



Tender feedback in Catering & Cleaning

This briefing provides the information that those tendering for public sector contracts should request in the event that a particular bid is unsuccessful. It provides the framework and appropriate wording to assist in obtaining feedback to inform and improve future bids.

Key issues

- The changing structure of local education is requiring in-house providers of FM services to tender for an increasing proportion of their work.
- Feedback is not always requested where bids have been unsuccessful, losing a valuable opportunity to gain the knowledge to improve future tenders
- EU procurement law and Government guidance are very clear that feedback for public contracts is a right in most cases. APSE urge that feedback should be requested as a matter of course.

Overview

Catering and Building Cleaning services are probably two of the services most frequently subject to competitive tender. Devolved funding of schools, academies and free schools and an active private sector market mean that in-house providers are increasingly required to tender to retain existing business and many frequently tender for additional work in a range of service areas.

If the local authority is awarding the work to its own in-house team, then there is no requirement to run a tender exercise and EU procurement rules do not apply. It is only when a contracting authority seeks competitive bids that the tender must be conducted within the procurement rules covered by this briefing.

No organisation wins everything it quotes for and for new clients a typical success rate of 1 in 3 is considered good by many private businesses. But for those tenders that are not won, they present an opportunity to gather feedback and improve bids for the next time. Too often the obvious disappointment of losing is a disincentive to re-engage with the client and gather valuable information on those aspects where others were judged stronger.

This briefing paper is intended to provide the basic information that you are entitled to request and the legal structure that lies behind that ability. It does not attempt to be a

resume of European procurement law in this area. Please refer to APSE publication '*Towards sustainable procurement for local authorities*' for those working in a client role.

Is the contract covered by European procurement law?

A public contracting authority is very wide ranging term and includes "quangos" and other publicly financed institutions as well as local and central government bodies, schools and colleges. The regulations apply to contracts for the supply of goods works and services, where contract values are above specified thresholds. From 1 January 2012 these range from around £174,000 for essentially local government supplies and services contracts (£113,000 for central government) to around £4,384,000 for works contracts. Similar regulations apply to utilities companies.

For the purposes of European Public Procurement regulations, building cleaning is classed as a part A service and catering part B. Part A Services are subject to the full requirements and must be advertised in the Official Journal of the European Union (OJEU). **For contracts above the services threshold, the provision of feedback is mandatory where requested.**

Although Part B services and contracts below the thresholds are not caught by the Regulations, there is case law to say that where the contract is of 'certain interest' to suppliers located in other EU Members States, contracting authorities must still procure them in line with the general principles of non-discrimination, equal treatment, transparency, proportionality and mutual recognition. In practice, the contract has to be "adequately" advertised and some form of fair competition run thereafter

For those tenders below the threshold, feedback should still be requested and although not specified by law, the previous OGC and now current Government Cabinet Office guidance is very explicit on the expectation that public bodies will provide feedback when requested.

Whatever the outcome of the bidding process, you should ask for feedback on your bid and how you presented it.

Under the EU procurement directives, a public-sector organisation has to provide feedback to you, within 15 days, if you have asked for this information. You can get feedback quicker if you ask for it in the first two days of the 10-day standstill period.

Standstill period

The Public Contracts Regulations 2006 require public contracting authorities to apply a compulsory waiting period between their decision to award a contract to which the Regulations apply and the date on which the contract is signed. This is commonly called the Standstill Period and lasts between 10 and 15 days dependent on how the decision is communicated.

This requirement follows a judgement of the European Court of Justice in the Alcatel case when the ECJ decided that contracting authorities should allow a period of time to elapse between decision and signing in order to give unsuccessful bidders a chance to seek remedies and challenge the award if they were dissatisfied with the procurement process.

To achieve this, a contracting authority must inform bidders including those who submitted Pre Qualifying Questionnaires (PQQ's), of its decision to award the contract, commonly called Alcatel Letters.

The decision notice should include the criteria for the contract award and the reasons for the decision including the characteristics and relative advantages of the winning tender, the scores of the winning bid and of the party receiving the notice. The notice also must name the winning bidder and provide details of the standstill period. On receipt of the notice, unsuccessful bidders may request an "accelerated debrief". The request must be made in writing before midnight on the second working day of the standstill period.

