

Tender process for Government projects in Qatar

Sharifah Hamzah
s.hamzah@tamimi.com

March 2011

Foreign construction companies wishing to participate in Government tender bids in Qatar should seek legal advice first. Often, foreign construction companies will focus more on the technical and commercial aspects of a tender bid; while overlooking the legal terms and conditions included in the tender documents. These companies may assume that the basic legal concepts they are familiar with in other jurisdictions are similarly applicable in Qatar, however, only in the process of executing the work do they realise that this may not be the case.

These companies should initially investigate the tender process, their eligibility in participating in a particular tender and the procedures for setting up in Qatar. They should be aware of the rules and regulations affecting their establishment in this country.

It is prudent for them to assimilate themselves with the local conditions before embarking on a major project. A potential bidder for a major project should ascertain whether they have the technical capability, financial strength, relevant experience and available resources to undertake such a project.

Where they are required to submit design drawings, they ought to have the relevant experience to provide these drawings and they should be able to adapt to local practices in drawing submissions. Many foreign contractors fall into the trap of clinging on rigidly to their normal practices and views which they inherited from their experience in their home countries causing them to invariably fail in adapting to the conditions in Qatar and later find themselves in a quandary over many issues. These contractors will often find that the execution of the works will be fraught with significant problems if they do not conduct adequate planning, research and preparation before submitting their tender and undertaking the project. Common pitfalls and difficulties faced by contractors undertaking projects in countries which they are not familiar with may include:

- Delay in procurement of materials such as concrete, steel and sand.
- Failure to take note of the restrictions imposed on transportation of materials causing delays in work.
- Delay in hiring workmen and finding workers with the requisite experience and qualification.
- Delay in securing the relevant work permits for their workers.
- Failure to familiarise themselves with the new environment and to investigate ground conditions properly.
- Engaging subcontractors who are not approved by the concerned governmental party.

The Government of Qatar has streamlined the tender procedure for Government projects and has established the Central Tenders Committee and the Local Tenders Committee to oversee this process. These two committees are also known as the Competent Tenders Committee.

The Central Tenders Committee

The Central Tenders Committee (“the Committee”) will administer tenders and bids, at the request of the concerned governmental entity, which have estimated values that exceed Five Million Qatari Riyals (QAR 5,000,000), including the award of contracts on behalf of government entities (with the exception of the

Armed Forces and the Police contracts of a confidential nature and Qatar Petroleum contracts). Tenders below the aforesaid estimated value are overseen by the Local Tenders Committee, where contracting is done through local tenders. The participation of such tenders is restricted to local suppliers, contractors and service providers.

The law governing the establishment and powers of the Committee is the Tenders and Auctions Law No (26) of 2005 as amended by Law No (22) of 2008 and Law No (14) of 2010 ("Tender Laws"). The provisions of this legislation cover the tender procedures for contracts for the purchase of items, contracting business, services or works of art. Under the Tender Laws, the Committee is given special functions to receive tenders, review tenders and give its opinion and recommendation with respect to the adjudication of the tenders.

The Contractors Classification Committee, which is affiliated to the Committee, is given the power to classify and reclassify the contractors in various classes and specialties according to their technical and financial ability, their expertise, skills and former business. The Contractors Classification Committee decides on the application for classification of the contractors submitted to it within thirty (30) days from the date such application is submitted. The contractor is entitled to request that the decision on his classification be reconsidered one year after the issuance of the decision.

Preparation of the Invitation to Tender

The compilation of documents for the Invitation to Tender is prepared by the concerned governmental party seeking to engage the services of a contractor to execute the works. The concerned governmental party will prepare the general conditions of contract together with a detailed scope of works and instructions for the contractors including the following:

- Necessary instructions for the contractors.
- Entire Detailed Drawings and Specifications.
- Detailed and accurate table of quantities.
- Procedure to be adopted in the implementation of the contract.
- Penalties imposed in the event of any breach of the provisions of the contract or delay in the execution of the works.

There should be as much detail as possible included in these documents to circumvent the need for bidders to revert to the concerned governmental party for clarification. It is therefore essential, when tendering, to ensure that the aforesaid documentation is accurate and concise and that it reflects the level of work required to prepare the tender.

