

As published in Annex H of the CIDB Standard for Uniformity in Construction Procurement in Board Notice 12 of 2009 in Government Gazette No 31823 of 30 January 2009

## H.1 General

### H.1.1 Actions

**H.1.1.1** The employer and each respondent submitting an expression of interest shall comply with these conditions for calling for expressions of interest. In their dealings with each other, they shall discharge their duties and obligations as set out in H.2 and H.3, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anti-competitive practices.

**H.1.1.2** The employer and the respondent and all their agents and employees involved in the submission process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Respondents shall declare any potential conflict of interest in their submissions. Employees, agents and advisors of the employer shall declare any conflict of interest to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

Note:

- 1) A conflict of interest may arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in his or her position even if no improper acts result.
- 2) Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.

**H.1.1.3** The respondent shall not make a submission without having a firm intention and the capacity to proceed with the next stage of the procurement process.

### H.1.2 Supporting documents

The documents issued by the employer for the purpose of obtaining expressions of interest are listed in the submission data.

### H.1.3 Interpretation

**H.1.3.1** The submission data and additional requirements contained in the submission schedules that are included in the returnable documents are deemed to be part of these conditions for the calling for expressions of interest.

**H.1.3.2** For the purposes of these conditions for the calling for expressions of interest, the following definitions apply:

- a) **conflict of interest** means any situation in which:
  - i) someone in a position of trust has competing professional or personal interests which make it difficult to fulfill his or her duties impartially.
  - ii) an individual or organisation is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit.
  - iii) incompatibility or contradictory interests exist between an employee and the organisation which employs that employee.
- b) **corrupt practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process; and
- c) **fraudulent practice** means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels

## **H.1.4 Communication and employer's agent**

Each communication between the employer and a respondent shall be to or from the employer's agent only, and in a form that can be readily read, copied and recorded. Communications shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a respondent. The name and contact details of the employer's agent are stated in the submission data.

## **H.2 Respondent's obligations**

### **H.2.1 Eligibility**

Submit an expression of interest only if the respondent complies with the criteria stated in the submission data and the respondent, or any of his principals, is not under any restriction to do business with the employer.

### **H.2.2 Cost of submissions**

Accept that the employer will not compensate the respondent for any costs incurred in the preparation and delivery of a submission.

### **H.2.3 Check documents**

Check the submission documents on receipt, including pages within them, and notify the employer of any discrepancy or omission.

### **H.2.4 Acknowledge addenda**

Acknowledge receipt of addenda to the submission documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the submission data, in order to take the addenda into account.

### **H.2.5 Clarification meeting**

Attend the clarification meeting(s) at which respondents may familiarize themselves with the proposed work, services or supply (and location, etc.) and raise questions. Details of the meeting(s) are stated in the submission data.

### **H.2.6 Seek clarification**

Request clarification of the submission documents, if necessary, by notifying the employer at least five working days before the closing time stated in the submission data.

### **H.2.7 Making a submission**

**H.2.7.1** Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.

**H.2.7.2** Seal the original and each copy of the submission as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the submission data, as well as the respondent's name and contact address.

**H.2.7.3** Accept that the employer shall not assume any responsibility for the misplacement or premature opening of the submission if the outer package is not sealed and marked as stated.

### **H.2.8 Information and data to be completed in all respects**

Accept that submissions, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

### **H.2.9 Closing time**

Ensure that the employer receives the submissions at the address specified in the submission data not later than the closing time stated in the submission data. Proof of posting shall not be accepted as proof of delivery. The employer shall not accept submissions submitted by telegraph, telex, facsimile or e-mail, unless stated otherwise in the submission data.

Accept that, if the employer extends the closing time stated in the submission data for any reason, the requirements of these conditions for expressions of interest apply equally to the extended deadline.

#### **H.2.10 Clarification of submission**

Provide clarification of a submission in response to a request to do so from the employer during the evaluation of submissions.

### **H.3 Employer's undertakings**

#### **H.3.1 Respond to clarification**

Respond to a request for clarification received up to five working days before the submission closing time stated in the submission data and notify all respondents who attended the clarification meetings, if any, of those responses.

#### **H.3.2 Issue Addenda**

If necessary, issue addenda that may amend or amplify the submission documents to each respondent during the period from the date of the calling for expressions of interest until seven days before the closing time for submissions stated in the submission data. If, as a result, a respondent applies for an extension to the closing time stated in the submission data, the employer may grant such extension and, shall then notify it to all respondents.

#### **H.3.3 Late submissions**

Unless otherwise stated in the submission data, return submissions received after the closing time stated in the submission data, unopened, (unless it is necessary to open a submission to obtain a forwarding address), to the respondent concerned.

#### **H.3.4 Opening of submissions**

**H.3.4.1** Record the name of each respondent whose submission is opened and acknowledge receipt of each submission.

**H.3.4.2** Make available the names of the respondents that made submissions prior to the closing time for submissions to all interested persons upon request.

#### **H.3.5 Non-disclosure**

Not disclose to respondents, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of submissions until after the evaluation process is complete.

#### **H.3.6 Grounds for rejection and disqualification**

Determine whether there has been any effort by a respondent to influence the processing of submissions and instantly disqualify a respondent if it is established that he engaged in corrupt or fraudulent practices.

#### **H.3.7 Test for responsiveness**

Determine, on opening and before detailed evaluation, whether each submission received:

- a) meets the requirements of these conditions for the calling for expressions of interest;
- b) has all the substantive provisions properly and fully completed and signed, and
- c) is responsive to the other requirements of the call for expressions of interest.

#### **H.3.8 Non-responsive submissions**

Reject all non-responsive submissions.

#### **H.3.9 Evaluation of responsive submissions**

**H.3.9.1** Appoint an evaluation panel of not less than three persons. Evaluate submissions using the evaluation criteria established in the submission data.

**H.3.9.2** Notify the respondents of the outcome of the evaluation process within two weeks of the evaluation report being accepted by the employer.

**H.3.10 Provide written reasons for actions taken**

Provide upon request written reasons to respondents for any action that is taken in applying these conditions, but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of respondents or might prejudice fair competition between respondents.