

Guide To Tendering & Public Procurement



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The Public Procurement Directives

Two Public Procurement Directives replacing the four 'old' Public Procurement Directives came into force in the UK on 31 January 2006. These Directives, adopted by the Council of Ministers and the European Parliament on 31 March 2004.

The Directives are:

The Public Sector Directive: Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

The Utilities Directive: Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

The public procurement directives have three main objectives:

- ◇ Implement new provisions take account of modern procurement methods and best practice developments.
- ◇ Take account of new technologies and changes in the economic environment.
- ◇ Make the current texts easier to understand so that contracts are awarded in complete conformity with the standards and the principles governing public procurement .

Types of document

There are three main types of tender documents:

- ◇ **PINS**
Prior Information Notices are published normally annually as an indication of the possible contracts which may be awarded in the coming year.
- ◇ **Contract Notices**
Contract notices (Invitation to Tender) are aimed at specific contracts and invite suppliers to make an application to be placed on the tender list or to be provided with information.
- ◇ **Contract Awards**
Award notices contain details of which contracts have been awarded, the awarding criteria and the successful bidder.

Types of contract

Four different types of contract are identified in EU Directives:

- ◇ Works contracts - buildings and civil engineering works
- ◇ Supplies contracts - purchasing goods and supplies
- ◇ Service contracts - advertising, property management services, architectural / engineering / surveying, management consultancy services and so on.
- ◇ Combined contracts - some tenders that are a combination of a supply and service contract or a works and service contract can be classified as a combined contract.



Types of procedure

The Directives provide for three types of procedure that contracting authorities can use:

- ◇ Open procedure
All interested suppliers, contractors or service providers may submit tenders.
- ◇ Restricted procedure
Only those suppliers, contractors or service providers invited by the contracting authority may submit tenders
- ◇ Negotiated procedure
The contracting authority consults suppliers, contractors or service providers of its choice and negotiates the terms of the contract with one or more of them.
Note: The negotiated procedure may be used only in justified cases and if the conditions required for its use are fulfilled.

For (Utilities) contracts they have a free choice between all three procedures provided that a call for competition notice has been published in the Official Journal. It should be stressed that in open and restricted procedures, all negotiation with candidates or tenderers on fundamental aspects of contracts, and in particular on prices, is ruled out; however, discussions with candidates or tenderers may be held, but solely for the purpose of clarifying or supplementing the content of their tenders, or the requirements of the contracting authorities and provided this does not involve discrimination.

Threshold values

Bodies and organisations that must comply with these thresholds can be split into two distinct groups:

- ◇ General - for all Government Departments, Local and Regional Authorities.
- ◇ Special - for Public Authorities, Public undertakings and Organisations that operate on the basis of special or exclusive rights granted by a competent authority of a Member State in the water, energy, transport and telecommunications sector.

These threshold values apply to both Tendering Opportunities and PINS



Public Contracts Regulations 2006 From 1st January 2010	Works	Services	Supplies
Entities Listed in Schedule 1 ¹	£101,323 (€125,000)	£101,323 ² (€125,000)	£3,927,260 (€4,845,000)
Other public sector contracting authorities	£156,442 (€193,000)	£156,442 (€193,000)	£3,927,260 (€4,845,000)
Indicative Notices	£607,935 (€750,000)	£607,935 (€750,000)	£3,927,260 (€4,845,000)
Small lots	£64,846 (€80,000)	£64,846 (€80,000)	£810,580 (€1,000,00)

¹ Schedule 1 of the Public Contracts Regulations 2006 lists central government bodies subject to the World Trade Organisation's (WTO) Government Procurement Agreement (GPA).

