Negotiate – goods and services procurement guide

Find out how to negotiate suppliers’ offers for goods and services procurement.

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## **Purpose**

Negotiate to improve the value for money outcome of the procurement through:

* improving compliance with the specification and the draft contract;
* treating risk;
* improving cost/price; and
* identifying wider opportunities for collaboration, innovation, and further benefits for both parties, including for broader government objectives.

## **Plan negotiation**

Plan negotiation to improve the potential value for money of offers. The approach to negotiation should be appropriate to the complexity of the procurement. The negotiation plan should be approved prior to negotiation by an appropriate delegate according to the governance framework for the procurement.

Conducting negotiations is particularly relevant for procurement activities with one or more of the following characteristics:

* strategic complexity, high risk or close to core business;
* high element of innovation or novelty;
* to better define procurement requirements;
* there is a proposal to allocate risks and ownership at variance from a standard operating position; and/or
* the procurement requires access to designated intellectual property in the supply market.

The negotiation plan should:

* align the capability and authority of the negotiating team with the complexity of the procurement;
* establish a process for engaging stakeholders to obtain input and advice as negotiation progresses;
* detail the approach to negotiating;
* detail the scope and outcomes sought;
* ensure probity; and
* establish a framework for conducting the meetings.

The scope of negotiations may include:

* technical matters;
* access to management and ownership of intellectual property;
* risk allocation and responsibilities;
* insurances, indemnities, warranties and guarantees;
* financial matters;
* pricing;
* contractual matters;
* performance objectives;
* benefit sharing and incentives;
* reporting format and structure;
* delivery and implementation commitments; and
* matters of confidentiality and security.

Negotiations can be time consuming and should be managed by persons with the required technical skills and with the ability to commit the organisation to any agreed outcomes. Whether to conduct negotiations depends on if the potential improvement in value for money outcomes exceeds the cost of the negotiation process.

### **Types of negotiations**

There are different types of negotiation processes that can assist in achieving clarification and commitment from suppliers to provide value for money outcomes. Two such processes include:

* Targeted improvement process (TIP); and
* Best and final offer (BAFO).

These negotiation processes are not mutually exclusive. They may overlap and have common elements across each.

A targeted improvement process (TIP) is a tailored process that involves inviting all shortlisted suppliers to provide a response on identified areas that do not meet expectations or need improvement such as specific areas of risk allocation, technical specification, price and significant contract departures.

A best and final offer (BAFO) is a process that seeks to obtain the best result from shortlisted suppliers in relation to the procurement requirements. You can conduct a BAFO process at any stage of the evaluation or negotiation phase. The process involves inviting all shortlisted bidders to submit their final offer, which will not be subject to subsequent negotiations.

The negotiation process decided upon will vary according to the type and complexity of the procurement. Where necessary, legal and probity advice should be sought.

Whatever negotiation strategy is undertaken it must be consistent with the tender process and evaluation plan. The methodology and decisions made must be documented and be defendable, if challenged. The process must ensure fairness, consistency and impartiality to meet high standards of probity.

A best alternative to a negotiated agreement (BATNA) is having a course of action that you can take if the current negotiations fail or an agreement cannot be reached. With all negotiation strategies, a baseline should be determined. The BATNA deals with what happens if negotiations do not meet the predetermined baseline.

### **Conclude negotiations**

Ideally, the negotiation process reaches an end when all parties commit to an agreement and proceed to contract execution. However, commencing a negotiation process does not bind the parties to reach an agreed outcome. Either party can withdraw from the negotiations if they decide that there is no further interest in continuing with the process.

### **Document the negotiation process**

Document each stage of the negotiation process to ensure:

* accuracy of details, i.e. who, what, why and when;
* accuracy of matters discussed, agreed to, or subject to further review;
* actions to be taken and by which party; and
* offers/concessions made/accepted/modified/rejected.

### **Maintain the integrity of the market approach**

When considering offers and concessions for agreement, it is important to maintain the intent and integrity of the original offer made to the market. Variance from this position could invalidate the market approach.

**Using this guide**

This guide accompanies the [goods and services supply policies](https://www.buyingfor.vic.gov.au/goods-services-supply-policies). There are 5 supplies policies:

* Governance policy
* Complexity and capability assessment policy
* Market analysis and review policy
* Market approach policy
* Contract management and disclosure policy

This guide supports the [market approach policy](https://www.buyingfor.vic.gov.au/market-approach-goods-and-services-policy).

## **Tools and support**

Access a document version of this guide in the [Toolkit and library](https://www.buyingfor.vic.gov.au/toolkit-and-library).

For more information please [contact the goods and services policy team](https://www.buyingfor.vic.gov.au/contact).

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