



## Checklist: steps for prospective tenderers

- Appoint a project co-ordinator for the bid**
- Strategy**
  - Is this contract a strategic fit for the Contractor?
  - Does it represent the Contractor's core business or is it diversifying into other areas?
- Scope of works**
  - Is it clearly defined?
  - Is it properly documented?
  - Is it unequivocal or is there room for interpretation on the main issues?
  - Can it be properly priced in its current form?
- Variations to scope**
  - Does the contract permit the Principal to vary the scope of the works?
  - Is the process of requiring variations clearly defined?
  - Is the scope of any variation work properly defined?
  - Is there an agreed mechanism for the pricing of variations?
  - Will the price mechanism for variations unfairly prejudice one of the parties?
  - Can the variations be rejected by the Contractor if pricing is either not agreed or proves disadvantageous to the Contractor?
- Third Parties**
  - Are any third parties necessary to carry out any of the works? – ie, Partner, sub-contractors, third party suppliers, etc.
  - Are there any agreements that need to be put in place for such third parties? – eg, teaming agreements or joint venture agreements for joint bidders or sub-contracts for single bidders or supplier agreements for either joint or single bidders?
- Insurance**
  - Is the Contractor's existing insurance coverage adequate when taking into account the contract works?

- Capital expenditure (CAPEX)**
  - Is the amount within the Contractor's normal limits?
  - Are there specific return on capital employed (ROCE) requirements that the Contractor must deliver? In many organisations the ROCE requirement is usually about 15-20%.
  - Is the CAPEX amount able to be amortised over the life of the contract?
  - Is the CAPEX amount properly protected under the contract in the case of early termination for whatever reason?
  - Prepare a business case for the CAPEX required.
  - At the end of the Contractor's term, is there a compulsory buy-back provision in the contract for the Principal or incoming Contractor?
- Financial modelling – Do the numbers “stack up”?**
  - Are cash flow and working capital requirements of the Contractor met?
- Contract review – legal**
  - Are there any contract terms or conditions of tender inconsistent with the Contractor's own terms?
  - Is pricing fixed? Is there an adequate “rise and fall” provision?
  - Liquidated damages. Are they capped?
  - Indemnity clauses. Are there appropriate carve-outs? Is there an express exclusion of consequential loss and damage?
  - Change of law provision? Who carries the risk?
  - Change of control provision. Is this relevant to the Contractor's future plans? Is there any exclusion for internal reorganisation within the Contractor's own company group?
  - Dispute resolution. Are the methods set forth appropriate for these parties in this contract?
  - Force majeure*. Are the *force majeure* events all covered? How will industrial disputes be dealt with?
  - Are there any intellectual property rights that need to be specifically dealt with?
  - Are there any time of the essence obligations?
  - Are the governing law and jurisdiction choices appropriate?



- Termination for convenience. Are demobilisation costs provided?
- Will there be any impact on other divisions or related companies of the Contractor?
- specialised provisions may need to be inserted in IT contracts – eg. escrow of source code, co-operation between Contractors and integration issues. The same applies to other specialised contract provisions, for example, construction contracts
- Amendments to contract**
  - Discuss amendments with Principal.
  - Any amendments or agreements to amend must be obtained in writing from an authorised officer of the Principal.
- Are there opportunities to cross-sell?**
- Occupational health and safety issues**
- Environmental issues**
- Senior management sign-off**
- Sub-contractors**
  - Secure commitment on same terms and conditions (back-to-back) as contract with Principal from sub-contractors and/or third party suppliers – subject to winning bid **and** signing of contracts.
  - Ensure sub-contractors and/or third party suppliers have adequate insurance in place.
- Proceed to quotation**
  - Check correct address and closing date for submission of tender bid
- Cross fingers and wait**

Naturally, not *all* steps will apply to *all* Contractors. In some situations, there may be other additional steps not shown here.

The checklist is a general guide only and should not be relied upon as advice.