Finance and Accounting Manual

Procurement: Tendering Procedures

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OVERVIEW

1. **Purpose**

These Procedures are a supplement to the University's Procurement Policy and apply to tendering for the acquisition of goods and services from suppliers external to the University, valued at $200,000 and above (GST inclusive).

The acquisition of goods includes purchasing and leasing of goods. The acquisition of services includes contractor and consultant services, but excludes services provided by staff employed through the University payroll, and any services provided to Investment and Capital Management in connection with the University's investment portfolio.

2. **Coverage**

These Procedures apply to all University activities including activities undertaken by Foundations, Centres, Controlled Entities (as defined in the University's Controlled Entity Policy) and any other entity which has entered into an agreement with the University, and such agreement includes a term which requires it to comply with the University's purchasing policy and associated procedures.

KEY ASPECTS OF THE TENDERING PROCESS

3. **Open tendering**

University tenders should be open to the public so that the market is assessed for the goods or services required. There are two ways this may be done, either by fully Open Tender or a multi-stage tender which initially involves the calling of an Expression of Interest ("EOI"), followed by a Selective Tender. **The Procurement Services Department must approve all Open Tender proposals and the Chief Procurement Officer must approve all EOI proposals.**

4. **Invited tendering**

Invited Tendering may be used instead of Open Tendering in certain circumstances. Invited Tendering occurs when specific suppliers are invited to tender for goods or services rather than the tender being open to any suppliers. **The Chief Procurement Officer must approve all Invited Tender proposals, with the exception of using approved pre-qualified supplier panels.**

5. **Documentation**

Accountability requires comprehensive documentation for all tenders. Detailed justification of all key decisions made, especially the selection of the tenderer, must be recorded on an official Records Management file from the time that a decision is made to tender until the finalisation of the contract. Documentation must be available to show that the tendering process is not only fair but also that it is seen to be fair. All communications with tenderers must be documented.

6. Confidentiality

All tenderer information and tender documents received are to be treated as confidential. The confidentiality and anonymity of tenderers must be maintained throughout the tender process.

PROCEDURES

7. Strategic planning

It is important that a proper strategy be planned. Staff involved must ensure that the objectives of the project being tendered are clarified and that clear specifications are developed and funding identified.

8. Types of Tenders

There are three types of tendering for the acquisition of goods or services:-

- Open Tender
- Multi-Stage Tender
- Invited Tendering

8.1 Open Tender

Open Tendering tests the market in a transparent manner. Tenders are advertised publicly and no restriction is placed on the number of tenderers. All prospective bidders are given the same tender documentation, subject to the registration of interest process outlined in Section 14.1.

The Procurement Services Department must be consulted on all Open Tender proposals.

8.2 Multi-Stage Tender

Multi-stage tendering may be used to cull a large number of respondents and identify the best service providers in a particular well-supplied market that are interested in providing the relevant goods or services. It also limits the number of tenderers to those able to demonstrate the requisite capability in the first stage.

Multi-stage tenders may be used:-

- to establish a panel of suitable suppliers for a specific category of goods or services;
- to identify suppliers with suitable proposals for complex procurements.

The first stage in multi-stage tendering is an Expression of Interest (EOI) or Request for Proposal to invite interested suppliers to register their interest against the requirements listed in the EOI document.

The second stage in multi-stage tendering is a Selective Request for Tender to invite suppliers shortlisted in the first stage to a submit proposals in response to specific criteria outlined in the Request for Tender (RFT) document.

8.2.1 Expression of Interest

The EOI document must state what further processes are expected beyond the first stage of the tender process.

The University would then short-list interested suppliers with the ability to undertake the particular product supply or services required. These prequalified tenderers would be asked to indicate their availability to tender in the second stage, a Selective Request for Tender.

The Chief Procurement Officer must be consulted on all EOI proposals.

8.2.2 Selective Tender

In this case tenders are called for a specific contract in a second stage from short listed service providers identified in the EOI stage.

Tenderers are required to submit tenders to respond to specifications identified in the Request for Tender document, such as price, capacity, expertise and experience.

The Chief Procurement Officer must approve all selective tender proposals, with the exception of using approved pre-qualified supplier panels.

8.3 Invited Tendering

Invited Tendering may be used:-

(i) in emergency situations
(ii) for specialist work
(iii) in special circumstances where only one or a limited number of suppliers are known to be able to carry out the work, or
(iv) for low value, low risk activities.

