This document was prepared by:

Richard Kupisz  
**Electricity Sector Lead**  
BearingPoint  
Baghdad  
Iraq  
Tel: +1.703.994.4674  
GSM: +964.(0)790.191.9596  
E-mail: richard.kupisz@ipaenergy.co.uk

© 2005 BearingPoint, Inc. All rights reserved.
Day 1: What is Procurement
Contents

- Objectives for the Workshop
- What is Procurement?
- Setting Your Objectives
- Fairness and Transparency
- Procurement Options
- The Tender Process (Part 1)
- Hot Topics
Objectives for the Workshop

This Workshop will:

- Describe the main methods of procurement
- Describe how you would carry out a competitive tender
- Discuss how to deal with some of the typical problems that arise

The FIDIC Tendering Procedure is used as an example of a competitive tender process
What is Procurement

“Procurement: the act of getting or obtaining something”
(Black’s Law Dictionary)

For the purposes of this Workshop it means the purchase of:

- Goods or equipment
- Services
- Construction

By a public sector organisation

The competitive tender process can also be used to attract private investment – for example in tenders for Independent Power Producers or privatisations of State-owned assets
Setting Your Objectives

It is important to set your objectives at the beginning

What kind of objectives would you suggest?
Setting Your Objectives

Price is not the only option

- Quality
- Timing
- After sales service

You may also have project-specific objectives:

- Improve revenue collections by 50%
- Adopt hand-held meter reading technology
- Install baseload or peak generating capacity
- Paint the Ministry building pink
Setting Your Objectives

Objectives must be prioritised to avoid conflicts

Potential conflicts…

Price vs Quality

Delivery time vs Quality

Price vs Delivery time

Price vs Warranty period

You should adopt a limited number (normally 2-3) objectives
Fairness and Transparency

A transparent, competitive tender is essential to get the best results

- Pressure from other bidders encourages competitive offers
- Purchaser sets the rules of the game
- Strengthens Iraq’s international reputation
- Less likely to be questioned later

...And to rebuild confidence in Iraq

But sometimes achieving this is harder than it looks
Fairness and Transparency

How do you achieve it?

- Open tender – any qualified bidder can participate
- Treat all bidders the same:
  - Same information…
  - …at the same time
  - Same opportunities for site visits and meetings
  - Same criteria to evaluate all bids
- Actively discourage corruption

There must be a “level playing field” – any qualified bidder can win
Fairness and Transparency

- Clear tender process, well communicated
- Same information…
- …at the same time
- Answers to one bidder’s questions are copied to all
- Advertise the tender widely
- Clear, objective evaluation criteria, communicated to bidders
- Allow bidders to comment on the Tender Rules
- Bidders/public can attend the bid opening
- Press release/public relations to publicise tenders
- Provide as much information as possible
- Keep bidders informed throughout the tender, explain any delays
- Stick to the Tender Rules
- Avoid changing your mind or reversing decisions
- Consult other bidders if making changes to accommodate one
Procurement Options

There are various options available

- International Competitive Tender
- National Competitive Tender
- Invited Bid
- “Shopping”
- Framework or “Call Down” Contract

The one you choose depends on the specific situation
**Procurement Options**

<table>
<thead>
<tr>
<th><strong>What</strong></th>
<th>A formal tender process, advertised internationally, open to any bidder regardless of whether they have local offices</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When</strong></td>
<td>For large, complex projects, or where the equipment or service is not available locally, or where there is not much local competition</td>
</tr>
</tbody>
</table>
| **Advantages** | ✓ More competition  
✓ Wider choice of suppliers  
✓ Access to goods, services or technology that are not available locally  
✓ More transparent  
✓ Improves Iraq’s international reputation |
| **Dis-advantages** | × Takes longer to complete  
× Higher administration cost  
× More complex tender  
× Normally you would have to run the tender in English  
× High profile: damage to Iraq’s/the Ministry’s reputation if you get it wrong |

*This is the preferred option for most medium to large projects*
## Procurement Options

### National Competitive Tender

<table>
<thead>
<tr>
<th>What</th>
<th>A formal tender process, limited to locally-based suppliers</th>
</tr>
</thead>
<tbody>
<tr>
<td>When</td>
<td>If the good or service is only available locally, if it is cheaper locally, if the contract size is small or the advantages of an international tender are outweighed by its disadvantages</td>
</tr>
<tr>
<td>Advantages</td>
<td>✓ Can be quicker, with less administrative burden, than international</td>
</tr>
<tr>
<td></td>
<td>✓ Can hold the tender in Arabic</td>
</tr>
<tr>
<td></td>
<td>✓ Can get a better price for some goods and services</td>
</tr>
<tr>
<td></td>
<td>✓ Can be used to promote local businesses</td>
</tr>
<tr>
<td></td>
<td>✓ International firms can still bid if they have a local office</td>
</tr>
<tr>
<td>Dis-advantages</td>
<td>✗ Artificially reduces competition - may get a worse deal as a result</td>
</tr>
<tr>
<td></td>
<td>✗ Time and cost savings may not be great – still need to run a competitive tender</td>
</tr>
<tr>
<td></td>
<td>✗ Potential lack of transparency (perception/reputation)</td>
</tr>
</tbody>
</table>
### Procurement Options

