



KURDISTAN REGIONAL GOVERNMENT

Ministry of Planning

Explanatory note on two-envelop bid submission

June 2016

Explanatory note on two-envelop bid submission

Overview

In accordance with the Public Procurement Regulation 2 of 2016 art. (28 First), in the procurement of goods, works and non-consultancy services, in which the tendering method is applied, the bidding documents should require each bidder to submit its bid in a single sealed envelope, including both the technical and the financial aspects of the bid. By way of exception, the Procurement Regulation (art. 28 Fifth) does permit, in specified types of cases, the submission of technical and financial aspects of a bid in separate, sealed envelopes.

This note provides guidance on the employment of the two-envelop approach in tendering proceedings in accordance with the Public Procurement Regulation 2 of 2016. It does not deal with the submission of technical and financial proposals in separate, sealed envelopes in the procurement of consultancy services, as the two-envelop approach is the norm in the procurement of consultancy services art. (53 First).

Single vs two-envelop approaches

The single-envelope approach maximizes transparency at the bid opening stage by revealing at the bid opening stage not only the bids that were submitted and by whom, but also the bid prices. By contrast, in the two-envelop approach, at the initial opening of bids, only the envelopes containing the technical aspects of bids are opened, and the envelopes containing financial aspects of bids are opened later, following the completion of the evaluation of technical envelopes.

The single-envelop approach also avoids the integrity risks posed where technical and price aspects of each bid are submitted in separate envelopes and opened at separate points in time (i.e., the risk that an unscrupulous party with access to the bids may substitute an envelope containing a bidder's financial offer in light of the results of the technical evaluation). The single-envelop approach also enables the tendering proceeding to be completed more quickly, since technical and financial aspects are evaluated in single evaluation process.

The key advantage and rationale of the two-envelop approach is that it enables the evaluation of the technical aspects of bids to be conducted without being influenced by considerations of price.

Permitted use of two-envelop bid submission

In light of the above, the Public Procurement Regulation 2 of 2016 art. (28-Fifth) permits the use of the two-envelop approach in single-stage tendering proceedings for the procurement of complex goods, works, and turnkey contracts. That is accommodated because it is in those types of cases that it may be preferable to

ensure that the technical evaluation of bids is not influenced by price considerations.

Procedural aspects of the two-envelop approach

Apart from establishing the basic rule that in the two-envelop approach the technical and financial proposals are to be submitted in separate, sealed envelopes art. (28 Fifth-a), the Procurement Regulation establishes other fundamental procedural requirements that, as outlined below, govern the application of the two-envelop approach in single-phase tendering proceedings.

In the two-envelop approach in single-phase tendering, the two separate sealed envelopes containing the technical and financial components of the bid are submitted simultaneously, in a sealed outer envelope art. (28 Fifth-b). That is because the two-envelop procedure envisaged in art. 28 is a single-phase proceeding rather than a two-phase tendering proceeding art. (41 and 42). By contrast to the two-envelop approach applied in a single-phase tendering proceeding, in a two-phase tendering proceeding the submission of technical and price offers is not simultaneous. In the first phase of the two-phase tendering proceeding, bidders submit only unpriced technical offers, and then, in the second phase, they submit priced bids.

Unless prequalification proceedings have been conducted, the bidding documents should require each bidder to submit the required qualification information in the envelope containing its technical proposal.

In order to enable the evaluation of technical aspects of each bid to be evaluated without being influenced by price considerations, in the two-envelop approach only the technical envelopes are opened at the initial bid-opening ceremony, which should take place immediately upon the expiry of the deadline for submission of bids art. (28 Fifth-d). No financial envelopes may be opened until after the completion of the evaluation of the technical offers. Pending the completion of the evaluation of the technical proposals, the financial proposals must be kept unopened, secure and confidential.

So as to enable the effective implementation of the two-envelop approach, the bidding documents should require the bidders clearly to mark the envelopes containing, respectively, their technical and financial offers (“Technical Proposal” and “Financial Proposals” in clear, legible lettering so as to prevent any confusion as to the type of contents of each envelop).

Since the use the two-envelop approach in tendering proceedings envisaged in the Public Procurement Regulations 2 of 2016 is in the context of a single-phase tendering proceeding, no modifications of technical proposals are permitted once the deadline for submission of bids has expired.

Disclosure and transparency requirements

In addition to the transparency provisions that apply to tendering proceedings generally, including when the two-envelop approach is applied, the Public Procurement Regulations 2 of 2016 refers to a number of requirement tailored specifically to the two-envelop context, as outlined below.

For transparency and fairness purposes, use of the two-envelop approach, when it is to be applied, must be disclosed in the bidding documents art. (28 Fifth-a). In addition, the bidding documents must disclose the details as to the steps involved in the submission and evaluation of bids in two-envelops, including any minimum technical requirements that technical offers must meet art. (28 Fifth-c) and the evaluation and scoring criteria to be applied to identify the successful bidder (e.g., the bidder whose technical proposal met the minimum technical requirements and who submitted the lowest evaluated bid).

Transparency in the two-envelop approach is also promoted by the requirement that bidders be invited to attend the opening of the technical envelopes, and also to attend the opening of the financial envelopes. art. (28 Fifth-d). To that end, the date, time and place of the opening of the technical envelopes should be disclosed in the bidding documents and the date, time and location of the opening of the financial envelopes must be communicated to bidders in advance.

At the opening of the technical proposals, the contracting authority must read aloud and record, at a minimum, the name of each bidder that submitted a bid, the presence or absence of a bid security (if a bid security was required by the bidding documents to be submitted), and the presence or absence of a sealed envelope containing the financial proposal.

It should be noted that only the financial envelopes submitted by the bidders whose technical offers met the minimum technical requirements set forth in the bidding documents are to be opened. The financial envelopes of those bidders whose technical proposals did not meet the minimum requirements in the bidding documents must be returned unopened to the respective bidders.

At the opening of the envelopes containing financial proposals, the contracting authority should read aloud and record the name of each bidder that submitted a bid, the total amount of each financial proposal and any discounts.

Separate evaluation reports should be prepared for the evaluation of the technical and of the financial envelopes. It should be noted that, in the case of procurement financed by an international development bank or other donor agency that is subject to prior review by the concerned institution, the contracting authority may be required to submit to the donor the evaluation reports for the technical

proposals for approval or no-objection prior to moving on to the opening of the financial envelopes.