



# PUBLIC PROCUREMENT MADE EASY FOR THE EIC CUSTOMER

## Guidelines and explanatory notes

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## ***The Public Procurement market***

### **Public service ethic**

Public Procurement market in the EU accounts for 14% of gross domestic product. The driving characteristic behind public procurement is the need for governments to maintain and develop the type of society demanded by their citizens. The prime motive is not profit, but service to the citizen. This is true at central, regional and local levels. The primacy of the public service motive may not necessarily apply to private utilities, for example, oil companies; however it is still valid for some utilities whose performance and service to the customer/citizen are closely monitored by regulatory bodies in central government.

### **Regulation and deregulation**

Another major characteristic of the public sector is the regulation of the procurement process by local, regional, national and international authorities. Non-discrimination and open competition are prime objectives of many regulatory authorities, especially the European Commission. These objectives may reduce the opportunity for suppliers to develop long-term contractual relationships with public authorities. Annual budgets may also inhibit long-term relationships.

While the core motivation behind public procurement is a higher service to the citizen and society, the operation of procurement systems focuses on more practical, pragmatic and 'value for money' issues. As a supplier, it is these issues that are likely to affect you most.

### **Variations in public procurement**

The organisation of public procurement varies throughout Europe. Each tier of government has responsibility for its own procurement. The main tiers are: central government, regional government, local government, defence and European institutions (see Tables 1 and 2).

In addition to main tiers listed above, there are the utilities. These stand at varying distances from government. The distance varies according to Member State and type of utility. For example, the telecommunications industry has been more extensively privatised than water supply. This is reflected in a more flexible regulatory framework for some utilities operating in the area of telecommunications. Indeed as full free market competition is progressively introduced into the area of telecommunications so the utilities in this area will have a stronger case to be completely free of the constraints of the public procurement legislation.

Public procurement is executed in a diverse and fragmentary way. Contracting authorities may be responsible for compliance with public procurement legislation, but buying decisions lie with individuals or teams at section or departmental level. This fragmentation is a major characteristic of the public sector market. You need to address it when it comes to your internal planning, organisation, communication and distribution.

### **The procurement framework**

Procurement in the EU and in the EEA has been regulated for some time by European directives on public procurement. The political aim is to create a single market for public procurement, so that European companies may, in principle, have access to contracts without any kind of discrimination. It is important to put the legal framework in perspective: the legal framework cannot win contracts for you. The obligation for an authority to advertise does not necessarily mean that it is seeking new suppliers, it is simply obliged to comply with the legislation. This said, many authorities do indeed use procurement as a way of adding value to their organisation. Also, national governments often see procurement as a key step in achieving value for money.

The planned objectives of an individual authority will have a great bearing on the outcome of any tender process. Cultural and political pressures are also strong, and can heavily influence the procurement process and individual contract awards. The legislation provides a framework in which the authorities must operate. If you understand the framework it will help you understand the

difference between what the authority is legally obliged to do and what it actually wants to do. This can only help in winning contracts, or at least recognising when making a bid is worthwhile.

The Euro Info Centre can help you in understanding the framework

### **The aims of the legislation**

The legislation aims to ensure:

- establishment of common procedures
- equal competition
- compliance by regulated (mainly public/governmental) bodies
- fair, transparent and predictable procedures
- equal access to opportunities for all EU suppliers

Public Procurement notices sometimes refer to articles within the directives (or within corresponding national legislation). This is particularly the case with regard to the qualification criteria which an authority can demand of potential suppliers.

Short of becoming a legal expert yourself you can contact your local Euro Info Centre for an explanation of the basic features of the legislation. You may wish for a deeper understanding should you experience discrimination. If so, it would be important to study the legislation in more depth with the support of a lawyer.

### **What is covered?**

The European public procurement legislation covers procurement by authorities and other entities (e.g. utilities) of most contracts for supplies (i.e. goods) works and services. Contracts above a certain threshold normally need to be advertised. Tables 9 and 10 show the main directives and the thresholds which apply.

### **Geographical areas covered**

The benefits of the EC directives have been extended to other countries under the European Economic Area Agreement and various Europe Agreements. The EU is also a signatory to the WTO (formerly GATT) government procurement agreement (GPA). The relevant States are:

**EU:** Austria, Belgium, Denmark, Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom.

**EEA:** Iceland, Liechtenstein and Norway.

**Europe Agreements:** Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic, Slovenia and Turkey.

**GPA (Government Procurement Agreement):** From 1 January 1996 the GPA was extended beyond the central government bodies listed in Annex 1 to the supplies directive to cover local authorities, other public bodies and public sector utilities in the ports, airports, water, urban transport and electricity. Broadly speaking, compliance with the EC rules will ensure compliance with the GPA, where it applies. GPA suppliers etc. have the same rights as EC suppliers. The current signatories of the GPA are: Canada, Hong Kong, China, Iceland, Israel, Japan, Korea, Liechtenstein, Netherlands with respect to Aruba, Norway, Singapore, Switzerland, United States.