**What**
- Informal process, written quotations should be obtained from at least 3 suppliers

**When**
- For readily available, off the shelf goods, standard commodities, small value or simple works

**Advantages**
- ✓ Quick to implement
- ✓ Low administrative burden
- ✓ Low cost to the Ministry and bidders

**Disadvantages**
- × Does not work for large or complex or non-standard items
- × Does not work for most types of services
- × Potential perception of lack of transparency
### Procurement Options

**Direct Contract**

<table>
<thead>
<tr>
<th><strong>What</strong></th>
<th>Invite one or (preferably) a number of companies directly to submit a bid, without advertising or prequalification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When</strong></td>
<td>If there are few companies that supply the product or service, all the suppliers are known to you or if the project is urgent and there is no time to run a full tender</td>
</tr>
</tbody>
</table>
| **Advantages** | ✓ Quicker than a full tender  
✓ Low administrative burden  
✓ Low cost to the Ministry and bidders |
| **Dis-advantages** | × Less competition means a worse deal  
× Risk of missing out qualified suppliers  
× Risk of including suppliers that are not qualified  
× Lack of transparency – suppliers that are left off the list may protest  
× Risk to Iraq’s reputation |

**Unless time is important it is best to avoid this option**
## Procurement Options

### Framework Or “Call Down” Contract

<table>
<thead>
<tr>
<th>What</th>
<th>Competitive tender is used to select one or more preferred suppliers and agree standard prices, “call down” the goods or services when needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>When</td>
<td>Best for standard items (e.g., stationery) or services (such as consultancy) where the level of demand is variable and spread throughout the year. The UK Electricity Regulator uses call down contracts for consultancy studies</td>
</tr>
</tbody>
</table>
| Advantages | ✓ Competition takes place at the start of the period, no further delay  
 ✓ Still uses a competitive tender to put pressure on prices  
 ✓ Flexible – you can call down the service or product when you need it |
| Disadvantages | ✗ Limited range of uses – not good for big or complex projects  
 ✗ Need to know at the start of the period what your likely demand will be |
# Procurement Options

Choice of option depends on the specific situation and your objectives

<table>
<thead>
<tr>
<th>Procurement Option</th>
<th>Complexity of Project</th>
<th>Cost</th>
<th>Timing</th>
<th>Available Locally?</th>
<th>Construction</th>
<th>Equipment</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Competitive Tender</td>
<td>High</td>
<td>High</td>
<td>Long</td>
<td>Not necessary</td>
<td>✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔</td>
</tr>
<tr>
<td>National Competitive Tender</td>
<td>Medium-high</td>
<td>Medium-high</td>
<td>Long</td>
<td>Yes</td>
<td>✔ ✔ ✔</td>
<td>✔</td>
<td>✔ ✔</td>
</tr>
<tr>
<td>Shopping</td>
<td>Low-medium</td>
<td>Low-medium</td>
<td>Short</td>
<td>Yes</td>
<td>☒ ☒ ☒</td>
<td>✔ ✔ ✔</td>
<td>☒ ☒ ☒</td>
</tr>
<tr>
<td>Direct Contract</td>
<td>Any</td>
<td>Medium</td>
<td>Medium</td>
<td>Not necessary</td>
<td>✔ ✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Framework Contract</td>
<td>Low</td>
<td>Low</td>
<td>Short</td>
<td>Yes</td>
<td>☒ ☒ ☒</td>
<td>✔</td>
<td>✔ ✔</td>
</tr>
</tbody>
</table>
Procurement Options

Points to remember

The more competition you have, the better the deal you will get

BUT

It costs bidders to participate in a tender – the lower the chance of winning the less attractive it is

Using a prequalification stage to eliminate unqualified bidders benefits both sides
Exercise 1
Tender Options

A standard competitive tender involves 2 phases: prequalification & bid

2 stage

Prequalification

Due Diligence

Bid

Closing

3 stage

Prequalification

Due Diligence

Preliminary Bid

Final Bid

Closing

3 stages can be used for large construction tenders or where there are many bidders
The Tender Process

The main stages of the tender

- Internal Due Diligence
- Marketing
- Pre-qualification
- Bid Pack
- Bidder Due Diligence
- Final Transaction Documents
- Bid Submission
- Closing
## The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 Establish Project Strategy</td>
<td>Agree:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Procurement method</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Timetable</td>
<td></td>
</tr>
</tbody>
</table>