Call for Tender and Submission of Tender

The Committee will thereafter advertise the tender by way of publication, at least twice, in the local daily newspapers. The announcement will also be put up on the notice boards of the headquarters of the Committee and the concerned governmental party. In addition to the aforesaid methods of publication, the tenders may also be published by using modern methods of communication. The general tender announcement will set out the following details:

- The number and object of the tender.
- Brief statement about the items or business or services required to be purchased or implemented.
- The party providing the tender documents.
- The amount payable by the bidder for a copy of the tender documents.
- Class and competence.
- System of submitting the offers.
- Party before which the offers are submitted and the submission deadline.
- Fixed date for opening the envelopes.
- Amount and effectiveness period of the temporary guarantee.
- Effectiveness period of the offer, being ninety (90) days at least as from the date of opening the

envelopes.

- Amount and effectiveness period of the final guarantee to be submitted by the winner of the tender.
- Stipulation of the concerned governmental party's right during the effectiveness of the contract, after acquiring the approval of the Committee, to increase or decrease the quantities of the items or business or services by twenty percent (20%), at most, of the contract value under the same conditions and prices, provided that the increase be the same type of items, business or services stipulated in the contract.

All tenders must be submitted within the timeframe set out for submission to the Committee. It is important to note that bidders should not make any amendments to the tender documents. In the event that the bidder wishes to insert some special conditions or make any modification to the tender documents, this ought to be done via a separate letter which should be enclosed with the tender submitted and the bidder should refer to this letter in the body of the tender. The tender offers that do not include total fixed prices will not be accepted; every offer violating the said provisions will be considered null and void.

Tender Price

The tender price quoted is required to be in Qatari currency unless the tender documents stipulate otherwise. It is imperative to take great care in the calculation of the tender price. Only the total price mentioned in the tender form will be taken into account without any other figures or any mistakes made by the bidder during the calculation of the total price of its offer. In the event the bidder makes a mistake in the calculation of its tender price, it will not be allowed to modify this after submission of tender. If the total price written in letters is different from the total price written in figures, the total price in letters will be taken into consideration. In the event the calculation mistake exceeds five percent (5%) of the total price value mentioned in the tender form, the offer will be excluded unless the Committee (by majority votes) decides to accept it for reasons related to public interest.

Some contractors have a penchant for under pricing or under-allowance of costs in their tender bids. Awarding the contract to such a contractor would lead to significant potential problems to the project owner/employer. The general fear and assumption is that this contractor will, throughout the contract period, make attempts to recoup his lost monies by compromising on quality, giving less, or at worst, the contractor may face insolvency.

The tender must include fixed lump sum prices which include all expenses such as transportation, insurance, custom duties and other taxes. All items stated in the bill of quantities must be priced and the lump sum price quoted in the tender form will be considered to include the prices of all the required items. If certain items are not priced, this will be taken to mean that the bidder abstains from entering the tender related to the said item. Further, in the contracting business, if the bidder did not determine the price of one of the items mentioned in the contracting business it submitted, the Committee is entitled to decide whether to exclude the offer or fix a higher price for this item, after comparing it with the other technically accepted offers, and the executive regulations of the Tender Laws will set out the basis and rules that will be applied regarding this matter.

The bidder will not be allowed to make any amendments to its price after submitting its tender. It may not withdraw its offer or amend its prices after submitting its tender and it shall be committed to the prices and conditions stated in its tender.

It is crucial for bidders to be able to assess the risks involved in undertaking the project. Careful scrutiny of the tender documents including the general and special conditions of contract is required with particular focus on the allocation of risks between the parties as this will affect the bidder's pricing for the project. The nature and number of risks must be identified and evaluated, thus ascertaining the consequential costs involved. All too often, in tendering for a project, contractors make the mistake of inadequately assessing and pricing the risks, leading to many loss making projects. In addition, bidders should also take into account that the concerned governmental party has the right of variation by way of increasing or

decreasing the quantities of the items or the works or services up to twenty percent (20%) of the contract value provided that any such increase is related to the same type of items, works or services set out in the contract.

