

FEEDLOT DESIGN AND CONSTRUCTION

47. Project tendering

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Introduction

When a lot feeder is seeking to have construction works carried out, some form of procurement process will be involved. There are a variety of different methods for procurement, all of which can be used for some level of construction works.

Project tendering is the process by which bids are invited from interested construction contractors to carry out specific packages of construction work. It is a common procurement method to obtain construction services. The tendering process is an important means by which a fair price and best value for undertaking the works is obtained.

Lot feeders should aim to obtain value for money whenever they procure construction services. This requires clear project definition and selection of the best delivery method for the project (See *Section 45 – Feedlot construction delivery*) before embarking on the tendering process.

The tendering process should adopt and observe the key values of fairness, clarity, simplicity and accountability, as well as establish the concept of apportionment of risk to the party best placed to assess and manage it. The principle of tendering is to ensure that true competition is achieved, and tenders received are evaluated by applying certain criteria. These criteria may be expressed in terms of financial matters, comprising a simple assessment relating to tender sums, or more complex financial evaluation, including consideration of projected costs over the life cycle of the completed project. It can also address other non-financial factors such as time, proposed methods, levels of capability; or sometimes a mixture of all these criteria. All tenderers should be able to bid on an equal basis, meaning that they must receive the same information and, most importantly, this information should be sufficient in content and accuracy to allow them to properly assess the implications of the project and bid accordingly.

The tendering process is not always easy, and every activity in the tendering process has a time and cost implication. Therefore, it makes economic sense not to overburden the tenderers with unnecessary information requirements, and to concentrate on those which are relevant to the work which is to be undertaken. Faced with competing financial pressures most construction contractors will carry out their own assessment of the projects for which they wish to tender, and will be less inclined to bid for those where the procedures involved are perceived as overly complicated or onerous. Also, since preparation costs are included in their overheads, these will ultimately be passed on in the form of higher prices.

Tendering can also be used for the procurement of plant and equipment not associated with a construction project.

Project tender objectives

The objectives of the tendering process are to

- provide an environment that encourages interest and competitive offers from suitably qualified and experienced construction contractors

- obtain a fair price and best value for undertaking construction works
- obtain a clear understanding of the rights and obligations of all parties
- allow resolution of general issues requiring clarification to all tenderers
- allow resolution of specific matters only relevant to a particular tenderer's bid
- reduce the likelihood of misunderstandings and disputes during the construction phase
- secure a construction contractor to undertake and meet the required project scope, time, cost and quality parameters.

Mandatory requirements

All project tenderers must comply with the Competition and Consumer Act 2010. The Australian Consumer Law prohibits anti-competitive practices, also referred to as restrictive trade practices, by businesses or individuals.

Ethical standards

It is mandatory that tenderers do not engage in any uncompetitive behaviour including, but not limited to, the following

- agreement between tenderers as to who shall be the successful tenderer and the payment of unsuccessful tender fees
- payment to any third party of monies, incentives or other concessions which do not relate to the provision of bona fide services relevant to the object of the tender, contingent upon the success of the tender
- acceptance or provision of secret commissions
- submission of cover tenders (i.e. tenders submitted as genuine but which have been deliberately priced and structured in order not to win the contract or commission)
- entering of any improper commercial arrangements with any other contractors, subcontractors, suppliers, agents or any other party
- seeking to influence contract decisions by improper means
- acceptance of incentives to provide contracts or services to other contractors, subcontractors or suppliers that financially disadvantage the lot feeder.

Project tendering choices

There are a variety of approaches in which a lot feeder may approach the market and conduct the tender process. These include

Call for Registration (CFR) - A Call for Registration is an approach to market used by a lot feeder to seek details about potential suppliers of a good or service.

Expression of Interest (EOI) - An Expression of Interest is used primarily to determine the market's ability or desire to meet the lot feeder's procurement need, after which the lot feeder may need to collect additional information to make procurement decisions. An

EOI is not an invitation to bid, is not binding on either party and is usually followed by a selective Request for Tender based on a more detailed specification.

Request for Information (RFI) – A Request for Information is commonly used on major procurements particularly if the lot feeder’s requirements could potentially be met through several alternate means. A RFI is not an invitation to bid, is not binding on either party and in some circumstances may be followed by a selective RFT, RFP or RFQ.

Request for Quotation (RFQ) – A Request for Quotation is used when detailed specifications of a good or service are known and competitive bids are to be evaluated, mainly on price.

Request for Proposal (RFP) – A Request for Proposal is used to directly purchase goods or services when the lot feeder clearly understands its business needs but does not have defined details of the solution. This approach is often used for the procurement of professional services.

