A user’s guide to
EU procurement rules
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This booklet has been developed to provide clarity and support to Sweett Group staff and our clients on procurement in the public sector. In particular, it focuses on the use of procedures set out in the Public Contracts Regulations, (Statutory Instrument 2006 No 5), the Public Contracts (amendment) Regulations 2009 and the Public Procurement (Miscellaneous Amendments) 2011 that were introduced on the 1 October 2011”.

The Regulations were developed in response to Procurement Directives issued by the European Union and they set out how the UK has transposed the EU Directive into national law. EU Procurement Directives apply when contracting authorities (public sector authorities or utility providers) seek to acquire goods, services, and works that exceed a specified threshold.

The directives exist to:

- open up the public procurement market
- ensure there is free movement of goods and services within the EU
- guarantee that public procurement is based on “Value for Money” which should be achieved through competition

Regardless of whether or not the anticipated procurement will exceed the thresholds all public expenditure must be carried out in a manner which ensures:

**Equal treatment (non-discrimination/fairness):** Contracting Authorities are obliged to treat both potential and actual tenderers in the same way, without favour or prejudice. When specifying requirements avoid brand names and other references which would favour or eliminate particular providers, products or services and accept equivalence.

**Transparency (openness):** Some degree of advertising (appropriate to the size of the contract) is likely to be necessary to demonstrate transparency. Must be upfront with tenderers about the conditions for participation, selection criteria, award criteria and the reasons why they were or (more importantly), were not, successful.
**Proportionality:** Contracting Authorities must ensure that tender requirements are both relevant to the contract being procured and necessary.

**Mutual recognition:** Member States are required to accept on their territory products which are legally produced and marketed, and services that are legally provided, in other Member States. Also mutual recognition of diplomas, certificates or other evidence of formal qualifications.

**Confidentiality:** Contracting Authorities are obliged to respect the confidentiality of the information received from tenderers during the procurement process.

Failure to follow the procurement procedures set out in the Regulations may result in penalties for non-compliance. There are three routes under which remedies may be sought: Judicial review, Article 226 proceedings and remedies under the Regulations. In any case if a challenge is made, the procurement process can be suspended or even cancelled and damages can be awarded. When Sweett Group acts as an advisor, or procures on behalf of a public sector client, we have a duty of care to our clients to ensure they are conducting procurement in accordance with these Regulations.

**This guide provides:**

- guidance on the steps and considerations that need to be taken to establish whether an advert in the Official Journal of European Union (OJEU) is required
- guidance on determining the appropriate procedure
- detailed guidance on the restricted procedure and competitive dialogue as these are the two routes most relevant to the construction industry
- flowcharts and keynotes for the procedures
- sources of further information such as directives, guidance documents, template examples and individuals who can be contacted for further advice
Sweett Group contacts

Sweett Group is able to provide a range of expert consulting services that relate to public sector procurement. The table below outlines who you can contact for expert procurement advice.

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charles McSweeney</td>
<td>Head of Specialist Consulting Services</td>
<td><a href="mailto:charles.mcsweeney@sweettgroup.com">charles.mcsweeney@sweettgroup.com</a></td>
</tr>
<tr>
<td>Alan Saunders</td>
<td>Project Director</td>
<td><a href="mailto:alan.saunders@sweettgroup.com">alan.saunders@sweettgroup.com</a></td>
</tr>
<tr>
<td>Tony Newberry</td>
<td>Project Director</td>
<td><a href="mailto:tony.newberry@sweettgroup.com">tony.newberry@sweettgroup.com</a></td>
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<tr>
<td>Ben Jefferson</td>
<td>Associate</td>
<td><a href="mailto:ben.jefferson@sweettgroup.com">ben.jefferson@sweettgroup.com</a></td>
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<tr>
<td>Cora Billy</td>
<td>Consultant</td>
<td><a href="mailto:cora.billy@sweettgroup.com">cora.billy@sweettgroup.com</a></td>
</tr>
<tr>
<td>Stuart McGee</td>
<td>Contracts Advice</td>
<td><a href="mailto:stuart.mcgee@sweettgroup.com">stuart.mcgee@sweettgroup.com</a></td>
</tr>
</tbody>
</table>

Sweett Group has invested to develop an experienced team, a compliant set of procurement documents and eProcurement tools.

eProcurement brings control, transparency and efficiency in the procurement process. Communication is enhanced through all procurement information, documentation and correspondence being distributed via an online portal thus allowing a full electronic audit trail to be maintained.

The system provides a single distribution method of tender documentation and also a functionality that allows document receipt. This allows mandatory timeframes to be reduced whilst also maximising supplier time to complete the response.

Using the eProcurement tool, we can reflect the benefits of a streamlined and controlled process in our own proposals. Contact a member of our team for more information.
establishing the contracting authority’s needs

In order to determine if the Regulations apply and to select the most appropriate procurement strategy, detailed discussions with the client, referred to here as “the contracting authority”, need to take place. This is to establish the scope of the proposed contract including:

• The nature of the works and/or services to be procured. Is the contracting authority able to pre-define their needs/requirements or are they so technically and financially complex that they will need input from bidders?
• The quantity of work to be undertaken, the anticipated duration and anticipated total value of any proposed work, purchase or service.
• Whether the setting up of a framework agreement would be appropriate (see Appendix A for more information).

It is advisable to formally document the needs identified above, detailing the appropriate procurement strategy, which the contracting authority will then sign off. This signals the start of the procurement process and audit trail that will govern the decisions made.

Be aware that some contracting authorities have produced their own guidance (see page 30). Always check to see whether your contracting authority has any such guidance so you can use this as the basis for your advice or alternatively point out where such guidance is applicable. If the contracting authority is a utility provider, a different directive governs this procedure (see Appendix B for more information).

It is not always clear whether the Regulations apply as the contracting authority can sometimes include a mix of public and private sector stakeholders. If this is the case, seek advice from the individuals listed in the introduction to this guide.
“T.E” – Teckal Exemption

Clients may want to consider where the Teckal Exemption applies. Teckal Exemption in essence allows one or more local authorities to place work with an external entity without complying with the public procurement directive or regulations. If their relationship is equivalent to that between the authorities and their internal departments, in the sense that the authority exercises control over the entity without private sector involvement and the essential part of the entity’s activities are with the authorities (please seek specialist procurement advice before determining this route).
the EU procurement procedures

open procedure

This allows an unlimited number of interested parties to tender against defined parameters. This procedure is straightforward and transparent but can attract an unwieldy number of potential bidders. It may be used for commodity procurement, (e.g. stationery, furniture supply), but is not usually recommended for construction projects due to the high number of tenders that could be expected. It is not appropriate for PFI/PPP due to their complex technical, legal and financial requirements. If you think this procedure is suitable, seek advice first (contacts noted on page 3).

restricted procedure

This is a two-stage procedure. The first stage allows the contracting authority to set the minimum criteria relating to technical, economic and financial capabilities that the suppliers have to satisfy. Following evaluation and short-listing, a minimum of five suppliers (unless fewer qualify) are invited to tender in the second stage. This process is typically used to appoint consultants or contractors on traditionally procured projects or frameworks. If this option is appropriate, see page 12.

