



# Compiler guidance note

## Component document: C1.1 - Form of Offer and Acceptance

### Function and broad outline of contents

The form of offer and acceptance formalises the legal process of offer and acceptance. As such it contains:

- a) the offer to provide the supplies, services or engineering and construction works for a price, or in accordance with the terms of the financial proposal made,
- b) confirmation from the employer that he accepts the tender offer following his tender evaluation, and that a contract therefore exists, and
- c) a schedule of deviations which records any agreed changes to the documentation that occur between receipt of the tender offer and award of contract.

### Notes

This **Form of Offer and Acceptance** is based on the wording provided in Annex C of the Standard for Uniformity in Construction Procurement. Sub-clause 4.4.1.3 of the Standard requires that this Form of Offer and Acceptance together with the schedule of deviations be used with minimal contract specific amendments to form the basis of an agreement arising from the solicitation of tender offers.

The schedule of deviations documents the agreed departures from the tender documents and serves as a record of the outcomes of any negotiations between offer and acceptance.

It should be noted that:

- a) The extent of deviations from the tender documents issued by the employer prior to the tender closing date is limited to those permitted in terms of the conditions of tender.
- b) A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, be the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
- c) Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents, and which it is agreed by the parties becomes an obligation of the contract, must also be recorded in the schedule.

The **schedule of deviations** should, in the single volume approach, contain the detail of every change made in terms of addenda issued prior to the close of tenders and all other changes to the wording of the contract arising from the process of offer and acceptance. In the three volume approach, a brief summary of the changes should be provided in sufficient detail so as to allow the reader to understand the nature and extent of the changes. It is not necessary to provide the detail of the changes as these will be incorporated in the final contract documents. In the event that extensive deviations are made, it is preferable to switch to the three volume approach and to incorporate the changes in the final contract documents.

## Commentary

- 1 There are two options provided for in the acceptance portion of the Form of Offer and Acceptance. The process of offer and acceptance is relatively straight forward. The tenderer makes an offer and the employer accepts that offer. The contract comes into effect once the tenderer (now contractor) receives one fully completed original copy of this document. The question that then arises is *“how does one establish the start date for the contract?”*  
  
It is relatively straight forward to establish the date if the contract is presented to the tenderer at the site hand over or when the contractor comes to the offices of the employer and is presented with a completed contract. Where there are large distances between the offices of the contractor and the employer, particularly in the case of low value contracts, or where the site is remote from the employer’s offices. As a result, an alternative option is provided whereby the employer can make use of a courier-to-counter delivery / counter-to-counter delivery / door-to-counter delivery /door-to-door delivery /courier service, provided that the employer notifies the tenderer of the tracking number within 24 hours of submitting the documents to such a service. This provides flexibility in the manner in which the process may be managed.
- 2 In terms of the Form of Offer and Acceptance, depending upon which option is used, the agreement comes into effect either on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any), or two working days after the submission by the employer of such documents to a courier-to-counter delivery / counter-to-counter delivery / door-to-counter delivery /door-to-door delivery /courier service. The tenderer (now contractor) has five working days from the date of such receipt, or within seven working days from the date of such submission to one of the aforementioned services, to notify the employer in writing of any reason why he cannot accept the contents of this agreement, failing which the agreement becomes a binding contract between the parties. The tenderer may only reject the contract on the basis that it does not reflect what was agreed to during the process of offer and acceptance e.g. the contract as issued differs from the draft contract, the schedule of deviations does not capture the addenda that were issued prior to the closing date for tender submissions, the scope of work does not reflect what was agreed to during the process of offer and acceptance etc.
- 3 The Form of Offer and Acceptance requires that the contract terms and conditions be finalized before the contract is entered into. This approach is in contrast to the linking of the formation of the contract to the notification of award. As such the acceptance does not contain wording such as “Until a formal contract is prepared and executed, this tender, together with written acceptance thereof and your notification of award, shall constitute a binding contract between us.”
- 4 The Form of Offer and Acceptance requires that the contractor make arrangements to deliver to the employer’s agent any bonds, guarantees, proof of insurance and any other documentation required in terms of the contract. Failure to provide these documents constitutes a repudiation of the contract.
- 5 The schedule of deviations documents the agreed departures from the tender documents. This schedule is important in public sector contracts as it serves as a record of the outcomes of any negotiations between offer and acceptance.