Introduction: Tendering Systems

Before any of the construction project activities start, there will always be an initial process of submitting a proposal (tender) to manage the undertaking of the project. This process is called tendering process. In construction context, the tender is treated as an offer to do the work for a certain amount of money or a certain amount of profit. They are the very first stage in any construction project processes.

Tendering process also serves as the employer’s way to select the contractor. The selection of a contractor to carry out a project is an important matter to do. It requires careful thought of the employer and his advisors (consultants). A wrong choice may lead to an unhappy relationship between the employer and also the contractor, which will eventually make the appearance of disputes.

Since construction industry is a large and complex industry, any one contractor will not be suitable for any one job. A contracting organization will be geared to work for a particular size or price range and will be unsuitable for contracts outside that range. For example, contractor grade A may not be suitable to carry out projects which are deemed for contractor grade B. Or a State-Owned Construction Company would probably not be suitable to carry out a small construction project or to build a single house in an urban location. The overhead costs of that size of organization would make it impossible for the company to carry out the work for an economic price. Therefore, we need to have the knowledge of tendering system. The main purpose of tendering system is to select a particular contractor for a certain project.

The employer’s professional advisers should aim to find a contractor which is:
1. Financially stable
2. Has a good business record
3. Suitable for the project (experience, size, method, complexity, etc)
4. Efficient organization
5. Has a good record of industrial relations
6. Has a reputation for good quality workmanship
7. Able to start when required

The above requirements may be added more by the employer.

There are various tendering systems in construction industry. Below are brief explanations of some tendering systems, their merits and demerits, and eventually a comparison in relation to cost, time, quality and performance.
**Open Tendering**

This type of tendering system is initiated by the employer’s project manager, architect or quantity surveyor by advertising the desired project in newspapers and other press, inviting contractors to apply for tender documents and to tender in competition for carrying out the work. Usually, a deposit is required in order to discourage frivolous applications, the deposit being returnable on the submission of a *bona fide* tender. Since it is open for all tenderers, this system may require a long process for the employer and consultants to evaluate the tenders.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
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<tbody>
<tr>
<td>There can be no charge of favouritism as might be brought where a selected list is drawn up</td>
<td>Can result in a large number of unsuitable firms tendering for the work</td>
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<tr>
<td>An opportunity is provided for a capable firm to submit a tender, which might not be included on a selected list</td>
<td>Can result in wasted time and effort in the selection process, and therefore, it can increase the total cost of tendering</td>
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<td>It is a competitive process, therefore the employer may get the best prices</td>
<td>There is a danger that the lowest or best tender may be submitted by an inexperienced contractor</td>
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<td></td>
<td>There is no guarantee for the chosen contractor is sufficiently capable of financially stable</td>
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**Selective Tendering**

Under this system, a short list is drawn up of contractors who are considered to be suitable to carry out the proposed project. Experienced employers and consultants will normally have a list of contractors who undertake different types of contracts and their records. Contractors are invited to tender on their proven record in relation to the type and size of contract and their reliability. The contractors may also be invited through suitably worded advertisements in the press, to apply to be considered for inclusion in the tender list. This gives the employer the opportunity to exclude any unsuitable contractors, and to limit the number of tenderers. At the same time, it also gives any contractor the opportunity to apply to be considered.

The criteria that an employer may use to decide upon the suitability of a contractor are:
1. Whether the company has had recent experience of similar projects of a similar standard and completed within the envisaged time scale
2. Whether the company has the skills necessary for the delivery of the project
3. The quality of the company management structure and personnel employed by the company
4. Whether the company has the spare capacity to carry out the work within the proposed time scale
5. The financial standing and record of the company

It is recommended that the number of tenderers should be limited to between five and eight, depending on the size and complexity of the project. If all tenderers are reputable, well-established and suitable for the proposed project, the employer then may select based on the best offered price. This system is commonly preferred method where the employer wishes to save time in assessing the technical and financial aspects of candidates.

<table>
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<td>It tends to reduce time and effort, and eventually will reduce the cost of tendering process</td>
<td>The submit prices will be higher since there being less competition and also due to the higher caliber of the tenderers</td>
</tr>
<tr>
<td>It ensure that only capable and suitable contractors submit their tenders</td>
<td>Has produced problems of ‘ringing’ (contractors phone the employer or consultants in order to get the project)</td>
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**Nomination**

This is a special kind of selective tendering, where the list of candidates contains only one name. It is sometimes referred to as single tendering. It is used when the employer has a preference for a particular company, often because it has done satisfactory work for the employer before.

If only one contractor tenders for the job, there is no competition and it leads to a higher price. The employer may think it is worth paying more, however, in return for a quicker and better quality job. When a contractor is nominated, the contract sum will be arrived at by a process of negotiation. Usually the negotiation will be conducted between one of the contractor’s estimators and the surveyor on behalf of the employer. When agreement on the whole contract is reached, a contract will be entered and signed by both parties.