At this stage the objectives for the project must be set out. Internal due diligence will need to be carried out. Administrative arrangements must be established:

- Hiring advisers
- Steering Committee and/or Working Group
- Who implements the Tender and who do they report to

Timetable is indicative at this stage – delays are common for larger tenders, timing for negotiations is unpredictable.
Hot Topics: Using Advisers

For large projects it is best to appoint experienced advisers:

- Have contacts with potential bidders
- Know how to run a transparent, competitive tender
- Will have templates for key contracts and documents
- Someone to blame if things go wrong

The Ministry may need a Financial/Transaction Adviser and an international legal adviser. They may also bring in: local legal adviser, accountants, technical experts, quantity surveyors

- Advisers appointed by competitive tender
- Will be paid a fixed “retainer fee” and sometimes a variable “success fee” that depends on completing the tender
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Prepare Prequalification Documents</td>
<td>Prepare:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Letter of Invitation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Information about prequalification</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Project information</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Prequalification application</td>
<td></td>
</tr>
</tbody>
</table>

These documents can be combined in a single “Request for Proposals” or “Invitation to Qualify”

FIDIC uses standard forms for the prequalification submission – easier to review and compare submissions

You should not charge a fee for the RFP – the aim is to get as many bidders as possible
Hot Topics: **Internal Due Diligence**

- Legal review – laws, regulations, court cases
- Financial review – accounts, systems, valuation
- Technical review – technology, operations, permits, infrastructure, site

- Information collected here will be used in the Tender Documents
- Helps to set the scope of the tender – what do you need the winning bidder to provide?
- Identify problems and fix them, or adjust the tender
- Collect information to give to Bidders
### The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2 Invitation to Qualify</td>
<td>Advertise:</td>
<td></td>
</tr>
<tr>
<td>(“Request for Proposals”)</td>
<td>➢ Employer (eg Ministry)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>➢ Outline of the project (scope, location, timing, funding)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>➢ Dates for issue of tender documents, bid submissions</td>
<td></td>
</tr>
<tr>
<td></td>
<td>➢ Instructions for prequalifying</td>
<td></td>
</tr>
<tr>
<td></td>
<td>➢ Qualification requirements</td>
<td></td>
</tr>
<tr>
<td></td>
<td>➢ Prequalification submission date</td>
<td></td>
</tr>
</tbody>
</table>

The aim is to generate as much interest as possible from potential bidders.
Hot Topics: Marketing

To inform potential bidders of the opportunity and persuade them to take part in the tender

- Advertise in specialist/trade press
- Advertise in local newspapers
- Advertise in the international press (The Economist, Financial Times, International Herald Tribune)
- Ministry and Government websites (download the RFP)
- Specialist websites
- Issue a press release
- TV and radio interviews with Ministers
- “Roadshows” – presentations in countries where the likely bidders are based
- Personal contacts or direct contacts with potential bidders
- Iraqi Embassies in other countries
- Foreign Embassies in Iraq
Exercise 2: Group Discussion
Exercise 2:

You are running a tender for the construction of 10 low voltage electricity substations:

1. What information would you include in the advertisement?
2. Where would you advertise?
## The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
</table>
| 2.3 Issue and submission of prequalification documents | Issue the RFP. Bidders submit:  
- Organisation and structure  
- Experience in the project work and in the region  
- Resources available*  
  (technical, managerial, labour, plant)  
- Financial statements  
- Current contract commitments*  
- Litigation history*  
  Acknowledge receipt | Request RFP  
Complete and submit the prequalification documents      |

At this stage the objective is to see whether the contractors are capable of doing the work – do **not** ask for their approach, specifications or prices

* These are more relevant to construction or engineering projects
Hot Topics: Request for Proposals

This is a marketing document – make the tender look like an attractive opportunity to potential bidders

Contents include:
- Background to the tender – why are you doing it?
- Objectives – what do you expect to achieve
- Invitation – explicit request for Expressions of Interest
- Scope – describe what you are buying (construction, equipment, services, etc)
- The tender – describe the process, indication of timing
- Qualification criteria
- Qualification process – number of copies, language of submissions, deadline date and time for submissions, address to send them to

If you are using a standard form for submissions this should be included
Hot Topics: Qualification Criteria

- Want to qualify as many bidders as possible to increase competition
- Want to keep out unqualified bidders and time wasters
- No more than 5 criteria
- Focus on the Bidder’s experience of similar projects and its financial strength
- Submissions should be easy for Bidders to prepare – do not ask for their proposed approach or business plan at this stage

Participating in the tender costs money – if you make it too expensive early on bidders will drop out
### The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.4 Analysis of prequalification submissions</td>
<td>Review submissions against the qualification criteria:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Company/consortium structure</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Experience</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Resources</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Financial capability</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- General suitability</td>
<td></td>
</tr>
</tbody>
</table>

The aim is to qualify as many bidders as possible to maximise competitive pressure but also to eliminate time-wasters.

