



Support for Improvement in Governance and Management

A joint initiative of the OECD and the EU, principally financed by the EU

Brief 9

January 2011

Public Procurement

Tender Evaluation and Contract Award

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The evaluation of tenders is the stage in the procurement process during which a contracting authority identifies which one of the tenders meeting the set requirements is the best one on the basis of the pre-announced award criteria, either the lowest-priced or the most economically advantageous tender. The qualified tenderer whose tender has been determined to be either the lowest-priced or the most economically advantageous, as the case may be, is awarded the contract.

Where the open procedure is used then the economic operators will have submitted both selection stage information and their tenders at the same time. The evaluation process will therefore comprise two stages. The contracting authority will first evaluate the selection stage information to ensure that the economic operators are suitably qualified and, then move straight on to the evaluation of the tenders received from suitably qualified economic operators. Where the restricted, competitive dialogue or negotiated procedure with prior publication of a contract notice is used then the selection stage and the tender evaluation stage will be undertaken as two separate processes.

The evaluation of tenders must be carried out by a suitably competent evaluation panel and in accordance with the general law and Treaty principles of equal treatment, non-discrimination, and transparency. The confidentiality of the information acquired by those involved in the evaluation process must be preserved.

The Directive sets out the criteria on the basis of which contracts are to be awarded, and it also specifies that the award of contracts is to take place after the selection of economic operators has taken place. The Directive does not contain specific rules on how the process of evaluation of tenders should be structured or on the organisation and responsibilities of the evaluation panel. These issues are left to EU Member States to regulate.

This procurement briefing provides general guidance and examples of good practice in the evaluation of tenders.

What key principles govern the process of evaluation of tenders?

- **Non-discrimination:** This Treaty principle means that any discrimination with regard to tenderers on the basis of nationality is forbidden and tenderers from other member states must not be discriminated against in favour of domestic tenderers.
- **Equal treatment:** This general law principle means that all tenders submitted within the set deadline are to be treated equally. They must be evaluated on the basis of the same terms, conditions and requirements set in the tender documents and by applying the same pre-announced award criteria.
- **Transparency:** This general law principle means that detailed written records must be kept (normally in the form of reports and minutes of the meetings held) of all actions of the evaluation panel. All decisions taken must be sufficiently justified and documented. In this way, any discriminatory behaviour can be prevented and if not prevented, then monitored.
- **Confidentiality** – Apart from any public tender opening, the process of evaluation of tenders must be conducted *in camera* and must be confidential. During the process of evaluation, the tenders should remain in the premises of the contracting authority and should be kept in a safe place under lock and key when

not under review by the evaluation panel. This safeguard is recommended in order to avoid any leaking of information. Information concerning the process of evaluation of tenders and the award recommendation is not to be disclosed to the tenderers or to any other person who is not officially concerned with the process, until information on the award of the contract is communicated to all tenderers.

How does an evaluation panel operate?

The process of evaluation of tenders is generally carried out by a suitably competent evaluation panel. A chairperson is usually appointed to lead, co-ordinate, give guidance and control the process of evaluation of tenders. The chairperson is responsible, *inter alia*, for ensuring that the process of evaluation of tenders is carried out in accordance with the general law and Treaty principles as well as local requirements. A secretary to the evaluation panel, generally with non-voting powers, is often appointed for the purposes of providing support to the chairperson, carrying out the administrative tasks linked to the evaluation process, and keeping the minutes of each meeting.

The way in which the members of the evaluation panel operate - for example whether they assess the tenders independently or jointly - depends on local legislation or local practice.

In principle, the evaluation panel normally has only the mandate to identify the best tender and to make a recommendation as to the award of the contract to the contracting authority.

Good practice note

It is good practice for all of the evaluation panel's members, including the chairperson and secretary, to sign a declaration of impartiality and confidentiality or a similar kind of declaration before they start to evaluate the tenders.

By signing such a declaration, each evaluation panel member:

- declares in an explicit way that he/she is not associated in any way with any of the tenderers (or their proposed sub-contractors, etc.) that have submitted a tender;
- commits himself/herself in an explicit way not to disclose any information acquired during the process of evaluation of tenders to tenderers or to other persons not officially involved in the evaluation process.

