



**USAID**  
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**IRAQ**

# PROVINCIAL ECONOMIC GROWTH PROGRAM

## Contracting TOT

August 2008



This publication was produced for review by the United States Agency for International Development. It was prepared by the joint venture partnership of The Louis Berger Group / AECOM International Development / under Contract # 267-C-00-08-00500-00

# CREDITS

**Produced for  
USAID –Tijara Iraq 2008**

**Created and delivered by  
Stephen Fordham**



The Iraq TIJARA project is made possible by the support of the American people through the United States Agency for International Development (USAID). TIJARA is implemented through the Joint Venture partnership of The Louis Berger Group / AECOM International Development

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## INTRODUCTION

This course was originally intended for purchasers in organisations and will have to be viewed as such. Changes are made where it makes more sense from the contractors point of view.

**This course is a training program intended for owners and staff of small and medium enterprises (SMEs) concerned with procurement.** It is

intended to familiarize those employees with the practical concepts of international and local procurement procedures and techniques, contracting within the scope of CPA Order Number 87 with its forthcoming regulations, and international best practices

(appendix a).

The course will take in to consideration the commercial, technical and contractual facets of the procurement procedures. The ongoing training sessions will also help identify those participants who would fit in the category of trainers and, once identified, they may be developed further to become professional trainers in this field.

The course will start with a look into the definitions related to the practical work of procurement officers. It will also cover forms of procurement procedures that the participants may encounter, such as international competitive bidding, international shopping, local competitive bidding, direct contracts procurements, single vendor approaches, limited tendering or repeat orders, and one contract and multi contract bids, explaining the differences between each form and highlighting the positives and negatives of each and the circumstances that necessitate using any particular form.

It is followed by taking a look into the three main types of contracts namely

“supply contracts”, “construction contracts” and “services contracts.” The participants are then taken to the stage of deciding on choosing a lump sum contract or a unit price one, or a combination of both – whichever serves the contracting establishment better. For very large, specialized, multi activity contracts it may be feasible to revert to turn key contracts or multi bid contracts where the civil works and the machinery supply and installation are awarded to separate contractors. In some cases, where the details of the project or its budget are not completely clear, a multi stage form of bidding is reverted to where commitments are made on the known parts of the project, leaving other parts to be fulfilled in a later stage.

The participants will further be introduced to the prequalification process, what is required of the bidder, what information to give them and how to present the prequalification documents. Participants are shown the importance of this process especially when executing large contracts, to exclude inexperienced or not fully qualified companies from participating in a tender, on the one side, and to spare the unqualified companies from having to go through bids preparations involving design preparations and complex specifications on the other. Participants will further be introduced to the principals of invitations to bid/requests for proposal, with case studies to enhance the practical side of the course. One of the important facets of the course shall be introducing participants to the instructions to be given to bidders on how to present their bids to ensure uniformity, special conditions governing the contract, scope, location, timing, nature and specifications of the project, modes of payments and securities required, standards to be adopted (that are vital to ensure quality control measures), currency details and prevailing monetary systems and regulations, language or languages of the bid, and the legal system prevailing over the contract in cases of dispute.

## TYPES OF CONTRACT



### Supply Contracts/Construction Contracts

For projects requiring both construction works and supply and erection of equipment, separate contracts are normally awarded for these items. Where a number of similar but separate construction works or items of equipment are involved, bids are invited under alternative contract options wherein contractors or suppliers, small and large, would be allowed to bid for individual contracts or for a group of similar contracts at their option, and all bids and combination of bids shall be evaluated simultaneously to determine the bid or combination of bids offering the most advantageous offer.

A supply contract means a contract made with the purchaser to furnish, or to fabricate and furnish, tangible personal property including ships, aircrafts, ordnance, or equipment, whereby title to tangible personal property purchased for use in fulfilling the contract passes to the purchaser in fulfillment to the provisions contained in the contract. Such contracts would normally contain full description and specifications of the items supplied, date for supplying, point of delivery, conditions of payment, default penalties, and all

other details to protect the interests of the procuring establishment.

Construction contracts normally contain designs, bills of quantities, construction stages and their projected timings, standards of construction, payment advances and their conditions, etc.

### **Two Stage Bidding**

In order to maximize competition and to facilitate bid evaluation with respect to large and complex contracts where the problem of technically unequal bids is likely to be encountered, a two-stage bidding procedure may be adopted. Under this procedure, bidders shall first be invited to submit technical offers (plus all other bid requirements) without prices, in accordance with specifications which lay down the minimum operating and performance requirements. Each of the un-priced technical bids shall then be studied in order to agree on an acceptable technical standard for all bids. After completion of this step, the bidders are given an opportunity to revise or adjust their proposals to conform to the standards reached. At the second stage, the bidders will be invited to submit price proposals and these shall be evaluated. For certain types of machinery or equipment, in which alternative technical processes are possible, the technical specifications and price proposals may be submitted in separate envelopes. The technical proposals are opened first and reviewed to determine responsiveness to the specifications and whether modifications are necessary. After the technical review has been completed, the price envelopes are then opened for purposes of price comparison. However, when technical modifications are required in any or some bids and consequent price adjustments are necessary, the price proposals affected shall be returned unopened to the bidders concerned and resubmitted within a specified period.

### **Turn Key Contracts**

In some cases, where special processes or closely integrated manufacturing's are involved or works of a special nature, turnkey contracts under which the design and engineering, supply of and installation of equipment and the construction of a complete industrial plant or works are provided through a single contract. In the case of turnkey contracts or contracts for large complex industrial projects, it is desirable to use a two-stage bidding procedure. However, such turnkey contracts for large, complex and very specialized industrial projects; it is desirable to prepare technical specifications in advance through consultant's bidding competition.

## FORMS OF PROCUREMENT



### International Competitive Bidding

The purpose of international competitive bidding is to provide the procuring entity with a wide range of choices in selecting the best bid from competing suppliers/contractors fair, and equal opportunity to bid on goods and works which are being procured. To achieve this, certain guidelines in preparing bidding and contract documents and to follow certain procedures in advertising bid invitations and in accepting, opening, and evaluating bids.

Contracts may be awarded on the basis of unit prices (for works performed or goods supplied) or of a lump sum price, or a combination of both for different portions of the contract, depending on the nature of the goods or works



involved. The manner of awarding contracts shall be stated early in the bidding documents.

To the extent possible, international procurement shall be carried out in such a way that each bid package or contract would be of such size as to attract international competition. The size and scope of individual contracts will depend on the magnitude, nature, and location of the project.

For projects requiring both construction works and supply and erection of equipment, separate contracts are normally awarded for these items. Where a number of similar but separate construction works or items of equipment are involved, bids shall be invited under alternative contract options wherein contractors or suppliers, small and large, would be allowed to bid for individual contracts or for a group of similar contracts at their option, and all bids and combination of bids shall be evaluated simultaneously to determine the bid or combination of bids offering the most advantageous offer,

### **International Shopping**

International shopping is employed where the amount of the contract is not large enough to attract foreign suppliers and contractors through the international competitive bidding process. International shopping may also be appropriate where the particular items needed are available only from a limited number of suppliers, or where early delivery is of paramount importance in carrying out certain works under the project.

