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**Construction procurement —**  
**Part 3:**  
**Standard conditions of tender**

*Marchés de construction —*

*Partie 3: Conditions types normalisées des soumissions*



Reference number  
ISO 10845-3:2011(E)

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# Contents

Page

Foreword .....	v
Introduction.....	vi
<b>1 Scope .....</b>	<b>1</b>
<b>2 Terms and definitions .....</b>	<b>1</b>
<b>3 General requirements .....</b>	<b>4</b>
3.1 Actions.....	4
3.2 Tender documents .....	4
3.3 Interpretation .....	4
3.4 Communication and employer's agent .....	4
3.5 Employer's right to accept or reject any tender offer .....	4
3.6 Procurement procedures.....	5
3.6.1 General .....	5
3.6.2 Competitive negotiation procedure.....	5
3.6.3 Proposal procedure using the two-stage tendering system.....	5
<b>4 Tenderer's obligations .....</b>	<b>6</b>
4.1 Eligibility.....	6
4.1.1 Submit a tender offer .....	6
4.1.2 Notify the employer .....	6
4.2 Cost of tendering.....	6
4.3 Checking documents .....	6
4.4 Confidentiality and copyright of documents .....	6
4.5 Reference documents .....	6
4.6 Acknowledging addenda .....	6
4.7 Clarification meeting.....	6
4.8 Seeking clarification.....	6
4.9 Insurance.....	7
4.10 Pricing the tender offer .....	7
4.11 Alterations to documents .....	7
4.12 Alternative tender offers .....	7
4.13 Tender submissions.....	7
4.13.1 General submission requirements .....	7
4.13.2 Signatures .....	8
4.13.3 Tender securities.....	8
4.13.4 Inclusion of certificates .....	8
4.13.5 Sealing of documents .....	8
4.13.6 Employer's acceptance of tender submissions .....	8
4.14 Information and data to be completed in all respects .....	8
4.15 Closing time .....	8
4.16 Tender offer validity .....	9
4.16.1 Period of validity.....	9
4.16.2 Withdrawal of tenders.....	9
4.17 Clarification of tender offer after submission .....	9
4.18 Other material .....	9
4.19 Inspections, tests and analysis .....	9
4.20 Submitting securities, bonds, policies, etc. ....	9
4.21 Checking final draft.....	9
4.22 Returning other tender documents .....	10
<b>5 Employer's undertakings.....</b>	<b>10</b>
5.1 Responding to requests from the tenderer .....	10

5.2	Issuing addenda.....	10
5.3	Returning late tender offers.....	10
5.4	Opening of tender submissions.....	10
5.5	Two-envelope system .....	11
5.6	Non-disclosure.....	11
5.7	Grounds for rejection and disqualification .....	11
5.8	Test for responsiveness .....	11
5.9	Arithmetical errors, omission and discrepancies .....	11
5.10	Clarification of a tender offer.....	12
5.11	Evaluation of tender offers .....	12
5.11.1	General.....	12
5.11.2	Method 1: Financial offer .....	12
5.11.3	Method 2: Financial offer and quality .....	13
5.11.4	Method 3: Financial offer and preferences .....	13
5.11.5	Method 4: Financial offer, quality and preferences.....	14
5.11.6	Decimal places.....	14
5.11.7	Scoring financial offers.....	14
5.11.8	Scoring preferences.....	15
5.11.9	Scoring quality.....	15
5.12	Insurance provided by the employer .....	15
5.13	Acceptance of a tender offer .....	15
5.14	Preparing contract documents.....	16
5.15	Completing adjudicator's contract .....	16
5.16	Notice to successful and unsuccessful tenderers.....	16
5.17	Providing copies of the contracts.....	16
5.18	Returning of tender securities.....	16
5.19	Providing written reasons for actions taken.....	16
Annex A (informative) Commentary .....		17
Annex B (informative) Tender data.....		36
Annex C (informative) Evaluating tender offers.....		42
Annex D (informative) Example of a tender security.....		58
Bibliography.....		59

## 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.

# 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.

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]

**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.

## 4.22 Returning other tender documents

If so instructed by the employer, return all retained tender documents within 28 days of the expiry of the validity period stated in the tender data.

## 5 Employer's undertakings

The employer shall carry out the following undertakings.

### 5.1 Responding to requests from the tenderer

Unless otherwise notified in the tender data, respond to a request for clarification received up to five working days before the tender closing time stated in the tender data, and notify all tenderers who obtained procurement documents.

Consider any request to make a 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 to pre-qualify a tenderer to submit a tender offer in terms of a previous procurement process.

Deny any such request if, as a consequence,

- a) an individual firm, or a joint venture as a whole, or any individual member of the joint venture fails to comply with any of the collective or individual qualifying requirements,
- b) the new partners to a joint venture were not pre-qualified in the first instance, either as individual firms or as another joint venture, or
- c) in the opinion of the employer, acceptance of the material change would compromise the outcome of the pre-qualification process.

### 5.2 Issuing addenda

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date that tender documents are available until, unless otherwise notified in the tender data, three working days before the tender closing time stated in the tender data.

If, as a result of the issuing of addenda, it is necessary to extend the closing time stated in the tender data, grant such extension and notify all respondents accordingly.

### 5.3 Returning late tender offers

Return tender offers received after the closing time stated in the tender data unopened, unless it is necessary to open a tender submission to obtain a forwarding address to the tenderer concerned.

### 5.4 Opening of tender submissions

Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers who choose to attend, at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted are not opened.

Announce at the meeting held immediately after the receipt of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened and, where applicable, the total of the tenderer's prices, preferences claimed and time for completion, for the main tender offer only.

Make available, upon request, to all interested persons the record of tender parameters that are announced in respect of each tender received.



## 5.5 Two-envelope system

Where stated in the tender data that a two-envelope system has been followed, open only the non-financial proposal of valid tenders in the presence of tenderers' agents, who choose to attend, at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.

Evaluate the non-financial proposals offered by tenderers, then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals are to be opened.

Open only the financial proposals of tenderers who, in the quality evaluation score, have more than the minimum number of points for quality stated in the tender data, and announce the score obtained for the non-financial proposals and the total price and any preferences claimed. Return unopened financial proposals to tenderers whose non-financial proposals failed to achieve the minimum number of points for quality.

## 5.6 Non-disclosure

Do not disclose to tenderers, or to any person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

## 5.7 Grounds for rejection and disqualification

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and said tenderer's offer) if it is established that the tenderer engaged in corrupt or fraudulent practices.

## 5.8 Test for responsiveness

Determine, after opening and before detailed evaluation, whether each tender offer that was properly received

- a) complies with the requirements of the standard conditions of tender in this part of ISO 10845,
- b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

A responsive tender is one that conforms to all the terms, conditions, and scope of work of the tender documents, without material deviation or qualification. A material deviation or qualification is one which, in the employer's opinion, would

- d) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the scope of work,
- e) significantly change the employer's or the tenderer's risks and responsibilities under the contract, or
- f) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and do not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

## 5.9 Arithmetical errors, omission and discrepancies

Check responsive tenders for discrepancies between amounts in words and amounts in figures. Where there is a discrepancy between the amounts in figures and the amount in words, the amount in words shall govern.

## ISO 10845-3:2011(E)

Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers in accordance with 5.11 for

- a) the gross misplacement of the decimal point in any unit rate,
- b) omissions made in completing the pricing schedule or bill of quantities, or
- c) arithmetical errors in
  - 1) line item totals resulting from the product of a unit rate and a quantity in bill of quantities or schedules of prices, or
  - 2) the summation of the prices.

Notify the tenderer of all errors or omissions that are identified in the tender offer and either confirm the tender offer as tendered or accept the corrected total of prices.

Where the tenderer elects to confirm the tender offer as tendered, correct the errors as follows:

- d) If a bill of quantities or pricing schedules apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.
- e) Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer shall be asked to revise selected item prices (and their rates if bill of quantities apply) to achieve the tendered total of the prices.

Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of errors in the required manner.

### 5.10 Clarification of a tender offer

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

### 5.11 Evaluation of tender offers

#### 5.11.1 General

Appoint an evaluation panel to evaluate submissions. Ensure that not less than three persons evaluate quality in terms of 5.11.9.

Reduce each responsive tender offer to a comparative offer and evaluate submissions using the tender evaluation methods and associated evaluation criteria and weightings that are specified in the tender data.

#### 5.11.2 Method 1: Financial offer

In the case of a financial offer

- a) rank tender offers from the most favourable to the least favourable comparative offer, and
- b) recommend the highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Re-rank all tenderers should there be compelling and justifiable reasons not to recommend the tenderer with the highest ranked tender, and recommend the highest ranked tenderer, unless there are compelling and justifiable reasons not to do so, in which case the process set out in this subclause shall be repeated.

### 5.11.3 Method 2: Financial offer and quality

In the case of a financial offer and quality,

- a) score each tender in respect of the financial offer made and quality offered in accordance with the provisions of 5.11.7 and 5.11.9, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any,
- b) calculate the total number of tender evaluation points ( $T_{EV}$ ) in accordance with the following formula:

$$T_{EV} = N_{FO} + N_Q$$

where

$N_{FO}$  is the number of tender evaluation points awarded for the financial offer made in accordance with 5.11.7;

$N_Q$  is the number of tender evaluation points awarded for quality offered in accordance with 5.11.9,

- c) rank tender offers from the highest number of tender evaluation points to the lowest, and
- d) recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Rescore and re-rank all tenderers should there be compelling and justifiable reasons not to recommend the tenderer with the highest number of tender evaluation points, and recommend the tenderer with the highest number of tender evaluation points, unless there are compelling and justifiable reasons not to do so, in which case the process set out in this subclause shall be repeated.

### 5.11.4 Method 3: Financial offer and preferences

In the case of a financial offer and preferences

- a) score each tender in respect of the financial offer made and the preferences claimed, if any, in accordance with the provisions of 5.11.7 and 5.11.8,
- b) calculate the total number of tender evaluation points ( $T_{EV}$ ) in accordance with the following formula:

$$T_{EV} = N_{FO} + N_P$$

where

$N_{FO}$  is the number of tender evaluation points awarded for the financial offer made in accordance with 5.11.7;

$N_P$  is the number of tender evaluation points awarded for preferences claimed in accordance with 5.11.8,

- c) rank tender offers from the highest number of tender evaluation points to the lowest, and
- d) recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Rescore and re-rank all tenderers should there be compelling and justifiable reasons not to recommend the tenderer with the highest number of tender evaluation points and recommend the tenderer with the highest number of tender evaluation points, unless there are compelling and justifiable reasons not to do so, in which case the process set out in this subclause shall be repeated.

#### 5.11.5 Method 4: Financial offer, quality and preferences

In the case of a financial offer, quality and preferences

- a) score each tender in respect of the financial offer made, the preference claimed, if any, and the quality offered in accordance with the provisions of 5.11.7 to 5.11.9, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any,
- b) calculate the total number of tender evaluation points ( $T_{EV}$ ) in accordance with the following formula, unless otherwise stated in the tender data:

$$T_{EV} = N_{FO} + N_P + N_Q$$

where

$N_{FO}$  is the number of tender evaluation points awarded for the financial offer made in accordance with 5.11.7;

$N_P$  is the number of tender evaluation points awarded for preferences claimed in accordance with 5.11.8;

$N_Q$  is the number of tender evaluation points awarded for quality offered in accordance with 5.11.9,

- c) rank tender offers from the highest number of tender evaluation points to the lowest, and
- d) recommend the tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Rescore and re-rank all tenderers should there be compelling and justifiable reasons not to recommend the tenderer with the highest number of tender evaluation points, and recommend the tenderer with the highest number of tender evaluation points, unless there are compelling and justifiable reasons not to do so, in which case the process set out in this subclause shall be repeated.

#### 5.11.6 Decimal places

Score financial offers, preferences and quality, as relevant, to two decimal places.

#### 5.11.7 Scoring financial offers

Score the financial offers using the following formula:

$$N_{FO} = W_1 \times A$$

where

$N_{FO}$  is the number of tender evaluation points awarded for the financial offer;

$W_1$  is the maximum possible number of tender evaluation points awarded for the financial offer as stated in the tender data;

$A$  is the number calculated using the relevant formula described in Table 1, as stated in the tender data.

