

TENDERING GUIDELINES

FOR THE SOUTH AUSTRALIAN CONSTRUCTION INDUSTRY

Recommended by



Australian
Institute of
Architects

AUSTRALIAN INSTITUTE OF
ARCHITECTS SA CHAPTER



ASSOCIATION OF CONSULTING
ARCHITECTS SOUTH AUSTRALIA



MASTER BUILDERS
ASSOCIATION OF SOUTH
AUSTRALIA INC

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TENDERING GUIDELINES for the South Australian Construction Industry

A reference handbook prepared jointly by:

Australian Institute of Architects (SA Chapter)
The Association of Consulting Architects (SA)
The Master Builders Association of South Australia Inc.

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INTRODUCTION

Members of the Australian Institute of Architects (SA Chapter), the Association of Consulting Architects SA and the Master Builders Association of South Australia Inc, unanimously agree that this guideline document represents the best interests of tenderers, clients and the industry as a whole, to maintain methodical, consistent and transparent procedures for tendering building works.

The Associations consider that well managed tenders are demonstrated to more accurately and efficiently capture the true nature, value and risk profile of a project. The outcome in relation to costs, time and effort benefit not only tenderers and clients, but also to the building industry inclusively, from developers, to the community and the overall economy.

While the statements contained in the following Guidelines are recommended procedures only, the Associations strongly attest that these Tendering Guidelines represent best practice tendering principles and will therefore encourage positive contractual relationships for the best possible outcomes.

The Guidelines reflect requirements under the National Code of Practice 1997, the SA Government Code of Practice for procurement and Australian Standard AS4120.

The Guidelines reinforce the requirement that principles of ethical behaviour must be adhered to by all parties, at all times, and at all levels. These Guidelines also take into account the advent of electronic tendering and the special considerations which may arise from this medium.

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As these Guidelines should apply at all levels of contracting, the terms 'client' and 'tenderer' used in these Guidelines should be read as being applicable to each link in the procurement chain.

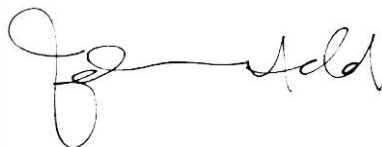
I.e. a contractor will act as a tenderer when dealing with their principal, and as a client when seeking tenders for subcontract packages from subcontractor tenderers. Likewise, references to 'architects' should be read to include other tender issuers or agents for owners.

It should be noted that these Guidelines have been drafted with a traditional "fixed price lump sum"/"construct only" delivery perspective, but that these principles are generally applicable in other forms of procurement.

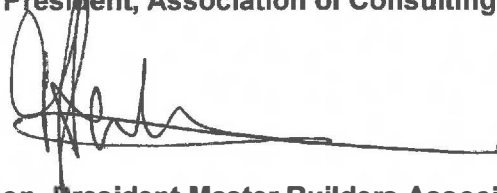
The Associations jointly recommend that architects, project managers, or anyone preparing to tender for projects, refer to these Guidelines when preparing their tender documents, and ensure that their clients are fully informed of these recommendations.



Mario Dreosti, President, Australian Institute of Architects SA Chapter



John Held, President, Association of Consulting Architects South Australia



Peter Salvesson, President Master Builders Association of South Australia Inc.

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1. General

Commitment to Tender

- 1.1 Tenders should not be called unless there is a firm commitment by the client to proceed with the work.

COMMENT: *Tendering for building works is expensive and the costs involved in tendering form a significant part of a building company's overhead expenditure. When unethical tender practices prevail, or if the process of calling tenders involves wastage of time and resources, then the resultant increase in tendering costs are reflected in building costs for all other projects.*

Accuracy and Completeness of Contract Documentation

- 1.2 All contract documents must be complete, accurate and unambiguous (See further [4. Quality and Accuracy of Documentation](#) below).
- 1.3 Tender documents should be issued in good faith and with a genuine and reasonable expectation that they are in the form that will be approved. Any changes to approved documents (or documents to be approved) should be clearly and promptly identified to tenderers if they should arise.

Fair Tenders

- 1.4 Any system used to select tenderers and successful contractors must not only be fair and equitable, but must be seen to be fair and equitable.
- 1.5 All tenderers should receive a fair and equal opportunity to submit their tenders on a reasonable and comparable basis.

Confidentiality

- 1.6 Confidentiality of tenders should be preserved.

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- 1.7 No one tenderer should be given information not provided to all other tenderers.
- 1.8 The site should be available for inspection by all tenderers at some appropriate time during the tender period.

