

## TES USER PROTOCOL<sup>1</sup>

This Protocol contains the terms of use of a computer system supporting electronic bid transmission (TES). When they access TES Internet site, users, in their own name and on behalf of the firm committed to the BSDQ, accept said terms of use as well as any changes subsequently made thereto. They also agree to refer thereto on a regular basis.

### ACCESS TO TES AND ELECTRONIC SIGNATURE

The BSDQ shall provide all legal and natural persons having signed either commitment C-1 or commitment C-2 of the Tendering Code and who require same, with a master-user's code and a temporary password. The BSDQ shall provide only one master-user's code per person committed to the BSDQ, and said master-user's code shall be provided to the natural person appointed or designated by the person committed to the BSDQ. The master-user's code shall allow that person to access TES, to establish his password which constitutes his electronic signature and to identify other users allowed to access TES depending upon what supervision and guidance and what limits were selected and determined by the master-user.

The BSDQ shall also provide, where required to do so, a master-user's code and a temporary password to any natural person appointed or designated by any surety company mentioned in Schedule II of the Tendering Code. Furthermore, the BSDQ shall provide, where required to do so, a master-user's code and a temporary password to any natural person appointed or designated by a legal or a natural person, to whom tenders may be sent in his capacity as «addressee of copies », in accordance with paragraphs a), b) and c) of section E-2 of the Tendering Code.

The temporary password provided by the BSDQ shall be changed by the holder of the master-user's code when he first accesses TES site. The new password so indicated, along with any subsequent changes thereto, and any passwords belonging to those users previously granted certain rights of access, shall become the electronic signature of the person committed to the BSDQ. This signature shall have the same legal effect as an original handwritten signature. The same shall apply to any password indicated for the representative of any surety company or for the representative of the «addressee of copies ».

Expressly appointed or designated BSDQ employees shall also dispose of a master-user's code allowing them to access TES so as to ensure that it operates properly and in order to allow the BSDQ to assume its role.

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<sup>1</sup> *It should be noted that, for interpretation purposes, the French text shall prevail over the English, the latter being a translation of the French original, and that acronyms are reproduced as in the French version.*

## **CONFIDENTIALITY AND SECURITY**

In order to allow the BSDQ to safeguard and protect the integrity of information, for TES to be accessible in due course and as required by any authorized person and in order that only authorized persons be allowed to take cognizance of or to provide information flowing through TES, the BSDQ shall make sure to confirm the identity of the natural person appointed or designated as aforesaid and provided with a master-user's code, and to have the latter sign this Protocol.

A master-user shall be responsible for the use he makes of his user's code and of any password he chose and he shall keep said password secret. A master-user shall also be responsible for any access, whether limited or unlimited, he may grant within his own firm.

The BSDQ shall retain, in a historical record, any actions and informations related to transactions executed through TES. Retention of the aforesaid elements shall be required in order to make it possible for the BSDQ to suitably play its part and ensure the integrity and soundness of bid E-filings. Thus, a greater number of elements shall be retained by the BSDQ than as part of the system of filing, forwarding, putting in availability and taking possession of tenders in a sealed envelope.

Neither the BSDQ nor any of its agents or employees shall be allowed to access tenders filed by means of TES less than one hour after the closing hour set by the awarding authority.

E-Mails received at the BSDQ shall be dealt with using the same confidentiality measures as those used where mail is concerned.

The BSDQ takes any steps required in order to avoid intrusions.

## **USER LIABILITY**

When it obtains a master-user's code, the natural person appointed or designated undertakes, thereby binding himself and any other users it gives limited or unlimited access, to use TES in compliance with the provisions of the Tendering Code and of this Protocol, and solely for authorized purposes. BSDQ shall hereby be authorized to limit or to prohibit access by any user making excessive use of, or abusing, TES.

Users shall immediately report to BSDQ any faulty operation of the system they may be aware of.

## **MAINTENANCE AND TECHNICAL SUPPORT**

TES shall always be accessible, save only during required maintenance periods. Where required, said maintenance work shall be carried out between 12 AM and 5 AM.

Technical support shall be provided between 8 AM and 5 PM weekdays, on BSDQ working days.

## **REQUIRED EQUIPMENT AND TOOLS**

In order to access TES, users shall have the required equipment and (software) tools, namely a personal computer and its components, Internet access (high-speed recommended) and the Explorer Web browser, version 6.0 or a later version.

Users shall also have « Acrobat Reader » software to be able to view and print « .pdf » files.

