



**New South Wales Government
Procurement System for Construction**

Procurement Practice Guide

**Tendering Process for Consultancy
Services engagements**

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Important notices

Current version

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http://www.nswprocurement.com.au/psc/system/index_ppg.doc

Amendments

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Tendering Process for Consultancy Services engagements

Glossary

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Tendering Process for Consultancy Services engagements

1 Preliminary

1.1 Tendering process

The NSW Government *Code of Practice for Procurement* requires that equal opportunity be provided to all tenderers. Fairness, probity and transparency must be maintained to ensure the quality and consistency of the tendering process and achieve the best outcome.

Further information on requirements for the tendering process is provided in the NSW Government *Tendering Guidelines*, Section 3 - **Tendering Process**.

A client agency may use its own tendering system, that of its project manager, or that of the Department of Commerce (see Section 3.3 *Commerce services on request*).

1.2 Tender method

The tender method will have been established by reference to Procurement Practice Guide *Tender Planning for Consultancy Services engagements*.

1.3 Number of tenderers

The following table shows the minimum number of tenderers for different fee ranges and tender methods:

Fee estimate	Is there a pre-qualified list for the work category?❖	Tender method	Minimum number of tenderers
Up to \$30,000	Not applicable	Optional	1
\$30,001 to \$49,999	Yes	Selective	1 (or 3 for administrative services)
	No	Invited	
\$50,000 to \$150,000	Yes	Selective	3
	No	Invited Open EOI	
Over \$150,000	Yes	Selective	3
	No	Open EOI Invited*	

❖ See *Tender Planning for Consultancy Services engagements*, Section 1.1 - **Tender method**.

* See *Tender Planning for Consultancy Services engagements*, Section 1.1 - **Invited Tender**.

2 Tenderer selection

2.1 Fee less than \$30,000

Where the estimated fee is less than \$30,000, selection of the tenderer(s) is at the discretion of the client agency.

2.2 Selective tenders

Fee less than \$50,000

Where the estimated fee is \$30,000 or more but less than \$50,000, refer to the Local Tenderer Selection Committee (Procurement Practice Guide *Selective Tendering*, Section 6.2 - **Local Tenderer Selection Committee**) for selection of a tenderer or a tenderer panel.

Fee \$50,000 or more

Where the estimated fee is \$50,000 or more, the selection process for selective tenders is described in detail in Procurement Practice Guide *Selective Tendering*, Section 7.1 - **Tenderer selection**. A summary follows.

Submit the form *Selective Tenders - Select a tenderer panel* in accordance with the directions on the form. A list of prequalified consultants capable of carrying out the services will be provided, with an RFT number if one has not previously been requested.

Consider the list to identify capable tenderers. Submit a brief written recommendation to the Secretary of the Tenderer Selection Committee (email Larry.Bailey@commerce.nsw.gov.au). The recommendation may include local consultants (refer to Procurement Practice Guide *Selective Tendering*). If there is a strong conviction that a particular consultant should or should not be invited to tender, provide sound reasons. A recommendation not signed by the client agency senior manager, project manager or nominee will not be considered. The list and recommendation must not be made public.

Following submission of the form *Selective Tenders - Select a tenderer panel*, the Tenderer Selection Committee selects a Tenderer Panel.

The Tenderer Panel will not be changed unless there are compelling reasons. Should these arise, contact the *NSW Procurement Client Support Centre*

Do not contact the tenderers. See Section 3.2 below, *Tenderer confirmation: Selective tenders* for subsequent action.

The Tenderer Panel selections remain valid for one month. If tenders have not been called by that time, request the Tenderer Selection Committee to review the selection to be sure there are no recent performance or relationship issues that might result in a change to the Tenderer Panel.

2.3 Invited tenders

Even if only one invited tender is the minimum, it may be beneficial to obtain more because a single invited tender may not result in value for money. Where a minimum of three invited tenders is required it may be appropriate to obtain additional tenders if the estimated fee is in a higher value range and benefits are expected from increased competition.

Exercise discretion if intending to exceed the minimum number of tenders. The cost to industry for preparing tenders and the additional resources and time to evaluate tenders must be considered against the expected benefits.