### **The purchaser perspective**

For the supplying company, the public procurement market may appear to be just another market in which it sells products, but from the point of view of the contracting authority, the company does not sell to it. Rather, the authority procures from the company according to its own plans and within the regulatory framework imposed upon it by the WTO, the EU and by national and regional governments.

## ***What information is available***

Contract information can be used by businesses for purposes other than submitting bids. A major use is market information. It can provide useful information on:

- the future spend of an authority
- standards expected
- contact names and addresses
- subcontract opportunities

### **Supplement to the Official Journal of the European Communities (OJ S) and TED**

The Supplement is the official name for the publication where notices of public sector contracts are placed. The official version of Supplement S is the CD-ROM. It is produced by the Office for Official Publications of the European Communities (EUR-OP) and published five times a week, from Tuesday to Saturday. The OJS is also published on the Internet: <http://ted.eur-op.eu.int>

Supplement S contains the following information:

- public contracts for works, supplies and services from all EU Member States
- utilities contracts (water, energy, transport and telecommunications sectors)
- public contracts from EU institutions
- European Development Fund contracts (ACP countries)
- Phare, Tacis and other contracts from central and eastern Europe
- European Investment Bank, European Central Bank and European Bank for Reconstruction and Development financed projects
- European Economic Area contracts
- notices concerning European Economic Interest Groupings (EEIGs)
- public contracts for food aid
- public contracts for air services

### **Publication languages**

Invitations to tender are published in all the 11 official EU languages. You should note that the tender information received from an awarding authority will usually be sent in its native language, and users must be prepared to submit their bid in the awarding authority's language.

### **SIMAP (Système d'Information pour les Marchés Publics)**

SIMAP is a European Commission initiative, which is applying the new information and communication technologies to public procurement. SIMAP deals with various aspects of the information chain in European public procurement: collection of data, electronic notification to EUR-OP, publication in print and on-line, dissemination, access to public procurement information other than TED, etc.

The SIMAP project covers the whole procurement life cycle from the notification procedure and dissemination, to monitoring and electronic tendering.

### **International opportunities**

US and Japanese contract notices are accessible via the Internet:

- US: <http://cbdnet.access.gpo.gov/index.html>
- Japan: <http://www.jetro.go.jp/cgi-bin/gov/govinte.cgi>

## ***The bidding phase***

The response to contract information will normally only take place after strategic thinking and planning. The contract information stage may be the start of a sales opportunity but it should come as a result of a marketing approach to the public sector.

A clear understanding of your product, market, communication channels and distribution would appear to make the decision to bid a straightforward issue. However, this decision is of crucial importance to your company. A planned approach to the bidding phase is important. In building experience in submitting bids, you should develop a planned approach, which allocates sufficient physical and human resources to identifying real opportunities and reacting efficiently to them.

Successful bids obviously contribute to the company's ability to sustain a market presence, but failed bids can also contribute to the company's long-term viability. Constructive feedback from the contracting authority can help correct technical mistakes, and re-define your marketing strategy.

### **What does a contract notice look like?**

The notice might contain:

- important information relating to the performance of the contract
- contacts
- deadlines
- clues about what the authority is really looking for

### **Knowing the contracting authority**

How well do you understand the needs and attitudes of the decision-makers and those with influence in the contracting authority? Where does this contract sit in relation to their overall procurement plan? Ignorance of the contracting authority may not necessarily mean that you have no chance of a successful bid (particularly if your product is basic and the buyer is price sensitive), but even at the bid stage it is advisable to get as much information as possible. This will help you to decide whether to continue with the bid.

### **Your next steps if you decide to continue**

If you are interested in a contract then attempt to make direct contact with the technical people involved in the bid evaluation. Further information will help you decide whether to submit a bid at all, or it may give you an indication of what the evaluation panel is placing most importance upon — price, delivery or service, for example. There may be an 'open day', seminar or site visit arranged to give potential suppliers a better idea of the substance of the contract.

### **Warning**

Legislation does not allow contracting authorities to give extra information or advice to potential suppliers, other than for reasons of clarification. More importantly, you are dealing with procurement professionals who may take a dim view of companies who overstep the mark in requesting extra information, so make a careful and calculated approach.

