

Tender Evaluation Criteria FAQs

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1 **QUESTION: What is the role and purpose of evaluation criteria in procurement?**

1.1 The term “evaluation criteria” is used to refer to the questions that bidders are required to respond to as part of a procurement process. They are an essential ingredient in any procurement – the authority will choose who is awarded the contract by assessing the bidders’ responses to the evaluation criteria.

1.2 Evaluation criteria should not be confused with the authority’s technical or performance requirements. The evaluation criteria are used by the authority to decide which company should be awarded the contract. The requirements describe what the authority wants from a procurement process (e.g. a technical specification of the goods, services or works or a full system requirements document that the contractor’s tendered solution is designed to meet).

1.3 There are two types of evaluation criteria:

(a) **Selection Criteria:**

These are criteria which are designed to assess whether bidders are capable of delivering the contract being procured by assessing (e.g.) the bidders’ previous experience, capacity and financial health.

The selection criteria are generally set out in a document called a Pre-Qualification Questionnaire (“PQQ”) or Selection Questionnaire.

The authority will evaluate bidders’ responses to the selection criteria to determine which bidders are taken forward to the next stage of the process, where bids will be assessed against the Award Criteria.

(b) **Award Criteria:**

These are criteria which aim to assess which bid should win the competition (whether because it offers the most economically advantageous tender or, where permitted, the lowest price). This assessment is likely to involve consideration of factors such as quality and price. The tender documents will identify the relative importance given to each of the Award Criteria (e.g. by weighting the criteria).

Bidders’ responses to the award criteria will be scored by the authority using the scoring methodology set out in the tender documents. The bid with the best score ultimately will win the competition. Depending on the procurement process adopted by the authority, the winning bidder will then either be awarded the contract or selected as preferred bidder to allow for final negotiations or bid refinement.

2 QUESTION: What types of questions can be asked?

- 2.1 For procurements falling within the scope of the Public Contract Regulations 2015 (PCR 2015), the contract must be awarded to the Most Economically Advantageous Tender (also known as “MEAT”). This requires an assessment of the bidders’ proposals from a quality¹ and price² perspective to identify the bid that offers the best mix of price and quality. The price-quality ratio will be determined by the weightings the authority allocates to the price and qualitative criteria.
- 2.2 For procurements falling under the Defence and Security Public Contract Regulations 2011 (“DSPCR 2011”) regime, contracts awards can be made on the basis of MEAT or lowest price. The lowest price approach is likely to be only appropriate for contracts for off the shelf products where the authority does not need to assess the quality of a product.
- 2.3 The award criteria must link to the subject matter of the contract (i.e. be directly related and proportionate to the authority’s requirements). The PCR 2015 includes a non-exhaustive list of examples of the types of qualitative criteria that may be used, namely:
- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
 - (b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; and
 - (c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.
- 2.4 In addition, for complex procurements (e.g. those carried out under the Negotiated Procedure/Competitive Procedure with Negotiation or Competitive Dialogue), it may be appropriate to allow bidders to mark-up the authority’s proposed contract terms so that they reflect the proposed solution. Changes to the terms may impact the selection of the most economically advantageous tender, e.g. by altering the balance of risk. The evaluation model will need to include a methodology for evaluating such changes.
- 2.5 There are a number of ways in which award criteria may be assessed. Some of the most common include:
- (a) pass/fail thresholds: assessments where the minimum acceptable limit can be expressed clearly and unambiguously
 - (b) qualitative assessment, where bidders’ responses are assessed against a scoring matrix offering a narrative description for each available score; and
 - (c) quantitative assessment, where bidders’ responses are assessed on a numeric basis (commonly used for assessing pricing or objective assessments of actual performance characteristics).
- 2.6 If some of the authority’s requirements are essential (i.e. “mandatory”), the authority may apply pass/fail thresholds, as described above, or require a minimum score to be achieved for the relevant award criterion. In these cases, the authority must be clear in the tender documents when the bidder’s solution must meet the minimum threshold, e.g. at the time of bidding or at a point related to future delivery.

¹ Quality can include aspects of; technical, deliverability, commercial, etc.

² Price can include life-cycle costing, cost adjustments for risk, authority costs associated with proposal, etc.

3 QUESTION: Should we use generic or common score guidance for all the questions or is it best to tailor the scoring guidance depending on the question?