Prospective suitable tenderers may be known to the client agency or project manager. Commerce may be able to identify suitable tenderers through the CCMS Administrator who can be contacted by:

- facsimile: (02) 9372 8999; or
- email: ccmsdata@commerce.nsw.gov.au.

A suitable list of consultants registered with any agency may be used.

Where a consultant is not registered with an agency, before issuing an invitation to tender:

- make sure the consultant satisfies criteria set out in the tender document for Professional Indemnity Insurance and Public Liability Insurance;

- in the interest of a successful engagement, check if the consultant:
 - holds the minimum professional qualifications set out in the [Consultant Prequalification Scheme 2008-2011](#), Section 2.4 - **Work Specific Requirements**; and
 - has had at least one engagement for similar services within the previous two years.

2.4 Pre-registered tenderers

Expressions of Interest, if used, will have resulted in a panel of pre-registered tenderers (see Tender Planning, Section 1.1 - **Expressions of interest**)

3 Calling tenders

3.1 Tender document availability

The tender document (RFT document) must be approved before tenders can be called or invited.

3.2 Tenderer confirmation

Selective tenders

For selective tenders with an estimated fee of \$50,000 or more, complete and submit Section 1- **Confirm a tenderer panel** of the form [Selective Tenders - Confirm a tenderer panel / request for tenders](#), in accordance with the directions on the form

Upon receipt of the completed form, Commerce will invite each of the tenderers to confirm its interest in tendering (Procurement Practice Guide [Selective Tendering](#), Section 7.2 - **Invitation to treat**). At the completion of this process, Commerce will notify the person who made the request, in writing, which of the tenderers have agreed to submit tenders.

Until formally notified of the completion of this process, do not approach any of the potential tenderers about the tendering opportunity.

Invited tenders

For invited tenders, advise potential tenderers of the proposed request for tenders and request them to confirm their willingness to tender. If asked, advise how many will be invited to tender. Do not reveal the estimated fee or names of other tenderers.

3.3 Commerce services on request

If the client agency wishes Commerce to call and close tenders, negotiate and engage the services prior to issuing the RFT document by contacting the [NSW Procurement Client Support Centre](#).

When ready to call tenders, submit Section 2 - **Request for tenders** of the form [Selective Tenders - Confirm a tenderer panel / request for tenders](#) as shown on the form.

3.4 e-tendering

Advertise competitive tenders (ie all but single invited tenders) using an electronic tendering system website.

3.5 Open tenders

Open tenders may also be called by advertisement or information in appropriate printed or other publications.

To help obtain sufficient competitive tenders, known prospective tenderers may be alerted to the tendering opportunity.

3.6 Issue of tender documents

When the tenderer panel (selective, invited and pre-registered tenderers) has been confirmed, issue to each tenderer a copy of the RFT document (with an extra set of tender schedules if in hard copy) accompanied by a letter requesting a tender to be submitted.

For open tenders issue a copy of the RFT document (with an extra set of tender schedules if in hard copy) to prospective tenderers who request the document.

If Commerce is to invite tenders, liaise with the Commerce Tender Issuing Office (see Section 3.3 - *Commerce services on request*) about issue of RFT documents.

Addenda and notification of any changes to the tender period must be issued to all prospective tenderers.

4 Receipt and opening of tenders

The process of receipt and opening of tenders must comply with the NSW Government *Tendering Guidelines*, Section 3.5 - **Receipt and opening of tenders**.

5 Tender evaluation

5.1 Tender Evaluation Plan

Follow procedures in the Tender Evaluation Plan (TEP) unless exceptional circumstances apply and any changes receive appropriate authorisation.

5.2 GST for fee up to \$30,000

If a consultant advises in its tender that it would not be registered for GST at the time of entering into the Agreement, and GST is payable, the tendered price is to be weighted by a 10% loading in assessing tendered price relativity. This represents the value of the Input Tax Credit the Principal would otherwise be able to recover from a consultant paying GST.

