

A GUIDE TO TENDERING FOR PUBLIC SECTOR CONTRACTS

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Introduction

Every year, public sector organisations award contracts worth billions of pounds to private business in the UK and across Europe. Besides the very large contracts announced periodically, many lower-value contracts are offered every day.

This factsheet looks at the different ways in which tenders are awarded, and explains how to find and bid for contracts. It also reviews the legal framework applicable to such tenders, and offers contact details for numerous sources of further information.

Who awards contracts?

Contracts are awarded by local authorities and central Government, Government agencies, health trusts, universities, the European Commission (EC), regional development agencies (RDAs) and many other organisations. The bodies inviting and awarding contracts are generally known as 'awarding authorities'.

Invitations to tender are advertised in trade journals, on websites and, in the case of contracts worth over a certain amount, in the Official Journal of the European Union (OJEU). A huge variety of work in every sector is offered, from the supply of equipment and infrastructure to the provision of services such as catering, research, transport, software, design and training.

What are the advantages of tendering?

Competing for public sector contracts can offer your business numerous potential advantages:

- Your competitors may be unaware of the possibilities and be ill-equipped to tender.
- The public sector must comply with strict requirements for payment periods, and has clear and fair procedures.
- Working with well-known authorities or agencies can improve the reputation of your business and provide reassurance to other potential clients.

How do invitations to tender work?

The precise procedure for awarding public sector contracts varies according to the organisation and the nature of the goods or services required. Note that although some contracts are advertised, the majority are subject to bidding by invitation or are simply carried out without deliberation. The procedure tends to involve the following stages:

- Having assessed their needs, public sector organisations formulate tenders and award work or orders to the business that is judged capable of providing the best service or goods. Most procurement consists of small lots and is not advertised, or may involve renewing contracts with existing suppliers who are already providing satisfactory work.
- Where contracts are advertised, businesses write to express their interest in bidding. Awarding authorities may hold open

days, at which they explain how they operate and what their needs are. If additional information is needed to make a bid, businesses contact the awarding authority for clarification.

- The awarding authority replies with a specification and, in some cases, a pre-qualification questionnaire. Pre-qualification may depend on providing certain basic information, such as staff numbers, trading record, audited accounts, or copies of its equal opportunities or health and safety policies.
- A shortlist of qualifying businesses is drawn up and invited to tender. Winning bids are chosen according to various criteria, including quality, reliability, price and efficiency.

The time between publication and award varies considerably. Sometimes businesses are given only a few days to prepare, but large-scale contracts are usually published months before they are due to be awarded.

For some time, the Government has been encouraging local authorities to switch to electronic procurement. E-procurement is the name for a collection of measures and initiatives designed to make Government procurement more efficient by using the Internet and other data transfer channels. All local authorities will eventually be required to publish notices and, as far as possible, carry out ordering and purchasing online. E-procurement includes systems operated by the Office of Government Commerce (OGC) such as the payment system Zanzibar, and the procedure known as e-tendering. See www.ogc.gov.uk/index.asp?id=1002823 for details.

How to find and bid for public sector contracts suitable for your business

To stand a serious chance of being awarded regular public sector contracts, you will need to be proactive. Responding to advertised contracts alone will not ensure success. Having identified appropriate organisations, you should set about contacting those responsible for buying.

Basic information about authorities, such as annual budgets and procurement policies, are often in the public domain, but you should also familiarise yourself with their future plans and evolving policies. By showing that you have a clear understanding of the organisation's aims, structure and work, you will increase the chances of being invited to tender.

Under European law, contracts exceeding certain amounts must be advertised in a supplement to the OJEU, published at <http://ted.publications.eu.int/official> and in print. The lower threshold varies according to the type of organisation and what sort of goods or services they require, but is typically around £100,000. See www.ogc.gov.uk/index.asp?id=397 for a schedule of current amounts.

Several free and subscription services also publish notices:

- Contrax Weekly is a subscription service offering information about contracts at a national or regional level in the UK and Ireland. See www.contraxonline.com for details.

- Local authority websites often publish invitations to tender. See www.direct.gov.uk/D11/Directories/LocalCouncils/fs/en for a directory of councils and their websites.
- Similarly, RDAs frequently publish tender invitations on their websites. See www.englandsrdas.com for a list of England's RDAs, or go to www.wales.gov.uk for the Welsh Assembly Government, and to www.scottish-enterprise.com or www.investni.com for the UK's other regional equivalents.
- Local newspapers regularly publish information about public sector contracts in their classified sections. Additionally, the relevant trade press can be a useful source of specialist contracts. See Media UK at www.mediauk.com to search for relevant regional publications, and go to www.tradepub.com for a directory of trade publications.
- Regional purchasing organisations operated by consortia of local authorities, such as the Yorkshire Purchasing Organisation (www.ypo.co.uk), the North Eastern Purchasing Organisation (www.qtegov.com), or Scotland's Authorities Buying Consortium (<http://abc-scotland.g2b.info>), are a useful source of information about current policies and future spending plans.
- The larger Government departments run their own procurement departments. See, for example, NHS Purchasing and Supply (www.nhspurchasing.com).
- Other private sector websites that aggregate published invitations to tender from around the UK and abroad offer access for a subscription. See www.tenders.co.uk, www.ojwatch.co.uk, or www.tendersdirect.co.uk for examples.