At the same time, if you discover that a competitor has been given exclusive information which helps it to submit a more attractive bid, you could take legal action.

### **What does the contracting authority really want to know?**

The information which you have gathered on the contracting authority and the specific information on the contract in question will be your primary guide in compiling your bid. If your bid does not directly address the contract issues then it will be easily weeded out at the first screening by the authority. Rarely a contracting authority wishes to know simply the price and a description of the product.

The authority will also need to be reassured on questions of delivery, service, the professionalism of your company, and the qualifications and experience of your people.

### **Supplementary information**

It may seem that what the contracting authority wants is simply supply or service, but what they really want is a solution, experience, partnership and good communication. Your on-going communication with the contracting authority should have done most of this work but it is still important to reinforce it at the bidding stage.

### **Structure and presentation**

Your presentation must address both the specified issues and the implied issues in a bid. It may appear to be a straightforward bid, requiring only a straightforward response, but all bids contain implied or expected elements as well as the stated specifications, quantities and prices.

Follow the format requested by the authority, if any. Involve all managers in the writing of the bid. A bid submitted by the sales manager alone could contain disastrous errors or promises.

Define in appropriate detail the technical aspects of your bid. A combination of buyers and technical staff may be involved in appraisal, so simplified summaries may be necessary.

Address the servicing aspect of the contract. Assessors are often more interested in the everyday use of the product, not how it looks in isolation or in a technical diagram.

Your people are part of the product, particularly in service products. Experience counts for a lot and gives the buyer confidence that they are choosing the right company. Include indicators of good practice, such as health and safety, training programmes for staff or any other relevant information.

Place emphasis on how you will deliver. A detailed schedule will not only convince the buyer that you can manage the contract, but it will highlight key logistical areas which you will need to resolve to deliver the contract.

Provide a detailed breakdown of costs. Some bidders give only global estimates to conceal where and how they are making their profit. But this may well undermine purchaser confidence, not because the supplier is making too much profit but because it appears the supplier has not thought through all possible contingencies. Do your figures add up?

### **Subcontracting**

In some circumstances it might not be possible to establish direct relationships with contracting authorities. Subcontracting may then be the most attractive option for a company.

Setting up a subcontract arrangement can have real attractions: and also risks:

#### *Benefits*

- long-term agreements
- regular work
- less exposure to cultural problems
- no need to respond quickly to invitations to tender

#### *Risks*

- lack of control
- no communication with the customer
- less profitable
- threat of competition from cheaper sources of supply

### **Partnership**

Many companies, small and large, benefit from the co-operation of local partners in exploiting non-domestic markets. Trading in markets other than your national market introduces additional problems and local partnerships are one way of overcoming these.

Two important points need to be borne in mind if you are considering a partnership. Partnership is a two-way relationship, it requires trust, openness and mutual support. You must ensure that your partnership agreement has the appropriate contractual strength to achieve your ends, and to protect your interest should things go wrong.

### **Award criteria**

Supply, works and service contracts may be awarded on the basis of one of two criteria: either the lowest price or the most economically advantageous tender.

For the purpose of determining the most economically advantageous tender, the Directives give a non-exhaustive list of criteria that may be applied:

The price, delivery or completion date, technical merit, quality, aesthetic and functional characteristics, running costs, cost-effectiveness, after-sales service and technical assistance.

In this case, the contracting authority shall state in the contract notice all the criteria they intend to apply to the award, where possible in descending order of importance.

If a tender appears to be abnormally low, a contracting authority is not free to reject it automatically. The Directives establish a procedure in which the contracting authority has to request, in writing, details of the constituent elements of the tender and verify them in the light of the explanations received.

### **Feedback**

When you make an unsuccessful bid, it is natural to want to know why. You may request from the authority reasons for rejection of your bid and you may also ask to be informed about the relative advantages of the tender selected. However, the authority may withhold information where the release of such information might be contrary to the public interest or where it might prejudice competition between suppliers.

The directives covering the normal public sector include provisions for suppliers to receive feedback on reasons why they were not successful in their application to be invited to bid or why a specific tender itself was unsuccessful.