accelerated restricted procedure

The accelerated restricted procedure is only intended for use where for reasons of urgency the contracting authority must procure the contract in a reduced time frame. Any contracting authority wishing to use this procedure must be able to demonstrate the reasons of urgency that necessitate the use of this procedure. Failure to do so could result in the process being challenged – accordingly for further advice please contact one of the procurement team – details on page 3.
The pro’s include:
• reduced timescales to as little as a 10 day allowance for pre-qualification and invitation to tender submissions to be received
• overall procurement and project programme improvement
• public sector finances mobilised earlier within the general economy

The con’s include:
• the market response may be lower than expected and that impacts on the potential to select the best provider
• the quality of the documents prepared for tender and those received from candidates may be poor due to the speed of activity
• pricing may be higher/lower than expected as limited time and the quality of the brief impacts the offer

**negotiated procedure**

The procedure involves the contracting authority selecting one or more persons with whom to negotiate the terms of the contract. If used, a full audit trail should be maintained and appropriate legal advice sought. This procedure has previously been popular and was used for all PFI/PPP procurement but has been superseded by the competitive dialogue procedure as a result of the revised Regulations that came into force on 31 January 2006. It is now only to be used in very exceptional circumstances. Undertaking a complex procurement for the first time would not usually justify a contracting authority using the negotiated procedure.

**competitive dialogue**

This procedure is appropriate for complex contracts where contracting authorities:
• are not objectively able to define the technical means capable of satisfying their needs or objectives, and/or
• are not objectively able to specify the legal and/or financial make-up of a project
A pre-qualification questionnaire should be completed to select the candidates to participate in the dialogue. The contracting authority enters into a dialogue with bidders to identify and define the means best suited to satisfying their needs. The dialogue may be conducted in successive stages with the remaining bidders being invited to tender. Some public sector authorities have developed guidance on conducting this procedure so it is vital that specific departmental guidance is adhered to where applicable. This process is now used for the procurement of private sector partners on PFI/PPP projects. If this procedure is deemed appropriate, see page 21.
The purpose of this section is to define the procurement procedure for a given contract, in compliance with the Regulations. Answer the questions in this section once you have established the contracting authority’s needs and are clear about the scope of the contract. By answering these questions you should arrive at the most suitable procurement procedure for your contract.

1. Is the public sector contract a:
   - **Supplies contract** (procurement of pre-manufactured goods including stationery, equipment and fixed assets)? If yes, go to question 2.
   - **Services contract** (the engagement of a person or a company to provide services such as maintenance, consultants etc.)? If yes, go to question 3.
   - **Works contract** (construction work) If yes, go to question 4.
   If you are not sure, see Appendix C of this guide.

2. Are the supply costs (net of value added tax) payable to an individual supplier expected to exceed the values listed below?

   
<table>
<thead>
<tr>
<th></th>
<th>£</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entities listed in Appendix E</td>
<td>113,057</td>
<td>130,000</td>
</tr>
<tr>
<td>Other public sector contracting</td>
<td>173,934</td>
<td>200,000</td>
</tr>
</tbody>
</table>

   If no go to question 5, if yes go to question 6.

3. Are the services fees (net of value added tax) payable to an individual supplier expected to exceed the following values?

   
<table>
<thead>
<tr>
<th></th>
<th>£</th>
<th>€</th>
</tr>
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<tbody>
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<td>173,934</td>
<td>200,000</td>
</tr>
</tbody>
</table>

   If no go to question 5, if yes go to question 6.

N.B. These values are as of 1 January 2012 and are updated every two years.
4. Is the tender price of the works contract expected to exceed £4,348,350 (net of value added tax)?
   If yes go to question 6.

5. Does the aggregate fee of a single requirement for services of the same type (e.g. architectural services) exceed the relevant thresholds below, over a 12 month period?

<table>
<thead>
<tr>
<th>Entities listed in Appendix E</th>
<th>Supplies</th>
<th>Services</th>
<th>Works</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£113,057</td>
<td>£113,057</td>
<td>£4,348,350</td>
</tr>
<tr>
<td></td>
<td>€130,000</td>
<td>€130,000</td>
<td>€5,000,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other public sector contracting authorities</th>
<th>Supplies</th>
<th>Services</th>
<th>Works</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£173,934</td>
<td>£173,934</td>
<td>£4,348,350</td>
</tr>
<tr>
<td></td>
<td>€200,000</td>
<td>€200,000</td>
<td>€5,000,000</td>
</tr>
</tbody>
</table>

Note that the thresholds are as it stands from 1 January 2012 and are updated biannually. The thresholds are fixed so do not always reflect the current exchange rates between pound sterling and euro. For current thresholds check: www.cabinetoffice.gov.uk/resource-library/policy-and-standards-framework-%E2%80%93-legal-framework

If no, follow the client’s internal tendering procedures. The contract is not subject to the Regulations although the principles still apply. For information on this process see Appendix F. If yes go to question 6.

N.B. In valuing a contract or transaction it is necessary to consider whether the ‘aggregation’ rules apply. In principle the relevant value for threshold purposes is the value of each individual contract, however, in certain circumstances it is necessary to add together the value of purchases made under a number of similar contracts over a 12 month period.

6. Is the contract straightforward, i.e. can specifications and terms of engagement be stated in advance of going to the market?
   If no go to question 8, if yes go to question 7.

7. The Restricted Procedure should be used. If you wish to use the Accelerate Restricted Procedure, justification will need to be provided on the contract notice.
8. Is there any reason (artistic or technical expertise or the need to protect exclusive rights) that warrants the contract being carried out by a particular person or authority?
   If no: competitive dialogue, if yes: negotiated procedure

**N.B.** Accelerated or negotiated procedures should only be used in specific circumstances. Seek advice first (contacts noted on page 3).
This section describes what each stage of the procedure involves as shown in the flowchart on page 20. An indicative programme of works for this procedure is included in Appendix H.

procurement strategy

Consider what influence this procurement may have on the sustainability agenda and how the procurement could be an opportunity to make a positive contribution.

As part of agreeing a procurement strategy:

- **Consider holding an objectives workshop with the contracting authority and/or conduct a contracting authority briefing** – this ensures that the contracting authority’s needs are understood and can be communicated to potential suppliers.
- **Consider drafting a procurement strategy document** – this acts as an audit trail of decisions made for the tendering process.
- **Consider using electronic communication** – this allows reduced timescales to be used. Sweett Group have corporate membership to mytenders – an electronic procurement portal. For details on how to access and use this system please contact one of the procurement team listed on page 3.

To comply with the Regulations, the equipment to be used for communication by electronic means must be:

- non-discriminatory
- generally available
- compatible with information and communication technology products in general use
The Regulations do not state which documents need to be communicated electronically in order for the reduced timescales to apply. Therefore the reduction of timescales by the use of electronic communication is open to interpretation. Reduced timescales are not always beneficial as the quality of the tenders may be compromised.

