



Tender evaluation & contracting, theory vs practice – practitioner's perspective



Tender evaluation

Case 1: Composition of the evaluation committee

PRAG section 2.9.1

“Evaluators must have the technical and administrative ability to give an informed opinion on the tenders.”

In practice, level of technical knowledge significantly varies between voting members. Frequently, majority of voting members have a tendency to assume positions of the most dominant member. In such situations, role of the chairperson is to motivate engagement of “silent” members while assuring balanced rather than biased assessment of tenders.

“Their identity is confidential.”

In practice, it is hard to keep reasons of absence during the participation on evaluation sessions from other coworkers. Longer the evaluation, higher the risk of breach of confidentiality. Hence, the role of the chairperson is to constantly remind voting members about the importance of confidentiality of proceedings as well as their identity.

Tender evaluation

PRAG section 2.9.1

“Evaluation committee members must attend all meetings.”

In practice, assuring presence of all members is a demanding task. More competent voting members are, harder to “shield” them from other responsibilities. As a consequence, timeline becomes tailored to availability of voting members rather than optimised in terms of workload and specific importance of the procedure.

PRAG section 2.9.2

“Should the conflict of interests be proven, the member or observer will be excluded from participating further in any capacity in the evaluation meetings.”

Typical mistake is missing the opportunity to clarify, point by point, consequences and importance of the Declaration of confidentiality & impartiality. Second mistake is insisting on voting member’s signature prior to tender opening, rather than immediately after conclusion of the opening.

Tender evaluation

PRAG section 2.9.2

“Any attempt by a tenderer, candidate or applicant to influence the process in any way (whether by making contact with members of the evaluation committee or otherwise) will result in the immediate exclusion of its tender or proposal from further consideration and might lead to the exclusion from future award procedures according to Section 2.6.10.1.1.”

In most cases, approach is indirect, either through management (e.g. sharing positive previous experience with particular vendor) or through friends or family members. “Influencing the process” is a rather ambiguous term so contracting authority should signal to tenderers that any contact from their side, except responses to the clarification requests, will result in immediate exclusion.

Tender evaluation

PRAG section 2.9.2

“For supplies and works tenders, apart from the tender opening session, which is public, the proceedings of the evaluation committee are conducted in camera and are confidential. For service tenders and calls for proposals, the proceedings of the evaluation committee, from the opening of tenders/proposals to the conclusion of the work of the evaluation committee, are conducted in camera and are confidential. “

Again, risk of breach of confidentiality increases in case of long-dragging procedures. Also, higher the number of participants (evaluation committee members & observers), higher the risk of the breach.

Case 2: Tender opening and formal compliance

PRAG section 2.9.3

If a tender or proposal infringes the formal requirements, the evaluation committee may use its discretion to decide whether or not it will still be considered during the rest of the evaluation process, while ensuring equal treatment of tenderers and applicants and upholding the principle of proportionality.

Voting members are frequently, at the start of the procedure, rather rigid and willing to use discretionary powers to reject tenders, even in case of formal requirements. After learning that rigid approach leads likely to unsuccessful procedure, they want to make a “u” turn. In order to assure equal treatment, chairperson should advise voting members to note down all alleged deficiencies, with a final decision being made only upon thorough examination of all tenders.

Tender evaluation

Case 3: Tender evaluation, administrative & technical compliance

Significant number of rejections based on administrative grounds, especially if associated with the same requirement, is also a signal that requirements are potentially ambiguous or that approach taken by the evaluation committee might be too rigid.

Rejections should be well substantiated and self-explanatory. If not having mentioned the quality, there is a good chance that decision will be challenged by a tenderer believing to be harmed by the decision.

Award recommendation should be unanimous. Chairperson is expected to mediate in case of opposing opinions. In absence of joint award recommendation, contracting authority may accept the majority opinion, whilst recording argumentation of opposite sides.

Tender evaluation

Case 4: Tender clarification

PRAG, section 5.3.9.4

“With the agreement of the majority of the evaluation committee voting members, the chairperson may write to tenderers whose submissions require clarification, asking them to reply within a reasonable deadline set by the evaluation committee.”

Clarification is probably the most sensitive aspect of the tender evaluation procedure – poorly articulate, ambiguous questions may produce additional problems rather than to yield a clear answer.

Principles of equal treatment and proportionality are mostly breached at that stage, e.g. by failing to observe analogue situations in case of different tenders, by trying to remedy errors which should have resulted in rejection or deciding not to clarify issues which should have been clarified.

Approach taken by the evaluation committee is especially critical in case of errors/omissions observed in the financial offers/BoQ under lowest tender award criteria - list of issues which may be clarified is exhaustive (only issues which are explicitly mentioned in PRAG/Instructions to tenderers may be clarified).

One of such issues is suspected predatory pricing, i.e. abnormally low tenders – there are no exact, quantifiable models. Similar to suspected cases of conflict of interest/distortion of competition, there should be no automatic rejection – tenderer must be provided with a chance to present his/her argumentation prior to making a decision.

EU PROJECT PREPARATION FACILITY PROJECT

All documents, information, materials and pictures from this EU PPF training are available for download in the download section of our site www.ppf.rs

Questions and assistance

Borislav Bogunović

Trainer, EU PPF | PPF6/EuropeAid/135637/IH/SER/RSr

+381 11 4040721

info@ppf.rs

www.ppf.rs

Thank you for your attention!