Preparatory and planning work: Preparatory work and advance planning are very important for the timely and proper conduct of the evaluation process. It is recommended that the evaluation panel holds a preparatory/planning meeting before tenders are received so as to ensure that all of the members understand the process to be followed, how criteria are applied, what their responsibilities are, the timescales for the process and to agree a work plan including scheduling meetings of the panel.

Process of evaluation of tenders: There are two key stages in the evaluation process: (1) receipt and opening of tenders, and (2) evaluation of tenders - which normally results in the recommendation of the contract award made by the evaluation panel to the contracting authority.

Receipt and opening: On receiving the tenders, the contracting authority must register them and it is common practice to record the names of the tenderers as well as the exact date and time of reception of the tenders. The summary of tenders received is then annexed to the tender opening report.

The envelopes containing the tenders must remain sealed and must be kept in a safe place under lock and key until they are opened, and afterwards they must be kept in a safe place under lock and key until the contract award.

Normally, late tenders are rejected and then returned to the tenderers concerned unopened, unless provided otherwise by national legislation. A record should be made of this decision.

The opening of tenders may be either public or non-public:

- **public tender opening** – Tenders are opened publicly in the presence of authorised persons and at the time and place indicated by the contracting authority. In the case of open procedures, the persons authorised to be present at the opening of tenders and the time and place for such an opening must be indicated in the contract notice
- **non-public tender opening** – Tenders are opened *in camera* in the presence of the evaluation panel members only.

The tender opening process should be recorded and any actions taken should be included in that report.

How does an evaluation panel evaluate tenders?

The evaluation panel must make sure that the tenders received are complete and that they comply with all of the requirements set by the contracting authority in the tender documents. The evaluation panel can then apply the pre-announced award criteria (either the lowest-price criterion or the MEAT criterion) to evaluate the tenders.

The evaluation panel will usually carry out the following activities:

- Formal compliance check
- Technical and substantive compliance check
- Choice of the best tender on the basis of the pre-announced award criteria: either the lowest-price criterion or the MEAT criterion
- Recommendation for the award of the contract

Formal compliance check: The formal compliance check consists of establishing which tenders are compliant with the procedural requirements and formalities set by the contracting authority in the tender documents. These procedural requirements could include, for example, the submission of tenders in the specified language, with the correct number of copies and including all documents requested.

Good practice note

It is good practice to clearly indicate in the tender documents the procedural requirements and formalities that are mandatory and those that are not. A procedural requirement/formality compliance grid (checklist) could also be included in the tender documents, which would then have to be used by the evaluation panel during the formal compliance check.

This good practice enhances legal certainty, reduces the number of tenders that are non-compliant with the procedural requirements and formalities set in the tender documents, and facilitates the process of evaluation of tenders.

Technical and substantive compliance check: The technical and substantive compliance check consists of identifying the tenders that are compliant with:

- the specifications
- the contract conditions and other fundamental substantive requirements (for example, the currency used)

Non-compliance with fundamental requirements: non compliance with fundamental procedural requirements, specifications and other fundamental substantive requirements must, as a general rule, result in the rejection of the non-compliant tenders. It is against the principle of equal treatment to accept tenders that do not comply with such requirements.

Some examples of non-compliance with fundamental requirements

- Offer of a delivery date that is later than the mandatory maximum delivery date specified in the tender documents
- Refusal to bear important responsibilities and liabilities allocated in the tender documents (for example, performance guarantees and insurance coverage)
- Submission of partial tenders by offering, for example, only selected items or only partial quantities of a particular item or only part of the works or services required, where this is not allowed by the tender documents

The reasons for rejecting a tender for non-compliance with specifications and other substantive requirements must be clearly and exhaustively explained and documented in the evaluation report.

Non compliance with non fundamental requirements: Generally speaking, non-compliance with non-fundamental procedural requirements and specifications and other non-fundamental substantive requirements would not constitute a reason for the rejection of a tender, but it would lead instead to a request for clarification.

