

# **Construction Procurement Handbook**

## **Chapter 7**

### ***Construction Procurement Route Two***

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## Introduction

1.1 The Construction Procurement Route Selection guidance (Chapter 3 of this handbook) sets out that there are two main procurement routes and provides a matrix for determining which one is most appropriate for individual procurements. Construction Procurement Route One (CPR1) is for procurements below the Procurement Reform (Scotland) Act 2014 thresholds and the other, Construction Procurement Route Two (CPR2) should be used for procurements above those thresholds. Figure 1, below, provides a description of each route and their sub-routes.

		Construction Procurement Route 1		Construction Procurement Route 2	
		A	B	A	B
Thresholds	Goods and Services	Below £50k	Below £50k	£50k – OJEU	Equal to and above OJEU Threshold
	Works	Below £500k	Between £500k and £2m	£2m - OJEU	OJEU Threshold
Risk		Low	Medium and High	Low, Medium and High	Low, Medium and High
Notes		This route is designed to reflect the legal requirement to ensure all Scottish public sector procurement is undertaken in an open, objective and equitable manner	As for Route 1A, but with the additional requirement of advertising the contract on PCS. This is not a legal requirement but good practice to achieve wide coverage. Used where Route 1A is not appropriate.	Must be advertised and comply with the requirements of Procurement Reform (Scotland) Act 2014.	Must fully comply with the relevant regulations including Public Contract (Scotland) Regulations 2015.
Procedures		No requirement to advertise. PCS Quick Quote provides an online system for taking this type of procurement to market.	This will most likely be openly advertised and it should be conducted in a fair, open, objective and equitable manner akin but <b>not</b> subject to the same rules as procurements conducted above Procurement Reform (Scotland) Act 2014 thresholds.	None specified but a full and formal fair, open, objective and equitable tender process must be followed. Where appropriate and proportionate to the specific case we believe that following <i>similar</i> procedures to those required for above OJEU procurements is advisable.	Open, Restricted, Competitive procedure with negotiation, Competitive dialogue, Innovation Partnership, Negotiated procedure without prior publication.

Figure 1: Construction Procurement Routes

## Legislation

2.1 Construction procurement, like all other procurements in Scotland are governed by legislation and case law. The principle pieces of legislation are the [Procurement Reform \(Scotland\) Act 2014](#) (The Act) the [Public Contract \(Scotland\) Regulations 2015](#) (the 2015 Regs) and the [Procurement \(Scotland\) Regulations 2016](#) (the 2016 Regs) Other related legislation can be found on the [Procurement legislation from 18 April 2016](#) web page. The [Guidance under the Procurement Reform \(Scotland\) Act 2014](#) is statutory guidance issued following the enactment of the *Procurement Reform (Scotland) Act 2014*.

## Applicability

3.1 This chapter of the *Construction Procurement Handbook* focuses on the advertising, selection and award of contracts under CPR2B which is specifically for those procurements which are above Official Journal of the European Union (OJEU) thresholds. Procurements above OJEU thresholds are regulated by the *2015 Regs*. There are no mandated procedures below the thresholds set out in the Act and those required by the 2015 Regs are not mandated below the OJEU thresholds. That said, we recommend that the use of similar processes for all below OJEU threshold procurements is good practice as they provide a consistent approach and ensure open competition in keeping with the common procurement principles of equal, fair and transparent processes.

## Procurement Thresholds

4.1 These are covered in more detail in Chapter 3, about route selection. For ease these are reproduced here in *Figure 2*:

		Works	Services, Supplies & Design Contracts
Procurement Reform (Scotland) Act 2014 <sup>1</sup>		£2m	£50k
OJEU <sup>2</sup>	Central Government	£4,551,413 See <a href="#">thresholds</a>	£118,133 See <a href="#">thresholds</a>
	Other Contracting Auths	£4,551,413	£181,302
	Small Lots	£820,370	£65,630

*Figure 2 – Public Contract Procurement Thresholds as at 1 January 2018*

## Procedures

5.1 **Procurement Procedures** When conducting a procurement either equal to or above the OJEU thresholds; contracting authorities (CAs) must apply a procedure which complies with the 2015 Regs. The Regulations provide for six procedures. These are:

- [Open](#) Regulation 28;
- [Restricted](#) Regulation 29;
- [Competitive procedure with negotiation](#) Regulation 30;
- [Competitive dialogue](#) Regulation 31;

<sup>1</sup> Section 3 of the Procurement Reform (Scotland) Act 2014 sets out the thresholds for contracts regulated under that Act.

<sup>2</sup> The OJEU thresholds are correct as at 1 January 2018. The amounts are amended biannually therefore reference to the [SPCD website and the table of EU thresholds](#) should be made for the latest rates.

- [Innovation partnership](#) Regulation 32; and
- [Negotiated procedure without publication Regulation](#) 33

5.2 The majority of procurements for supplies, services and works will follow either the *Open* or *Restricted* procedures; which one is followed will be dependent on the specific nature and requirements of the project and contract. The use of the *Competitive Procedure with negotiation* and *Competitive Dialogue* are more appropriate for complex procurements, for example, where readily available solutions need significant adaptation or the contract requires innovative design solutions. *Innovation Partnerships* are more appropriate where the development of innovative solutions not available on the market is required and will normally require a commitment from the supplier to conduct substantial research and development to arrive at a solution. This guidance focuses on the use of the *Open* and *Restricted* procedures.

