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招標文件製作實務簡介

Introduction to the Practical Implementation of Tender Document Preparation

壹、前言

就機關辦理公開招標來說，必須先公告「採購資訊」及「遊戲規則」，「要約誘引」符合投標規範之不特定廠商向招標機關為「要約」，再由機關依「遊戲規則」以決標向得標廠商為「承諾」，從而成立採購契約。

然而機關辦理採購，就是為了要「用」才要「買」。但如不知「要用什麼」、「要怎麼用」，自然規劃不出「要買什麼」的「採購資訊」，也無法完整配套出與招標、投

Part 1 Preface

In government agencies' open tender, it entails posting relevant "Procurement information" and "Game rules" that would poise to lure and draw unspecified vendors that meet bidding criteria to solicit contract with a government agency, whereby the government agency would then extend to the vendor with a promissory in accordance with the "Game rules", whereof a procurement contract would then be sustained.

Yet it remains true that the reason why an agency seeks to stage a tender lies in certain requirements that arise to call for a procurement action. Yet not knowing what to get, or how the goods are to be use



標、開標、審標及決標、履約、驗收等等「要怎麼買」的「遊戲規則」。簡言之，機關辦理採購，要先掌握「要用什麼」、「要怎麼用」，還要將其正確的轉化成「買什麼」、「怎麼買」的招標文件，使得廠商能夠完整無誤的接收到，足以知道要「賣什麼」、要「怎麼賣」。

所以機關應須體認，招標文件所服務的客人，是「廠商」，也是自己。一份能讓廠商正確掌握機關「採購資訊」及「遊戲規則」的招標文件，不僅是為符合政府採購法第29條第3項「招標文件內容應具有包括廠商提交投標書所必須之一切必要資料」之意旨，亦為使機關確認自己的採購需求，這是機關製作招標文件應有之基本態度。招標文件不僅要符合法令規定，也要符合正常之市場實務及合理之商業習慣。一份不完整、不明確、不合理、不適當的「白紙黑字」，不但不能息紛止爭，反成紛爭來源。

貳、招標文件的參考來源

一、主管機關提供之資料：

- (一) 網址 <http://www.pcc.gov.tw/>
政府採購法規 / 子法及相關規定 / 招標相關文件及表格：列示例如投標須知、契約、投標標價清單及投標廠商聲明書等範本。這類範本為符合不同機關之使用需要，內容均為概括性的條款，使用機關除須視案件性質及實際需要增刪補填其中選項或空白部分外，尚須按需要作適當調整。
- (二) 網址 <http://www.geps.gov.tw/>
歷史標案作業：凡前三個月內依政府採購法所辦且提供電子領標之採購，均可免付費下載。但只限持有機關政府採購 IC 卡和密碼之人員（一般為機關招標作業承辦人）得操作之。有意參酌者，建議先在網路上篩選出近三個月內相關之標案資料（得以個人名義申請為政府採

would prevent the agency from coming up with the procurement information as to what to buy, nor would it be able to determine a set of game rules in terms of how to go about doing the procurement, in terms of devising a set of package rules and how to go about staging the render, bidding, bid opening, bid review, bid award, contract fulfillment, acceptance inspection and so forth. Put it simple, when setting out to tender a procurement, there is a necessity for government agencies to first grasp what are the game rules in written tender documents governing how the goods and services are to be procured, and it is to be used, that would facilitate the vendors to receive and discern the requirements, and how what to sell and how to sell it.

Hence it is important for government agencies to realize to what clients the tender documents are served to, and that they are essentially vendors. A set of comprehensive tender documents providing the vendor with a precise grasp of the agency's procurement information and game rules not only complies with the core demands set forth under par 3, Article 29 of the Government Procurement Law requires of bidding documents to be submitted by the bidders, but it also helps a government agency discern its own procurement needs, which remains a correct rudimentary approach for an agency to produce relevant tender documents. A set of tender documents not only need to cover relevant laws and regulations but also need to support customary market practice and rational commercial practices. A set of incomplete, unclear, irrational, inadequate written account could poise to become source for disputes rather than clarifying them.

