



Refreshingly approachable

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Public Procurement Procedure

The Government has recognised public procurement as a means of economic recovery and has set itself an “aspirational target” of 25% of government contracts being performed by Small and Medium Size Enterprises (“SMEs”) and is seeking to simplify procedures especially in contracts worth less than £100,000.

In 2009/10, direct procurement from SMEs stood at 6.5% and this stood to rise to 13.7% in 2011/12.

Whilst the overall goal of the government remains to obtain value for money and drive down costs, this still represents a significant opportunity for SMEs who are willing to commit time and effort to familiarise themselves with public procurement procedures, answer Pre-Qualification Questionnaires and submit tenders for such contracts.

It is though important that any SMEs exploring this area fully understand the terms of the tender; the commitment they are taking on and the steps they need to take to be successful in this area.

There are essentially four separate procedures available to any contracting authority:

- 1. Open Procedure** – there is no Pre-Qualification Questionnaire and any interest party may submit a tender.
- 2. Restricted Procedure** – any interested party may request to bid for the tender but only those invited by the contracting authority to bid following a qualification process can submit tenders.
- 3. Competitive Dialogue Procedure** – this procedure is used in more complex situations and in circumstances where the contracting authority cannot adequately specify its requirements. They enter dialogue with potential bidders before specifying a final tender for the interested parties to bid for.

- 4. Negotiated Procedure** – a procedure now reserved for the most complex projects or for where procurement under other procedures has failed. The contracting authority negotiates direct with the contractors of its choice for the performance of the project.

ELEMENTS OF THE PROCEDURES

1. Advertisement

Where any contracting authority wishes to enter a contract governed by the Public Contracts Regulations 2006 it is obliged to advertise the tender within the Official Journal of the European Union. Not all contracts are governed in this way as there are significant exemptions due to the nature of the contract or its value.

2. Pre-Qualification

Frequently a Pre-Qualification Questionnaire is used to collect information about the interested parties so that the contracting authority can assess them and cut them down to a short list of parties they wish to invite to tender. At this stage the information sought is limited to the information about the interested party and an objective selection criteria is applied to reduce numbers to a manageable number.

The shortlisted parties are then either invited to tender (in the Restricted Procedure) or enter dialogue (in the Competitive Dialogue Procedure).

3. Invitation to Tender

An invitation to tender ordinarily sets out in full the requirements of the contracting authority for the tender and also whether it will only accept reference bids or reference and variant bids.

Reference bids are restricted to a bid in the form required by the contracting authority, whereas a tender which accepts variant bids will permit alternative bids from reference bids in prescribed ways or in some cases permit the interested party a free hand in alternative bids that it may submit.

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4. Invitation to enter dialogue

There is no definition of what is and what is not dialogue but an invitation to enter dialogue contains a broad summary of the contracting authority and its needs and a start point of some kind for the dialogue, including rules governing how the dialogue will be conducted. In all respects, the dialogue has to be conducted in a transparent way.

Usually dialogue consists of a number of meetings between the contracting authority and those invited to be involved in the dialogue which cover off all aspects of the proposed contract but include the needs of the contracting authority as well as all other technical, financial and legal elements of the contract.

From this, the contracting authority tends to invite outline solutions to their requirements. Once they are fully satisfied of the requirements and the method of delivery and all contractual terms they will invite final tenders from the parties still involved based on that requirement, the method of delivery and contractual terms.

5. Tenders/Final Tenders

These will include:

- The contractor's final detailed technical submission across the Board to meet the Contracting Authorities
- Acceptance of the contractual terms upon which the contract will be entered, should their tender be successful.

6. Tender Evaluation

The basis of the evaluation will be specified as either lowest price (where price is the be all and end all of the tender) or most economically advantageous tender (MEAT) (where factors other than price are to be considered overall).

Where MEAT applies, the invitation to tender or where advertised the advertisement will specify the factors that will be considered and the weighting that will be applied to each award criteria.

7. Contract Award

The conclusion of the tender process is at the point of tender award. At this point the contracting authority will notify the successful and unsuccessful bidders.

There then follows a minimum of a 10 day standstill period before the contract is entered to enable any challenge to the process and to enable unsuccessful parties to obtain a debrief of why they were not successful.

Following expiry of the relevant standstill period, the contract is entered.

8. Contract monitoring and re-tender

All public procurement will involve a degree of performance assessment, monitoring and compliance auditing. Awareness of these procedures is essential and they should be planned for.

In service contracts this can include TUPE information for re-tender or the ability to deliver cost savings during the term.

For further information on public procurement procedures, and how Woodfines can help your business to tender for contracts, please contact:

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