

WHITE PAPER CONFERENCE, JUNE 2017

SUBJECTIVE CRITERIA:

DESCRIBING WHAT YOU WANT WITHOUT GIVING THE ANSWER

How do you describe what you are looking for with more subjective criteria without giving the answer to suppliers. For example:

- "functionality" or "ease of use"
- innovative method statements and programmes of work or
- demonstrations and interviews?

“It may be that the type of scoring exercise rampant in decision-making these days measures more the ability to write an application than the quality of the applicant.”

Mr Justice Craston – Greenwich Community Law Centre Case

RECAPPING AWARD CRITERIA

- EU Treaty principles
- Clear, precise, unequivocal
- Weightings specified
- Linked to subject matter of contract
- No unrestricted freedom of choice
- Reasonably well informed and normally diligent tenderers able to interpret the criteria in the same way

TELLING BIDDERS WHAT YOU WANT – EXAMPLE 1

In a tender for improvement work for social housing:

- Outline your plan for provision of local employment and training opportunities.
- In addition describe your plan to deliver sustainable benefit.

Should bid deal with:

- Recruitment
- Apprenticeships
- Recycling
- Solar panels
- H&S

TELLING BIDDERS WHAT YOU WANT – EXAMPLE 2

In a tender for improvement work for social housing:

- Describe your lone working policy and the measures you have in place to ensure suitability of operatives who you send to the homes of customers who may be classed as being vulnerable?

Should bid deal with:

- Staff protection
- DBS checks
- Protection of vulnerable tenants

WHY TELL BIDDERS WHAT YOU WANT?

- PCR / EU obligations
- So they know what you want
- So you get the best outcome

FUNCTIONALITY AND EASE OF USE (1)

- What?
 - Do you know what you're looking for?
 - Have you carried out thorough market engagement?
- In purely written processes:
 - Criteria tell bidders which parts of their product to focus on
 - Allow flexibility through weighting – not too granular
 - Publish factors the evaluators will take into account
 - “Factors include But evaluators will also take account of any other factors...”
 - “Factors include but are not limited to...”
 - Ensure evaluators are open minded

FUNCTIONALITY AND EASE OF USE (2)

- If there is a practical assessment / tests / demonstrations:
 - Which procedure
 - Who is going to assess
 - Briefing evaluators – ensure they understand the criteria!
 - Documenting
 - Like for like assessment
- Plan for standstill letters

INNOVATIVE METHOD STATEMENTS / PROGRAMMES OF WORK

- Do you know what you're looking for?
- Have you carried out thorough market engagement?
- Why do you want innovation?
 - What value can it add?
- Should you evaluate innovation separately?
- Describe benefits you want – output specification

INTERVIEWS (1)

- Potentially the most subjective... and risky
- Be clear of the purpose / need
- If possible - avoid
- How scored?
 - Separate criterion or
 - Clarifying / updating scores for other questions?
- Explain purpose and scoring method clearly to bidders
- Is competitive procedure with negotiation (CPN) more appropriate?

INTERVIEWS (2)

- Pitfalls
 - Taking account of illegitimate factors
 - Not properly documenting
 - Inability to explain scores in standstill letter
 - Bidders' perception of unfairness

MY TOP TIPS

- Know what you want – market engagement
- Explain your requirements
- Thoroughly brief evaluators
- Keep good quality records
- Ensure you can explain the characteristics and relative advantages
- Avoid “black box”
- Listing factors to be taken into account creates some flexibility

THANK YOU
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PARTNER