**prior information notice (PIN)**

**Consider issuing a PIN** – the purpose of this is to inform the market of impending work and it allows the use of reduced timescales
- it is mandatory, but there are no specific sanctions for failure to publish a PIN
- can give advance warning of impending contracts which is useful to warm up the market
- allows reduced timescales if published at least 52 days (and within 12 months) prior to OJEU notice but this is not always advantageous as the quality of tenders is frequently compromised when timescales are reduced
- a PIN should also be used as the means for advertising and requesting responses to any Soft Market Testing that the contracting authority may wish to conduct
- for services or supplies, publish the PIN at the start of the financial year when the aggregate value is expected to exceed the threshold
- for works, publish the PIN once a decision has been made to proceed with a works contract

**advertising**
- no transaction subject to the directives is to be advertised elsewhere before despatching the OJEU notice
- all notices published via the Mytenders portal are automatically issued to Contracts Finder. Those above the Thresholds will additionally be sent for publication in the OJEU
- once it is published in the OJEU the requirement may then be advertised elsewhere, provided that no more information than that given in the OJEU is supplied
- additional advertising is optional (it can sometimes be beneficial to advertise the notice in a trade journal)
contract notice

Draft OJEU contract notice using contracting authority information

It is important that the contract notice is completed in full and represents the requirements being purchased. This can have major implications should the procurement process be challenged and the advertised requirements misrepresent the contract.

- go to Simap website: http://simap.europa.eu/index_en.htm and follow links to “Buyers Corner” then “New Forms.” The PSCM team has registered Simap users and are able to access and publish contract notices.

N.B. If the conclusion of the procurement process is to set up a framework agreement, potential candidates must be made aware of this when the contract notice is submitted.

submit contract notice

the selection process - pre qualification questionnaire (PQQ)

Develop information pack and PQQ

- consider using a website as a vehicle for publishing all documents to reduce time and cost
- consider holding an open day for prospective tenderers. This allows tenderers to clarify queries and indicates the level of market interest
- applications can only be short-listed on the following criteria:
  - technical or professional ability (e.g. experience, CDM competency and resources)
  - economic and financial standing
- assessment criteria (including any sub criteria to the main criteria weightings) need to be defined and communicated in the documents and relative weightings need to be agreed. Examples of criteria are shown in Appendix G
Issue PQQ and information pack to candidates

Respond to all requests for information – ensure that responses to all candidate queries are recorded and made available to all other candidates

Administration and clarification of the PQQ process with prospective tenderers

Pre qualification evaluation

Assist contracting authority with the evaluation of returned PQQs to develop a shortlist with a minimum of five tenderers (unless fewer than five compliant PQQs are received or fails to satisfy minimum standards)

• It is recommended that a core group of stakeholders mark the submissions and collate and weight the scores (to pre-agreed criteria and weightings) to ensure that a collective and objective view is obtained
• record all contact information relating to all PQQ submissions. This will be used at the end of the PQQ assessment and the end of the tender period.

N.B. All those submitting a PQQ need to receive notification of the results.

Issue all candidates with a written notification of success/failure

Debriefing for unsuccessful candidates

In accordance with the Regulations the unsuccessful candidate must be informed of the:
• reasons why it was unsuccessful
• characteristics and advantages offered by the successful candidate(s)

the award - invitation to tender (ITT)

Prepare tender document:
• confirm/agree tender submission opening procedures
• prepare invitation to tender (ITT)
• include payment terms
• include specific contract
• evaluation methodology
• include evaluation and sub award criteria
• the tender documents should be marked on quality/added value issues as well as a defined and fixed financial model
• the relative assessment ratings for quality and price should be decided at early briefing meetings, and in any case no later than the issue of the ITT

**N.B.** Under the Freedom of Information Act, public sector contracting authorities may be requested to release details of tenders received. Tender documentation should ask bidders to identify commercially sensitive aspects of their bid which they do not wish to be released into the public domain. Ultimately the public sector contracting authorities will make the decision on what is to be discussed.

**Issue tender documents**

**tender evaluation**

**Administration and clarification of the ITT process with tenderers**

• ensure that responses to all tender queries are made available to all other tenderers, apart from those commercially sensitive to the bid

**Conduct tender evaluation process as agreed with client on receipt of tenders**

• it is recommended that a core group of stakeholders mark the submissions and collate and weight the scores (to pre-agreed criteria and weightings) to ensure that a collective and objective view is obtained and recorded for audit purposes

**Organise and facilitate interview evaluation (if required)** – An interview can be used by the contracting authority to clarify information included in the tender. This should not be used as an award criteria in itself. The interviews should be a controlled and recorded activity.
Post tender clarification with client:

• hold meeting to finalise details
• should not include negotiation on submitted tenders
• compile a recommendations report

Recommendations report – the contracting authority should be presented with an evaluation report of recommendations. This document will form part of the project audit trail. It is advisable to include the following in this document:

• background information including an overview of the:
  - contract
  - procurement strategy
  - the process and stakeholders involved
  - details of the number of bidders that applied, withdrew, were disqualified, unsuccessful at PQQ, interviewed, invited to tender etc.
  - description of the evaluation criteria used to shortlist bidders
• combined final score sheet
• recommendations
• appendices that include summary evaluation data

If the conclusion of the procurement process is a framework agreement, consider holding a framework launch event and schedule regular framework review meetings in order to maintain communication channels between framework partners. For specialist supply chain management advice, contact Tony Newberry (contacts noted on page 3).

Issue all candidates with a written notification of success/failure

Issue letter (pdf) via email to successful and unsuccessful tenderers - the details to be included are:

• the award criteria
• the reasons for the decision, including the characteristics and relative advantages of the successful tender
• the scores obtained by the recipient and the operator to be awarded the contract
• the successful operator’s name
• a precise statement of when the standstill period is expected to end.
Details are also to be sent (via an email and letter in pdf form) to the candidates that submitted a PQQ.

The details to be included are:
- the award criteria
- the successful operator’s name.
- a precise statement of when the standstill period is expected to end

**Debriefing for unsuccessful candidates**

In accordance with the Regulations, and in line with the timescales noted below for the standstill period, the unsuccessful candidate must be informed of:

- the reasons why it was unsuccessful
- the characteristics and advantages offered by the successful candidate(s)
- the name of the candidate to be awarded the contract, or the names of the parties to the framework agreement

**standstill period**

**Standstill period** (also often referred to as the “Alcatel” period due to the legal decision from which this point arose)

- The standstill period is defined by the method of dispatch of the award notification. A 10 day standstill period will apply if the notification (by letter in a PDF format) is issued by email. Where a letter is sent by post then a 15 day period must be provided. **N.B.** The standstill period starts the day after sending and ends at midnight on the 10/15th day. The last day must be a working day. If the final day of the standstill falls on a non working day then the standstill period must be extended until midnight at the end of the next working day.
- Contracting authorities must notify all tenderers of their decision on the contract award in writing, allowing a standstill period of at least 10 calendar days between the date the notification is sent to tenderers and the date when the preferred bidder is awarded the contract.
- If a tenderer makes a request for a debriefing by the end of the second working day of the 10 day period, contracting authorities must debrief that tenderer during the standstill period.
- Contracting authorities must allow three working days between providing the debriefing and the end of the standstill period.
contract award notice

**Publish contract award notice** – a notice of the contract award must be placed in the OJEU, no later than 48 days after the award or conclusion

**Contract Execution**
Issue prior information notice (PIN)

**Yes:** Reduced timescales can be used

**No:** Full minimum timescales to be adhered to

Submit contract notice

Issue pre qualification evaluation

PQQ return date

Pre qualification assessment

Issue invitation to tender

Tender return date

Tender evaluation

10 day standstill period

Contract award notice
This section describes the process for each stage of the flowchart on page 20. An indicative programme of works for this procedure is included in Appendix I.

procurement strategy

Consider what influence this procurement may have on the sustainability agenda and how the procurement could be an opportunity to make a positive contribution.