# 1) List of European institutions publishing tenders on TED

(not exhaustive)

- Committee of the Regions
- Council
- Court of Auditors
- Court of justice
- Delegation of the European Commission in Bosnia and Herzegovina
- Directorate-General Information Society
- EuroCustoms Consortium
- European Agency for Reconstruction
- European Bank for Reconstruction and Development
- European Central Bank
- European Commission
- European Economic and Social Committee (ESC)
- European Environment Agency
- European Foundation for the Improvement of Living and Working Conditions
- European Investment Bank (EIB)
- European Monitoring Centre on Racism and Xenophobia
- European Parliament
- European Patent Organisation (EPO)
- European Training Foundation
- European Union Monitoring Mission
- External Aid and European Development Fund
- General Secretariat of the Council of the European Union
- Office for Harmonisation in the Internal Market (trade marks and designs)
- Office for Official Publications of the European Communities
- The Authority for Research and Conservation of Cultural Heritage (ARCCH)
- Translation centre for the bodies of the European Union

## 2) Type of document

### Public works concession

Public works concessions are contracts which are similar to invitations to tender, the difference being that the work is not a one-off contract but a concession for a certain time. Here the concession work is listed.

A typical concession is the operation of a parking lot.

### Works contracts awarded by the concessionaire

Using the above example, here, should work be required to renovate the parking lot, it is classed as a contract awarded by the concessionaire.

### European economic interest grouping

Companies wishing to make an offer together in future invitations to tender can establish an EEIG.

### Technical standards and regulations

Basically references to technical standards and regulations.

### Design contest

Similar to an invitation to tender but for services such as area planning, town planning, architecture and civil engineering or data processing. Here the tenderer can propose via designs their intentions should they be awarded the contract.

### Periodic indicative notice (PIN) without call for competition

Utility sector (water, energy, telecommunications, transport) shall make known at least once a year the purchases that they intend to make.

### Periodic indicative notice (PIN) with call for competition

As above, but here with a call for competition.

### Qualification system without call for competition

Utility sector contracting entities may establish and operate a system of qualification for their suppliers. Here without a call for competition. The idea is to set up and maintain a list of companies that are qualified and willing to undertake work for the utility company.

### Qualification system with call for competition

As above, but here with a call for competition

### Results of design contests

Contract award for this specific type of contracts.

### Pre-information procedures

Details of future purchases outlining the work to be done and the foreseen date of publication of the invitation to tender and the foreseen date of execution of the tender. Awarding authorities with an annual budget must publish pre-information on the planned tenders for the coming year. It should also be noted that by using this procedure the awarding authority is allowed to give a shorter deadline for the tender once it is published.

### Corrigenda

Official document amending a previous one.

### Additional information

Published to provide further information.

### Invitation to tender

Thought to be the most important type of document, the Invitation to Tender gives details At least of who is making a purchase and the address where the documents can be obtained. Many other details about the contract are included.

### Prequalification notices

Public notices which proceed, most commonly, restricted procedure invitations to

tender. Only companies chosen in this pre-selection will be allowed to tender for the restricted procedure opportunity.

**Requests for proposals**

This is similar to an invitation to tender, however, it is usually less defined and invites suppliers to make proposals for the work that is to be undertaken.

**General information**

Any other useful information for public procurement.

**Contract awards**

These notices contain interesting information as they indicate that a tender has been won, the name of the successful bidder and the price. Sometimes for reasons of confidentiality the name of the supplier and price are not published.

**Other**

Any type of information not listed above

**Not applicable**

Documents not categorised in any other way

### 3) Time scale for tendering procedures

Every contract published must follow a certain type of procedure which must be clearly outlined. The default procedure is 'open procedure' where any company can tender.

| Type of procedure | Time-limit for receipt of requests to participate |                       | Time-limit for receipt of tenders |                       |
|-------------------|---|-----------------------|-----------------------------------|-----------------------|
|                   | <i>Normal</i>                                     | <i>Urgent</i>         | <i>Normal</i>                     | <i>Urgent</i>         |
| <i>Open</i>       |   |                       | not less than 52 days (1)         |                       |
| <i>Restricted</i> | not less than 37 days                             | not less than 15 days | not less than 40 days (2)         | not less than 10 days |
| <i>Negotiated</i> | not less than 37 days                             | not less than 15 days |                                   |                       |

(1) Reduced to 36 days in the case of works and service contracts where an indicative notice has been published.

(2) Reduced to 26 days in the case of works and service contracts where an indicative notice has been published.

## 4) Type of procurement

### **PHARE, TACIS and countries from ECE**

Most of these notices originate from Eastern and Central Europe under the PHARE and TACIS programmes.

### **European Development Fund**

Contracts issued by the European Development Fund.

### **European Investment Bank and European Bank for Reconstruction and Development**

Contracts issued by the European Investment Bank or the European Bank for Reconstruction and Development.

### **EC Institutions**

Concerns contracts issued by the EU institutions.

### **EEC**

Notices published by the EU member states (United Kingdom, Ireland, The Netherlands, Denmark, Germany, Belgium, Luxembourg, France, Greece, Italy, Portugal, Spain, Austria, Sweden and Finland).