You should also monitor trade association newsletters (see www.taforum.org for a directory of associations) for specialised contracts and ask your Chamber of Commerce (contact details at www.chamberonline.co.uk) whether it helps publicise tenders relevant to your local area.

As well as following European procurement regulations, many organisations have their own rules about the value of the contracts they must advertise, and where the notice must appear. These are generally available on request.

Analysing the invitation

Examples of invitations to tender can be seen at www.ectenders.com/about/example.htm; they usually include:

- A summary of the goods or services required.
- The name and contact details of the awarding authority.
- Relevant codes under which the contract is classified.
- A schedule of the work or goods required.
- A calendar or deadline for delivery.
- Minimum requirements for a bid to be considered.
- The deadline for bids and the date the contract is expected to be awarded.

The notice may include other information, such as how the bids will be treated, where to find out more information, and what balance will be struck between quality and price.

The invitation may include a CPV or NUTS reference. The Common Procurement Vocabulary (CPV) is a classification system intended to describe all possible services and goods using 8,200 numbered codes. The NUTS Code (Nomenclature of Territorial Units for Statistics) is also included in tenders subject to European public procurement law.

Researching the contract and assessing your ability to fulfil it

Having looked at the tender invitation and additional information such as detailed specifications, you will need to start researching the contract in detail, taking into account the background to the call and the awarding authority's particular requirements.

Whatever these particular requirements may be, there is a standard checklist of issues you must consider or verify before submitting your tender:

- Is another business already providing the goods or services required in the invitation? Some contracts are put out to test the water; they are a way for the awarding authority to judge whether or not they are currently getting good value for money, or to signal to the existing contractor that renewal of its contract is not necessarily assured. Previous knowledge of the organisation will be helpful in assessing the seriousness of the call.
- Should you bid? Having read the specifications, does your business meet all the requirements and if not, what changes will be needed to meet them? Can you meet the delivery schedule?
- What information will you need to pull together to include in the bid? Does the awarding authority require detailed financial information, CVs and confirmation of qualifications of your employees, or references from previous contracts? Can you meet the closing date and time for receipt of tenders?
- What impact would a successful bid have on your business' finances, staff and other resources? Will it strain cash flow or tie up assets needed elsewhere in the business?
- Does the contract feature work or goods that your business will be unable to supply, and if so, is it possible to form a partnership with another organisation? Some tenders specify that a certain percentage of the work may be subcontracted, but in other cases you might need to negotiate with the awarding authority.
- Who will be the end-user of your goods or services? Will your business be dealing with the public, the private sector, or other public sector organisations?
- Is the awarding authority being advised by specialists? You may need to liaise with consultants to obtain detailed technical information, and adapt your bid accordingly.
- How will your business provide continuing support once the initial delivery has been completed? Will you need to service machinery, fix bugs in software, train staff or periodically report progress?

How the public sector awards contracts

When awarding contracts, organisations are influenced by a variety of considerations. Price is not necessarily the decisive factor; indeed, a particularly low bid is more likely to raise questions or suspicions in the minds of the awarding authority. Some invitations mention a numerical ratio according to which quality and price will be weighted. In the case of many UK public sector tenders, achieving 'Best Value' has become a legal obligation or a procedural requirement.

In addition, organisations frequently consider the following:

- The quality of the bid. Your response to an invitation will be seen as a reflection of the lines along which you run your business. Needless to say, your tender must arrive on time, should be complete, and your offer must meet the specifications. One of the most frequent reasons for automatic disqualification cited by awarding authorities is that a business fails to meet all the tender requirements.

- The ability of the business to fulfil its requirements. This will involve showing that your staff have adequate experience or are sufficiently qualified, that your business will approach the contract professionally, and that you have experience of fulfilling contracts on a similar scale. You may need to provide accounts, references and detailed plans of how you will carry out the work.
- Evidence that your business follows best practice. The awarding authority will want to minimise the risk to its own finances and reputation. You may need to disclose your environmental, equality and health and safety policies, as well as providing evidence of appropriate insurance cover, relevant certification, and the quality standards you follow.

Some businesses tender frequently for contracts and save time and resources by obtaining accreditation from independent assessors. Exor (www.exorgroup.co.uk), for example, specialises in certifying much of the documentation needed to respond to tenders issued by local authorities. Contact the organisations you are interested in to find out which standards they use.

In general, small-scale procurement is becoming better advertised. The Department for Business, Enterprise and Regulatory Reform (BERR) is among the many organisations attempting to steer local authorities and Government agencies towards actively seeking tenders from small businesses. The examples of Newham Borough Council's East London Online programme (www.eastlondononline.co.uk) or the Highways Agency's decision to include small specialist suppliers in its 10 Principles for Best Value in procurement (www.highways.gov.uk/business/1175.aspx) indicate that the public sector is responding to this strategy.

