

Tendering and Post Tender Negotiation

CIPS is expressing beliefs on tendering and post tender negotiation as these activities are fundamental to the purchasing and supply management profession.

CIPS
KNOWLEDGE
WORKS

Knowledge
Summary

Introduction

Tendering and post tender negotiation are core components of purchasing and supply management and, as such, all purchasing and supply management professionals should be competent in their application and use.

The processes described and positions presented in this document are intended to illustrate good practice in respect of these key purchasing and supply management processes although it should be emphasised that other approaches, adapted to suit particular sectors or industries, may also represent good practice. These principles of good practice can be extrapolated to an eCommerce environment.

The reader should not infer that if they follow the guidance set out in this document that this is all that is required for effective competition. CIPS believes it is the responsibility of the professionally trained purchasing and supply management practitioner to develop appropriate processes for his or her own organisation based on the principles, not necessarily the detail, described in this document.

As with any aspect of purchasing and supply management, more detailed guidance may be sought from the Chartered Institute of Purchasing & Supply (CIPS).

The public and utilities sectors must comply with the EC procurement rules that prescribe procedures for use when tendering for contracts above given thresholds and these EC procurement rules must always take precedence.

CIPS Positions on Practice

CIPS views, opinions and beliefs are stated throughout the document; however the broad practice statements which underpin the text are as follows:

- As core elements in purchasing and supply management, CIPS considers that all purchasing professionals should be proficient in the application of tendering and post tender negotiation.
- CIPS considers that tendering is most appropriate for higher-value, and certainly high-risk, procurements where transparency is a key requirement
- CIPS considers that an appropriate specification is a vital precondition for successful tendering
- CIPS believes that pre-qualification is a useful tool to employ prior to issuing Invitation to Tenders (ITTs)
- Whilst individual circumstances can vary considerably, in general CIPS recommends that P&SM professionals analyse the market prior to deciding how many prospective suppliers to invite to tender.
- CIPS believes that through-out the tender process; potential suppliers should receive exactly the same information, preferably at the same time.

- CIPS takes the view that it is the responsibility of the purchasing and supply management professional to determine a reasonable and appropriate time for receiving a response from tenderers (consistent with any legislative requirements); they should also take responsibility for determining and defining all other parameters associated with the tender evaluation procedure.
- CIPS supports the concept of post tender negotiation, provided that the correct professional and ethical procedures are followed
- CIPS believes that conducting the post tender negotiation process should be the responsibility of the purchasing professional and that such individuals should undertake appropriate refresher/ training programmes at five-year intervals

Tendering

There are a variety of means of obtaining offers from suppliers such as 'requests For pricing/quotation' (RFPs/ RFQ), 'enquiries' etc. many of which can be confused to mean the same process. CIPS believes that obtaining an offer from a supplier can be seen as a continuum with the degree of complexity as the axis; with enquiries at one end and tendering at the other.

Advantages and Weaknesses of Tendering

The advantages of tendering include:

- Transparency
 - An established, accepted and generally understood process
 - An audit trail
 - Compliance with the organisation's policy
 - Fairness to all parties
 - The encouragement of competition
 - The production of a written quotation, along with relevant supporting information, against a prescribed need
 - An easier comparison of offers
- The weaknesses of tendering include:
- It can be very bureaucratic
 - It may provide a barrier for SMEs
 - It can be a triumph of process over substance
 - It can inhibit flair, creativity and innovation
 - It can be expensive for all parties e.g. the time and resource in preparation and evaluation of tenders
 - It can inhibit negotiation
 - Prices submitted are often inflated to allow room for negotiation

Tendering and Post Tender Negotiation

CIPS believes that tendering is most appropriate for high value and high risk purchases and where transparency is paramount.

Pre-Requisites for Tendering

A good specification is the single most important factor in achieving value for money. It is vital when inviting tenders, and the greater the financial commitment the more important it is that purchasing and supply management professionals ensure the existence of an appropriate specification.

Generally, the specification should be output or outcome-based i.e. what is to be achieved as opposed to how it should be achieved, or functional i.e. what the requirement should be able to do as opposed to its technical profile. Such specifications enable suppliers to be innovative in their solutions. In some cases, a technical specification is useful but the purchasing and supply management professional must ensure the drafter of the specification is absolutely clear about the requirement and that they are capable of specifying it properly.

Such specifications should be described in terms of European standards, British standards or, as alternative, American standards. When using a technical standard, care must be taken not to name proprietary items. When using a choice of standards, those standards must be comparable.