Table 1 — Formulae for calculating the value of  $A^a$ 

Formula number	Basis for comparison	Formula
1	Highest price or discount	$P/P_m$
2	Lowest price or percentage commission or fee	$P_m/P$
<sup>a</sup> $P_m$ is the comparative offer of the most favourable comparative offer. $P$ is the comparative offer of the tender offer under consideration.		

### 5.11.8 Scoring preferences

Confirm that tenderers are eligible for the preferences claimed in accordance with the provisions of the tender data and reject all claims for preferences where tenderers are not eligible for such preferences.

Calculate the total number of tender evaluation points for preferences ( $N_p$ ) claimed in accordance with the provisions of the tender data.

### 5.11.9 Scoring quality

Score each of the criteria and subcriteria for quality in accordance with the provisions of the tender data.

Calculate the total number of tender evaluation points for quality ( $N_Q$ ) using the following formula:

$$N_Q = W_2 \times S_O / M_S$$

where

$W_2$  is the maximum possible number of tender evaluation points awarded for the quality as stated in the tender data;

$S_O$  is the score for quality allocated to the submission under consideration;

$M_S$  is the maximum possible score for quality in respect of a submission.

## 5.12 Insurance provided by the employer

If requested by the proposed successful tenderer, submit, for the tenderer's information, the policies or certificates of insurance (or both) which the conditions of contract identified in the contract data require the employer to provide.

## 5.13 Acceptance of a tender offer

Accept a tender offer should it be considered not to present any unacceptable commercial risk, only if the tenderer

- a) is not under restrictions, or has principals who are under restrictions, preventing participation in the employer's procurement,
- b) can, as necessary and in relation to the proposed contract, demonstrate the possession of the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and personnel, to perform the contract,
- c) has the legal capacity to enter into the contract,

- d) is not insolvent, in receivership, bankrupt or being liquidated, does not have affairs administered by a court or a judicial officer, does not have suspended business activities, or is subject to legal proceedings with respect to any of the foregoing,
- e) complies with the legal requirements, if any, stated in the tender data, and
- f) is able, in the opinion of the employer, to perform the contract free of conflicts of interest.

#### **5.14 Preparing contract documents**

If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of

- a) addenda issued during the tender period,
- b) inclusion of some of the returnable documents, and
- c) other revisions agreed between the employer and the successful tenderer during the process of offer and acceptance.

Complete the schedule of deviations attached to the form of offer and acceptance, if any.

#### **5.15 Completing adjudicator's contract**

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete the formalities for appointing the selected adjudicator at the same time as the main contract is signed.

#### **5.16 Notice to successful and unsuccessful tenderers**

Notify the successful tenderer of the employer's acceptance of the tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period.

After the successful tenderer has been notified of the employer's acceptance of the tender, notify other tenderers that their tender offers have not been accepted.

#### **5.17 Providing copies of the contracts**

Provide to the successful tenderer the number of copies stated in the tender data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

#### **5.18 Returning of tender securities**

Return tender securities to the successful tenderer and unsuccessful tenderers before the expiry period stated in the tender data or in the tender security.

#### **5.19 Providing written reasons for actions taken**

Provide, upon request, written reasons to tenderers for any action that is taken in applying any of this part of ISO 10845, but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of tenderers and respondents or which might prejudice fair competition between tenderers.

## Annex A (informative)

### Commentary

**NOTE** This annex includes background information on this part of ISO 10845, guidance on its use and suggestions on good practice. The paragraphs in the commentary refer directly to the respective clauses in this part of ISO 10845, e.g. A.1 refers to Clause 1.

#### A.1 Commentary on scope

The purpose of this part of ISO 10845 is to standardize the procurement processes, methods and procedures from the time that tenders are invited to the time that a contract is awarded.

The conditions of tender are, by definition, the document that establishes a tenderer's obligations in submitting a tender and the employer's undertakings in soliciting and evaluating tender offers. The conditions of tender, as such, establish the rules from the time a tender is advertised to the time that a contract is awarded. They are generic in nature and are made procurement-specific through tender data (see Annex B).

The standard conditions of tender are based on a procurement system that

- a) is fair, equitable, transparent, competitive and cost-effective and, subject to an organization's procurement policy, can promote social or development (or both) objectives, and
- b) complies with the qualitative procurement system requirements identified in Table A.1 (see also ISO 10845-1).

**Table A.1 — Qualitative procurement system requirements**

Goal	Qualitative interpretation of goal
Fair	The process of offer and acceptance is conducted impartially without bias and provides participating parties simultaneous and timely access to the same information. Terms and conditions for performing the work do not unfairly prejudice the interests of the parties.
Equitable	The only grounds for not awarding a contract to a tenderer who complies with all requirements are restrictions from doing business with the organization, lack of capability or capacity, legal impediments and conflicts of interest.
Transparent	The procurement process and criteria upon which decisions are to be made are publicized. Decisions (award and intermediate) are made publicly available together with reasons for such decisions. It is possible to verify that criteria were applied. The requirements of procurement documents are presented in a clear, unambiguous, comprehensive and understandable manner.
Competitive	The system provides for appropriate levels of competition to ensure cost-effective and best-value outcomes.
Cost-effective	The processes, procedures and methods are standardized with sufficient flexibility to attain best-value outcomes in respect of quality, timing and price, and least resources to effectively manage and control procurement processes.
Promotion of social and development objectives	The system may incorporate measures to promote objectives associated with a secondary procurement policy subject to qualified tenderers not being excluded and deliverables or evaluation criteria being measurable, quantifiable and monitored for compliance.

Annex C indicates how aspects of these conditions of tender are to be applied. Public sector procurement is frequently governed by local and international laws. These standard conditions of tender do not purport to cover the provisions of all such laws. Employers need to be aware that they are responsible for correct application of these conditions and ensuring consistency with prevailing legislation through the provision of additional clauses, the modification of certain provisions and the formulation of submission data. Compliance with this part of ISO 10845 cannot confer immunity from legal obligations. If doubt exists, legal advice should be sought.

### A.2 Commentary on terms and definitions

The terms “tender” and “tenderer” have been used in preference to “bid” and “bidder” as this is the terminology used in ISO 6707-2 and by the United Nations Commission on International Trade Law in the Model Law on Procurement of Goods, Construction and Services, the World Trade Organization in the Agreement on Government Procurement, the European Commission in their procurement directives and the Fédération Internationale des Ingénieurs-Conseils (FIDIC) in their conditions of contract. The terms “bid” and “bidder”, where encountered in these documents, are only used in the context of auctions.

A contractor is defined as a person or organization that contracts to provide the goods, services or construction works covered by the contract. The use of the generic term “contractor” in all the parts of ISO 10845 eliminates the need to introduce the terms “service provider” and “supplier” as it has been defined to cover these terms.

The financial offer should be reduced to a comparative offer to enable an equitable and fair comparison to be made; hence the need for this definition.

Quality is one of the three parameters which can be used to evaluate tenders. When linked to the financial offer, it enables the most economically advantageous offer to be identified as it enables the subject matter relating to the contract, which has a direct impact on the outcome of the procurement, and hence the financial offer, to be evaluated. (See ISO 10845-1.)

### A.3 Commentary on general requirements

#### A.3.1 Actions

Subclause 3.1 binds both the employer and the tenderer to the provisions of the basic code of conduct provided in ISO 10845-1. It also expands upon some of the provisions of the code of conduct in relation to the tender process.

Failure by a tenderer to act within the provisions of this subclause is tantamount to a breach of the conditions of tender and can result in disqualification (see 5.8).

Employers should not disclose tender information received from tenderers that is intellectual property, proprietary, commercial-in-confidence or otherwise confidential information.

Tender assessment panels should indicate in each tender evaluation report whether or not all members of the panel have declared their interest and, where conflicts of interest (actual, potential or perceived) have been identified, what action has been taken.

#### A.3.2 Tender documents

Subclause 3.2 requires that the tender documents pertaining to a particular tender be identified in the tender data (see Annex B).



### A.3.3 Interpretation

Subclause 3.3 makes it clear that the tender data and tender schedules which are only required for tender evaluation purposes are not to form part of a contract arising from an invitation to tender. This subclause presupposes that procurement documents are developed in accordance with the provisions of ISO 10845-2 and that the list of tender returnables clearly indicates which of the returnable documents are only for tender evaluation purposes.

### A.3.4 Communication and employer's agent

The tender data should provide the name and contact details of the employer's agent for the purpose of communications, and should specify the language of communication.

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

Employers can cancel tenders after their receipt and opening for a number of reasons. The common motivations and probable causes for cancelling such tenders are as set out in Table A.2.

**Table A.2 — Probable reasons for cancelling tenders**

Motivation	Probable cause
More work needs to be done to refine and finalize the scope of the work of the client	A client invites tenderers to submit tenders merely to test market prices to inform design decisions or test cost models
Finance is not available to proceed with the contract	Insufficient planning or co-ordination
The goods, services or construction works falling within the scope of the contract are no longer required	Poor planning or lack of managerial control within an organization
The tender price exceeds the available budget	Poor estimates, market conditions or overly ambitious scope of work for a given budget
The most competitive tenderer is not the tenderer preferred by the employer or the contractor sought by the employer to perform the contract	The preferred contractor failed to submit a tender or submitted a non-responsive tender or the preferred tenderer, following a competitive selection process, fell outside of the desired target group
Insufficient competition or the belief that if the tender would be retendered, the tender prices would be lower	Poor advertising of tenders, contract too risky to be attractive or the timing of the tender was such that tenderers were on holiday or too busy tendering on other more attractive projects
No responsive tenders were obtained	Tenderers failed to satisfy the requirements of the conditions of tender or only tenderers who do not have the capability or capacity to perform the contract submitted tender offers

Not all the aforementioned motivations for cancelling tenders are consistent with a fair, equitable, transparent, competitive and cost-effective procurement system. Tendering is a time consuming and expensive process. Clients can abuse the tendering system by

- calling for tenders solely to obtain market related prices, or
- withdrawing tenders to manipulate market prices or to avoid awarding a contract to a particular contractor who submitted a responsive tender and had the capability and capacity to perform the contract.

Tender prices, particularly in the public sector, are, in the interests of transparency, read out at the opening of tenders or are made known to tenderers. This means that the market is aware of the tender prices when fresh tenders are invited for the same, or substantially the same, scope of work.

Subclause 3.5 prevents employers from inviting tenders without having a firm intention to proceed with the procurement, or from approaching the market with work the market value of which is public knowledge before the expiry of a “cooling down” period. This subclause does not prevent an employer from calling for fresh tenders should the employer change the contracting strategy or restructure the work covered by the proposed contract.

### A.3.6 Procurement procedures

ISO 10845-1 makes provision for competitive selection procedures, a negotiation procedure with a sole contractor, a competitive negotiation procedure, an electronic auction procedure, and disposal procedures. The standard conditions of tender can be applied to any competitive selection procedure, the competitive negotiation procedure and disposals procedures other than those relating to public auction.

In a competitive selection procedure, the focus is on identifying the highest ranked tenderer or the tenderer scoring the highest number of tender evaluation points (i.e. the preferred tenderer) who, following any negotiation of the final terms of the contract, is awarded the contract. In the competitive negotiation procedure, negotiations take place and tenderers are allowed to revise their offers before the identification of the preferred tenderer.

Subclause 3.6 allows the tender process to be adjusted in a standard manner to accommodate the variations in procedure required where the competitive negotiation procedure and proposal procedure using the two-stage tendering system is used.

The competitive negotiation procedure is used to negotiate with a number of qualified tenderers in order to arrive at the most advantageous offer. Negotiations with tenderers can take place through a number of rounds of negotiations, eliminating tenderers on the basis of their rankings or tender evaluation scores until the remaining tenderers are invited to submit final offers. During such negotiations, organizations are required to ensure equal treatment of all tenderers and not provide any requirements, guidelines, documents, clarification or other information relative to the negotiations in a discriminatory manner which might give some tenderers an advantage over others. They can request that tenders be clarified, specified and fine-tuned 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 and, in particular, price competition or have a discriminatory effect on the process. The dialogue with tenderers is closed when solutions which are capable of meeting the employer's needs are identified.