Do not rely entirely on their submissions – you may need to carry out independent checks to verify the qualifications of potential bidders.
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.5 Select bidders</td>
<td>Prepare a shortlist of bidders</td>
<td></td>
</tr>
</tbody>
</table>

Depending on the type of project a shortlist of 3 - 7 companies is enough to ensure competition.

More than this risks putting off potential bidders.
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.6 Notify bidders</td>
<td>Notify the shortlisted bidders</td>
<td>Acknowledge receipt of the notification and confirm that they intend to bid</td>
</tr>
<tr>
<td></td>
<td>Notify the companies that failed to get on the list</td>
<td></td>
</tr>
</tbody>
</table>

It is good practice to notify the losers as well as the shortlisted companies
BUT be prepared for protests from the companies that did not make it
Do not change your mind in response to protests
Day 2: Running a Competitive Tender
Contents

- Tender Process (Part 2)
- Hot Topics
- Summary of Key Documents
- Common Practical Problems
- Timetable
- Public Relations
- After the Tender
## The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Prepare Tender Documents (or “Bid Pack”)</td>
<td>Company/consortium structure&lt;br&gt;Letter of invitation to tender&lt;br&gt;Instructions to bidders (“Tender Rules”)&lt;br&gt;Conditions of contract (or draft contracts)&lt;br&gt;Form of tender and appendices&lt;br&gt;Drawings*&lt;br&gt;Bills of quantities*&lt;br&gt;Additional information (“Information Memorandum”)&lt;br&gt;Information data (“Data Room”)</td>
<td></td>
</tr>
</tbody>
</table>

You should aim to provide all the information that will be needed for the contractor to prepare their bid

*These are more relevant to construction or complex equipment projects
Hot Topics: **Bid Fees**

Some tenders charge bidders an entry fee – to:

- Recover the administrative costs of running the tender
- Dissuade time-wasters and unqualified bidders from participating

But:

- If the fee is set too high or disproportionate to the tender it will put off potential bidders
- The prequalification stage and Bid Bonds can be used to filter out time-wasters without putting off genuine bidders
- One option is to charge for the Tender Documents

For most projects the disadvantages of bid fees outweigh the advantages. Only use them for:

- Large, complex tenders that will be expensive to run
- Large projects that are expected to generate a lot of demand from bidders

You should not aim to make a profit from charging bidders to participate
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.2 Issue Tender Documents (or “Bid Pack”)</td>
<td>Issue Documents to qualified bidders</td>
<td>Acknowledge receipt</td>
</tr>
</tbody>
</table>

If the information in the Bid Pack is sensitive bidders should sign a Confidentiality Agreement before receiving it.

Bidders must accept the Tender Rules (either implicitly or explicitly) before being given the information or being allowed to proceed with the tender.
Hot Topics: Confidentiality Agreement

Must be signed before bidders can receive any commercially confidential information

Contents include:
- Definition of “confidential” information
- Obligation on the bidder not to disclose the information to anyone else (apart from their advisers) unless it has already been made public
- Term of the agreement – normally extends 2-5 years after completion of the tender

Some bidders will insist on negotiating the Agreement – since all bidders must sign the same document any changes should be kept to a minimum
Hot Topics: Information Memorandum

A more detailed version of the RFP – it is still a marketing document

Contents depend on the specific transaction

For a construction project these might include:

- Executive Summary – include the key selling points of the transaction
- Country Background – information on Iraq
- Sector Background – information on the relevant sector (e.g., electricity)
- Chapters describing specific features of the tender – for example, a sale of a company would include: asset description, operations, financial review, legal review, labour force, IT and systems
- Summary of relevant legislation (if necessary)
- Tender Process – summary of relevant parts of the Tender Rules, including timetable
Hot Topics: Information Memorandum

The Information Memorandum must include a Disclaimer to protect the issuer from future legal action – For example:

Whilst the [issuer] has taken all reasonable steps to ensure the accuracy of the contents of this document, no reliance whatsoever should be placed upon it by any person (including third parties). The [issuer] accepts no liability for damage suffered or purported, claims arising out of, or any reliance placed on any part or parts of this document. Prospective investors should conduct their own due diligence investigations in relation to the subject matter of this document prior to taking any action on the basis of any information contained herein. The [issuer] expressly disavows any obligation or duty (whether in contract, tort or otherwise) to any Bidder. No Bidder is entitled to rely on the [issuer’s] involvement in the preparation of this Information Memorandum or in the solicitation process as a basis for bidding on or developing the project.

