

5.5 TENDER ADVERTISING, SUBMISSION AND RECEIPT

INTRODUCTION

- 1 This chapter applies to all procurements conducted in Defence and the Defence Materiel Organisation (DMO).
- 2 This chapter examines the policy associated with the advertising, submission, opening and recording of tenders, and late tenders. This policy is referenced in standard Defence contracting templates to ensure that tenderers are aware of the applicable requirements.
3. For the purposes of this chapter, the term tenderer should be interpreted as meaning any potential supplier responding to request documentation issued by Defence and DMO, and is not limited to a supplier responding to a Request for Tender.

MANDATORY POLICY

- **All procurement officers must comply with the *Commonwealth Procurement Guidelines (CPGs)*, including all mandatory requirements identified in this chapter. Mandatory requirements are denoted by the term ‘must’.**
- **All non-campaign advertising must be placed through Adcorp Australia Pty Ltd.**
- **All potential suppliers participating in a procurement must be required to lodge submissions in accordance with a common deadline.**
- **Where a tender is delivered by fax, tenderers must fax their entire tender, including the pricing details and the signed ‘declaration by tenderer’ page, to the Tenders and Advertising Officer. A hard copy of the document must also be received through the Tender Room within one working day.**
- **Where the deadline is extended for any reason, or where negotiations are terminated and potential suppliers are permitted to lodge new submissions, the new time limit must be applied equally to all potential suppliers.**
- **Late tenders must not be accepted for any procurement, except where:**
 - **the tender is late due solely to Defence or DMO mishandling; or**
 - **the Procurement Approver has determined that a Defence or DMO specific exemption applies in accordance with chapter 1.2 and Special Counsel to the CEO DMO (SCCEO) has approved its acceptance.**

OPERATIONAL GUIDANCE

DEFENCE POLICY

- 4 The tender process follows the core procurement principle of ‘value for money’ set out in the CPGs, and the three supporting principles of: efficient, effective and ethical use of resources; accountability and transparency; and compliance with Government policies that interact with procurement.
- 5 Tenders should be treated as commercial in confidence, with information restricted to those officers with ‘need to know’. See chapter 3.11 for further information. All tenders should be kept secure and sealed until the designated opening time. Procedures should be in place for receiving, storing, opening, registering, handling and filing tenders following the processes outlined in this chapter.

MINIMUM TIME LIMITS FOR COVERED PROCUREMENTS

- 6 Defence should provide sufficient time for potential suppliers to prepare and lodge tenders.
- 7 For covered procurements,¹ where a notice advising of an open approach to the market or the issue of an invitation to potential suppliers to participate in a restricted tender process has been issued electronically, the time limit for potential suppliers to lodge a response must be at least 25 calendar days from the date and time of publication of the notice.²
- 8 Where the notice of approach to the market has not been issued electronically, the 25 calendar day response period must be extended to 30 calendar days.³
- 9 The time limit may be reduced from 25 calendar days to not less than 10 calendar days where:
- details of the procurement have been published in an Annual Procurement Plan on AusTender, at least 30 calendar days and not more than 12 months in advance, and these details include a description of the procurement, the estimated timing of the approach to the market, and the procedure for obtaining the request documentation;
 - the procurement is for commercial property or services. That is, property or services of a type that are offered for sale to, and routinely purchased by, non-government buyers for non-government purposes, including any modifications common in the commercial marketplace and any minor modifications not common in the commercial marketplace;
 - in the case of second or subsequent approaches to the market for procurement of a recurring nature; or
 - the genuine urgency of the requirement renders the normal time limit impracticable.
- 10 Covered procurements undertaken through direct sourcing (see Chapter 5.3) need not comply with these time limits⁴ however, sufficient time must still be allowed for the tenderer to respond.
- 11 Where conditions for participation require potential suppliers to undertake a registration or pre-qualification procedure, the time limit for responding to the registration or pre-qualification requirement must be included in the request documentation. Conditions of this nature must be published in sufficient time to enable all interested suppliers to complete the registration and qualification procedures within the time limit for the procurement.