Shopping is one of the least competitive procurement methods and may be abused unless it is carried out in compliance with the legal agreements, and observing a minimum of formality in the process, and with appropriate record keeping for verification and audit.

Shopping may be used:

To procure small amounts of off-the-shelf goods or standard specification commodities for which more competitive methods are not justified on the basis of cost or efficiency.

In emergency projects or for urgent relief-type operations including re-establishment of vital services like utilities, communications, shelter, and vital supplies which stem from disasters or conflict. These emergency contracts may involve one or several activities in supply of goods, installation and commissioning, and very urgent minor civil works. Because of the risk of abuse in procurement under shopping, the use of this method is restricted to cases when the justification for it is beyond contention.

The invitation to bid shall be issued to a reasonable number of contractors or suppliers, as the case may be, which shall be not less than three. The bids or quotations received shall be opened publicly and compared and evaluated as in international competitive bidding.

### **Local Competitive Bidding**

Local competitive bidding may be adopted in cases where the following are met:

Domestic production or construction facilities are available at reasonable cost, are efficient, and adequate in terms of prompt delivery.

It is considered unlikely that foreign contractors and suppliers would be interested in bidding.

The procedures to be followed are satisfactory.

Local competitive bidding shall not preclude participation by foreign bidders.

### Direct Contact/Single Vendor Approach Procurement

Direct purchase/negotiation or single tender involves dealing with a particular supplier or a limited number of suppliers and is to be avoided whenever possible, it may however be considered in any one of the following situations:

*When buying small or off-the-shelf items*

When standardization is important and equipment and spare parts required for expansion or repair of existing equipment must be procured from the original supplier or from a supplier of identical goods

When the equipment is proprietary in character and is obtainable only from one supplier . When critical items are to be procured from specialist suppliers

When the civil works to be undertaken are a natural extension of an earlier or ongoing job and it can be shown that the engagement of the same contractor will be more economical and will ensure compatibility of results in terms of quality of work.

### Limited Tendering and Repeat Order



**Forms of Procurement Continued**

- Limited Tendering and Repeat Order
- One and Multi Contracts Bids
- Internet Procurement Processes

Business Development Services



When an additional quantity of the same items originally purchased for a project through international competition is urgently needed, the additional items may be procured through limited tendering where it can be shown clearly that no advantage could be gained by adopting international competitive bidding. Under this procedure, bids may be invited only from those who had submitted responsive bids for the earlier order. In other cases a repeat of the original purchased items may be done through the same contractor if it can be proved that items purchased were superior to others in quality and price.



### **One Contract and multi contracts bids**

For projects requiring a variety of goods and works, separate contracts are generally awarded which cover various supplies which can be in different contracts and works contracts which may be many depending on the nature and location of the works.

For projects requiring similar but separate items of equipment or works, bids may be invited under alternative contract options that would be of interest to various small and large contractors.

### **Internet Procurement Processes**

This sort of procurement is gradually imposing itself; it is normally done through the extensive use of the internet. Various internet selling and auction companies are being introduced to the market.

TERMS YOU WILL COME ACROSS



**Terms used in contracting / procurement**

- Bill of Quantities
- Construction
- Contract
- Corrupt Practice
- Fraudulent Practice

Business Development Services

**Bill of Quantities**

Recording of dimensions from drawings or schedules of work. List type unit of measure, qty per unit build etc

**Construction**

All types of civil, mechanical and electrical construction

**Contract**

A contract is a legal obligation, on parties acceptance of that offer etc beware small print

**Corrupt Practises**

Are behaviours leading to ..individuals improperly .. enriching themselves and/ or those close to them, or induce others to do so, by misusing their position.

**Fraudulent Practise**

A misrepresentation of facts in order to influence a procurement process involving bidder collusion before or after bidding

All types of property including commodities, materials, supplies, and equipment



**Terms used in contracting / procurement**

- Goods
- Procurement
- Supplier
- Advice of shipment
- Air Waybill

Business Development Services

**Goods**

Goods not in packages or containers; shipped loose in the hold of a ship without mark and count. Grain, coal and sulfur are usually bulk freight.

**CAF**

Abbreviation for "Currency Adjustment Factor." A charge, expressed as a percentage of a base rate, which is applied to compensate ocean carriers of currency fluctuations.

**Procurement**

The process of acquiring goods, commodities, services and consultants in one of the procurement recognized and adopted methods.

**Supplier**

The entity whose operations normally involve furnishing, providing, affording or distributing items of supply to a user to satisfy stated requirements.

**Advice of Shipment**

A notice sent to a local or foreign buyer advising that shipment has gone forward and containing details of packing, routing, etc. A copy of the invoice is often enclosed and, if desired, a copy of the bill of lading.

**Air Waybill**

The forwarding agreement or carrying agreement between shipper and air carrier and is issued only in nonnegotiable form.



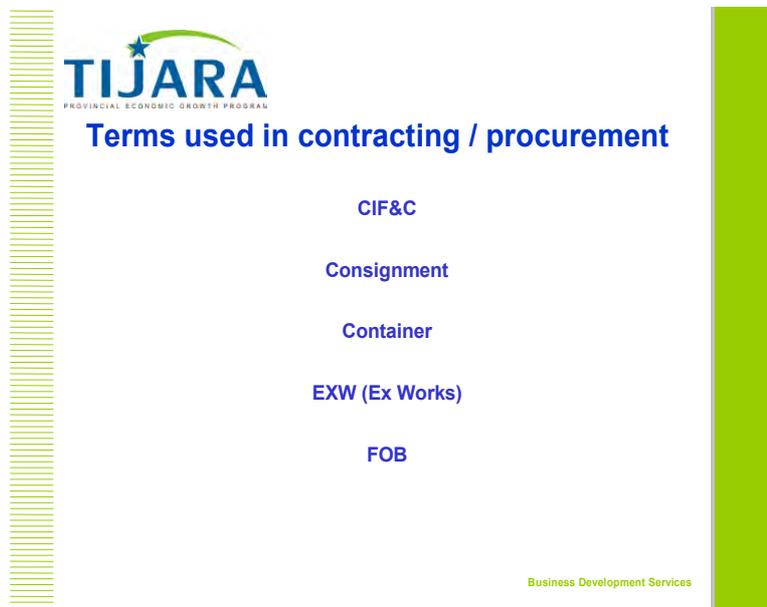
**Terms used in contracting / procurement**

- Bill of Lading (B/L)
- Bulk Cargo
- CAF
- CI
- CIF (Cost, Insurance and Freight)

Business Development Services

## Bill of Lading (B/L)

A document that establishes the terms of a contract between a shipper and a transportation company. It serves as a document of title, a contract of carriage and a receipt for goods.



## Bulk Cargo

Goods not in packages or containers; shipped loose in the hold of a ship without mark and count. Grain, coal and sulfur are usually bulk freight.

## CAF

Abbreviation for "Currency Adjustment Factor." A charge, expressed as a percentage of a base rate, which is applied to compensate ocean carriers of currency fluctuations.

### **CI (Cost, Insurance)**

Abbreviation for "Cost and Insurance." A price that includes the cost of the goods, the marine insurance and all transportation charges except the ocean freight to the named point of destination.

