

Unit 7: Prepare Specification for Contract

Unit reference number: H/506/1957

QCF level: 4

Credit value: 4

Guided learning hours: 23

Unit summary

In today's fast paced and ever changing business world, mergers, acquisitions tender and bidding opportunities are becoming the norm. Competitive tendering (bidding) is a widely used procurement method within government agencies and private sector organisations. The idea behind competitive tendering is that it forces suppliers to compete and consequently the purchaser and taxpayer will gain better "value for money".

A major portion of every organisation's operating cost is spent on outside goods and services. Based on this fact, executive management everywhere is determining that managing tenders, specifications, and contracts must emerge as a critical core competency if organisations are to increase revenue.

In this unit you will learn how to identify, prepare contract specifications for a range of contracts and agreements. You will demonstrate understanding of tendering processes and develop skills in the design of contract specifications. You will learn about contract specification parameters and how to comply with legal requirements required of the procurement process. You will demonstrate skills and techniques managing tender processes including communication of contract specifications and selection criteria with stakeholders and potential tenderers.

Learning outcomes and assessment criteria

To pass this unit, the learner needs to demonstrate that they can meet all the learning outcomes for the unit. The assessment criteria outline the requirements the learner is expected to meet to achieve the unit.

Learning outcomes	Assessment criteria
<p>1 Understand the principles supporting the preparation of specifications for contracts</p>	<p>1.1 Explain the scope of contract specifications</p> <p>1.2 Explain the roles and interests of those who should be involved in a tender process</p> <p>1.3 Analyse the legal implications of a range of types of contracts and agreements</p> <p>1.4 Explain the requirements of confidentiality and data protection</p> <p>1.5 Evaluate the risks associated with procurement and tendering processes</p> <p>1.6 Explain the basis for the design of a tender evaluation process</p>
<p>2 Be able to prepare specifications for contracts</p>	<p>2.1 Confirm the requirements for the contract specification</p> <p>2.2 Draft contract specifications that meet the requirements including post-contractual requirements</p> <p>2.3 Specify the parameters of the contract in line with the requirements</p> <p>2.4 Provide sufficient information to enable potential suppliers to develop proposals that are capable of meeting the specification</p> <p>2.5 Define objective selection criteria to evaluate tender proposals</p> <p>2.6 Establish a selection process that meets organisational requirements</p> <p>2.7 Adhere to organisational policies and procedures, legal and ethical requirements when preparing specifications for contracts</p>

Unit amplification

AC1.1: Explain the scope of contract specifications

- *Types of contract:* sale and purchase of a business agreement; partnership agreements; leases of a business premises; leases of plant and equipment, employment agreements
- *Format of business contract:* face to face; written; distance selling
- *Contract specifications:* offer and acceptance; intention to create legal relations; lawful consideration; capacity; legal formalities, e.g. terms and conditions
- *Matters covered in a contract:*
 - Parties of the contract
 - Contract date
 - Definitions used in the contract
 - Goods and services being provided or received
 - Payment amount and payment date
 - Interest on late payments
 - Delivery dates or performance date for services
 - Insurance promises
 - Guarantee promises
 - Termination dates
 - Renewal terms
 - Damages for breach of contract
 - Special considerations

AC1.2: Explain the roles and interests of those who should be involved in a tender process

- *Roles of those who should be involved in a tender process:* internal, e.g. end user, initiator, preparer, reviewer, approver; external, e.g. potential tenderers, stakeholders, existing contractors, legal advisors
- *Responsibilities of those who should be involved in the tender process:* negotiate; support; manage; implement; evaluate; advise; supply

AC1.3: Analyse the legal implications of a range of types of contracts and agreements

- *Types of contracts and agreements:* public; non-public
- *Contract Law:* current legislation, e.g. Public Contracts Regulations 2006, EU Directives
- *Legal requirements of contracts:* formal agreements; intention to create legal relations
- *Contract requirements:* value for money; integrity, e.g. corruption, conflict of interest; accountability; equal opportunities; fair treatment; objectives, e.g. industrial, social, environmental; public markets, efficiency in procurement process

AC1.4: Explain the requirements of confidentiality and data protection

- *Legal issues:* relevant and current data protection legislation, e.g. Data Protection Act 1998, Freedom of Information Act 2000
- *Ethical issues:* codes of practice, e.g. use of email, internet; 'whistle blowing'; organisational policies; information ownership
- *Operational issues:* security of information; organisational policies, procedures and processes; staff training; communication of information
- *Implications of data protection:* access; information security, e.g. internal threats, external threats, data corruption; cost; reputation; effects on business sustainability
- *Managing risk:* cyber-crime, e.g. diverting financial assets, communications sabotage, intellectual property theft, denial of service attacks; preventive technologies, e.g. firewalls, access control methods, secure payment systems; disaster recovery

