

Guide to Evaluation, Negotiation and Selection

Contents

What is Evaluation?	2
Creating an Evaluation Plan	2
Shortlisting submissions	2
Detailed evaluation of submissions and clarifications	3
Alternative submissions	3
Evaluation report	3
Negotiation	3
The negotiation process – consistency of negotiations	4
Concluding negotiations.....	4
Documenting the negotiation process.....	5
Maintaining the integrity of the market approach	5
Requesting a best and final offer	5
Selection	5
More information	6
Disclaimer	6

What is Evaluation?

In procurement, evaluation is the process of deciding whether to approve a potential supplier, deciding which offer represents best value or deciding whether the planned approach to either have a panel/register/single supplier is still a valid strategy. Technical evaluation focuses on the respondent's compliance with the statement of requirements or specification in the invitation to supply (ITS). When acquiring complex categories, the evaluation may separate technical dimensions of the bid from the commercial dimensions of the bid. The outcome of ITS evaluation is the selection of the successful offer(s).

Evaluation, negotiation and selection (ENS) are important complementary processes that underpin selection of the most appropriate submission(s) in response to a procurement requirement. The structure of the ENS process should reflect the complexity and scope of the procurement requirement.

Evaluation plan creation

The evaluation plan should be developed before issuing an ITS and should involve a structured, transparent and defensible process to meet with HSV purchasing policy requirements.

Creating an Evaluation Plan

An evaluation plan defines the process for assessing submissions which:

- Is scaled to reflect the complexity of the procurement
- Guides the development of the evaluation report
- Provides a record of decisions made during the evaluation process
- An evaluation plan may include:
 - The objectives of the procurement
 - A description of the requirement and deliverables, allowing flexibility to respond to market innovation (if relevant)
 - Evaluation criteria, methodology and scoring
 - The process for shortlisting submissions and negotiation with shortlisted respondents
 - Governance arrangements for decision making
 - Roles and responsibilities for managing the evaluation process (for higher risk and complex procurement the plan needs to detail the evaluation panel structure, any specialist subcommittee structures, any individual specialist inputs, the capability/expertise of identified persons, etc.)
- Managing variations to scope in alignment with probity requirements
- Communication management, including processes and timelines for communicating with suppliers about the status of their submissions
- Management of submissions (security and confidentiality considerations)
- Conflict of interest management
- Record management and reporting arrangements
- Any arrangements for probity review and oversight.

Shortlisting submissions

In the evaluation process, submissions may be shortlisted. Shortlisting is a process of eliminating submissions that are non-conforming, non-compliant or non-competitive in comparison to other submissions that demonstrate higher levels of potential value for money.

When conducting the shortlisting process with suppliers, health services should apply the evaluation criteria fairly and equitably.

Detailed evaluation of submissions and clarifications

Evaluate submissions by applying the evaluation criteria as notified to the market in the invitation documents. Health services should maintain a proper audit trail of evaluation decisions. Seek clarification of any matter where that would add to further understanding of a supplier submission. However, this action should not be the catalyst for a supplier to alter their submission. A record should be kept of any such clarifications sought and responses received.

Alternative submissions

Where a health service invites suppliers to submit alternative submissions, these submissions are evaluated together with conforming submissions, and treated and evaluated in the same way. Alternative submissions that fail to meet mandatory requirements should be eliminated.

Evaluation report

After completing the shortlisting stage, complete an interim evaluation report to identify the preferred supplier(s) and any ranking of supplier(s). The shortlisting stage may also involve internal approval steps. A final evaluation report is prepared at the conclusion of the selection process. The structure of the interim and final report can include (but not be limited to) the following considerations:

- Summary of the technical evaluation including any activities conducted (e.g., site visits, clarifications sought, negotiation etc.) and outcomes
- Financial viability
- Pricing evaluation outcomes
- Legal issues
- Commercial evaluation outcomes
- Contractual evaluation outcomes
- Risk analysis
- Value-for-money outcomes
- Interim probity report (if relevant/necessary).

Negotiation

Negotiation is the process between buyer and supplier that seeks to improve value for money outcomes through discussion. Either party can make an offer or detail a concession in attempting to arrive at an agreement. The negotiation process can start after shortlisting your preferred supplier(s).

Negotiations can be time consuming and should be managed by persons with the required technical skills and with the ability to commit the organisation to any agreed outcomes. Whether to conduct negotiations depends on whether the potential improvement in value for money outcomes exceeds the cost of the negotiation process.

