
Construction procurement —
Part 3:
Standard conditions of tender

Marchés de construction —

Partie 3: Conditions types normalisées des soumissions

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ISO 10845-3:2011

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Foreword

ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

International Standards are drafted in accordance with the rules given in the ISO/IEC Directives, Part 2.

The main task of technical committees is to prepare International Standards. Draft International Standards adopted by the technical committees are circulated to the member bodies for voting. Publication as an International Standard requires approval by at least 75 % of the member bodies casting a vote.

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. ISO shall not be held responsible for identifying any or all such patent rights.

ISO 10845-3 was prepared by Technical Committee ISO/TC 59, *Buildings and civil engineering works*.

ISO 10845 consists of the following parts, under the general title *Construction procurement*.

- *Part 1: Processes, methods and procedures*
- *Part 2: Formatting and compilation of procurement documentation*
- *Part 3: Standard conditions of tender*
- *Part 4: Standard conditions for the calling for expressions of interest*
- *Part 5: Participation of targeted enterprises in contracts*
- *Part 6: Participation of targeted partners in joint ventures in contracts*
- *Part 7: Participation of local enterprises and labour in contracts*
- *Part 8: Participation of targeted labour in contracts*

Introduction

Procurement is the process which creates, manages and fulfils contracts. Procurement can, as such, be described as a succession of logically related actions occurring or performed in a definite manner and which culminate in the completion of a major deliverable or the attainment of a milestone. Processes, in turn, are underpinned by methods (i.e. a documented, systematically ordered collection of rules or approaches) and procedures (i.e. the formal steps to be taken in the performance of a specific task), which are informed and shaped by the policy of an organization. Methods and procedures can likewise be documented and linked to processes.

Conditions of tender are required to establish procedures from the time that tenders are invited to the time that a tender is awarded. Such conditions document the procedures, the manner in which those engaged in the procurement process are to behave, the obligations of the tenderer and the undertakings of the employer.

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Construction procurement —

Part 3: Standard conditions of tender

1 Scope

This part of ISO 10845 sets out standard conditions of tender which

- a) bind the employer and tenderer to behave in a particular manner,
- b) establish what a tenderer is required to do in order to submit a compliant tender,
- c) make known the evaluation criteria to tenderers, and
- d) establish the manner in which the employer conducts the process of offer and acceptance and provide the necessary feedback to tenderers on the outcomes of the process.

This part of ISO 10845 is intended for use in procurements relating to goods, services and construction works and disposals other than by auction.

[ISO 10845-3:2011](#)

NOTE 1 Annex A contains commentary on the clauses in this part of ISO 10845. Annex B provides guidance on how to develop the tender data for a procurement document using this part of ISO 10845.

NOTE 2 ISO 10845-2 establishes the manner in which procurement documents should be formatted and compiled. The standard conditions contained in this part of ISO 10845 may by reference be incorporated in procurement documents formatted and compiled in accordance with the provisions of ISO 10845-2.

2 Terms and definitions

For the purposes of this document, the following terms and definitions apply.

2.1

bill of quantities

document that lists the items of work and the quantities and rates associated with each item to allow contractors to be paid, at regular intervals, an amount equal to the agreed rate for the work multiplied by the quantity of work completed

[ISO 10845-1:2010, definition 3.3]

2.2

bond

sum of money or securities submitted to the employer or placed in the hands of a third party to guarantee completion of the work and recovery of the sums which the contractor would be recognized as owing under the terms of the contract

NOTE Adapted from ISO 6707-2:1993, definition 3.5.4.

2.3 comparative offer
tenderer's financial offer after all tendered parameters that can affect the value of the financial offer have been taken into consideration to enable comparisons to be made on a comparable basis

2.4 conflict of interest
any situation in which someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfill his duties impartially, an individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or incompatibility or contradictory interests exist between an employee and the organization which employs that employee

[ISO 10845-1:2010, definition 3.8]

2.5 contract data
document that identifies the applicable conditions of a contract and states the associated contract-specific data

[ISO 10845-1:2010, definition 3.10]

2.6 corrupt practice
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

NOTE Adapted from ISO 10845-1:2010, definition 3.13.