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2. Tenderers Selection

Methods of selecting Contractors for Tendering

- 2.1 **Private or Selected Tenders** are defined as those received following notification by the tendering authority to a limited number of tenderers, selected because of their proven experience and recognised ability and capacity to undertake particular work.
- 2.2 **Negotiated Tenders** are defined as those where a single tenderer is engaged in negotiation to arrive at an acceptable agreement. Negotiations **must be completed** with the original tenderer prior to calling for an alternative tenderer. Prices negotiated should not be disclosed to others for the purpose of inducing lower prices.

Equality of Tendering Groups

- 2.3 **Registered Interests** are defined as those received following the placing of an advertisement or notice in a newspaper, periodical or public place notifying that tenders are to be called and requesting those interested in tendering to register their interest in an appropriate manner. It is normal to indicate that from the list of registrants, a number of tenderers will be selected; it is recommended that the number be restricted to six.
- 2.4 **Makeup of Tenderers** - selection criteria and group of tenderers.

Tenderers should be drawn from contractors with appropriate experience and expertise (including where applicable having satisfied any registration or prequalification process) and holding the requisite licenses. This will help to ensure that the tenders received are such that the winning contractor is capable of successfully carrying out the project.

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In the event that an 'Expression of Interest' (EOI) or 'Registration of Interest' (ROI) process is undertaken, the intent should be to offer the full market opportunity to demonstrate suitability for the project based on non-price criteria. Information sought for an EOI or ROI process should be based on project requirements and could be expected to include items such as:

- Capability and relevant experience
- Resources and capacity to undertake the project

It is recommended that the number of tenderers be restricted to six (6) tenderers.

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3. Tender Period and Changes to Tender Documents

Time spans for Tendering

- 3.1 The tender period should be adequate for the complexity of the work and allow sufficient time for tenderers to visit the site, to study the tender documents and prepare a tender. More particularly:
- (a) For works of greater magnitude and/or a more complex nature, the period between availability of complete tendering documents and the date for receipt of a tender should not be less than one month (20 working days).
 - (b) For works of a more simple or routine nature the period between availability of complete tendering documents and the date for receipt of a tender should not be less than three (3) weeks (15 working days).
 - (c) For works of a minor nature with limited involvement by subcontractor trades the period between availability of complete tendering documents and the date for receipt of a tender should not be less than two (2) weeks (10 working days).

Clients should be aware that much of the industry shuts down over the Christmas period and in January each year, and adjust tender periods accordingly.

- 3.2 Where amendments or clarifications are required to tender documents, Addenda should be issued to all tenderers in sufficient time for the pricing of addenda so that all tenderers have adequate opportunity to forward copies to subcontractors pricing particular sections of the work.

Alternatively, the tender period should be extended.

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COMMENT: *Risks when addenda released without sufficient time. If sufficient time is not allowed on the release of addenda, then difficulty may subsequently arise for the builder, with cost ramifications for the project, when comparing prices received from the trades as to whether all the prices have been prepared on the same extent of works incorporating all addenda issued. Tender qualifications are thereby encouraged or lower prices discarded resulting in a possibility of more extensive and protracted post tender negotiations or higher prices.*

3.3 The purpose of addenda is to:

- Answer tenderer's requests for essential explanations and clarifications in regard to the issued tender package;
- Give directions concerning any discovered inconsistencies in issued tender documents;
- Provide any essential additional documentation detail of a minor nature **substantially within the scope of the issued documentation**;

Addenda should be limited to the above. **They are not intended to be a vehicle for extended design/documentation, nor for substantially changing the scope of the Works.**

3.4 The addendum should be forwarded to tenderers and provision made for written acknowledgment with the tender submission.

Procedure and timing for issue of Addenda

3.5 An addendum should generally not be issued later than five (5) working days before the closing date for tenders.

It may be appropriate for minor addenda items to be negotiated with the lowest tenderers rather than distribute to all tenderers with a possible time extension and increased costs.

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4. Quality and Accuracy of Documentation

Co-ordination of Consultant's Documentation

- 4.1 Those responsible for issuing tender documents have an obligation to see that, so far as is reasonably possible, tender documents are complete, coordinated, complementary and sufficient for accurate tendering, and as free from omissions, errors, inconsistencies and ambiguities as possible. The consultant team should be engaged under suitable conditions to provide such documents.