Part 2 The references of tender documents

- I. Pertinent data provided by competent government authorities:
 - (I) The government procurement website at <http://www.pcc.gov.tw/> government procurement laws and regulations / bylaws and relevant stipulations/ tender related documents and forms: To itemize specimens, such as tender guide, contracts, tender price checklist, bidder affidavit and so forth. These type of specimens may vary from agency to agency according to their specific needs, and the contents are mostly likely to be general provisions, where an agency needs to supplement or delete certain contents according to how it fits the contents of a procurement case in checking the options or filling in the blanks but also adequate adjustments to contents where required.
 - (II) The Website at <http://www.geps.gov.tw/> history bidding case operations: All government procurement cases tendered electronically in the previous three months can be downloaded free of charge, provided that only those possessing the government procurement IC card and password (being government tender processors in general) have the access to such information. Bidders who are interested to partake the bidding process are cordially invited to log on the Internet website to browse relevant recent bidding information from the most recent three months (whereby an individual may



購資訊公告系統（網址 <http://web.pcc.gov.tw/>）廠商端的會員，免付費，可閱覽各機關各類具體標案資訊），再洽機關有權限之人員協助下載。參酌此類具體個案時應注意其內容之正確性及適法性。

二、公開徵求廠商提供資料或詢價訪商所得資料：

機關依政府採購法第34條第1項但書規定，得於政府採購資訊公告系統上公開徵求廠商提供資料，或自行於市場上詢商訪價時取得資料，作為製作招標文件之參考。

三、以往採購文件：

以往同類採購案件之資料亦具參考性，但相關法令、市場條件、競爭型態、科技進步等變動情形則應注意。

參、招標文件的構成

一、與投標有關的文件：

- （一）投標須知：包括招標事項、招標期限、投標期限及場所、投標文件格式及內容規範、開標時間及場所、開標及審標程序、決標方式與程序等具體事項，如果以評選方式決定得標廠商的採購，則尚應包含關於評選時間及場所、評選程序及評選項目及評選標準等與評選事項有關之內容。
- （二）投標廠商聲明書、投標委託書、投標標價清單。
- （三）其他與投標相關之必要文件。

二、與契約有關的文件：

- （一）契約草案：預定之契約條款。
- （二）規格書或規範書、圖說。
- （三）其他履約必須遵循的標準或法令規範事務的必要文件。

肆、招標文件的製作實務

一、基本原則：

- （一）完整、明確：須完整涵蓋所有採購訊息及遊戲規則，內

apply for a membership access PIN in individual name for accessing the government procurement information website at <http://web.pcc.gov.tw/>) before contacting relevant authorized government personnel to facilitate downloading the information. Caution is to be taken on the accuracy and legitimacy of the contents when browsing prior cases.

II. Data derived from open solicitation of vendors, and/or data derived from vendors' pricing inquiry:

Government agencies that heed to the extraordinary terms and conditions as cited under par 1, Article 34 of the Government Procurement Law, may openly solicit on the government procurement information announcement system for vendors to provide information, or to secure information through vendor pricing inquiry on the market as references in compiling tender documents.

III. Prior procurement documents:

Data derived from previous procurement cases also provide reference value ; however, the state of changes in relevant laws and regulations, market conditions, competitive types and technology progress should be considered.

Part 3 The composition of tender documents

I. Bidding-related documents:

- (I) Tender guide It encompasses definite procedures, such as tender requirements , deadline of bidding , bidding entry cutoff and venue, tender document format and content guideline, bid opening time and venue, bid opening and bid review procedures, bid award method and procedure; and if a selection method is used for screening the bidder, it would also needs to cover the selection time and venue, selection process, selection categories, selection criteria and selection implementation related contents.
- (II) Tenders affidavit, tender authorization letter, tender price checklist.
- (III) Other related essential tender documents.

II. Contract-related documents:

- (I) Contract draft: preliminary contract provisions
- (II) Specification or guidelines, drawings.
- (III) Other essential documents pertaining to criteria, legal and regulatory guidelines pertaining to contract fulfillment.

Part 4 The practical implementation of compiling and producing the tender documents

I. Rudimentary principle:

- (I) Comprehension and concise It needs to cover all procurement information and game rules, and the contents need to be concise and clear. When the illustrated specimen demanding that the results of contract fulfillment is to be completely identical to the exist system format. Then the contents of



容完整明確。例規範「履約結果須與現行系統格式一致且完全相容」，則現行系統格式內容及其相容要求等事項即應納入招標文件，不應缺漏或語焉不詳。

- (二) 合理、可能：要求事項須合理，並有達成之可能。例如規範「履約標的須為某一特定廠牌型號之產品或其同等品」，但產品係屬專利，市場上並無同等品，即無實現可能。又或經訪價結果，擬購標的無現貨，如以原訂預算額度則須經相當時間才有交貨可能，則履約期限或採購預算即應相對調整，以求合理。
- (三) 適當、有效：規範內容須適當有效，條款互為配套。例如於驗收條款規定「將驗收合格後之採購標的送達機關之指定地點」，既已驗收合格卻要求廠商履行一定事項，又未訂期限，即屬欠當。

二、作業技巧：

- (一) 遣詞用字要相同：遣詞用字應事前釐清避免混淆，減少事後無謂的解釋或澄清。使用法定用語或特定專業用語，亦應與法令或專業慣行一致，不應誤植或另創用語。例如招標文件同時出現甲方、買方、機關、業主，或者零件、配件、零配件、零組件等名稱不同但均為同一事物之情形。
- (二) 格式類型要一致：文件所用字體種類相同、字型大小統一，文字或文件排列方向一致，標題及附件標示分明，繕具頁碼。使文件具有可親近性、易於瞭解。機關得視採購標的類型建立專用範本，例如委託服務採購之專

the existing system format and compatibility demands would need to be included in the tender document without any omission or vague expression.