Evaluation

Typically the tender is assessed on a range of criteria broadly split between quality and price:

Examples of costs that may contribute to the whole life costs of tenders

Initial price	Taxes
Delivery and installation	Maintenance
Costs of operation	Energy consumption
In-house management resources	Depreciation
Consumables	Disposal
Spare parts	Environmental Impact
Licences	

Examples of criteria, which are often used to assess the quality of a tender

Quality of goods / service / works	Technical competence
Previous experience of tenderer	Equality in service provision
Aesthetic and functional characteristics	Commercial aspects
After sales service	Financial stability
Delivery date / delivery period / period of completion	Insurance provisions
Capacity of tenderer	Health and safety procedures
Value-added services	Quality assurance e.g. ISO9000
	Environmental aspects e.g. ISO14001

Points are awarded using a matrix, and pricing often assessed using the CIPFA Pricing score method based on the maximum points x (100% - % above lowest price). This

process can sometimes have the effect of extenuating what might at first glance appear small differences

Example tender based on price/quality split of 60%/40% - lowest price £500
Points awarded for price would be

Price	% above lowest price (price – lowest price) / lowest price x 100	100% - % above lowest price	Points calculation Maximum points x (100% - % above lowest price)	Points
£500	$0/500 \times 100 = 0\%$	$100\% - 0\% = 100\%$	$60 \times 100\%$	60
£600	$(600-500)/500 \times 100 = 20\%$	$100\% - 20\% = 80\%$	$60 \times 80\%$	48
£700	$(700-500)/500 \times 100 = 40\%$	$100\% - 40\% = 60\%$	$60 \times 60\%$	36
£800	$(800-500)/500 \times 100 = 60\%$	$100\% - 60\% = 40\%$	$60 \times 40\%$	24

Supplier Form for requesting tender feedback

Printed below is a below is a form containing the questions that can legitimately be requested of the contracting organisation. If feedback is not offered then a formal request for a debrief should be made

The contracting organisation will usually only discuss the details of a particular tender. They may decline to answer questions in the following circumstances:

- Information about other bidders is deemed to be commercially confidential
- The tender process has not been concluded (it may not be possible to answer some of the questions if you are requesting feedback at the selection stage, as a preferred supplier may not yet have been identified).

The opportunity to request feedback should not be used to negotiate or change the decision, or to re-open the process, but should be seen as a useful opportunity to discuss the strengths and weaknesses of the tender, as well as offer buyers feedback on the tender process.

FEEDBACK REQUEST

Contract Tendered for.....

1. General information

a) Who won the contract?

b) How many bids did you receive for this contract?

c) Where did my bid rank?

d) What was the score of the winning tender?

e) What was my score?

2. Detailed feedback on your bid

a) Please give a breakdown of my score against the evaluation criteria:

b) Were there any criteria where I did not meet the minimum standard required?

c) If so, why did I fail in these areas?

d) Did I satisfy you that I was able to meet the requirements and had the ability to deliver the contract?

e) Were there any particular strengths in my bid?

f) Were there any particular weaknesses?

g) In what areas do you suggest I can improve in future?

3. The process

a) Which roles were represented on the evaluation panel? (e.g. finance / budget holder, procurement officer, service user)

b) What was the process for scoring and evaluating the tenders, including agreeing a preferred supplier?

c) What was the approval process for the panel's decision?

END OF FORM

Local Authority Schools

Local authority schools are legally part of the same organisation as the Council and in most cases therefore, the in-house provider is legally indistinct. Where the tender exercise is run by an external organisation for instance on behalf of a cluster of schools they cannot bind the in-house tenderer. It is therefore legitimate to make further offers to the local authority schools within a Borough at any point, even if that is directly following an award to another contractor.

APSE Comment

Tendering skills are an essential part of the skill set of all in-house catering and building cleaning providers, especially where schools services are devolved in England and Wales. APSE itself was set up as a response to Compulsory Competitive Tendering and to provide councils and in-house providers with the necessary practical skills to survive and thrive. Feedback acts a necessary part of the improvement process and to drive innovation

For further support, guidance and training on tendering, please contact APSE.

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