

<b>PROCUREMENT &amp; LOGISTICS DEPARTMENT</b>
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## **Tender/OJEU Procedure Overview**

This procedure applies to all purchases over £50,000 not covered by existing contracts and should be followed in conjunction with the Tender/OJEU Procurement Procedure process flow. The numbered steps in the procedure below relate to the steps in the flowchart.

### **1. Identify need**

Customers' new requirements can be identified in a number of ways:

- through feedback from customers
- from presentations by, or meetings with, suppliers
- through new policies and procedures
- from new Government initiatives
- from consultation groups
- emergent requests
- from new technologies or innovations to the market place
- from a planned replacement programme

### **2. Identify source of funding**

The customer will establish, through liaison with relevant finance staff, whether their purchase(s) will be via capital, revenue (including a lease versus purchase decision) or charitable funds.

### **3. Assign to Buyer**

The initial steps taken by the Procurement Department are as follows:

- identify and categorise the requirement to ensure that action is taken by the appropriate Category Buyer
- confirm that no contract or purchasing agreement already exists for the requirement e.g. local Trust contract, NHS Supply Chain or the Peninsula Purchasing & Supply Alliance.

- identify any linked items (e.g. add-ons, peripherals to the core requirement, service, maintenance or consumables and the revenue impact of these)
- identify other potential customers for possible consolidation of requirements where such an approach would add value
- identify potential usage figures

#### **4. Establish stakeholder group (if appropriate)**

Where appropriate, the Buyer and customer will establish a stakeholder group who will be responsible for the production of the pre-qualification questionnaire (PQQ), specification, agreeing objective marking matrix (OMM), evaluation criteria and technical evaluations.

#### **5. Develop specification**

After identifying the customer's requirements the buyer must ensure that a specification is produced for the required goods and/or services which is:

- clear and concise. If in doubt, the Buyer should ask a senior Procurement Manager to examine the specification for clarity.
- non-discriminatory. References to particular brands, sources, trade marks, patents and processes can unfairly favour some suppliers; therefore generic descriptions should be used wherever possible. In cases where it is impossible to avoid the use of a brand name it must always be qualified with the words 'or equivalent' so as to allow alternative offers to be made.
- based on appropriate national and international standards. EU rules require specifications to be defined by reference to 'European specifications' wherever these exist. European specifications are defined as 'common technical specifications, British Standards implementing European standards, or European technical approvals'.
- a true reflection of the customer's needs. Customers should be closely involved in the production of the specification. Customer representatives must be asked to agree the final specification prior to the despatch of an advertisement to the Official Journal of the European Union (OJEU) or, where the OJEU rules do not apply, prior to its inclusion in an Invitation to Tender package.
- meets any Trust standardisation initiative
- meets MEMS or Medical Physics protocols

If a British Standard is quoted in a specification, the words 'or direct International Standard' should be added to cover EU/ISO/PIN/other equivalents. The only exceptions are when:

- the use of EU or other standards is precluded by national technical rules (e.g. health and safety legislation)
- applying a European specification would conflict with other EU directives (e.g. telecommunications directives)
- a known incompatibility, disproportionate technical difficulties or disproportionate costs would arise if a European specification were to be used
- it is technically impossible to establish that the goods and/or services conform to European specifications.

Buyers must not assume that existing specifications use the latest or most appropriate standards. They should check with all the bodies appropriate to the goods and/or services in question to ensure that any new or revised standards are incorporated into the specification.

Specifications can be developed after consultation with a number of different sources, such as test houses, suppliers, consultation groups and customer advice departments. This should include MEMS, Medical Physics and the Medical Devices Strategy Group (MDSG). If suppliers have been consulted, care must be taken not to draw up a specification which unduly favours or discriminates against one supplier. Any amendments to a specification should be agreed with the relevant bodies. Documentary evidence of such agreements, and the reasons for the change, should be kept on file. To encourage competition and innovation, specifications should be expressed in terms of performance rather than design requirements, wherever possible. All new or revised specifications should be agreed subject to Trust policy.