PROCEDURES FOR ADVERTISING TENDERS

Tenders and Advertising Officer

- 12 The role of the Tenders and Advertising Officer is to arrange all Austender advertising (and print media advertising where requested) and provide advice regarding the applicable policy and procedures in relation to tender advertising. The Tenders and Advertising Officer is also responsible for tender room management and for organising booking for tender room registrations, opening and collection.

AusTender Advertising

- 13 Defence must publish all open approaches to the market on AusTender⁵ (www.tenders.gov.au). In addition, Defence may decide to advertise in newspapers or other

¹ Refer to chapter 1.2 for more information on covered procurements.

² CPGs Paragraph 8.58

³ CPGs Paragraph 8.59

⁴ CPGs Paragraph 8.32.

⁵ CPGs Paragraph 7.17

print media, however what appears in print must be identical to what is published on AusTender.

- 14 The area conducting the procurement is responsible for placing the advertisement on AusTender however, AusTender ATM Reporting User access will be required. The Tenders and Advertising Officer listed in Annex 5E can assist in arranging this access, as can the Department of Finance and Deregulation (Department of Finance) AusTender Helpdesk on 1300 651 698. In addition, the Tenders and Advertising Officer should be contacted **before** the tender closing date is set and the advertisement placed on AusTender to ensure availability of the Tender Room, otherwise tender receipting may be delayed.
- 15 AusTender uses the United Nations Standard Products and Services Classification (UNSPSC) codes for the classification of work, goods and services. Typing in the key word on the relevant AusTender screen generates the relevant UNSPSC code.

Print Media Advertising

- 16 Defence must place all non-campaign advertising through Adcorp Australia Pty Ltd (Adcorp). Tender advertising falls within the Department of Finance's definition of non-campaign advertising. Defence officials wishing to use the services of Adcorp will need to deal directly with the company including opening an account.
- 17 A display advertisement allows the procurement officer to provide a detailed description of the tender. It is the procurement officer's responsibility to organise the display advertisement with Adcorp. A list of advertising deadlines for major newspapers is provided at Annex 5F.
- 18 To organise an advertisement through Adcorp, email cas@adcorp.com.au Adcorp will explain the advertising process and what information is required to place an advertisement.

TENDER SUBMISSION AND TENDER ROOM REQUIREMENTS

- 19 Many of the procedures outlined in this section represent best practice and may not be applicable to every tender process. Whilst all mandatory policy must be complied with, discretion should be applied in the application of the other policy, specifically the formal tender room process.

Tender Closing Date, Time and Place

- 20 All potential suppliers participating in a procurement must be required to lodge tenders in accordance with a common deadline.⁶ The tender closing date, time and lodgement place should be clearly nominated in request documentation and in the advertisement for publicly available opportunities. A tender closing time of 12:00 noon local time is suggested. This time has been selected as it enables Commonwealth personnel sufficient time, following the close of tenders, to record and process tenders prior to the close of business. A tender closing time of 12:00 noon local time also ensures that the Commonwealth will be aware of any late tenders that are received. Given the different time zones across Australia the words 'Close of Business' should not be used, as this phrasing may cause confusion.
- 21 Due to the potential for misunderstanding regarding tender closing time, splitting tender closing times for different aspects of the same tender should be avoided.
- 22 Tenders should not be advertised as closing on a weekend or a public holiday. Tenders should not close a week before, or a week after, the standard Defence Christmas stand-down period.
- 23 Any tender released during this Christmas stand-down period must not have this period count as part of the minimum time for a tender to be open to the market outlined in paragraphs 6 - 11.

⁶ CPGs Paragraph 8.56.

- 24 Procurement officers selecting the tender closing time should give due consideration to the impact that the tender closing time will have on Defence personnel involved with the receipt and opening of tenders, as well as the ability of the Commonwealth to determine whether tenders received were submitted prior to the tender closing time.

Advice to Tenderers

- 25 The procedures and processes that must be followed by tenderers when submitting tenders to Defence as outlined in this chapter are referenced in standard Defence contracting templates to ensure that tenderers are aware of the applicable requirements.

