



MINISTRY OF FINANCE AND THE PUBLIC SERVICE

OFFICE OF PUBLIC PROCUREMENT POLICY

Criteria for the Award of Contracts

This Guidance Note describes principles and practices related to the establishment and application of Contract Award Criteria.

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INTRODUCTION

Scope:

This guidance note describes principles and practices related to the establishment and application of **Contract Award Criteria**.

Definition:

Contract award criteria are those specific considerations upon which a procuring entity will choose the successful bid from amongst the bids that are substantially responsive to the procuring entity's requirements. A bid is substantially responsive if it conforms to all the requirements set out in the bidding documents without material deviations or omissions. Contract award criteria enable a procuring entity to compare the relative advantages of different bids. **Contract award criteria are not synonymous with the obligatory requirements set out in the specifications or the criteria for qualification of bidders.**

Interpretation:

In this Guidance Note, all words are given the meaning imputed by Section 2 of The Public Procurement Act 2015 (as amended) herein referred to as "The Act".

Context:

In order to identify the best possible contracting partner, procuring entities must evaluate the information provided in bids, together with important characteristics of bidders, according to criteria that are set out in the bidding documents.

In Jamaica's public procurement law, the various criteria for evaluation are:

1. Eligibility - Which allow a supplier to participate in public procurement only if the supplier is compliant with all of its obligations in relation to taxes and where required, is duly registered with the Public Procurement Commission (Ref Section 15 of the Act and Regulation 17 of the Public Procurement Regulations 2018 "the Regulations);

2. Qualification - Which are set to ensure that in view of the possible procurement and contract risks, only bids from bidders that demonstrate at least minimum capability in terms of existing technical and financial attributes are considered (Ref Regulation 18 of the Regulations);
3. Disqualification and Exclusion - Which are mandatory bases on which a procuring entity must not consider a bidder for contract award (Ref Section 42 of the Act and Regulation 19 of the Regulations);
4. Specifications- Which define the subject matter of the contract. The specifications go to the heart of the contract, and the contractor must perform according those specifications.
5. Contract award criteria (Ref Section 38 of the Act).

LAW AND COMPLIANCE

The Law:

Section 38(2) of The Public Procurement Act 2015 provides that having determined that a bid is responsive, a procuring entity may determine the successful bid on the basis that the bid is **either**:-

- i. The lowest price- where price is the only criterion; **or**
- ii. The most advantageous bid- where the procuring entity may consider criteria in addition to, or other than price.

Contract award criteria must meet the underlying principles and objectives of public procurement and must be set in advance and disclosed in the bidding documents in a manner that:-

- i. All reasonably well informed and normally diligent bidders may clearly understand the nature and extent of information they ought to include in the bid so that the procuring entity may be convinced that the bid is the best and should be deemed successful;
 - ii. The procuring entity may evaluate bids reliably and systematically;
 - iii. Review and approval authorities such as Cabinet, The Public Procurement Commission, The Integrity Commission, The Auditor General etc. are able to monitor the process and ensure that award decisions do not involve discrimination or dishonesty; and
 - iv. Ensures the widest possible competition and is neither discriminatory nor prejudicial to suppliers.
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How to comply: Prior to instituting procurement proceedings, procuring entities should determine which contract award criterion is best for the particular procurement.

Lowest Price Awards

Procuring entities should award contracts to the lowest priced offer when it is determined that value for money may be achieved by considering only acquisition price or “up front” costs. Normally, awarding a contract on the basis of price alone is appropriate when-

- Contract requirements are well defined, standardized or simple
- In the estimation of the procuring entity, there is low risk of poor performance of the contractor
- The procuring entity would receive no additional value by consideration of factors that are not related to price

In choosing to award contracts on the basis of lowest price procuring entities must be aware of the following limitations:

- The procuring entity must not take into account qualitative considerations apart from those factors that are built into the specifications
- The procuring entity cannot take into account innovative solutions beyond any innovation that was specified, as only price is considered
- For contracts whose subject matter may have a long operating life, the procuring entity cannot consider total operating costs, life-cycle costs or any other cost factor beyond the initial purchase price.

