Preambles to Bills of Quantities (if not included as Bill No. 2)
 - (g) Bills of Quantities
 - (1) Bill No. 1 – Preliminaries (full descriptions or headings only)
 - (2) Bill No. 2 – Preambles
 - (3) Bill No. 3 onwards - Measured Works Sections
 - (4) Prime Cost and Provisional Sums
 - (5) Dayworks Schedule
 - (6) General Summary
 - (h) Schedule of Rates (if without Bills of Quantities)
 - (i) Summary of Tender (if without Bills of Quantities)
 - (j) Schedule of Drawings
 - (k) Appendices (references to these Appendices should be given in the appropriate parts of the Tender Documents):
 - (1) Insurance policies taken out by the Employer
 - (2) Property Management's house-rules (if not already described in the Specification and Preliminaries)
 - (3) Main Contractor's house-rules (for Sub-Contract tendering)
- 5.2 One set of drawings as listed or referred to in the Schedule of Drawings
- 5.3 One duplicate copy of the Tender Booklet for retention by the Tenderer (really essential?)
- 5.4 One duplicate copy of the Form of Tender (really essential?)
- 5.5 Electronic documents (precedence against hardcopies)
6. Drawings

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- 6.1 Drawings actually issued to tenderers
- 6.2 Drawings available for inspection
- 6.3 Standard Drawings
- 6.4 BQ (Taking-off) Drawings
- 6.5 Tender Drawings
- 6.6 Preliminary design drawings to be submitted by the tenderers
- 6.7 Contract Drawings
- 6.8 How to manage these drawings to avoid discrepancies
- 7. Tender
 - 7.1 The bound Tender Booklet with:
 - (a) The Form of Tender completed, signed, witnessed and dated
 - (b) Selected appendices to the Form of Tender completed, signed, witnessed and dated (some to be completed after contract award)
 - (c) The Bills of Quantities priced, extended and totalled (the sum shown on the Form of Tender must agree with the total of the Summary)
 - (d) The Summary of Tender priced and totalled (the sum shown on the Form of Tender must agree with the total of the Summary)
 - (e) Schedule of Quantities and Rates showing the build-up of the respective items in the Summary of Tender
 - (1) Schedule of Quantities and Rates all prepared by the tenderers
 - (2) Pro-forma Schedule of Quantities and Rates without quantities provided to tenderers
 - (3) Schedule of Quantities and Rates with quantities pre-inserted for the tenderers' reference and verification (implication of discrepancies with Tender Drawings and Specification)
 - (f) Technical and Delivery Schedule completed
 - 7.2 List of the names of the specialist contractors that the Tenderer intends to choose for sub-letting part of the Works
 - 7.3 Preliminary design drawings and specification for tenderers' specialist design
 - 7.4 Material catalogues and sample boards
 - 7.5 Proposed method statement and programme of the Works
 - 7.6 Site layout plan showing the proposed locations of plant, scaffolding, catch fans, stores, site office and access routes

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- 7.7 Project organisation chart with the names and qualification of key management and site personnel for the Works
- 7.8 Maintenance contract proposal (for M&E works)
- 7.9 General company information (if not already fully submitted when expressing interests to tender)
- 7.10 Number of copies of submissions required
- 7.11 Duplicate copy of the Form of Tender
- 7.12 Sealed envelope to be labelled in the manner and deposited at the time and place set out in the invitation to tender
- 7.13 Return of Tender Drawings (use of returned drawings)
- 7.14 Unauthorised alteration or erasure to the text of the Tender Documents
- 7.15 Alternative tenders
- 7.16 Unpriced items deemed included
- 8. Tender Briefing and Site Walk
 - 8.1 Joint meeting or separate meeting
 - 8.2 Confidentiality, convenience and trust
 - 8.3 Introduction to tenderers
 - 8.4 Tenderers to raise queries and problems
- 9. Answering Queries
 - 9.1 Re-phrasing into common answers to all tenderers
 - 9.2 Issued as Tender Clarification Letters or Tender Addenda
- 10. Issuing Tender Addenda
 - 10.1 Latest time for issuing Tender Addenda
 - 10.2 Numbering and labelling as "Tender Addendum <>"
 - 10.3 Highlighting of changes
 - 10.4 Different dates and filenames on different pages to be avoided for documents

