

GOVERNMENT PROCUREMENT WEBINAR SERIES 2021

Top Ten Issues for 2021

Presented by Scott Alden, Partner

Tuesday, 21 December 2021

The 2021 Procurement Seminar Series

- Planning a perfect procurement – 17 July 2021
- Probity in Procurement – 17 August 2021
- Current Issues and Updates in Procurement - 7 September 2021
- Legal Issues and Risks in Procurement – 28 September 2021
- Tender Assessment – 19 October 2021
- Innovations in procurement – 9 November 2021
- Managing the Procurement – 30 November 2021
- **Top Ten Issues for 2021 – 21 December 2021**

If you have any questions in relation to our Government Procurement Webinar Series, please email Katarina Szivek, BD Specialist on kszivek@hwle.com.au.

To view the recordings of sessions already delivered, please visit <https://hwlebsworth.com.au/recordings-government-procurement-webinar-series-2021/>

Top Ten Issues

1. Level Playing Field

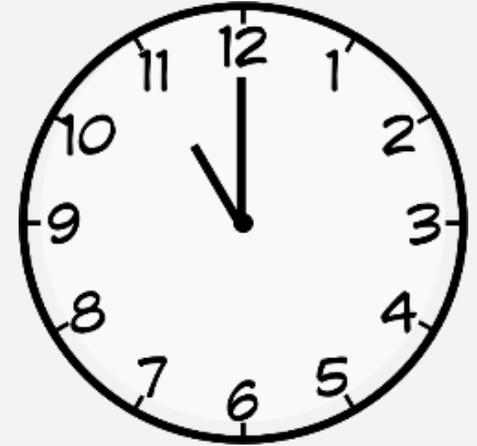
- All information to tenderers at the same time
- Incumbents
- Data Rooms
- RFIs
- Alternative Forms / ECI / Interactive / Competitive Dialogue
- Pre-Tender Briefing (Mandatory / Not Mandatory)
- Site Visits



Top Ten Issues

2. Late Tenders

- Is there a policy and if so what does it say
- What have you said in the Conditions of Tender
- What do you do on the day
 - When is late, late? Who says?
- E-Tendering
- NSW Procurement Policy
 - Must not be considered UNLESS integrity and competitiveness not compromised:
 - Exceptional circumstances (only tender, natural disaster affecting all tenderers equally)
 - Left control of tenderer before close and confidentiality maintained until opened
 - No tenders were opened prior to receipt of late tender
 - Mishandling by procurer
 - RFT states lateness not a bar to consideration



Top Ten Issues

2. Late Tenders

Cth Gov

- CPRs
 - CPR 10.28

Late *submissions* **must** not be accepted unless the *submission* is late as a consequence of mishandling by the *relevant entity*. A *relevant entity* **must** not penalise any *potential supplier* whose *submission* is received after the specified deadline if the delay is due solely to mishandling by the *relevant entity*.

- CPR 10.30

Late *submissions* should be returned unopened to the *potential supplier* who submitted them, to:

- ensure that they are not evaluated or compared with *submissions* which were submitted by the due time and date;
- demonstrate to other *tenderers* that the process for receiving *submissions* is fair and impartial; and
- eliminate scope for any suggestion that the *submission* was rejected for any reason other than because it was late.

Top Ten Issues

3. Consistency of Criteria

- What did Conditions of Tender say
- What did Tender Schedules ask for
- What must Tender Evaluation Plan / Methodology state

- How do you change
 - Before Tender Close
 - After Tender Close



Top Ten Issues

4. Post Tender Negotiations

- When is a clarification a negotiation
- What is appropriate / inappropriate
- Departures and Qualifications
- Budget – Scope
- Price
- The 'cost to comply' column



Top Ten Issues

5. Intellectual Property

- EOI / RFI / Market Sounding Process
- Unsuccessful bids
- Using IP of losing tenderer to improve project with contractor



Top Ten Issues

6. Disclosure

- Who won
- How evaluated (weightings)
- Price
- Post tender briefing
 - GIPA
 - Preliminary Discovery
 - CPR 7.18
 - Relevant entities must report contracts and amendments on AusTender within 42 days of entering into (or amending) a contract if they are valued at or above the reporting threshold



Top Ten Issues

7. Variations – Post Tender / Pre-Contract / Post Contract
 - What are these?
 - Why do they happen?
 - What is acceptable?

Top Ten Issues

8. Conflicts of Interest

- Lack of understanding of Col
- Failure to disclose
- The Col Toolkit
- The 6 Rs
 - Register / Restrict / Recruit / Remove / Relinquish / Resign
- CPRs – CPR 6.8
 - *In particular, officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes: a. recognising and dealing with actual, potential and perceived conflicts of interest.*



Top Ten Issues

9. Confidential Information

- Confidentiality Agreement / Deed
- What is confidential
- Who can have access to what and under what circumstances
- Issues
 - Public Transport / Water Cooler / Code names / Social media



Top Ten Issues

10. Small Market – Limited Expertise

- Tender Consultant Wants to Bid
- Advising Procurer and Bidder
- Identifying and contacting bidders
- Probity Deeds
- Information Barriers
 - Physical Barriers / Geographic Barriers / Separate Team / IT / No Shared Access

Contact



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