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Introduction

This booklet has been developed to provide clarity and support to Cyril Sweett 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) hereafter referred to as the Regulations.

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, engineering or building 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.

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 Cyril Sweett acts as an advisor, 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

Cyril Sweett contacts

Cyril Sweett 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.

Name	Team	Expertise	Contact Details
Charles McSweeney	Procurement and Supply Chain Management (PSCM)	Public procurement	t: 020 7061 9121 charles.mcsweeney@cyrilssweett.com
Keith Keown	Legal Support	Drafting contracts	t: 020 7061 9332 keith.keown@cyrilssweett.com
Andrew Wildgust	PFI/PPP	Health PFI	t: 020 7061 9213 andrew.wildgust@cyrilssweett.com
Alan Saunders	Procurement and Supply Chain Management (PSCM)	Social housing	t: 020 7061 9172 alan.saunders@cyrilssweett.com
Tony Newberry	Procurement and Supply Chain Management (PSCM)	Frameworks	t: 0117 926 0785 tony.newberry@cyrilssweett.com

OGC Buying Solutions Technical Assurance Services framework

Public and third sector clients can appoint Cyril Sweett directly through the OGC Buying Solutions Technical Assurance Services framework agreement.

For more information about the type of services offered under the framework, please visit www.ogcbuyingsolutions.gov.uk or www.cyrilssweett.com or contact **Charles McSweeney** on t: +44 20 7061 9000 e: charles.mcsweeney@cyrilssweett.com.

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.

Be aware that some contracting authorities have produced their own guidance (see page 20). 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 inapplicable. 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 2).

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 8.

Accelerated restricted procedure

This procedure is exactly the same as the restricted procedure but allows for a quicker process. It can only be used in situations where external factors have created a state of urgency. "Urgency" is narrowly defined so it is worth seeking advice if you suspect this route can be justified (contacts noted on page 2).

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 relevant, see page 14.

Determining the right procedure

The purpose of this section is to define the procurement route 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 route 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** (traditional construction work)? If yes, go to question 4
 - if you are not sure, see Appendix C of this guide
 - if it is a mixture of the different contract types, see Appendix D

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

Entities listed in Appendix E	£ 90,319	€133,000
Other public sector contracting authorities	£139,893	€206,000

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?

Entities listed in Appendix E	£ 90,319	€133,000
Other public sector contracting authorities	£139,893	€206,000

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

N.B. These values are as of January 2008 and are updated every two years.

4. Is the tender price of the works contract expected to exceed £3,497,313 (net of value added tax)?

If no go to question 5, 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?

	Supplies	Services	Works
Entities listed in Appendix E	£90,319	£90,319	£3,497,313
	€133,000	€133,000	€5,150,000
Other public sector	£139,893	£139,893	£3,497,313
Contracting authorities	€206,000	€206,000	€5,150,000

Note that the thresholds are as it stands from 31 January 2008 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.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds.asp

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.

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. Is the contract considered to be "urgent"? This is narrowly defined by the Public Contracts Regulations 2006, so administrative inefficiency does not count!

If no, use open or restricted procedure, if yes, use accelerated restricted procedure.

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 (contracts noted on page 2).

Restricted procedure guidance

This section describes what each stage of the procedure involves as shown in the flowchart on page 13. An indicative programme of works for this procedure is included in Appendix H.

Procurement strategy

As part of agreeing a procurement strategy:

- **consider holding an objectives workshop with the contracting authority and/or conduct a contracting authority briefing** – this ensure 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

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

- for services or supplies, publish the PIN at the start of the financial year when the aggregate value is expected to exceed €750,000 (approx £500,000)
- 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 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 development information

- go to Simap website: <http://www.simap.eu.int> 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 and in any subsequent advertisements.

Submit contract notice

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 need to be agreed. Examples of criteria are shown in Appendix G
- tenderers must 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 applicant queries are recorded and made available to all other applicants

- ▶ **Administration and clarification of the PQQ process with prospective tenderers**

Pre qualification assessment

- ▶ **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
- ▶ **Issue all applicants with a written notification of success/failure**
- ▶ **Debriefing for unsuccessful applicants**

In accordance with the Regulations the unsuccessful applicant must be informed of the:

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

Invitation to tender (ITT)

- ▶ **Prepare tender document:**
 - confirm/agree tender submission opening procedures
 - prepare invitation to tender (ITT)
 - include payment terms
 - include evaluation criteria
 - the tender documents should be marked on quality/added value issues as well as financial issues
 - 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)** – this provides the opportunity for the contracting authority to clarify information included within submissions

▶ **Post tender clarification with client:**

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

▶ **Issue all applicants with a written notification of success/failure**

▶ **Debriefing for unsuccessful applicants**

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

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

Ten day standstill period

- ▶ **Ten day standstill period** (also often referred to as the “Alcatel” period due to the legal decision from which this point arose)
 - 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 stand-still 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.
- ▶ **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

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 2)

- ▶ **Get contract signed**

Competitive dialogue procedure guidance

This section describes the process for each stage of the flowchart on page 19. An indicative programme of works for this procedure is included in Appendix I.

Procurement strategy

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

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.