### **CIF (Cost, Insurance and Freight)**

A Term of Sale where the seller has the same obligations as under the CFR, but also has to procure marine insurance against the buyer's risk of loss or damage to the goods during the carriage. The seller contracts for insurance and pays the insurance premium. The CIF term requires the seller to clear the goods for export.

### **CIF&C**

Price includes commission as well as CIF.

### **Consignment**

A stock of merchandise advanced to a dealer and located at his place of business, but with title remaining in the source of supply.

### **Container**

A truck trailer body that can be detached from the chassis for loading into a vessel, a rail car or stacked in a container depot. Containers may be

ventilated, insulated, refrigerated, flat rack, vehicle rack, open top, bulk liquid or equipped with interior devices. A container may be 20 feet, 40 feet, 45 feet, 48 feet or 53 feet in length; 8'0" or 8'6" in width; and 8'6" or 9'6" in height.

**EXW (Ex Works)**

A Term of Sale which means that the seller fulfills the obligation to deliver when he or she has made the goods available at his/her premises (i.e., works, factory, warehouse, etc.) to the buyer. In particular, the seller is not responsible for loading the goods in the

vehicle provided by the buyer or for clearing the goods for export, unless otherwise agreed. The buyer bears all costs and risks

involved in taking the goods from the seller's premises to the desired destination. This term thus represents the minimum obligation for the seller.

**FOB**

Shipped under a rate that includes costs of delivery to and the loading onto a carrier at a specified point.



**Terms used in contracting / procurement**

- GATT
- Irrevocable Letter of Credit
- Liquidated Damages
- Manifest
- RFQ

Business Development Services

## **GATT**

Abbreviation for "General Agreement on Tariffs and Trade," a multilateral treaty to help reduce trade barriers between the signatory countries and to promote trade through tariff concessions. The World Trade Organization (WTO) superseded GATT in 1994.

## **Irrevocable Letter of Credit**

Letter of credit in which the specified payment is guaranteed by the bank if all terms and conditions are met by the drawer and which cannot be revoked without joint agreement of both the buyer and the seller.

### **Liquidated Damages**

The penalty a seller must pay if the construction project does not meet contractual standards or deadlines.

### **Manifest**

Document that lists in detail all the bills of lading issued by a carrier or its agent or master for a specific voyage. A detailed summary of the total cargo of a vessel. Used principally for Customs purposes.

### **RFQ**

Request for quotation.

## PREQUALIFICATION

of bidders is required for most civil works contracts, special services such as, production of media advertising, investigative or research where the capability/expertise of the supplier is paramount. The main aim of the prequalification process is to ensure that only technically and financially capable firms will be invited to submit bids. Prequalification shall be based entirely upon the ability of the interested firm to perform the particular work satisfactorily. Prequalification notices are normally advertised to secure the maximum number of participants.



**Prequalification**

- Information required from Bidders
- Information Supplied to Bidders
- General Pre-Qualification Information
- Pre-Qualification Offer
- Pre-Qualification Assessment

Business Development Services

### *Information required from bidders*

The following documented main information is required from firms applying for pre-qualification:

- ***Financial position***

A copy of the firm's three (3) most recent annual (audited, if available) financial statements. At a minimum, the financial statements must include the balance sheet, statement of income and retained earnings and footnotes, if applicable. If the applicant has been in business less than three years, the application must include all available statements.

- ***Previous Work History***

Details of works of a similar nature that the firm has preformed in the last two years.

- ***Resume and Organizational Chart***

Applicants must include current resumes of each Principal and Key Individual in the company applying. The application must also include a copy of the firm's current Organizational Chart.

- ***Licenses***

Copies of all applicable and current trade licenses issued to the applicant's firm which legally allow the firm to perform the work in question should such a licenses be necessary.

### **Information supplied to bidders**

The following information is usually supplied to firms requested for prequalification:

- An ample detail of scope of works, abbreviated specifications, and a clear statement of requirements for prequalification shall be provided to all would participants in the pre-qualification process.
- Enough time such as a period of 60 days must be allowed for the submission of prequalification applications, the complexity and scope of tender shall decide the period of time to be accorded for participants to submit their prequalification applications.

### **General pre-qualification information**

- There shall be no limits to the number of firms to be pre-qualified, and all firms found capable of performing the work satisfactorily in accordance with the approved prequalification criteria need to be pre-qualified and invited to submit bids.
- Invitation for prequalification does not vary much when goods supply is required for construction work is asked for. As previously mentioned, most prequalification is required for big projects that include a number of activities such as civil works and machinery supply and installation, and for large goods supply contracts. It is in the interest of both the contracting entity and the would be contracted company to go through the process of prequalification as it will exclude unqualified firms from the one side and relieve the contractors from spending time and money on preparing bidding offers when their chances may be slim.
- Instruction on prequalification completion must be provided to the competing companies to ensure uniformity of the received information, these instructions normally include the following:

*Format of the application document*

Scope of bid-type of works, contract, project number, dates, type and form of information required such as financial position, key personnel qualifications and whether it is in table form or otherwise Company's equipment type, characteristics and number available

If joint venture is submitted, information related to this must be supplied such as percentage of minimum liability of each partner. They have to collectively satisfy pre-qualification requirements. Same rules and regulations apply to the public sector and are treated as a commercial entity for the purpose of pre-qualification.

Matters that are within the subject of conflict of interest must be clearly outlined; these include **any relations** with the consultant overseeing the project or any other entity that has prepared the design, specifications, and other prequalification and bidding documents for the Project, or with an entity that was proposed as Engineer for the Contract.

**Prequalification Offer**

Prequalification brief should contain as a minimum the following:

- Company/Business/Partnership/Sole Trader details (most frequently but not necessarily in the form of a Declaration of Business Status)
- Experience of the company including references
- Local factors, including compliance with the provisions of Contractor Accreditation where applicable

Any other information that would be appropriate to enable a proper assessment to be undertaken. These will include, but are not limited to:

- Personal dossiers of the Principal Officers

- Financial statements of the last two to three years with certification by registered auditors
- Experience particularly of the personnel proposed for the requirement/category of work
- Quality assurance systems/practices in the company
- Equipment available to the company
- Office/Workshop facilities available associated with the requirement/category of work

### **Pre-qualification Assessment**

Once applications close, the contracting organization shall undertake a thorough assessment of the applicants. Assessment is to take into consideration the principles of the Procurement Policy adopted by the organization. In certain instances technical or creative abilities would receive more consideration than physical abilities.

From this assessment a short list of the most suitably qualified (i.e. pre-qualified) bidders is obtained. Those pre-qualified should be advised in writing of the decision

Where bidders have been pre-qualified, the invitations to bid and the bidding documents must be transmitted directly to the pre-qualified bidders.

## BIDDING DOCUMENTS



### Bidding Documents

- Invitation to Bid
- Instructions to Bidders
- Bid Form
- General and Special Conditions of Contract
- Scope of Work or Goods to be supplied
- Payment Bases
  - Lump sum, Unit price, Reimbursable cost plus

Business Development Services

### Invitation to bid

Its purpose is to supply information to enable potential bidders to decide on their participation. Apart from the essential items listed in the bidding documents, the Invitation for Bids should also indicate any important or unusual bid evaluation criteria (for example, the application of a margin of preference in bid evaluation).