In submitting a proposal in response to the RFP, each Bidder: certifies that it understands, accepts and agrees to the disclaimers on this page; and agrees that nothing contained in any other provision of the RFP or any statements made orally or in writing by any person or party will have the effect of negating or superseding any of the disclaimers set forth on this page.
Hot Topics: Instructions to Bidders

Or “Tender Rules” - one of the most important documents in the tender – describes how it will be run and includes protections for the issuer (Ministry)

- Description of the tender process and timetable
- Consortium arrangements
- Anti-corruption and ant-collusion provisions
- Bidder pays its own costs
- Structure and content of the bid
- Bidder conference, site visits
- Bid submission and opening
- Bid evaluation criteria and weights
- Right to cancel the tender
- Templates for standard documents
Hot Topics: The Data Room

Must include all additional information that may be relevant to bidders

- No longer a physical room with a photocopier
- Data is usually provided either:
  - On CD ROM or
  - On a secure website

It is important to include as much information as possible to reduce the risk of subsequent legal action or warranty claims by bidders claiming that they were not told something important
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.3 Site visits</td>
<td>Arrange date and time for visits</td>
<td>Apply for site visit</td>
</tr>
<tr>
<td></td>
<td>Site visits: employer must accompany the bidder</td>
<td></td>
</tr>
</tbody>
</table>

For some types of tender (e.g., consultancy services or privatisations) you can also have:

- Individual visits, including presentations from relevant people, meetings and an opportunity to ask questions
- A Bidder Conference, where all bidders attend together

Bidders often feel more comfortable with individual visits

Transcripts of all questions and answers should be provided to all bidders
### The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.4 Bidder queries</td>
<td>Issue Documents to qualified bidders</td>
<td></td>
</tr>
<tr>
<td><strong>a) Correspondence method</strong></td>
<td>Prepare replies to bidder questions</td>
<td>Submit questions in writing by a fixed date</td>
</tr>
<tr>
<td><strong>b) Bidder Conference</strong></td>
<td>Reply to questions raised at the Conference</td>
<td>Confirm attendance</td>
</tr>
<tr>
<td></td>
<td>Send Minutes to all bidders</td>
<td>Acknowledge receipt</td>
</tr>
</tbody>
</table>

Both options can be used – bidders may have further questions after the Conference

It is to your advantage to provide as much information as possible
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.5 Addenda to Tender Documents</td>
<td>Issue any addenda and replies to questions to all bidders</td>
<td>Acknowledge receipt</td>
</tr>
</tbody>
</table>

When changing the Tender Rules it can be more flexible to refer to “clarifications” rather than “addenda”

You can also take comments on draft contracts and issue further drafts – this can help to reduce time spent in negotiations
# The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.6 Submission and receipt of Tenders</td>
<td>Record date and time of receipt</td>
<td>Submit tender</td>
</tr>
<tr>
<td></td>
<td>Acknowledge receipt</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Return unopened any bids received late</td>
<td></td>
</tr>
</tbody>
</table>

Avoid the temptation to accept bids that are delivered late or to the wrong address, even if it was not the bidder’s fault (e.g., late delivery by a courier).

Bidders can hand deliver their bids.
Hot Topics: Bid Bonds & Guarantees

Large projects often demand a Bid Bond or Guarantee from bidders. The aim is to make the tender less attractive for time wasters and to give the preferred Bidder an incentive to agree and sign the contracts.

The Bond (usually a bank guarantee) will pay a fixed sum to the employer (e.g., the Ministry) if the Bidder fails to meet certain commitments:

- Bid complies with the Tender Rules
- Commitment to negotiate in good faith if selected as the preferred bidder
- Commitment to keep to the terms of their proposal
- No bribery, corruption or collusion

The winning Bidder may be required to replace the Bid Bond with a Performance Bond, which pays out if they fail to start the project.

The FIDIC Tendering Procedure document includes a template for a Bid Bond.
## The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
</table>
| 4.1 Open tenders | Public or restricted opening:  
➢ Announce and record names of bidders and prices  
➢ Announce and record disqualified bidders | Attend bid opening |

For most tenders a restricted opening (bidders only) is adequate

A press release can be used to inform the public of the number and (possibly) names of bidders
Hot Topics: **Consortia**

Bidders will often form a Consortium

Allows them to provide a full range of services

Access to funding

They may use it to reduce competition

You need to know:

- Who is in charge?
- Who are the members?
- Who has authority to sign?
- What are the arrangements between members?
- Will the Consortium collapse after winning the Bid?

Will you accept changes to Consortia before bids are submitted?

