# **Evaluation, negotiation and selection – Goods and services procurement guide**

## What is evaluation, negotiation and selection?

Evaluation, negotiation and selection (ENS) are important complementary processes that underpin selection of the most appropriate submission in response to a procurement requirement. The structure of the ENS process should reflect the complexity and scope of the procurement requirement.

Within the sourcing phase of an individual procurement activity, ENS applies to:

* Conduct market analysis
* Develop plan for market approach
* Evaluate, negotiate and select supplier.

## Creating an evaluation plan

Under the Market approach policy, your organisation must ‘develop an evaluation plan which reflects the level of complexity of the procurement activity’.

An evaluation plan should:

* detail the evaluation criteria and any relevant weightings;
* detail any government policy and international standards which are relevant to the evaluation criteria. If international standards do not exist, Australian standards can be used;
* document the process for assessing submissions from suppliers through providing a clear process for evaluation, decision making and selection;
* be finalised prior to closing the market engagement process;
* be scaled to reflect the complexity of the procurement;
* guide the development of the evaluation report; and
* provide methodology for recording decisions made during the evaluation process.

An evaluation plan may include:

* the objectives of the procurement;
* a description of the requirements and deliverables, and if relevant, flexibility to respond to market innovation;
* evaluation criteria, methodology, weightings and scoring;
* process for evaluating alternative offers (if applicable);
* details of the types of negotiation processes that may be undertaken;
* the governance arrangements for decision making;
* the roles, responsibilities and structure of people involved in the evaluation process (for more complex procurement this may include the evaluation panel structure, any specialist subcommittee structures, any individual specialist inputs i.e. probity and legal, and the capability/expertise of identified persons, etc.);
* communication management, including processes and timelines for communicating with suppliers about the status of their submission;
* management of submissions (security and confidentiality considerations);
* conflict of interest management;
* managing variations to scope in alignment with probity requirements;
* record management; and
* reporting requirements.

## Conducting an evaluation

An evaluation of procurement should:

* follow the methodology defined in the evaluation plan;
* assess submissions against mandatory criteria and advise accordingly any non-compliant suppliers;
* assess submissions against the predefined evaluation criteria, weightings and scoring;
* identify the submission(s) that best meets the procurement requirements;
* achieve optimal value for money for the Victorian Government;
* ensures probity and fairness to all suppliers; and
* mitigate risk for the Victorian Government.

### Shortlisting submissions

Shortlisting is a process of eliminating submissions that are non conforming, non compliant or non competitive in comparison to other submissions that demonstrate higher levels of potential value for money. When shortlisting suppliers, you must apply your evaluation criteria fairly and equitably.

Prepare a shortlisting evaluation report prior to proceeding to the next stage of the evaluation process. Depending on the methodology documented in the evaluation plan, this may need review and approval.

It is a requirement under the Market approach policy, that the evaluation process only consider bids that meet the mandatory requirements of the procurement process.

### Detailed evaluation of submissions and clarifications

You evaluate submissions by applying the evaluation criteria as detailed to the market in the invitation documents. You should maintain a proper audit trail of your evaluation decisions.

You should seek clarification of any matter where it may add to your understanding of a supplier submission. However, this action should not be the catalyst for a supplier to alter their submission. A record should be kept of any such clarifications sought.

### Alternative submissions

Where you invite suppliers to submit alternative submissions, evaluation of these should be undertaken with conforming submissions and in accordance with the methodology set out in the evaluation plan. Alternative submissions are treated and evaluated in the same way as conforming submissions. Alternative submissions should be eliminated, if they fail to meet mandatory requirements.

### Evaluation report

After completing the shortlisting stage, complete an interim evaluation report to identify the preferred supplier(s) and any ranking of supplier(s). Prepare a final evaluation report at the conclusion of the selection process. 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.);
	+ financial viability;
	+ pricing evaluation outcomes;
	+ legal issues;
	+ commercial evaluation outcomes;
	+ contractual evaluation outcomes;
	+ risk;
	+ value for money outcomes;
	+ interim probity report (if relevant/necessary); and
	+ comparative analysis of submissions as evaluated against the evaluation criteria.

## Negotiation

Negotiation is a process between buyer and supplier(s) that seeks to improve value for money outcomes through discussion. Either party can propose an action, an offer or detail a concession in attempting to arrive at an agreement. The action or offer must not compromise the integrity of the procurement process. The negotiation process can start after shortlisting preferred supplier(s) provided the organisation has indicated its intention to conduct negotiations in its approach to market documentation, or it appears from the evaluation that no tender is obviously the most advantageous against the relevant evaluation criteria.

Negotiations can be time consuming and should be managed by persons with the required technical skills and with the ability to commit the organisation to any agreed outcomes. Whether to conduct negotiations depends on if the potential improvement in value for money outcomes exceeds the cost of the negotiation process.

The primary objectives of conducting negotiations are to:

* + explore wider opportunities to improve the overall value for money outcome of the procurement; and
	+ clarify issues and identify further opportunities including social procurement opportunities.

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. Beneficial outcomes could include a shorter delivery period, a better targeted product or service, improved stakeholder/client satisfaction, less disputes, reduced costs, delivering of innovation benefits and better allocation of risk.

