

**Using this guide**

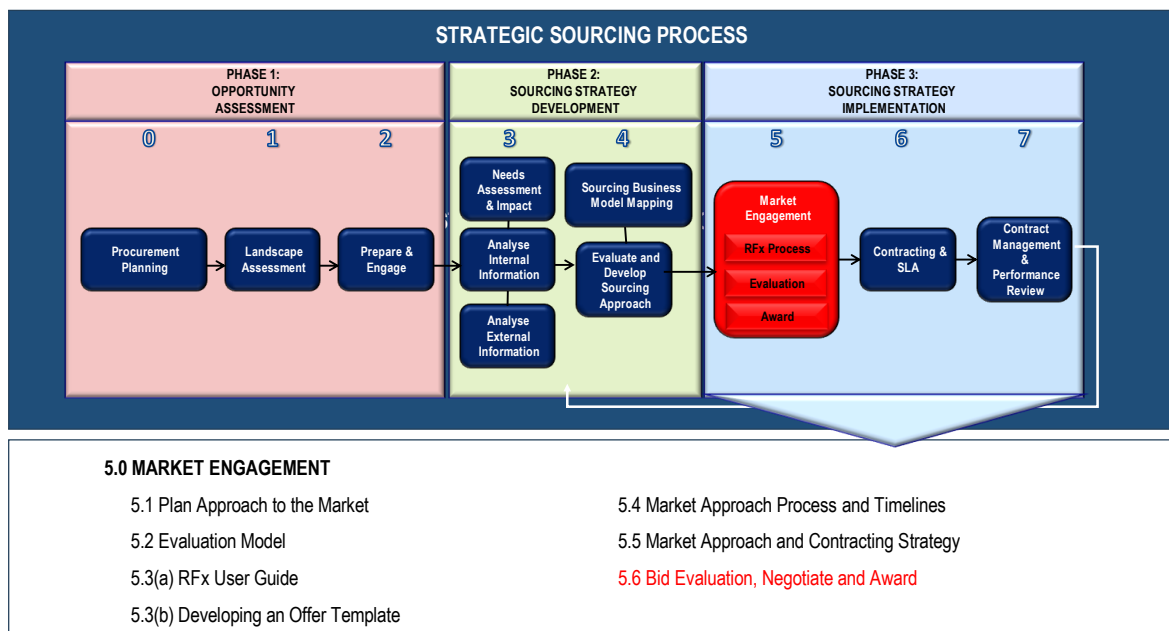
This guide accompanies the National Treasury's Strategic Procurement Framework (SPF) for Strategic Sourcing in the Public Sector. For more information, visit the

National Treasury website at <http://ocpo.treasury.gov.za/>

The SPF can be found here:

[http://ocpo.treasury.gov.za/Resource\\_Centre/Documents/1A.%20Strategic%20Procurement%20Framework.pdf](http://ocpo.treasury.gov.za/Resource_Centre/Documents/1A.%20Strategic%20Procurement%20Framework.pdf)

**BID EVALUATION, NEGOTIATION AND AWARD**



**1.0 Introduction**

- i. Bid evaluation, negotiation and award (BENA) are important complementary processes that underpin the selection of the most appropriate submission in response to a procurement requirement.
- i. The structure of the BENA process should reflect the complexity and scope of the procurement requirement.
- ii. The following good practice guides apply to this stage of bid evaluation, negotiation and award:
  - a. The evaluation process
  - b. Negotiation

c. Selection and award

**1.1 The objective**

- i. To assist procurement practitioners in evaluating bid submissions according to the defined bid evaluation criteria, shortlisting bidders, and negotiating with preferred bidders, with the ultimate goal of selecting and awarding the most suitable bidder to fulfil the procurement requirement.