If prequalification is used, the above notifications advertise a Request for Prequalification. After the prequalification process, only the pre-qualified applicants receive the Invitation for Bids.

### **Instructions to bidders**

This section of the bidding documents should provide the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the organization. It should also give information on bid submission, opening and evaluation, and on the award of Contract.

These Instructions to Bidders will not be part of the Contract and will cease to have effect once the Contract is signed.

### **Bid Form**

The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for goods and works to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, it is important to dictate to bidders the way to present their bids. Some companies go as far as tabulating the bid information and requesting that companies present their information accordingly.

### **General and special conditions of contract**

The following are some of the general conditions to be taken in to consideration:

- Legal status-The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of the organization

- The Contractor shall neither seek nor accept instructions from any authority external to the Organization in connection with the performance of its services under Contract.
- The Contractor shall be responsible for the professional and technical competence of its employees
- The Contractor shall not assign, transfer, pledge sub-contract or make other disposition of the contract or any part thereof, without the consent of the Organization
- Contract must include clauses that defends the Organization and its employees from any lawsuits against the Contractor or his approved affiliates

The following are some of the special clauses that have to be announced:

- The Organization can state that it is not bound by the lowest price if this may not serve the Organization's interests.
- The bidding documents may state regional or country preferences that may be taken in to consideration.

### **Scope of work to be performed or goods to be supplied**

It is essential that the bidding documents provide all the information necessary for bidders to prepare responsive bids. While the detail and complexity of these documents vary depending upon the kind of goods to be procured and the size of the contract, they shall normally include full description of goods to be supplied with specifications when applicable.

Works bidding documents normally provide site location, bills of quantities, designs and drawings, specifications of equipment and special conditions to be considered.

### **Payment Bases**

**Lump Sum.** This is a fixed price for contract work, not intended to be adjusted in any way either by variation or re-measurement. A lump sum contract therefore is a contract for an agreed amount of work for a lump sum of money.

The following are two types of lump sum contracts:

Lump Sum Contracts involving Bills of Quantities: The best form of contract drawings and detailed specifications are prepared which includes sufficient information to allow a bill of quantities to be produced, all of which is then issued to contractors for pricing. Bills can either be firm i.e. totally comprehensive or approximate i.e. where there the level of detail to prepare a firm bill is lacking, but there is sufficient information to proceed with the project. The essential key documents in a lump sum contract incorporating bills of quantities are: Drawings, Bills of Quantities, Specifications, Schedule of Works, Conditions of Contract, and Tender Form.

Lump Sum Contracts without Bills of Quantities: Suitable for smaller projects or where work cannot be precisely measured, the contractor is asked to submit a price based on drawings and specifications. The key documents are the same as above, minus the bill of quantities.

**Unit Price.** Normally unit price tenders are for a known quantity of items that may vary in specification such as the supply of life support merchandise, sporting items, spare parts and accessories. Other tenders involving unit price which constitute a mechanism that is used in public and private sector procurement, examples of which include highway contracting, pipeline construction and publishing rights.

**Reimbursable cost plus fees.** Under this type of contract, the organization agrees to reimburse the contractor for its costs and pay a fee for profit and general overhead, usually a set percentage of the costs. Typically the cost and fee payments to the contractor are subject to a cap (i.e. guaranteed maximum price) over which the contractor is not entitled any additional payments unless a change or increase in the project scope occurs.

In some cases depending on the type of contract it may be to the benefit of the organization to adopt a number of the above in one tender



### Bidding Documents, Continued

- Schedule Of Payment
- Liquidated damages
- Prices Adjustment
- Bid and Performance Securities
- Clauses
- Bid Language
- Specifications and Standards

Business Development Services

### **Schedule of payment**

- Contracts for supply of goods shall provide for full payment on the delivery and inspection of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the supplier has complied with all its obligations under the contract.
- Advances may be made in construction contracts to cover mobilization expenses and the cost of materials delivered to the site for incorporation in the works. The bidding documents shall indicate the basis for determining the amount of advance in each case, time and method of payment, the kind of security required as well as the modalities for their recovery and the terms and conditions under which the security shall be released., and the manner of repayment by the contractor. Regular progress payments amounts or percentages are also to be incorporated.
- Bidding documents shall specify the payment method and terms offered and securities required.



### **Prices adjustment clauses**

The bidding documents must clearly indicate whether price adjustments are allowed in the event changes occur in the major cost components of the contract such as labor, equipment, materials and unexpected inflation rate over which the contractor has no control. Price adjustment provisions are not necessary for simple supply contracts involving short delivery periods. However, for contracts with long delivery or completion periods including major civil works contracts, price adjustment provisions may be provided at the discretion of the Organization.

### **Liquidated damages**

Provision for liquidated damages clauses and percentages in an appropriate amount will be contained in contracts when delays in completion of works or delivery of goods or failure of the works or goods to meet performance requirements would result in extra cost or loss of revenue to the Organization.

### **Bid and performance securities**

A **bid security** is required to secure the validity of the bid within the period specified in the invitation to bid. The amount shall reflect a reasonable assessment of the amount of loss the organization will suffer in the event of bid withdrawal or the bidder's refusal to sign the contract. Two to three percent of the bid price would generally be considered as fair and reasonable. The bid security, at the bidder's option, shall be in the form of a certified check, a letter of credit or a bank guarantee from a reputable bank or as specified in the bidding document. Bid securities shall be returned to the unsuccessful bidders as soon as the successful bidder has been selected.

**Performance security** shall be required in the bidding documents to ensure that the works will be carried to completion in the case of failure of the contractor to perform under the contract. In civil works, a performance security in the form of a bank guarantee shall be required of the contractor, the validity of which shall cover the contract period. The amount of the security will depend upon the type and magnitude of the works to be done; normally 10 percent of the contract value is deemed adequate to protect the organization. In addition, retention money to ensure compliance by the contractor of its warranty or maintenance obligations may be required in an amount not to exceed 10 percent of the payments.

For contracts for the supply of goods, a performance security in the form of a bank guarantee is required to guarantee the performance of the equipment according to specifications during the warranty period. Although the amount would depend upon market conditions and commercial practice for the particular type of goods, from 5 to 10 percent of the contract amount is considered appropriate in most cases.

### **Bid Language/Languages**

Bidding documents must indicate the language and languages that the bid must be presented in, where more than one language is indicated, one of the languages shall prevail. Indication need to be stated in bidding documents that bids in other languages than those stated will not be accepted.

## **Specifications and Standards**

Specifications mentioned in bidding documents shall be based on relevant characteristics and shall make reference to performance requirements, and not to brand names, catalogue numbers, or types of equipment of a specific manufacturer. If it becomes necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added.

The specifications shall permit the acceptance of offers of alternative equipment, articles or materials that have similar characteristics and that provide performance and quality at least equal to those specified.

Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. As far as possible, internationally-accepted standards such as those issued by the International Standards Organization (IOS) with which equipment, materials or workmanship shall comply. In all cases, bidding documents shall state that equipment, material or workmanship meeting other standards, which are internationally recognized, will also be accepted.