Documentation - there are various elements that the CIPS suggests could comprise an invitation to tender (ITT) document such as:

- A covering letter providing instructions e.g. labels to be used, return date, contact names and numbers etc. with some background to the requirement and also a statement that reads along the lines of "we are not bound to accept any, or the lowest tender"
- An acknowledgement form - to be returned stating whether or not the supplier is intending to submit a tender
- A specification (as above)
- A cost, price and delivery schedule - to be completed with the price and corresponding costs components e.g. information to assist whole life costing along with the expected delivery or lead time
- A detailed breakdown of production costs e.g. margin, overheads etc. to be completed
- A quality schedule - declaring which quality standards are met by the supplier
- A signed declaration of bona fide tender
- A parent company guarantee/performance bond to be completed as appropriate
- A series of questions on policy e.g. health and safety, environment, social responsibility etc. to which the supplier should respond
- A list of information required on the supplier's company profile (if not already obtained)
- A request for the supplier's company accounts e.g. for the last three years (if not already obtained)
- A list of satisfied customers along with at least one reference

Pre-Qualification

CIPS advocates the use of pre-qualification before inviting tenders where possible. This is so that suppliers which are unsuitable for the requirement in question can be eliminated

from the tendering process and the tendering process can then be focused on the offer itself. Pre-qualification would include an evaluation of, for example, suppliers':

- Financial standing
- Quality procedures
- Capacity and competence
- Track record

These criteria would then not be required in the ITT and can be used in any subsequent tendering exercises. However, depending on the market, it is recommended that pre-qualified suppliers are evaluated in this way periodically.

Suppliers who have successfully passed the pre-qualification stage are sometimes referred to as 'approved suppliers'. This is different to the term 'preferred suppliers', that is to say those suppliers that have successfully won a tendering exercise and have been awarded a contract or a framework agreement for the supply of a specific range of goods or services for a given period.

If a pre-qualified list of tenderers is to be used (so that the suppliers are all known in advance as opposed to simply responding to an advertisement) it is acceptable practice to advise these suppliers that an ITT for the supplies or services in question will be forwarded to them by a specific date. This enables suppliers to plan what can be a resource intensive process.

CIPS believes that suppliers should not be requested to pay for ITT documentation.

Dialogue with Suppliers

In order to refine and finalise the requirement, CIPS believes it is acceptable practice to discuss requirements with suppliers before tenders are invited. However, suppliers must be advised that this is the purpose of the dialogue and care must be taken not to use proprietary information in the specification.

Variations may arise during the tendering process and the purchasing and supply management professional should ensure that all suppliers receive exactly the same information and, as far as possible, at the same time.

Response Times for Tenders

In respect of the utilities and public sectors, contracts above a given threshold are subject to rules about response times during tendering. For those contracts let where such rules do not apply, whether within those sectors or outside, it is the responsibility of the buying organisation to set reasonable time periods for responses to tenders.

CIPS believes that it should be the responsibility of the purchasing and supply management professional to determine a reasonable period for responses which will depend on variables such as the complexity of the procurement, the nature of the marketplace and the urgency of the purchase.

The response date or 'tender return date' should be clearly shown on the covering letter or detailed within the ITT. There should also be a time given (noon) beyond which tenders received will be deemed 'late tenders'.

These should be separated from the rest and a decision then taken, by an independent person if the purchasing and supply

Tendering and Post Tender Negotiation

CIPS
KNOWLEDGE
WORKS

Knowledge
Summary

management professional deems appropriate, as to whether or not the late tender should be evaluated. Reasons for inclusion may include a bona fide reason for lateness or a lack of competition due to too few tenders being received.

If, due to unforeseen circumstances, the tender return date is changed, this should be immediately and effectively communicated to all suppliers which have been invited to tender. They should all be given exactly the same new tender return date.

Tender Boards/Evaluation Panels

Tenders often arrive early and these should be stored in a safe place, unopened. When the response deadline is reached a group of at least three people, including at least one purchasing and supply management professional, should meet to open the tenders and record their receipt.

This group is often referred to as a 'Tender Panel'. A special form can easily be produced to list those tenders received by the deadline and this should be signed by all on the panel. Members of the panel should each sign the first page of each tender which should also be stamped with the date. It is good practice to stamp and sign every page in a tender containing price or financial information.

The extent of such processes should be determined by the purchasing and supply management professional in conjunction with the Internal Audit department.

The tender panel, or a separate evaluation panel, then has the task of determining the winning supplier(s).

During the time between tenders being opened and a final decision being made, all those involved must take care not to breach confidentiality. CIPS believes that it is not good practice to advise any tenderer of the details of another tenderer's offer without prior agreement with all suppliers.

Selection Criteria

During tendering there are generally two forms of selection criteria. One is similar to the pre-qualification criteria, whether or not that is used at a pre-qualification stage or once the tenders have been received.