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- 10.5 Date stamping required for Tender Drawings which do not usually the revision version number
- 10.6 Covering letter
 - (a) Letter to be marked confidential
 - (b) Amended or additional documents and drawings issued
 - (c) Description of the changes and instructions to make the changes (either in the letter or in an appendix)
 - (1) Pages or sheets to be replaced, added or deleted
 - (2) Clarification statements
 - (d) Place and time for collection of documents and drawings
 - (e) Any change to the tender return deadline
 - (f) Other terms and conditions remain unchanged
 - (g) Contact person in case of queries
 - (h) Acknowledgement of receipt by couriers
 - (i) Confirmation of incorporation of tender addenda by tenderers
- 11. Form of Tender
 - 11.1 Tender Sum
 - 11.2 Alternative tenders
 - 11.3 Discrepancies between words and figures
 - 11.4 Completion times
 - 11.5 Confirmation of acceptance of amendments to the Standard Form of Main Contract and Sub-Contract / Special Conditions of Contract and Sub-Contract
 - 11.6 Confirmation of incorporation of tender addenda
 - 11.7 Confirmation of compliance with pro-forma surety bond
 - 11.8 Tender validity period
 - 11.9 Implications of withdrawal before expiry of the tender validity period
 - 11.10 Complication of counter-offers during negotiation upon terms demanding irrevocable offer
 - 11.11 Acceptance constituting a binding contract
 - 11.12 No obligation to award to the lowest
 - 11.13 Registered address (may be different from letter head)
 - 11.14 Signature of Form of Tender (name and position of signatory)

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12. Receiving and Opening Tenders

12.1 Parties to attend

12.2 Late return of tenders

12.3 Tender envelopes sealed?

12.4 Tender Sum in words and figures matching General Summary and Form of Tender?

12.5 Tender Opening Form

- (a) Tenderers' names
- (b) Tender Sums
- (c) Completion Times
- (d) Alternative Tenders
- (e) Remarks
- (f) Ranking
- (g) Signatures
- (h) Pre-tender Estimate

12.6 Witnessing signatures on Form of Tender

12.7 Immediate short listing for detailed analysis

13. Tender Analysis

13.1 Checking the completeness of tender submissions

13.2 Requesting for immediate submission of outstanding information (except when the outstanding information leads to disqualification)

13.3 Checking the correctness in completing the Form of Tender

13.4 Checking the completeness of pages

13.5 Checking the inclusion of amended pages and exclusion of deleted pages

13.6 Checking on no unauthorised alteration or erasure to the text of the Tender Documents

13.7 Checking arithmetic, evidenced by ticking or correction in red

13.8 Consideration when deciding whether to correct the rate or the extension in case of mismatch:

- (a) Rate derived by dividing quantities into extension reasonable as a round figure or as compared to similar rates?

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- (b) Total of extension matching page total?
- 13.9 Rates in Remeasurement Contract not to be changed and Tender Sum can be adjusted (some Conditions of Tendering specify as such)
- 13.10 Checking the reasonableness of quantities and sufficiency of items in the Schedule of Quantities and Rates prepared by tenderers
- 13.11 Omission of prime cost and provisional sums deemed to be an error to be absorbed by the Tenderer or to be corrected and added back (depending on the provisions of the Conditions of Tendering)
- 13.12 Compiling multiple rate bills (for easy comparison of rates and to serve as future data bank)
- 13.13 Checking rates
 - (a) Consistencies of rates for similar items (with differences for different locations and times of construction)
 - (b) Reasonable differences and pattern for dissimilar items
 - (c) High and low rates
 - (1) Comparison amongst tenders and pre-tender estimate
 - (2) Comparison with known supply costs
 - (3) Picking out those unreasonably high or low or incorrect rates for adjustments
 - (d) Reasonable on-costs above prime cost rates
 - (e) Inappropriate pricing of preliminaries items which should not normally be priced
 - (f) Unreasonable dayworks rates and mark-ups
- 13.14 Checking for front loading
- 13.15 Discounted cash flow analysis for projects of long duration based on tenderers' programme
- 13.16 Equating tenders with different completion times (normally using the rate of liquidated damages)
- 13.17 Checking qualifications
- 13.18 Checking whether overall time of preliminary programme matches the committed completion times

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- 13.19 Checking of obvious errors and omissions on the programme (though the detailed checking should be the duty of the Architect and Engineers)
- 13.20 Checking the materials and equipment proposal in so far as the make and type may affect the comments on the reasonableness of the prices (the technical suitability should be left to the Architect and Engineer)
- 14. Issuing Tender Queries
 - 14.1 Requesting for outstanding submissions
 - 14.2 Confirmation of correction of major arithmetic errors
 - 14.3 Requesting for agreeing more reasonable rates for variations, with details as to how they will be applied – omissions and additions or additions only? implication on provisional quantities?
 - 14.4 Requesting for rationalization of both the quantities and rates in Schedule of Quantities and Rates prepared by the tenderers
 - 14.5 Clarification of uncertain terms
 - 14.6 Requesting for withdrawal of unacceptable qualifications
 - 14.7 Tender Sums not to be changed if the tendering basis has not been changed, otherwise disqualification
 - 14.8 Confidential queries and replies
- 15. Issuing Post Tender Addenda
 - 15.1 If changes to the original tendering basis are required, the Tender Sums may need to be changed. The mode of submission and opening of the revised Tender Sums should be considered and stipulated
 - 15.2 Individual tenderers' competitive ideas should be observed and respected
 - 15.3 Confidential
- 16. Tender Report
 - 16.1 Date tenders received
 - 16.2 Tenders received
 - (a) Tenderers' names
 - (b) Tender Sums
 - (c) Ratios
 - (d) Completion Times