Example of non-compliance with non-fundamental requirements

- The tender is submitted in a number of copies that is fewer than the required copies

- The tendered price is quoted in Danish kroner (DKK) instead of euro (EUR), as required in the tender documents.

In principle, the correction of non-compliant tenders in these instances would not give rise to abuse. On the contrary, it would be wasteful for a contracting authority and against the principle of effective procurement to reject an advantageous tender only because it failed to meet some minor specifications or other minor substantive requirements.

When a tenderer, following a request for clarification, is allowed to bring its tender into compliance, this correction must be made in compliance with the principle of equal treatment. Therefore, any tenderer failing to comply with the same requirement or with other non-fundamental specifications or non-fundamental substantive requirements must be treated equally and must also be allowed to bring its tender into compliance.

Some notes on the clarification process

The evaluation panel may, at its discretion and at any time during the process of evaluation of tenders, ask tenderers for clarifications of their tenders.

Some examples of when requests for clarifications may be needed

- When the tender contains inconsistent or contradictory information about the specific aspect of the tender
- When the tender is not clear when describing what it is offering
- When the tender contains minor mistakes or omissions
- When the tender is non-compliant with the non-fundamental formal and/or substantive requirements set in the tender documents

In accordance with the principle of equal treatment, no substantial alterations to tenders are to be sought or accepted through requests for clarifications. Therefore, requests for clarifications cannot, for example:

- allow a non-compliant tender to be brought into compliance with the set mandatory fundamental specifications;
- allow a change in the tendered price (except for the correction of arithmetical errors discovered in the evaluation of the tenders, if applicable).

Some important points to keep in mind:

- Requests for clarifications do not imply negotiations.
- Any request for clarification and the corresponding response must be in writing.
- The evaluation panel must agree on any request for clarification before it is sent to the tenderer concerned.
- Any agreed request for clarification must be sent to the tenderer exclusively through the chairperson of the evaluation panel. Individual members of the evaluation panel are not to be allowed to contact the tenderers directly in order to seek clarifications of their tenders.
- The clarification correspondence exchanged must be summarised in detail in the evaluation report, with a clear indication of whether the answers received

are satisfactory to the evaluation panel, and if not why not. For the purpose of transparency, the exchanged correspondence must also be annexed to the evaluation report.

- Any clarification submitted by a tenderer with regard to its tender that is not provided in response to a request by the evaluation panel is not to be considered.

Choice of the best tender on the basis of the lowest price

If the award criterion is the lowest price, the tenders submitted by qualified tenderers that:

- meet the set procedural requirements and formalities and
- meet the set specifications and other substantive requirements

are compared on the basis of the tendered prices.

Some important issues to keep in mind before comparing tendered prices:

- Tendered prices must include all price elements in accordance with the requirements set in the tender documents.
- Any arithmetical error must be corrected and recorded.
- Any discount must be applied.
- Tenders that appear to be abnormally low must be duly investigated.

Choice of the best tender on the basis of the MEAT criterion

If the award criterion is the most economically advantageous tender (MEAT), tenders submitted by qualified and selected tenderers that:

- meet the set procedural requirements and formalities, and
- meet the set mandatory specifications and other set mandatory substantive requirements

will be evaluated by applying the pre-announced specific criteria and their relative weighting. If a more detailed evaluation methodology was disclosed in the tender documents, this methodology must be followed.

Some important points to keep in mind:

- The pre-announced criteria and weightings, any pre-announced sub-criteria and weightings, as well as any pre-announced evaluation methodology cannot be changed or waived during the process of evaluation of tenders. Any criteria and methodology must be applied as they stand.
- To obtain a meaningful evaluation, the members of the evaluation panel must take a consistent approach when scoring the tenders, and the same scoring rationale must be used.
- Before evaluating and scoring the financial aspects of the tenders, the evaluation panel must:
 - make sure that all costs are included;
 - correct any arithmetical errors;
 - apply any discount;
 - investigate any tender that appears to be abnormally low

- Evaluation grids/matrices should be used to score the tenders. For the purpose of transparency, these grids/matrices must then be attached to the evaluation report.