**Bidding Documents, Continued**

- Currency
- Insurance
- Pricing Conditions
- Force Majeure
- Settlement of Disputes
- Training of Personnel

Business Development Services

### Currency

For comparison of bids, each bid price shall be valued in terms of a single currency and stated in the bidding documents. The rates of exchange to be used in such valuation shall be the selling rates officially prescribed for similar transactions and prevailing on the date specified in the bidding documents. Payments under the contract shall be made in the currency in which the price has been stated in the successful bid, except where a different arrangement is clearly justified and specified in the bidding documents.

### Insurance

Bidding documents should state the type of insurance to be provided by the successful bidder indicating the kinds of risks that the insurance covers and the duration of the insurance. In goods supplied on CIF bases, marine insurance and transportation is the responsibility of the contractor and is to be arranged by him as part of the contract. If goods are supplied on FOB bases then marine insurance and transportation is the responsibility of the organization and

therefore it should be taken care of by them

In construction contracts, all equipment and installation are to be covered by insurance in favor of the contracting Organization

### **Pricing Conditions**

For bids to be presented in a uniform manner, bidding documents should clearly state whether bids for goods to be shipped are on CIF or FOB bases and whether it is ex-works or otherwise for local goods.

### **Force Majeure**

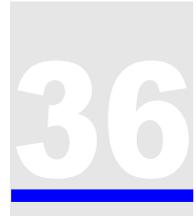
This is failure of the contractor to deliver within his contractual obligations due to conditions beyond his control (Floods and natural phenomena, civil commotion ....etc). Contracts normally contain clauses that define these conditions clearly and exempt contractors from liability

### **Settlement of Disputes**

Contracts and sometimes bidding documents state conditions for contractor's liabilities in cases of default, penalties to be imposed and the law prevailing over disputes between the Organization and the Contractor.

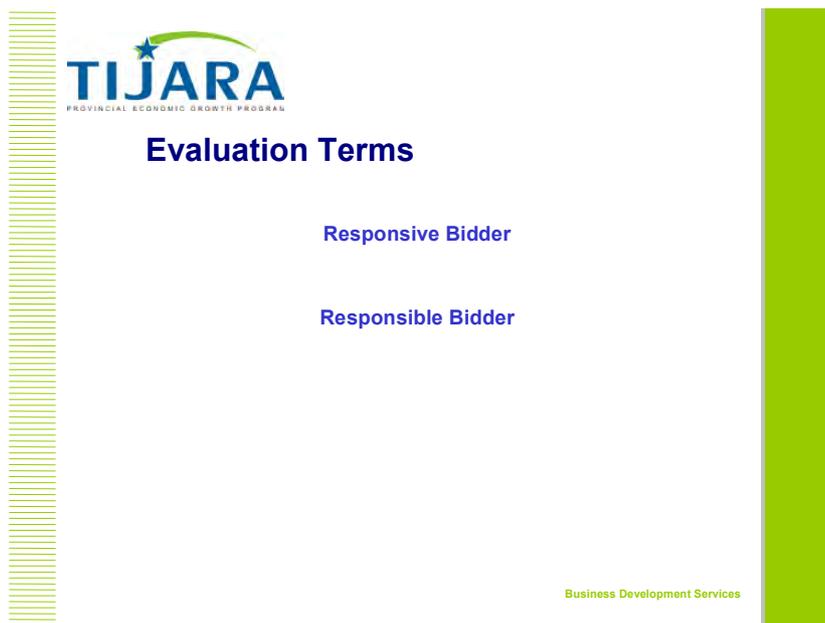
### **Training of Personnel**

Contracts must contain a clause covering the training of the Organization's personnel, either in the Contractor's location or at the Organization's premises on the operation and maintenance of the goods, machinery or equipment contracted. This clause should also state those trainees' remunerations and living conditions while being trained. Training should be of a standard and period that will ensure the trainees reaching the level required to maintain and



operate the equipment. This clause may also be made to require the contractor to include the Organization's employees in the installation of equipment and machines as trainees.

EVALUATION TERMS



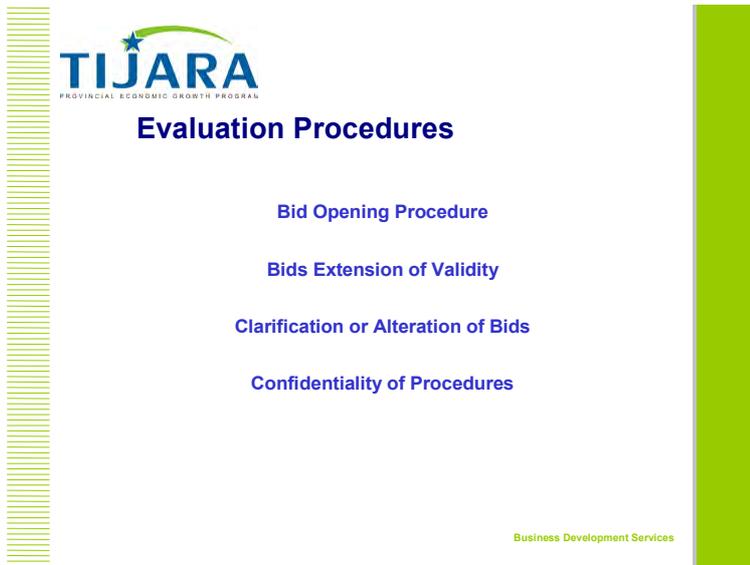
**Responsive Bidder:**

A bidder whose bid meets or exceeds administrative requirements, technical specifications, and contractual terms and conditions.

**Responsible Bidder:**

Bidder has the ability in all respects to successfully perform the contract requirements.

**EVALUATION PROCEDURES**



**Bid opening procedures**

The last date, time and physical location for receiving of bids is normally stated in the bid invitation or announcement. In general, bids openings are public unless the tendering Organization sees that it is to their best interests that bids are opened confidentially. The requirement for public opening of bids is a statement of openness to reduce the possibilities of collusion and favoritism. Sealed bids shall be opened by members of the bid committee at the time, date and location specified in the tender documents. Names of bidders and their prices shall be announced and tabulated unless it is specified otherwise in the bid documents. The price is just one of the factors that are considered in recommending a bid award. Public openings of sealed bids and disclosure of price-related information are undertaken in an effort to ensure that all vendors are treated equitably, and that the integrity of the acquisition process is maintained.

Bid opening dates may be changed and bid openings rescheduled if bidders are properly notified in advance of the new opening date. If a bid opening is canceled, all bids which were being held for opening will be returned to the bidders unopened with a cover letter indicating the reason for the cancellation.

No discussion of bids compatibility with required specification is to be discussed at this stage.

A bid received after the date and time established by the bid invitation is a late bid and will not be considered under any circumstances.

Bids should be checked for signature before tabulation. Bids without a signature will be disqualified and not considered valid.

### **Bids extension of validity**

There are some exceptional circumstances where a contract cannot be awarded within the bid validity period stipulated in the tender. The purchaser is to request an extension of the bid validity period from all responsive bidders, and if any of the responsive bidders decline to extend the bid period, the contract must be awarded to the "best assessed bidder" whose bid acceptance period has been extended and whose original prices remain in effect.