5.3 Scoring non-price criteria

Evaluate and score tenderer responses against the non-price criteria and their elements listed in the TEP. For example, when reviewing resources offered keep in mind that:

- the engagement of an inexperienced consultant can lead to high supervision costs;
- poor quality contract documentation prepared by the consultant may give rise to:
 - claims related to document discrepancies,
 - delay costs,
 - variations,
 - increased agreement administration, and
 - increased site supervision costs;
- personnel with the right credentials increase the potential for better design which may result in lower operating costs.

Check that suitable nominated personnel will be committed to critical services.

If the Conditions of Tendering provide for consideration of past performance, information available to assist evaluation can be generated by Commerce from its Contractor and Consultant Management System. This service can be accessed by a request to CPR@commerce.nsw.gov.au.

The tender evaluation team must reach consensus on the score for each non-price criterion for each tender. Team scores must not be arrived at by averaging the scores of individuals. Reasons for differences in scores must be identified and discussed, and scores justified on the basis of available information which might be:

- provided in a tender; and/or
- known to the agency, including, for example, prequalification status or performance on current/recent engagements.

5.4 Checking tendered rates

Complete and review a spreadsheet for tendered rates if applicable.

When an error in the calculation of an extended amount is found in a tendered Schedule of Rates, show the correction and revised total on the spreadsheet. The revised total is used in the scoring calculations.

Enter rates tendered for variations in a variations spreadsheet. Check if the rates are considered reasonable.

Check for “loaded” rates (significantly higher than the estimated rate and other tendered rates). A loaded rate might be tendered if a quantity has been seriously underestimated, and if overlooked in tender assessment can lead to serious cost consequences.

5.5 Assessed fee

If a tender has qualifications and departures, their estimated value has to be assessed and added to or deducted from the tendered fee to enable evaluation against other tenders on a comparable basis. The “assessed fee” incorporates the assessed values of qualifications and departures. It takes into account any error in the extended amount or total in a Schedule of Rates. Calculate an assessed fee without contacting the tenderer, to avoid any perception of “bid-shopping”.

The recommendation for award must record how assessed fees were arrived at.

5.6 Scoring price criteria

The fees, or assessed fees as applicable, are normalised using a process set out in the Tender Evaluation Plan.

For information see Section 1.9 - *Tender Evaluation Plan* at **Scoring Price**

5.7 Contact with tenderers

Until scoring calculations are completed and a preferred tenderer is identified, contact with tenderers should be limited to what is needed to clarify tenders and evaluate them against specified evaluation criteria. Evaluation must rely on the tendered documents to avoid giving undue advantage to a tenderer by offering an opportunity to improve its bid.

When seeking clarification:

- a tenderer must not be made aware of the estimated fee or other tenderers' fees;
- nothing submitted in another tender may be revealed or discussed;
- the tenderer's status in tender evaluation must not be divulged.

If a tenderer advises that an error has been made in a Schedule of Rates with a rate or lump sum fee, the tenderer cannot amend it. The tenderer may elect to:

- withdraw the tender, or
- demonstrate that the services can be completed for the tendered fee without unacceptable risk to the Principal.

5.8 Withdrawal of a tender

If a tenderer withdraws its tender, the circumstances must be recorded in the recommendation for award.

5.9 Passing over a tender

If it is found that a tenderer has not demonstrated a comprehensive understanding of requirements in the tender document, or has tendered a low fee that does not encompass all those requirements, consider passing over the tender.

If a tendered fee or rates greatly exceed the fee/rates as re-estimated, this may also be a case for passing over the tender.

If a tender does not score well for a criterion with low weighting, but scores well for criteria of high weighting, passing over may not be appropriate.

A tender to be passed over should be included in the scoring calculations.

5.10 Preferred tenderer

Identification

The best tender (overall best value for money) may not always be the highest scoring tender. Check for close or “equal” highest scoring tenders to identify the preferred tenderer (refer to *Tender Planning for Consultancy Services engagements* Section 1.5 - **Tender evaluation plan: Close or highest scoring tenders** if not covered in the TEP).

Negotiation

Negotiation to resolve qualifications and departures should be undertaken only with the preferred tenderer.

Any changes to the lump sum fee or rates resulting from the withdrawal or modification of a tenderer’s qualifications or departures must be fully justified and explained in the recommendation for award (NSW Government *Tendering Guidelines*, Section 4.8 - **Clarification of a tenderer’s information**).