- (II) Rationality and feasibility It needs to specify requirements that are rational and feasibly attainable. When an illustrated specimen stipulates that the contracted goods should be of a certain make or an equivalent product. In reality, the product is of a patented goods and without any comparable substitute in the market, there would be no feasibility that this could be executed. Furthermore, when pricing inquiry made on the proposed goods to be in short supply in the market, and the previously defined budget limitation would require the delivery to be made at a lengthy time, the contract fulfillment deadline or the procurement budget would need to be fittingly adjusted for rationality.
- (III) Adequacy and validity: The contents of the guidelines need to be adequate, valid. The provisions are to be complementary to each other. For instance, when the acceptance inspection provisions specify that the contracted goods needed to be delivered to a location designated by the agency upon undergoing satisfactory acceptance inspection, it would not be adequate in this instance where demands are set for the contractor to heed to the mandated measure but without giving a clear-cut deadline.

II. Operating techniques:

- (I) Choice of expression and vocabulary needs to be identical: The choice of expression and phrases need to be presorted and discerned to avoid confusion or mix-up and help to reduce unnecessary interpretation or clarification. The usage of words or professional terms needs to be consistent legal or trade terms, and shall refrain from impregnating or creating usages. For example, such as the usage of Party A, the buyer, the agency, the owner used throughout a tender document, or expression such as parts, accessories, parts and accessories, parts and components which though different essentially refer to the identical things.
- (II) The format and type need to be consistent: The font type used throughout a document shall be kept identical, the font size uniformed, the text and document layout in consistent direction, and the heading, annexes clearly marked, complete with page numbers. Efforts are to be made to ensure that all documents are readable, and understandable. The agency may instill designated specimens by procurement type, such as designated specimen for consigned service procurements that would help to standardize the contents of procurement documents, conserve the time needed for drafting and reviewing, as well as conserving the time, simplify the reviewing process. Furthermore, it is crucial to divide contractual provisions into general provisions and frequently modified provisions by placing frequently changed



用範本等。使招標文件內容標準化，節省研擬及製作時程，簡化審核程序。又或將契約條款區分為一般通案條款及常用變動條款，將常用變動條款集中於採購規範書（例如履約標的、價金給付、履約期限、驗收、及其他個案需要列示之條款等），使契約重要事項便於查閱。

（三）階段層次要定位：依招標、履約或驗收各階段明確區分相關事務之規定位置，不要重覆或混合規範；有必要在不同文件內提及同一事務者，得於一處列示內容，而於它處註記「參考某條」。例於規格文件內所訂「須於投標時檢附型錄供審查」，即應改列於投標須知關於廠商應備之投標文件之條款下，以減少誘發廠商發生漏誤之陷阱。另關於投標文件（例樣品之作用，係供審查廠商履約能力或為確認廠商未來履約標的）、屬於履約標的之文件（例將研究成果印成報告）、採購過程所衍生的文件（例驗收時提出海關進口證明）等各階段所須備具之文件或作為事項，應確認其目的及效果，不應混淆。

（四）規範配套要有效：訂立有效規範，並與相關條款配套，避免有規定無效果，或互相矛盾。例如廠商常將非招標文件規定之文件一併投標，機關自得限制投標文件之種類，並明文「投標文件非機關招標文件所要求部分，機關不予審查；廠商得標後機關亦不受該超出部分文件之拘束」，減少廠商發生缺漏短少投標文件之情形，亦將非招標文件規定之投標文件，排除具有成為必

provisions in the specification section; such as those governing contracted goods and services, terms of payment, contract fulfillment deadline, acceptance inspection and other provisions that need to be enlisted on a case-by-case basis.

(III) The paragraph layout needs to be aligned: It is crucial not to repeat or confuse the guidelines on the hierarchy of implements pertaining to the various stages in tender solicitation, contract fulfillment and /or acceptance inspection, and when there is a necessity to mention the same implement in various documents, references shall be made as to where an implement has been quoted from, or have such references denoted in the footnote section. For instance, of catalogs that the bidder needs to include at the time of bid entry for review purposes, the bidding guide would need to be modified to stipulate a bidder's documentation submission requirements in order to avoid misleading the bidder to submit erroneously. In addition, of bidding documents relating to contract fulfillment documents, such as sample making, documents for ascertaining a bidder's contract fulfillment capabilities or ascertaining the bidder's future contract fulfillment capabilities, i.e. research finding validation reports, and those derived from the process of a procurement, i.e. Customs importation proof of documentation that needs to be presented at the time of acceptance inspection, due efforts shall be made to verify their purposes and intended objectives, without mixing them or confusing them.

