Clarification

This section provides you with guidance to conduct Post Tender Clarifications and Negotiation where appropriate.

It is important that any discussions at this stage are fully documented.

For complex regulated procurements, you may find some of the guidance and tools in **Route 3** to be of benefit.

Consideration must also be given to **Planning**, **Sustainable Procurement** and **Risk Management** throughout this stage of the Journey.

Tender Clarifications

The objective at the clarification stage is to clarify the tenders as submitted i.e. it is contact between you and the bidder(s) purely to clarify aspects of the tender which are unclear or abnormal.

Tender, or bid clarifications, may be required during the evaluation of tenders. This may be the case where aspects of the bid:

- Are unclear or contain minor errors e.g. arithmetical mistakes and/or;
- Seem strange. For example, if a bid appears abnormally low or especially high on price;
- Require clarification on quality performance or particular terms and conditions of contracts.

In seeking clarification, all communications with bidders must be properly recorded so that an audit trail is maintained. If **PCS-Tender** is being utilised, this can be recorded on the system in the messaging area.

You should examine bids to ensure that bidders:

- Are not making fraudulent claims;
- Have delivered similar types of work, if they have claimed to do so.

In doing so the following points should be considered:

Checklist

Checklist

Post Tender Clarification - Points to Consider

Checklist Links to content

A checklist of points to consider once you have received all bids.

All bidders who meet the tender requirements should be given the same opportunity to engage in tender/bid clarification.

Extreme caution and care must be used to avoid either unfairness to potential bidders or the impression of unfairness to some bidders.

Post Tender Negotiation

Post Tender Negotiation (PTN) should not be confused with 'tender' or 'bid clarification'.

Tender Clarification is contact between you and bidder(s) purely to clarify aspects of the tender which are unclear or abnormal whereas PTN is contact between you and the leading bidder (possibly multiple leading bidders) to improve or enhance Value for Money (VFM).

It's important to remember that PTN:

- Is conducted after the receipt of formal tenders and before the award of any contract. It is your role to ensure any PTN does not change the outcome of the competition;
- Should be handled as a separate exercise from Tender Clarification;
- May be used to refine and improve bid(s) from the leading bidder(s) to ensure that prices, delivery or associated contract terms are competitive;
- Should not distort competition. That is a bidder, who is not clearly in the lead, should not be given a chance at PTN to improve its offer. Nor should any changes be made which would result in a contract being awarded on terms more favourable to a bidder;
- Remains a stage of the procurement process and the competing bidders must be treated in an honest, fair and ethical manner. Bid confidentiality must be retained.

This list is not meant to be exhaustive. Any negotiation process requires you to define the points most relevant to the procurement exercise and the specific bid under negotiation.

PTN should be a controlled and documented process. It should not be used automatically on all procurements.

Quickfire Guide

Quickfire Guide

Post Tender Negotiation

Before engaging in PTN, the following criteria should be met:

- there should be a considered approach to improving VfM;
- the approval of senior management must be sought in advance of any PTN initiation or activity.

A clear "audit trail" should be available to illustrate the process was conducted fairly and transparently. The PTN record should show:

- The justification for PTN;
- The approval for PTN (at a suitably senior level of management);
- The aim of the negotiation;
- The precise record of all exchanges, both written and verbal. This should demonstrate that the negotiations were conducted by trained and experienced purchasing staff;
- The approval for the award of contract.

When carried out with openness and mutual trust negotiations can strengthen relationships with bidders.

Quickfire Guide

Quickfire Guide

Example Negotiation Topics

The potential areas for negotiation will differ for every contract. Typical topics for PTN might include:

- Terms of payment;
- Quality of goods or services;
- Supply and cost of spare parts;
- Earlier delivery or completion dates;
- Warranties and guarantees;
- Documentation requirements;
- Expediting and inspection procedures;
- Maintenance and support;
- Repair or after-sales service;
- Compensation for failure to meet specified requirements (e.g. of delivery, quality etc.);
- Sustainable Procurement, possible Community Benefits;

- Procedures for remedial action for unsatisfactory service.

Negotiations in relation to price or other areas where bid improvements may be possible should not take place.

Abnormally Low Tenders

Open or close

Where tenders appear abnormally low in relation to the supplies and services being offered, organisations should clarify the price or costs proposed in the tender.

These clarifications may relate to some of the following:

- The cost of the manufacturing process for the services provided;
- The proposed technical solutions;
- The originality of the supplies or services proposed by the bidder;
- The bidder's subcontracting arrangements;
- Whether the price or costs take into account the grant of subsidies.

If it is found that the tender is abnormally low due to a breach of environmental, social or employment law obligations, you should reject the tender. This includes collective agreements and certain international law measures.

Before awarding the contract you should ensure you receive the most up-to-date supporting documents e.g. certificates. These documents should be requested in the selection stage of the tender. For Framework Agreements this should be done prior to a contract based on the Framework being awarded.

Any documents you need are listed below

Negotiation Process

(file type: doc)