These thresholds will also apply to any successor bodies

² With the exception of the following services, which have a threshold of £156,442 (€193,000)

- Part B (residual) services
- Research & Development Services (Category 8)
- The following Telecommunications services in Category 5
 - CPC 7524 - Television and Radio Broadcast services
 - CPC 7525 - Interconnection services
 - CPC 7526 - Integrated telecommunications services
- Subsidised services contracts under regulation 34

Utilities Contracts Regulations 2006 From 1st January 2010	Supplies	Services	Works
All sectors	£313,694 (€387,000)	£313,694 (€387,000)	£3,927,260 (€4,845,000)
Indicative Notices	£607,935 (€750,000)	£607,935 (€750,000)	£3,927,260 (€4,845,000)
Small lots	£64,846 (€80,000)	£64,846 (€80,000)	£810,580 (€1,000,00)

Contracts below the various thresholds may also be covered by the Directives. Thresholds exclude VAT



How do I tender

Using the CPV code

The CPV (Common Procurement Vocabulary) Code was developed to promote ease and transparency in the public procurement arena. By using a standard method of classification codes potential suppliers can identify the contracts that are of interest to them.

The CPV is an 8-digit code. Awarding authorities may often use more than 1 code to accurately describe a particular opportunity. The codes may be used broadly to describe the industry sector or more narrowly to define a particular product or service, e.g.:

- 41000000: Collected and purified water
- 42000000: Industrial machinery
- 43000000: Machinery for mining, quarrying, construction equipment
- 44000000: Construction structures and materials; auxiliary products to construction (except electric apparatus)
- 45000000: Construction work
 - 45100000: Site preparation work
 - 45200000: Works for complete or part construction and civil engineering work
 - 45210000: Building construction work
 - 45220000: Engineering works and construction works
 - 45221000: Construction work for bridges and tunnels, shafts and subways
 - 45222000: Construction work for engineering works except bridges, tunnels, shafts and subways
 - 45222100: Waste-treatment plant construction work
 - 45222200: Engineering work for military installations
 - 45222300: Engineering work for security installations
 - 45223000: Structures construction work
 - 45230000: Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork
 - 45240000: Construction work for water projects
 - 45250000: Construction works for plants, mining and manufacturing and for buildings relating to the oil and gas industry
 - 45260000: Roof works and other special trade construction works
 - 45300000: Building installation work
 - 45400000: Building completion work
 - 45500000: Hire of construction and civil engineering machinery and equipment with operator
- 48000000: Software package and information systems
- 50000000: Repair and maintenance services

For example, if we take a tender for the construction of a road bridge, the diagram above shows the different steps through the CPV code starting at the highest level: 45000000 - Construction work and ending at the lowest level 45221111 - Road Bridge.

How do I get more information on a specific opportunity

Most notices contain contact details of the Awarding Authority. In the case of Award notices it will contain details of the successful applicant. Notices usually contain an address field with details of where to obtain further details. Alternatively simply contact us quoting the Document Number and we will obtain further details on your behalf.

Replying to tenders and getting on tender lists

Once you have identified a tendering opportunity that is of interest to you and obtained information on the awarding authority, the next step is to reply to the tender and get yourself on the tendering list.

The best way to ensure inclusion onto a tendering list is to:

- ◇ Ensure you supply all the information required as set out in the tender notice by the awarding authority.
- ◇ Convince the awarding authority that your products / services meet the necessary performance criteria and specifications.
- ◇ Convince the awarding authority that your company meets all the criteria for inclusion on tender lists.
- ◇ Respond promptly to any requests for information or clarification arising from your application.



Timescales fro replying

The normal periods that contracting authorities must allow for receipt of tenders is no less than 52 days for an open procedure and no less than 40 days for a restricted procedure.

This may be reduced to 36 and 26 days respectively, in the cases of works or service contracts where an indicative notice has been published.

Tendering checklist

- ◇ Do you have the necessary resources?
- ◇ Does your product/service meet the specifications set out in the tender document?
- ◇ Can you meet the delivery schedule?
- ◇ Can you meet the closing date and time for receipt of tenders?
- ◇ Can you tender for part of the contract or must you tender for everything?
- ◇ Do they require financial information on your company?
- ◇ Do they want details and references of previous contracts?
- ◇ Do they want details of your personnel and qualifications?
- ◇ Do they want details of your plant and any specialized equipment?
- ◇ Will you be able to provide a Tax Clearance Certificate, if successful?



Qualifying for tenders

What do I need to apply ?