Invited Tendering involves issuing RFT documents to known available suppliers assessed as the most capable of delivering the goods or services required.

The Chief Procurement Officer must approve all proposals for invited tendering.

9. Tender Waivers

The need to run a tender may be waived in exceptional circumstances. Refer to section 8 in the Procurement Policy.

10. Tenders requiring a Non-Disclosure Agreement

In certain circumstances, the Procurement Services Department may require an interested tenderer to accept and sign a Non-Disclosure Agreement before receiving the tender documentation.

11. Tender Evaluation Team

All tenders must have a Tender Evaluation Team to ensure the probity of the tender process. The Tender Evaluation Team must consist of at least three members, including a representative from the Procurement Services Department as well as other people who have the relevant technical knowledge of the goods or services required. For Campus Infrastructure and Services (CIS) managed tenders, the Procurement Services Department representative may be replaced with a CIS representative who has been trained and approved by Procurement Services Department.

- One member of the evaluation team is to be external to the area requesting the tender and may come from outside the University.
- The representative from the Procurement Services Department (or CIS for CIS managed tenders) will be the Team Leader who will be the tender contact and the only member of the Team permitted to communicate with tenderers.
- Tenders relating to information and communications technology must also have a representative from Information Communication Technology.
- Evaluation Teams for approved Capital Works programs or approved Repairs and Maintenance Programs must have a representative from Campus Infrastructure and Services.

Tender Evaluation Team members must not have a vested or perceived interest in the outcome. A Conflict of Interest declaration will be distributed to the Evaluation Team members prior to the commencement of evaluations by the Team Leader and anyone with a conflict of interest must declare this conflict and disqualify themselves from the tender. Refer to the University's Code of Conduct and Corruption Prevention Strategy for details.

Tender Evaluation Team members can seek external assistance and advice on specific aspects of the tender. This assistance must be co-ordinated through the Tender Evaluation Team Leader.

12. **Request for Tender Documentation (RFT)**

Documentation for tenders is to be prepared by the Procurement Services Department using University-approved RFT templates and include as a minimum requirement:

(a) **Invitation to Tender**

This is a general statement of the purpose of the tender and disclaimers associated.

(b) **Conditions of Tendering**

These are principal tendering conditions and will include provisions concerning:-

- Interpretation
- Issue of Tender Documents
- Invited Tenderer To Become Informed
- Queries During Tender Period
- Addenda
- Pre-Tender Meeting/Site Inspection
- Tender Closing Time
- Lodgement Of Tenders
- Tender Preparation Costs
- Contents Of Tender
- Post-Tender Submission
- Alternative Tenders
- Tender Validity
- Assessment And Acceptance Of Tender
- Disclosure Of Tender Information And Announcement
- Liability
- Annexure 1 To Conditions Of Tendering - Tender Specific Information
- Location tenders are to be submitted to (eTenderBox tender web lodgement address)
- Closing date and time for the receipt of tenders
- Name and contact details of the Tender Evaluation Team Leader.

(c) **Assessment Criteria**

These are the principal selection criteria that tenders will be assessed on:-

- Capability Assessment

  This assesses the experience of the tenderer and the capability and qualifications of the key personnel. This includes:-
  - the tenderers track record
  - references
  - the tenderers financial and managerial capacity to deliver the goods and/or services
  - environmental and sustainability assessment

- Technical Assessment
  This assesses whether the tender meets the requirements set out in the specification.
- Contractual Assessment
  This assesses any qualifications or variations included in the tender.
- Financial Assessment
  This assesses all financial issues included in the tender.
- Long Term Assessment
  This assesses the long term implications of the tender.

(d) **Specifications and Contractual Requirements**

These are the tender specifications for the goods or service required and the structure of responses. Tender specifications must be clear and specific and included in the documentation to tenderers. The specifications are to be prepared by the Procurement Services Department in conjunction with the area requesting the tender, by people who have the relevant technical knowledge of the goods or services required.

A clear statement on the structure of responses required from tenderers will assist in evaluating tenders. Tenderers should be requested to provide the same information on key issues (including financial issues) to enable comparison between tenders.

Tender specifications must be written so they are not restricted to or favour a particular brand or supplier, to ensure that the tender selection is an open and fair process.

A draft pro forma Agreement document will be provided to tenderers with the tender documentation

13. **Agreements Arising from Tender Outcome**

The successful tender will require the execution of a formal Purchase Contract/Agreement.

