

Public procurement “how-to” series:

Episode 4 – Evaluation and moderation

Complying with procurement principles in evaluation and moderation

Above threshold procurement processes must be conducted in accordance with the Public Contracts Regulations 2015 (“PCR”) which require everyone (including all evaluators) involved in the procurement process to:

1. act transparently
2. treat the bidders equally and in a non-discriminatory manner
3. act proportionately.

These are the procurement principles.

In the context of evaluation and moderation this means evaluators must follow the process described in the procurement documents, score the bids in the way described in the procurement documents and clearly document the scores and reasons for scores.

It is vital to have a clear audit trail explaining all scores awarded and the reasons for those scores

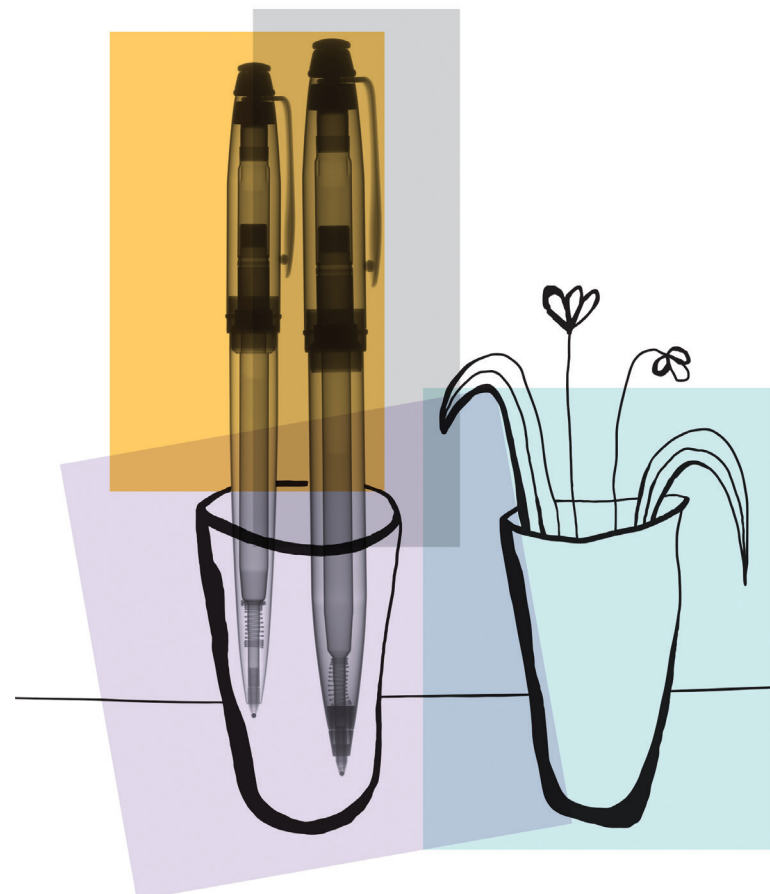
Often, contracting authorities evaluate as follows:

- First, individual evaluators score independently (without liaising with the other evaluators). There must be a clear and detailed record of each individual score awarded and the reasons for those scores
- Then all evaluators come together in a moderation meeting to agree the consensus scores. Even where evaluators all gave the same score when they scored independently, there should still be a discussion of that score during moderation to confirm that was the right score to be awarded and there should be a reason of that score recorded during moderation. There must be a clear and detailed record explaining why any evaluator changed their score during moderation as well as a clear and detailed record of the consensus score and reasons why the evaluators awarded the consensus scores.

Evaluators must be free from conflict

Evaluators should not have a conflict of interest when scoring. A conflict could be direct, indirect, financial or cover another personal interest which might be *perceived* to compromise their impartiality and independence in the context of the procurement process.

All evaluators should be asked to declare any potential conflicts and the contracting authority should assess whether the evaluator can be involved in the procurement process. The contracting authority must keep a record of declarations of interest from evaluators and measures taken to effectively prevent, identify and remedy any conflicts of interest (see regulation 24 PCR).



Evaluators need to receive training where the procurement principles are explained to them, their obligations are explained and so they understand how they must document their scores and reasons

It is important that contracting authorities can demonstrate that evaluators have been adequately trained in respect of their obligations.

In a procurement challenge, a challenger is likely to ask what training the evaluators received. If a contracting authority cannot demonstrate that the evaluators were trained (with a slide pack and written guidance for example), that would not reflect well.

Top tips when evaluating

Evaluators should:

- Only score the questions they are allocated.
- Only score what is in the written response to the relevant question. Evaluators should not take into account any information they know or have heard about a bidder.
- Ensure they do not compare the bids when scoring – they must score against the requirements in the procurement documents.
- Ensure they do not introduce new elements into their scoring – evaluators can't determine what they would like to see in a response, it's got to be requested in the question and covered in the scoring methodology.
- Ensure they do not make any assumptions when scoring. If something is not clear, they should contact the person running the procurement in case a clarification needs to be raised with the bidder.

All notes from the evaluation should be kept

It is expected that evaluators make notes when evaluating, particularly where they have large, lengthy documents to review. Do not discourage evaluators from making notes.

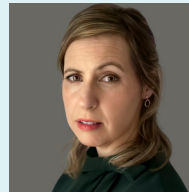
All notes made should be saved with the procurement documents – if evaluators have made hand written notes, they should be asked to scan them in so they can be kept with the procurement documents.

All evaluator notes could be disclosable in a procurement challenge.

Contact




Katrina Day
Legal Director
0776 680 5122
katrina.day@capsticks.com



Mary Mundy
Partner
0742 300 0016
mary.mundy@capsticks.com

Capsticks

www.capsticks.com

 @capstickslp

Birmingham
35 Newhall Street,
Birmingham B3 3PU
T +44 (0)121 230 1500
F +44 (0)121 230 1515
DX 13003 - Birmingham

Chorley
Ordnance House,
6 East Terrace Business Park,
Euxton Lane,
Chorley PR7 6TB
T +44 (0)125 726 6008

Leeds
Toronto Square, Toronto Street,
Leeds LS1 2HJ
T +44 (0)113 322 5560
F +44 (0)113 242 2722
DX 713112 - Leeds Park Square

London
1 St George's Road,
London SW19 4DR
T +44 (0)20 8780 2211
F +44 (0)20 8780 1141
DX 300118 - Wimbledon Central

Winchester
Staple House, Staple Gardens,
Winchester, SO23 8SR
T +44 (0)1962 678 300
F +44 (0)1962 678 311
DX 2532 - Winchester