"Specifications should take account of the key environmental issues associated with the product/service and management of the contract. In particular, due consideration should be given to the minimisation of "waste" throughout the life-cycle of the product/service and throughout the management of the contract. This should be achieved through the application of value engineering principles and through ensuring that standards are of the appropriate quality to meet the customer's need and are not, de facto, of the highest available standard".  
". [UK Govt Sustainable Development - Home](#)

## **6. Develop PQQ (if applicable)**

See Work Instruction WI PR1 Developing a pre-qualification questionnaire (PQQ)

## **7. Agree OMM evaluation criteria**

OMM criteria must comply with Trust Standing Financial Instructions (SFIs).

**8. Establish procurement plan**

Agree a timetable for the procurement process with user group or end users.

**9. Identify total value of spend**

If the total purchase price will be over £101,323 (or over £3.9 million for works) the OJEU process must be followed - go to step **10**. If the total purchase price will be less than £101,323 then the standard tender process can be used – go to step **16**'.

**10. Post OJEU advert**

Wait 30 or 37 days.

**11. Co-ordinate official responses to advert**

See Work Instruction WI PR2 Co-ordinating official responses to OJEU adverts.

**12. Send PQQ (if applicable)**

Send PQQ to all suppliers that have expressed an interest via Tactica.

**13. Collate responses to PQQ****14. Shortlist potential bidders**

Shortlisting should take place with the customer or stakeholder group.

**15. Advise unsuccessful companies**

See Work Instruction WI PR3 Advising unsuccessful suppliers at PQQ stage.

**16. Issue Invitation to Tender (ITT)**

A permanent record shall be maintained to show for each set of competitive tender invitations despatched:

- the names of firms/individuals invited

- the names of and the number of firms/individuals from which tenders have been received
- closing date and time

### **17. Wait for responses**

Wait 35 or 40 days in the case of OJEU process, or 30 days in the case of the standard tender process.

### **18. Receive official bids**

When opening tender documents in Tactica, in accordance with the Trust's Scheme of Delegation, two independent procurement staff should undertake this process. When opening paper tender documents, this will be undertaken by two senior officers designated by the Chief Executive who are not from the originating department.

A permanent record shall be maintained to show for each set of paper competitive tender invitations opened:

- date and time of opening
- the persons present at the opening shall sign the record

### **19. Ensure bids are accurate & complete**

Checking the received bids should be done in conjunction with the customer/stakeholder group.

### **20. Conduct trials and/or site visits as required**

Trials and site visits (where appropriate) should be undertaken by the customer/stakeholder group and these should be consistently documented. See Work Instruction WI PR4 Conducting Trials as part of the Tender Process.

### **21. Manage formal evaluation against pre-agreed OMM criteria**

All returned offers must be assessed to establish which candidate has made the best value for money offer. To facilitate such an assessment, the buyer must:

- complete a Summary of Offers form (this is the minimum information necessary for an award recommendation to be made)

- enter the details into an agreed evaluation software system such as Tactica. Evaluation weightings to be agreed and recorded prior to the receipt of tenders, and authorised subject to Trust policy.

After analysing all the offers received, the Buyer should transcribe the following details from each candidate's offer documentation on to the Summary of Offers form, taking care to ensure that no significant detail has been excluded:

*Comparison of prices.*

A comparison of offer prices on a 'like-for-like' basis. There are several methods of comparison; the method selected will depend on the goods or services under consideration, but it should be chosen on the basis of offering the best value for money. For example:

- 'Current unit price per [given quantity]'
- 'Proposed unit price per [given quantity]'
- 'Cost in use' - e.g. a 'two-for-one' price comparison if it is known through controlled trials that brand X is concentrate and goes twice as far.
- 'Whole-life costing' - include the cost of maintenance, consumables, residual value, discount cash flow if the purchase is capital equipment.
- 'Output cost' - establish the unit energy cost (kJ) if comparing oil, gas and coal prices.