**Negotiated Tendering**

It is almost same with nomination. The only difference is that in nomination, which is considered as a special kind of selective tendering, consists of only one name and then the only contractor will negotiate the whole matters in contract with the employer. While in negotiated tendering, there may be more than one contractor.

In this system, detailed discussions are held with each of the chosen contractors during which their experience and management expertise is assessed and the contractor offering the skills and knowledge best suited to the project is selected in order to participate, with the employer’s consultants, during the design stage so as to provide advice on buildability, value engineering and construction methods and eventually agree a price for the project which will subsequently form the basis of a contract which will be entered into prior to construction work commencing on site. This system is usually used to employ contractors of a specialist nature, or to extend an existing contract, i.e. where a new tower is added to a building after the construction has been started.

However, it is always possible that the negotiations may break down and both parties reach deadlock and thus necessary to ensure that the employer has the option of being able to break off the negotiation if the impediment to an equitable solution cannot be removed.

<table>
<thead>
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<th>Disadvantages</th>
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</thead>
<tbody>
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<td>The system is useful where other systems cannot attract sufficient tenders or realistic prices, where a special expertise is required or where project costs can be reduced as a result of the contractor already being established on site</td>
<td>The submit prices will be higher since there being less competition and also due to the specialist nature of the tenderers</td>
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<td>Modest savings in time can be achieved using this system</td>
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**Serial Tendering**

This system is normally used on large projects. When a large project is to be carried out in successive phases, there will be a number of contracts. The contractor is chosen for the first phase by means of selective competitive tendering. The accepted tender forms the basis of payment for the resulting contract in the normal way. The tender is also used for the second and later phases, provision being made for so doing in the initial contract by the inclusion of a formula for updating the prices. Alternatively, the contract for the first phase may specify negotiation of new rates, based upon the tendered prices, as the means of determining the payment for each successive phase in the series.
The purpose of this system is to gain the benefits of continuity. The contractor for the first phase will have his site organization set up, his offices, mess and storage huts, etc., already in use and plant of various kinds on the site. When the second phase commences, these facilities will be already available, thus allowing a smooth transition with much less additional expense than if a different contractor were to be employed. In addition, the contractor’s workers will be familiar with the details of the construction after building the first phase, and thus should be able to work more speedily and efficiently.

Two Stage Tendering (Early Contractor Involvement)

It is also a special kind of selective tendering but with different involvement of contractor. This procedure is used when it is desired to obtain the benefits of competition and at the same time to have the advantage of bringing a contractor into the planning of the project, thus making use of his practical knowledge and expertise. It may also result in an earlier start on site.

As has been indicated in the name of the system, there are two stages in implementing this system. The first stage aims to select a suitable contractor by means of limited competition. The second stage is a process of negotiation with the selected contractor on the basis of the first-stage tender.

Stage 1
Tenderers bid on basis of capability, resources, track records, order-of-magnitude price, overheads and profits, outline program and fee for pre-construction services. Preferred contractor identified and an agreement executed to record pre-construction services to be performed.

Stage 2
Employer and contractor continually develop design, jointly procure competitive tenders for major sub-contracts, and agree price (after most major sub-contracts tendered). Second stage concludes with the agreement of a lump-sum contract price (based on negotiation).
Comparison of Various Tendering Systems

From the above advantages and disadvantages of each types of tendering system, we can summarize them into a comparison table. Below is the comparison table of various types of tendering system in relation to cost, time, quality and performance.

<table>
<thead>
<tr>
<th>Tendering System</th>
<th>Cost</th>
<th>Time</th>
<th>Quality</th>
<th>Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Tendering</td>
<td>A</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Selective Tendering</td>
<td>B</td>
<td>B</td>
<td>B</td>
<td>B</td>
</tr>
<tr>
<td>Negotiated Tendering</td>
<td>B</td>
<td>B</td>
<td>A</td>
<td>A</td>
</tr>
<tr>
<td>Serial Tendering</td>
<td>B</td>
<td>A</td>
<td>A</td>
<td>A</td>
</tr>
<tr>
<td>Two Stage Tendering</td>
<td>C</td>
<td>A</td>
<td>B</td>
<td>A</td>
</tr>
</tbody>
</table>

A : strongly desirable  
B : desirable  
C : not desirable

Conclusion

The above comparison is only served as a brief comparison of various tendering systems. It does not give the overall best tendering system for all types of project. It just serves as the general approach for selecting the best tendering system for a certain type of project only.

Usually in a competitive tendering situation, price tends to be the only criterion for selection. But in the case of two stage tendering where the contractor has more involvement with the project through a design or management input, it will effect to the tender price and project quality. If such approach is adopted, then the employer should be fully informed of the selection criteria.

Despites of so many tendering systems adopt in construction industry, the employer and consultant must remember that they should conduct the tendering process fairly. As in the case of Harmon CFEM Facades (UK) Ltd v Corporate Officer of the House of Commons (1999) 67 Con LR 1, the court held that the defendant was in breach of its obligation to conduct the tendering process fairly and openly, and the claimant was entitled to recover the wasted costs of tendering.

References