If the best assessed bidder, or more than one bidder does not agree to the extension, serious consideration should be given to re-tendering the requirement.

Where a bidder does not agree to the extension and it is clear that this particular bidder has no chance of being recommended for award,

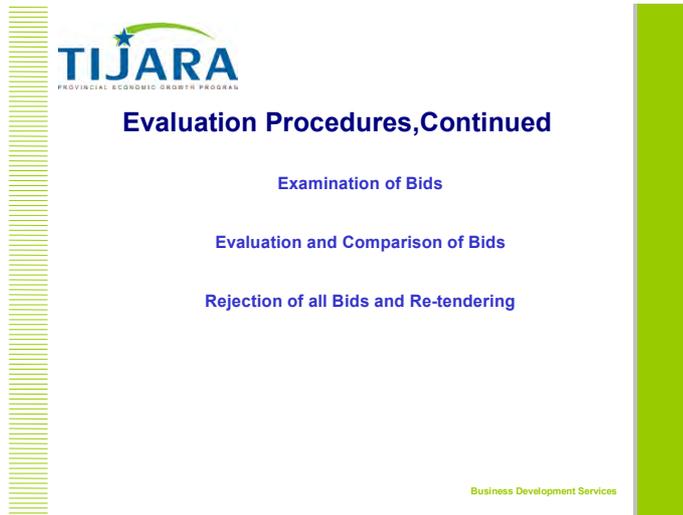
(because its ranking is beyond a reasonable range) then it may be appropriate to proceed to award with only those bidders that have agreed to an extension.

### **Clarification or alteration of bid**

After opening of bids no contact is to be established with any bidder except when clarifications on the bidder's offer that are not clear, a record of such clarification request is to be kept. No alteration to the bid is to be accepted from any bidder, neither any is permitted by the organization after the public opening of bids. Short listed bidders may be called for negotiations at the final stages.

### **Confidentiality of Procedures**

The bids and all documents and information about the evaluation of bids and bidders, will be withheld until after contract award. No information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall be communicated after the public opening of bids to any person not officially concerned with these procedures before the announcement of the award of a contract to the successful bidder.

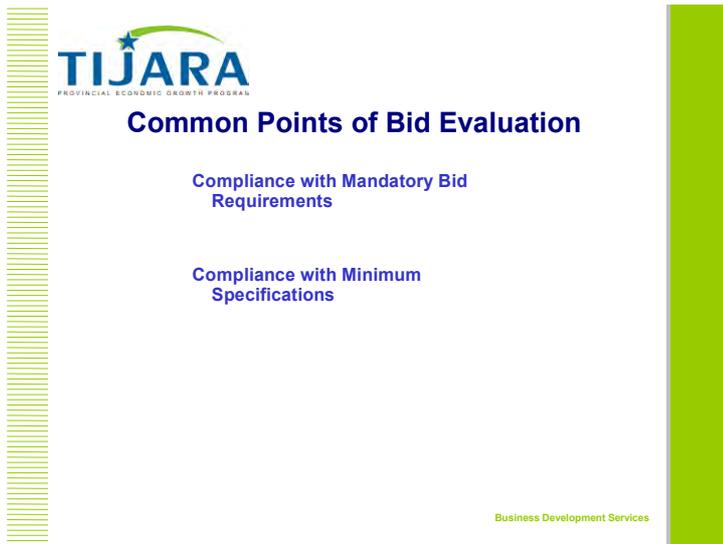


## Examination of Bids

After the Bidding deadline, Bids are reviewed to establish that they are complete and are formally in accordance with the instructions contained in their Bidding Documents. Incomplete or incorrect Bids are excluded from evaluation.

Each bid will be examined to determine if it:

- is properly signed and accompanied by a power of attorney
- is accompanied by the required bid security
- is complete and generally in order (if not, any omission must be noted)
- is substantially responsive to the bidding documents (if not, any deviations, omissions or variations must be noted)
- is free of computational errors (any such errors must be noted)



### Evaluation and Comparison of Bids

Prior to the receipt of bids, the purchaser should appoint an evaluation committee which would be responsible for carrying out the evaluation and making an award recommendation. Where the purchaser’s staff does not have the necessary experience or expertise to carry out the evaluation on their own, the purchaser should retain competent independent consultants to assist the committee.

All members of the evaluation committee and other personnel involved in any way with the bid evaluation must be fully aware that the bid evaluation process up to the award of a contract is confidential, and this confidentiality must be respected and fully adhered to.

Evaluations are based only upon what is written in each Bid. Previous knowledge of the Suppliers shall be ignored by the evaluation team.

The purpose of bid evaluation is to determine the most suitable evaluated responsive bid from amongst the substantially responsive bids received. In order to determine the most suitable evaluated responsive bid, a systematic evaluation process that follows a logical sequence should be followed

The detailed evaluation of a bid involves first checking that the technical characteristics, functional performance and commercial conditions of the bid are in accordance with the bid requirements.

Where there are a large number of bids to be evaluated and the spread of bid prices is relatively wide, it is not necessary, in the first instance, to evaluate all bids in detail. It can usually be determined, from the specified evaluation criteria, the range of bid prices relative to the lowest bid price which stand a reliable chance of being the lowest evaluated bid. In such cases it is recommended that, in the first instance, only those bids within this range should be subjected to a detailed evaluation. If the lowest priced bid is rejected during evaluation, the range must be predetermined, and all bids in the revised range must be subject to a detailed evaluation.

A successful bidder must be qualified to satisfactorily perform the contract.

The following is an example of a preliminary examination results table

| Bidder  | Eligibility | Bid security | Completeness of bid | Substantial responsiveness | Acceptance for further evaluation |
|---------|-------------|--------------|---------------------|----------------------------|-----------------------------------|
| XX<br>X | Yes         | No           | Yes                 | Yes                        | No                                |
|         |             | Yes          | Yes                 | Yes                        | Yes                               |

Below is an example of a detailed bid cost/time evaluation table which includes only those accepted for further evaluation from the table above:

| Particular  | Bidder 1 |      | Bidder 2 |      | Bidder 3 |      |  |
|---|----------|------|----------|------|----------|------|--|
|   | Time     | Cost | Time     | Cost | Time     | Cost |  |
| Part A. (Supply and Installation of a Pump Station) |          |      |          |      |          |      |  |
| 1. Pumps  |          |      |          |      |          |      |  |
| 2. Motors   |          |      |          |      |          |      |  |
| 3. Pipes, Valves, and Fittings                      |          |      |          |      |          |      |  |
| 4. Etc.   |          |      |          |      |          |      |  |
| CIF/EXW   |          |      |          |      |          |      |  |
| Inland Transportation                               |          |      |          |      |          |      |  |
| Installation  |          |      |          |      |          |      |  |
| Part B (civil works)                                |          |      |          |      |          |      |  |
| 1-Land preparation                                  |          |      |          |      |          |      |  |
| 2-civil works construction                          |          |      |          |      |          |      |  |
| 3-Electrical installations                          |          |      |          |      |          |      |  |
| 4-Sanitary services                                 |          |      |          |      |          |      |  |
| 5-complimentary works                               |          |      |          |      |          |      |  |

After evaluation completion, a bid evaluation report with the award recommendation must be prepared.

