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Inviting offers

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Contact us

The Office of the Chief Advisor – Procurement is committed to continuous improvement. If you have any suggestions about how we can improve this guide, or if you have any questions, contact us at betterprocurement@hpw.qld.gov.au.

Disclaimer

This document is intended as a guide only. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

The Department of Housing and Public Works disclaims all liability that may arise from the use of this document. This guide should not be used as a substitute for obtaining appropriate probity and legal advice as may be required. In preparing this document, reasonable efforts have been made to use accurate and current information. It should be noted that information may have changed since the publication of this document. Where errors or inaccuracies are brought to the attention of the Department of Housing and Public Works, a reasonable effort will be made to correct them.

Purpose of this guide

The purpose of this guide is to provide information about inviting offers from suppliers. Many Queensland Government agencies already have a process in place to invite offers. This guide is to assist those agencies that need to develop effective, or improve existing, processes and documentation.

How is the guide to be used?

This guide should be read in conjunction with the Queensland Procurement Policy and your department's procurement procedures.

What does 'inviting offers' mean?

Inviting offers is the process where the agency informs suppliers of its procurement requirements by "inviting" suppliers to advise whether they are able to meet those requirements. Once the agency has received responses from suppliers that have been invited to offer, the successful offeror can then be determined.

There are many expressions used both within Government and the private sector which relate to the process of inviting offers. Some of these include the following:

- request for a quote
- 'Request for Information' (RFI) or 'Expression of Interest' – generally used to request information from suppliers in order to shortlist potential suppliers before seeking offers. Usually the information sought is high-level and specific
- 'Request for Offer' (RFO) or 'Invitation to Offer' – usually used to obtain bids for clearly defined and specific requirements
- 'Request for a Proposal' (RFP) – usually seeks a solution to a problem or process
- 'Request for Tender' - this is similar to an RFO. The construction industry often uses this term.

There are also different terms for the word 'offer'. These include 'tender', 'quote/quotation' and 'bid'. Whatever the term used, the process of "inviting offers" is an important step in the procurement of goods and services and must be performed in accordance with the principles of the Queensland Procurement Policy.

Hint – Staged procurement

In complex procurement activities where the procurer needs to learn more about the goods/services or the market, it may be helpful to use a multi-stage procurement process.

- **Stage 1:** A 'Request for Information' (or 'Expression of Interest') is issued to find out more about the goods/services, the market and the capability of industry to satisfy the procurement need.
- **Stage 2:** A 'Request for Offer' (or 'Invitation to Offer' or 'Request for Proposal' or 'Request for Tender') is issued requesting industry to submit an offer for goods and/or services or propose a solution.
- **Stage 3:** Best and final offer - the most promising of the offerors from Stage 2 are invited to submit their final offer.

This three stage process is time consuming and expensive for all parties and would only be used for goods and services categorised as "high relative expenditure and for which supply is difficult to secure."

Where a formal 'Invitation to Offer' process has been selected for the procurement, documentation usually consists of the following:

- **invitation to offer details -** provides basic information about the offer
- **conditions of offer -** the terms upon which the department/agency is inviting offers
- **specifications -** a statement of needs; it defines what the procurer wishes to buy and, consequently, what the supplier is required to provide
- **offer evaluation process and criteria -** details the process and criteria against which any offers received will be evaluated by the department/agency
- **conditions of contract -** the terms and conditions upon which the department/agency is prepared to contract
- **response forms** - a proforma of questions prepared by the department/agency on all aspects of requirements, both technical and commercial, which is completed by the offerors – this usually also includes a schedule of prices for offerors to include pricing information.

Complex procurement may contain more documentation as appropriate.

Where an agency is inviting offers from building contractors or consultants, reference needs to be made to the Capital Works Management Framework and the Maintenance Management Framework published by the Department of Housing and Public Works. For more information on either of these refer to the department's website at www.hpw.qld.gov.au.

Inviting offers is not restricted to complex or expensive procurements by agencies. It may also be appropriate for the simpler, day-to-day purchases.

Hint – Standard Conditions of Offer and Standard Conditions of Contract

Standard Conditions of Offer and Standard Conditions of Contract for the procurement of goods and/or services are available for agencies to use at www.qld.gov.au/procurement.

