Clarification

This section provides guidance on how to conduct post tender clarifications and negotiation, where appropriate.

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

Tender Clarifications

The objective at the clarification stage is to clarify the tenders as submitted.

Tender, or bid clarifications may become necessary during the evaluation of tenders. For example, where there are aspects of the bids that are unclear or contain minor errors.

You should consider whether an aspect of a bid seems ambiguous it might be prudent to request clarification.

For example:

If the tender has asked for services to be completed daily and a bidder responds that the services will be completed seven times per week, you should seek clarification that the services are indeed completed once per day.

Clarification may also be sought from bidders on matters of 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, clarifications can be recorded on the system in the messaging area.

Negotiations in relation to price, essential aspects of the tender or other areas where bid improvements may be possible must not take place as part of the clarification process.

You should give all bidders who meet the tender requirements the same opportunity to engage in tender/bid clarification. You must avoid unfairness or the impression of unfairness to bidders.

Before awarding the contract you should ensure you receive the most up-to-date supporting documents referred to in the selection stage response e.g. certificates.

Post-Tender Negotiation (PTN), where it is practiced by an organisation, should be handled as a separate exercise from Tender Clarification.

Points to Consider

Open or close

You should examine tenders to ensure bidders:

- are not making fradulent claims
- have delivered similar types of work, if they have claimed to do so.

In doing so the following points should be considered:

Legitimacy	Are the claims made in the tender submissions legitimate and verifiable?
Scope	If bidders are inexperienced in the type of work being tendered, tenders may appear excessively high or abnormally low. In both cases you should ensure that suppliers have understood the scope of the requirement
Interference	Have there been any perceived or obvious attempts to influence/interfere with the process?
Price discrepancies	Are there similar tenders with a large price discrepancy between different bidders? This could suggest collusion. Are there tenders with large price discrepancies from bidders who have worked in the same industry for some time? This could again suggest collusion.

Exclusions	Was anyone involved who should have been excluded as part of the selection process?
Conflict of Interest	Should a conflict of interest have been identified earlier in the process? Have conflict of interest declarations been examined and ratified?
Tone	Read and digest the tone of emails. Do they appear over friendly or allude to additional meetings either professionally or socially? Information is often exchanged during a visit or a social event: you should always maintain an audit trail of all correspondence
Submission	Were all tenders submitted on time and delivered in the prescribed manner? Examples of tenders being sent via a person within the tendering organisation could constitute a breach of protocol and should be examined
Late tenders	Were late tenders accepted and if so was there a legitimate reason?

Abnormally Low Tenders

Open or close

Where tenders appear abnormally low for the offered supplies and services, you are required to clarify the price or costs proposed..

These clarifications may relate, in particular, to the following:

- the cost of the manufacturing process of the goods provided
- the proposed technical solutions or any exceptionally favourable conditions available to the bidders
- the originality of the supplies or services proposed by the bidders
- the bidder's compliance with applicable obligations in environmental, social or labour law
- the bidder's subcontracting arrangements
- whether the price or costs take into account the grant of subsidies

Note: if it is found that the tender is abnormally low due to an environmental, social or employment law obligation breach the tender MUST be rejected.

Post Tender Negotiation

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

Tender clarification is contact between the buyers and the bidder(s) to clarify aspects of the tender which are ambiguous or irregular.

PTN may be used to refine and improve bids from the preferred supplier(s) This is to ensure that prices, delivery or associated terms of the contract are competitive. PTN is undertaken in open and restricted procedures as part of a competitive tendering process.

The potential areas for negotiation will differ for every contract but typical topics might be:

• the 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		

The list is not meant to be exhaustive.

Quickfire Guide

Quickfire Guide

Post Tender Negotiation

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

- there must be a considered and soundly-based prospect of improving value for money
- it must be in line with your internal governance and approval policies
- trained and experienced purchasing staff must conduct negotiations
- the negotiations must be fully documented, so that there is a clear audit trail.

A clear audit trail must be available so that it can be seen that the PTN was conducted in a fair manner. The records 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, written and verbal
- the approval for the award of contract

PTN must not:

Trade suppliers against each other	become any form of 'Dutch Auction': unfairly trading off one bidder against another by using the lowest tender to seek a reduction in costs from the other bidders.
Distort competition	allowing a bidder a chance to improve its offer.
Create bias	make changes which would result in a contract being awarded on terms more favourable to a particular bidder.
Adjust the specification	accept reduced prices achieved by adjusting the specification in a manner more favourable to a particular bidder. There is a risk that such an adjustment could have led to a different outcome in the competition even if the price was reduced commensurately.
Be used automatically	be used in all procurements.

When carried out in an atmosphere of openness and mutual trust negotiations can strengthen relationships with suppliers.

PTN must be a controlled and documented process.

The activities at this stage must be undertaken in a way that supports the **Principles of Procurement**.

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

Any documents you need are listed below

Negotiation Process

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