Receipt of Tenders

- 26 Procedures to receive all tenders must guarantee fairness and impartiality, and must treat tenders in confidence.⁷ Tenders should be received into a secure environment such as a tender room. Tenders can only be accepted in the manner prescribed in the request documentation.⁸

Tender Room

- 27 There are a number of tender rooms located throughout Defence. Addresses are provided in Annex 5G. These facilities cannot be utilised without first consulting the contact officer listed at Annex 5E. Before advertising the tender, procurement officers should contact the appropriate officer listed in Annex 5E to check the availability of a tender room. The contact officer will require the following details:

- the title of the tender;
- a reference number;
- the number of responses anticipated; and
- the volume of the responses, including the number of copies requested.

- 28 Tender rooms should be double-locked and each of the keys should be kept separately under secure conditions.

- 29 The following articles are required for opening a tender and should be kept inside the tender room:

- the tender room attendance book;
- the tender closing register;
- two perforating machines;
- stand alone computer;
- photocopier;
- instructions for duties of witnesses and Tenders and Advertising Officer (refer 5H);
- a stamp marked 'Department of Defence' with space for two witnesses' signatures and the local registration number; and
- a number stamp; and
- a tender receipt book.

These items should not be removed from the tender room.

⁷ CPGs Paragraph 8.67.

⁸ FMG 13, Section 8.1

- 30 Tender room management is the responsibility of the contact officers listed at Annex 5E. Procurement officers should acquaint themselves with any tender room practices specific to their region.

TENDER LODGEMENT PROCEDURES

Delivery Method

- 31 Tenders can only be accepted in the manner prescribed in the request documentation. Request documentation may specify that tenders may be lodged in a number of formats, e.g. by mail/courier service, by hand, and/or, facsimile that has been endorsed by the Defence Security Authority. Receipt of tenders by email may be appropriate in very limited circumstances, such as simple procurements and use of Standing Offer panels, where this method of receipt is agreed by the Procurement Approver.

Mail/Courier Service

- 32 Tenders should be receipted in accordance with the requirements of Part 8 of the *Defence Security Manual*. For SAFEBASE ALPHA and BRAVO conditions, tenders should be lodged through the tender rooms listed at Annex 5G, after consultation with the Defence Advertising Officers listed at Annex 5E. A receipt will be issued upon request to the person delivering the tender. If the SAFEBASE level rises above BRAVO, seek advice from your Regional Security Office (see paragraph 33). Where delivery is by post, arrangements should be made with the relevant registry in order to ensure that the tenders are left unopened and they are date and time stamped by the registry. Tenders should be clearly identified as tenders with tender number, etc on the outside of the envelope or package (see paragraph 43).

Mail/courier Service Canberra Only (SAFEBASE BRAVO and above)

- 33 All tenders should be delivered to the Mailroom Manager or Assistant Manager (see Annex 5G) who will issue a receipt to the person lodging the tender. The delivery times that tenders will be accepted are between 0830-1230hrs and 1400-1600hrs Monday to Friday. Details of the tender are to be recorded on XC49 'Safe Hand Schedule of Documents Despatched'. Tenders are to be placed in a secure area until delivery via Dial-A-File or Safe Hand courier to the Tenders and Advertising Officer. Tenders are to be transported in a secure bag with a Safe Hand crimp.

Facsimile

- 34 If the request documentation did not specify that tenders could be delivered by fax then tenderers cannot fax their tenders. There are a number of risks associated with the receipting of tenders by fax such as transmission problems that result in the receipt of only part of the tender and problems with the quality of faxed copies. For these reasons, the delivery of tenders by fax is not the preferred delivery method and should only be used for simple and less complex procurements. Any fax used for the receipting of tenders should be located in a secure environment. If a tender is to be faxed then all of the following processes apply:
- the Tenders and Advertising Officer should be contacted and advised when a facsimile tender is to be/being transmitted;
 - for accountability and transparency reasons, tenderers should be advised when faxing a tender response to send it through the Tenders and Advertising Officer, not the procurement officer;
 - tenderers must fax their entire tender, including the pricing details and the signed 'declaration by tenderer' page to the Tenders and Advertising Officer.
 - tenders delivered by facsimile are to be placed immediately in the tender room; and
 - a hard copy of the document must also be received through the tender room within one working day. The facsimile response will be treated as the original.