Moderation meeting of the evaluation panel: A moderation meeting is normally held once all members of the evaluation panel have completed their independent review and scoring of the tenders, if that approach is being adopted.

At the moderation meeting the panel members would consider the scores and comments allocated by each member of the evaluation panel in order to establish the ranking of the evaluated tenders and to agree on the recommendation of the award to be included in the evaluation report.

In the event of significant differences in the scores given by members of the evaluation panel, a mechanism should be agreed in advance to deal with this issue. Such a mechanism, which must be in line with national legislation, might include, for example, the request for clarifications from tenderers or the engagement of expert advice. In that case, more than one moderation meeting would have to be held.

The evaluation panel may also use the moderation meeting to consider other issues such as; the evaluation of variants, what to do if only one tender or one admissible tender is received, how to respond to abnormally low tenders or what to do if there are a number of equally-ranked tenders.

Recommendation to award the contract: The evaluation panel normally has the mandate to issue only a recommendation to the contracting authority regarding the award of the contract, and not to make the final award decision. This arrangement depends, however, on the provisions of national legislation. The recommendation to award the contract is generally contained in the evaluation report

Evaluation report: The recommendation for the award of the contract is contained in the evaluation report, which is normally prepared by the chairperson of the evaluation panel with the support of the secretary and members of the panel.

Information that should be contained in the evaluation report: In broad terms, the evaluation report must confirm who the member of the panel are, describe the contract which is the subject to the evaluation process, confirm the recommendation of the panel and name the proposed tenderer and those tenderers who have been unsuccessful. The report should summarise in a clear way the activities carried out by the evaluation panel during the process of evaluation of tenders and provide a clear and detailed analysis of those activities and their results. There should be a clear justification for any recommendation made.

The evaluation report must have attached to it all of the documentation drawn up by the evaluation panel during the performance of its tasks.

Recommendation or obligation to cancel the tender process – There are a number of situations where the evaluation panel may not make a recommendation for the award of a contract. National legislation may also specify grounds for mandatory cancellation. Examples of these situations include:

- No tenders have been received at all;
- None of the tenders received has been found to be compliant;
- All admissible tenders exceed the budget available;
- None of the tenderers (when using the open procedure) satisfies the set selection criteria
- The circumstances of the contract have been fundamentally altered;
- Irregularities occurred during the process of evaluation of tenders.

In this case, the evaluation process recommends, in the evaluation report, the cancellation of the tender process or sets out the mandatory grounds for cancellation. It will then be up to the contracting authority to decide, on the basis of the circumstances of the case and the applicable national legislation, how to proceed (for example, by entering into a negotiated procedure or re-advertising the tender process).

Award approval: It is the chairperson of the evaluation panel who normally issues the evaluation report to the contracting authority for approval. It is often the case that the evaluation report is provided to the authorised officer who is responsible for:

- verifying that the process of evaluation of tenders was conducted properly and asking for any additional clarification or evidence;
- ensuring that the recommendation of the award is sound and correct; and
- making the final award decision or making the final recommendation.

It is of utmost importance for the authorised officer of the contracting authority to be knowledgeable about the rules governing the process of evaluation of tenders and more generally about the applicable public procurement rules.

Contract award: Once the award approval has been given, the contracting authority notifies the successful tenderer in writing that its tender has been accepted for the contract award.

Mandatory standstill period: The contracting authority must notify all tenderers and candidates of the contract award decision before it concludes the contract with the winning tenderer. This notification is followed by the 'mandatory standstill period'. The mandatory standstill period means that a minimum number of calendar days (which, in very broad terms, may be either 10 or 15) must elapse between the written communication of the contract award decision to all tenderers and, where relevant, to candidates and the contract conclusion.

Contract conclusion: Once the mandatory standstill period has expired, and provided that no complaint has been received, and depending on national legislation, the contracting authority may proceed with the conclusion of the contract, using the contract template and contract conditions that were included in the tender documents and accepted by the successful tenderer with its tender. The contracting authority must also remember, where relevant, to publish a contract award notice in the OJEU within 48 days of the contract award.

Further reading:

[SIGMA Public Procurement Training Manual](#)