**For larger contracts a Consortium must form a legal entity**
## The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Review tenders (“compliance”)</td>
<td>Check that bids meet the requirements of the Tender Rules</td>
<td>Reject bids that do not comply</td>
</tr>
</tbody>
</table>

Reject – bids that do not include all the necessary documents or the Bid Bond, or are not correctly sealed or labelled
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2 Tenders containing deviations (“alternative proposals”)</td>
<td>Evaluate deviations</td>
<td>Provide clarifications as requested</td>
</tr>
<tr>
<td></td>
<td>Seek clarification</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rank tenders</td>
<td></td>
</tr>
</tbody>
</table>

More appropriate for construction projects – bidders may find a better way to achieve your objectives

The Tender Rules may explicitly allow “Alternative Proposals” – bidders must still submit a compliant bid but their willingness to implement it will be reflected in the price
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.3 Adjudication of tenders</td>
<td>Assess bids against the evaluation criteria</td>
<td>Provide clarifications</td>
</tr>
<tr>
<td></td>
<td>Request clarification if needed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Check with funding agency (if necessary)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Reject non-conforming tenders* and advise the losing bidders</td>
<td></td>
</tr>
<tr>
<td>5.4 Rejection of tenders</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Only where they do not comply (e.g., if they fail to meet a minimum technical score). Normally you would keep the losers in reserve until negotiations with the winning bidder are completed.

You should prepare an Evaluation Report and get the necessary approvals before informing the winning bidder.
Hot Topics: **Bid Structure**

Proposals are usually in two parts:

- **Financial Proposal:** price, payment schedule and related issues
- **Technical Proposal:** approach to implementing the project, technology and systems, business plan (where relevant), experience of key staff proposed for the project

The format for proposals should be included in the Tender Rules – makes it easier to evaluate and compare bids

If technical aspects are important it is best to set a hurdle score for the technical proposal – only bids that pass the technical evaluation move on to financial evaluation. In that case you should not open the financial proposal until the technical evaluation is completed

The aim is to avoid being forced to choose a cheap, lower quality bid
Hot Topics: Alternative Bids

It may be useful to allow bidders to propose alternative ways to meet your objective that you may not have considered.

This would include:

- New technology
- Different methodology
- Alternative specifications
- Different payment terms

You may wish to allow Alternative Bids in the Tender Rules. Bidders should still submit a bid that complies with the Tender Rules as well as the Alternative

You decide whether to allow the alternatives
Hot Topics: **Bid Evaluation Criteria**

Do not repeat the Qualification Criteria – now you are evaluating the Bid, not the Bidder

The criteria should match your objectives for the tender, to align Bidders’ incentives with yours

Criteria should be objective and, if possible, quantifiable, to make evaluation easier and more transparent

Assign weights to each criterion – the most important gets the highest weight

No more than 6 criteria

**Objective criteria make it easier to compare bids, losing Bidders will not be able to challenge the result**
Exercise 3
Allocate marks for the Financial Bid (normally score out of 100)
Lowest (or highest if selling something) price gets full marks
Other bids are scored relative to the best price using the following formula:

Buying: \[ \text{Score}_i = \frac{\text{Price}_b \times 100}{\text{Price}_i} \]

Selling: \[ \text{Score}_i = \frac{\text{Price}_i \times 100}{\text{Price}_b} \]

Keep it simple: bidders will play the numbers game if the financial proposal is too complex
Payment timing is relevant – a lower bid that requires up front payment may cost more. Either:
- Set the payment schedule yourself
- Discount the phased payments to get a single figure at today’s prices
Exercise 4
## The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.0 Award contract</td>
<td>Decide on contract award, if necessary after pre-award discussion</td>
<td>Attend the pre-award discussion if required</td>
</tr>
</tbody>
</table>

FIDIC uses standard contracts for construction projects

For more complex tenders you may need to negotiate the final Tender Documents with the winning Bidder
Minimising Negotiations

Negotiations can be time-consuming and costly – avoid them if possible

Once you select the preferred bidder you lose your leverage (competitive pressure from the other bidders)
Bidders may try to use negotiations to completely change the terms of the deal

You can minimise negotiations by:

- Use standard contracts (eg FIDIC or World Bank templates)
- Finalise the contracts during the Bidder Due Diligence process when there is still competitive pressure to agree
- Use a Bid Bond to ensure the preferred bidder negotiates in good faith
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1 Issue Letter of Acceptance</td>
<td>Issue acceptance to the winning bidder</td>
<td>Acknowledge receipt</td>
</tr>
</tbody>
</table>

A template Letter of Acceptance may be included in the Tender Rules
## The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.2 Performance security</td>
<td>Obtain Performance Bond from contractors</td>
<td>Provide the Performance Bond</td>
</tr>
</tbody>
</table>

Standard practice for construction projects, not used so much in other types of tender
The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.3 Prepare Contract Agreement (“Closing”)</td>
<td>Prepare contract documents</td>
<td>Sign contract(s)</td>
</tr>
<tr>
<td></td>
<td>Sign contract(s)</td>
<td>Sign contract(s)</td>
</tr>
</tbody>
</table>