Conducting negotiations is particularly relevant for procurement activities with one or more of the following characteristics:

* + strategic, high risk or close to core business;
	+ high element of innovation or novelty;
	+ to better define procurement requirements;
	+ there is a proposal to allocate risks and ownership at variance from a standard operating position; and/or
	+ the procurement requires access to designated intellectual property in the supply market.

### The negotiation process

Where negotiations will be undertaken, a negotiation strategy should be developed and aligned with the strategy outlined in the evaluation plan. The negotiation process is based on a structured plan that:

* + aligns the capability and authority of the negotiation personnel with the complexity of the procurement;
	+ establishes a process for engaging stakeholders to obtain input and advice as negotiations progress;
	+ has considered a position on the scope and scale of offers and concessions that the organisation will consider;
	+ details how issues and propositions are to be assessed and analysed;
	+ ensures that the process is conducted in a consistent manner; and
	+ establishes a framework for conducting the meetings.

It is important to understand the range of matters that you are willing to consider when carrying out negotiations, including:

* + technical matters;
	+ access to management and ownership of intellectual property;
	+ risk allocation and responsibilities;
	+ insurances, indemnities, warranties and guarantees;
	+ financial matters;
	+ pricing;
	+ contractual matters;
	+ performance objectives;
	+ benefit sharing and incentives;
	+ reporting format and structure;
	+ delivery and implementation commitments; and
	+ matters of confidentiality and security.

### Types of negotiations

There are different types of negotiation processes that can assist in achieving clarification and commitment from suppliers to provide value for money outcomes. Two such processes include:

* Targeted improvement process (TIP); and
* Best and final offer (BAFO).

These negotiation processes are not mutually exclusive. They may overlap and have common elements across each.

A targeted improvement process (TIP) is a tailored process that involves inviting all shortlisted suppliers to provide a response on identified areas that do not meet expectations or need improvement such as specific areas of risk allocation, technical specification, price and significant contract departures.

A best and final offer (BAFO is a process that seeks to obtain the best result from shortlisted suppliers in relation to the procurement requirements. You can conduct a BAFO process at any stage of the evaluation or negotiation phase. The process involves inviting all shortlisted bidders to submit their final offer, which will not be subject to subsequent negotiations.

The negotiation process decided upon will vary according to the type and complexity of the procurement. Where necessary, legal and probity advice should be sought.

Whatever negotiation strategy is undertaken it must be consistent with the tender process and evaluation plan. The methodology and decisions made must be documented and be defendable, if challenged. The process must ensure fairness, consistency and impartiality to meet high standards of probity.

A best alternative to a negotiated agreement (BATNA) is having a course of action that you can take if the current negotiations fail or an agreement cannot be reached. With all negotiation strategies, a baseline should be determined. The BATNA deals with what happens if negotiations do not meet the predetermined baseline.

### Concluding negotiations

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

### Documenting the negotiation process

Documenting each stage of the negotiation process ensures:

* + accuracy of details, i.e. who, what, why and when;
	+ accuracy of matters discussed, agreed to, or subject to further review;
	+ actions to be taken and by which party; and
	+ offers/concessions made/accepted/modified/rejected.

### Maintaining the integrity of the market approach

When considering offers and concessions for agreement, it is important to maintain the intent and integrity of the original offer made to the market. Variance from this position could invalidate the market approach.

## Selection

Selection is the end stage of the sourcing process. It establishes the basis for proceeding to engage with the supplier(s) best able to satisfy the procurement requirements.

The selection stage will also involve internal approval steps regarding process compliance and financial commitment prior to establishing a formal agreement between parties and starting the contract management phase of the procurement process.

Entering a contract establishes legal obligations on each party. In doing so, the organisation wants to achieve a value for money outcome while committing public funds that demonstrate high standards of probity, due process and transparency in arriving at a decision to proceed.

In closing out this stage of the procurement process, consider the following:

* handover arrangements to the contract manager/contract management team;
* clarify any contractual related matters;
* ensure supplier(s) understand and commit to the agreed contractual terms and conditions;
* schedule any transition in/transition out requirements;
* method and timing of notification to successful and unsuccessful suppliers;
* arrangements for managing and conducting debriefings with suppliers;
* ensure that records of the sourcing process are kept in accordance with the management of public record; and
* detail contract information on the contract publishing system ([www.tenders.vic.gov.au](http://www.tenders.vic.gov.au)) where the contract is equal to or greater than $100 000 (including GST).

The opportunity to debrief suppliers on their offers should be incorporated into every procurement process. It can help to improve supplier’s competitiveness and in the long term, increase the potential for improved value for money opportunities for government. For further information about conducting a debrief, refer to the guide to Supplier feedback.

## Using this guide

This guide accompanies the [goods and services supply policies](https://buyingfor.vic.gov.au/goods-services-supply-policies). There are 5 supplies policies:

* Governance policy
* Complexity and capability assessment policy
* Market analysis and review policy
* Market approach policy
* Contract management and disclosure policy

This guide supports the [Market approach policy](https://buyingfor.vic.gov.au/market-approach-policy).

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