As part of agreeing a procurement strategy:

- **consider holding an objectives workshop with the contracting authority** and/or **conduct a client briefing** – this ensures that the contracting authority’s needs are understood and can be communicated to potential suppliers

- **consider drafting a procurement strategy document** – this acts as audit trail documentation for the tendering process

- **consider using electronic communication** – this allows reduced timescales to be used. Sweett Group have corporate membership to mytenders – an electronic procurement portal, for details contact one of the procurement team listed on page 3.

To comply with the Regulations, the equipment to be used for communication by electronic means must be:

- non-discriminatory
- generally available
- compatible with information and communication technology products in general use

The Regulations do not state which documents need to be communicated electronically in order for the reduced timescales to apply. Therefore the reduction of timescales by the use of electronic communication is open to interpretation. Reduced timescales are not always beneficial as the quality of the tenders may be compromised.
prior information notice (PIN)

Consider issuing a PIN – the purpose of this is to inform the market of impending work and it allows the use of reduced timescales

• it is mandatory, but there are no specific sanctions for failure to publish a PIN
• can give advance warning of impending contracts which is useful to warm up the market
• allows reduced timescales if published at least 52 days (and within 12 months) prior to OJEU notice but this is not always advantageous as the quality of tenders is frequently
• a PIN should also be used as the means for advertising and requesting responses to any Soft Market Testing that the contracting authority may wish to conduct compromised when timescales are reduced
• for services or supplies, publish the PIN at the start of the financial year when the aggregate value is expected to exceed the threshold
• for works, publish the PIN once a decision has been made to proceed with a works contract

advertising

• no transaction subject to the directives is to be advertised elsewhere before despatching the OJEU notice
• once published in the OJEU, the requirement may be advertised elsewhere provided that no more information than that given in the OJEU is supplied
• additional advertising is optional (it can sometimes be beneficial to advertise the notice in a trade journal)
• all notices published via the Mytenders portal are automatically issued to Contracts Finder. Those above the Thresholds will additionally be sent for publication in the OJEU

contract notice

Draft OJEU contract notice using contracting authority information

• go to Simap website: http://simap.europa.eu/index_en.htm and follow links to “Buyers Corner” then “New Forms”. The PSCM team has registered Simap users and are able to access and publish contract notices
• the OJEU notice must state that the competitive dialogue procedure will be used
• where the contracting authority wishes to reduce the numbers of tenderers during the dialogue phase, it should state its intention to do so

N.B. If the outcome of the procurement process is to set up a framework agreement, potential candidates must be made aware when the contract notice is submitted and in any subsequent advertisements. It is unlikely that this procedure would be suitable for setting up frameworks.

Submit contract notice

The selection process - pre qualification questionnaire (PQQ)

Develop information pack and PQQ
• consider using a website as a vehicle for publishing all documents to reduce time and cost
• consider holding an open day for prospective tenderers. This allows tenderers to clarify queries and indicates the level of market interest
• applications can only be short-listed on the following criteria:
  - technical or professional ability (e.g. experience and resources)
  - economic and financial standing
• assessment criteria and relative weightings to be agreed, examples of criteria are shown in Appendix G
• candidates to remain unaware of each others’ identities to ensure fair competition

Issue PQQ and information pack to tenderers

Respond to all requests for information – ensure that responses to all queries that are addressed are recorded and made available to all other candidates.

Administration and clarification of the PQQ process with prospective tenderers
pre qualification evaluation

Assist contracting authority with the evaluation of returned PQQs to develop a shortlist with a minimum of three bidders – (provided they satisfy the minimum standards set)

Issue all candidates with a written notification of success/failure – same as detailed in restricted procedure

Debriefing for unsuccessful candidates
In accordance with the Regulations the unsuccessful candidate must be informed of:
• the reasons why it was unsuccessful
• the characteristics and advantages offered by the successful tenderer(s)

the award - invitation to participate in dialogue (ITPD)

Prepare invitation to participate in dialogue (ITPD)
ITPD should include:
• memorandum of information and any other supporting documentation
• date for the start of the dialogue period
• criteria for the award of contract
• information on the weighting of the award criteria
• reference to any additional documents required from bidders
• information to show at what stage the number of bidders will be reduced

N.B. Under the Freedom of Information Act, public sector contracting authorities may be requested to release details of tenders received. Tender documentation should ask bidders to identify commercially sensitive aspects of their bid which they do not wish to be released into the public domain. Ultimately the public sector client will make the decision on what is to be discussed.

Issue ITPD
dialogue phase

Carry out the dialogue phase
The aim is to identify and define the means best suited to satisfy the contracting authority's needs:
• discuss solutions, develop ideas and explore options
• consider presentations, round table meetings etc
• issue clarifications as the solution develops
• ensure all discussions are documented
• dialogue to continue until one or more solutions capable of fulfilling the needs are identified”

Conclude dialogue – this occurs once the contracting authority has identified the solution(s) capable of meeting its needs.

Notify all bidders that the dialogue has concluded

Invite bidders to submit final tenders
• confirm/agree tender submission opening procedures
• prepare invitation to tender (ITT)
• include payment terms
• include specific contract
• evaluation methodology
• include evaluation and sub award criteria
• the tender documents should be marked on quality/added value issues as well as the commercial proposals
• the relative assessment ratings for quality and price should be decided at early briefing meetings, and in any case no later than the issue of the ITT
• issue tenderers with specific schedules of supplementary requirement where necessary

N.B. Under the Freedom of Information Act, public sector contracting authorities may be requested to release details of tenders received. Tender documentation should ask bidders to identify commercially sensitive aspects of their bid which they do not wish to be released into the public domain. Ultimately the public sector contracting authorities will make the decision on what is to be discussed.
tender evaluation

Conduct tender evaluation process as agreed with the client on receipt of tenders

• ensure that final tenders contain all the elements required
• if necessary contact bidders to obtain any clarification, specification or fine tuning
• ensure that after clarification, specification and fine tuning there is no change to the basic features of the final tender

Post-tender clarification with contracting authority

• hold meeting to finalise details
• should not include negotiation on submitted tenders
• compile a recommendations report

Select preferred bidder

Issue all candidates with a written notification of success/failure

Debriefing for unsuccessful candidates

In accordance with the Regulations and in line with the timescales noted below for the standstill period, the unsuccessful candidate must be informed of the:
• reasons why they were unsuccessful
• characteristics and advantages offered by the successful candidate(s)
• name of the candidate to be awarded the contract, or the names of the parties to the framework agreement
**Standstill period**