## **RULES AND TERMS OF USE**

Pursuant to the Tendering Code and provided its conditions of application are met, tenderers shall transmit any tenders sent to recipient contractors only through the BSDQ. TES makes it possible for tenderers and recipient contractors to comply with Tendering Code rules by providing an electronic channel through which tenders can be made and received.

Certain administrative procedures in force and effect at the BSDQ or certain provisions in the Tendering Code shall be applied and read while making adjustments made necessary on account of the introduction of controls and technological requirements inherent in computing and browsing on the Internet. Subject to such required adjustments, using TES involves no change to the Tendering Code.

These main adjustments are dealt with below. Users shall refer to the Operating Guides provided by the BSDQ and avail themselves of the training given to become acquainted with additional information that can prove useful when using TES.

## **MAIN ADJUSTMENTS**

Retention of the present system involving sealed envelopes : Since TES is not a replacement of but rather an addition to the present system involving filings in sealed envelopes, tenders sent by different tenderers to any recipient contractor, in respect of one and the same project, may either be e-filed or filed in sealed envelopes. Upon receiving tenders sent to them through electronic channels, recipient contractors are made aware of the fact that tenders in sealed envelopes, as the case may be, have also been filed with the BSDQ, whereupon it is their responsibility to take whatever steps may be necessary to ascertain whether any tenders have been sent to them in sealed envelopes in order to receive same.

Tenderer's single option : Notwithstanding the coexistence of sealed envelope and electronic channel filing systems, tenderers shall not resort to both sealed envelope and electronic channel filing with respect to one and the same project and with respect to one and the same tender. Should they do so, the BSDQ shall consider only the latest tender to be filed.

Intended markets : TES shall not be used where a tender is intended by a tenderer for an awarding authority. Only tenders intended for recipient contractors may be sent by way of TES.

Project record opening deadline : Owing to the introduction of controls, tenders and bid bonds shall not be e-filed except where the BSDQ posts the project in the TES four working hours prior to the date and closing time set by the BSDQ for tenderers. Any information regarding record opening regarding any project shall be provided to the BSDQ early enough to allow it to post the project within the allotted time.

E-filing : The system involving coloured envelopes identified in the Tendering Code shall be replaced by E-filing and E-receiving. E-filings shall be purchased in the same way as are the coloured envelopes used for filings in sealed envelopes.

Regional deposit offices : The deposit office concept and that of their geographical situation are not relevant for TES use purposes.

Project description : Project description mentioned in the tender form is the description of the project posted by the BSDQ. Projects are submitted on dropdown lists allowing users to choose from those lists projects that are of interest to them.

Specialty identification : The identification, on the tender form, of the specialty or grouping of specialties liable to be called upon to perform the work being tendered for is determined by the selection made by tenderers from lists of specialties identified by the BSDQ with regard to each project.

Recipient contractors identification : Recipient contractors having signed a commitment to the BSDQ shall be indexed in a directory from which tenderers must make a selection. Nevertheless, unindexed recipient contractors are free to request to be indexed in the directory on a temporary basis by communicating with the BSDQ at the appropriate time. To be authorized to receive tenders intended for them, said recipient contractors shall first sign a commitment to the BSDQ and meet any requirements set in order to use TES.

Bid bonds and letters of intent : In TES, bid bonds and letters of intent, where required, shall first be e-filed by the legal person issuing same.

Tender security : In TES, tender securities such as certified cheques or bank drafts shall be replaced by E-filings for the amount provided for in the Tendering Code and shall be issued through a financial institution. The required amount shall be deposited in the BSDQ's trust account immediately following the filing of the secured tender, prior to the closing date and time set at the BSDQ with respect to tenderers. The existence and validity of the aforesaid tender security shall be confirmed by the BSDQ the day after it is filed. Recipient contractors shall be responsible for securing said confirmation.

The amount deposited by way of tender security in the BSDQ's trust account shall be returned to the tenderers in accordance with the terms and conditions provided for in the Tendering Code. Any interest earned as a result of said deposit shall be assigned to the BSDQ.

Required fields : Certain mandatory controls or checks shall be implemented by means of TES, requiring tenderers to fill in fields indicated by an asterisk. Should they fail to do so, it shall be impossible for them to file their tender and they shall be notified thereof. More particularly, tenders without a bid bond and a letter of intent or a tender security where required by the Code, tenders not digitally signed, tenders whereon the contractor's license number does not appear, and tenders with empty « price », « plan numbers », « specifications sections » or « addenda » fields cannot be filed.