Lowest price awards are therefore likely to be most effective when contract requirements can be clearly and comprehensively set out, and there is need for swift contracting. See the below example of how this criterion may be applied.

Example 1: Applying the “Lowest Price” Criterion

Case 1- ABZ Limited (“the procuring entity”), a government owned company in Jamaica, intends to procure three hundred (300) laptops for general office use. In its bidding document, the procuring entity has disclosed that the contract will be awarded on the basis of the lowest price as below:

F. Award of Contract	
ITB 44.1	The procuring entity will award the contract to the responsive bidder that has offered the lowest price.

Note that in keeping with the principle of transparency and best practice, procuring entities are required to place this information in the bidding documents, and in

*particular the bidding data sheet and/or other places which provide **specific information** about the contract opportunity.*

The procuring entity instituted procurement proceedings by way of the “National Competitive Bidding” method. At the close of tender, the procuring entity received three bids. All three bids were substantially responsive to the procuring entity’s request, as all three bidders were eligible, qualified, and submitted documentary evidence that the laptops conformed to the specifications set out. The bids were then ranked as follows:

Table 1- Ranking of bids

	Bidder A	Bidder B	Bidder C
Bid Price	J\$45,500,000.00	J\$45,502,500	J\$51,102,000
Rank	1	2	3

ABZ Limited therefore deemed the bid from Bidder A the successful bid, and sought approval for Contract Award to Bidder A on the basis that Bidder A’s bid was responsive and offered the lowest price. ABZ’s recommendation was supported by the Public Procurement Commission.

Awarding the Most Advantageous Bid (MAB)

Procuring entities should award contracts on the basis that the bid is the most advantageous when the procuring entity’s determination of value for money cannot be limited to price only, but must include additional considerations. This system of award allows the procuring entity to determine which of the submitted bids promises the most advantages, based on considerations of **price and quality**.

Quality considerations are normally important when:-

- Contract requirements are complex or novel

- The contract is one for services that are primarily intellectual in nature (such as consulting services), and owing to the complexity of the services, it is desirable to place greater emphasis on a bidder's superior characteristics, rather than focus on price only;
- Having regard to the market for the subject matter of the procurement, or the need for innovative solutions, or otherwise, it is desirable for suppliers to offer multiple additional benefits than stipulated in the specifications
- There is need to account for subjective considerations such as aesthetics or appearance
- The procuring entity needs to consider the whole costs of maintaining, operating or disposing of the subject matter of the contract
- The procuring entity may require quicker turnaround or delivery time or after sales support
- Environmental or social aspects of bids may vary and a procuring entity desires the best possible outcome in relation to these matters.

In choosing to award contracts on the basis of most advantageous tender, procuring entities must be aware of the following limitations:

- **Criteria must not be chosen for any purpose except to identify the most advantageous tender**
- **The criteria must not be discriminatory. That means that all criteria must be relevant to the subject matter of the procurement and not arbitrarily set**
- **The criteria must be set in a manner that adherence to them can be objectively assessed**

Criteria for MAB

The criteria for most advantageous bid may take account of any of the below. This list is taken from the procurement directives of the European Union, and is illustrative only. The criteria that may be considered are:-

- Costs, such as total ownership costs, or lifecycle costs
- quality, including technical merit;
- aesthetic and functional characteristics;
- accessibility;
- design for all users;
- social, environmental and innovative characteristics;
- trading and its conditions;
- organisation, qualification and experience of staff assigned to perform the contract where the quality of the staff assigned can have a significant impact on the level of performance of the contract;
- after-sales service and technical assistance;
- Delivery conditions, such as delivery date, delivery process and delivery period or period of completion.

Procuring entities are free to consider criteria other than those listed above in order to determine the most advantageous tender, having regard to the procuring entity's circumstances.