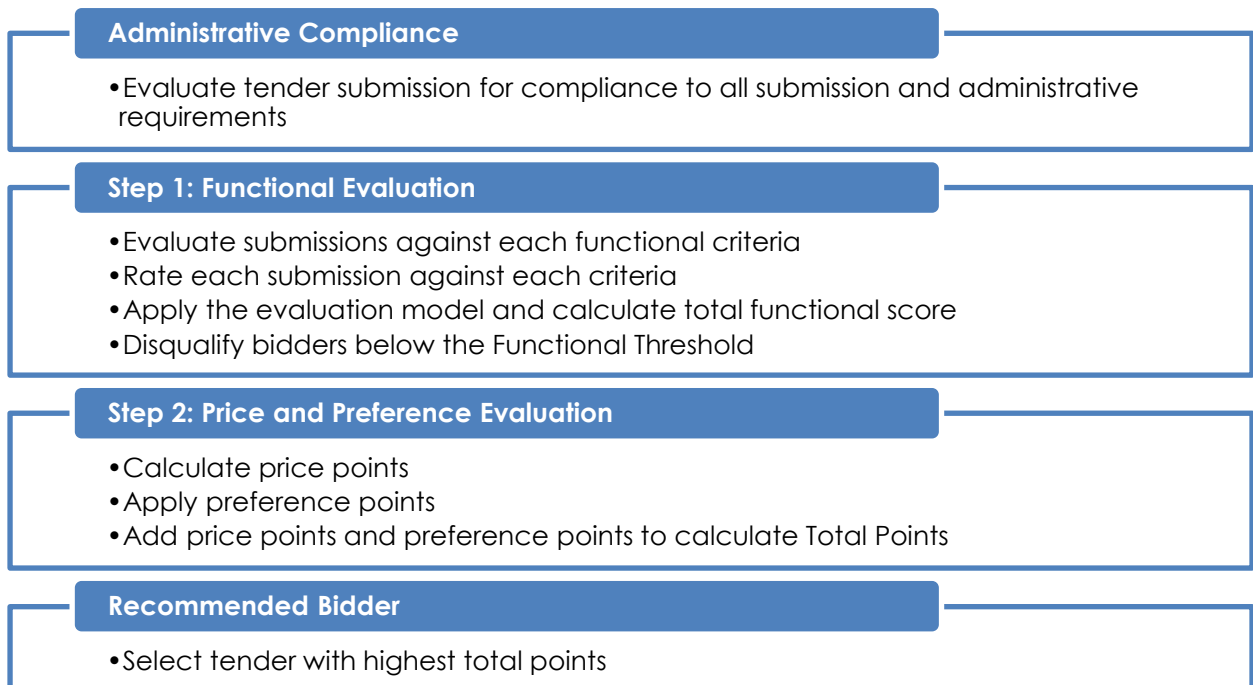
**1.2 Output**

- i. BEC recommendation report
- ii. Negotiation outcome report
- iii. BAC approval and award

**2.0 Good practice guides**

**2.1 The bid evaluation process**

- i. Government procurement has various evaluation stages, depending on the nature, scope, value, level of risk and complexity of each procurement.
- ii. The most common process is as follows:



**Figure 1: The Bid Evaluation Process**

### **2.1.1 Administrative compliance**

- i. Administrative compliance is a process of eliminating submissions that are non-conforming, non-compliant or non-responsive when evaluated against the mandatory administrative evaluation criteria.
- ii. Prepare a shortlisting evaluation report before proceeding to the next stage of the evaluation process.
- iii. When shortlisting suppliers, you must apply your evaluation criteria fairly and equitably.
- iv. Carefully document the reasons for disqualifying submissions.
- v. Reasons must be able to stand in a court of law and the reasons must be valid in terms of the evaluation criteria.
- vi. The next step in the evaluation process only considers bids that meet the mandatory administrative requirements of participation in the bid process.

### **2.1.2 Functional evaluation**

- i. In the "Evaluation Model" stage earlier, you already determined what evaluation model you will follow and whether the bid will include functional evaluation.
- ii. Not every tender has to use the two-step process but it must be clearly stated in the bid invitation if this is the case.
- iii. The evaluation criteria for measuring functionality must be objective and the weighting for each criterion on which technical capability will be judged must be provided.
- iv. Bidders must be required to meet a certain minimum threshold for functionality and only those bidders who meet that threshold must then qualify for further evaluation based on price and preference during the award stage (Bolton, 2014).

### **2.1.3 Price and Preference Evaluation**

- i. This evaluation criteria is also known as the "price and points" evaluation criteria.
- ii. This evaluation is done when the administrative and functionality or technical evaluations are completed.
- iii. Refer to the applicable procurement legislation.