In a proposal procedure using a two-stage tendering system, typically, non-financial proposals are called for. Tender offers are then invited from those tenderers that submit acceptable proposals based on revised procurement documents or a contract is negotiated with the tenderer scoring the highest number of evaluation points. Alternatively, only technical proposals are called for. The employer thereafter invites responsive tenderers to submit competitive tenders.

## A.4 Commentary on tenderer's obligations

### A.4.1 Eligibility

Subclause 4.1 requires the employer to only evaluate tenders that satisfy eligibility criteria. This subclause accordingly allows an employer to introduce minimum qualification or pre-qualification criteria. Failure to satisfy eligibility criteria is a breach of the conditions of tender and, as such, results in instant disqualification. Eligibility criteria, as such, enable employers to call for tenders without first having to call for and evaluate expressions of interest in terms of the qualified procedure (see ISO 10845-1).

Eligibility criteria should be stated in the tender data in the interests of transparency. Such criteria should be formulated around the capability and capacity to perform the work and the avoidance of conflicts of interest and should not contain any criteria which effectively exclude tenderers who comply with all the requirements of 5.13 for the award of a contract.

Where tenderers are invited to submit tender offers following a call for expressions of interest, only those tenderers who are pre-qualified or shortlisted to submit tender offers are eligible to do so. This should be stated in the eligibility criteria.

Where tenderers are pre-qualified or invited to submit tenders following a call for expressions of interest, tenderers are required to advise the employer of any material changes in the tendering entity so that the criteria upon which they were invited to submit tenders are not compromised by such changes.

NOTE Eligibility criteria are not framed around any legal requirements as such requirements are included in the tender data associated with 5.13.

#### **A.4.2 Cost of tendering**

Subclause 4.2 makes the cost of tendering and demonstrating compliance with requirements an expense of the tenderer.

#### **A.4.3 Checking documents**

Subclause 4.3 places the responsibility for checking the completeness of the documents on the tenderer. The employer is obliged to state, in the tender data, the documents that are issued for tender purposes to enable the tenderer to comply with this obligation (see 3.2).

#### **A.4.4 Confidentiality and copyright of documents**

Subclause 4.4 requires tenderers to treat documents as confidential and not to use the documentation issued for any other purpose.

#### **A.4.5 Reference documents**

Subclause 4.5 makes the tenderer responsible for basing the tender offer on the latest versions of publications referenced in procurement documents in the compilation of the tender.

#### **A.4.6 Acknowledging addenda**

Subclause 4.6 requires tenderers to acknowledge receipt of addenda issued by the employer and, if necessary, to apply for an extension to the closing date. It is important that tenderers acknowledge receipt of addenda.

#### **A.4.7 Clarification meeting**

Subclause 4.7 makes provision for tenderers to attend compulsory clarification meeting(s), failing which their tenders can be rejected. Details of such meetings should be stated in the tender data.

A compulsory clarification meeting affords potential tenderers the opportunity to raise points of clarity with the employer. Employers should obtain the names and addresses of all who attend such meetings so that any clarifications or addenda can be simultaneously sent to all prospective tenderers in accordance with 5.2. Tenders received from tenderers who submit tenders and do not attend a compulsory clarification meeting are regarded as being non-responsive. (see 5.8).

Measures should be put in place to accurately record the names and contact particulars of all potential tenderers who obtained tender documents where no compulsory meeting was held. Should this not be done, it is impossible for the employer to issue addenda in terms of 5.2.

In engineering and construction works, clarification meetings often take place on site. Such meetings provide potential tenderers with an opportunity to view the site. As a result, they are commonly referred to as "site meetings". Addenda to correct errors or omissions in procurement documents are often issued at these

meetings as this is the one time that representatives of all potential tenderers who can submit tenders are present in one place.

Minutes of any such clarification meetings should be taken, recording all requests for clarification received and responses thereto, without identifying the sources of the requests. The minutes of such meetings should be promptly distributed to those attending the meetings and, if necessary, to all tenderers who have obtained procurement documents.

Clarification meetings should, as relevant, be structured such that they provide

- a) an opportunity for tenderers to become fully aware of, and to understand, what is required in the procurement processes and in the execution of the proposed contract,
- b) an opportunity for tenderers to raise any specific queries they might have concerning incomplete information or ambiguities in the information,
- c) an opportunity for tenderers to raise questions about potential qualifications or alternative tenders, and
- d) an opportunity to issue any further information or addenda.

All tenderers should be dealt with equitably and fairly. Additional information should be provided in writing simultaneously to all tenderers.

#### **A.4.8 Seeking clarification**

Subclause 4.8 places the onus on tenderers to seek clarification well in advance of the closing date for tenders. This enables the employer to respond to requests for clarification within a time frame that still allows tenderers to take account in their tender offers of any addenda that might be issued.

#### **A.4.9 Insurance**

Subclause 4.9 makes tenderers aware that insurance, if any, provided by the employer might not be sufficient.

#### **A.4.10 Pricing the tender offer**

Subclause 4.10 establishes a common basis for the preparation and documentation of prices so that they can be fairly and equitably compared, and it deals with changes in value added tax (VAT), duties, taxes and the like, around the time that tenders are submitted.

#### **A.4.11 Alterations to documents**

Subclause 4.11 establishes a consistent and uniform approach regarding the alteration of tender documents.

#### **A.4.12 Alternative tender offers**

Subclause 4.12 establishes requirements for the submission of alternative tenders to ensure that the acceptance of such tenders does not compromise the competitive process. The criteria upon which an alternative offer is to be based should be indicated in the tender data. Alternatively, the criteria that such an offer should satisfy in order to be accepted by the employer should be stated.

The tender data should, where relevant, indicate what should be submitted with the alternative tender offer and any allowances that the tenderer should make in the alternative offer to cover the employer's cost in evaluating such proposals. For example, in the case of an alternative bridge design, tenderers might be required to submit calculations, drawings and all other pertinent technical information, as well as modified or proposed pricing data, including an amount to cover the employer's cost of confirming the acceptability of the detailed design before it is constructed.

Employers should not breach confidentiality by using information contained in alternative tenders as the basis for calling for subsequent tenders.

#### **A.4.13 Tender submissions**

Subclause 4.13 establishes the requirements for tenderers to submit compliant tenders. Specific requirements relating to the submission of tender offers should be stated in the tender data.

Organizations can only, unless otherwise permitted, submit one tender offer, either as a single tendering entity or as a partner in a joint venture. The submission of more than one tender offer from an organization is not permitted.

Subclause 4.13.3 permits employers to require tenderers to submit tender securities. Such securities encourage tenderers to guarantee their tender offer, failing which they forfeit their tender security. Annex D provides an example of a tender security.

Subclause 4.13.4 requires tenderers to include any certificates specified in the tender data in their tender submissions. These certificates should also be included in the list of returnable documents which forms part of the procurement documents.

#### **A.4.14 Information and data to be completed in all respects**

Subclause 4.14 warns tenderers that incomplete submissions can be regarded by the employer as being non-responsive. The list of returnable documents (see ISO 10845-2) should identify all the documents that should be completed or submitted together with the tender offer.

#### **A.4.15 Closing time**

Subclause 4.15 identifies the closing time for submissions and deals with extensions of time. The closing time and date should be stated in the tender data.

#### **A.4.16 Tender offer validity**

Subclause 4.16 states that the tenderer should hold tender offers valid for acceptance for a period stated in the tender data. The employer is free to request the tenderer to extend the validity period should this be necessary. The tenderer is not, however, obliged to extend the validity period. It is unfair to hold a tender for lengthy periods without providing the tenderer with an opportunity to withdraw the tender or extend the validity of the tender with or without provisions for price escalation.

The financial value of the tender offer of any tenderer extending the validity period of the tender offer, subject to price escalation, can require that the financial offers of all tender offers received be brought back to a common basis and be re-evaluated in terms of 5.11.

Subclause 4.16 also establishes a procedure for the withdrawal of tenders before the closing time for tenders.

#### **A.4.17 Clarification of tender offer after submission**

Subclause 4.17 obligates tenderers to clarify aspects of their tenders, when requested to do so, and to make any amendments to the tender without changing the competitive position of the tenderers. The employer should manage the clarification procedure in such a way as not to give any tenderer an unfair advantage over other tenderers. Tenderers should not use clarification requests as an opportunity to gain an advantage over other tenderers by revising or enhancing their tender offers.

This subclause does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process. In a competitive selection process, the negotiation of the final contract with the preferred tenderer (i.e. the tenderer with the highest number of tender evaluation points or highest ranked tender) should be confined to the final terms of the contract and not, under any circumstances, lead to a change in the competitive position of tenderers.

Any of the rates submitted in the pricing data can be amended and adjusted in order to manage commercial risk, provided that the tendered sum is not increased. The tendered sum is usually only amended where

- a) it is believed that the total of prices is considered to be excessive, or
- b) the total of prices is above the budget available for the project and the scope of work needs to be trimmed to reduce the total of prices.

### **A.4.18 Other material**

Subclause 4.18 allows the calling for additional material relating to the evaluation of tenders after the closing time for submissions. All information which is integral to the tender offer should be submitted with the tender submission, failing which the tender can, in terms of subclause 5.8, be declared non-responsive and therefore be rejected.

Those responsible for compiling procurement documents should clearly identify, in the list of returnable documents, which of the returnable schedules form part of the contract that can be entered into.

The additional material that is requested should only be requested from shortlisted or preferred tenderers to confirm that they have the capacity to enter into a contract with the employer, demonstrate that they have the necessary capabilities and capacity to perform the contract or to confirm the acceptability of the product offered and to provide clarity on what is actually offered. Accordingly, such additional material can include a breakdown of prices, a priced bill of quantities, joint venture agreements, samples, documents authorizing signatories to sign contracts and any documentation which demonstrates that the tenderer has the capacity and capability to perform the contract.

### **A.4.19 Inspections, tests and analysis**

Subclause 4.19 requires that access, during working hours, to the tenderer's or his supplier's premises for inspections, tests and analysis be provided, the details of which should be set out in the tender data.

### **A.4.20 Submitting securities, bonds, policies, etc.**

Subclause 4.20 permits employers to obtain all the required securities, bonds, guarantees, policies and certificates of insurance identified in the contract data before the formation of the contract, should this be necessary. This subclause permits the employer to require that such documentation be finalized and submitted before the formation of the contract. Many standard forms of contract establish requirements for finalizing and submitting such documentation within a specified time period after the commencement date of the contract. Failure to do so constitutes a breach of the contract.

There are advantages and disadvantages, as well as certain practical difficulties, associated with the finalization and submission of these documents before or after the formation of the contract. These should be carefully considered.

### **A.4.21 Checking final draft**

Subclause 4.21 obligates tenderers to confirm the final draft contract within a specified time period so as not to delay the award of the contract. This should only be necessary where the changes in the procurement document issued for tender purposes are significant, as the form of offer and acceptance provided in ISO 10845-2 provides for a window period within which the contents of the contract can be refused.

### **A.4.22 Returning of other tender documents**

Subclause 4.22 requires tenderers to return all retained tender documents should the employer so require.

## **A.5 Commentary on employer's undertakings**

### **A.5.1 Responding to requests from the tenderer**

Subclause 5.1 establishes the manner in which the employer should respond to requests for clarification and requests to make a material change in the capabilities or formation of the tendering entity and the time frames relating thereto.

All requests for information provided in writing should be consolidated and all answers provided to all tenderers via fax or e-mail to ensure consistent and fair dealing. Where the question or request for clarification is considered to be of material significance, both the query and the response should be communicated in a suitably anonymous form. Where queries result in the issuing of an addendum that makes significant changes to the documentation, e.g. the amending of clauses, the issuing of additional drawings and information not included in the documentation, or amendments to the pricing data, an extension of the tender period should be considered.

### **A.5.2 Issuing addenda**

Subclause 5.2 establishes the manner in which the employer issues addenda and the time frames relating thereto.