The bid evaluation report should reflect the logical sequence of the bid evaluation process in the following manner:

- receipt and opening of bids
- examination of bids
- substantially non-responsive bids
- bids short listed, subject to detailed evaluation and negotiations
- final comparison of bids
- lowest evaluated responsive bid
- award recommendation

## **RESPONSIVE INDICATORS**

Employers choose a Bid that conforms to all the terms and conditions, and specifications given in the IFB without material deviation or reservation.

It is important that a Bid does not include footnotes, provisos and conditional statements. In all cases, the Bid shall state all assumptions made. It shall include a statement on dependencies on other firms or organisation implied in the Bid.

In its procurement manual, World Bank writes:

“The eligible Bid is the Lowest Evaluated Responsive Bid.

A substantially responsive bid is one which conforms to all the terms, conditions and specifications of the bidding documents without material deviation or reservation.

A material deviation or reservation is one

- which affects in any substantial way the scope, quality or performance of the works
- which limits in any substantial way, inconsistent with the bidding documents, the Employer’s rights or the Bidder’s obligation under the contract or
- whose rectification would affect unfairly the uncompetitive position of other bidders presenting substantially responsive bids.

If a Bid is not substantially responsive, it will be rejected by the Employer, and may not be subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation”

Most international lenders such as Inter-American Development Bank, European bank for Reconstruction and Development, European Commission, Asian Development Bank and commercial banks adopt this policy.



### Responsible Indicators

Proven Ability to Perform -  
Experience

Inventory

Staff and/or Technical Support

Equipment, Resources, and  
Facilities

Financial Resources

Business Development Services

The evaluation committee should set the evaluation criteria for comparison and the weight as part of a hundred that this criteria carries

| Evaluation criteria       | Un-accept-able | Accept-able | Excell-ent | Score |
|---------------------------|----------------|-------------|------------|-------|
| Methodology proposed      |                | ✓           |            | 40    |
| Track record              |                |             |            | 80    |
| References                |                |             |            | 80    |
| Environmental issues      |                |             |            | 40    |
| Health & Safety practices |                | ✓           |            | 20    |
| Management style          |                | ✓           |            | 20    |
| Back-up & support         |                |             |            | 20    |
| Fit of their team to ours |                |             | ✓          | 25    |
| <b>325</b>                |                |             |            |       |

As the lowest cost bid will be awarded top marks for cost and it is unlikely that any tender will be awarded top marks for quality, the agreed ratio between price and quality scores will be altered. The Evaluation committee must ensure that this ratio is maintained by upgrading quality scores by an amount necessary to bring the highest quality score to 100.

This is done by multiplying each quality score by 100 and dividing by the best score. For example, if the three bidders' quality scores are:

Bidder A scores 325

Bidder B scores 415

Bidder C scores 400

Then multiplying each by 100 and dividing by 415 (the best score) produces the following adjusted scores:

|             |       |       |
|-------------|-------|-------|
| Bidder A    | 100 x | 78.31 |
| $325/415 =$ |       |       |
| Bidder B    | 100 x | 100.0 |
| $415/415 =$ |       |       |
| Bidder C    | 100 x | 96.38 |
| $400/415 =$ |       |       |

### **Cost versus quality**

The evaluation committee has to decide the most appropriate ratio between cost and quality.

If a reliable pre-qualification and selection process has been followed and all bidders are considered to be capable of doing the work then cost should be the most important factor and will normally represent more than half of the total marks. In such cases a ratio of 60:40 or 70:30 in favor of cost shall be appropriate. However more often a bidder's capability is not fully assessed. If that is the case then quality should be given a higher percentage, (e.g. 60:40 in favor of quality).



**Combining the two scores**

The two scores, cost and quality, must be combined using the ratio chosen in advance (say 60:40 in favor of quality). Use the form below, which allows the cost and quality scores to be recorded, adjusted and combined

| Bidder    | Quality score | Adjusted quality score | Cost      | Calculation   | Cost score | 60% x quality | 40% x cost | Total score |
|-----------|---------------|------------------------|-----------|---------------|------------|---------------|------------|-------------|
| Company A | 325           | 78.31                  | \$119,000 | 119000/119000 | 100        | 47.16         | 40.0       | 87.16       |
| Company B | 415           | 100.0                  | \$125,000 | 119000/125000 | 95.2       | 60.0          | 38.08      | 98.08       |
| Company C | 400           | 96.38                  | \$138,000 | 119000/138000 | 86.2       | 57.82         | 34.48      | 92.3        |

Company B, with the highest score, is the winner.

It is a simple matter to create a spreadsheet for assessing and scoring each bid. The formulae to adjust the scores to ratios out of 100, and to combine the cost and quality scores in the appropriate way can be built in.

**Rejection of all bids and re-tendering**

The purchaser may reject all bids and re-tender in one of the following cases:

- If none of the bids are found to be responsive.
- If bids are unreasonably high in price compared with earlier estimates.
- If none of the bidders is qualified.

The following are considered major deviations that present grounds for rejection:

- Stipulating price adjustment when fixed price bids were called for.
- Failing to respond to specifications.
- Failing to comply with Mile-stones/critical dates provided in Bidding Documents.
- Subcontracting contrary to the Conditions of Contract specified in Bidding Documents.
- Refusing to bear important responsibilities and liabilities allocated in the Bidding Documents, such as performance guarantees and insurance coverage.
- Taking exception to critical provisions such as applicable law, taxes and duties and dispute resolution procedures.

When all bids have been rejected, an assessment is made whether rejection of a bidder has been in any of the above reasons. Those bidders who are not responsive or are not qualified are rejected. If a bidder is excluded because their prices are much higher than original estimates then negotiations takes place to lower the price, if no success is made then a re-bidding process takes place with different criteria



## COMMON POINTS OF BID EVALUATION

The following are considered major deviations that present grounds for rejection:

- Stipulating price adjustment when fixed price bids were called for.
- Failing to respond to specifications.
- Failing to comply with Mile-stones/critical dates provided in Bidding Documents.
- Subcontracting contrary to the Conditions of Contract specified in Bidding Documents.
- Refusing to bear important responsibilities and liabilities allocated in the Bidding Documents, such as performance guarantees and insurance coverage.
- Taking exception to critical provisions such as applicable law, taxes and duties and dispute resolution procedures.

**NEGOTIATION**



**Negotiation Techniques & Strategies**

We negotiate over...

