

## NEGOTIATION IN THE PUBLIC SECTOR - AND HOW TO DO IT

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Negotiation

Public sector procurement often requires a different negotiation approach to that used in the commercial sector. It may seem obvious to some, but why is that? Quite simply, in public sector organisations, the strategic imperatives are different.

### WHAT ARE THE MAIN DIFFERENCES?

First and foremost, there are different objectives for the public sector. Organisations are guided by different needs such as being able to demonstrate value for taxpayers' money, transparency of spend or improving outcomes for those receiving services.

Secondly, procurement approaches need to operate within a regulated framework which has strict rules about the awarding of contracts. These frameworks have been designed to demonstrate transparency in all engagement and negotiation with suppliers, deliver fairness, and where possible, eradicate the potential for corruption.

While demonstrating fairness to suppliers is important, unlike in the commercial sector it can restrict our ability to negotiate freely with more than one supplier at the same time. There are also occasions where government legislation might even demand positive discrimination towards suppliers in certain minority groups. Furthermore, the supplier selection could even be based upon promoting the well-being of a given sector.

All of this can completely change the way in which we might approach a negotiation and could even mean that there is no potential for negotiation at all. In these circumstances, what is being negotiated might focus more on service levels and assurance of supply. It could even be combined with positive support to get a supplier compliant with the core requirements.

It is important to remember that local or national regulation exists the world over for public organisations, hence further reading is recommended to fully understand the parameters that apply before

approaching a public sector negotiation in a different country.

### DIFFERENCES FOR NEGOTIATION IN EUROPE

In Europe, there is the EU Procurement Legislation which is founded upon the four pillars of European Union Law. These can be outlined as follows:

- subsidiarity – the principle of needs and problems being dealt with at the most immediate or local country level. This is typically done through local supporting, but not subservient, bodies that are part of the whole;
- transparency;
- equal treatment;
- proportionality – which ensures the correct balance of the different but related needs that must be satisfied.

At the same time, it seeks to ensure that the public sector is pursuing simplification, value for money, sustainability, innovation, efficiency, opportunities for SMEs and growth, whilst maintaining the single market and complying with World Trade Organisation rules.

EU Procurement Legislation regulates any government or public purchasing body for expenditure above certain, published financial thresholds in the hundreds of thousands. If the potential contract exceeds the threshold, it must be advertised in the Official Journal of the European Union (OJEU). Once advertised, prospective suppliers can register their interest with the aim of being invited to take part in some form of competitive bidding exercise.

There are strict rules for this process which have implications for potential negotiations. While hard 'dog eat dog' negotiations with multiple suppliers can be standard practice for many commercial companies, this approach can fall foul of EU public sector procurement legislation. This is because of the conflict with the underpinning pillars of equal treatment, transparency and proportionality. In fact, until recently, there was very

little scope for negotiation. Thankfully, the changes in 2015 to EU Procurement Legislation have moved some way forward with the introduction of new negotiated procedures and a level of increased flexibility for buyers.

## WHAT SHOULD YOUR APPROACH BE?

If you are negotiating in the public sector, it could mean that you need to change your approach or, perhaps, adopt new practices to demonstrate fairness with the suppliers involved. It could also mean that the negotiation itself is less about refining and agreeing the makeup of what we are buying, but focuses more on our overall requirements. These must be precisely defined from the outset and cannot change at any point in the process to ensure that all companies or individuals who later enter into some form of negotiation can compete to supply the same thing.

Negotiations will typically be part of a competitive bid or tender process, which will follow strict procedures and be rigorously documented. These negotiations cannot be isolated events. Generally, where there are multiple bidders, any dialogue or negotiation with suppliers must be fair and transparent to all, with no potential for favouritism.

An engagement with one supplier must be replicated identically with all others under consideration; as if all were in their own swimming lanes progressing forward individually, but identically in terms of discussion and engagement.

It might seem that public sector procurement legislation places an unnecessary burden on procurement teams, restricting their ability to negotiate freely with suppliers, and that driving down cost works against the public interest. However, advocates of EU procurement legislation would counter that it has a much bigger agenda than the needs of an individual entity as it seeks to balance good procurement with a wider social and country progression. In other words, it is a necessary part of the bigger picture.

It is, in fact, possible to deliver highly effective procurement whilst, at the same time, complying with public procurement legislation. However, you will need to possess an advanced level of capability to ensure compliance. Fundamentally, people who are leading public sector buying functions need to guide teams to think about the most effective route through a competitive process to enable them to secure the best possible outcome.

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