Addenda should be communicated simultaneously to all prospective tenderers that have drawn procurement documents in advance of the closing date. Should there be insufficient time to issue addenda or for tenderers to respond to such addenda, such addenda should either not be issued, or the closing date for tender offers should be postponed to enable the addenda to be issued.

### **A.5.3 Returning late tender offers**

Subclause 5.3 obligates the employer to return late tenders unopened.

### **A.5.4 Opening of tender submissions**

Subclause 5.4 establishes the procedures which should be followed for the opening of tender submissions and requires the employer to make available the record upon request.

Where tenders are not opened in public, this subclause should be replaced in the tender data with wording to the effect that the total of prices, preferences claimed and time for completion (if any) for the main tender offers received will be published and made available to tenderers. Measures should be put in place to ensure that late tenders are returned unopened and that tender submissions are not tampered with or changed after the closing time for tenders. Such tender submissions should be opened not more than one week after the closing time for tenders, in the presence of not less than two persons representing the employer and one other person who is independent of the employer, named in the procurement documents.

All tender submissions should be given a mark of authenticity upon opening, and on every page, as proof that the tender submission was received before the closing time.

Where contracts are not awarded in totality to a single tenderer, the recording of the total of prices is not required. Where defined portions of contracts can be awarded to multiple tenderers and such portions can be readily totalled in the tender submission, these totals should be recorded.

### **A.5.5 Two-envelope system**

Subclause 5.5 establishes the procedures associated with the use of the two-envelope system, should the tender data indicate that such a procedure is to be pursued.

### **A.5.6 Non-disclosure**

Subclause 5.6 establishes requirements to maintain integrity in the tender process.

### **A.5.7 Grounds for rejection and disqualification**

Subclause A.5.7 permits tender submissions to be rejected and tenderers to be disqualified should there be a reasonable suspicion or evidence that a respondent has, or has attempted to, improperly influence the tender process or has engaged in corrupt or fraudulent practices.

### **A.5.8 Test for responsiveness**

Subclause 5.8 establishes the procedures for this test and the criteria by which tender offers are considered responsive. Table C.1 provides comprehensive guidance on how to test for responsiveness.

If, after a competitive tendering procedure has been followed, none of the tenders are responsive, negotiations should be conducted with the tenderer submitting the most acceptable tender offer based on the evaluation criteria in order to arrive at a mutually acceptable tender.

### **A.5.9 Arithmetical errors, omission and discrepancies**

Subclause 5.9 deals with the handling of arithmetical errors during the evaluation of tenders and specifies how the employer should make such corrections when establishing the competitive position of tenderers. It

- a) requires that the price submitted (i.e. the offer), which is made known to interested parties at the opening of tenders, be used as the basis for establishing the competitive position of tenderers in the interests of transparency,
- b) streamlines the evaluation process as each and every tender submitted does not have to be checked for arithmetical correctness,
- c) removes the responsibility placed on the employer to manage the process of the arithmetical scrutiny of tendered amounts without compromising the integrity of the process,
- d) enables employers to request that tenderers submit the tendered sum with their tender submissions and complete bill of quantities only if called upon to do so before the award of the contract, and
- e) requires tenderers to take full responsibility for correctly calculating their tender sums.

Allowing the competitive position of tenderers to be determined on the basis of the correction of errors of all tenders received by the employer has the potential to undermine transparency in the procurement process.

This subclause requires that the employer notify the most competitive tenderer of any arithmetical errors and to get clarity on what the tender offer is — the sum tendered or the corrected amount. This affords the tenderer the opportunity to comment on the impact of the error on his ability to perform the contract in the event of a serious omission or error. If the tenderer elects to be bound by the corrected amount and this changes the competitive position of the tenderer, the procedure should be repeated with the highest ranked tender or tenderer with the highest number following the re-evaluation of submissions in terms of 5.11.

This subclause does not deal with the re-measurement of the works based on the rates provided for in the bill of quantities. This is dealt with in the contract data and pricing data, and is particular to the form of contract and contracting strategy used.

### **A.5.10 Clarification of a tender offer**

Subclause 5.10 requires that employers obtain clarification from a tenderer on any matter arising from the tender offer that could give rise to ambiguity in a contract.



### A.5.11 Evaluation of tender offers

Subclause 5.11 establishes procedures for the evaluation of tender offers using one of the following four methods, namely

Method 1: Financial offer

Method 2: Financial offer and quality

Method 3: Financial offer and preferences

Method 4: Financial offer, quality and preferences

This subclause contemplates that the tender data in the procurement documents for a particular procurement:

- a) identify the methods that should be used in the evaluation of tenders,
- b) establish the weighting between financial offer and preference, financial offer and quality, and financial offer, quality and preference, as relevant,
- c) describe and quantify the preferences, establish the conditions associated with the granting of preferences and the precise manner in which preferences should be scored, and
- d) establish the quality criteria and subcriteria that should be evaluated and the precise manner in which quality should be scored.

Where submissions are based solely on quality, Method 2 should be used with the weighting between quality and financial offer being set at 1,0 and 0 respectively. The tender data should indicate that the price is negotiated with the highest ranking tenderer.

#### A.5.11.1 General

The evaluation panel should

- a) determine whether or not tender offers were responsive to requirements established in the procurement documents,
- b) evaluate submissions strictly in accordance with the criteria and procedures established in the procurement documents,
- c) reduce tender offers to a comparative basis,
- d) determine whether or not there are any grounds for disqualification,
- e) determine the acceptability of preferred tenderers (legal compliance, capability, capacity and commercial risk),
- f) identify and evaluate commercial risks, and
- g) prepare a tender evaluation report or shortlist report, complete with recommendations, which clearly states the reasons for overlooking a tenderer or respondent.

Where quality is evaluated, three persons who are fully conversant with the technical aspects of the procurement should undertake such evaluation.

Preferences evaluated on a comparative basis and quality criteria should be scored either collectively or independently by each member of the evaluation panel and averaged. The scores should be retained for auditing purposes.

Those engaged in the evaluation process should

- h) not foster the suspicion of any conflict between their official duty and their private interest,
- i) not give the impression to anyone whomsoever that they have been or might be influenced by a gift or consideration (including acceptance of hospitality) to show favour or disfavour to any person,
- j) deal with tenderers in an equitable and even-handed manner at all times, and
- k) not use any confidential information obtained for personal gain and not discuss with, or disclose to, outsiders prices which have been tendered.

A comparative offer is defined as the tenderer's financial offer after all tendered parameters that can affect the value of the financial offer have been taken into consideration. Account should be taken of parameters such as unconditional discounts, operating or life-cycle costs, employer's risk, not firm prices, etc. when reducing offers to comparative offers.

Where the contract data provide for no changes in cost relating to the rise and fall of the cost of labour, materials, or other inputs to the work, and tenderers are permitted to tender amounts with and without changes in costs, tender amounts should be reduced to firm prices for comparative purposes, i.e. to amounts before any changes in costs are made. Estimates of changes in costs might need to be made in order to reduce amounts to comparative prices. A discount which is dependent on the employer adhering to the contractual obligations, e.g. to pay on time, should be regarded as an unconditional discount.

### A.5.11.7 Scoring financial offers

Subclause 5.11.7 provides a range of formulae to facilitate the scoring of financial offers, depending upon what the basis of the evaluation is. Formula 1 is applicable to situations where tenderers are invited to submit tenders for disposals or to tender a discount against a price list.

The offer receiving the highest number of points for price should be realistically priced. Unrealistic financial offers (i.e. offers where it is not economically possible to perform the contract at that price) distort the scoring of price.

A tendered sum can be regarded as being unduly low should it be considered to compromise the ability of a tenderer to complete the contract. A professional estimate or the average price tendered can be used as an indicator (benchmark of market prices) of this, but not as an absolute criterion on which a tender offer is overlooked. Any decision reached in this regard should be established on a case-by-case basis (see ISO 10845-1). An analysis of the fundamental components of a project, e.g. equipment, materials, labour and supervision, might indicate that it is highly improbable that the work can be executed for the tendered amount. Alternatively, the tenderer might have to be called upon to demonstrate his ability to complete the contract for the sum tendered in terms of 4.17.

### A.5.11.9 Scoring quality

To ensure consistency in scoring, members of the evaluation panel should be provided with prompts for judgments or qualitative indicators relating to all quality criteria and any subcriteria that are linked to a specific score (see Tables A.3 and A.4). Such prompts should, wherever appropriate, be communicated to tenderers in procurement documents. The rating of submissions should be based on the information submitted, or where relevant, from interviews, and not on mere speculation or suspicion or the personal knowledge of a panel member.

**Table A.3 — Qualitative indicators or prompts for judgement used in the evaluation of quality (linear scale)**

Score <sup>a</sup>	Qualitative indicator or prompt for judgement
0	Failed to address the question or issue.
20	A detrimental response, answer, solution – limited or poor evidence of skill/experience, high risk that relevant skills are not available.
40	Less than acceptable response, answer or solution – lacks convincing evidence of skill or experience, medium risk that relevant skills are not available.
60	Acceptable response, answer, solution to the particular aspect of the requirement – evidence given of skill or experience.
80	Above acceptable response, answer, or solution – demonstrates real understanding of requirement and evidence of ability to meet it.
100	Excellent response, answer or solution – gives real confidence that the supplier adds real value.
<sup>a</sup> The threshold score, below which tenderers are eliminated from further consideration, should be between 50 % and 60 %.	

Subclause 5.11 requires that the tenderer with the highest number of tender evaluation points (or highest ranked tender if only price is considered) be recommended for the award of the contract, unless there are compelling and justifiable reasons not to do so. Such reasons can include non-compliance with legislative requirements, a lack of demonstrated capability or capacity to perform the contract, or the fact that the tender offer presents an unacceptable commercial risk to the employer (see 5.13).

If the tenderer is unable, unwilling, or fails to enter into the contract, the contract should be offered to the tenderer with the next highest number of tender evaluation points subject to such tenderer complying with the requirements of this subclause, and so on until the contract is awarded; provided, however, that the procurement remains cost-effective and such tender offers are still valid. Where such tenderer is the most favourable comparative offer in the scoring of the financial offer, tender offers should be rescored in order to establish the tenderer that is next in line.

Employers should exhaust all negotiations with the tenderer that submitted the highest ranked tender or with the tenderer with the highest number of tender evaluation points before commencing negotiations with the next highest tenderer, unless time constraints or the closeness of the tenders dictate otherwise.

**Table A.4 — Qualitative indicators or prompts for judgement  
used in the evaluation of quality (logarithmic scale)**

Score <sup>a</sup>	Rating	Qualitative indicator or prompt for judgement		
		Example 1 (Proposed Organization and staffing)	Example 2 (Approach paper)	Example 3 (Knowledge of issues pertinent to the project)
0	No response	Failed to provide information.	Failed to provide information.	Failed to provide information.
40	Poor	The organization chart is sketchy, the staffing plan is weak in important areas.  There is no clarity in allocation of tasks and responsibilities.	The technical approach and/or methodology is poor/is unlikely to satisfy project objectives or requirements. The tenderer has misunderstood certain aspects of the scope of work and does not deal with the critical aspects of the project.	Key staff have limited experience of issues pertinent to the project.
70	Satisfactory	The organizational chart is complete and detailed, the technical level and composition of the staffing arrangements are adequate.	The approach is generic and not tailored to address the specific project objectives and methodology. The approach does not adequately deal with the critical characteristics of the project.  The quality plan, manner in which risk is to be managed, etc. is too generic.	Key staff have reasonable experience of issues pertinent to the project.
90	Good	Besides attaining the “satisfactory” rating, staff are well-balanced, i.e. they show good co-ordination, complimentary skills, clear and defined duties and responsibilities.  Some members of the project team have worked together before on limited occasions.	The approach is specifically tailored to address the specific project objectives and methodology and is sufficiently flexible to accommodate changes that might occur during execution. The quality plan and approach to managing risk, etc. is specifically tailored to the critical characteristics of the project.	Key staff have extensive experience of issues pertinent to the project.
100	Very good	Besides attaining the “good” rating, the proposed team is well-integrated and several members have worked together extensively in the past.	Besides attaining the “good” rating, the important issues are approached in an innovative and efficient way, indicating that the tenderer has outstanding knowledge of state-of-the-art approaches.  The approach paper details ways to improve the project outcomes and the quality of the outputs.	Key staff have outstanding experience of issues pertinent to the project.