Where the preferred tenderer has omitted a rate or an amount, this is to be clarified. For reasons of probity, a tenderer cannot make good an omitted rate or amount unless it is the only tenderer.

If a non-compliance in the preferred tender is a simple failure to include required information, such as confirmation that addenda have been taken into account in the tender, then that information should be sought to complete the tendering process.

If substantial errors are found in compilation of the fee, this would generally result in a tenderer offering to withdraw its tender. In the case of a low lump sum fee, it is unlikely that the tenderer would be able to demonstrate that the services could be performed without unacceptable risk to the Principal.

Where the preferred tenderer has made an error in the extended amount or total in a Schedule of Rates, this should be clarified with the tenderer. It is the tendered rates and lump sums that will be accepted and used as the basis for payment. The tenderer cannot amend them.

Change in scope

If the scope of the services is to be changed after opening of tenders, ensure there are sufficient funds available to cover the adjusted amount (i.e. the fee to be accepted), reimbursable expenses, and a contingency allowance for variations.

After approval to the change in scope, but before award of a contract, negotiate reasonable prices for the change with the preferred tenderer.

Checking relativity of tenders

On completion of negotiations, check that the tenderer still qualifies as the preferred tenderer by revisiting the scoring calculations. If another tenderer becomes the preferred, repeat the process of negotiating the removal of qualifications and departures and changes in scope, and revising the scoring calculations to check the preferred tenderer.

Recent performance

As well as any checks through referees, the preferred tenderer's recent performance must also be checked through the Commerce Supplier Systems Officer by:

Facsimile: 9372 8999 or:

Email: Systems_Coordinator@commerce.nsw.gov.au;

who can provide information from the Commerce-managed Performance Management Systems.

If advised by Commerce that the preferred tenderer appears on the Review List, then contact the [NSW Procurement Client Support Centre](#) before preparing a recommendation for award.

Should the preferred tenderer's recent performance not be satisfactory, pass over that tender and repeat the negotiation and checking process for the tenderer that next becomes the preferred.

Significantly low tendered fee

Exercise caution before making a recommendation for award of a significantly lower priced tender (one that is more than 30% below the estimate or abnormally low when compared with other tenders). A recommendation for award of a significantly lower priced tender must be justified.

A significantly low tendered fee may mean the estimated fee is inaccurate or could signal risks in accepting the tender because the tenderer has not fully understood the requirements of the tender document or has made an error.

Compare a low tendered fee with the estimated fee or a re-estimate and consider whether the tenderer has recognised and allowed for the full extent of the services described in the tender document. The tender must show that sufficient resources (personnel numbers, skill level and hours) have been allowed to complete the services.

If the assessed fee for the preferred tenderer is still considered low compared with the revised estimated fee, request written confirmation that the agreed final amount for the fee provides for all services, deliverables and other contractual obligations.

Final check

Check that all negotiation with the preferred tenderer has been confirmed in writing for reference in the Letter of Award.

Get clarification in writing for all aspects where there is any doubt.

5.11 Recommendation for award

The recommendation for award should be based on the:

- Tender acceptance recommendation (single tender) [worked example](#); or
- Tender acceptance recommendation (multiple tenders) [worked example](#).

The tender evaluation report, which is part of the recommendation, must contain at least the following:

- a summary of all tenders received, in ascending order of tendered fee;
- an evaluation of each tender, indicating if it conforms with the tender document, and where there were differences if any;
- information on tenders withdrawn or passed over; and
- full details and justification of the recommendation. This normally includes a table for each tender showing scores for evaluation criteria with the basis for each score. The scoring calculations for each tender should be tabled. The justification should include the shortcomings of tenders with a lower price that are not recommended.

The report on the recommended tenderer must confirm that:

- the tender complies with the requirements of the tender document; or
- qualifications or departures have been satisfactorily negotiated and any remaining are acceptable; and
- the proposed fee is reasonable and conforms with market prices; and
- the reviewer is satisfied that the tenderer has the ability to successfully perform the services; and
- the tenderer's recent performance in the work category has been satisfactory.