**2.1 5 Other considerations when evaluating bids**

**2.1.5.1 Detailed evaluation of submissions and clarifications**

- i. You evaluate submissions by applying the evaluation criteria that were included in the invitation documents.
- ii. You should maintain a proper audit trail of your evaluation decisions.
- iii. You should seek clarification of any matter that would add to your understanding of a supplier submission.
- iv. However, this action should not lead to a supplier altering their submission.
- v. A record should be kept of any such clarifications sought.

**2.1.5.2 Alternative submissions**

- i. Where you invite suppliers to submit alternative submissions, you must evaluate these submissions together with conforming submissions.
- ii. Alternative submissions are treated and evaluated in the same way as conforming submissions.
- iii. You should eliminate alternative submissions if they fail to meet mandatory requirements.

**2.1.5.3 Evaluation report**

- i. After completing each evaluation stage, complete an interim evaluation report to identify the preferred supplier(s) and any ranking of supplier(s).
- ii. Prepare a final evaluation report after the selection process.
- iii. The structure of the interim and final report can include (but not be limited to) the following considerations:
  - a. Summary of activities conducted (e.g., site visits, clarifications sought, negotiation etc.);
  - b. Outcomes;
  - c. Financial viability;
  - d. Pricing evaluation outcomes;
  - e. Legal issues;
  - f. Commercial evaluation outcomes;

- g. Contractual evaluation outcomes;
- h. Risk;
- i. Value for money outcomes; and
- j. Interim probity report (if relevant/necessary).

## **2.2 Negotiation**

- i. Negotiation is a process between buyer and supplier that seeks to improve value-for-money outcomes through discussion.
- ii. Either party can make an offer or detail a concession in attempting to agree.
- iii. Negotiations can be time-consuming and should be managed by persons with the required technical skills and the ability to commit the institution to any agreed outcomes.
- iv. The decision on whether to conduct negotiations depends on whether the potential improvement in value-for-money outcomes exceeds the cost of the negotiation process.
- v. Negotiation must be approached with care so that it is not seen as favouring one supplier at the expense of others.
- vi. Therefore, negotiation must be done post-tender award.
- vii. The primary objectives of conducting negotiations are to:
  - a. Explore the wider opportunities to improve the overall value for money outcome of the procurement activity; and
  - b. Clarify issues and identify further opportunities.
- viii. 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.
- ix. Beneficial outcomes could include a shorter delivery period, a better-targeted product or service, improved stakeholder/client satisfaction, fewer disputes and reduced costs.
- x. Conducting negotiations is particularly relevant for procurement activities with one or more of the following characteristics:

- a. Strategic, high risk or close to the core;
- b. High element of innovation or novelty;
- c. The activity is a pilot project to better define procurement requirements;
- d. There is a proposal to allocate risks and ownership that differs from a standard operating position;
- e. Procurement requires access to designated intellectual property in the supplier market; and
- f. The procurement complexity is generally not transactional.

### **2.2.1 The negotiation process - consistency of negotiations**

- i. The negotiation process is based on a structured plan that:
  - a. Aligns the capability and authority of the negotiation personnel with the complexity of the procurement activity;
  - b. Establishes a process for engaging stakeholders to obtain input and advice as negotiations progress;
  - c. Has considered a position on the scope and scale of offers and concessions that the institution will consider;
  - d. Details how issues and propositions are to be assessed and analysed;
  - e. Ensures that the process is conducted consistently; and
  - f. Establish a framework for conducting meetings.
- ii. It is important to understand the range of matters that you are willing to consider when carrying out negotiations, including:
  - a. Technical matters;
  - b. Access to management and ownership of intellectual property;
  - c. Risk allocation and responsibilities;
  - d. Insurances, indemnities, warranties and guarantees;
  - e. Financial matters;
  - f. Contractual matters;

- g. Performance objectives;
- h. Benefit sharing and incentives;
- i. Reporting form and structure;
- j. Delivery and implementation commitments;
- k. Items of confidentiality and security; and
- l. Pricing (under exceptional circumstances).

### **2.2.2 Concluding negotiations**

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

### **2.2.3 Documenting the negotiation process**

- i. A detailed record of each stage of the negotiation process ensures:
  - a. Accuracy of details discussed;
  - b. Matters agreed to, or subject to further review;
  - c. Actions to be taken, and by which party;
  - d. Offers/concessions made/accepted/modified/rejected; and
  - e. Further schedule of planned negotiations.