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- (e) Alternative Tenders

16.3 Scope of tenders

- (a) Works tendered for
- (b) Provisional sums
- (c) Prime cost sums
- (d) Provisional quantities and dayworks schedule
- (e) Works by others

16.4 Type of tenders

16.5 Tender addenda

16.6 Post tender addenda and revised tenders

16.7 Tender submissions

16.8 Time for completion

16.9 Arithmetic errors

16.10 Comparison of tenders in the form of appendices

- (a) By Trades and by Sections
- (b) List of major rates
- (c) Multiple Rate Bills of Quantities (bound separately)
- (d) Technical particulars (delivery periods, origins, makes, types, models, etc. in so far as they are required for the appreciation of the reasonableness of the prices)

16.11 Examination of tenders with comments on individual tenders

- (a) Tender Sum
- (b) Priority
- (c) Contract periods
- (d) Arithmetic error
- (e) Technical submissions
- (f) Qualifications
- (g) Alternative proposal
- (h) General price levels
- (i) Items with unreasonably low rates
- (j) Items with unreasonably high rates
- (k) Items incorrectly priced
- (l) Unpriced items or items without specific prices quoted
- (m) Conclusion

16.12 Reconciliation with Estimate

16.13 Conclusion and recommendation

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- 16.14 Total building or project cost based on the recommended tender
- 16.15 Tender validity period
- 17. Tender Interviews
 - 17.1 Better conducted after submission of the tender report
 - 17.2 Strategy in priority of interview
 - 17.3 Questions and answers
 - 17.4 Subsequent confirmation of questions by issuing Tender Queries
 - 17.5 After receipt of the replies, a final recommendation can be made as to the selection of the successful tenderer. A supplementary tender report may or may not be required.
- 18. Awarding the Contract
 - 18.1 Letter of Acceptance / Letter of Award
 - 18.2 Letter of Intent (to nominate) followed by Letter of Acceptance by the Main Contractor
 - 18.3 Is letter of intent binding? If binding, how?
 - 18.4 Issuing on behalf of the Client
 - 18.5 The Works
 - 18.6 The Contract Sum
 - 18.7 Build-up of the Contract Sum from the original Tender Sum, if different
 - 18.8 Discounts (lump sum, percentage, how to apply, how are prime cost rate items treated)
 - 18.9 The Contract Periods
 - 18.10 Pricing clarifications
 - 18.11 Technical clarifications
 - 18.12 Defining Contract Documents and order of precedence (Tender Documents, tender, tender correspondence)

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- 18.13 Any programme, method statement, site layout plan, and organization chart for reference only and to be formally proposed after contract award but subsequent deviations to be properly justified (information contained in these reference documents but intended to form part of the contract should be specifically stated)
- 18.14 Counter-signing and returning the letter
- 18.15 Binding contract upon counter-signing
- 18.16 Immediate formal submissions
 - (a) Surety Bond
 - (b) Employees' Compensation Insurance Policy
 - (c) Contractors' All Risks and Third Party Liability Insurance Policy
 - (d) Method statement of the Works
 - (e) Programme of the Works
 - (f) Site layout plan
 - (g) Organisation chart with the names and qualification of key management and site personnel for the Works
- 19. Preparing the Formal Contract Documents
 - 19.1 Number of copies
 - 19.2 Contract Drawings to be bound and signed as well
 - 19.3 Original and certified true copies
 - 19.4 Checking for the updated registered addresses
 - 19.5 Amendments and Special Conditions to the Form of Contract
 - (a) Physically amending the Form
 - (b) Including and initialling an overriding clause to incorporate the amendments and special conditions
 - 19.6 Calculating the Date for Completion from the overall duration (Date for Possession or Date for Commencement counting as day 1)
 - 19.7 Calculating limit of retention and amount of surety bond (based on the overall Contract Sum or exclusive of prime cost and provisional sums; rounding off)
 - 19.8 Execution as simple contract or contract under seal
 - 19.9 Significance of the date of signing