*Terms of trading.*

The following information is required:

- 'Period for which prices are firm'
- 'Delivery period'
- 'Limits to [geographical] coverage/quantities'
- 'Areas of non-compliance' - e.g. changes to the specification or conditions of contract (Note: This may result in the offer being rejected)
- 'Added value services offered'

Note: Buyers must ensure that there is substantive independent evidence of a product's performance/cost in use when making comparisons other than on a 'unit price' basis.

Additional reports (e.g. product trials and evaluation results, plans, drawings, product illustrations, etc.) can be attached to the form if they are helpful in establishing the best value for money offer.

The evaluation of offers is the process of establishing which of the returned offers meets the specified requirements, affords the best value for money (within the terms of the

predetermined contract award criteria) and should be recommended for the award of a contract or purchasing agreement.

The evaluation of offers must be carried out with reference to the awards criteria as specified in the advertisement placed in the OJEU (where applicable). No new evaluation factors can be added at this stage. All award recommendations must be made in accordance with the Standing Orders and Standing Financial Instructions applicable to the purchase.

The extent of a customer's involvement in the evaluation process will depend on the nature of the goods or services under review, their level of commitment to the proposed contract or purchasing agreement, and the customer base that the contract is designed to cover.

Adjudication panels will differ widely dependent on the proposed scope of the agreement. Adjudication panels are used it should be ensured that:

- all members of the adjudication panel are notified in good time and in writing of arrangements for the meeting
- an agenda is circulated in advance of the meeting and if members need to carry out advance work or consult with colleagues they may also require an early copy of the Summary of Offers. If the Summary of Offers is circulated in advance of the adjudication meeting it must be overprinted 'Confidential'.
- formal notes of the adjudication meeting are taken and copied to all participants afterwards
- all members of the adjudication panel know in advance of the meeting who will chair, administer (organise venue/take notes etc.) and present Summary of Offers for evaluation
- assessment of offers must be carried out with reference to predetermined awards criteria as specified in the OJEU advert or agreed prior to ITT. No new evaluation factors can be added at this stage.

Environmental considerations should be taken into account in the tender evaluation, using the information requested in the specification. Sufficient weight should be given to enable these considerations to influence the award.

It is Government policy to use whole-life costs to evaluate tenders. These should include consideration of product management at end-of-life; resource consumption and waste generated.

All award recommendations must be made in accordance with SOs and SFIs applicable to the purchase.

## 22. Manage post-tender clarification process (if required)

The Council of Ministers and the European Commission have stated that: 'In open and restricted procedures all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out: however, discussions with candidates or tenderers may be held but only 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.'

Notwithstanding the legal prohibition on 'negotiations', in practice there will be occasions when negotiations are necessary. For example, in fast moving markets such as energy or seasonally harvested crops, where prices can change by the hour, many suppliers will only deal by negotiation.

All post offer negotiations must be authorised by a senior Procurement Manager in accordance with the Trust's SO's and SFIs. In all instances, the authorisation must be in writing and the documents kept on file.

As there is a risk of a legal challenge to such actions, the senior Procurement Manager should always assess the risk of such a challenge and act accordingly. In order to minimise these risks, a clear audit trail must be maintained to show that all offerors were treated fairly and none was given any advantage over the others. No post tender negotiations should be undertaken if authority has not been given.

Post-offer discussions may be held to ensure that there is a mutual understanding of the submitted offers, or where the buyer believes the offeror has made a genuine error in completing the offer documents. For instance, it is reasonable to:

- seek to ensure that an offeror has understood the contract specification and has devised the offer correctly
- seek clarification from an offeror on aspects of quality and performance and of particular terms and conditions
- clarify or supplement the requirement to a minor degree, but not change its scope.