Taking possession : Recipient contractors take possession of tenders addressed to them through electronic channels by accessing TES on and after a set time. Recipient contractors consulting a list of tenderers having sent them a tender regarding a given project shall, whether they refuse or whether they accept tenders addressed to them through electronic channels, confirm said refusal or acceptance through their electronic signature. Tenders shall be deemed refused until accepted by recipient contractor.

Nevertheless, where recipient contractors fail to take cognizance of the list of tenderers having sent them tenders, said tenders shall be deemed unread.

Addressees of copies : Addressees of copies such as awarding authorities, architects or engineers shall use electronic channels to receive copies of tenders sent to them through electronic channels.

## **PURCHASE OF E-FILINGS AND PAYMENT THEREFORE**

Purchasing envelopes shall be replaced, where TES is concerned, by on-line e-filing purchases. The cost of each filing shall be set by the BSDQ and paid by VISA or MASTER CARD.

## **TRAINING AND OPERATING GUIDES**

To make it easier for users to use TES, the BSDQ provides training for those wishing to avail themselves thereof. The BSDQ reserves the right to restrict access to its technical support service by users choosing not to receive the training provided.

Appointed or designated natural persons provided with a master-user's code by the BSDQ shall nevertheless either obtain, before accessing TES, Operating Guides prepared by the BSDQ or receive the training provided.

## **LIMITATION OF LIABILITY**

The parties to the Agreement (the ACQ, the CMEQ and the CMMTQ) and the BSDQ shall not be liable for any damage or injury resulting either from any misuse of TES or for that caused by use of obsolescent equipment or tools.

The parties to the Agreement and the BSDQ shall act as agents for the users and for any firms committed to the BSDQ having appointed them. They shall carefully and diligently assume their duties in that capacity.

The parties to the Agreement and the BSDQ hereby undertake to take the required steps in order to avoid any mistake, error, failure, malfunction or discrepancy and in order to ensure the confidentiality and security of TES. Nevertheless, the parties to the Agreement and the BSDQ shall not be liable for any damage or injury resulting from any user's failure to obtain appropriate information, to access TES, completely or partly, or to finalize or complete the filing or receipt of any tender due to any mistake, error, failure, malfunction or discrepancy. Nor shall the parties to the Agreement and the BSDQ be liable for any damage or injury possibly resulting from any third party fault or from any superior force or fortuitous event.

## **COPYRIGHTS**

The BSDQ and the parties to the Agreement (the ACQ, the CMEQ and the CMMTQ) own this TES system and their copyrights are protected.

## TES user protocol

### Signature form for general contractors and/or trade contractors

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Name of committed firm  
*(please print)* \_\_\_\_\_

BSDQ commitment number \_\_\_\_\_

Name of appointed or designated master-user  
*(please print)* \_\_\_\_\_

Master-user's title or office \_\_\_\_\_

Master-user's E-Mail address \_\_\_\_\_

Master-user's business address  
*(City, Street and Postal Code)* \_\_\_\_\_

Master-user's signature \_\_\_\_\_

Resolution for a business (legal person)

**RESOLUTION RESPECTING THE TES USER PROTOCOL**

WHEREAS

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*Name and address of the business (legal person)*

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requires a master-user's code enabling it to use the BDSQ computer system supporting electronic bid transmission (TES) ;

BE IT RESOLVED

THAT Mr. or Mrs. \_\_\_\_\_ be appointed or designated « master-user », and that he/she be authorized to sign, on its behalf, the TES user protocol;

THAT the BSDQ be authorized to provide said appointed or designated master-user with a master-user's code and password allowing him/her to access TES.

CERTIFICATION

I, the undersigned, certify that the foregoing resolution was duly passed by the directors of the aforementioned legal person and that said resolution is still in force and effect, without amendment.

And I have signed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signature: \_\_\_\_\_  
*(President or Secretary)*

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Signatory's Name *(please print)*

Title

Resolution for a partnership

**RESOLUTION RESPECTING THE TES USER PROTOCOL**

WHEREAS

\_\_\_\_\_  
*(Name and address of the partnership)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
requires a master-user's code enabling it to use the BDSQ computer system supporting electronic bid transmission (TES) ;

BE IT RESOLVED

THAT Mr. or Mrs. \_\_\_\_\_ be appointed or designated « master-user », and that he/she be authorized to sign, on its behalf, the TES user protocol;

THAT the BSDQ be authorized to provide said appointed or designated master-user with a master-user's code and password allowing him/her to access TES.

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Name and signature of Partners (please print)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_