AC1.5: Evaluate the risks associated with procurement and tendering processes

- *Tendering process:* pre-qualification; invitation to tender; mid-tender; tender; presentation; award; delivery
- *Risks associated with procurement and tendering processes:*
 - Identifying the need: understatement of need; overstatement of need; misinterpretation of user needs
 - Planning and purchase: insufficient funding; impractical timeframe; probity issues
 - Developing the specification: narrow definition or commercial specification; definition of inappropriate products or services; biased specification; inadequate statement of requirements
 - Selecting the purchasing method: failure to identify potential services; selecting inappropriate method
 - Purchasing documentation: terms and conditions unacceptable to tenderers; providing inadequate information
 - Inviting, clarifying and closing offers: failure to address enquiries from tenderers; favouritism in providing information; actual or perceived breach of confidentiality; insufficient number of responses, no responses from known suppliers
- *Evaluating offers:* failure to follow effective evaluation procedures; breaches of security; offers fail to meet needs; failure to identify a clear winner
- *Selecting the successful tenderer:* selecting an inappropriate/appropriate supplier; selecting an inappropriate/appropriate product or service
- *Negotiations:* not matching expectations of buyer and tenderer; deadlock on details of agreement; failure to secure mandatory conditions; unfair or onerous contract requirements; contract fails to reflect the terms offered; creating a contract without delegate approval
- *Contract management:* variations, e.g. price and foreign exchange; unwillingness of supplier to accept contract; failure to fulfil conditions of contract; inadequate administration of contract; work commences ahead of contract acceptance; unauthorised increase in scope of work; loss of intellectual property; failure to meet liabilities of third parties, loss or damage of goods; key personnel not available
- *Evaluating the procurement process:* failure to evaluate procurement and management processes; failure to identify and address problems

AC1.6: Explain the basis for the design of a tender evaluation process

- *Tenders:* conforming; non-conforming
- *Tender process compliance with mandatory criteria:* be complete; comply with the conditions; lodged on time; meet mandatory specifications
- *Tender evaluation process steps:*
 - Evaluate compliance with objective criteria, e.g. mandatory, qualitative/non-cost criteria
 - Clarify offers, e.g. allowing correction of unintentional errors
 - Evaluate qualitative/non-cost criteria
 - Shortlist offers
 - Formal presentation from tenderers (including site visits and interviews)
 - Calculate value for money, e.g. fitness for purpose, performance history, relative risk, flexibility to adapt to change, financial considerations
 - Compare offers
 - Seek clarification from referees
 - Apply due diligence
 - Write the evaluation report
 - Provide evaluation report to appropriate authorities for approval
 - Contract negotiations
 - Final approval process

Information for tutors

Suggested resources

Books

Farrington B and Lysons K – *Purchasing and Supply Chain Management* (8th edition) (Pearson, 2013) ISBN 9780273723684

Hamilton M – *Contract Law (Law Express Questions and Answers)* (2nd edition) (Pearson, 2013) ISBN 9780273783671

Lewis H – *Bids, Tenders and Proposals: Winning Business Through Best Practice* (4th edition) (Kogan Page, 2012) ISBN 9780749465603

Websites

www.cips.org – Chartered Institute of Purchasing & Supply: Professional body

www.skillsca.org – Skills CFA: Sector Skills Council for Business Administration

Assessment

To pass this unit the evidence that the learner presents for assessment must demonstrate that they have met the required standard specified in the learning outcomes and assessment criteria and the requirements of the Assessment Strategy.

To ensure that the assessment tasks and activities enable learners to produce valid, sufficient, authentic and appropriate evidence that meet the assessment criteria, centres should apply the *Unit assessment guidance* provided and the requirements of the Assessment Strategy given below.

Wherever possible, centres should adopt a holistic approach to assessing the units in the qualification. This gives the assessment process greater rigour and minimises repetition, time and the burden of assessment on all parties involved in the process.

Unit assessment requirements

This unit must be assessed in the workplace in accordance with the Skills CFA Assessment Strategy for Business Administration, Customer Service and Management and Leadership in *Annexe A*. Simulation is not allowed for this unit. All evidence of occupational competence should be generated through performance under workplace conditions; this includes evidence of achievement for knowledge-based learning outcomes and associated assessment criteria.

Unit assessment guidance

This guidance supports assessors in making decisions about how best to assess each unit and the evidence needed to meet the assessment requirements. Centres can adapt the guidance for learners and the particular assessment context, as appropriate.

The primary source of evidence for meeting the requirements of learning outcome 2 is direct observation of the learner carrying out their work activities relating to preparing specifications for contracts.

The evidence from any direct observation for learning outcome 2 could be supported by examining work products such as notes from meetings, draft and final contract specifications, records and non-verbal communication to colleagues, managers, stakeholders and/or potential suppliers, e.g. emails etc. – this provides further evidence to meet the requirements, for example AC2.1, AC2.2, AC2.3, AC2.4, AC2.5 and AC2.6. To achieve AC2.7, learners need to provide evidence of adhering to organisational policies and procedures, legal and ethical requirements when preparing specifications for contracts either through checklists, forms and/or draft specifications. Witness testimony could be used to support the evidence from direct observation for this assessment criterion as well as for AC2.1 and AC2.4.

The primary source of evidence for meeting the requirements of learning outcome 1 could come from a professional discussion where the learner demonstrates an understanding of the principles of preparing specifications for contracts. Learners responses during the professional discussion must be at the appropriate breadth and depth to meet the level of demand for the knowledge assessment criteria; for example, the responses must have sufficient detail about the scope of contract specifications (AC1.1), the roles and interests of those who should be involved in a tender process (AC1.2), the legal implications of a range of types of contracts and agreements (AC1.3), the requirements of confidentiality and data protection (AC1.4), the risks associated with procurements and tendering processes (AC1.5) and the basis for the design of a tender evaluation process (AC1.6). Reflective account can be used to support the evidence from professional discussion for learning outcome 1.

Evidence of Recognition of Prior Learning (RPL) can also be used within the unit to confirm competence. Wherever possible, the learning outcomes in this unit should be assessed holistically across the qualification.