<sup>a</sup> The threshold score, below which tenderers are eliminated from further consideration, should be between 50 % and 60 %.

### A.5.12 Insurance provided by the employer

Subclause 5.12 requires that the employer provide the successful tenderer with information on policies or certificates of insurance (or both) that the employer has in relation to the works.

### A.5.13 Acceptance of a tender offer

Subclause 5.13 establishes procedures for the acceptance of tender offers and establishes the criteria for rejecting offers (see Table C.1 in Annex C). It presupposes that a form of offer and acceptance along the lines of that provided in ISO 10845-2 is used.

A tender can be rejected on technical grounds [see (a), (c), (d) and (e)] or for not having the capability and capacity to undertake the work [see (b)]. There are no other grounds for declining a tender apart from conflicts of interest [see (f)], unacceptable commercial risk or a breach of the standard conditions of tender.

There are a number of ways in which it might be established that a tenderer has the legal capacity to enter into the contract, should it be necessary to do so. These include the inclusion of the completion of an authority for signatory in the list of returnable documents in the procurement documents (see 4.14 and ISO 10845-2), relying on the tenderer confirming that he is duly authorized to submit a tender in the form of offer and acceptance (see Annex B of ISO 10845-2:—<sup>1)</sup>) and the requesting of the tenderer to confirm authority prior to signing the contract in terms of 4.18.

Employers can decline to contract with tenderers who are not in good standing in so far as a piece of legislation is concerned, e.g. failing to meet their tax obligations, failing to pay their social security contributions or contravention of anti-corruption laws.

Professional service providers are required to provide professional, objective and impartial advice and at all times hold the employer's interests paramount, without any consideration of future work, and strictly avoid conflicts with other assignments or their own corporate interests. Conflicts of interest might arise from prior or current obligations to other organizations. In such cases, such tenderers should not be awarded a contract that would be in conflict with their prior or current obligations to other clients, or that might place them in a position of not being able to carry out the assignment in the best interests of the employer.

Conflicts of interest might arise from the preparation of procurement documents for an employer, should the professional service provider responsible for preparing that document submit a tender. If, for reasons acceptable to the employer, it is not desirable to debar a professional service provider who has participated in the development of the scope of work and other such documentation associated with a particular tender, the employer should state in the tender data that such a professional service provider is a potential tenderer and that all the information which was made available to and the advice provided by that professional service provider which is relevant to the tender is made equally available to all potential tenderers upon request, if not already included in the scope of work. The employer should, in such circumstances, review the outputs of the professional service provider and be satisfied that the procurement document is objective and unbiased with regard to the role and recommendations of that professional service provider.

Conflicts of interest might also arise where a tenderer provides goods or engineering and construction works to a particular project and is then called upon to provide professional services relating to that project.

Proof of the tenderer's economic and financial standing might be furnished by one or more of the following references:

- a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- b) balance sheets or extracts from the balance sheets, where publication of the balance sheet is required under the law of the country in which the tenderer is established;
- c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the tenderer started trading, as far as the information on these turnovers is available.

## ISO 10845-3:2011(E)

Evidence of the tenderer's technical abilities might be furnished by one or more of the following means according to the nature, quantity or importance, and use of the works, goods or services:

- d) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution or declarations for the most important works indicating the value, date and site of the works and whether they were properly completed; or
- e) a list of the principal deliveries effected or the main services provided in the past three years, with the prices, dates and recipients involved;
- f) an indication of the technicians or technical bodies involved, whether or not belonging directly to the tenderer's undertaking, especially those responsible for quality control and those upon whom the tenderer can call in order to carry out the work;
- g) a description of the technical facilities and measures used by the tenderer for ensuring quality and the tenderer's study and research facilities;
- h) where the products or services to be supplied are complex or, in exceptional cases, are required for a special purpose, a check carried out by the employer or on the employer's behalf by a competent body of the country in which the tenderer is established, subject to that body's agreement, on the production capacities or the technical capacity of the tenderer and, if necessary, on the means of study and research which are available to it and the quality control measures it intends operating;
- i) the educational and professional qualifications of the tenderer or those of the tenderer's managerial staff, or both, and, in particular, those of the person or persons responsible for providing the services or managing the work;
- j) an indication of the environmental management measures that the tenderer intends to apply when performing the contract;
- k) a statement of the average annual manpower of the tenderer and the number of managerial staff for the last three years;
- l) a statement of the tools, plant or technical equipment available to the tenderer for carrying out the contract;
- m) an indication of the proportion of the contract which the tenderer intends possibly to subcontract;
- n) with regard to the products to be supplied
  - 1) samples, descriptions or photographs, or both, the authenticity of which should be certified if the contracting authority so requests,
  - 2) certificates drawn up by official quality control institutes or agencies of recognized competence attesting the conformity of products clearly identified by references to specifications or standards.

A tenderer might, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It should, in that case, prove to the employer that it has at its disposal the resources necessary for the performance of the contract, for example by producing an undertaking by those entities to place the necessary resources at the disposal of the tenderer.

Information which can be deduced from registration on official lists or certification should not be questioned without justification.

The precise requirements to demonstrate financial standing and technical abilities should be set out in tender documents (see ISO 10845-2).

A risk analysis should be performed on the tenderer with the highest ranking or highest number of points (i.e. the "preferred tenderer") to ascertain if any of the following might present an unacceptable commercial risk to the employer:

- o) unduly low tendered sums;
- p) unduly low or high rates;
- q) contract or pricing data provided by the tenderer; or
- r) the contents of any of the tender returnables which should be included in the contract.

A tendered sum can be regarded as unduly low should it be considered to compromise the ability of a tenderer to complete the contract. Unduly high rates can expose the employer to disproportionate increases in construction costs should quantities increase or should the rates contained in the bill of quantities serve as the basis for determination of variation to the scope of work. On the other hand, unduly low rates might cause a tenderer to fail to complete the works. This exposes the employer to considerable risk and increased project costs should the tenderer fail to complete the contract.

The tenderer can be approached to amend any part of the tender submission that might, in the opinion of the organization, present an unacceptable commercial risk, provided that such negotiations do not affect the competitive position of the tenderer. Failure to make unacceptable commercial risks acceptable to the organization might be sufficient grounds for the organization to reject the tender.

In the event that it is determined that an unacceptable commercial risk to the organization is present and cannot be made acceptable, a risk analysis should be conducted on the next highest ranked tenderer or tenderer scoring the highest points after the points have been recalculated, based on the most favourable comparative offer remaining in contention for the award of the contract. The process should be repeated until a tenderer who satisfies the risk analysis is identified.

There are two issues that should be addressed in the evaluation of tenders and the award of a contract:

- what is offered by the tenderer;
- what is accepted by the employer.

Subclauses 4.17 and 5.10 deal with the clarification of tender offers after the submission of the tender. In a competitive selection process, the negotiation of the final contract with the preferred tenderer (i.e. the tenderer with the highest number of tender evaluation points or highest ranked tender) should be confined to the final terms of the contract and should not, under any circumstances, lead to a change in the competitive position of tenderers. Any of the rates can be amended and adjusted in order to manage commercial risk provided that the tendered sum is not increased.

The total of prices can be reduced where

- it is believed that the total of prices is considered to be excessive, or
- it is above the budget available for the project and the scope of work should be trimmed to reduce the total of prices to within budgetary limits.

Where it is believed that the tendered sum is excessive, the employer can request the tenderer to adjust the tendered sum downward. Should a tenderer not elect to do so, the employer can consider the cancellation of the tender, revise the scope of work and call for fresh tenders.

#### A.5.14 Preparing contract documents

Subclause 5.14 establishes procedures for the preparation of contract documents. In the single-volume approach (see ISO 10845-2), only the schedule of deviations should be completed. In the three-volume approach, the schedule of deviations should be completed to establish an audit trail and the contract should be compiled, including the returnable schedules that form part of the contract.

In both single-volume and three-volume approaches, the signing of the form of offer and acceptance creates the legal contract.

#### A.5.15 Completing adjudicator's contract

Subclause 5.15 makes provision for the completion of the adjudicator's contract, should this be necessary.

Adjudication is a form of dispute resolution where the outcome is a decision by a third party, within a specified period of time, which is binding on the parties in dispute, and is final unless and until reviewed by either arbitration or litigation.

Provision can be made for the naming of an adjudicator in the contract data. Alternatively, an adjudicator can be appointed, when necessary, in terms of a procedure whereby the parties jointly choose an adjudicator, failing which an adjudicator nominating body is called upon to do so. Where the adjudicator is named in the contract, the successful tenderer and the employer should contract with the adjudicator at the same time as they enter into contract with each other.

#### A.5.16 Notice to unsuccessful tenderers

Subclause 5.16 establishes procedures for the notification of unsuccessful tenderers in support of the system requirements for transparency.

Notification of unsuccessful tenderers should be by post, telefax or other electronic methods, or by publication of the name of the successful tenderer on a website or in an accessible publication, as appropriate.

Tenderers, following the award of a contract, can be debriefed should they request a debriefing in writing. A prompt response should be made to such requests including information on the timing, venue and, if possible, those who will be representing the employer. In some circumstances debriefing can occur by telephone, video conference, or in writing.

Face-to-face meetings should strike a balance between informality and practicality as it is not a formal interview. At the beginning of the session, the employer should make it clear that

- a) no formal record is kept of the meeting, but parties can take informal notes for their own records,
- b) the process is not to be used to change the selection decision or to reopen the award procedure,
- c) the participants are only present to discuss the details of their submission and not the performance of others, and
- d) the submission was evaluated against evaluation criteria which included weighting and scoring agreed before the submissions were opened.

The participants should, as relevant, be provided with

- e) a tabulation, which lists, in respect of each of the quality criteria, the financial offer and the preference claimed, the weighting, the maximum score possible, the score obtained, the average score for all tenderers and the score of the successful tenderer, and
- f) the reason for the tenderer being overlooked in the evaluation process.



Where the discussion relates to the scoring of quality, the background to the evaluation criteria, the evaluation approach and, in broad terms, the methodology used should be explained. Brief comments on the evaluation of each of the criteria should be made. The main criteria can then be taken in turn with the marks attributable to each, explaining how their submission was scored, giving a balanced view of their strengths and weakness. The average score is intended to assist the participant and give a better understanding on how they have performed in each of the criteria. The aim is to assist participants to understand their scores and the weightings and how they can improve in future competitions.

In the cases of successful participants who have requested debriefing, the focus should be on explaining their strengths and weaknesses and how they may improve in future competitions.

#### **A.5.17 Providing copies of the contracts**

Subclause 5.17 establishes the number of copies of the contract that the successful tenderer should receive. This number should be stated in the tender data.

#### **A.5.18 Returning of tender securities**

Subclause 5.18 requires employers to return tender securities in a timely manner to both the successful tenderer and the unsuccessful tenderers.

#### **A.5.19 Providing written reasons for actions taken**

Subclause 5.19 forms an integral part of the system requirements for transparency. The employer should, however, bear in mind that information can be withheld under certain conditions, e.g. information which

- a) is not in the public interest to be divulged;
- b) is considered to prejudice the legitimate commercial interests of tenderers; or
- c) might prejudice fair competition between tenderers.

## Annex B (informative)

### Tender data

ISO 10845-2 defines tender data as a “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”.

The tender data informs tenderers about the tendering procedures that shall be observed and the documentation that should be submitted with tender offers, failing which, tender offers can be rejected or not evaluated. The tender data also establishes the manner in which the employer undertakes to conduct the tender process and to evaluate tender offers. The tender data does this by establishing a set of generic rules relating to the process of offer and acceptance and the tender-specific variables relating thereto.

This annex provides generic tender data. The tender data contained in Table B.1 shall, as appropriate, be included in procurement documents.