- Flexibility
- Money
- Time
- Relationships
- Processes
- Policies

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The conduct of negotiations after the close of the tender advertised period and before the selection of the preferred tender(s) can be considered a fine tuning activity prior to entering in to a contract and are legitimate to obtain the optimal solution and commercial arrangements and not merely to reach the lowest price



### Areas for Negotiation in Procurement

- Payment terms
- Price
- Delivery dates
- Warranties / guarantees
- Quality of product
- Performance indicators and monitoring
- Remedial action
- Training
- Documentation requirements
- Maintenance, repair, or after sales service
- Compensation for failure to perform
- Terms and conditions of contract

Business Development Services

### What we can negotiate

. The following are examples of potential areas for negotiations:

Payment terms, price, delivery, warranties, quality, performance indicators, performance monitoring, remedial actions, training, documentations requirements, after sales maintenance and repairs, compensation for failure to perform, terms and conditions of contract

*The following are cases for negotiations:*

- A bidder who has most closely met the selection criteria where no bidder has met them fully
- A number of pre-selected companies selected originally on a competitive basis or on the basis of having met specific criteria relating to qualifications, experience and track record

- Negotiations with the preferred bidder to refine details of their bid



### Preparing to Negotiate

- Understanding the context
- Know the personalities
- Gather Information
- Practice negotiations
- Educate yourself on past negotiations
- Exert positive attitude
- Control emotions
- Cultivate patience
- Recognize warning signs

Business Development Services

The following are to be taken in to consideration before getting in to negotiations:

- Ensure that the persons negotiating on behalf of the organization have appropriately high levels of skills, training and experience in commercial negotiations. It is advisable to take a team approach to any round of negotiations. The team should be led by a suitably qualified and experienced senior officer of the organization. It is sometimes advisable to include an independent, knowledgeable observer. Document staff authority levels and roles. Officers should not exceed their delegations.
- Prepare carefully. Make sure the negotiating team understands the aims, objectives and constraints of the negotiations. Prepare a negotiating plan and strategy. Agree on

minimum bargaining positions before commencement. Provide adequate resources for the negotiating process.

- Involve expert technical advisers and legal advisers at the appropriate times. Keep senior management informed of progress if appropriate. Maintain appropriate confidentiality of the process.
  - Ensure that conflicts of interest of negotiating team members are disclosed and dealt with.



**Setting the Stage**

- Set the agenda
- Use positive, firm language
- Be flexible
- Treat any concession as real money
- Summarize at regular intervals
- Avoid deadlock
- Avoid ultimatums

Business Development Services

The following should strictly be followed in post tender negotiations:

1. Negotiations are restricted to short listed tenderers only.
2. Consistency of negotiations, i.e. the same general questions and propositions must be put to all short listed tenderers.
3. Document post tender negotiations.

4. Maintaining the Integrity of the Tender, i.e. Post tender negotiations must not alter the scope or intent of the tender.



### Negotiation Roles & Communications

- Decision Maker
- Negotiator
- Consultant
- Reporter

*From "Managing Research Alliances: Increasing Your Odds of Success" – white paper by Thomas Honohan and John Kim*

Business Development Services

### Formulating strategies and tactics

Information gathering which includes the following:

- Enter negotiations knowing a great deal of the other party.
- The market condition of the goods or services to be procured.
- The other party's position in the market, i.e. how strong is the competition.
- The supplier's strengths and weaknesses.
- How busy is the other side, do they have full order book.

### **Setting objectives**

The aim of gathering and assessing this information is to identify your strengths and weaknesses in negotiation, so that you can set your objectives. To negotiate successfully, you must be clear on what you want to achieve. Your objectives must be realistic.

#### **Points to consider when defining your objectives:**

- Strengths and weaknesses of both yourself and the other party.
- Main issues for negotiation.
- What you want to achieve, in order of importance.
- What you are willing to concede, also in order of importance.
- When you should be willing to compromise, and when you should not compromise.

### **Strategy and Tactics**

#### *Points to consider:*

- The team needs to be authorized to negotiate
- Who will be the lead negotiator and who will say what and in what circumstances
- What needs to be covered
- In what order should the areas be covered
- Who is to take formal minutes of discussions
- Where will the meeting take place and what will the seating arrangement will be
- What overall style and approach should be adopted. You will want to achieve some combination of appearing relaxed, confident and determined
- The main point to remember is that your strategy and tactics should be flexible



**Where Negotiations Break Down**

- Role and authority of participants unclear and inconsistent
- Feeling unduly constrained and pressured by an issue, money, timing, etc.
- Agreeing to things you know you can not accept or will not be able to do
- Or, asking the other party to agree to things you know THEY can not do
- Not enough attention paid to the negotiation process

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You are going to have to respond to developments during the meeting. You should think in advance about the circumstances in which you might wish to have a break or call a halt to the meeting.

*Points to consider:*

- Adopt a relaxed atmosphere
- Clarify the issues on which you wish to focus. Set the agenda to make sure that you control the situation
- Try to establish if the other party would be willing to make concessions
- Use positive firm language
- Do not give chances for the other party to concentrate on your weak points. Change the subject by talking about their weak points
- Only make concession as a trade off for something you want in return and do not give them easily.
- Treat any concession as real money putting a value to it before you make it

- Summarize what has been agreed upon at regular intervals throughout the meeting
- Trade things that are low value for you to give but worth a lot to the other party
- Do not raise the other party's expectations by conceding too much, too fast or to a pattern
- Be ready to bring back into contention any previously settled issues if you need negotiating room
- Don't be afraid to say "no" when necessary
- Avoid deadlock. If you cannot agree, are you sure that you need to deal with this bidder
- Don't issue an ultimatum unless you are sure that it is irresistible to the other party or if you want to close the meeting.



**Negotiation Don'ts**

- Sacrifice quality for cost
- Make unreasonable demands
- Insist on being the final authority
- Jump at the first offer
- Be intimidated
- Lie or misrepresent
- Escalate and overestimate needs
- Promise what cannot be delivered
- Pass up a good deal based on personality conflict
- Be inconsiderate of a supplier's profit margin

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Good negotiators have better control of their concession rate, are well prepared, use controlled emotion, use logic, use silence and break effectively, separate fact from assumption, have the ability to listen and analyze information and are persuasive.



Unsuccessful negotiators are more generous in their concessions, are more predictable in their concession pattern and have lower tolerance of uncertainty.

Holding successful meetings requires good interpersonal skills. These include: active listening, not interrupting, avoiding point scoring, sarcasm or threats and using 'friendly' body language.

## CONTRACT



**Contracts**

- Clear
- Accuracy
- Define important terms
- Pages should be numbered
- Avoid “Contract Form” and use only as example

Business Development Services

### Contracting

Having completed bids evaluations and negotiations and selected one bidder as the winner, a contract is drawn. The contract normally contains general conditions which covers the scope of work or kind of goods to be supplied, rights and obligations of both the purchaser and the contractor, conditions and powers of the purchaser supervising staff, payment terms, and advances if any, provision for securities, price adjustment clauses, insurance, additional general conditions and special conditions relative to the nature of goods or works to be done.

The following points are worth taking in to consideration:

- An effective contract should always be clear, specific, and focused.
- Sentences should be short to avoid unnecessary complexity and ambiguity.
- Both parties' names should be accurate.
- A contract should be consistent in tone, grammar, word usage, and abbreviations.
- Outlining the contract can aid clarity and allow for quick reference to certain clauses.
- Define important terms.
- All parties should sign the contract, including business titles if applicable.
- Pages should be numbered. Avoid the appearance that pages could have been added after the agreement was signed.
- As with any business writing, proofread very carefully.



## Contract Management

- Acceptance of works
- Acceptance of goods
- Guarantee period follow up

Business Development Services