Request for Tender (RFT) – A Request for Tender is used when a lot feeder is seeking potential suppliers for a scope of work that has been designed and specified in detail. A RFT is often used for building and construction works, plant and equipment and evaluation is based on price and a range of technical factors. This approach is outlined in detail below.

Possible solutions

Typically, the formal RFT process involves three stages which are universally applicable as outlined in Figure 1.

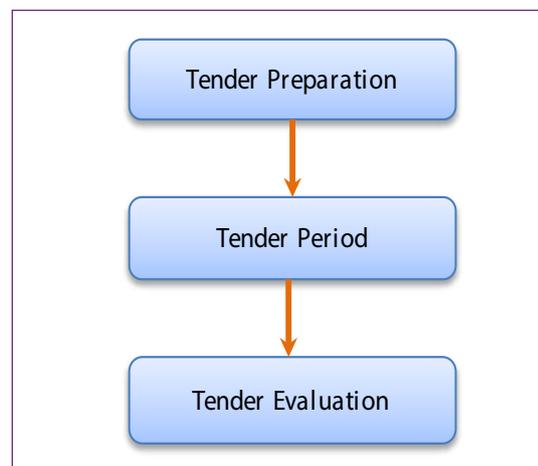


Figure 1. Stages in request for tender process

Each stage has component activities as outlined in the process flow chart in Figure 2. A brief outline of each activity follows.