Awarding authorities look for similar information when evaluating potential suppliers for tender lists. The requirements may vary in detail and structure depending on the nature of the tender, but the vast majority look for information to assess the skills, efficiency, experience and reliability of the potential suppliers. This information usually takes the form of:

- ◇ Financial and Economic Information
- ◇ Information Supporting Technical Capacity

Financial and Economic Information that may be required

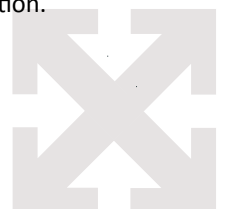
- ◇ Balance Sheet Information
- ◇ Bank Statements
- ◇ Turnover over the previous 3 financial years
- ◇ Evidence of overall turnover and turnover in respect of services/products to which the contract relates, over the previous 3 financial years
- ◇ Any document which the Public Sector Organisation considers appropriate
- ◇ Relevant professional risk indemnity insurance

Information Supporting Technical Capacity that may be required

- ◇ A list of principal product deliveries/services provided over the previous 3 years with details of amounts, dates and recipients (whether in the public or private domain).
- ◇ The technical bodies and personnel responsible for monitoring your quality control and conformance with other standards.
- ◇ Recognised third party certification of conformity of the products/services to given specifications and industry standards.
- ◇ For complex or special purpose services/products, a possible check on the supplier's/service providers technical ability, study and research facilities or quality control measures carried out by an official body in the supplier's country of establishment.
- ◇ Information on Health and Safety aspects
- ◇ Information on Environmental Controls
- ◇ The educational and professional qualifications of managerial staff and of those responsible for providing the services.
- ◇ Average annual manpower and the number of managerial staff for the last 3 years.
- ◇ The tools, plant or equipment available for the carrying out of the services.
- ◇ An indication of the proportion, if any, of the contract, which the service provider intends to sub-contract
- ◇ Quality assurance standards referring to EN29000 European Standards series. (see ISO9000)

Qualification criteria

Qualification criteria must be clearly laid out either in the notice, or the tender documents, preferably in order of importance. They must be easily identifiable - it is not acceptable for potential tenderers to have to interpret documentation in order to establish the criteria as this may lead to inequality due to alternative interpretation.



Awarding Tenders

European criteria for awarding tenders

Awarding Authorities when deciding which bid to accept may do so on the basis of either:

- ◇ The lowest price only
- ◇ The most economically advantageous tender - using various criteria such as price, period for completion, running costs, profitability, technical merit.

If an Awarding Authority chooses to use the "most economically advantageous" method, this must be stated in the tender notice or documents. Details must include which criteria it intends to apply to the award, and their order of importance.

Who won what tenders and why

Details of any contract awarded must be notified to the Commission no later than 48 days after the award of a particular contract. Award notices should include information on the successful tenderer as well as the awarding criteria.

Why didn't I win that tender

Tenderers should be informed without undue delay if they have been unsuccessful. Awarding Authorities must release the relevant information to unsuccessful tenderers who inquire as to why their bids were not accepted.

Tendering tips

- ◇ You do not have to be established in any particular location as long as you have the ability to meet the response times of the buyer
- ◇ If you have tendered a particular buyer recently, you should not have to re-supply information, which you have previously made available to the buyer
- ◇ There is no need for a permit issued by a government department or to be on an "official list" in order to apply for a contract. However, this is not to be confused with tender lists, which the public sector commonly use when seeking product/service providers.
- ◇ The resources of other suppliers may be availed of while tendering as long as you supply proof of a relationship/arrangement between you and the other supplier.
- ◇ Tender details must not mention products/services of a specific make, source, process or trademark. However, if it is absolutely essential to describe something by these terms, the words "or equivalent" must be used.
- ◇ You will not be permitted to sub-contract an entire contract to another supplier.

Advertising your own procurement needs

Advertising in the OJEC

Only government bodies and certain qualifying private companies (government strategic interest companies such as transport, utilities, energy and telecommunications) are allowed to advertise on the OJEC. Notices for the Official Journal should be drawn up in accordance with the relevant directives.

Advertising in the OJEC is free of charge.