Agreements will be prepared on Standard University Agreements (Procurement) templates provided by the Office of General Counsel, approved in accordance with the Delegations of Authority – Administrative Functions and signed by the Chief Procurement Officer, or the Director of Campus Infrastructure and Services for CIS managed tenders.

Agreements arising from tender outcomes are to be on a Standard University Agreement (Procurement) Template will include the following details:-

- the term of the Agreement, including options for extensions
- a detailed description of the goods and/or services to be supplied and when (Statement of Work/Work Order)
- any specification about the nature or quality of the goods or services to be supplied
- any variations to the goods or services or financial arrangements allowed and a process for variation
- ownership of intellectual property rights
- any insurance obligations indemnities from the supplier
- any confidentiality provisions
- any guarantees required
- the financial arrangements, including amounts and timing of payments, and supplier expenses allowed

- any foreign exchange rate fluctuation obligations
- provisions for default and termination
- any winding down obligations at the end of the agreement
- assigning or sub-contracting contract obligations

14. Advertising Tenders

The call for Open Tenders and Expressions of Interest will be advertised in the Sydney Morning Herald every fortnight. Other, additional methods of advertisement may also be utilised from time to time. **The Procurement Services Department must approve all tender advertisements, with the exception of CIS managed tenders.**

Public advertisements must include:-

- an adequate description of the tender to allow prospective tenderers to decide whether they wish to prepare a tender, or a link to the location where this information is available;
- the location where the tender documents may be obtained, including the name, telephone number and email of the contact officer;
- a tender reference number;
- where tenders are to be lodged (eTenderBox tender web lodgement address) and the closing date and time; and
- any other important dates and deadlines.

The University will endeavour to ensure that the time given between the release and the closing date of the tender is sufficient to allow a tenderer to study the tender specification and prepare a bid; however the final duration will be determined by the Procurement Services Department.

14.1 Registration for Documentation/Information on Tenders

Interested suppliers must register interest in a specific tender by providing their details at the eTenderBox tender web lodgement address. Suppliers can automatically avail themselves of/download all tender documentation after registration for a specific tender, and payment of the tender fee as set out in 14.4, is complete.

All potential tenderers are to be given the same documented information. Any background material given to one potential tenderer is to be supplied to all potential tenderers. A record must be maintained of the distribution of background material.

Confidentiality about tenderers must be maintained and therefore no group emails or letters identifying the supplier are to be issued.

14.2 Extending the tender closing date

If it is necessary to extend the tender closing date, all registered suppliers (as per 14.1) will be informed via an addendum issued by the Procurement Services Department.

14.3 Amendments to tender documents

Where amendments or clarifications to tender documents are required, a numbered and dated addendum will be issued to all registered suppliers (as per 14.1) via an addendum issued by the Procurement Services Department, in sufficient time to allow for their consideration before the tender closing date. If an addendum that reflects a substantial change to the original tender documents is issued less than five working days prior to the tender closing date, then the tender closing date may be extended.

14.4 Charging for tender documentation

A fee will be charged for the registration of interest and supply of the tender documentation. The Chief Procurement Officer must approve any charges for tender documentation. Information on the fee payable and the payment methods accepted will be provided at the pre-registration stage at the eTenderBox tender web lodgement address.

The fee will be non-refundable and may be reviewed from time to time.

15. Receipt and Registration of Tenders

All tenders are to be lodged in the University's eTenderBox at the tender web lodgement address.

The eTenderbox will be opened after the tender closing date and time. Details of the tenders received are registered by the eTenderBox on a schedule/register which includes:-

- tender details;
- tender reference number and tender name;
- tender closing date and time;
- date and time the tender box was opened; and
- supplier name, time submitted and a unique identifier for each file.

All tenders received must be kept in a secure location.

Tenders will only be accepted in the University's eTenderBox. Tenders submitted by facsimile, email, hand delivery, post or any method other than via the eTenderBox will not be accepted, except in exceptional circumstances with express approval from the Procurement Services Department.

Tenders that are not uploaded to the eTenderbox prior to closing time will be deemed to be a late tender.

16. Late Tenders

Late tenders must not be considered, except when the University is satisfied and can demonstrate that the integrity and competitiveness of the tendering process would not be compromised.