2.7 employer
person or organization intending to or entering into a contract with the contractor for the provision of goods, services, or engineering and construction works

[ISO 10845-1:2010, definition 3.17]

2.8 form of offer and acceptance
document that formalizes the legal process of offer and acceptance

[ISO 10845-2:2011, definition 2.15]

2.9 form of securities
document that provides for the securities required by the employer

[ISO 10845-2:2011, definition 2.16]

2.10 fraudulent practice
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

NOTE Adapted from ISO 10845-1:2010, definition 3.20.

2.11**joint venture**

grouping of two or more contractors acting as one legal entity, where each is liable for the actions of the other

[ISO 6707-2:1993, definition 3.4.22]

2.12**organization**

company, firm, enterprise, association or other legal entity, whether incorporated or not, or a public body

[ISO 10845-1:2010, definition 3.23]

2.13**quality**

totality of features and characteristics of a product or service that bears on the ability of the product or service to satisfy stated or implied needs

[ISO 10845-1:2010, definition 3.35]

2.14**returnable document**

document that a tenderer is required to complete and submit to the employer as part of his tender submission

[ISO 10845-2:2011, definition 2.22]

2.15**scope of work**

document that specifies and describes the goods, services, or engineering and construction works which are to be provided, and any other requirements and constraints relating to the manner in which the contract work is to be performed

[ISO 10845-1:2010, definition 3.37]

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2.16**tender data**

document that establishes the tenderer's obligations in submitting a tender and the employer's undertakings in administering the tender process and evaluating tender offers

[ISO 10845-1:2010, definition 3.45]

2.17**tender offer**

written offer for the provision of goods, or to carry out a service or engineering and construction works under given conditions, usually at a stated price, and which is capable of acceptance and conversion into a binding contract

[ISO 10845-1:2010, definition 3.46]

2.18**tenderer**

person or organization that submits a tender offer

[ISO 10845-1:2010, definition 3.47]

3 General requirements

3.1 Actions

The employer and each tenderer submitting a tender offer shall comply with the standard conditions of tender. In their dealings with each other, they shall discharge their duties and obligations, as set out in Clauses 4 and 5, in a timely manner and with integrity, behave equitably, honestly and transparently, comply with all legal obligations and not engage in anti-competitive practices.

The employer and the tenderer, and all the agents and employees involved in the tender 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. Tenderers shall declare any potential conflict of interest in their tender 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.

The employer shall not seek and a tenderer shall not submit a tender without having a firm intention and the capacity to proceed with the contract.

NOTE 1 A conflict of interest can arise due to a conflict of roles which can provide an incentive for improper acts in some circumstances or positions. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in said circumstance or position, even if no improper acts result.

NOTE 2 Conflicts of interest with respect to 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 can in any way affect any decisions taken.

3.2 Tender documents

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

3.3 Interpretation

The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of the standard conditions of tender in this part of ISO 10845.

The standard conditions of tender contained in this part of ISO 10845, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

3.4 Communication and employer's agent

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

3.5 Employer's right to accept or reject any tender offer

The employer may accept or reject any variation, deviation, tender offer, or alternative tender offer, and may cancel the tender process and reject all tender offers at any time before the formation of a contract. The employer shall not accept or incur any liability to a tenderer for such cancellation and rejection, but shall give written reasons for such action upon written request to do so.

The employer may not, subsequent to the cancellation or abandonment of a tender process or the rejection of all responsive tender offers, re-issue a tender covering substantially the same scope of work within a period of six months unless only one tender was received and such tender was returned unopened to the tenderer.