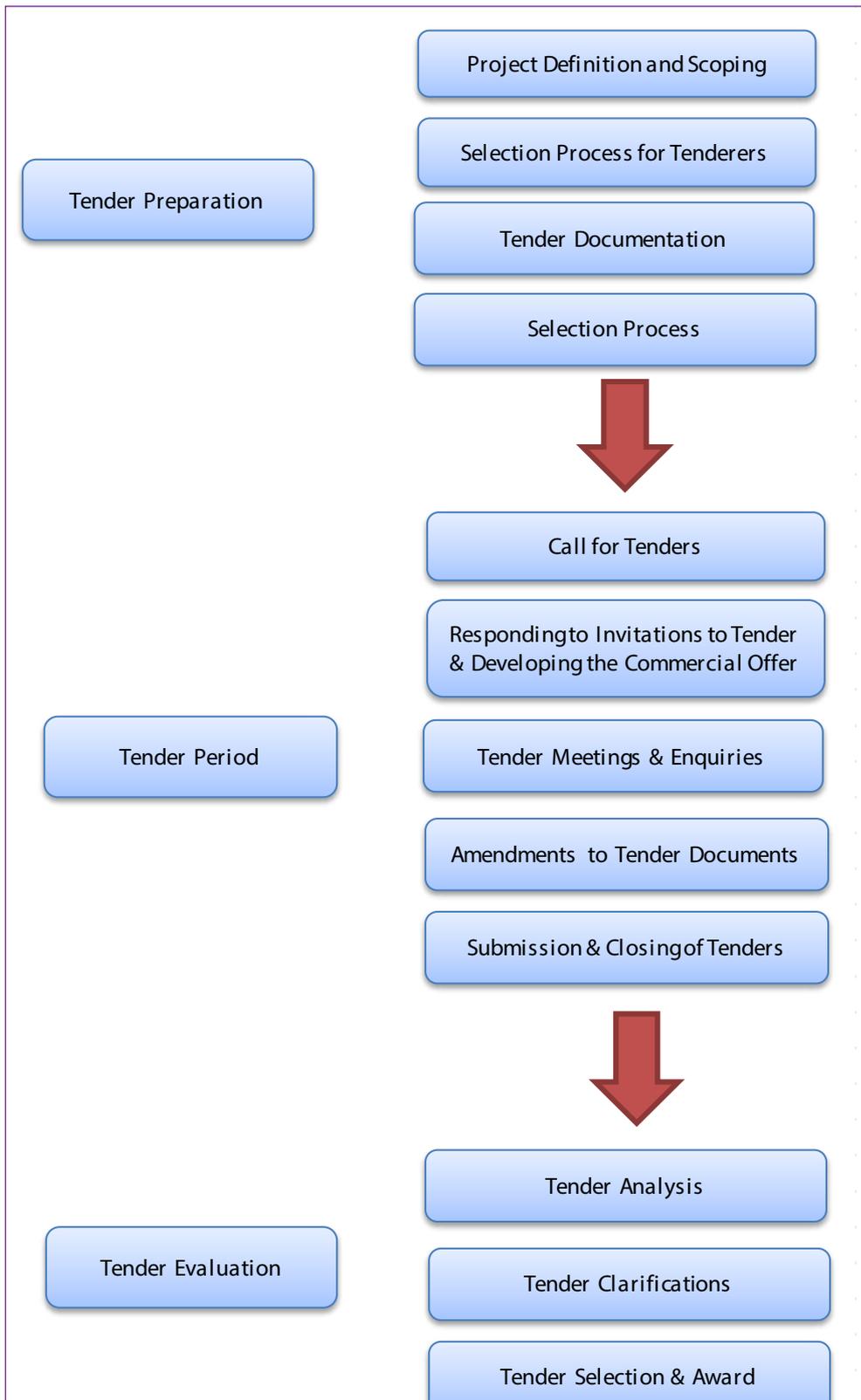


Figure 2. Process flow for tender process activities

Project definition and scoping

The commencement of the Request for Tender (RFT) is the development of the project definition and scope which will set the scene for the success of the entire process. In the best interests of the project, it is recommended that the lot feeder ensures the following

- A Project Brief is prepared that clearly defines the scope of the project for which Tender Documents are to be prepared. This document must define all project requirements (including envisaged functional goals, performance, technical criteria, completion dates or term date requirements) for the project. Any known constraints associated with the delivery of the contract should be identified up front (e.g. public access requirements, availability of land, limits to work, approval conditions). Failure to include all scoping requirements may result in expectations not being met, and disputes or increases in cost at a later date.
- A cost estimate is established based on the scope defined in the Project Brief, which should include the proposed risk allocation between the lot feeder and the tenderer. Costs need to be estimated for all resources associated with the project (including labour, materials and supplies). In this way, the proposed scope may be adjusted in line with the budget.
- A time estimate is established based on the scope defined in the Project Brief. This involves the definition, sequencing and duration estimation of individual project activities.
- A cost/benefit exercise is carried out, taking into account the initial cost estimate, time estimate and expected costs/revenues over the life of the project.
- An appropriate budget is allocated and finance arranged to develop the project.
- Appropriate time is allowed to undertake these activities.

Selection process

The four main processes for the selection of tenderers are outlined in Table 1.

Tender documentation

The content of the tender documentation will vary for particular projects according to factors such as project size, complexity and delivery method. The documents will contain the evaluation criteria, the evaluation procedures and the proposed timing of the evaluation process as outlined in Table 2.

Cost of tender documents

The cost of printing tender documents can sometimes be quite high. A document fee to cover printing costs is sometimes charged, or a refundable deposit is charged to encourage the return of complete and undamaged sets of tender documents.

The amount of any document charge or refundable deposit and the conditions for return of deposits must be clearly stated in the tender advertisement.

Table 1. The selection process

Selection process	Description	Examples
Open or public tenders	The lot feeder invites tenders by way of public advertisement without restriction on the number of tenders received.	Simple projects that are low risk and low cost.
Selected/ approved/invited tenderers	The lot feeder invites a select number of tenderers for a particular project. In some cases, the lot feeder will have an established register of approved contractors for particular types of work. In these cases, tenderers have a recognised capability to undertake the type of project planned. Tenderers are generally invited on a rotational basis. The register of contractors needs to be reviewed and updated on a regular basis.	Repetitive works regularly carried out by a lot feeder. Specialised projects.
Pre-qualified tenders	The lot feeder invites expressions of interest by way of public advertisement for pre-qualification for a specific project or specific types of projects. Evaluation is carried out against the defined selection criteria. A selected number of pre-qualified tenderers is then invited to tender.	Complex projects that are high risk and high cost.
Direct negotiation	The lot feeder negotiates with a single tenderer.	Highly specialised projects in which only one entity has the required skill and current capacity to undertake the work.

Table 2. Tender documentation

Document type	Description
Notice to tenderers	This document contains a project summary, a listing of tender documents relating to the project, key dates, validity period of the tenders submitted, contact details, number of copies of the tender required and details of tender submission location and timing.
Conditions of tendering	This document details the overall tender process including the delivery method, probity issues, communication issues, the criteria for selection and the evaluation process.
Tender form and schedules	These documents request specific information from the tenderers concerning the works. For example, tenderers are generally required to provide an overall cost, a breakdown of this cost, a program, details of key personnel, plant and equipment, subcontractors to be used and methodologies. The tender form is a formal statement of the tenderer's offer to supply services in accordance with the tender documents. A useful example of a tender form can be found in Australian Standard AS 2125 - 1992.
Conditions of contract	This document contains the general conditions of contract which sets out the contractual basis for carrying out the works. In addition, special conditions are sometimes included which are unique to the lot feeder and/or project.
Specification	Depending on the type of delivery method chosen, this document may be a project brief or a detailed technical specification of the works. These documents set out the performance and technical criteria for the project. See <i>Section 46 - Design drawings and technical specifications</i> .
Drawings	The number and standard of drawings provided is dependent on the chosen method. See <i>Section 46 - Design drawings and technical specifications</i> .
Additional information	Additional information concerning the project may include Development Approval Conditions, Environmental Impact Study (EIS) reports and other documents relevant to the development of the project.