How to issue invitations to suppliers

Hint

Offers should not be sought without a firm intention to continue, subject to a satisfactory offer being received. It can be expensive for suppliers to develop offers and if it is perceived that there is a lack of commitment from the agency, competition will be reduced (suppliers may refrain from dealing with agencies at all) and value for money will be more difficult to obtain.

Inviting offers can be formal (e.g. in writing) or informal (e.g. by telephone). The manner in which an agency invites offers from suppliers will depend on the nature of the goods and services being procured. Two major factors influence the nature of government purchasing:

a) the **"difficulty of securing supply"** of goods and services which means:
   - the degree to which the goods or services being procured present risks or are critical to the agency; **as well as**
   - the extent to which a competitive supply market for the goods or services exists; and

b) the **relative expenditure** for the goods and services – which means their cost relative to the total procurement expenditure of an agency.

When the total expenditure of an agency on goods and services is analysed, an agency's purchasing can be segmented into four categories:

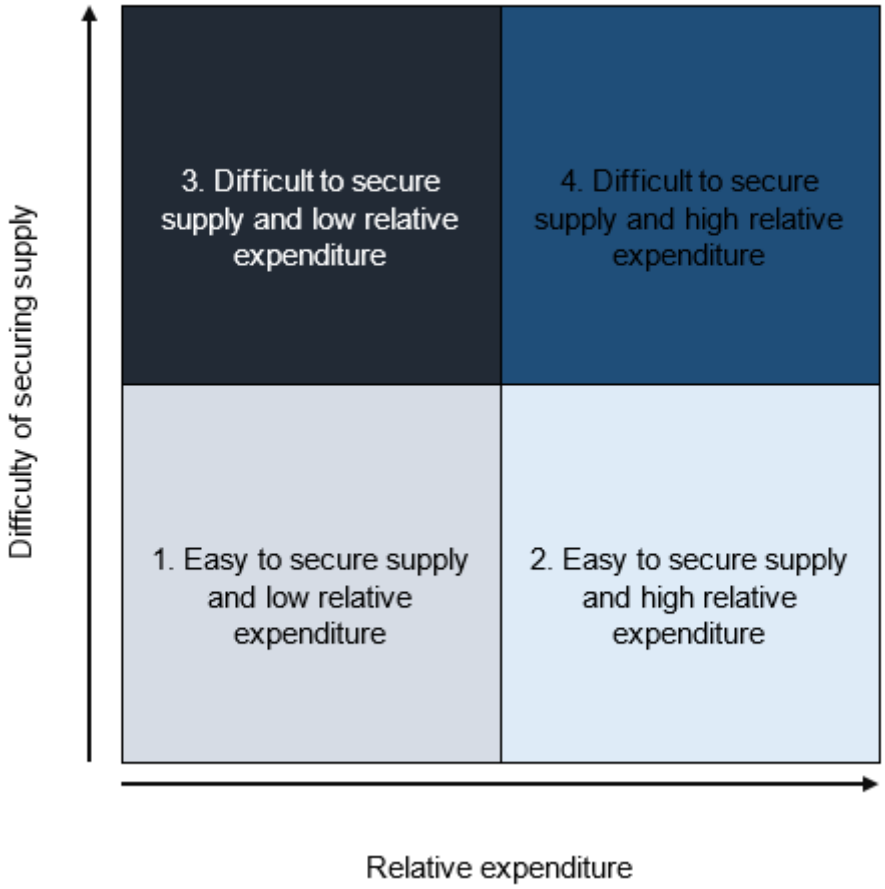
1. goods and services with a **low** degree of difficulty in securing supply and a **low** expenditure relative to total procurement spend. These items collectively make up a relatively small proportion of the total expenditure on procured items

2. goods and services with a **low** degree of difficulty in securing supply and a **high** expenditure relative to total procurement spend. These items collectively make up about a quarter of the total expenditure on procurement items

3. goods and services with a **high** degree of difficulty in securing supply and a **low** expenditure relative to total procurement spend. These items collectively make up a very small proportion of the total expenditure on procured items

4. goods and services with a **high** degree of difficulty in securing supply and a **high** expenditure relative to total procurement spend. These items can collectively make up over half of the total expenditure on procured items.

These categories are shown in the following diagram.