Late tenders may be considered when verifiable circumstances are confirmed by the University, such as:-

- exceptional circumstances, such as the tender being the only tender or a natural disaster affecting all tenders equally, that ensure the integrity and competitiveness of the tendering process would not be compromised by considering the late tender;
- the tender left the control of the tenderer prior to close of tenders and confidentiality of the tender was maintained before it was opened;
- control of the confidentiality of tenders before the scheduling of tenders guarantees no enhancement to the late tender occurred using knowledge of the other tenders;
- the RFT documents stipulate that lateness is not a bar to consideration.

Acceptance of a late tender will be at the discretion of the Tender Evaluation Team Leader.

17. **Evaluating and Assessing Tenders**

The Tender Evaluation Team Leader obtains the schedule/register of tenders received and the tender documents for evaluation. The methodology, format and detailed criteria for the evaluation are to be documented and agreed to by the Tender Evaluation Team prior to the commencement of the evaluation. Assessments must be undertaken in a timely manner.

Each member of the Tender Evaluation Team is to evaluate the tenders independently and then the Team together will consider and agree on the results. Supporting documentation must be comprehensive and include the decisions arrived at in making the assessment and reasons for the recommended tender, especially where the lowest tender is not accepted.

The Tender Evaluation Team Leader is to prepare a report for the Tender Board on the evaluation and assessment process taken. The report will include a recommendation on the successful tenderer(s) and action required. Justification for the selection of the recommended tender is to be included. Each member of the Tender Evaluation Team will sign the evaluation document to confirm that member's concurrence to the outcome and then this report is to be submitted to the Tender Board.

There are five components in the tender evaluation process:-

- **Capability Assessment**

  This assessment covers the experience of the tenderer and the capability and qualifications of the key personnel who will be working under the proposal.

  Reference checks are essential. The Capability Assessment must cover:-
  - tenderers track record
  - confirmation of references provided
  - tenderers financial and managerial capacity to deliver the goods and/or services
  - a credit reference check
  - tenderers policy on risk management and their corresponding program
  - tenderers occupational health and safety management practices and performance
  - tenderers workplace and industrial relations management practices and performance
  - tenderers environmental management practices and performance
  - tenderers insurance cover (e.g. public liability, professional indemnity, workers compensation, etc)
- **Technical Assessment**

  The technical assessment will establish whether the tender meets the requirements set out in the specification and, if not, the significance of any variation from that specification. Any modifications proposed in the tender are to be checked for acceptability. Where the tenderers own facilities are proposed to be used the capacity to meet the workload should be verified. Any innovations offered and value adding components are to be assessed.
- **Contractual Assessment**

  The contractual assessment establishes the acceptability of any contractual qualifications or variations stated in the tender, particularly where these propose variations to delivery or quality. The cost and other effects of any acceptable variations will be taken into account and legal advice may need to be sought.

- **Financial Assessment**
  The financial assessment will identify all relevant costs and benefits and the calculation of annual costs and/or net present values of the competing tenders. The initial one-off costs, the ongoing costs associated with maintaining the goods and/or service, and the costs on expiry of the contract, including penalties and discounts, should be identified and calculated. Consideration needs to be given to any exchange rates, payment terms, installation, training, transportation and insurance costs.
- **Long-term Assessment**
  An analysis must be undertaken on the long term implications to the University, including contract failure, risk of a single supplier, information and communications technology implications, costs, expiry of the contract and replacement of equipment, consideration of end of life including cost and method of reuse, recycling or disposal, decontamination.

18. **Clarification of Tenders**

If important information received in a tender is not clear then clarification can be requested from the tenderer. The clarification sought from the tenderer must not give the tenderer an unfair advantage over the other tenderers or allow the tenderer to revise or enhance its original tender.

The Tender Evaluation Team cannot trade-off one tenderers prices against other tenderers' prices in order to obtain lower prices.

19. **Modifications and Re-tendering**

During the tender evaluation process, if the Tender Evaluation Team decides to make substantial modifications to the original tender, then it will be necessary to recommence the tendering process. An opportunity must be given to each original tenderer to submit a new tender. Comprehensive documentation must be retained that shows why the substantial modifications are necessary and demonstrates that the modifications are consistent with the original requirements of the user department.

The Chief Procurement Officer is to approve the re-tendering proposal.

20. **Post Tender Negotiations**

Where there are no acceptable tenders, negotiations may be conducted with the tenderer submitting the least unacceptable tender, or the tender which conforms most closely to the requirements and provides best value for money (the 'best tender').

Where tenders are ranked by a systematic method, for example, by scoring tender prices and other evaluation criteria, the tender with the best ranking would normally be regarded as the best tender.