A non-refundable charge may in some instances discourage the collection of documents by parties who have no interest in submitting a tender.

Lot feeders should consider the following issues relating to refundable tender deposits

- administrative costs of issuing receipts and securing the money
- financial accountability
- damaged documents or alterations to tender documents that make them unsuitable for use in construction or contract management at a later date.

Tender timeframes

The timeframe for tender preparation by the contractor and evaluation by the lot feeder will vary depending on factors such as project size, complexity or external pressures. The lot feeder should ensure that the time allowed for tenderers to prepare tenders and for the lot feeder to evaluate and select tenders is reasonable. Due regard should be given to the costs of tendering.

When preparing tenders, tenderers need time to request prices from their subcontractors and suppliers and to review all the detailed tender documents and specifications. Contractors who are keen to win the project will usually take longer than contractors who are not. As a guide allow four weeks minimum. A longer period would be appropriate for complex or large contracts and for tenders requiring a pre-tender meeting.

Criteria for selection

Before calling tenders, the lot feeder (or consultant) must establish project-specific qualification criteria and decide the relative importance of each. Such criteria need to cover the critical factors on which the success of the project is based. The qualification criteria must be clearly stated in the tender documentation and their order of importance may be indicated e.g. with a simple list. The actual weighting of the criteria need not be disclosed.

Typical criteria for selection include

- **Conformity** – does the tender conform to the requirements outlined in the tender documents?
- **Capability** – this would include previous experience, financial resources, technical resources, quality assurance system, workplace health and safety record, environmental compliance
- **Innovation**
- **Price** – the tendered cost may include whole-of-life as well as capital costs
- **Construction period**

Call for tenders

In the case of open or public tenders called by public advertisement, advertisements must be placed in appropriate newspapers, publications or electronic media at appropriate times so as to attract suitable applicants.

In cases where tenders are advertised, it is recommended that the advertisement includes the following

- an appropriate summary description of the work required
- details of when and where the documents may be obtained
- details of when and where tenders will close
- details of any tender documentation purchase price or deposit and if applicable, the method of obtaining a refund of that cost
- The name, address, telephone number, facsimile number and email address of the lot feeder's contact person.

With respect to procedural issues, it is recommended that the lot feeder ensures that

- A written record is kept of all persons to whom the tender documents are issued. It is also recommended that each tender set be numbered for identification and tracking purposes.
- Tender document deposit monies collected and receipts issued (if required).
- In the case of selected, pre-qualified and invited tenders, the tenderers are informed of the number of tenders being invited.
- No tender price offered orally is received.

Responding to invitations to tender and developing the commercial offer

In the case of selected or invited tenders, where a tenderer decides not to proceed with the tender, the tenderer should promptly advise the lot feeder. In the case of pre-qualified tenders, tenderers should be required to provide an undertaking to tender if selected.

Tenderers should formally acknowledge the receipt of tender documents in writing and promptly advise the lot feeder if they become aware of errors, omissions, ambiguities or discrepancies in the documents.

The tenders submitted should conform to all aspects of the requirements defined in the tender documents.

Tender meetings and enquiries

It is recommended that all information provided between the parties is treated as confidential and commercial-in-confidence. The lot feeder should ensure that

- All briefing meetings held for tenderers are minuted. Minutes are then forwarded to all tenderers and are included as part of the tender documentation.
- The lot feeder contact person responsible for dealing with enquiries from tenderers is to document all such inquiries, noting the time, the date and the issue discussed.
- Information provided to one tenderer is also promptly given to all other tenderers.
- In the case where an enquiry reveals a significant error, omission, ambiguity or discrepancy in the tender documents, the information provided to resolve the issue is promptly forwarded in writing to all tenderers.

Amendments to tender documents

A structured review of the tender documents prior to issue will minimise the requirement to amend tender documents due to errors or omissions.

