3 Tender and Acceptance

3.1 Selection of tendering contractors: prequalification

Many mistakes and potential claims can be avoided if sufficient thought and planning is put into the pre-tender stage of a contract. A common mistake is to invite too many contractors, at the last possible minute, to submit a tender for a project. There have been cases of over twenty contractors being invited to bid for a project. In a recession, all, or most of the invitees will oblige. This process may provide the lowest possible tender figure. However, it does not guarantee the lowest final account and very often completion of the project on time (if the contractor survives the course) may be in doubt due to failure to resource the project properly. In a buoyant market, some contractors may submit cover prices (not a genuine tender, but one based on another tendering contractor’s price and uplifted to ensure that it will not be successful). It has not been unknown for only one serious bid to be made alongside several cover prices. In such circumstances, the contractor submitting the serious bid usually discovers that fact and the tender price increases accordingly.

Substantial benefits can be gained by early selection of contractors who are willing to submit a bona fide tender and who are capable of carrying out the work. This can be done by carefully selecting potential contractors, giving them reasonable notice of the proposed tender and inviting them to indicate their willingness to submit a tender for the project. The invitation should contain sufficient information to enable the invitees to consider their ability to submit a tender and execute the work, such as:

- Date for issuance of complete tender documents;
- Date for receipt of tenders;
- Date of award of contract;
- Date for commencement of the work;
- Contract period;
- Form of contract (with or without bills of quantities);
- Liquidated and ascertained damages;
- Brief description of the project.

It should be made clear that any firms wishing to decline from submitting a
tender would not prejudice their chances of being invited to tender for future work. Firms who accept the invitation should be given the opportunity to attend a preliminary meeting and view the drawings which are available.

If the above procedures are followed, the employer will be reasonably confident that he will receive serious bids from contractors. In the event of insufficient positive replies, the employer can widen his net to make enquiries of other firms. In addition, each contractor will be able to prepare for the necessary staff to be available and it can begin to make enquiries of potential subcontractors and suppliers.

In the case of large complex projects it may be desirable to invite contractors to pre-qualify to tender for the work. The procedures described above will be equally applicable to this process. However, in addition to providing the information mentioned hereinbefore, the employer will wish to find out more about the potential tenderers' capability. Prequalification enquiries should cover:

- Previous track record on similar projects;
- Proposed management structure and staff responsible for the project;
- Financial standing of the firm;
- Resources which can be made available for the project;
- Details of any joint venture if tenders are to be submitted in the name of more than one firm;
- Outline proposals for method of construction and programme.

In some circumstances it may be appropriate to include all of the matters described for management contracting in Chapter 2.

Prequalification inquiries should inform tenderers of the criteria to be used for selection. After receipt of prequalification documents from the invitees, a shortlist should be prepared according to the applicants' response, measured against the relevant criteria. This should be followed by interviews of the shortlisted firms and the final tender list should be drawn up as soon as possible so that all firms can be notified without delay.

With the advent of the Single European Act, a number of Directives issued by the European Commission have come into effect. The EC Public Procurement Directives cover work in the public sector, that is, work to be done by Contracting Authorities (government departments, local authorities, nationalised industries and private sector bodies receiving more than fifty per cent of their funding from government and all bodies governed by public law), the value of which exceeds specified thresholds (subject to review). The principal EC Directives relating to procurement are:

The Public Supplies Directive, 77/62/EEC (amended 22 March 1988, 88/295/EEC) – Governing supplies where the contract exceeds ECU 200 000 (£132 000). Exclusions include transport, distribution of drinking water, energy, telecommunications, contracts subject to secret or national