**Standstill period** (also often referred to as the “Alcatel” period due to the legal decision from which this point arose)

- The standstill period is defined by the method of dispatch of the award notification. A 10 day standstill period will apply if the notification (by letter in a PDF format) is issued by email. Where a letter is sent by post then a 15 day period must be provided. **N.B.** The standstill period starts the day after sending and ends at midnight on the 10/15th day. The last day must be a working day.
- Contracting authorities must notify all tenderers of their decision on the contract award in writing, allowing a standstill period of at least 10 calendar days between the date the notification is sent to tenderers and the date when the preferred bidder is awarded the contract.
- If a tenderer makes a request for a debriefing by the end of the second working day of the standstill period, contracting authorities must debrief that tenderer during the standstill period.
- Contracting authorities must allow three working days between providing the debriefing and the end of the standstill period. If the final day of the standstill falls on a non working day then the standstill period must be extended until midnight at the end of the next working day.

**contract award notice**

**Publish contract award notice** – a notice of the contract award must be placed in the OJEU, no later than 48 days after the contract award or conclusion of the procurement process

**Conclusion of the procurement process** – the contracting authority should be presented with an evaluation report of recommendations. This document will form part of the project audit trail. It is advisable to include the following in this document:
- background information including an overview of the:
  - contract
  - procurement strategy
  - the process and stakeholders involved
- details of the number of bidders that applied, withdrew, were disqualified, unsuccessful at PQQ, interviewed, invited to tender etc.
- description of the evaluation criteria used to shortlist bidders
  - combined final score sheet
  - recommendations
  - appendices that include summary evaluation data

Get contract signed
competitive dialogue flowchart

1. Contract notice
2. Pre qualification questionnaire
3. PQQ return date
4. Pre qualification evaluation
5. Invitation to participate in dialogue
6. Dialogue phase
   - Call for final tenders
   - Tender return date
7. Tender Evaluation
8. 10 day standstill period
9. Contract award notice

Dialogue continues until solution(s) capable of fulfilling needs are identified.

37 days (30 for electronic)
On some occasions you may need to refer back to the full Public Contracts Regulations 2006 and Public Contracts (Amendment) Regulations 2009 which can be found:

- www.opsi.gov.uk/si/si2006/20060005.htm (Statutory Instrument 2006 No 5)
- www.opsi.gov.uk/si/si2009/uksi_20092992_en_1

The OGC website no longer exists and all information is now obtainable through the Cabinet Office website, however the following archive guidance documents are clear and succinct and are a useful starting point for learning about OJEU procurement. Please note that these guides do not contain details of practical implementation:

- OGC Public Sector Procurement
- OGC Guidance on Competitive Dialogue
- OGC Guidance to Framework Agreements
- OGC Guidance on the 10 day standstill period
- EU Explanatory Note on Competitive Dialogue

The OGC issued the following information note, which was a response to uncertainty over implementing competitive dialogue into practice. The note is useful for best practice guidance.

- OGC Information Note on Competitive Dialogue

All OGC documents can be found at http://webarchive.nationalarchives.gov.uk/20110822131357/http://ogc.gov.uk

The following guidance is essential if you are involved with Competitive Dialogue Procurement for hospitals or schools.


Other sample documentation and advice can be obtained from the PSCM and legal support team (contacts noted on page 3).
glossary of terms

Central Product Classification (CPC) – codes assigned by the United Nations to categorise products, works and services.

Common Procurement Vocabulary (CPV) – codes assigned to the different categories of works, services and supplies to enable standardised European categorisation.

Contracting Authority – a body governed by public law which is predominantly financed by the state, or regional or local authorities.

Contract Notice – form to be completed for all public sector contracts valued above a certain threshold when submitting them to the OJEU. It is a standard form that contains all the information that prospective tenderers will view.

European Union (EU) Procurement Directive – sets out the procedures to be followed by purchasers in the public and utilities sectors. Under these rules, public sector procurement must follow transparent open procedures to ensure fair conditions of competition for suppliers. The Directives aim to open up public procurement, improve the functioning of the Internal Market and enable the EU to reap the full benefits from an enlarged Internal Market. The European Commission’s Consolidated Directive was adopted in March 2004.

Invitation to Tender (ITT) – a document in which the contracting authority invites interested companies or organisations to submit a tender for a public sector contract. It outlines the conditions for the submission of a tender and gives the terms of reference or the technical qualifications required.

Invitation to Participate in Dialogue (ITPD) – a document in which the contracting authority invites participants who have pre-qualified for a public sector contract, to participate in the competitive dialogue phase.

Official Journal of European Union (OJEU) – publication (formerly known as OJEC) in which all contracts from the public sector (which are valued above a certain threshold) must be published. The term ‘Journal’ can be misleading, as production of the hard copy version ceased in 1997 and is now only accessible online.

Pre Qualification Questionnaire (PQQ) – this enables public sector purchasers to identify the most suitable suppliers to invite to tender for contracts. It is a formal mechanism for assessing whether potential suppliers are suitable to tender for contract opportunities in terms of their legal, financial and technical capacity.

Prior Information Notice (PIN) – the annual or occasional advertisement in the Official Journal of the European Union, advising the contracting community of a contracting authority’s future procurement plans. PINs are intended to ensure that interested parties have as much time as possible to prepare to participate.

framework guidance

A framework agreement sets out the terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. The EU rules apply to framework agreements which are treated in the same way as any other contract.

As with all qualifying public contracts, the framework is advertised in the OJEU. When procuring a framework the contracting authority must make clear that it intends to conclude the procurement process with a framework agreement. This must be highlighted in the contract notice.

Where the contracting authority concludes a framework agreement, the minimum number of suppliers must be one or three or more; providing that there were enough suppliers to satisfy the selection criteria and there was a minimum of three admissible tenders which met the award criteria.

The main benefits of setting up a framework are as follows:
- it is only necessary to go through the OJEU procedure once; those in the framework are then “called off” under the agreement when goods, services and works are required
- the framework establishes the fundamental terms on which subsequent contracts will be awarded
- authorities are not tied to the agreement so can use it when it provides value for money, but go elsewhere when it does not
- the treaty-based principles still apply at the call-off stage to ensure nothing is done that is discriminatory, improper or which distorts competition
The drawbacks are:

- the purchases that are intended to be made through the framework need to be specified with sufficient precision (i.e. scope, types of goods/services) in the OJEU notice
- changes to the terms established by the framework agreement are forbidden (i.e. no negotiation). Terms can only be refined or supplemented
- hourly rates means pricing mechanisms are fixed

The OJEU notice must:

- make it clear that a framework is being awarded
- include the contracting authorities entitled to call off under the framework
- specify the length of the framework agreement (generally up to a maximum of four years under the new directive)
- include an estimate of the total value of goods, works or services for which call-offs are to be placed
- include an estimate of the value and frequency of the call-offs to be awarded

Call-off and Mini Competition in Frameworks:
The Public Contracts Regulations set out the grounds for two methods of awarding work within a framework. These are call-off and mini-competition procedures that must be applied.