Political factors, such as providing employment in the immediate area, must be discounted by law. A list of non-commercial factors in assessing bids restricts the scope of political choices, but commercial factors such as the emphasis on small business (resulting from the creation of the European Union's (EU) Lisbon Agenda) may play a part.

This emphasis on small business is balanced, however, by Government pressure on the public sector to improve efficiency; this has led to an apparently conflicting policy of reducing the number of businesses used and consequently giving more work to larger contractors.

Presenting the tender and negotiating contracts

There are many types of contracts, from one-off purchases to long-term service contracts. The contract basis will be taken from one of these four main categories:

- **Framework contract:** An arrangement to provide goods or services as and when required over a fixed period. There is no agreement to purchase a specific quantity, but an estimated usage over the period is usually provided. Framework contracts are often used for consultancy services.
- **Call-off contract:** An agreement for a fixed quantity of goods or services, such as stationery, at agreed prices over an agreed timescale.
- **Fixed-price contract:** The contractor agrees a price in advance for the goods and services.
- **Measured-term contract:** This is a fixed period of contract for a set amount of goods or services from the supplier. This will be a calculation of contract price based on the tenderer's rates multiplied by the number of days or volume of goods.

Successfully winning public sector contracts takes time, preparation and experience of the tendering process. It must also be integrated into the broader sales and marketing strategy of your business.

Overseas tenders

Although advertised tenders are theoretically open to everyone across Europe, practical considerations mean overseas contracts will be more difficult to bid for successfully.

Technical standards may differ from one country to the next, professional requirements vary, and accounting standards are different. You may find it hard to show how you will offer the tendering organisation post-sales support, and transaction costs such as translation may raise the complexity of bidding.

National barriers to doing business across Europe are being dismantled slowly, but the EU has struggled to open up the key area of services and it may be some years before most types of business see tendering for overseas work as rewarding.

The legal aspects of tenders for public sector contracts

The legislation on advertising and bidding for public sector tenders was consolidated in 2006. EU Directives 2004/17/EC and 2004/18/EC were brought into effect by the following laws:

- The Public Contracts Regulations 2006, which apply to England, Wales and Northern Ireland, and the Public Contracts (Scotland) Regulations 2006.
- The Utilities Contracts Regulations 2006, and the Utilities Contracts (Scotland) Regulations 2006.

These laws cover threshold amounts above which contracts must be advertised, electronic procurement, and the various exemptions for utilities (some of which are private sector and others public). See www.ogc.gov.uk/index.asp?id=1004559 for the OGC's guidance.

The Local Government Act 1999 obliges local authorities, fire authorities and local transport executives to review their services and ensure 'Best Value' in procurement. See www.la-hq.org.uk/directory/prof_issues/br3.html for further information.

In addition, local authorities and many Government agencies operate their own internal rules on procedures for tendering. These include threshold values for inviting tenders from more than one bidder, and apply to sums much smaller than those covered by national legislation. You will need to contact the relevant organisations individually for precise details.

In the interest of commercial secrecy, some details of tenders and awards are subject to exemptions under the Freedom of Information Act 2000. See www.ogc.gov.uk/index.asp?docid=1002588 for details.

Hints and tips

- As well as monitoring invitations to tender, it will be worth watching out for contracts awarded. They may provide useful information about your competitors, the market or even opportunities to subcontract.
- When providing references or other evidence of your abilities, use only that which is relevant to the situation and shows your business in the best light for the particular contract requirements.
- Watch out for accelerated procedures, late invitations to tender or restrictive pre-qualification - they may indicate that the decision has already been made. You could move on and find a better prospect. This is legally murky water, and you may have no recourse.
- Bear in mind that the bidding process can take a long time. There may be more than one round of bidding, and before you embark on a new bid you should think carefully about the time, cost and effort it will take.
- Each competition is an opportunity to get experience. Ask for feedback on your bid, and try to gather as much information as possible about the winning tender.

Further information

For practical start up and small business tips, ideas, know-how and news, go to:

Website: www.enterprisequest.com

To access hundreds of practical factsheets, market reports and small business guides, go to:

Website: www.scavenger.net

BIF 452 A Guide to Tendering for Olympic Games Contracts

The Office of Government Commerce (OGC) is an independent agency that works with the public sector to improve efficiency in procurement.

Rosebery Court
St Andrew's Business Park
Norwich
NR70HS
Tel: 0845 0004 999
Website: www.ogc.gov.uk

The Society of Procurement Officers in Local Government (SOPO) advises local authorities throughout the UK about purchasing and supplies.

Tel: (0141) 332 8247
Website: www.sopo.org/about_sopo/index.htm

Supplying Government is a portal providing information for lower-value contracts, and supports small businesses bidding for Government contracts.

Website: www.supply2.gov.uk

SIMAP is the EU's portal for public procurement. It provides information about European law, advice for buyers and suppliers, and explains cross-border procurement.

Website: <http://simap.eu.int>

Federal Business Opportunities is a US Government website offering information about buyers and the legislation surrounding tenders in the US.

Website: www.fedbizopps.gov

Sell2Wales is operated by the Welsh Assembly Government and provides information about public sector contract opportunities in Wales.

Website: www.sell2wales.co.uk

CONTACT-

for further information.

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