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)

Contract notice

▶ Draft OJEU contract notice using contracting authority development information

- go to Simap website: www.simap.eu.int 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

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 applicants

▶ Administration and clarification of the PQQ process with prospective tenderers

Pre qualification assessment

- ▶ **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 applicants with a written notification of success/failure**
- ▶ **Debriefing for unsuccessful applicants**

In accordance with the Regulations the unsuccessful applicant must be informed of:

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

Invitation to participate in dialogue

- ▶ **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
- information to show at what stage the number of bidders will be reduced
- criteria for the award of contract
- information on the weighting of the award criteria
- reference to any additional documents required from bidders

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

- ▶ **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**

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 applicants with a written notification of success/failure**
- ▶ **Debriefing for unsuccessful applicants**

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

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

Ten day standstill period

- ▶ **Ten day standstill period** (also often referred to as the “Alcatel” period due to the legal decision from which this point arose)
 - 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 stand-still 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 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**

Further Information

On some occasions you may need to refer back to the full Public Contract Regulations 2006 which can be found:

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

The following 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 Introduction to 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 has 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 www.ogc.gov.uk

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

- Department of Health: The Private Finance Initiative. How to conduct a Competitive Dialogue – www.dh.gov.uk
- Building Schools for the Future Guidance Note. How to Conduct a Competitive Dialogue Procedure – www.p4s.org.uk

Other sample documentation and advice can be obtained from the PSCM and legal support team (contacts noted on page 2).

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.

Office of the Government Commerce (OGC) – independent office of the Treasury that work with public sector organisations to gain the best possible value for money from procurement. They represent the UK at the European Union (EU), and are responsible for transposing the EU Procurement Directives into UK law.

Office Journal of European Union (OJEU) – publication (formerly known as OJEU) 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 mechanisms 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.

Public Contract Regulations 2006 – came into force on 31st January 2006 and transposes the European Commission's Procurement Directive into UK law. The Directive consolidates all the rules affecting procurement of contracts for works, services and utilities into one piece of legislation for England, Wales and Northern Ireland. Scotland has a separate Public Contracts Regulation 2006 which similarly came into force on 31st January 2006.

Appendix A

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. Figure 1 provides clarification on the processes to be undertaken when considering a framework. Figure 2 shows the decision process that should be followed when deciding how best to call off suppliers once the framework has been established.

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 three; 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). Times 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

For more information about frameworks refer to:

OGC guidance to Framework Agreements or speak to a member of the PSCM team.

Appendix B

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 authorities.

The activities are:

- the provision or operation of fixed networks for the provision of services in 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 (attestation) of their, procurement systems and practice; and they and their supplies 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.

Appendix D

Mixed contracts (e.g. supplies and services)

In most cases it should be clear from the nature of the work, whether a contract is supplies, services or works but when contracts contain a mixture of these elements the Regulations state:

- where contracts cover both services and supplies it should be determined by whichever element is greater in value
- where a contract covers works/services or works/supplies the classification is based on the predominant purpose, e.g. a Design and Build procurement would be classified as a works contract as the build element is always going to exceed the design component
- a contract that provides for the supply of equipment and an operator should be regarded as a services contract
- software contracts are considered as supplies unless it is tailored to the purchaser's needs whereby it becomes services

Appendix E

Schedule 1 of the Public Contracts Regulation 2006

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
Plant Variety Rights Office
Royal Botanic Gardens, Kew
Royal Commission on Environmental Pollution

Department of Health

Dental Practice Board
National Health Service Strategic Health Authorities
NHS Trusts
Prescription Pricing Authority

Department for International Development

Department of the Procurator General and Treasury Solicitor

Legal Secretariat to the Law Officers

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

National Assembly for Wales

Higher Education Funding Council for Wales
Local Government Boundary Commission for Wales
Royal Commission for Ancient and Historic Monuments in Wales
Valuation Tribunals (Wales)
Welsh National Health Service Authorities and Trusts
Welsh Rent Assessment Panels

National Audit Office

National Savings and Investments

Northern Ireland Assembly Commission

Northern Ireland Court Service

Coroners Courts
County Courts
Court of Appeal and High Court of
Justice in Northern Ireland
Crown Court
Enforcement of Judgements Office
Legal Aid Fund
Magistrates' Courts
Pensions Appeals Tribunals

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
Privy Council Office
Public Record Office
Royal Hospital, Chelsea
Royal Mint
Rural Payments Agency
Scotland, Auditor-General

Scotland, Crown Office and Procurator Fiscal Service
Scotland, General Register Office
Scotland, Queen's and Lord Treasurer's Remembrancer
Scotland, Registers of Scotland
The Scotland Office
The Scottish Ministers
Architecture and Design Scotland
Crofters Commission
Deer Commission for Scotland
Lands Tribunal for Scotland
National Galleries of Scotland
National Library of Scotland
National Museums of Scotland
Royal Botanic Garden Edinburgh
Royal Commission on the Ancient and Historical Monuments of Scotland
Scottish Further and Higher Education Funding Council
Scottish Law Commission
Local Health Councils
The NHS Education for Scotland Board
Scottish Council for Postgraduate Medical and Dental Education
Scottish National Health Service Authorities and Trusts
The Office of the Accountant of Court
High Court of Justiciary
Court of Session
HM Inspectorate of Constabulary
Parole Board for Scotland and Local Review Committees
Pensions Appeal Tribunals
Scottish Land Court
Sheriff Courts
Scottish Criminal Record Office
Scottish Crime Squad
Scottish Fire Service Training Squad
Scottish Police College
Office of the Social Security Commissioners
Rent Assessment Panel and Committees
The Scottish Parliamentary Body Corporate
Scottish Record Office
HM Revenue and Customs
The Revenue and Customs Prosecutions Office

HM Treasury

Office of Government Commerce
United Kingdom Debt Management
Office
The Wales Office (Office of the
Secretary of State for Wales)

Appendix F

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

Appendix G

Pre qualification assessment:

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