With this type of selection criteria the objective is to ensure that the supplier is capable of providing the supplies and services to the level of quality required so issues to be evaluated include financial standing, quality systems, track record and so on.

The other set of selection criteria is centred on the offering i.e. the individual supplier's solution to the requirement, and these should be value for money criteria. This will almost always include the following:

- Quality of product or service
- Delivery times
- Terms and conditions (payment terms, warranties etc.)
- Cost to include the initial price, total acquisition cost plus whole life costs

It may also include the future likelihood of supplier innovation, technical or cultural fit with the purchasing organisation, the strength of the supplier's account team, ability to handle TUPE transfers, or any other factor which is important to that particular procurement.

The selection criteria should be agreed prior to the tenders being invited so that the information required can be incorporated in the tender documents. The EC procurement rules require that, for public sector and utility sector procurements to which the rules apply, the selection criteria be stated in the advert and this is normally reiterated in the IIT.

There are many different approaches to evaluation for example; the selection criteria can be weighted according to their importance and a table produced listing the suppliers against the criteria. The tenders then need to be evaluated and ranked against each criterion accordingly so that the best value for money offer can be assessed.

Evaluation should never be a purely mechanistic process. In most cases, cost has to be assessed against the other criteria, and usually there will be some value judgements to be made e.g. whether to pay more for apparent better quality or service. However, the objective of a robust evaluation process is to make these judgements as structured and objective as possible.

Post Tender Negotiation

Provided it is undertaken professionally and ethically, CIPS believes that post tender negotiation is an appropriate process to secure value for money. It is the responsibility of the purchasing and supply management professional to determine whether, for any particular contract, post tender negotiation should be undertaken.

CIPS suggests that bid clarification i.e. detailed discussion about the offer, should usually comprise the final stage after receipt of tenders and before contract award; it will normally lead to improved value being obtained.

This is because there are often points in the tender which need to be clarified. It may also be necessary to undertake bid clarification with several suppliers, for example if a bid appears especially low, or especially high on price. During bid clarification, discussion might take place around the specification or delivery period for example.

This may lead to negotiation on terms and conditions, warranties, payment terms or price. It is important however, that during this process of negotiation, the changed offer does not alter the competition. Where the negotiation is taking place with the clear winner, as judged against the pre-set selection criteria, it would not matter if the outcome dramatically changed.

The problem arises where for instance, three suppliers are undergoing a process of bid clarification and negotiation and the third most attractive offer suddenly changes substantially. It is important in this case to allow all suppliers access to the same information and the same opportunity to review their proposals.

CIPS believes that during post tender negotiation on price, suppliers must be treated fairly and courteously. The person responsible for negotiating should be the purchasing and supply management professional, but where this is not the case, it is their responsibility to ensure that the negotiator conducts the negotiation on a professional basis.

Post tender negotiation is a key skill of the purchasing and supply management professional and, like other aspects of negotiation, the CIPS believes that the purchasing and supply management professional should undertake a refresher training course, once every five years.

Tendering and Post Tender Negotiation

One way of obtaining Best and Final Offers (BFO) is to send to suppliers, on an anonymous basis, a list of all the costs/ prices obtained, inviting their BFO. It is important that suppliers are advised at the ITT stage that this process is scheduled to take place and that suppliers make their own decision as to whether or not they wish to participate.

A similar method is the reverse auction, whereby suppliers are requested to submit offers which progressively reduce in price until either a) they are accepted by buyers, or b) until those other suppliers decline to reduce their prices any further. It is worth noting that eAuctions are based on the reverse auction principle. For further information on eAuctions please refer to CIPS paper on 'an introduction to eAuctions' available at www.cips.org.

CIPS approves of these techniques for obtaining BFOs, provided that suppliers are under no compulsion to participate and as long as they have the reasonable expectation that buyers are in principle prepared to award them the contract.

Contract Award

Once the decision has been made as to the successful supplier (s) the contract should be negotiated, finalised and signed. It is good practice to produce two copies and sign both before sending to the supplier with a request that the supplier signs both and retains one and returns the other copy.

The unsuccessful suppliers should be advised that they have not been awarded the contract on this occasion. This should be communicated by letter with an invitation for the suppliers to receive a debrief as appropriate.

Conclusion

Tendering and post tender negotiation are fundamental purchasing and supply management skills which must be executed professionally and ethically in order to obtain best value for money. This document has described the principles and processes of good practice in respect of the above but does not intend to be prescriptive.

In particular, purchasing and supply management professionals in the utilities and public sectors must ensure compliance with the EC procurement rules. CIPS recommends that purchasing and supply management professionals adopt the principles of good practice but define and develop their own signature purchasing processes which are best suited to their own organisations and reflect the sectors, industries and markets in which their organisations are positioned.