- Negotiate final contracts (if necessary)
- Complete final contracts (name, address, price)
- Sign final contracts
- Transfer funds (if necessary)
- Issue shares/permits/concession, etc, (if necessary)
- Hand over to the winning Bidder (if necessary)
- Final Press Release

The aim is to complete the tender as quickly and efficiently as possible and hand over to the winning bidder
## The Tender Process

<table>
<thead>
<tr>
<th>FIDIC Section</th>
<th>Tasks</th>
<th>Contractor Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.4 Notify unsuccessful bidders</td>
<td>Advise unsuccessful bidders and return their Bid Bonds</td>
<td>Acknowledge receipt</td>
</tr>
</tbody>
</table>
## Summary of Key Documents

<table>
<thead>
<tr>
<th></th>
<th>Invitation To Qualify</th>
<th>Confidentiality Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Parties</strong></td>
<td>Government</td>
<td>Government, all bidders</td>
</tr>
<tr>
<td><strong>Term</strong></td>
<td>N/A</td>
<td>2 – 5 years after Closing</td>
</tr>
<tr>
<td><strong>Purpose</strong></td>
<td>Marketing document to stimulate initial interest from Bidders</td>
<td>To maintain secrecy of commercially sensitive information</td>
</tr>
<tr>
<td><strong>Contents</strong></td>
<td>- The opportunity</td>
<td>- Definition of Confidential Information</td>
</tr>
<tr>
<td></td>
<td>- Background (sector, economy, company)</td>
<td>- Non-disclosure obligation</td>
</tr>
<tr>
<td></td>
<td>- Qualification criteria</td>
<td>- Term of validity</td>
</tr>
<tr>
<td></td>
<td>- Indicative timetable</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Submission requirements for Expressions of Interest</td>
<td></td>
</tr>
</tbody>
</table>
## Summary of Key Documents

<table>
<thead>
<tr>
<th>Information Memorandum</th>
<th>Tender Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parties</td>
<td>Government</td>
</tr>
<tr>
<td>Term</td>
<td>N/A</td>
</tr>
<tr>
<td>Purpose</td>
<td>More detailed marketing document to summarise selling points &amp; encourage bids</td>
</tr>
<tr>
<td>Contents</td>
<td>The sector, The economy, The opportunity, Legal/technical/ financial review, Regulatory framework, Updated indicative timetable, Summary of Transaction Documents</td>
</tr>
</tbody>
</table>

Other documents include loans & other financing agreements, guarantees, bid & performance bonds, letters of comfort from banks
### Common Practical Problems

<table>
<thead>
<tr>
<th>Problem</th>
<th>Options</th>
</tr>
</thead>
</table>
| No bids, no acceptable bids | - Cancel the tender and restart with improved conditions  
- Ask all qualified bidders to improve their proposals  
- Negotiate with the best bidders to improve their proposals |
| 1 preferred bidder, other bids unattractive | - Negotiate with the preferred bidder (little competitive pressure)  
- If negotiations fail, cancel the tender and run it again |
| 1 bid, not very attractive | - Negotiate with the bidder to improve their offer  
- Cancel the tender and run it again with improved conditions |
Common Practical Problems

**Problem**

**Non-compliant bids**
- Reject the non-compliant bids and continue the tender
- Improve the conditions and ask all bidders to revise their offers
- Cancel the tender and run it again with improved conditions

**1 bidder requests an extension to the timetable**
- It may be beneficial agree to the extension (depending on the reason for requesting it)
- You may wish to consult the other bidders
- Reject the request, continue the tender

**A bid is delivered late**
- Reject it
- Allow it (depends how late)
Common Practical Problems

The appropriate response to these problems depends on the specific situation
Major breaches of the Tender Rules cannot be accepted (minor ones could be, at your discretion)
If you have a number of good bids it is easier to reject non-compliant ones
Bidders may have to get Board permission to commit themselves to a proposal – this often causes delays as Board meetings may be infrequent
**Timetable**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Time* (weeks)</th>
<th>Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Draft terms of Reference for Adviser</td>
<td>3</td>
<td>1 2 3</td>
</tr>
<tr>
<td>Prequalify Advisers</td>
<td>6</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Select and appoint Adviser</td>
<td>12</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Internal Due Diligence</td>
<td>4</td>
<td>1 2 3 4</td>
</tr>
<tr>
<td>Prepare Invitation to Qualify</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Marketing to investors</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Expressions of interest submitted</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Prepare Information Memorandum</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Prepare Tender Rules</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Draft Power Purchase Agreement</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Draft Fuel Supply Agreement</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Draft other contracts/guarantees</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Shortlist bidders</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Sign Confidentiality Agreement</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Issue Bid Pack</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Bidder Due Diligence</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Bidder Conference</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Bids submitted</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Bid evaluation</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Appoint winning Bidder</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Negotiations^</td>
<td>0-6-?</td>
<td></td>
</tr>
<tr>
<td>Closing</td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