(IV) The package specifications need to be valid: By instilling effective guidelines, together with introducing relevant packaged provisions, it helps to avoid creating conflicting provisions and creating invalid provisions; for example, how some bidders tend to include non-tender documents along with the mandated bidding documents. The agency may restrict the types of bidding documents, and specify that the agency will not review documents that go beyond the scope of documents demanded by the agency, and that the agency will not honor any document submitted by the bidder that went beyond the scope of documentation it specifies even following the bid award, which would serve to cut down the bidder's bid document error or omission, and weed out bid documents containing non-tender documents, and help to eliminate enlisting such information as the premises in future bid review, bid award processes.

III. Review guidelines:

(I) The "who, what, when, where and how" principle This pertains to ascertaining whether the individual guideline within a tender document has been comprehensive and clear. If the contents of the guideline should lack certain principle, this indicates that the contents are incomprehensible or

須審標、決標或成為未來履約依據之效果。

三、審核要領：

- (一)「人、事、時、地、物、如何」原則：核對招標文件個別規範內容是否「完整明確」。若規範內容缺少任一原則，即表其內容不完整或規範不明確。例如履約事項僅規定「廠商應將採購標的完成交付」，即缺何時、何地、交付何人之具體規範。
- (二)「為何」原則：綜合招標文件各階段個別規範或所有規範所形成的整體內容是否「合理可能」，有無「適當有效」。並藉此審酌招標文件所定規範有無達成採購目的或符合原訂採購需求。
- (三)「預演」原則：依招標文件所訂程序及時序之先後，依序運作招標、等標、截標、開標、審標、決標、簽約、履約、驗收等各階段，以發掘整體規範中的錯漏、矛盾、盲點。

伍、結語

西諺「魔鬼都在細節裏（Devils are in the details）」，提醒了細節的重要。一個採購案由無數細節所構成，又與各類法律及商業活動習習相關，其過程卻僅仰賴一份事前擬具的招標文件所涵蓋，理應謹慎。如事前能「知己知彼」的掌握具體明確的採購需求及市場動態，減少招標文件「不必要」的缺漏錯誤或瑕疵，而能「講的清楚、說的明白」，就能降低廠商誤解或誤判的風險，自然不易敘衍爭議。

然而，一份完整明確、合理可能、適當有效的招標文件只是採購作業的開端，落實執行其規範才有意義，並且在結案後須將執行過程所發現的問題或爭議，具體反應在未來招標文件上，才能形成良性循環，招標文件的製作水準及品質才會實際有效的提升。（本文作者任職於本署後勤處）

imprecise; for instance, if a contract fulfillment provision only stipulates that the contractor is to complete the delivery of the procured goods and service, it instantly presents how it lacks tangible guidelines governing the time, place as to when the goods and services are to be delivered.

- (II) The “why” principle This pertains to recapping whether the individual guidelines or the overall contents of all guidelines have been rational and feasible, and are adequate and effective. Such review on the tender documents plays a vital role in ascertaining that all guidelines specified would help to satisfy the procurement objectives, or attain or comply with the initial procurement requirements.
- (III) The rehearsal principle: By following the sequence or timeline defined in the tender documents, all relevant phases of a tender work, covering bid queuing, bid entry, bid opening, bid review, bid award, contract entry, contract fulfillment, acceptance inspection and so forth are to be implemented in search of explore any error, omission, conflict or blind spot throughout the entire guideline.

Part 5 Conclusion

As the Western saying goes that “Devils are in the details”, it reiterates the importance and virtue of attending to details. Not only is a tender case made up by numerous details, but it is closely related to a wide variety of legal and commercial activities, in which caution would need to be taken to address a pre-drafted tender document that serves to cover the entire process. The ability to cover all grounds in identifying any error, omission, defect in a set of tender documents by stating the demands clearly and concisely can certainly help to reduce the bidders’ misinterpretation or erroneous judgment, hence helping to curtail frequently occurred disputes.

Nevertheless, a set of clear-cut, rational, feasible, concise, adequate and effective tender documents remains the very beginning of a procurement case, and only an effective execution of all guidelines can it become significant, and that all potential issues or disputes throughout the entire implementation process until the case is closed can be truthfully reflected in a tender document, a crucial process that is inductive in creating a positive cycle, and a viable means to excel the sophistication and quality of tender document compilation.

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