- 35 It is the responsibility of the procurement officer, not the Tenders and Advertising Officer, to look for any discrepancy between the original (facsimiled) and hard copy.

Electronic Tender Box

- 36 Currently there are no Defence approved electronic tender box products. Accordingly, electronic tender box solutions should not be employed for Defence tendering.

Security Conditions (SAFEBASE BRAVO and below)

- 37 Procedures for security conditions other than SAFEBASE ALPHA and SAFEBASE BRAVO should be prepared on a case by case basis. The *Defence Security Manual*, provides general guidance on SAFEBASE protective security measures. Requests for advice and/or guidance should be directed to the Defence Security Authority on (02) 6266 2633.

TENDER COLLECTION AND OPENING PROCEDURES

Tender Collection

- 38 The Tenders and Advertising Officer will control access to the tender room. The witnesses should be present when tenders are removed from the tender room. All tenders received should be treated as commercial in confidence (or higher classification where appropriate) and retained under secure conditions. A secure condition includes the (locked) tender room.

Tender Opening Procedures

- 39 Procedures to open all tenders must guarantee fairness and impartiality, and must ensure tenders are treated in confidence.⁹ Tenders should not be opened until after the closing date and time has been reached.¹⁰
- 40 Procurement officers should note that the time taken to complete a tender opening process is dependant on the number and size of the tenders received. Most Major Capital Equipment tenders require two days for the tender opening process to be completed, although the process can take up to four days for very large tenders.
- 41 It is best practice that the opening and recording of tenders be carried out by a minimum of three officers, those being the Tender Supervising Officer and two witnesses. The role of the Tender Supervising Officer (of which there can be more than one in a large tender receipting process) is to receive all tenders, supervise the conduct of the tender and ensure probity and compliance with the Tender Room and opening procedures outlined in the CPGs and the DPPM. The Tender Supervising Officer may be the same person as the Tenders and Advertising Officer,
- 42 Neither the Tender Supervising Officer nor the two witnesses should be involved in the evaluation of the tender. Further advice on the roles of witnesses and the Tender Supervising Officer is available at Annex 5H.
- 43 General rules are that:
- the Tender Supervising Officer and witnesses should be permanent Departmental employees;
 - no personnel other than the Tender Supervising Officer and the witnesses should be permitted in the tender room at any time during the tender opening process;
 - no officer should be permitted to leave the tender room during the tender opening period without the express permission of the Tender Supervising Officer; and

⁹ CPGs Paragraph 8.67

¹⁰ FMG 13 Section 8.1

- if a change in witnesses is necessary, then the witness that is to be replaced should complete the current tender he/she is working on before leaving. Procurement officers should provide the Tender Supervising Officer with reasons as to why the witness is being changed. This advice should be in writing.
- 44 For ease of identification, all tenders should have a tender identification number, title and closing date and time on the outside of the envelope. If for any reason tenders are received without an identification number or title, they should be opened by a receipting officer and one permanent Departmental employee not involved in the evaluation of the tender to ascertain their identity. If the opened tender is found not to relate to the current tender opening they should be resealed and labelled with an appropriate identification number, title and closing date and should remain in the tender room. Some tender responses may contain disks or CDs. These should be registered by stamping or writing the same number used on the original response, on the disk or CD cover. Where possible, disks and CDs should be checked to make sure they are readable.
- 45 The envelopes from which tenders are taken should be retained until the opening and recording process is complete. The envelopes are to be checked by the Tender Supervising Officer, in the presence of the witnesses, to ensure they are empty.
- 46 If procurement officers note that an expected tender is missing, the Tender Supervising Officer should be contacted to ascertain whether the tender response has been placed in the wrong tender room.