### **EEC with participation by GATT countries**

GATT is used for countries that have signed the 'GATT Agreement on Government

Procurement' The main countries being the EU (EEC), EFTA the USA and Japan.

### **European Economic Area**

Covers the EU countries, Norway, Liechtenstein and Iceland.

### **GATT - with participation from EEC countries**

Contracts issued by non-EU and non EEA countries following the GATT agreement.

### **Other**

### **Not applicable**

### **US/Japan agreement telecoms procurement**

A special agreement between the EU and the USA and Japan for the procurement of telecommunication products.

### **European Economic Area (EEA) with participation of GATT countries**

EEA and GATT.

### **US agreement on government procedure**

Contracts published under the EU-US agreement on public procurement

## 5) Type of bid

**Global bid** - A supplier must bid for the whole contract.

**Partial bid** - It is possible for a smaller or more focussed supplier to bid to supply a part of the contract, but not necessarily the whole contract.

**Mixed 1&2** - Either global or partial bids will be accepted.

**Not specified**

**Not applicable**

## 6) Type of procedure

**Qualification system** - Open to any interested company.

**Design contest** - Open to any interested company.

**Results of design contests**

**Pre-information or periodic indicative notice**

**Open procedure** - Any company can tender

**Restricted procedure** - Differs from the 'open procedure' in that the suitability of the supplier is assessed at a pre-qualification stage. Successful suppliers are then added to a select-list (or approved supplier list). Only suppliers on the select-list will be invited to tender.

**Accelerated restricted procedure** - As the 'restricted procedure' but with shortened deadlines.

**Negotiated procedure** - this procedure is only used in exceptional circumstances. Participation in this type of tender is limited to only those who have been consulted and are invited to negotiate the terms of a contract.

**Open procedure with recurring quantities** - Where the tender is for not just a single contract but for recurring quantities.

**Accelerated negotiated procedure** - Shorter deadlines (which must be justified by the awarding authority), otherwise the same as the negotiated procedure.

**Contract awards**

**General information**

**Not applicable**

## 7) European public procurement tenders thresholds

|  | Small lots | Defence   | Indicative Notices | Central Government | Other Public Sector |
|--|------------|-----------|--------------------|--------------------|---------------------|
| <b>Supplies</b>  |            |           |                    |                    |                     |
| EUR €  |            | 200 000   | 750 000            | 162 293            | 249 681             |
| <b>Services</b>  |            |           |                    |                    |                     |
| EUR €  | 80 000     | 200 000   | 750 000            | 162 293            | 249 681             |
| <b>Works</b>   |            |           |                    |                    |                     |
| EUR €  | 1 000 000  | 5 000 000 |                    | 6 242 028          |                     |
| <b>Utilities</b>   |            |           |                    |                    |                     |
| Indicative Notices for all utilities   |            |           |                    |                    | € 750 000           |
| Services or supplies for telecommunication sector  |            |           |                    |                    | € 499 632           |
| Services or supplies for oil, gas, coal and railway sector                               |            |           |                    |                    | € 400 000           |
| Services or supplies for water, electricity, urban transport, airports and ports sectors |            |           |                    |                    | € 600 000           |
| Works, Small lots for all utilities  |            |           |                    |                    | € 1 000 000         |
| Works for telecommunication, oil, gas, coal and railway sector                           |            |           |                    |                    | € 5 000 000         |
| Works for water, electricity, urban transport, airports and ports sectors                |            |           |                    |                    | € 6 242 028         |

## 8) European public procurement Directives

| Scope  | Title  |
|--|--|
| <b>Amending Utilities Directive</b>                    | Directive 98/4/EC amending directive 93/38/EEC                             |
| <b>Amending Services, Supplies and Work Directives</b> | Directive 97/52/EEC amending directives 92/50/EEC, 93/36/EEC and 93/37/EEC |
| <b>Supplies</b>  | Council Directive 93/36/EEC  |
| <b>Works</b>   | Council Directive 93/37/EEC  |
| <b>Services</b>  | Council Directive 92/50/EEC  |
| <b>Remedies</b>  | Council Directive 89/665/EEC   |
| <b>Utilities</b>                                       | Council Directive 93/38/EEC  |
| <b>Remedies for the Utilities Directive</b>            | Council Directive 92/13/EEC  |

*The information of this guide has been extracted and adapted from the booklet "Selling to the Public Sector in Europe - A practical guide for Small and medium-sized companies" © European Communities. The full text is available on the Internet: <http://europa.eu.int>  
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