Call-off:
The grounds for applying the call-off must be clear and enable an unequivocal decision regarding the appointment of one economic operator to be made based on the terms and proposals of the original tender. Where there is:

- doubt; or
- where the requirement exceeds the financial thresholds set out on page 10; or
- the potential for another party within the framework to be aggrieved by the decision to call-off
- then consideration should be given to a mini-competition.
Mini-Competition:
A mini-competition is to be used where the terms of the original tender are not defined enough to apply the call-off procedure. All those capable of providing the requirement should be invited to tender, the minimum number being three. However, should the requirement exceed the thresholds set out on page 7 then it is advisable that the competition is held with all members in the framework (within its lot or subset). This will avoid that the potential for challenge on the grounds for ‘ineffectiveness’.

At the end of the mini-competition process, the Standstill period is to be applied. This is defined as 10 days or 15 days dependant on the type of communications used.

For more information about frameworks refer to: OGC guidance to Framework Agreements or speak to a member of the PSCM team.
utilities contracts

24. The rules apply to:
   i. public authorities
   ii. public undertakings (undertakings over which public authorities may exercise directly or indirectly a dominant influence) and
   iii. private sector bodies which operate on the basis of special or exclusive rights or which are deemed to do so if they undertake relevant activities.

The activities are:
- the provision or operation of fixed networks for the provision of services to the public in connection with the production, transport or distribution of drinking water, electricity, gas or heat
- the supply of drinking water, electricity, gas or heat to such networks
- sewerage and hydraulic engineering activities by water network operators
- the exploitation of a geographical area for the purpose of exploring for, or extracting, oil, gas, coal or other solid fuels
- the exploitation of a geographical area for the provision of airport, maritime or inland port facilities
- the operation of networks providing transport services to the public by rail, tramway, trolley-bus, bus, cable or automated systems

25. The utilities rules are similar to those for the public sector, but there are some differences, for instance:

- utilities can call for competition either by advertising in the OJEU, publishing sufficiently detailed PINs or by publishing a notice of a qualification system. Where a qualification system is used, those invited to tender or negotiate for a particular contract have to be selected from those who have qualified in accordance with the system
- utilities have a free choice between the open, restricted and competitive negotiated procedures

- utilities have voluntary access to a system for the external audit (attribution) of their procurement systems and practice; and they and their suppliers or contractors may resolve disputes about the application of the EU rules through a Community-level system for conciliation

26. The revised Utilities Regulations incorporate some of the changes introduced into the Public Sector Regulations, in particular, Dynamic Purchasing Systems, Electronic Auctions, Central Purchasing Bodies and the Standstill period. They also allow for utilities to apply for an exemption from the rules altogether where it can be shown that the activity they undertake is directly exposed to competition.
<table>
<thead>
<tr>
<th>Category</th>
<th>Services</th>
<th>* CPC Ref</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Maintenance and repair of vehicles and equipment</td>
<td>6112, 6122, 633, 886</td>
</tr>
<tr>
<td>2</td>
<td>Transport by land, including armoured car services and courier services but not including transport of mail and transport by rail</td>
<td>712 (except 71235), 7512 87304</td>
</tr>
<tr>
<td>3</td>
<td>Transport by air but not transport of mail</td>
<td>73 (except 7321)</td>
</tr>
<tr>
<td>4</td>
<td>Transport of mail by land, other than by rail, and by air</td>
<td>71235, 7321</td>
</tr>
<tr>
<td>5</td>
<td>Telecommunications services other than voice telephony, telex, radiotelephony paging and satellite Services</td>
<td>752</td>
</tr>
<tr>
<td>6</td>
<td>Financial services: (a) insurance services (b) banking and investment services other than financial services in connection with the issues, sale purchase or transfer of securities or other financial instruments, and central bank services</td>
<td>81 (Part) 812, 814</td>
</tr>
<tr>
<td>7</td>
<td>Computer and related services</td>
<td>84</td>
</tr>
<tr>
<td>8</td>
<td>R&amp;D services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs; and the services are to be wholly paid for by the contracting authority</td>
<td>85</td>
</tr>
<tr>
<td>9</td>
<td>Accounting, auditing and book-keeping services</td>
<td>862</td>
</tr>
<tr>
<td>10</td>
<td>Market research and public opinion polling services</td>
<td>864</td>
</tr>
<tr>
<td>11</td>
<td>Management consultancy services and related services but not arbitration and conciliation services</td>
<td>865, 866</td>
</tr>
<tr>
<td>12</td>
<td>Architectural services: engineering services and integrated engineering services: urban planning and landscape architectural services; related scientific and technical consulting services: technical and analysis services</td>
<td>867</td>
</tr>
<tr>
<td>13</td>
<td>Advertising services</td>
<td>871</td>
</tr>
<tr>
<td>14</td>
<td>Building cleaning services and property management services</td>
<td>874 82201 to 82206</td>
</tr>
<tr>
<td>15</td>
<td>Publishing and printing services on a fee or contract basis</td>
<td>88442</td>
</tr>
<tr>
<td>16</td>
<td>Sewerage and refuse disposal service: sanitation and similar services</td>
<td>94</td>
</tr>
</tbody>
</table>
### Part B

<table>
<thead>
<tr>
<th>Category</th>
<th>Services</th>
<th>* CPC Ref</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Hotel and restaurant services</td>
<td>64</td>
</tr>
<tr>
<td>18</td>
<td>Transport by rail</td>
<td>711</td>
</tr>
<tr>
<td>19</td>
<td>Transport by water</td>
<td>72</td>
</tr>
<tr>
<td>20</td>
<td>Supporting and auxiliary transport services</td>
<td>74</td>
</tr>
<tr>
<td>21</td>
<td>Legal Services</td>
<td>861</td>
</tr>
<tr>
<td>22</td>
<td>Personal placement and supply services</td>
<td>872</td>
</tr>
<tr>
<td>23</td>
<td>Investigation and security services other than armoured car services</td>
<td>873 except 87304</td>
</tr>
<tr>
<td>24</td>
<td>Education and vocational education services</td>
<td>92</td>
</tr>
<tr>
<td>25</td>
<td>Health and Social Services</td>
<td>93</td>
</tr>
<tr>
<td>26</td>
<td>Recreational, cultural and sporting services</td>
<td>96</td>
</tr>
<tr>
<td>27</td>
<td>Other Services</td>
<td></td>
</tr>
</tbody>
</table>

* CPC is an abbreviation for the Central Product Classification of the United Nations
### activities constituting works