There are also instances when the University may negotiate with an acceptable preferred tenderer to improve outcomes. Any negotiation process should be transparent, recorded and conducted in a manner that does not disadvantage other tenderers.

If none of the tenders are acceptable following negotiation it will be necessary to close the tender and re-tender. **The Chief Procurement Officer is to approve the re-tendering proposal.**

21. **Acceptance of Tender**

The Tender Board are to approve all tenders valued at $200,000 and above. Following formal Tender Board approval, a "letter of acceptance" is to be issued to the successful tenderer. The letter of acceptance must state that the acceptance of the tender is conditional upon execution of a contract satisfactory to the University.

All other tenderers are to be notified in writing that they were not successful. Unsuccessful tenderers can request a debriefing with the Tender Evaluation Team Leader. Debriefings should explain how their tender performed against the evaluation criteria, rather than against the successful tender.

The letter of acceptance and letters to unsuccessful tenderers are to be prepared by the Tender Evaluation Team Leader and signed by the Chief Procurement Officer, or the Director of Campus Infrastructure and Services for CIS managed tenders.

If none of the tenders are acceptable it will be necessary to close the tender and re-tender. The Chief Procurement Officer is to approve the re-tendering proposal.

22. **Dealing with Queries from Unsuccessful Tenderers**

Tender information is commercially sensitive and therefore must be handled and protected appropriately. The disclosure of information could prejudice the commercial interests of the companies submitting the bid and the bargaining power of the University in the future. Unsuccessful tenderers can be advised of the name of the successful tenderer, the contract price and, in the case of a higher price having been accepted, the reasons why their offer was not successful. The University may wish to inform the unsuccessful tenderer about the weaknesses in their bid in comparison made against the tender selection criteria, but not the other bids.

Some tips to remember are:-

- Ensure all tenderers are aware of the sole contact person.
- Ensure relevant people in your department/unit are aware of the sole contact person, do not answer any questions themselves, and refer questions to the correct person.
- Ensure all communications are documented so that there can be no argument about what was said.

23. **Agreements Arising**

All tenders will require a written Agreement between the University and the successful tenderer. The draft Agreement provided with the tender documentation will form the basis (refer to section 13 above for details).

In most cases, Agreement negotiations between the University and preferred tenderer will be finalised prior to the Tender Board approval for the acceptance of a tender.

Agreements are to be signed by the Chief Procurement Officer or the Director of Campus Infrastructure and Services for CIS managed tenders.

24. **Variations to Approved Agreements/Purchase Orders**

Variations up to 10% on the approved amount do not require additional approval by the Tender Board. Except for contracts for approved major capital works for building projects, variations in excess of 10% require Tender Board approval for the revised total. Refer to part 6.5 of the Delegations of Authority Administrative Functions for delegations in relation to contracts for approved major capital works for building projects.

RELATED INFORMATION

25. **Resources and Weblinks**

References

- University eTenderBox tender web lodgement address
  sydney.edu.au/procurement_services/supplying/etender
- Code of Conduct
  sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/65&RendNum=0
- Corruption Prevention Strategy
  sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/69&RendNum=0
- Procurement Policy
  sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/40&RendNum=0

26. **University procedures superseded or replaced by this procedure**

- Purchasing: Tendering Procedures – 13 December 2011

CONTACTS AND REVIEW

27. **Contacts**

- **Procedure Interpretation and Application**
  Waivers, Selective Tendering and Processing of Tenders
  Chief Procurement Officer
  Phone: (02) 9114 0963 Fax: (02) 9036 5386
  Email: procurement.services@sydney.edu.au
- Chair of the Tender Board
  Deputy Chief Financial Officer
  Phone: (02) 9351 2399 Fax: (02) 9351 3680
  Email: matt.easdown@sydney.edu.au
- **Audit and Probity Matters**
  Director, Audit and Risk Management
  Phone: (02) 9351 2415 Fax: (02) 9351 3596
  Email: craig.prosser@sydney.edu.au

28. **Review**

The Chief Financial Officer will approve changes to financial procedures and guidelines and will co-ordinate changes to financial policy, with the Vice-Chancellor delegated to approve University financial and infrastructure policy.

Amendments to forms, schedules and weblinks will be processed by Financial Services.

Amendments to the Finance and Accounting Manual procedures and forms are listed in the Financial Services website under:-

- FAM Amendments
- Amendments to Forms

Please forward suggestions and comments on the Finance and Accounting Manual via the Feedback Form.