These actions may result in a change in price. This is acceptable provided that all the offerors have been given the opportunity to amend their offers in the light of the clarification.

No action should be taken that distorts competition. Therefore, there should be no fundamental changes to the contract specification on the basis of which offers were invited and no changes in the award criteria.

All post-offer negotiations and discussions must be minuted, as follows:

- the reasons for holding the negotiations or discussions
- the matters raised and agreed with the offeror
- the deadline for responses on all matters on which agreement was not reached.



All offerors should be given the opportunity to participate in post-offer negotiations and discussions. However, if a Buyer finds it difficult to maintain equality of treatment, or is unable to defend his or her actions, the offer process should be started all over again with the placing of a new advertisement in the OJEU.

A checklist has been designed to ensure all the required steps in this process are followed. See N\Procedures\Tender OJEU Procedures\Post-offer Discussions Checklist.

### **23. Agree selection of preferred bidder**

This should be undertaken with the customer or stakeholder group.

If non-OJEU process go to step **29**.

### **24. Communicate intention to award to successful and unsuccessful bidders**

In accordance with the new Remedies Directive award notices will be sent to all bidders summarising the 'characteristics and relative advantages of the successful tender' and respective scores of the successful and unsuccessful bidder. Information will be provided in the notice on when the standstill period is expected to end and the date the contract is expected to be entered into. There is no legal obligation to provide further de-briefs with bidders if the Alcatel letters provide all the required information.

### **25. 'Alcatel' standstill period**

Wait 10 days

### **26. Manage any challenges**

During Alcatel period only

### **27. Send formal award letter to successful company**

### **28. Publish award in the OJEU**

If a contract has been awarded subject to the public procurement directives, a contract award notice must be published in the OJEU within 48 days of the contract award date. This applies regardless of whether or not the contract was advertised in the OJEU (e.g. a residual services contract or a negotiated procedure contract).

### **29. Communication of award to successful and unsuccessful bidders (non-OJEU)**

See Work Instruction WI PR5 Communicating details of award to successful and unsuccessful bidders (non-OJEU).

### **30. Raise official order in Oracle or produce contract sheet**

Produce contract documentation where appropriate. Ensure document is signed by Buyer, supplier and lead customer.

If appropriate, raise a Purchase Order in Oracle. This is only really applicable in the case of Capital or Trust Fund purchases. All other purchase orders should be raised, via a requisition, by the end user after step **32** is completed.

### **31. Implement contract**

### **32. Arrange product set-up and/or removal on Oracle**

Liaise with the eProc Helpdesk to get product(s) set up on Oracle if appropriate. Where the contract is for multiple items a catalogue should be provided in the appropriate format. The minimum information required on an Excel spreadsheet is;

- Supplier name
- Product code
- Product description
- Unit of measure
- Price
- eClass code
- Contract reference

The eProc Helpdesk will need to know the period that the contract is valid for and which Trust(s) the contract is relevant to. The eProc Helpdesk will also need to know which products (if any) should be permanently removed from the system.

**33. Ensure all documentation is filed correctly**

Any tender documentation should be filed in the appropriate place within the department. Please liaise with the Procurement Secretary.

**34. Arrange formal review meetings with suppliers and stakeholders (if appropriate)****Note**

With markets and customer profiles constantly changing, buyers should not assume that existing contracts and purchasing arrangements will adequately reflect future requirements. When considering the renewal of existing arrangements the buyer must re-examine the base requirements and determine whether they are accurate or need updating. This should be done in consultation with the customer and should also take into account the views of new and current suppliers. In addition, the buyer should examine new product developments, revisions to the appropriate regulations, and have a thorough knowledge of the market.

## Related documents

- Tender/OJEU Procedure process flow
- Work Instructions WI PR1-PR5
- Post-offer discussions checklist
- Standing Financial Instructions, Section 7