<table>
<thead>
<tr>
<th>Subject</th>
<th>Notes</th>
<th>CPV Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>Construction of new buildings and works, restoring and common repairs</td>
<td>45000000</td>
</tr>
<tr>
<td>Site preparation</td>
<td></td>
<td>45100000</td>
</tr>
</tbody>
</table>
| Demolition and wrecking of buildings; earth moving | - demolition of buildings and other structures  
- clearing of building sites  
- earth moving; excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.  
- site preparation for mining: overburden removal and other development and preparation of mineral properties and sites  
- building site drainage  
- drainage of agricultural or forestry land                                                                                     | 45110000 |
| Test drilling and boring                      | Test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes                                                                                          | 45120000 |
| Building of complete constructions or parts thereof; civil engineering |                                                                                                                                                                                                        | 45200000 |
| Building construction work                   | • construction of all types of buildings  
• construction of civil engineering constructions bridges, including those for elevated highways, viaducts, tunnels and subways  
• long-distance pipelines, communication and power lines  
• urban pipelines, urban communication and power lines  
• ancillary urban works  
• assembly and erection of prefabricated constructions on the site                                                                 | 45210000 |
| Engineering and construction works           | • erection of roofs  
• roof covering  
• waterproofing                                                                                                                                | 45220000 |
| Construction for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork | • construction of highways, streets, roads, other vehicular and pedestrian ways  
• construction of railways  
• construction of airfield runways  
• construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations  
• paintings of markings on road surfaces and car parks                                                                               | 45230000 |
# activities constituting works

<table>
<thead>
<tr>
<th>Subject</th>
<th>Notes</th>
<th>CPV Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of water projects</td>
<td>Construction of:</td>
<td>45240000</td>
</tr>
<tr>
<td></td>
<td>• waterways, harbour and river works, pleasure ports (marinas), locks, etc.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• dams and dykes dredging</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• subsurface work</td>
<td></td>
</tr>
</tbody>
</table>
| Construction works for plants, mining and manufacturing and for buildings related to the oil and gas industry | Construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment.  
Construction of foundations, including pile driving.  
Water well drilling and construction, shaft sinking.  
Erection of non-self-manufactured steel elements.  
Steel bending.  
Bricklaying and stone setting.  
Scaffolds and work platform erecting & dismantling, including renting of scaffolds and work platforms;  
Erection of chimneys and industrial ovens.                                             | 45250000  |
| Building installation                            |                                                                                                                                                                                                     | 45300000  |
| Electrical installation work                     | Installation in buildings or other construction projects of:  
• electrical wiring and fittings  
• telecommunications systems  
• electrical heating systems  
• residential antennas and aerials  
• fire alarms  
• burglar alarm systems  
• lifts and escalators  
• lightning conductors, etc.                                                                                                           | 45310000  |
| Insulation work activities                       | Installation in buildings or other construction projects of thermal, sound or vibration insulation                                                                                                    | 45320000  |
| Plumbing and sanitary works                      | Installation in buildings or other construction projects of:  
• plumbing and sanitary equipment  
• gas fittings  
• heating, ventilation, refrigeration or air conditioning equipment and ducts  
• sprinkler systems                                                                                                                      | 45330000  |
<p>| Fencing, railing and safety equipment installation work | Installation of illumination and signalling systems for roads, railways, airports and harbours.                                                                                                       | 45340000  |</p>
<table>
<thead>
<tr>
<th>Subject</th>
<th>Notes</th>
<th>CPV Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building completion</td>
<td>Application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.</td>
<td>45400000</td>
</tr>
<tr>
<td>Plastering</td>
<td></td>
<td>45410000</td>
</tr>
<tr>
<td>Joinery installation</td>
<td>Installation of non self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials. Interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</td>
<td>45420000</td>
</tr>
<tr>
<td>Floor and wall covering</td>
<td>Laying, tiling, hanging or fitting in buildings or other construction projects of: Ceramic, concrete or cut stone wall or floor tiles parquet and other wood floor coverings carpets and linoleum floor coverings carpets and linoleum floor coverings, including of rubber or plastic terrazzo, marble, granite or slate floor or wall coverings wallpaper.</td>
<td>45430000</td>
</tr>
<tr>
<td>Painting and glazing</td>
<td>Interior and exterior painting of buildings. Painting of civil engineering structures. Installation of glass, mirrors etc.</td>
<td>45440000</td>
</tr>
<tr>
<td>Other building completion</td>
<td>Installation of private swimming pools steam cleaning, sand blasting and similar activities for building exteriors. Other building completion and finishing work n.e.c.</td>
<td>45450000</td>
</tr>
<tr>
<td>Hire of construction and civil engineering machinery and equipment with operator</td>
<td></td>
<td>45500000</td>
</tr>
</tbody>
</table>
ineffectiveness

The placing of a contract that exceeds the thresholds set out on page 7 can be subject to challenge on the grounds of Ineffectiveness. This is a term that recognises that the contract has not been awarded correctly and allows aggrieved parties to raise their objections to the decision during and after the standstill period. The grounds for Ineffectiveness can be brought by any aggrieved party under three key headings; the failure to advertise the requirement correctly – not applying the OJEU rules correctly and thereby not appraising the market of the requirement that could be fulfilled by others.

Combined breaches of the procurement rules and review procedures – where the EU Procurement rules have not been followed and the contracting authority fails to act to suspend the contract. The call-off procedural breach – this is applicable to multi-supplier frameworks that award works that are above the thresholds through mini-competition procedure. Similar to the Combined Breaches, this breach focuses on awarding work within a framework and allows an aggrieved framework member to bring a challenge where the mini-competition rules have not been applied correctly and a stand-still period has not been provided for at the end of the award process for. This does not affect Utility organisations or Part B Services.

Timeframe for the consideration of Ineffectiveness – as a result of the challenge made for ineffectiveness, the aggrieved party must bring grounds for ineffectiveness to court within 6 months of the contract award.

Implications of failure in one of the grounds - if a court is satisfied that there are good reasons to declare a contract Ineffective, the court may decide to do one or more of the following:

- suspend the procurement process
- set aside the contract forcing re-procurement
- award damages to an economic operator suffering loss as a result of the
decision
• impose financial penalty (fine)
• insist on shortening the contract

Voluntary Transparency Notice - in the case of a procurement process that has not commenced with the issuing of a Contract Notice (due to its permitted exemption) or a contract variation means the procurement threshold is exceeded then a Voluntary Transparency Notice can be issued through OJEU with justification for its use.
appendix e

schedule 1 of the Public Contracts Regulation 200

Cabinet Office
Office of the Parliamentary Counsel
National School of Government

Central Office of Information

Charity Commission

Department for Constitutional Affairs
Boundary Commission for England
Circuit Offices and Crown, County and Combined Courts (England and Wales)
Combined Tax Tribunal
Council on Tribunals
Court of Appeal Criminal
Immigration Appellate Authorities
Immigration Adjudicators
Immigration Appeals Tribunal
Lands Tribunal
Law Commission
Legal Aid Fund (England and Wales)
Office of the Social Security Commissioners
Pensions Appeal Tribunals
Public Trust Office
Supreme Court Group (England and Wales)
Transport Tribunal

Department for Culture, Media and Sport
British Library
British Museum
Commission for Architecture and the Built Environment
The Gambling Commission
Historic Buildings and Monuments Commission for England
Imperial War Museum
Museums, Libraries and Archives Council
National Gallery
National Maritime Museum
National Portrait Gallery
National History Museum
Science Museum
Tate Gallery
Victoria and Albert Museum
Wallace Collection