- 3.1 It depends. The scoring guidance can be common across all of the criteria in a procurement process or bespoke for each or some of the criteria. But whichever approach is chosen, the key question to ask is: *Does the proposed scoring guidance clearly tell bidders how their responses to the evaluation criteria will be scored?*
- 3.2 Where the language used in the evaluation criteria or scoring guidance is ambiguous, imprecise or overly complex, there is a greater risk of the procurement being challenged and of any such challenge ultimately being successful. The benchmark test is whether a “reasonably well-informed and normally diligent” bidder could be expected to understand the criteria, how its response would be scored and how a given score would affect its bid. This is sometimes known as the “RWIND” test.
- 3.3 Where an authority wishes to reject a bid which fails to meet all or some of the authority’s mandatory or minimum requirements, the tender documents must include an express statement to that effect (e.g. *“If the minimum score is not achieved for question [1], the bid will be excluded from the competition and the bidder will not be awarded the contract”*). Case law indicates that simply stating that the bidder will be awarded a “fail” is not enough to give rise to a right to exclude a bid from the competition.
- 3.4 Employing common scoring guidance for all the evaluation criteria can save time. However, for complex procurements with multiple risks and diverse requirements, it is likely to be more effective to evaluate different aspects of the tender in different ways.

4 QUESTION: What question formats or structure best aid both the bidder (understanding) and the evaluator (assessing and scoring)?

- 4.1 Simplicity is key. Tender documents should clearly set out the criteria being evaluated, the response required and how the response will be evaluated. A suggested structure is as follows:

Criterion Section	Commentary
Title and Question Number <i>Criteria Identifier/Number & Title/Name</i>	
Weighting <i>If applicable.</i>	
Aim <i>To contract with a supplier...</i> <i>To award a contract for a solution that...</i> <i>To procure a system that...</i>	
Background <i>The Authority expects...</i> <i>The Authority’s approach to...</i>	A short explanation of the context of the subject matter or area of questioning.
References or related documents <i>Policy (e.g. Def Stan)</i> <i>Standards (e.g. ISO/BSI)</i>	All references should be provided as part of the tendering information pack as hyperlink routing can be unreliable When referring to technical requirements, these should be individually referenced

<p>Evidence/response required <i>Systems integration strategy</i> <i>Draft [...] plan...</i> <i>Financial response template</i> <i>Populated commercial compliance matrix [...] explain caveats</i> <i>Populated SRD compliance matrix</i> <i>CVs of the nominated Key People...</i></p>	<p>A list of all evidence items the supplier's response should include.</p>
<p>Scoring Guidance</p>	<p>How the response will be evaluated (e.g. pass/fail; qualitative; quantitative).</p> <p>Include reference to any minimum standards and consequences of a 'fail' score (if applicable).</p>

4.2 The tender documents should also clearly set out:

- (a) Any page or word limits that bidders must adhere to when responding. Limits should ideally be set out for each question and the tender documents should state the consequences of a bidder exceeding the limit (e.g. that any words over the limit will be ignored). If page limits are used, instructions should be included on font size, margins and spacing, as well as any exclusions (e.g. for diagrams/CVs). It is normal for criteria with higher relative weighting or lengthy evidence/response requirements to be afforded larger page or word limits.
- (b) When tendering electronically acceptable file types should be specified. Generally, file types should be restricted to those that are available to Authority assessors (e.g. standard applications on local desktop environments).
- (c) A warning against bidders providing extraneous items (e.g. marketing material) or referring to other parts of their bid which are not included in the expressed limits.

About Commerce Decisions Limited

Commerce Decisions was founded in 2001 and is headquartered in Oxford, UK with offices in Canada and Australia. We provide the AWARD® evaluation solution and expert services to support strategic, complex, high-risk procurements. We have successfully supported over \$500bn worth of procurement globally. UK Ministry of Defence was our first client in 2001; and has had a corporate agreement in place since 2013. We have now successfully supported over 1,700 MOD projects and our best practice methodology has been widely used and adopted by Cat A-D projects across all domains.

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About Burges Salmon LLP

Burges Salmon is the independent UK law firm which delivers the best mix of advice, service and value.

Our procurement lawyers are nationally recognised for advising on the most complex, innovative and high-profile public procurements in the UK. We combine deep insight across a range of sectors with expert knowledge of procurement law. We work with authorities, utilities and bidders, and understand the challenges faced by all parties in the procurement process.

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