Procedures for handling inconsistencies in Documentation

- 4.2 Tenderers, upon the discovery, (or upon being made aware by their subcontractors), of any such inconsistencies or flaws in documentation, should immediately seek corrective resolution and direction from the architect, which the architect will then issue to all tenderers.
- 4.3 In the event of a tenderer believing that proper and clear directions have not been received in any such matters, the tenderer should identify the scope of the effect of such deficiencies as conditional items in the tender.

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5. Bill of Quantities and other methods of measurement

Bills of Quantities Procedures

- 5.1 Where quantities are prepared by a quantity surveyor, they should be measured in accordance with the Australian Standard Method of Measurement and should form part of the contract documents.

COMMENT: *Where quantities are prepared, but do not form part of the contract documents, they are of little use and are often disregarded by the group of tenderers.*

Advantages of Bills of Quantities

- 5.2 Providing a bill of quantities can have many advantages, including:
- (a) conserves industry resources;
 - (b) ensures tenderers bid on a common basis;
 - (c) more clearly defines variations to the works and assists in the valuation of variations;
 - (d) assists in the regulation of progress claims and payments;
 - (e) more accurate estimating, and a better ability to adjust estimates to changing briefs and budgets; and
 - (f) cross-checking by the quantity surveyor and an opportunity for correction and co-ordination of all documentation for final estimate (price bill) before going to tender. *(This forces the provision of adequate programmed time for this exercise).*

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6. Tender Documentation

Procedures for and extent of Documents in Tender package

- 6.1 The tender documents should list all the documents that are referred to or issued at the time of calling tenders including site and geotechnical reports and any documents upon which nominated sub-contractors have been asked to submit prices. All relevant information which would be of assistance to tenderers in preparing their bids should be made available to them.
- 6.2 Tender documents must state the contract to be used and should include a fully completed appendix to the contract.
- 6.3 Where possible tender documents should identify the form of contract that will be entered into between the client and successful tenderer in its entirety, including amendments to the standard form in the case of a standard form contract.
- 6.4 Tender criteria should be clear and transparent, and where there are multiple criteria, indication should be given of their relative importance or weighting. Selection criteria will not necessarily only be the lowest cost offering and may include matters such as program, risk, and team composition. This requires some care – for example, it should not be indicated that early practical completion date is the client's first priority where in fact the client will select a lower cost offering that is later.

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7. Tender Closing

Time for closing of tender

- 7.1 The time for closure of tenders should be between the hours of 3pm and 5pm on a weekday, except that closure should not take place on a Monday, a public holiday, a rostered day off or an industry closure day; nor should closure of tenders occur on the day immediately following a public holiday, a rostered day off or an industry closure day.
- 7.2 No tender price submitted orally should be considered. Late tenders should not be considered.

Procedures for submission of Tenders

- 7.3 Tenders should be submitted in plain sealed envelopes marked to show the name of the works, and delivered by mail or by hand.
- 7.4 In instances where distance between the tenderer's office and the place for receipt of tenders causes timing difficulties (e.g. interstate), tenders may be sent by email transmission, provided that this has been previously arranged with the tendering authority and security arrangements are observed.
- 7.5 Evidence of time delivery should be procured by the tenderer. Time stamps should be kept from an email server, document management system, or by Australia Post as applicable.
- 7.6 Delivery of tenders is at a tenderer's risk until acknowledgment of receipt from the client or their architect is received.

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8. Tender Evaluation

Time for appraisal

- 8.1 The consideration of tenders is a matter of priority and should be carried out with a minimum of delay. It is in the client's best interest and that of the industry to award a tender as soon as is practicable and in any event within the originally stipulated tender validity period. A tender validity period should be kept to 30 to 60 days, depending on circumstances.

Evaluation timing and procedures

- 8.2 **Low tenders.** Where a confirming tender is submitted which is significantly low in comparison with the estimate and or other tenders and doubt exists in the opinion of the architect as to the ability of that tenderer to perform the work for the price tendered, discussion should be initiated by the architect to ascertain that the tenderer has sufficient capacity and resources to complete the work at that price and that a mistake has not been made. A tenderer should be invited to review that tender and be given the option to withdraw it or leave it as submitted. Other tenders should not be discussed with the tenderer.
- 8.3 **Additional Information,** technical data, rates, schedules etc. should not be requested of all tenderers, unless there is some specific reason. Technical data, rates, schedules etc. should be requested of the preferred tenderer only prior to acceptance of the tender. Such information should be delivered within two (2) working days.

A breakdown of tender prices, preliminary schedules, technical data and lists of sub-contractors should not be requested of all tenderers as a condition of tendering, but such request may be made to the lowest tenderer.