Crown Prosecution Service

Crown Estate Commissioners (Vote Expenditure Only)

Department for Education and Skills
Higher Education Funding Council for England
Department for Environment, Food and Rural Affairs
Agricultural Dwelling House Advisory Committees
Agricultural Land Tribunals
Agricultural Wages Board and Committees
Cattle Breeding Centre
Countryside Agency
| Department of Health | Dental Practice Board  
|                     | National Health Service Strategic Health Authorities  
|                     | NHS Trusts  
|                     | Prescription Pricing Authority  
| Department for International Development | Legal Secretariat to the Law Officers  
| Department of the Procurator General and Treasury Solicitor |  
| Department of Trade and Industry | Central Transport Consultative Committees  
|                     | Competition Commission  
|                     | Electricity Committees  
|                     | Employment Appeal Tribunal  
|                     | Employment Tribunals  
|                     | Gas Consumers’ Council  
|                     | National Weights and Measures Laboratory  
|                     | Office of Manpower Economics  
|                     | Patent Office  
| Department for Transport | Maritime and Coastguard Agency  
| Department for Work and Pensions | Disability Living Allowance Advisory Board  
|                     | Independent Tribunal Service  
|                     | Medical Boards and Examining Medical Officers (War Pensions)  
|                     | Occupational Pensions Regulatory Authority  
|                     | Regional Medical Service  
|                     | Social Security Advisory Committee  
| Export Credits Guarantee Department |  
| Foreign and Commonwealth Office | Wilton Park Conference Centre  
| Government Actuary's Department |  
| Government Communications Headquarters |  
| Home Office | HM Inspectors of Constabulary  
|             | Parole Board and Local Review Committees  
| House of Commons |  
| House of Lords |  
| Ministry of Defence | Meteorological Office  
|                     | Defence Procurement Agency  
| The National Archives |  

45
<table>
<thead>
<tr>
<th>National Assembly for Wales</th>
<th>Higher Education Funding Council for Wales</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Government Boundary Commission for Wales</td>
<td>Royal Commission for Ancient and Historical Monuments in Wales</td>
</tr>
<tr>
<td>Valuation Tribunals (Wales)</td>
<td>Welsh National Health Service Authorities and Trusts</td>
</tr>
<tr>
<td>Welsh Rent Assessment Panels</td>
<td></td>
</tr>
</tbody>
</table>

| National Audit Office                                | Coroner’s Courts                                                  |
| National Savings and Investments                     | County Courts                                                      |
| Northern Ireland Assembly Commission                 | Court of Appeal and High Court of Justice in Northern Ireland      |
|                                                     | Crown Court                                                        |
|                                                     | Enforcement of Judgments Office                                    |
|                                                     | Legal Aid Fund                                                     |
|                                                     | Magistrates’ Courts                                                |
|                                                     | Pensions Appeals Tribunals                                          |

| Northern Ireland Court Service                        |                                                                     |
|                                                     |                                                     |

| Northern Ireland, Department for Employment and Learning |                                                      |
| Northern Ireland, Department for Regional Development    |                                                      |
| Northern Ireland, Department for Social Development      |                                                      |
| Northern Ireland, Department of Agriculture and Rural Development |                                                      |
| Northern Ireland, Department of Culture, Arts and Leisure |                                                      |
| Northern Ireland, Department of Education               |                                                      |
| Northern Ireland, Department of Enterprise, Trade and Investment |                                                      |
| Northern Ireland, Department of the Environment         |                                                      |
| Northern Ireland, Department of Finance and Personnel    |                                                      |
| Northern Ireland, Department of Health, Social Services and Public Safety |                                                      |
| Northern Ireland, Office of the First Minister and Deputy First Minister |                                                      |

| Northern Ireland Office                               | Crown Solicitor’s Office                                         |
|                                                     | Department of the Director of Public Prosecutions for Northern Ireland |
|                                                     | Forensic Science Laboratory of Northern Ireland                  |
|                                                     | Office of the Chief Electoral Officer for Northern Ireland       |
|                                                     | Police Service of Northern Ireland                               |
|                                                     | Probation Board for Northern Ireland                             |
|                                                     | State Pathologist Service                                         |

| Office of the Deputy Prime Minister                   | Rent Assessment Panels                                           |

| Office of Fair Trading                                |                                                                     |

| Office for National Statistics                        | National Health Service Central Register                          |
| Office of the Parliamentary Commissioner for Administration and Health Service Commissioners |                                                      |
| Paymaster General’s Office                            |                                                                     |
| Postal Business of the Post Office                    |                                                                     |
best practice advice when EU rules do not apply

If the contract does not exceed the relevant thresholds the EU treaty-based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality still need to be adhered to. In particular there must be no discrimination against suppliers, contractors or service providers on the grounds of their nationality or the member state in which they are based. Some degree of advertising appropriate for the scale of the contract is likely to be necessary, to ensure transparency.

If managing the procurement process for a client when the rules do not apply, it is still good practice to select a bidder by adopting practices involved with the EU procedures. It is important to:

• establish whether the contracting authority has an in-house policy on tender selection. If so, this needs to be adhered to as applicable
• select the most appropriate procurement route for the project:
  - design and build
  - traditional
  - framework
  - management contracting
  - PPP
• decide on a suitable medium (i.e. specialist journal) for advertising the contract. Alternatively, approach potential bidders speculatively (based upon recommendation), inviting them to submit a bid
• develop and agree the following in consultation with the client, for issue to bidders:
  - project briefing
  - selection criteria
  - stages to be undertaken in the selection of a preferred bidder (e.g. tender, interview)
  - timeframe to be followed
• shortlist tenders in accordance with criteria
• invite short-listed participants to interview
• award the contract to the most economically advantageous tender (MEAT) based upon the submitted tender and interview
• notify participants of the outcome, providing feedback as requested
pre qualification evaluation

The following information can be requested at the pre qualification stage.

**In relation to economic and financial standing:**
- appropriate bankers’ statements
- accounts
- turnover for (at least) the last two years
- turnover for the last three years in the area of practice concerned
- for service contracts, evidence of an appropriate level of professional indemnity insurance
- confirmation of compliance in respect to Regulation 23 of the Regulations (solvency, payment of taxes, criminal convictions etc)

**In relation to technical ability for services contracts:**
- relevant experience
- confirmation of absence of conflict of interest
- professional/educational qualifications
- principal services of a similar type
- average annual manpower/managerial staff over the last three years
- IT systems
- approach to, and knowledge of, best practice
- measures for ensuring quality
- any proportion of the contract to be subcontracted
- level of Professional Indemnity Insurance and details of any claims made or any items under dispute within the last three years
For works contracts:

• relevant experience
• professional/educational qualifications of managerial staff, for those responsible for carrying out the works
• list of works carried out over the last five years and certificates of satisfactory completion
• statement of plant, equipment, etc, available to carry out work
• average annual manpower and number of managerial staff over previous three years
• statement of technicians/technical services which may be called upon.
• level of Professional Indemnity Insurance and details of any claims made or any items under dispute within the last three years