

There are many aspects to consider as a bidder when participating in procurement procedures for public works, supplies and services, as well as concessions and utilities contracts procurements. Mistakes can be time consuming and costly.

We provide some pointers below for how best to respond to RFPs/ITTs to maximise your chances of success and minimise the risks.

Initial Steps

- Pay attention to every aspect of the evaluation criteria, specifications and guidance – this is imperative, as the information provided in the RFP/ITT will usually help you understand what support and assistance you may require in order to formulate your tender submission. Subsequently, the information provided in the RFP/ITT will be necessary in situations where a legal challenge needs to be made or enforcement action is taken.
- Identify and consider all the information in the RFP/ITT about the response requirements, evaluation methodology and award procedure. The submission responses must be fully compliant and care must be taken when considering the relevant allocation of weightings to award criteria, including the breakdown of the percentage weightings – pay particular attention to high scoring questions.
- Check whether communications relating to the RFP/ITT are conducted electronically or by hard copy. If the tender process is managed via an electronic portal, ensure that you note down the username and password of the portal (and consider sharing it with your team members). Most portals will notify you of crucial information and deadlines, so ensure that you regularly monitor the electronic portal.

Compliance and Strategy

- The initial qualification criteria is crucial – you will be required to respond to the mandatory information questions in order to satisfy and meet the selection criteria. If you are successful at this stage of the procurement process, your bid will be evaluated in the subsequent award stage.

- If the bid is based on Most Economically Advantageous Tender and Price per Quality Point, consider the way in which these work under the evaluation criteria (i.e., the balance between quality and cost).
- Plan carefully and delegate tender submission preparatory work to relevant members of your team and, wider, the business – do not underestimate the resources required to prepare a tender submission.

Responding to the Tender

- Every part of the question and every aspect of the evaluation criteria must be dealt with in the response. Ignoring certain elements of a question could lead to your entire tender being disqualified. Take special care where questions are identified as particularly important where a low score may lead to disqualification.
- Ensure that your response is answering the question asked and discuss with your wider team if there is any possibility that such question might be construed in different ways. Be cautious in relation to equivocal questions – for example, a mandatory table with vague instructions for its completion. You should either ask clarification questions or make it clear in your submission **how and on what basis** you have filled in the table, so that evaluators cannot misconstrue your response.
- Avoid attempting to answer a question by reference to another question, as any cross-referencing may be disregarded. Individual evaluators may not deal with all the questions, so do not assume that knowledge or understanding will be carried over from one response to another.
- Ensure that all the responses to questions are consistent with each other rather than being “piecemeal”; this will ensure that evaluators will be able to fully understand and appreciate the tender submission in its entirety.
- Determine whether there is a formal clarification/Q&A process – raising clarification questions during the process will help you understand and meet the requirements. It is important to note that any questions raised by bidders and the responses supplied may be shared anonymously with all other bidders.

- If a problem arises during the tender exercise, it should be dealt with immediately. You should consider seeking legal advice to assess the evaluation criteria, specifications and guidance. If your concern is, for example, a change of criteria or an unclear instruction in the RFP/ITT, you should consider challenging the ambiguity, inconsistency and/or lack of transparency as to the process, evaluation criteria and/or weightings immediately, rather than waiting to find out if you have been successful or not before addressing it. **Legal proceedings may need to be instigated during the tender process. In the event that you decide to make a challenge, the time limit for making such a challenge (30 days) starts to run from whenever you were aware or ought to have been aware of the issues, rather than the award date.**

General Points

- Adhere to the RFP/ITT timetable (if applicable) and ensure that all deadlines are noted and met, as late tender submissions will not be accepted.
- Be careful to adhere to word/character limits, page limits, required fonts, font size, margin requirements, sizing of tables, graphs, charts and other such issues, including any language requirements for foreign RFPs/ITTs, naming conventions of documents and any electronic formats, e.g., PDF format. Not adhering to such requirements may lead to your responses not being evaluated and, in the worst case, your entire bid may be disqualified.
- If acronyms and abbreviations are used, they should be fully explained to ensure that your responses will not be penalised for being misunderstood.
- Delegate individuals in the team to work on each draft response in accordance with the evaluation criteria.
- If you are the incumbent, do not be complacent! This is unlikely to count. Do not assume.
- Consider using tender writers!

Post-award

In the event that you are unsuccessful, you should ensure that you are provided with a debriefing to help you understand the reasons why you were unsuccessful, and to assess whether there are any grounds for a legal challenge to be made.

If you participate in public procurements as a bidder, you may be subject to the regulatory procurement regime. You will be required to comply with the regime where a contracting authority seeks offers in respect of a public works, services or supply contract with a value in excess of the applicable financial threshold. In the event that the public procurement process may not have been followed correctly, there may be scope for challenging an award.

You are strongly encouraged to seek legal advice as early as possible if you feel you might have grounds for complaint. **Time is of the essence in procurement claims because there will generally only be 30 days from the date you knew or ought to have known** that there might be grounds to bring a claim. In most instances, **a standstill period provides for a pause for 10 days between the point when the contract award decision is notified to bidders and the final contract conclusion**, during which time bidders can challenge the decision. The award process is subject to an automatic suspension once the contracting authority is aware that proceedings have been issued.

Contact

For further information, please contact:



Martin Rees

Partner
T +44 207 655 1137
E martin.rees@squirepb.com



Will Sparks

Partner
T +322 627 76 10
E william.sparks@squirepb.com



Sam Hare

Senior Associate
T +44 207 655 1154
E sam.hare@squirepb.com