Goods and services that are low relative expenditure and for which supply is easy to secure may only require quotes to be obtained over the telephone from one or more suppliers (refer to your agency's procurement procedures). Goods and services that are high relative expenditure and/or for which supply is difficult to secure will more likely require a formal invitation such as a 'Request for Offer/Tender' or 'Invitation to Offer/Tender'. Inviting offers for goods and/or services in categories 2, 3 and 4 is discussed further later in this guide.

Important

When inviting offers most agencies have procedures in place for officers to follow. Contact your procurement area to find out if your agency has a formal process in place that you must follow.

Inviting offers where supply is easy to secure and expenditure is relatively low

Goods and services in this category are usually very low value and are procured routinely or ad hoc. Generally there are competitive supply markets even at the local level. In accordance with clause 2.4 of the Queensland Procurement Policy, for goods and services in this category, procurement should be delegated to a level closest to the geographical location where the good or

service is to be supplied (except where limited by whole-of-government requirements and/or common-use supply arrangements established under the policy).

For some procurements, it may only be necessary to invite offers by telephoning one or more suppliers to ask for a verbal quotation. For other procurements, it may be necessary to obtain the quotes in writing (e.g. email, fax). However, officers must comply with the principles of the Queensland Procurement Policy and their own agency's procurement procedures.

Some tips for obtaining telephone/verbal quotations

- Before speaking to suppliers have a clear, written statement of the requirements and any questions to ask. In this way, the same consistent information will be sought from suppliers and the goods and services offered can be properly compared.
- Officers need to clearly identify themselves and their agency.
- Obtain the name of the supplier's salesperson with whom the officer is speaking and request a government price and any applicable trade or settlement discounts for the goods or services required.
- Other details such as method and time for delivery should be obtained as well as any packing or freight charges involved.
- Information obtained should be recorded on a requisition form and it is also good practice for the officer to request a supplier to send an email or fax confirming details of the quote.
- Prospective suppliers should be made aware of the evaluation criteria used to compare offers.
- When officers have obtained pricing (including GST) and all other necessary details from suppliers, it is then appropriate to decide from which supplier to procure the goods and/or services.
- Once a decision has been made, after taking all relevant factors into account, the order containing the necessary details can then be placed with the successful supplier.
- Record the reasons for selecting a particular supplier and leave an audit trail.

Hint

Remember that the use of verbal/telephone quotations does not change the requirement for good procurement practices. The only thing different is that you are writing down the details of the offer rather than the supplier writing it. Your objective is still to get the right item, in the right quantity, with the right quality, at the right time and the right price.

Important

Be careful when talking to suppliers that you do not inadvertently make a verbal promise to procure from them if you are only obtaining quotes.

Inviting offers for significant procurements

“Significant procurements” are of goods and services that have been identified in the as being of high relative expenditure and/or for which supply is difficult to secure (categories 2, 3 and 4).

Plans for significant procurements, should include the procurement strategy options available (at either the category or individual procurement level). This strategy will determine how an invitation will be issued and the extent of the invitation process. Written invitations and responses from suppliers are often more appropriate when inviting offers for significant procurements.

The following matters, among others, should be considered when developing invitations for offer.

Identity of the agency

All invitations to suppliers should clearly indicate the agency that is inviting offers, a contact name and telephone number.

Specification for the requirement

The specifications must be included in the invitation documentation.

Format requirements for offers

It needs to be made clear in the invitation documentation whether the agency will consider offers in any format other than the standard format for offers as enclosed with the invitation. Generally, offers outside of the standard format are not accepted. Specifying a standard format for offers facilitates comparisons between them, especially where there are a number of variables that must be compared between offers.

Terms and conditions

It is important to clearly explain the terms and conditions upon which the agency is inviting the offer. Problems can occur (sometimes leading to the invitation process being seriously compromised) where there are misunderstandings about the nature of the invitation process.

As a first step, the agency should make very clear the terms upon which the offers are being invited. For example:

- What is the procedure for lodging of offers?
- How will the successful supplier be chosen?

The way for agencies to clarify the terms upon which they are inviting offers is to issue the invitation with a set of standard conditions of offer. Standard Conditions of Offer for Queensland Government agencies to use is available on the internet at www.qld.gov.au/procurement.

