



CONSTRUCTIVE TENDERING IS A LEARNING EXERCISE

“Don’t let your learning lead to knowledge. Let your learning lead to action.” Jim Rohn

It can be daunting to submit your first tender and you may not even succeed. The reality is that unless it is a panel arrangement, most tenders only have one winner. There are no easy-wins.

The good news is that there are many successful tenderers. For example, over the May 2015 to May 2016 period, approximately 432 contracts were awarded across all NSW government agencies under the “Building and Facility Construction and Maintenance Services” category, with contract values ranging from as little as \$10,000 to as much as \$200 plus million.

Government tendering requires a commitment to time and resources and a constructive learning approach. It requires us to understand, learn and apply the rules that apply to tendering.

1. NSW procurement policy framework: understanding the playground rules

In NSW, the NSW Procurement Policy Framework is the guiding framework that sets the rules for all government procurement. It is a good starting point. It deals with all areas of procurement, such as who can procure what and when, how tenders will be advertised, fairness and probity and provides consistency in terms of process and form to be used.

It sets the procurement playground rules to make sure that all NSW procurement follows a fair and equitable process with best value for money outcomes. The policy framework is logically set up and (even for a policy document) easy to follow. It is a must read.

2. NSW government procurement system for construction: understanding the classroom rules

Moving from the playground to the classroom, the procurement system for construction (“the system”) sets the rules for the construction procurement and tenders – applying both the government agencies and providers. It is focused on delivering effective and efficient government construction related services, holding both agencies and providers accountable. It provides for a “whole of life” procurement whereby government agencies can be accredited and providers can be pre-qualified under the system.

The system allows for selective tendering, where only specific providers are allowed to tender. Most tenders under \$1m will not be available for open tender and would be only open to prequalified businesses on the General Construction Scheme. It takes time to get prequalified but it is worthwhile to go through the process to access the selective tenders.

The system is a great initiative, as it will remove the requirement to replicate the same information tender-after-tender. It saves time and cost relating to tendering and aims to avoid duplication of effort.

3. Tendering rules: understanding the rules applying to the lesson

When a tender is issued, the tendering rules are included as part of the tender. These can be classed as the “lesson” rules. These rules have to be followed or you may have to leave the lesson and not return.

You really have to spend time to work through the tendering rules. There is no way around it - buckle down and work through it.

It is also worth looking at the Market Approaches Guide, it sets the rules that agencies follow when tendering.

It is handy to know what can score a “no” in a lesson:

- a. Absolute no-no’s: Do not talk to anyone about the tender in government except for the tender contact officer and only to ask for clarification;
- b. Another no-no: No late submissions are allowed, not even a few seconds. With electronic tendering the offer disappears the second the tender closes – so there is no real way to accept late tenders.
- c. “No” means “no” - Many tenders have mandatory pre-qualification requirements such as licensing/ registration requirements or mandatory site briefings. Where a requirement is a mandatory requirement, this will be clearly stated. When you cannot comply with any of the mandatory requirements, “no” means leave the lesson and do not return. No need to hand in your homework either as it will not be considered.
- d. Sometimes “no” can mean “maybe” - Tenders can include requirements relating to disclosure and compliance such as subcontractors, declaration of criminal convictions and insurance requirements. In the event where you do not comply, you really have to be able to provide a proper risk-based justification for non-compliance. But remember – preferred still means “we really like you to have this” and may impact on the success of a tender.

4. Tender evaluation criteria: best value for money - exam rules

“Best value for money” is all about the criteria that will apply to your “exam”. A tender is an opportunity for a provider to show how it will make the tender scope work how it will provide the best value for money and provide a better solution than the other tenderers.

Value for money is more than just having the lowest price. Value for money in simple terms is about making sure that:

- a. value for money procurement is done for the right reasons; and
- b. the right process (that includes both financial and non-financial criteria) is followed to make sure that the procurement results in value for money.

5. Contract management and performance - graduation

When you graduate to a winning tender, make sure that you can actually perform the requirements of the contract and will have the capability and capacity to perform well under the contract. Remember to tender for success and aim to perform better than promised.

It is best to allow time between graduating to the winning tender and commencing work under the tender. Depending on the complexity of the tender, there could be commercial negotiations required to finalise the tender award and signing of contracts before work can commence.

Government tenders start with a clean slate approach, however a surefire way to be remembered for the wrong reason, is where

a contract goes wrong because it was poorly executed or where the contract extended beyond its schedule and/or tendered price.

A great initiative as part of the NSW Government Procurement System for Construction is the focus on performance under contract and the opportunity for providers to receive “best practice accreditation”. A successfully executed contract will certainly assist in this process.

6. Contract close out – an opportunity for lessons learned

Lessons learned from tendering and contracting are very useful. It gives insight not only into what can be improved but also what went well. It saves having to re-invent the wheel and provides an opportunity to improve your future opportunities for tendering successes.

Learning is a dynamic process. Learning about tenders will be a constructive process when we can implement the lessons that will help to improve tenders.

In conclusion, some handy tips and tricks around tendering in general:

- a. Do your homework on awarded contracts; the published details include an estimated contract value and successful tenderer name; this information will provide an idea on the pricing and potential competitors;
- b. If there is anything unclear in the tender, raise a tender clarification request as soon as possible but remember the clarification will be shared with all the interested tenderers;

- c. Plan to submit your tender early, know what you have to do and get on with it.
- d. Tender responses should answer the questions asked and provide information to substantiate the evaluation criteria. It is important to keep the response focused and remember quality still beats quantity.
- e. Carefully select the best examples that will substantiate capability and experience as required under the tendered scope; the same rule applies to referees, they have to be able to back up your success story.
- f. Look at the validity period required for your offer and make sure that you have taken into consideration any factors that could impact on the offer.
- g. Remember that you are entitled to a post-tender debrief; it is the best opportunity for lessons learned.

Remember what Benjamin Franklin said: *“If a man empties his purse into his head, no one can take it away from him. An investment in knowledge always pays the best interest.”*

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**NSW Government Construction Tenders
A Constructive Approach**