### **2.3 Maintaining the integrity of the market approach**

- i. When considering offers and concessions for agreement, it is important to maintain the intent and integrity of the original offer made to the market.
- ii. Moving from this position could invalidate the market approach and cause reputational risks.

## **2.4 Selection and Award**

- i. Selection and award is the end stage of the sourcing process.
- ii. It establishes the basis for proceeding to engage with the supplier(s) best able to satisfy the procurement requirements.
- iii. The selection and award stage will also involve internal approval steps concerning process compliance and financial commitment before establishing a formal agreement between parties and starting the contract management phase of the procurement process.
- iv. Entering a contract establishes legal obligations on either party.
- v. In doing so, the government institution wants to achieve a value-for-money outcome while committing public funds that demonstrate high standards of probity, due process and transparency in deciding to proceed.
- vi. In closing out this stage of the procurement process, consider the following:
  - a. Handover arrangements to the contract manager/contract management team;
  - b. Clarify any contractual-related matters;
  - c. Ensure supplier(s) understand and commit to the agreed contractual terms and conditions;
  - d. Schedule any transition in/transition out requirements;
  - e. Method and timing of notification to successful and unsuccessful suppliers;
  - f. Arrangements for managing and conducting debriefings with suppliers;
  - g. Ensure that records of the sourcing process are kept by the management of public records; and
  - h. Publish the final contract award information on the e-tender portal.
- vii. The following table shows how to determine the selection or shortlisting methods that will be used using one or a combination of the following, (this must be part of the Terms of Reference or Bidding documents:



| Method                             | Description   |
|------------------------------------|---|
| <b>Written submission</b>          | <ul style="list-style-type: none"> <li>The most common evaluation method where the supplier provides a written bid document which is used as the basis for the bid evaluation.</li> </ul>   |
| <b>Method statement</b>            | <ul style="list-style-type: none"> <li>This is also a written bid submission and is used primarily in the research and innovation sectors.</li> <li>The responses may be less structured and appear very different given that they are looking for a response to a problem statement.</li> </ul>  |
| <b>Presentation</b>                | <ul style="list-style-type: none"> <li>The supplier delivers a presentation of the proposal, or an aspect thereof, which is used as a basis for the evaluation.</li> </ul>  |
| <b>Interview</b>                   | <ul style="list-style-type: none"> <li>Here specialist advisors or consultants are required.</li> <li>The supplier is interviewed, often by a panel and the interview is used as the basis for the evaluation.</li> </ul>   |
| <b>Pitch</b>                       | <ul style="list-style-type: none"> <li>This is often used in the entertainment and arts industries where a production company or artist also presents, but there may be elements of acting role-play, or an artist may even perform or recite.</li> </ul>   |
| <b>Site visit</b>                  | <ul style="list-style-type: none"> <li>The evaluation team can choose to visit the offices, warehouse, or construction site to evaluate aspects of the proposal that are difficult to evaluate in a written proposal.</li> </ul>  |
| <b>Third-party references</b>      | <ul style="list-style-type: none"> <li>These refer to phone calls or correspondence with a third party that had experience with the supplier, or accreditations with other bodies such as ISO QMS, or SABS, or professional bodies such as SAICA, ECSA etc</li> </ul>   |
| <b>Due diligence</b>               | <ul style="list-style-type: none"> <li>The evaluation team can choose to visit the offices, warehouse or construction site to evaluate aspects of the proposal that are difficult to evaluate in a written proposal.</li> <li>Due diligence helps in minimising supplier failure which might have serious consequences on service delivery and value for money.</li> </ul>  |
| <b>Sample, model, or prototype</b> | <ul style="list-style-type: none"> <li>Examples of the products that will be supplied are evaluated.</li> <li>Where it is too expensive or impractical, a smaller model, built to scale, of the infrastructure, may be used as a basis for the evaluation, e.g. where it's not practical to get the sample, a visit to other customers that have the product or commodity installed may be considered.</li> <li>In technology-related bids, the supplier may be asked to provide a prototype and proof of concept solution to illustrate aspects of the proposal</li> </ul> |

**Figure 1: Determining the Selection or Shortlisting Methods**

### 3.0 Templates

Not applicable