**Table B.1 — Tender data to be included in procurement documents**

Clause number	Data	Guidance notes
	<p>The conditions of tender are the standard conditions of tender as contained in the latest edition of ISO 10845-3.</p> <p>The standard conditions of tender make several references to the tender data for details that apply specifically to this tender. The tender data shall have precedence in the interpretation of any ambiguity or inconsistency between the tender data and the standard conditions of tender.</p> <p>Each item of data given below is cross-referenced to the clause in the standard conditions of tender to which it mainly applies.</p>	Include in all documents.
3.1	The employer is ... .	Enter name of employer.
3.2	<p>The tender documents issued by the employer comprise:</p> <p>T1.1 Tender notice and invitation to tender</p> <p>T1.2 Tender data</p> <p>T2.1 List of returnable documents</p> <p>T2.2 Returnable schedules</p> <p>C1: Agreements and contract data</p> <p>C1.1 Form of offer and acceptance</p> <p>C1.2 Contract data</p> <p>C1.3 Form of guarantee</p> <p>C1.4 Adjudicator's contract</p> <p>C2: Pricing data</p> <p>C2.1 Pricing instructions</p> <p>C2.2 Activity schedules or bill of quantities</p> <p>C3: Scope of work</p> <p>C3 Scope of work</p> <p>C4: Site information</p> <p>C4 Site information</p>	<p>Use for single-volume approach and delete if three-volume approach is adopted.</p> <p>Revise list of documents as necessary.</p>

Table B.1 (continued)

Clause number	Data	Guidance notes
3.2	The tender documents issued by the employer comprise: Volume 1: Tendering procedures T1.1 Tender notice and invitation to tender T1.2 Tender data Volume 2: Returnable documents T2.1 List of returnable documents T2.2 Returnable schedules C1.1 Form of offer and acceptance C1.2 Contract data (provided by the contractor) C2.2 Activity schedules or bill of quantities Volume 3: The contract C1: Agreements and contract data C1.2 Contract data (provided by the employer) C1.3 Form of guarantee C1.4 Adjudicator's contract C2: Pricing data C2.1 Pricing instructions C3: Scope of work C3 Scope of work C4: Site information C4 Site information	Use for three-volume approach and omit if single-volume approach is adopted.  Revise list of documents as necessary. (Part 2 of the contract data contains the data which tenderers are to submit.)
3.4	The employer's agent is Name: ... Address: ... Tel: ... Fax: ... E-mail: ...	Enter data. (Name and contact particulars of employee or external agent.)
3.4	The language for communications is ... .	State the language for communications
3.6	The competitive negotiation procedure shall be applied. or Option 1 of the proposal procedure using the two-stage system shall be applied.	Select option and modify appropriate statement or omit if the competitive negotiation procedure or proposal procedure using the two-stage system is not to be used.
4.1	Only those tenderers who satisfy the following eligibility criteria are eligible to submit tenders: ... .	Modify statement, state eligibility criteria.
4.2	The employer compensates the tenderer as follows ... .	Omit if employer does not intend compensating the tenderer for making a submission or describe the arrangements for compensation.

Table B.1 (continued)

Clause number	Data	Guidance notes
4.7	<p>The arrangements for a compulsory/non-compulsory clarification meeting are</p> <p>Location: ... .</p> <p>Date: ... .</p> <p>Starting time: ... .</p> <p>Confirmation of attendance to be notified at least one full working day in advance to</p> <p>Name: ... .</p> <p>Tel: ... .</p> <p>Fax: ... .</p> <p>Tenderers shall sign the attendance list in the name of the tendering entity. Addenda will be issued to, and tenders will be received only from, those tendering entities appearing on the attendance list.</p>	<p>If not a requirement, replace with "There are no compulsory or clarification meetings."</p> <p>Amend wording as necessary.</p> <p>Can alternatively state that arrangements are as stated in the tender notice and invitation to tender, if the information is stated in this document.</p>
4.8	Request clarifications at least ... working days before the closing time.	Omit if default period is suitable.
4.10	Tenderers are required to state the rates and currencies in ... .	Omit if default position is applicable or enter the required currency.
4.12	Main tender offers are not required to be submitted together with alternative tenders. If a tenderer wishes to submit an alternative tender offer, the only criteria permitted for such alternative tender offer is that ... .	<p>Omit if there are no requirements.</p> <p>If the standard provisions of 4.12 are not acceptable, state that:</p> <p>"No alternative offers will be considered."</p>
4.13	Tenderers may offer to provide any of the following parts, or combinations thereof, of the works, services or goods identified in the contract data:	Omit if not permitted. Amend statement as necessary.
4.13	Parts of each tender offer communicated on paper shall be submitted as an original, plus ... copies.	Enter the required information.
4.13 4.15	<p>The employer's address for delivery of tender offers and identification details to be shown on each tender offer package are</p> <ul style="list-style-type: none"> <li>— location of tender box: ... ;</li> <li>— physical address: ... ;</li> <li>— identification details: ... ;</li> <li>— postal address: ... .</li> </ul>	<p>Enter data.</p> <p>Describe how the tender submissions shall be marked.</p>
4.13	Telephonic, telegraphic, telex, facsimile or e-mailed tender offers shall not be accepted.	If telegraphic, telex, facsimile or e-mailed tender offers shall be accepted, delete the word "not" from this sentence.

Table B.1 (continued)

Clause number	Data	Guidance notes
4.13.3	A tender security in the amount of ... is required and shall remain valid for a period not exceeding ... days after the closing date for tender offers. The form of the tender security shall not differ substantially from the sample provided in Annex D.	State the amount, the period of validity and the wording or requirements for securities. Omit if not a requirement.
4.13.4	The tenderer is required to submit with his tender the following certificates: ... ; ... .	State requirements for certificates.
4.13.5	The "ORIGINAL" and "COPY" are to be submitted as separate packages.	Omit if not a requirement.
4.13.5	A two-envelope procedure is required.	Omit if a two-envelope procedure is not required.
4.15	The closing time for submission of tender offers is ... hours on ... (day) ... (date).	Enter closing time, day and date or state that there are stated in the tender notice and invitation to tender.
4.16	The tender offer validity period is ... weeks.	State time period in weeks.
4.19	Access shall be provided for the following inspections, tests and analysis: ... .	State requirements or omit item.
4.22	Return all retained tender documents within 28 days of the expiry of the validity period.	Omit if not a requirement.
5.1	The employer shall respond to clarifications received up to ... days before tender closing time.	Omit if default period is suitable.
5.2	The employer shall issue addenda until ... working days before tender closing time.	Omit if default period is suitable.
5.4	The time and location for opening of the tender offers are: Time: ... on ... (date). Location: ... .	Insert data or state what the arrangements for opening are.
5.11	The procedure for the evaluation of responsive tenders is [Method ... .].	Insert method which shall be used to evaluate tender offers, i.e. 1, 2, 3 or 4.
5.11.1	The financial offer is reduced to a comparative basis using the tender assessment schedule.	Delete row where no tender assessment schedule is provided. (The tender assessment schedule, correctly formulated, allows all tendered parameters to be assessed, e.g. the total of prices and the fee percentages tendered and other tendered rates, if applicable.)

Table B.1 (continued)

Clause number	Data	Guidance notes															
5.11.2	The procedure for the evaluation of responsive tenders is Method 1.	Omit if method 2, 3 or 4 is used.															
5.11.3	The procedure for the evaluation of responsive tenders is Method 2. The financial offer is scored using Formula ... in Table 1 where the value of $W_1$ is ... . The value of $W_2$ is equal to 100 minus $W_1$ .	Omit if method 1, 3 or 4 is used.															
5.11.4	The procedure for the evaluation of responsive tenders is Method 3. The financial offer is scored using Formula ... in Table 1 where the value of $W_1$ is ... . Up to 100 minus $W_1$ tender evaluation points are awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed.	Omit if method 1, 2 or 4 is used. The specific goals, the points allocated to each such goal and the conditions, if any, associated with the granting of preferences shall be stated in the preferencing schedule.															
5.11.5	The procedure for the evaluation of responsive tenders is Method 4. The value of $W_1$ is ... and $W_2$ is ... . The score for financial offer is calculated using Formula ... in Table 1. Up to 100 minus $W_1$ minus $W_2$ tender evaluation points are awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed.	Omit if method 1, 2 or 3 is used. Ensure that $W_1$ plus $W_2$ is less than 100. The specific goals, the points allocated to each such goal and the conditions, if any, associated with the granting of preferences shall be stated in the preferencing schedule.															
5.11.9	<p>The quality criteria and maximum score in respect of each of the criteria are as follows:</p> <table border="1" data-bbox="260 1301 1043 1563"> <thead> <tr> <th data-bbox="260 1301 504 1368">Quality criteria</th> <th data-bbox="504 1301 778 1368">Subcriteria</th> <th data-bbox="778 1301 1043 1368">Maximum number of points</th> </tr> </thead> <tbody> <tr> <td data-bbox="260 1368 504 1406"></td> <td data-bbox="504 1368 778 1406"></td> <td data-bbox="778 1368 1043 1406"></td> </tr> <tr> <td data-bbox="260 1406 504 1444"></td> <td data-bbox="504 1406 778 1444"></td> <td data-bbox="778 1406 1043 1444"></td> </tr> <tr> <td data-bbox="260 1444 504 1482"></td> <td data-bbox="504 1444 778 1482"></td> <td data-bbox="778 1444 1043 1482"></td> </tr> <tr> <td data-bbox="260 1482 504 1563">Maximum possible score for quality (<math>M_S</math>)</td> <td data-bbox="504 1482 778 1563"></td> <td data-bbox="778 1482 1043 1563"></td> </tr> </tbody> </table> <p>Quality shall be scored by not less than three evaluators in accordance with the following schedules: — ... The minimum number of evaluation points for quality is ... .</p>	Quality criteria	Subcriteria	Maximum number of points										Maximum possible score for quality ( $M_S$ )			<p>Omit if method 1 or 2 is used. Insert criteria and breakdown of points.</p> <p>List applicable evaluation schedules and include such schedules in the returnable schedules. State value – usually 60.</p>
Quality criteria	Subcriteria	Maximum number of points															
Maximum possible score for quality ( $M_S$ )																	

Table B.1 (continued)

Clause number	Data	Guidance notes														
5.11.9	<p>The prompts for judgment and the associated scores used in the evaluation of quality shall be as follows:</p> <table border="1" data-bbox="347 483 1134 1016"> <thead> <tr> <th data-bbox="355 490 448 524">Score</th> <th data-bbox="448 490 1126 524">Prompt for judgement</th> </tr> </thead> <tbody> <tr> <td data-bbox="355 524 448 566">0</td> <td data-bbox="448 524 1126 566">Failed to address the question or issue.</td> </tr> <tr> <td data-bbox="355 566 448 663">20</td> <td data-bbox="448 566 1126 663">A detrimental response, answer or solution – limited or poor evidence of skill or experience sought, high risk that relevant skills are not available.</td> </tr> <tr> <td data-bbox="355 663 448 759">40</td> <td data-bbox="448 663 1126 759">Less than acceptable response, answer or solution – lacks convincing evidence of skill/experience sought, medium risk that relevant skills are not available.</td> </tr> <tr> <td data-bbox="355 759 448 855">60</td> <td data-bbox="448 759 1126 855">Acceptable response, answer or solution to the particular aspect of the requirement – evidence given of skill/experience sought.</td> </tr> <tr> <td data-bbox="355 855 448 952">80</td> <td data-bbox="448 855 1126 952">Above acceptable response, answer or solution – demonstrates real understanding of requirement and evidence of ability to comply with it based on ... .</td> </tr> <tr> <td data-bbox="355 952 448 1016">100</td> <td data-bbox="448 952 1126 1016">Excellent response, answer or solution – gives real confidence that the supplier adds real value.</td> </tr> </tbody> </table> <p>The scores of each of the evaluators are averaged, weighted and then totalled to obtain the final score for quality.</p>	Score	Prompt for judgement	0	Failed to address the question or issue.	20	A detrimental response, answer or solution – limited or poor evidence of skill or experience sought, high risk that relevant skills are not available.	40	Less than acceptable response, answer or solution – lacks convincing evidence of skill/experience sought, medium risk that relevant skills are not available.	60	Acceptable response, answer or solution to the particular aspect of the requirement – evidence given of skill/experience sought.	80	Above acceptable response, answer or solution – demonstrates real understanding of requirement and evidence of ability to comply with it based on ... .	100	Excellent response, answer or solution – gives real confidence that the supplier adds real value.	<p>Omit if assessed on the basis of four indicators on a logarithmic scale. (see ISO 10845-1). Adjust text as necessary.</p>
Score	Prompt for judgement															
0	Failed to address the question or issue.															
20	A detrimental response, answer or solution – limited or poor evidence of skill or experience sought, high risk that relevant skills are not available.															
40	Less than acceptable response, answer or solution – lacks convincing evidence of skill/experience sought, medium risk that relevant skills are not available.															
60	Acceptable response, answer or solution to the particular aspect of the requirement – evidence given of skill/experience sought.															
80	Above acceptable response, answer or solution – demonstrates real understanding of requirement and evidence of ability to comply with it based on ... .															
100	Excellent response, answer or solution – gives real confidence that the supplier adds real value.															
5.11.9	<p>Each evaluation criterion is assessed in terms of four indicators – no response, poor, satisfactory, good and very good. Scores of 0, 40, 70, 90 or 100 are allocated to not able to evaluate, poor, satisfactory, good and very good, respectively. The scores of each of the evaluators are then averaged, weighted and totalled to obtain the final score for quality.</p>	<p>Omit if prompts for judgement based on a linear scale are used (see ISO 10845-1).</p>														
5.13	<p>Tender offers are only accepted if: ....</p>	<p>Omit if there is not a requirement. Insert particulars in accordance with the organization's procurement policy and the relevant legal framework.</p>														
5.17	<p>The number of paper copies of the signed contract to be provided by the employer is ... .</p>	<p>Insert number.</p>														
	<p>The additional conditions of tender are: 1..... 2..... 3.....</p>	<p>Such conditions should only be used on very rare occasions. It is easier to use tender schedules for the purpose of soliciting information to be returned with the tender offer, including design details for design and build contracts. The conditions of tender state that all schedules shall be completed and submitted as part of the tender offer.</p>														