Where a contractor has delayed performance of works, the Tender Laws allow the concerned governmental party to grant an extension of time to complete works provided that the contractor is penalised with a fine for the delay period. This fine shall not exceed ten percent (10%) of the contract value. The contractor should seek legal advice on the relevant provisions under Qatari law with respect to liquidated damages and the imposition of penalties. It is also very important to seek legal advice on the application and enforceability of any limitation of liability provisions in the construction contract. Contractors from other jurisdictions may make certain assumptions regarding liquidated damages and limitation of liability, based on their previous experience undertaking projects in other countries, which do not necessarily apply in Qatar. There is no point feigning ignorance of the local laws and regulations once the contract is signed. (Claire – please use this quote)

Tender Bond and Performance Bond

A tender bond (or a temporary guarantee, as it is called in the Tender Laws) will be required to be deposited together with the tender. This is a security in a lump sum amount fixed by the concerned governmental party. Note that the Committee has the right to exclude any tender which is not submitted with a tender bond.

The tender bond can be in the form of a bank cheque or an unconditional bank letter of guarantee from a local bank. The tender bond shall be valid for payment in whole and should be valid for a period of at least thirty (30) days after the termination fixed for validity of tender. The tender bonds shall be returned to the bidders immediately after the expiration of the determined effectiveness period of the tender or before the same in the event the winning bidder whose tender has been accepted, has deposited the performance bond (known as the final guarantee in the Tender Laws).

Evaluation of Tender and Award of Contract

The tenders will then be reviewed by the concerned governmental party's technical team who will thereafter submit their recommendations to the Committee. The concerned governmental party is entitled to collect from the bidders the necessary data to complete the technical study of the tender provided that it does not prejudice the conditions, specifications and prices mentioned in the tender offers.

The Committee is not bound to accept the recommendations of the concerned governmental party but a decision of the Committee which is inconsistent with the recommendations of the concerned governmental party has to be issued by a majority of two-thirds of the members forming the Committee.

Although it is the norm that the Committee will recommend the bidder who submitted the lowest total price, the Committee may at times recommend the award to a bidder who submitted a higher price. This is justifiable in the case where the Committee feels that the price quoted by the lowest bidder is unreasonably low. We have already addressed the pitfalls of awarding a contract to a bidder whose bid is clearly under priced.

The recommendations of the Committee will then be passed to the Minister of Finance for approval, and where the tender exceeds Fifty Million Qatari Riyals (QAR 50,000,000), it must be approved by the Prime Minister based on the proposal of the Minister of Finance.

The concerned governmental party will ask the winning bidder to show up in order to submit the final guarantee/performance bond within ten (10) days from the day after being notified of the acceptance of the offer and to sign the contract within the determined date. However, in the event the bidder does not show up at the determined date, it shall be considered as withdrawn. In the event the bidder withdraws for any reason during the effectiveness period of the offer, without an acceptable excuse, or in the event the bidder of the accepted offer does not deposit the final guarantee/performance bond during the said period, or in the event it abstained from signing the contract at the determined date, the Committee may

take one or more of the following measures:

- Sending a notification.
- Confiscating the temporary guarantee.
- Confiscating the final guarantee.
- Decreasing the class of the bidder.
- Striking the bidder off from the register for a specific period or permanently.

Conclusion

In general, tendering for projects anywhere in the world has become a more complex exercise where pricing is only part of the selection criteria. Construction and procurement methodologies are also taken into account in the selection process. Other criteria which would be taken into consideration is the contractor's understanding of the project employer/owner, in this case, the concerned government party's objective. Likewise, more tangible considerations may also form the basis of selection such as the contractor's general approach and ability to correlate with the project employer/owner and their team and the contractor's general compatibility with them.

As a general rule, any contractor bidding for a project in any country should have a basic idea of the laws of that country particularly on the following areas:

- Dispute resolution procedure and enforcement of awards.
- Enforceability of limitation of liability clauses.
- Entitlement to additional payment for variations.
- Delay compensation.
- Price escalation.
- Decennial Liability.
- Suspension of Works.
- Termination for Convenience.

As mentioned earlier in this article, it is advisable to seek proper professional advice including; financial, technical and legal advice, before embarking on a major project in Qatar.