Where significant issues arise that make it necessary to amend the tender documents during the tender period, the amendments are advised as an addendum, forwarded to all tenderers. Each addendum is issued in sufficient time for all tenderers to consider the amendments properly and fully before tenders close. The tender period may need to be extended, particularly if the addendum is issued late in the tender period.

Each addendum contains a returnable covering sheet so that tenderers can acknowledge its receipt in writing. A statement of confirmation that allowance has been made for each addendum is required in the submission of the tenders.

The lot feeder should ensure that each tenderer acknowledges receipt of each addendum in writing and confirms in their tenders that allowance has been made for each addendum.

Submission and closing of tenders

It is recommended that the lot feeder ensures that

- The security and confidentiality of all tenders received is achieved following the closing of tenders. Procedures for the security of documents, access to documents and the availability of price-sensitive information are to be developed in advance of the closing of tenders.
- Tenders are generally received in a secure tender box and opened in the presence of a specially qualified team (not less than two people).
- One copy of each of the tenders (the original) is separately stored in a secure location from working copies, for reference purposes.
- Typically, the timing of the closing of tenders is
 - not earlier than 2.00 pm.
 - not on a Monday or day following a public holiday.
- Each tenderer is informed in writing that its tender has been received.
- In the event that the lot feeder is prepared to consider late tenders and non-conforming offers, the conditions in the tender documentation should describe how the lot feeder will treat late tenders and non-conforming or alternative offers.

Opening and recording tenders

Tenders should be opened and recorded in a way that maintains the security of the tenderer's intellectual property and that offers no advantage to one tenderer over another. It is good practice to open and summarise tenders as soon as possible after the closing time. The tenders should be opened, checked and recorded by at least two people.

Non-conforming tenders

Tenders which fully comply with tender requirements should be given preference. The lot feeder may consider non-conforming tenders where the tenderer can demonstrate that

- their bid will be more cost effective without jeopardising the desired outcomes and levels of service; and
- the rights and interests of both parties are protected; or
- superior levels of service can be achieved whilst conforming with (a) and (b) above; or
- new cost effective technologies, procedures or techniques are offered which can meet the requirements of (a) and (b) above.

Tenderers who seek to reduce costs by compromising workplace health and safety, service or other factors which would reduce the rights or interest of the lot feeder should be deemed non-conforming and be excluded.

Tender analysis

The importance of assembling an experienced and competent tender evaluation team is critical to the success of the tender process.

Above all, a consistent approach to the evaluation of all tenders is required.

After receipt of tenders, submissions are comparatively assessed against the Criteria for Selection defined in the tender documents. Tenders are likely to contain significant differences, particularly in areas of design, time, cost, risk allocation, durability and operation. Tenders may also differ in terms of certainty of delivery and clarity of content.

A tender that does not comply with the tender documents should be rejected. If a tender is rejected, the reasons for such action are to be clearly documented and communicated to the tenderer.

Tender clarifications

The evaluation team may seek clarification of any issues from applicants, verbally or in writing, but may not solicit new information. The tender clarifications need to be carefully managed to ensure that confidentiality is maintained and tenderers are treated equitably and ethically.

Tender selection and award

The lot feeder should ensure that unsuccessful tenderers are advised in writing that their tenders have been unsuccessful.

In the finalisation of the contract documentation, the lot feeder and successful tenderer shall ensure that the contract incorporates the tender submission of the successful tenderer and any qualifications during the tender process. It is noted that this phase of the process is to settle all outstanding technical, commercial and/or legal issues necessary for finalisation of the contract. It is not an opportunity for either party to vary the final contract price or to materially alter the proposal.

Quick tips

- The tendering process ultimately determines who will undertake the construction works and the process by which a fair price and best value for undertaking the works is obtained.
- Prepare a project brief that clearly defines the scope of the project for which tender documents are to be prepared.
- Select a suitable process for selection of tenderers depending on the nature of the project.
- Prepare adequate tender documentation containing evaluation criteria, evaluation procedures and the proposed timing of the evaluation process.
- Clarify any issues in tenders with the tenderer.
- Allow sufficient time for the tenderer to make a tender submission and the lot feeder to fully assess the tenders received.
- Advise all unsuccessful tenderers in writing.
- Prepare a legally binding contract with the successful tenderer.

Further reading

Standards Australia, 1994, AS4120-1994 Code of tendering, Standards Australia, Canberra, ACT.

Standards Australia, 1997, AS 4000-1997 General conditions of contract, Standards Australia, Canberra, ACT.

Standards Australia, 1995, AS 4300-1995 General conditions of contract for design and construct, Standards Australia, Canberra, ACT.