Once the invitation process has concluded and the successful supplier has been chosen, the agency will need to formalise, in a binding and written contract, the terms upon which the goods and services will be supplied. It is good practice to include the conditions of contract in the invitation documentation. This makes clear to all prospective suppliers, at the earliest possible stage, the terms and conditions upon which the agency is prepared to contract. Standard Conditions of Contract that are available for Queensland Government agencies to use is available on the internet at www.qld.gov.au/procurement.

Agencies may choose to include special conditions of offer and special conditions of contract.

Where the contract documentation to be used is not a standard government contract or if a standard contract has been changed, legal advice should be sought.

Important

It is critical to be completely familiar with both the Standard Conditions of Offer and the Standard Conditions of Contract. Sometimes, there is confusion about when to use "Conditions of Offer" (sometimes called "Offer Conditions") and when to use "Conditions of Contract" (sometimes called "Conditions of Supply" or "Supply Conditions").

- **Conditions of Offer** are the terms and conditions which regulate how the agency will receive and deal with offers from prospective offerors (e.g. procedure for lodgement, evaluation criteria). They govern the pre-contractual relationship between the parties. In other words, there is usually no contract or agreement between the offeror and the agency at this stage (though agencies will still be obliged to act according to the terms specified in the Conditions of Offer).

- **Conditions of Contract** are the terms and conditions of the formal contract or agreement between the successful offeror and the agency, once both parties have negotiated the "deal" and indicated their intention to be bound to a contract.

Where the agency has issued the Conditions of Contract with the invitation document, the offeror will have notice of the terms of the contract or agreement which the agency is prepared to enter. When the successful offeror is chosen, both the offeror and the department should sign their agreement to the Conditions of Contract.

Caution: Some agencies seek to conclude their contracts with offerors by issuing a letter of acceptance. If such an approach is adopted, great care should be taken to ensure that the offeror also intends to be bound to the Conditions of Contract, by acknowledging its agreement with the terms in writing.

For example: *Department X* issues an invitation for the supply of office furniture. It attaches to the invitation documentation the Standard Conditions of Contract and asks offerors, if successful, to confirm they will enter into a contract with *Department X* on those terms. *XYZ Company* responds to the invitation but indicates in its response that it wishes to contract under its own terms and conditions. *Department X* issues a letter of acceptance to *XYZ Company* advising them that they are the successful offeror and that they are now in a contract with the department governed by the Standard Conditions of Contract.

The problem: What are the terms of this contract? Are they the Standard Conditions of Contract or *XYZ Company's* own terms?

The answer: This is unclear and, arguably, there is no contract (that is, no intention by the parties to be mutually bound by agreed terms) until the parties both agree on the terms and conditions which govern their arrangement. As a minimum, *XYZ Company* should be asked to counter-sign a copy of the letter of acceptance, indicating their agreement with the terms of the letter.

Non-conforming offers

It is essential that all invitations for a particular procurement be made on the same basis so as to allow for a fair and relatively straightforward evaluation of the suppliers' offers/responses.

However, it is common for suppliers to specify terms and conditions in their offer documents which do not reflect the requirements of the invitation. Consideration must therefore be given as to whether offers that do not fully conform to the specified terms and conditions will be accepted for evaluation. The agency has a choice as to whether to accept a non-complying offer.

Hint

The invitation to offer should require the supplier to state in its offer documentation whether the prices quoted include Goods and Services Tax.

Medium of the offer

The invitation should specify whether an offer may be lodged in hard-copy form (that is, paper format) or in electronic form. If the agency is prepared to accept offers lodged in electronic format, the agency may wish to specify in the invitation whether a hard-copy form of some (which should be specified) or all parts of the offer should also be lodged. In addition, simple requirements like the number of copies that are required must also be stated in the invitation.

Under the clause 1.4 of the Queensland Procurement Policy, agencies must use the Queensland Government's QTenders website to publish all open tender opportunities.

An invitation should also state whether the agency is prepared to accept offers by facsimile. Before an agency decides it is prepared to accept offers by facsimile, it should assess whether the agency is capable of managing any associated problems (e.g. lack of security and confidentiality, poor transmission which may affect the print quality etc.).

Date and time of lodgement

The closing time and date for receipt of offers must be prominently displayed on the invitation document. Offers should not be accepted after the closing time and date, unless there are exceptional circumstances and the integrity of the process has not been compromised. If extensions of closing time are given, all offerors must receive the same extension.