*Given the current situation in Iraq you can add 30-100% to these timings

^ Depends on how much is pre-agreed and the position of the winning bidders
## Public Relations

PR is important to a successful transaction – it must be targeted

<table>
<thead>
<tr>
<th>Target</th>
<th>Public &amp; Politicians</th>
<th>Potential Investors</th>
<th>Employees</th>
<th>General</th>
</tr>
</thead>
<tbody>
<tr>
<td>Messages</td>
<td>Economic benefits ➢ Impact on quality of service</td>
<td>Attractive investment climate ➢ Attractive deal ➢ Transparency, fairness, competitive ➢ Government priorities</td>
<td>Need for efficiency improvements ➢ Reassurance on their future ➢ Transparent tender process ➢ Timetable</td>
<td>Transparent tender ➢ Attractive investment climate</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Importance</th>
<th>Medium - high</th>
<th>High</th>
<th>Medium</th>
<th>Low</th>
</tr>
</thead>
</table>

| Media used | Press releases ➢ TV/Radio/Newspapers ➢ Briefings to politicians ➢ Prepared Questions & Answers (“Q&As”) | Specialist industry press ➢ Business press ➢ Government websites ➢ Personal contacts ➢ Iraqi Embassies | Company newsletters ➢ Presentations to employees | Mostly covered already in other PR ➢ Specific briefings to donors, embassies |

| When | After key milestones – EoIs, Shortlisting bidders, Closing | During marketing phase and bidder due diligence | Immediately before or at the same time as public announcements | Beginning of the process, during marketing phase, subsequently as necessary |
After the Tender

It is important to monitor the contractor’s performance

- To ensure that they meet the terms of the contract
- To evaluate and publicise the success of the Tender

Key points:

- Someone must be responsible for monitoring
- Timing and scope of monitoring should be clear
- Minimise interference with the contractor’s operations
- Minimise cost for the contractor
## Exercise 1

### Choosing a procurement option

Which option would you use for the following purchases (tick the box)?

<table>
<thead>
<tr>
<th></th>
<th>International Competitive Tender</th>
<th>National Competitive Tender</th>
<th>Shopping</th>
<th>Direct Contract</th>
<th>Framework Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>One year’s supply of photocopying paper and pens</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Catering (food and drink) for a conference</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>100,000 solid state electricity meters</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Construction of a 800 MW Combined Cycle Gas Turbine generating station</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>IT training for 1,000 Ministry staff to be provided over a 1 year period</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Urgent repairs to a low voltage substation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Painting a Ministry office building</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Providing furniture for 10 offices</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Purchase and installation of 150 km of high voltage transmission line</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Cleaning services for an office building for 1 year</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Procurement Training Workshop

Exercise 3

Bid Criteria

You are running a tender for a contract to provide transport services (vehicles, servicing and repairs).

What Qualification Criteria and Bid Evaluation Criteria would you use?

**Qualification Criteria**

1. 

2. 

3. 

4. 

**Evaluation Criteria**

1. 

2. 

3. 

4. 

Procurement Training Workshop

Exercise 4

For discounting purposes assume that the relevant interest rate is 11%. The discount factor after 1 year is 0.9.

Evaluating Financial Proposals

1. You are purchasing 50 computers with a standard specification. You received 5 bids, all of which passed the technical review.

Score and rank the bids.

<table>
<thead>
<tr>
<th>Bid (US$)</th>
<th>Score</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>25,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23,600</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10,000 today, 15,000 in 1 year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. You are running a tender for the construction of 10 electricity substations. 5 bids passed the technical evaluation with the scores set out below. The weighting between the technical and financial bids is 50:50.

Score and rank the bids.

<table>
<thead>
<tr>
<th>Financial bid</th>
<th>Technical Score</th>
<th>Financial Score</th>
<th>Final Score</th>
<th>Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>250,000</td>
<td>80</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>125,000 today, 130,000 in 1 year</td>
<td>82</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>260,000 in 1 year</td>
<td>78</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>100,000 today, 150,000 in 1 year</td>
<td>78</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>230,000</td>
<td>75</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Procurement Training Workshop

Contents

Course Outline
Day 1: What is Procurement?/ Running a Competitive Tender Part 1
Day 2: Running a Competitive Tender Part 2
Exercises
FIDIC Tendering Procedure
Outline for Billing and Collections Request for Proposals
Examples of Advertisements (English)
Confidentiality Agreement
Tender Rules Contents
Government of Lesotho: Information Memorandum Concerning the Privatisation of the Lesotho Electricity Corporation – contents
Three Bids, New Tender for TPP Plevlja (article)