## Annex C (informative)

### Evaluating tender offers

The activities associated with the standard conditions of tender, where they are applied to a competitive selection procedure (see ISO 10845-1) other than that relating to the proposal procedure using the two-stage tendering system, are as indicated in Table C.1. A slightly modified procedure should be followed where the proposal procedure using the two-stage tendering system and the competitive negotiation procedure are followed (see Table C.2).

**Table C.1 — Activities associated with the evaluation and award of tenders in a competitive selection procedure**

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
1	Open and record tender offers received	<b>Where two-envelope system is not used</b>	5.4	Opening of tender submissions
		1) Open tender offers immediately after the closing time for receipt of tender submissions in the presence of tenderers' agents and announce and record pertinent data, if <ul style="list-style-type: none"> <li>a) submitted in sealed envelopes,</li> <li>b) annotated with the required particulars, and</li> <li>c) placed in the nominated tender box or delivered to the specified place for receipt of tender submissions.</li> </ul>	4.13	Tender submissions
		2) Make available the name(s), price and preferences claimed to interested parties who request such information.		
		<b>Where the two-envelope system is used</b>	5.5	Two-envelope system
		1) Open the technical proposal in the presence of tenderers' agents and announce the name of each tenderer.		
		2) Evaluate the quality of the technical proposals.		
		3) Open the financial proposals of tenderers who score above the minimum number of points for quality stated in the tender data, and announce the score in the presence of the tenderers' agents. Return unopened the financial proposals received from those tenderers who failed to achieve the minimum number of points for quality.		
		4) Return tenders, unopened, that <ul style="list-style-type: none"> <li>a) were received late,</li> <li>b) are submitted by a method other than the prescribed method,</li> <li>c) were withdrawn in accordance with the procedure provided in 4.16, or,</li> <li>d) where only one tender submission is received and the employer decides to call for fresh tender submissions.</li> </ul>	5.3	Returning late tender offers
			5.8	Test for responsiveness
			3.5	Employer's right to accept or reject any tender offer
			4.16.2	Withdrawal of tenders



Table C.1 (continued)

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
1		5) Consider declaring as non-responsive tender offers not received in the required manner, i.e. tenders which are submitted in a format or on forms other than those prescribed in the tender documents.	4.14	Information and data to be completed in all respects
		6) Reject all tender offers submitted by telegraph, telex, facsimile or e-mail, unless otherwise stated in the tender data.	4.13	Tender submissions
2	Determine whether or not tender offers are complete	1) Compare each tender submission against the list of returnable documents contained in the procurement document (see ISO 10845-2) and identify schedules and component documents that have not been returned or are incomplete.	5.8 4.13	Test for responsiveness Tender submissions
		2) Request tenderers to complete incomplete documents only if such information does not change or affect the competitive position of a tenderer, within a reasonable period of time, so that it is possible to evaluate their tenders. [Tenderers shall not provide additional information that is integral to the tender offer, i.e. amends their financial offer (Methods 1 to 4), preferences claimed (Method 3 or 4) or quality offered (Method 2 or 4)].	4.14	Information and data to be completed in all respects
		3) Record what is incomplete in each tender offer, i.e. what is incomplete regarding the financial offer, quality offered or preferences claimed	4.18	Other material
		4) Confirm that tenderers took in their submission any addenda that were issued into account.	4.6	Acknowledging addenda
3	Determine whether or not tender offers are responsive	1) Confirm compliance with all the requirements of the standard conditions of tender, i.e. that		
		— eligibility criteria are complied with,	4.1	Eligibility
		— there are no material changes in the capabilities of a pre-qualified tendering entity, if applicable,		
		— the tenderer attended compulsory clarification meetings, if any,	4.7	Clarification meeting
		— the tenderer has observed pricing instructions,	4.10	Pricing the tender offer
		— alterations, if any, comply with instructions,	4.11	Alterations to documents
		— conditions attached to alternative tender offers, where alternative tenders have been submitted, have been satisfied,	4.12	Alternative tender offers
— the tender offer covers the scope of work contained in the procurement document and, where applicable, complies with the performance or functional requirements of the specifications or is equivalent in performance to that specified,	4.13	Tender submissions		
		— the tenderer has signed the form of offer and acceptance,		

Table C.1 (continued)

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
3	Determine whether or not tender offers are responsive	— access to premises for inspections, tests and analysis, as provided for in the tender data, was provided,	4.19	Inspections, tests and analysis
		— each organization has submitted only one tender or is a joint venture partner of only one tendering entity,	4.13	Tender submissions
		— the required tender security has been submitted,	4.13.3	Tender securities
		— the certificates identified in the tender data have been submitted, and	4.13.4	Inclusion of certificates
		— the required securities, bonds, guarantees, policies and certificates of insurance required have been submitted.	4.20	Submitting securities, bonds, policies, etc.
3	Determine whether or not tender offers are responsive (continued)	2) Identify areas of non-compliance with the terms, conditions and scope of work, and determine if any deviation is material, using the test for material deviation provided in 5.8.	5.8	Test for responsiveness
		3) Review all qualifications made to the offer, and determine if any of them are material, using the test for material qualification provided in 5.8.	5.8	Test for responsiveness
		4) Declare tender offers non-responsive and reject them as such should they <ul style="list-style-type: none"> <li>— fail to comply with the requirements of (1) above,</li> <li>— fail to provide the additional information requested by the due date (see 4.18),</li> <li>— not have a signed and completed form of offer and acceptance, or</li> <li>— contain material deviations or qualifications.</li> </ul>	5.8	Test for responsiveness
		5) Record reasons for declaring a tender to be non-responsive.	5.8	Test for responsiveness
		4	Evaluate tender offers	1) Identify parameters included in the returnable documents that have a bearing on the financial offer and quantify their impact on the financial offer, e.g. life-cycle costs, contract period, requirement for price escalation, etc.
		2) Reduce all tender offers to a common base, i.e. to comparative offers.	5.11.1	General
		3) Judge the reasonableness of financial offers and reject all tender offers with unrealistic financial offers.	5.11.1	General
		4) Confirm that tenderers are eligible for the preferences claimed in the preference schedule or the reasonableness of any tendered contract participation goal (or both). (No preferences may be granted to incomplete claims for preferences.)	5.11.4 5.11.5	Method 3 Method 4
		5) Score the financial offer of all responsive tender offers received to two decimal places using the appropriate formulae. Score incomplete quality submissions in so far as they may be scored.	5.11.7 5.11.6	Scoring financial offers Decimal places

Table C.1 (continued)

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
4	Evaluate tender offers	6) Score quality for each of the categories stated in the tender data, calculate the total score for quality and record the score. Score incomplete quality submissions in so far as they may be scored.	5.11.9	Scoring quality
		7) Eliminate tender offers that do not score the minimum number of points for quality stated in the tender data.	5.11.9	Scoring quality
		8) Award tender evaluation points for the category of preference or in proportion to the tendered contract participation goal (or both) to each eligible tenderer, in the manner described in the relevant preferencing schedule.	5.11.8	Scoring preferences
		9) Total tender evaluation points in accordance with requirements in the tender data and rank tenderers.	5.11.3 5.11.4 5.11.5	Method 2 Method 3 Method 4
5	Determine if there are any grounds for disqualification	Determine whether or not the highest ranked or highest scoring tenderer has been engaged in corrupt or fraudulent practices and, if so, instantly disqualify him.	5.7	Ground for rejection and disqualification
6	Determine acceptability of preferred tenderer	1) Confirm that the highest ranked or highest scoring tenderer (preferred tenderer) <ul style="list-style-type: none"> <li>a) is not under any restrictions or has principals who are under any restrictions from participating in public procurement,</li> <li>b) can demonstrate that he possesses the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, reputation, and the personnel to perform the contract,</li> <li>c) has the legal capacity to enter into a contract,</li> <li>d) is not insolvent, in receivership, bankrupt or being wound up, or has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal procedures in respect of any of the foregoing,</li> <li>e) complies with legal requirements, and</li> <li>f) does not have conflicts of interest which may impact on his ability to perform the contract in the best interests of the employer.</li> </ul>	5.13	Acceptance of a tender offer
		2) Review bill of quantities or pricing schedules, if any, of the preferred tenderer for arithmetic errors, omissions and discrepancies in accordance with the provisions of 5.9, and if relevant, clarify if tendered or corrected price shall apply. (Repeat the actions from action 5 in activity 4 onwards if competitive position changes as a result of arithmetical corrections.)	5.9	Arithmetical errors, omissions and discrepancies

Table C.1 (continued)

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
6	Determine acceptability of preferred tenderer	3) Perform a risk analysis on the preferred tenderer to ascertain if any of the following might present an unacceptable commercial risk to the employer: a) unduly high or unduly low tendered rates or amounts in the tender offer; b) contract data provided by the tenderer; or c) the contents of the tender returnables which shall be included in the contract.	5.13	Acceptance of a tender offer
		4) Approach tenderer to amend any part of the tender submission that presents an unacceptable commercial risk, if relevant.	5.13	Acceptance of a tender offer
		5) Clarify any matter that could give rise to ambiguity in a contract arising from the tender offer.	5.10	Clarification of a tender offer
		6) Negotiate the final terms of the contract with the preferred tenderer.	5.10	Clarification of a tender offer
		7) Recommend the highest ranked tenderer or the tenderer with the most evaluation points for the award of the contract. If he is found to be unsatisfactory, undertake an analysis on the next highest ranked tenderer and so on until such time as a tenderer satisfies the risk assessment.	5.11	Evaluation of tender offers
7	Prepare a tender evaluation report	1) Prepare tender evaluation reports, preferably using the following headings and appropriate forms (see Figures C.1 to C.6): Section 1: Summary Section 2: An overview of the tender evaluation process Section 3: Tender evaluation forms Section 4: Reasons for the elimination of tenderers Section 5: Recommendations for the award of the tender	—	—
		2) A tender evaluation report should, as a minimum, contain a) the contract number and description, b) an outline of the procurement strategy that was adopted, i.e. the targeting, contracting and pricing strategy and the procurement procedure, as relevant, c) the tender validity expiry date and the tender closing date, d) the date of advertisement and the place where advertised, e) the method of tender evaluation (Method 1, 2, 3 or 4), f) the number of tenders received and the number of responsive tenders, g) the name of the recommended tenderer and key aspects of the recommended tenderer's offer, h) the cost estimate (budget) prepared ahead of the tender, i) the parameters used for scoring tenderers and the score assigned to each tenderer in respect of each component of the evaluation that is evaluated, and j) the reasons for rejecting or overlooking a tenderer.	—	—
8	Confirm recommendation contained in the tender evaluation report	Submit tender evaluation report to persons identified in the institution's procurement policy for their confirmation of the recommendation for the award of the contract.	—	—