A secure system that ensures confidentiality of suppliers' information needs to be set up for receiving the offers.

Best and final offer

When an invitation specifies "best and final Offer" it means that the procurement process has involved several stages and the suppliers are invited to submit their final offer. If an invitation is part of a multi-staged procurement process, the invitation should state whether suppliers have the option of specifying a best and final offer prior to the completion of the final stage of the procurement process.

Evaluation criteria

The invitation should specify the evaluation criteria to be used by the agency in assessing which supplier is to be awarded the contract. Examples of criteria include whether the offer complies with "mandatory requirements" or "desirable aspects", quality warranties, after-sale service and support, whole-of-life costing, fitness for purpose and quality assurance requirements.

Response forms

Response forms are a proforma of questions prepared by the agency on all aspects of the requirements, both technical and commercial. It is completed by the offeror as part of the offer and allows for easier comparison by the agency of offers received. They should be as long as is necessary to gather all the information on commercial considerations, functionality/performance and technical aspects of a supplier's offer.

A schedule of prices is usually also included in a standard format for offerors to include pricing information.

Hint

All offerors need to be given the same information and in sufficient time to be able to respond effectively. The timeframe will depend on the complexity of the procurement.

Standing offer arrangements

When a standing offer arrangement (SOA) is being established, certain terms and conditions governing the SOA need to be made clear.

It is important that suppliers are made aware, for example, that a SOA does not give rise to an obligation to procure from the supplier. It is merely an opportunity or offer from the supplier to make its products or services available for purchase for a certain period of time, on certain pre-agreed terms and conditions. An agency buyer is not obliged to place orders under the SOA, unless that has been specifically agreed between the parties.

What is the difference between a contract and a SOA?

A contract is a legally binding agreement (that is, an **offer** by one party which is **accepted** by the other), for **consideration** (that is, some kind of payment), entered into by parties which intend it to give rise **to legal rights and obligations** between them.

A standing offer arrangement is not a contract. It is an **offer** by the supplier to provide goods or services on certain pre-agreed terms and conditions. However, until a department/agency places a particular order under a standing offer arrangement, the elements of a contract do not exist. Once the department/agency **accepts** the supplier's offer by placing an order under the pre-agreed terms and conditions, a contract (having all the elements discussed above) is formed.

Ethical dealings with offerors

It is important that all officers treat all suppliers equally when inviting offers so that the best commercial arrangement on the best terms and conditions can be made for the agency. The procurement practices of Queensland Government agencies are subject to public scrutiny and all officers must act ethically, honestly and with fairness to all participants.

The following pointers will give some guidance to officers as to what is expected of them as part of the inviting offers process.

- Provide invitations to potential suppliers.
- Do not communicate with only one potential supplier (if one supplier seeks clarification, the information given should be made available to all suppliers that have requested offer documentations as promptly as possible).
- Apply the evaluation criteria that are published in the invitation (do not change the evaluation criteria, or if you must, notify all potential suppliers within plenty of time prior to the closing date of the invitations).
- Do not change any of your requirements without notifying all suppliers that have requested offer documentation and giving them the opportunity to respond to the changed requirements.
- Treat all offers confidentially.
- Act impartially (if the procurement process places an officer in a position of conflict, the officer should seek their manager's instructions before continuing).

Officers should <u>never</u> do any of the following:

- change requirements or criteria without advising all suppliers of the changes (in some circumstances, the changes to the specification or the agency's requirements may be so fundamental that fairness dictates that the invitation process should be started again)
- reveal or discuss the contents of one potential supplier's offer to another potential supplier
- indicate to a potential supplier that its offer is likely to be accepted or rejected before any formal decision has been made by the agency
- extend the final date for receipt of offers for one or several potential suppliers without extending the date for all potential suppliers
- accept gifts or other favours from potential suppliers who intend or who have lodged offers
- enter into anti-competitive arrangements with suppliers that have the purpose or effect of substantially lessening competition in the market.

Hint

It is good practice to take notes of any discussions with prospective suppliers. If you are unsure about responding to a potential supplier's request for information or advice, seek advice from your manager as to the appropriate and ethical manner of responding to the potential supplier.