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- 8.4 Subject to item 8.2 above, clients should negotiate first with the tenderer that best meets the tender criteria (whether price is the only criterion or other criteria are also relevant). To this end and without limitation, if after tenders have been received, the client instructs the architect to reduce or increase the scope of works, negotiation should be carried to finality with the first selected tenderer before any other negotiations commence with other tenderers.

In such negotiations, the tenderer with whom negotiation is required should immediately be available for discussions with the architect. Should the tenderer refuse to cooperate with the architect or agreement not be reached as to the basis for adjustment, the architect may then approach any one of the remaining tenderers to adjust the scope of the work as tendered.

- 8.5 A tender validity period should be kept to 30 to 60 days, depending on circumstances. The period should be honoured and should not be extended except in exceptional unexpected circumstances.

- 8.6 **Conforming tenders.** For the purpose of fair and reasonable competitive tendering, all tenderers should submit a tender which conforms with the tender documents.

An alternative may be offered if requested.

- 8.7 **Confidentiality.** All information provided between tenderers and the Owner shall be treated as confidential information. Both the tenderer and Owner shall undertake to maintain that information and commercial in confidence.

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8.8 **Non-preferred tenderers.** Non-preferred tenderers should be notified that their tender is assessed as not preferred, as soon as possible after notifying the preferred tenderer of their preferred status, and in any event after the end of the tender validity period.

Feedback should be provided by clients (or their architect) to non-preferred tenderers upon request.

Prior to tender the architect and client should agree on the level of feedback that is appropriate in the specific circumstances of the project.

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9. Post Tender Negotiations

Should no tender submitted be accepted by the client, the architect, after notifying all tenderers to that effect, may negotiate with the conforming tenderer (who best meets the tender selection criteria), to arrive at a satisfactory, amended tender.

Negotiation should not proceed with more than one tenderer at a time.

Negotiation should be completed with the first preferred tenderer before any other negotiations commence with other tenderers.

It is recommended that if tenders for a proposed contract are received, and the work is not proceeded with, then tenders based on the original documents should not be recalled for a period of at least six (6) months.

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10. Contract Conditions

Advantages of Standard and established Contract Forms

10.1 Standard forms of contract that have been developed through consensus by industry bodies representative of the whole industry are to be preferred to contract forms that have not been negotiated with industry because:

- they are recognisable;
- precedents exist as to their interpretation;
- they appeal to the widest range of contractors and clients;
- they have a principled approach to the allocation of obligations and risks that reflects market standards, as well as which party is best able to deal with those obligations and risks; and
- they have compatible standard form sub-contracts.

To a significant degree these advantages are eroded or lost if standard form contracts are heavily amended. Amending standard form contracts can alter risk allocation, complicate contract administration, add transaction costs and have unintended consequences for the operation of a contract if not done carefully by specialist legal practitioners.

Procedures for making changes to Standard Contract Forms

10.2 Appropriate standard forms of contract should be specified according to size and complexity of the project to be undertaken.

Standard forms of contract should be used without amendments, but where amendments are incorporated they should be clearly identified, in some way, possibly by:

- Making hand-written amendments to the standard printed form

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- Filling out an annexure to the conditions of contract
- Specifying special conditions of contract in the specification / conditions of tendering

10.3 Security

Procedures for Providing Security

The amount of “security” should not exceed 5% of the contract sum.

Where the security provided by the builder is in the form of a retention fund, as distinct from the provision of a bank guarantee or insurance bond from an acceptable insurer, the percentage to be retained from progress claims until the security percentage is reached, should not exceed 10%.

The conditions of contract appendix item should be filled in accordingly.

10.4 Liquidated Damages

Procedure for estimating provision for Damages

The rate contained in the appendix must be a genuine pre-estimate of damage as at the date the parties make the contract.

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11. Electronic Tendering

- 11.1 The process for lodgment of tenders must be clearly outlined in the tender documents and the following principles adhered to:
- a) The client (and their auditors, where applicable) should be able to verify that there was no collusion, price shopping or other behaviours not in accordance with the code of tendering.
 - b) The client should have the option of witnessing the opening of tenders.
 - c) If tenders are submitted electronically, a system should be in place to record the time of receipt, file integrity of the tender and a way to record when and by whom the tender was opened.
 - d) If emailing of tenders is considered acceptable by the client, a hard copy of the tender postmarked or otherwise time stamped should be forwarded to comply with (a).

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