**Table C.2 — Activities associated with the evaluation and award of tenders in a competitive negotiation procedure**

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
1	Open and record tender offers received	1) Open tender offers immediately after the closing time for receipt of tender submissions in the presence of tenderers' agents and announce and record names of tenderers making submissions, if <ul style="list-style-type: none"> <li>a) submitted in sealed envelopes,</li> <li>b) annotated with the required particulars, and</li> <li>c) placed in the nominated tender box or delivered to the specified place for receipt of tender submissions.</li> </ul>	5.4 4.13	Opening of tender submissions Tender submissions
		2) Make available the names to interested parties who request such information.	5.4	Opening of tender submissions
		3) Return tenders unopened that <ul style="list-style-type: none"> <li>a) were received late,</li> <li>b) are submitted by a method other than the prescribed method, or</li> <li>c) were withdrawn in accordance with the procedure provided in 4.16.</li> <li>d) or where only one tender submission is received and the employer decides to call for fresh tender submissions.</li> </ul>	5.3 5.8 3.5 4.16.2	Returning late tender offers Test for responsiveness Employer's right to accept or reject any tender offer Withdrawal of tenders
		4) Consider declaring as non-responsive tender offers not received in the required manner, i.e. tenders which are submitted in a format or on forms other than those prescribed in the tender documents.	4.14	Information and data to be completed in all respects
		5) Reject all tender offers submitted by telegraph, telex, facsimile or e-mail, unless otherwise stated in the tender data.	4.13	Tender submissions
2	Determine whether or not tender offers are complete	1) Compare each tender submission against the list of returnable documents contained in the procurement document (see ISO 10845-2) and identify schedules and component documents that have not been returned or are incomplete.	5.8 4.13	Test for responsiveness Tender submissions
		2) Request tenderers to complete incomplete documents, within a reasonable period of time, so that it is possible to evaluate their tenders. [Tenderers shall not provide additional information that is integral to the tender offer, i.e. amend their financial offer (Methods 1 to 4), preferences claimed (Method 3 or 4) or quality offered (Method 2 or 4).]	4.14	Information and data to be completed in all respects
		3) Record what is incomplete in each tender offer, i.e. what is incomplete regarding the financial offer, quality offered or preferences claimed.	4.18	Other material
		4) Confirm that tenderers took into account in their submission any addenda that were issued.	4.6	Acknowledging addenda

Table C.2 (continued)

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
3	Determine whether or not tender offers are responsive	1) Confirm compliance with all the requirements of the standard conditions of tender, with the exception of those contained in 5.8 relating to material deviations of qualifications, i.e. that <ul style="list-style-type: none"> <li>— eligibility criteria are complied with,</li> <li>— there are no material changes in the capabilities of a pre-qualified tendering entity, if applicable,</li> <li>— the tenderer attended compulsory site/clarification meetings, if any,</li> <li>— the tenderer has observed pricing instructions,</li> <li>— alterations, if any, comply with instructions,</li> <li>— conditions attached to alternative tender offers where alternative tenders have been submitted, have been satisfied,</li> <li>— the tender offer covers the scope of work contained in the procurement document and, where applicable, complies with the performance or functional requirements of the specifications or is equivalent in performance to that specified,</li> <li>— the tenderer has signed the form of offer and acceptance,</li> <li>— access to premises for inspections, tests and analysis as provided for in the tender data was provided,</li> <li>— each organization has submitted only one tender or is a joint venture partner of only one tendering entity,</li> <li>— the required tender security has been submitted,</li> <li>— the certificates indentified in the tender data have been submitted, and</li> <li>— the required securities, bonds, guarantees, policies and certificates of insurance have been submitted.</li> </ul>	3.6.2	Competitive negotiation procedure
			4.1	Eligibility
			4.7	Clarification meeting
			4.10	Pricing the tender offer
			4.11	Alterations to documents
			4.12	Alternative tender offers
			4.13	Tender submissions
			4.19	Inspections, tests and analysis
			4.13	Tender submissions
			4.13.3	Tender securities
			4.13.4	Inclusion of certificates
			4.20	Submitting securities, bonds, policies, etc.
		2) Declare tender offers non-responsive and reject them as such should they <ul style="list-style-type: none"> <li>— fail to comply with the requirements of (1) above,</li> <li>— fail to provide the additional information that is requested by the due date (see 4.18), or</li> <li>— not have a signed and completed form of offer and acceptance.</li> </ul>	5.8	Test for responsiveness
		3) Record reasons for declaring a tender to be non-responsive.	5.8	Test for responsiveness

Table C.2 (continued)

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
4	Evaluate tender submissions	1) Identify parameters included in the returnable documents that have a bearing on the financial offer, and quantify their impact on the financial offer, e.g. life-cycle costs, contract period, requirement for price escalation, etc.	5.11.1	General
		2) Reduce all tender offers to a common base, i.e. to comparative offers.	5.11.1	General
		3) Confirm that tenderers are eligible for the preferences claimed in the preference schedule or the reasonableness of any tendered contract participation goal (or both). (No preferences can be granted to tenderers who submit incomplete claims for preferences.)	5.11.4	Method 3
			5.11.5	Method 4
		4) Score the financial offer of all responsive tender offers received to two decimal places using the appropriate formulae.	5.11.7	Scoring financial offers
			5.11.6	Decimal places
		5) Score quality for each of the categories stated in the tender data, calculate the total score for quality and record the score. Score incomplete quality submissions in so far as they can be scored.	5.11.9	Scoring quality
		6) Eliminate tender offers that do not score the minimum number of points for quality stated in the tender data. (See 5.11.1.)	5.11.9	Scoring quality
		7) Award tender evaluation points for the category of preference or in proportion to the tendered contract participation goal (or both) to each eligible tenderer, in the manner described in the relevant preferencing schedule.	5.11.8	Scoring preferences
8) Total tender evaluation points in accordance with the requirements in the tender data and rank tenderers from highest to lowest score.	5.11.3	Method 2		
	5.11.4	Method 3		
	5.11.5	Method 4		
9) Identify the preferred tenderers for inclusion in the round of negotiations, i.e. all responsive tenderers, or three or more of the highest ranked tenderers.	3.6.2	Competitive negotiation procedure		
5	Determine if there are any grounds for disqualification of the preferred tenderers	Determine whether or not the preferred tenderers have engaged in corrupt or fraudulent practices and, if so, instantly disqualify those found to have done so. (Repeat from action 9 of activity 4 if the minimum number of shortlisted tenders drops below three.)	5.7	Grounds for rejection and disqualification

Table C.2 (continued)

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
6	Determine acceptability of preferred tenderers	<p>1) Confirm that the preferred tenderers</p> <ul style="list-style-type: none"> <li>a) are not under any restrictions or have principals who are under any restrictions from participating in public procurement,</li> <li>b) can demonstrate that they possess the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, reputation, and the personnel to perform the contract,</li> <li>c) have the legal capacity to enter into a contract,</li> <li>d) are not insolvent, in receivership, bankrupt or being wound up, or have their affairs administered by a court or a judicial officer, have suspended their business activities, or are subject to legal procedures in respect of any of the foregoing,</li> <li>e) comply with legal requirements, and</li> <li>f) do not have conflicts of interest which can impact on their ability to perform the contract in the best interests of the employer.</li> </ul> <p>(Repeat from action 9 of activity 4 if the minimum number of shortlisted tenders drops below three.)</p>	5.13	Acceptance of a tender offer
		<p>2) Review bill of quantities or pricing schedules of the preferred tenderers, if any, for arithmetical errors, omissions and discrepancies in accordance with the provisions of 5.9 and, if relevant, clarify if tendered or corrected price is to apply. (Repeat from action 9 of activity 4 onwards if competitive position changes as a result of arithmetical corrections.)</p>	5.9	Arithmetical errors, omissions and discrepancies
		<p>3) Perform a risk analysis on the preferred tenderers to ascertain if any of the following might present an unacceptable commercial risk to the employer:</p> <ul style="list-style-type: none"> <li>a) unduly high or unduly low tendered rates or amounts in the tender offer;</li> <li>b) contract data provided by the tenderer; or</li> <li>c) the contents of the tender returnables which shall be included in the contract.</li> </ul>	5.13	Acceptance of a tender offer
7	Negotiate procurement needs with preferred tenderers	<p>1) Engage in separate negotiations with each preferred tenderer to establish the most satisfactory solution to procurement requirements in a manner that does not alter any fundamental aspects of the offers, or impose substantial new requirements which restrict or distort competition or have a discriminatory effect.</p> <p>2) Issue preferred tenderers with revised procurement documents which include revised weighting criteria, if any, the revised closing date for tenders and, where relevant, any notification that best and final offers are to be submitted.</p>	3.6.2	Competitive negotiation procedure



Table C.2 (continued)

Activity			Related clauses in this part of ISO 10845	
No.	Description	Action	No.	Heading
8	Evaluate revised or best and final offers	<p><b>Where no notification of best and final offer is provided</b></p> <p>Repeat, as necessary, the relevant activities associated with activities 1 to 7.</p> <p><b>Where a notification of best and final offer is provided</b></p> <p>Repeat, as necessary, the relevant activities associated with activities 1 to 3 and actions 1 to 8 of activity 4. Perform the relevant activities associated with activities 5 and 6 with the highest ranked tenderer.</p>	3.6.2	Competitive negotiation procedure
9	Prepare a tender evaluation report	<p>Prepare tender evaluation reports, preferably using the following headings and appropriate forms (see Figures C.1 to C.6):</p> <p>Section 1: Summary</p> <p>Section 2: An overview of the tender evaluation process</p> <p>Section 3: Tender evaluation forms</p> <p>Section 4: Reasons for the elimination of tenderers</p> <p>Section 5: Recommendations for the award of the tender</p>	—	—
10	Confirm recommendation contained in the tender evaluation report	Submit tender evaluation report to persons identified in the employer's procurement policy for their confirmation of the recommendation for the award of the contract.	—	—













**Annex D**  
(informative)

**Example of a tender security**

**Tender No.:** .....

**Brief description of contract:** .....

**Beneficiary:**      **Name:** .....

**Address:** .....

.....

(Whom the tender documents describe as “the Employer”)

We have been informed that ..... (hereinafter called “the Tenderer”) is submitting a tender offer for such contract in response to your invitation, and that the tender data in the procurement documents require his offer to be supported by a tender security.

At the request of the Beneficiary, we (*name of bank*) ..... hereby irrevocably undertake to pay you, the Beneficiary, any sums or sums not exceeding the total amount of ..... upon receipt by us of your demand in writing and your written statement (in the demand) stating that the Tenderer

- a) has, without your agreement, withdrawn his offer after the latest time specified for its submission and before the expiry of the period of validity;
- b) failed to comply with the requirements of the tender data relating to the finalization of the contract;
- c) failed to enter into a contract with the Beneficiary; or
- d) provide the securities required in terms of and in accordance with the provisions of the contract data.

Any demand for payment shall contain your signature(s) which shall be authenticated by your bankers or by a notary public. The authenticated demand and statement shall be received by us at this office on or before ..... (*the date 35 days after the expiry of the tender validity period as stated in the tender data*), when this guarantee shall expire and be returned to you.

This guarantee is subject to the Uniform Rules of Demand, published as number 458 by the International Chamber of Commerce, except as stated above.

**Signature:** .....

**Date:** .....



## Bibliography

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- [2] ISO 6707-2:1993, *Building and civil engineering — Vocabulary — Part 2: Contract terms*
- [3] ISO 10845-1:2010, *Construction procurement — Part 1: Processes, methods and procedures*
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- [5] SANS 294:2004, *Construction procurement processes, methods and procedures*

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