3.6 Procurement procedures

3.6.1 General

Unless otherwise stated in the tender data, a contract shall, subject to 5.13, be concluded with the tenderer who, in terms of 5.11, is the highest ranked or the tenderer scoring the highest number of tender evaluation points, as relevant, based on the tender submissions that are received at the closing time for tenders.

3.6.2 Competitive negotiation procedure

Where the tender data require that the competitive negotiation procedure is to be followed, tenderers shall submit tender offers in response to the proposed contract in the first round of submissions. Notwithstanding the requirements of 5.4, the employer shall only announce the names of the tenderers who make a submission. The requirements of 5.8, relating to the material deviations or qualifications which affect the competitive position of tenderers, shall not apply.

All responsive tenderers, or not less than three responsive tenderers that are highest ranked in terms of the evaluation method and evaluation criteria stated in the tender data, shall be invited in each round to enter into competitive negotiations, based on the principle of equal treatment and keeping confidential the proposed solutions and associated information. Notwithstanding the provisions of 4.17, the employer may request that tenders be clarified, specified and fine-tuned in order to improve a tenderer's competitive position, provided that such clarification, specification, fine-tuning or additional information does not alter any fundamental aspects of the offers or impose substantial new requirements which restrict or distort competition or have a discriminatory effect.

At the conclusion of each round of negotiations, tenderers shall be invited by the employer to make a fresh tender offer, based on the same evaluation criteria, with or without adjusted weightings. Tenderers shall be advised when they are to submit their best and final offer.

The contract shall be awarded in accordance with the provisions of 5.11 and 5.13 after tenderers have been requested to submit their best and final offer.

3.6.3 Proposal procedure using the two-stage tendering system

3.6.3.1 Option 1

In the first stage, tenderers shall submit technical proposals and, if required, cost parameters around which a contract may be negotiated.

The employer shall evaluate each responsive submission in terms of the method of evaluation stated in the tender data.

In the second stage, the employer shall negotiate a contract with the tenderer scoring the highest number of evaluation points and award the contract in terms of the standard conditions of tender.

3.6.3.2 Option 2

In the first stage, tenderers shall submit only technical proposals. In the second stage, the employer shall invite all responsive tenderers to submit tender offers, following the issuing of procurement documents.

The employer shall evaluate tenders received during the second stage in terms of the method of evaluation stated in the tender data, and award the contract in terms of the standard conditions of tender in this part of ISO 10845.

4 Tenderer's obligations

The tenderer shall comply with the following obligations.

4.1 Eligibility

4.1.1 Submit a tender offer

Submit a tender offer only if the tenderer satisfies the eligibility criteria stated in the tender data and if the tenderer, or any of the tenderer's principals, is not under any restriction to do business with the employer.

4.1.2 Notify the employer

Notify the employer of any proposed material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used by the employer as the basis in a prior process to invite the tenderer to submit a tender offer, and obtain the employer's written approval to do so before the closing time for tenders.

4.2 Cost of tendering

Accept that, unless otherwise stated in the tender data, the employer does not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer comply with requirements.

4.3 Checking documents

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

4.4 Confidentiality and copyright of documents

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

4.5 Reference documents

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are incorporated into the tender documents by reference.

4.6 Acknowledging addenda

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

4.7 Clarification meeting

Attend, where required, a clarification meeting, the details of which are stated in the tender data, at which tenderers may familiarize themselves with aspects of the proposed work, services or supply, and raise questions.

4.8 Seeking clarification

Unless otherwise notified in the tender data, request clarification of the tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the tender data.

4.9 Insurance

Be aware that the extent of insurance to be provided by the employer (if any) might not be for the full cover required in terms of the conditions of contract identified in the contract data.

4.10 Pricing the tender offer

Include in the rates, prices, and the tendered total of the prices (if any), all duties, taxes which the law requires to be paid [except value added tax (VAT)], and other levies payable by the successful tenderer, that are applicable 14 days before the closing time stated in the tender data.