Important practical considerations when using MAB

1. To ensure that the contract award criteria are not discriminatory, procuring entities are expected to select award criteria that match the contract specifications. Therefore, the preparation of specifications and the selection of award criteria should be done at the same time, and after thorough consideration of the features of the subject matter of the procurement that are most important to the procuring entity.

2. Procuring entities should specify the weight it places on each criterion for contract award. In doing this, bidders are immediately advised of the relative importance of each criterion, and may decide which trade-offs they will pursue in order to earn the contract. Additionally, deciding on, and disclosing the relative weight of each criterion ensures that the procuring entity does not make arbitrary decisions during the process of evaluation of tenders. Weighting can be done by various routes, including points, percentages or other qualitative expressions tied to fixed considerations. For example, excellent- where the bid demonstrates xyz, above average – where the bid demonstrates x and y and average where the bid demonstrates x only.
3. Practically, procuring entities should take either of the following approaches to the detailed evaluation and contract award stage:-
 - a. Fix the minimum mandatory specifications that must be met by all bidders, and then evaluate all tenders on a pass/fail basis. Thereafter, and in accordance with the award criteria set out, apply scores to all bids that have passed the minimum requirements. These scores would naturally reflect the degree to which a bid exceeds the basic requirements and the most advantageous of these would be the bid with the highest score/points;
 - b. Without fixing minimum mandatory specifications, the procuring entity may score all bids on the basis of their level of compliance with the requirements set out. The scores would be allotted to the technical and commercial requirements on a scale that demonstrates the relative benefit of one proposal over the other. The bid amassing the highest

points, once responsive, would naturally be the most advantageous bid;
or

- c. Where the procuring entity will determine the most advantageous bid on the basis of cost or economic aspects, without qualitative aspects, the procuring entity must publish a worksheet that requires bidders to indicate their best prices for the cost factors associated with maintaining or owning the subject matter of the procurement. The most advantageous bid would naturally be that bid which demonstrates lowest costs over a period of time, or lowest costs related to the maintenance of the subject matter of the procurement.

Example 2- Applying the “Most Advantageous Bid” Criterion

Case 2- ABZ Limited (“the procuring entity”), a government owned company in Jamaica, intends to procure three (3) specialised IT servers for certain control room computers used in its nuclear energy station. In preparing for this procurement, the Managing Director indicated the need to ensure that these servers were the most energy efficient servers within budget, given the intended application. He would be willing to approve a slightly higher spend in order to obtain the advantages of energy efficiency, but he would not be willing to obtain these advantages regardless of the price. He also indicated that ABZ needs the servers urgently in order to complete the commissioning of the control room, and he did not want to wait for more than ten (10) days. From the procuring entity’s market research, it was discovered that delivery turnaround of these servers varied quite widely, but most firms could deliver in twelve (12) days. Some of the best firms could deliver within 1-5 days of contract award- though these earlier deliveries meant an increase in price.

All of these objectives suggested the importance of considering factors apart from the price, in identifying the most successful bid.

In its bidding document, the procuring entity therefore disclosed that the contract will be awarded on the basis of the “most advantageous bid”:

F. Award of Contract	
ITB 44.1	The procuring entity will award the contract to the responsive bidder that has submitted the most advantageous bid. The most advantageous bid will be determined by the application of the criteria for contract award set out in Section III.

*Note that in keeping with the principle of transparency and best practice, procuring entities are required to place this information in the bidding documents, and in particular the bidding data sheet and/or other places which provide **specific information** about the contract opportunity.*

In Section III, the bidding documents disclosed that all specifications labelled “mandatory” must be met by the bidder, and only those bidders that passed the technical specifications would be considered for contract award. It further disclosed in Section III that the most advantageous bid will be the bid obtaining the highest score computed as follows:

Description	Criterion	Score (Range)	Weighting (%)	Documentary Requirement
	Non-price- N			
The procuring entity desires to obtain the servers urgently. Please propose the earliest possible delivery	i. Delivery- 1-10 days after contract award 11-15 days after award Greater than 15 days	10 8 3	10	Suppliers must propose delivery date on Form A- "Form of Bid"
Server efficiency on the basis of the SPECpower_ssj2008 methodology	ii. Server energy efficiency Average active power between 10-15 Watts at 300 load Average active power between 16-20 Watts at 300 load Average active power between 21-25 Watts at 300 load	30 25 15	30	Suppliers must provide SPECpower information clearly indicating the average active power at the requested loads (SPECpower= $\frac{\sum \text{ssj_ops}}{\sum \text{power}}$)

Ratio of idle power to maximum power at 100% workload on the basis of SPECpower 100%/SPECpowerIdle comparison	iii. Idle power ratio		20	Suppliers must provide power consumption figures for SPECpower100% and SPECpowerIdle
	1:40k:1 or lower	20		
	1:42k:1-1:50k:1	15		
	1:52k:1-1:60k:1	5		
Σnon-price			60	

Description	Criterion	Score (Formula)	Weighting (%)	Documentary Requirement
	Price- P			
The procuring entity desires to obtain the servers at the best price in consideration of all required criteria		<p>Lowest responsive bid receives 40</p> <p>All other bids:</p> $P = \frac{C_{low}}{C} \times X$ <p>where</p> <p>C= Corrected Bid Price</p> <p>C low= the lowest of all Corrected Bid Prices among responsive bids</p> <p>X = weight for the Price as specified in the BDS</p>	40	Suppliers must propose price on Form A- "Form of Bid"

The total overall score would be calculated by the formula:

$$T = N + P$$

The procuring entity instituted procurement proceedings by way of the “National Competitive Bidding” method. At the close of tender, the procuring entity received three bids. All three bids were substantially responsive to the procuring entity’s request, as all three bidders were eligible, qualified, and submitted documentary evidence that the servers conformed to the mandatory specifications set out. A summary of the evaluation was then prepared and is shown below:

Table 1- Price Score

	Bidder A	Bidder B	Bidder C
Bid Price	J\$145,500,000.00	J\$151,102,000	J\$152,610,000
Price Score (P)	40	38.5	38.1

Table 2- Non Price Score

	Bidder A	Bidder B	Bidder C
Delivery	12 days- 8 points	8 days- 10 points	3 days- 10 points
Server Efficiency	Active Power- 16 Watts- 25 points	Active Power- 11 Watts- 30 points	Active Power- 11 Watts- 30 points
Idle Power Ratio	1:38k:1- 20 points	1:346k:1- 15 points	1:38k:1- 20 points
Non Price Score (N)	53	55	60

Table 3- Total Score

	Bidder A	Bidder B	Bidder C
T	93	93.5	98.1

ABZ Limited therefore deemed the bid from Bidder C the successful bid, as it was the bid with the highest score. It was also qualitatively the most advantageous, since it promised the quickest possible delivery, and earned maximum points for the energy efficiency aspects. The procuring entity therefore sought approval for

Contract Award to Bidder C on the basis that Bidder C's bid was responsive and was the most advantageous, in accordance with the criteria that were published. ABZ's recommendation was supported by the Public Procurement Commission.

Changing criteria for contract award:

Procuring entities are advised that a choice of award criteria must be made at the time of instituting the procurement proceedings. This choice, together with the manner of computation must be disclosed. **A procuring entity MUST NOT alter or modify the award criteria, nor their associated relative weighting after bids have been received.**

However, a procuring entity may make alterations or modifications to award criteria prior to the receipt of bids. **All such alterations or modifications MUST be communicated to all suppliers prior to the deadline for receipt of bids.**

FURTHER INFORMATION AND GUIDANCE:

For further information, procuring entities are encouraged to contact the Office of Public Procurement Policy in the Ministry of Finance and the Public Service by sending an e-mail to opppcustomer@care@mof.gov.jm or by calling 1-876-932-5220.