EXTENSION OF CLOSING DATE AND/OR TIME

- 47 Occasionally, tenderers ask for an extension of the closing date and/or time. As a general rule extensions should not be needed or given. However, in those instances where it would be in the Defence's interest to extend the date and/or time, this can be done provided that there is sufficient time before the original closing date and/or time for all potential tenderers to be advised of the revised closing date and/or time.
- 48 Where the deadline is extended for any reason, or where negotiations are terminated and potential suppliers are permitted to lodge new submissions, the new time limit must be applied equally to all potential suppliers.¹¹
- 49 It is for this reason that it is important to have a formal record of all potential tenderers who received the request documentation. Tenderers who have already complied with the original closing date may otherwise claim to have been disadvantaged if they subsequently discover that the closing date has been extended.

LATE TENDERS

- 50 Defence policy requires that request documentation stipulate the exact closing date and time for the submission of tenders. There may be occasions where, for a variety of reasons, a tender is received after the nominated closing date and time. In such cases, any tenders received after the closing date and time must be considered late and dealt with in accordance with the late tender policy.
- 51 The late tender policy should be included or referenced in all request documentation where competitive tenders are sought. All ASDEFCON templates reference the late tender policy.

Late Tenders policy

- 52 Commonwealth policy on the handling of late tenders is contained in the CPGs (paragraphs 8.63 – 8.66) and in Financial Management Guidance 13, (*FMG 13*) – *Guidance on the Mandatory Procurement Procedures – January 2005* (paragraph 8.1)

¹¹ CPGs Paragraph 8.62

- 53 In Defence, a late tender must not be accepted for any procurement, except where:
- the tender is late due solely to Defence mishandling; or
 - the Procurement Approver has determined that a Defence or DMO specific exemption applies in accordance with chapter 1.2, and Special Counsel to the CEO DMO (SCCEO) has approved its acceptance.
- 54 Mishandling by a courier or mail service provider engaged by a tenderer to deliver a tender does not constitute mishandling by Defence. It is the responsibility of tenderers to ensure that their tender is dispatched in sufficient time for it to be received by Defence by the closing date and time.
- 55 The decision on whether Defence accepts the late tender should be made before the tender is opened.

Late Tender process

- 56 Where a late tender has been received, the Tender Supervising Officer should:
- advise the tender contact officer that a later tender has been received;
 - determine whether the tender is late due to mishandling by Defence; and
 - advise the tender contact officer whether mishandling has occurred.
- 57 Where mishandling has occurred, the late tender should be registered by the Tender Supervising Officer in the same manner as the other tenders.
- 58 Where mishandling has not occurred, and the procurement is subject to a Defence or DMO specific exemption as outlined in paragraph 53 above, the tender contact officer should refer the matter to the Tender Evaluation Chair to determine whether to exclude the late tender from further consideration. Factors that should be taken into account when making this decision include:
- whether the tenderer had an opportunity to obtain any form of unfair advantage from the late submission; and
 - the time that has elapsed between the tender closing date and time and the time and date of the late submission.
- 59 If the Tender Evaluation Chair Chairperson determines that the late tender should be included, the Chairperson must seek the agreement of SCCEO to admit the late tender to evaluation. The tender contact officer should advise the Tender Supervising Officer that the late tender is to be accepted, and make arrangements for the tender to be registered in the same manner as the other tenders.
- 60 The reasons for either accepting or rejecting the late tender should be recorded in the Source Evaluation Report. When approving the Source Evaluation Report, the Contract Approver cannot override this decision.
- 61 If the decision is made to reject any late tender, it should be collected by the tender contact officer from the receipting officer and returned to the tenderer unopened and clearly marked as a 'late tender'. The tenderer must be notified of the exclusion of its tender due to late submission.
- 62 Where the outside of the late tender has no indication of which tender process it is responding to, or there is no return address, the tender may be opened. Where this occurs, the tenderer should be advised that the tender has been opened for this reason only.

Further Advice

- 63 Advice on the policy aspects of advertising, receiving, opening and recording of tenders may be obtained by contacting the Contracting Help Desk on 1800 100 605 or via email at contracting@defence.gov.au.

KEY REFERENCES

- ***Commonwealth Procurement Guidelines 2008***
- **Department of Finance and Deregulation Financial Management Guidance (FMG) 13 – *Guidance on the Mandatory Procurement Procedures – January 2005***
- ***Defence Security Manual***

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