Show the VAT payable by the employer separately as an addition to the tendered total of the prices.

Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

State the rates and prices in monetary value of the contract unless otherwise instructed in the tender data.

NOTE The contract data can provide for part payment in other currencies.

4.11 Alterations to documents

Do not make any alterations or additions to the tender documents, except to comply with instructions issued by the employer or to correct errors made by the tenderer and ensure that all signatories to the tender offer initial all such alterations.

Do not make erasures using masking fluid.

4.12 Alternative tender offers

Unless otherwise stated in the tender data, submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted, as well as a schedule that compares the requirements of the tender documents with the alternative requirements that are proposed.

Accept that an alternative tender offer may be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

4.13 Tender submissions

4.13.1 General submission requirements

Submit one tender offer only, either as a single entity or as a member in a joint venture, to provide the whole of the works, services or supply identified in the draft contract, unless otherwise stated in the tender data.

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.

Submit

- a) the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with a translation of any documentation in a language other than the language of communication established in 3.4, and
- b) the parts communicated electronically in the same format as they were issued by the employer.

4.13.2 Signatures

Sign the original and all copies of the tender offer where required in terms of the tender data.

State in the case of a joint venture which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

NOTE The employer holds all authorized signatories liable on behalf of the tenderer.

4.13.3 Tender securities

Submit, as required as part of the tender submission, a tender security from a bank or insurer that is in a strong enough commercial position to carry such security in the name of the tenderer, or in the names of each of the members of a joint venture, in the amount, for the period and in the form specified in the tender data.

4.13.4 Inclusion of certificates

Include in the tender submission, or provide the employer with, any certificates as stated in the tender data.

4.13.5 Sealing of documents

Seal the original and each copy of the tender offer as separate packages, marking the packages as "ORIGINAL" and "COPY". Unless otherwise specified in the tender data, seal the "ORIGINAL" and "COPY" packages in a single package and state on the outside of such package the employer's address and identification details specified in the tender data, as well as the tenderer's name and contact address.

Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked "FINANCIAL PROPOSAL" and place the remaining returnable documents in an envelope marked "NON-FINANCIAL PROPOSAL". State on the outside of each envelope the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address. Seal the original tender offer and copy packages together in an outer package that states, on the outside, only the employer's address and identification details as specified in the tender data.

4.13.6 Employer's acceptance of tender submissions

Accept that the employer does not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

Accept that the employer shall not accept tender offers submitted by telegraph, telex, facsimile or e-mail, unless otherwise stated in the tender data.

4.14 Information and data to be completed in all respects

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

4.15 Closing time

Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Proof of posting shall not be accepted as proof of delivery.

Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of the standard conditions of tender in this part of ISO 10845 apply equally to the extended deadline.

4.16 Tender offer validity

4.16.1 Period of validity

Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period, with or without any conditions attached to such extension. Extend the period of the tender security, if any, to cover any agreed extension requested by the employer.

4.16.2 Withdrawal of tenders

Accept that a tender submission that has been submitted to the employer may only be withdrawn or substituted by giving the employer's agent written notice before the closing time for tenders that a tender is to be withdrawn or substituted.

Where a tender submission is to be substituted, submit a substitute tender in accordance with the requirements of 4.13 with the packages clearly marked as "SUBSTITUTE".

4.17 Clarification of tender offer after submission

Provide clarification of a tender offer during the evaluation of tender offers, in response to a request from the employer to do so.

NOTE Such clarifications can include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.

4.18 Other material

Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials considered necessary by the employer for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as being non-responsive.

Dispose of samples of materials provided for the employer's evaluation.

4.19 Inspections, tests and analysis

Provide access during working hours to premises for inspections, tests and analysis, as provided for in the tender data.

4.20 Submitting securities, bonds, policies, etc.

If requested, submit for the employer's acceptance before formation of the contract all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

4.21 Checking final draft

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.