The primary objectives of conducting negotiations are to:

- Explore the wider opportunities to improve the overall value for money outcome of the procurement activity
- Clarify issues and identify further opportunities.
- In addition to an improved value for money outcome, negotiations can result in a better understanding and working relationship between parties during the contract period. Beneficial outcomes could include a shorter delivery period, a better targeted product or service, improved stakeholder/client satisfaction, less disputes and reduced costs.

Conducting negotiations is particularly relevant for procurement activities with one or more of the following characteristics:

- Strategic, high risk or critical to business
- High element of innovation or novelty
- The activity is a pilot project to better define procurement requirements
- There is a proposal to allocate risks and ownership at variance from a standard operating position
- Procurement requires access to designated intellectual property in the supplier market
- The procurement complexity is generally not of a transactional nature.

Negotiation considerations

Health services should take care not to expand/change the scope of the procurement activity too much as this might affect the ability of the process to withstand contest. Negotiations should not result in material changes to scope or requirements and if it does, there may need to be a re-think and consideration given to go back to short-list.

The negotiation process – consistency of negotiations

The negotiation process is based on a structured plan that:

- Aligns the capability and authority of the negotiation personnel with the complexity of the procurement activity
- Establishes a process for engaging stakeholders to obtain input and advice as negotiations progress
- Has considered a position on the scope and scale of offers and concessions that the organisation will consider
- Details how issues and propositions are to be assessed and analysed
- Ensures that the process is conducted in a consistent manner
- Establishes a framework for conducting meetings.

It is important to understand the range of matters that you are willing to consider when carrying out negotiations, including:

- Technical matters
- Access to management and ownership of intellectual property
- Risk allocation and responsibilities
- Insurances, indemnities, warranties and guarantees
- Financial matters
- Pricing
- Contractual matters
- Performance objectives
- Benefit sharing and incentives
- Reporting form and structure
- Delivery and implementation commitments
- Items of confidentiality and security.

Concluding negotiations

Ideally, the negotiation process reaches an end when all parties commit to an agreement and proceed to contract execution. However, commencing a negotiation process does not bind the parties to reach an agreed outcome. Either party can withdraw from the negotiations if they conclude that there is no further interest in continuing with the process.

Documenting the negotiation process

A detailed record of each stage of the negotiation process ensures:

- Accuracy of details discussed
- Matters agreed to, or subject to further review
- Actions to be taken and by which party
- Offers/concessions made/accepted/modified/rejected
- Further schedule of planned negotiations.

Maintaining the integrity of the market approach

When considering offers and concessions for agreement, it is important to maintain the intent and integrity of the original offer made to the market. Variance from this position could invalidate the market approach,

Requesting a best and final offer

The best and final offer (BAFO) process seeks to obtain the best result from shortlisted suppliers in relation to the procurement requirements. You can conduct a BAFO process at any stage of the evaluation or negotiation phase. The process involves inviting all shortlisted bidders to submit their final offer, which will not be subject to subsequent negotiations.

If BAFO is included as part of the bid process, you must make available details regarding the process carried out and the outcomes achieved.

You should not conduct any further negotiations or accept any further offers from any suppliers following completion of the BAFO process.

Best and Final Offer

It is worth noting that the BAFO process may not result in any change from the initial offer and can sometimes worsen the initial offer.

Selection

Selection is the end stage of the sourcing process. It establishes the basis for proceeding to engage with the supplier(s) best able to satisfy the procurement requirements.

The selection stage will also involve internal approval steps concerning process compliance and financial commitment prior to:

- Establishing a formal agreement between parties
- Implementing the contract
- Commencing the contract management phase of the procurement process.

Entering a contract establishes legal obligations on both parties. In doing so, the health service should ensure value for money outcomes in committing public funds whilst demonstrating high standards of probity, due process and transparency in arriving at a decision to proceed.

In closing out this stage of the procurement process, include the following:

- Handover arrangements to the contract manager/contract management team
- Clarification of all contractual related matters
- Ensure supplier(s) understand and commit to the agreed contractual terms and conditions
- Schedule any transition in/transition out requirements
- Method and timing of notification to successful and unsuccessful suppliers

- Arrangements for managing and conducting debriefings with suppliers
- Ensure that records of the sourcing process are kept in accordance with the Public Records Office Of Victoria (PROV) requirements
- Contract information is registered in the health services contract register.

More information

Related documents and templates are available on the HSV website.

Disclaimer

The information presented in this document is general in nature and based on HealthShare Victoria's interpretation of the *Health Services Act 1988 (Vic)* and any ancillary legislation and regulations in effect at the time and should not be relied upon as legal advice. Please consider seeking professional and independent advice from your legal representative as to the applicability and suitability of this information and the legislation to your own business needs or circumstances.