

P&SM: Tendering & Post Tender Negotiation



Tendering can be defined as the public release by an organisation of the requirements of goods or services for a project in order to allow formal bids to be made to supply these goods or services.



CIPS members can record one CPD hour for reading a CIPS Knowledge download that displays a CIPS CPD icon.

Introduction

The CIPS' practice documents are written as a statement in time. They are a collection of views on good practice within a particular subject area and are intended to provide direction on good practice with some guidance for context and interest. The reader is encouraged to use the CIPS practice documents for their own purposes, such as writing policy statements, guidance or procedures. This particular practice statement has been written primarily for the benefit of full-time purchasing and supply management professionals, but can be used by anyone associated with, or interested in, purchasing and supply management (P&SM).

This document is about tendering and post-tender negotiation.

Definition

Tendering can be defined as the public release by an organisation of the requirements of goods or services for a project in order to allow formal bids to be made to supply these goods or services.

Post tender negotiations refer to the negotiations that take place between a client (or contractee) and potential suppliers, after the receipt of tenders but prior to contract award. In the public sector these negotiations are supposed to be limited to clarifications of substantive items within the tender and do not include price negotiations.

Background

There are a variety of means of obtaining offers from suppliers such as 'requests for pricing/quotation', 'enquiries' etc. many of which can be confused to mean the same process. CIPS believes that obtaining an offer from a supplier has a range of different degrees of complexity, and that tendering is most appropriate for high value and high risk purchases and where transparency is paramount.

As core elements in purchasing and supply management, CIPS considers that all P&SM professionals should be proficient in the application of tendering and post tender negotiation.

Explanation

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

Pre-requisites for tendering

CIPS believes that a good specification is an 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 P&SM professionals ensure the existence of an appropriate specification.

Generally, specifications for complex requirements 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, technical specifications are useful and needed, especially in manufacturing and/or engineering scenarios. The P&SM 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 commonly used standards, e.g. European standards, British standards, International standards (ISO). When using a technical standard, care must be taken to avoid proprietary items, where possible. 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 eg. 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 eg. 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 wherever 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. For example, pre-qualification would include an evaluation of 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.

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 as this discriminates against small to medium sized enterprises.

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. This will allow the contractee to supplement his knowledge of the requirement and to discover possible avenues of innovation for the future. However, suppliers must be advised that this is the purpose of the dialogue and care must be taken not to include any proprietary information within the specification that is developed as a result of these discussions.

Variations may arise during the tendering process and P&SM professionals 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 in Europe contracts above a published threshold are subject to the [Public Procurement](#) . For those contracts that are not governed by legislative requirements it is still the responsibility of the buying organisation to set reasonable time periods for responses to tenders.

CIPS believes that it should be the responsibility of P&SM professionals to determine a reasonable period for responses. This 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 (e.g, 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, as to whether or not the late tender should be evaluated excluded. 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 that have been invited to tender and all suppliers should 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 P&SM 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 individually 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 a price or financial information.

The extent of such processes should be determined by the P&SM professional in conjunction with the Internal Audit department. It is very important to ensure that a fully auditable process is developed and followed so that questions can be dealt with quickly and challenges can be satisfied with robust evidence.

The tender panel, or a separate evaluation panel, then has the task of determining the shortlisted or preferred suppliers and the results of this evaluation are then presented to the full project team for further evaluation.

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 where objective items, such as financial status, are reviewed. The second type of selection criteria take into account the qualitative/quantitative criteria, such as materials used, applicable standards, price, track record, proposed solution, etc..

Other criteria that are used include, but are not limited to, the following:

- Quality of product or service
- Delivery times
- Terms and conditions (payment terms, warranties etc.)
- Cost (including 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 requirement.

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 European Procurement Directives state that, for public sector and utility sector procurements, the selection criteria must be stated in the advert and this is normally reiterated in the ITT.

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.

CIPS believes that 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 P&SM 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 to the extent that other bidders may challenge the award of contract. Public sector contracts are subject to a standstill period prior to award of contract that allows the losing suppliers to be debriefed and any aggrieved suppliers to put in a challenge.

Problems can arise where, say, 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 P&SM professional

whenever possible, 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 P&SM professional and believes that they should be encouraged to undertake a refresher training course, at least, once every five years.

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.

CIPS approves of these techniques for obtaining BFOs, provided that suppliers are under no compulsion to participate and as long as they have a 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 and requesting 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. CIPS believes that debriefing suppliers that have failed tenders develops better relationships with these suppliers and may result in opportunities with these suppliers at a later date.

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.

In particular, P&SM professionals in the utilities and public sectors must ensure compliance with the European Procurement Directives. CIPS recommends that P&SM 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.

CIPS Group Easton House, Easton on the Hill, Stamford, Lincolnshire, PE9 3NZ, United Kingdom
T +44 (0)1780 756777 F +44 (0)1780 751610 E info@cips.org

CIPS Africa Ground Floor, Building B, 48 Sovereign Drive, Route 21 Corporate Park, Irene X30, Centurion, Pretoria, South Africa
T +27 (0)12 345 6177 F +27 (0)12 345 3309 E infosasa@cips.org.za

CIPS Australasia Level 8, 520 Collins Street, Melbourne, Victoria 3000, Australia
T 1300 765 142/+61 (0)3 9629 6000 F 1300 765 143/+61 (0)3 9620 5488 E info@cipsa.com.au

CIPS Middle East & North Africa Office 1703, The Fairmont Hotel, Sheikh Zayed Road, PO Box 49042, Dubai, United Arab Emirates
T +971 (0)4 327 7348 F +971 (0)4 332 5541 E mena.enquiries@cips.org

©CIPS 2013



*Printed on stock containing
50% post consumer
recycled content*

www.cips.org

CIPS™ is a registered trademark of the
Chartered Institute of Purchasing & Supply