5.3 *Open* and *Restricted* procedures consist of three parts – advertising, selection and award of contract. Although open and restricted procedures are distinct, the rules and manner by which those three parts are carried out are similar. The main difference is that for the open procedure, selection and award are carried out simultaneously whereas for the restricted procedure, this is separated into two distinct stages carried out consecutively.

5.4 There are advantages to both procedures, however for most construction contracts to engage both contractors and consultants, the restricted procedure will normally be the most suitable. The following sets out the characteristics of these:

- Open Procedure This allows anyone to submit a tender to supply, goods, services or works in response to an advert being placed by a client. The supplier submission includes two parts, the selection information and the tender. Each is evaluated separately. Because both elements are submitted at the same time, it does not restrict the number of tender submissions and may result in a large number of submissions, including those from suppliers who are entirely unsuitable for the delivery of the contract and can, consequently be a slow and costly process. It is though considered to offer the greatest competition and can allow new or emerging suppliers to try to secure work.
- Restricted Procedure This is very similar to the *Open* procedure but separates the pre-qualification or selection stage from the consideration of the tender evaluation. An advert is published and suppliers respond to this by completing a pre-qualification questionnaire (in Scotland this is done on the European Single Procurement Document (Scotland)). This is considered by the client and a short list of those suppliers who meet the requirements (or qualify) is drawn up and those on it invited to tender for the contract. This procedure has the advantage of reducing the number of tenders which are submitted and consequently reducing the amount of speculative work required by suppliers in preparing full tender submissions and the number of submissions which require to be evaluated by the client. Generally a short-list will consist of a minimum of five suppliers.

5.5 Restricted procedures are often referred to as two stage processes. This refers to the selection and award ‘stages’. This should not be confused with *two stage tendering*, which is used, generally in construction, to allow the early appointment of a contractor, prior to the completion of all the information required to enable them to offer a price. In the first stage, a limited appointment is agreed allowing the contractor to begin work and in the second stage a fixed price is negotiated for the contract. Both open and restricted procedures can be used in two stage tendering.

## Timescales

6.1 Procurements regulated under the 2015 Regs allow certain minimum timescales for the completion of various elements of the processes. Procurements regulated under the Act do not have the same fixed minimum timescales imposed, but contracting authorities must adopt timescales that are proportionate to the complexity of the procurement. For many procurements these may be the same as those set out in the 2015 Regs.

6.2 *Regulation 48* of the 2015 Regs requires contracting authorities to take account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits which are shown in *Figure 3* below. For example, the regulations cite that where tenders can only be made after a visit to the site or after an on-the-spot inspection of the procurement documents, time limits must be fixed so that all economic operators may be aware of the information need to produce tenders.

Choice of procedure and stage	Standard timescales	Tenders submitted electronically	Requirement is extremely urgent and longer time limit is impractical as a result	PIN published no more than 12 months and no less than 35 days from despatch of contract notice <sup>3</sup>
<b>Open procedure</b>				
Despatch of contract notice to receipt of responses	35 days	Period Reduced to 30 days	Period reduced to 15 days	Period reduced to 15 days
Standstill Period	10 days			
Publication of contract award notice	Not later than 30 days after contract award			
<b>Restricted procedure</b>				
Selection				
Despatch of contract notice to receipt of responses	30 days		Period reduced to 15 days	
Award				
ITT to receipt of bids	30 days	Period Reduced to 25 days	Period reduced to 10 days	Period reduced to 10 days
Standstill Period	10 days			
Publication of contract award notice	Not later than 30 days after contract award			

*Figure 3: Procurement Timetable - Open and restricted*

<sup>3</sup> Provided that the PIN contains all the information required of a contract notice.

**6.3 Time Limits (Reg 48)** The time limits set for receipt of tender submissions from bidders should be proportionate to the contract complexity and the time required to prepare and submit a bid (bearing in mind minimum requirements). Setting too short a timescale for bidders to respond is counter-productive and may lead to poorly formed requirements and contracts, leading to contractual issues and poor outputs later in the project.

**6.4** Where additional information is requested by a bidder in good time and this cannot be not supplied at least six days before the tender receipt date (or four days in accelerated procedures), the CA must extend the time limits for the receipt of tenders. An extension to the timescale must also be given where there are significant changes to the procurement documents. Bidders must be given sufficient time to consider any changes or additional information. The length of extension of a tender deadline should be proportionate to the complexity of the change and/or the additional information being provided. To proceed with a tender extension the necessary approval should be obtained in accordance with internal governance procedures. If the date is amended, the new date should be notified to all tenderers (in the case of an open procedure this will require an amendment to the notice to be issued), and if any tenderer indicates that they have already submitted a tender then they should be given the opportunity of withdrawing the original tender and submitting a revised one in line with the extended tender deadline. Consideration should also be given to whether, as a result of the requirement having changed sufficiently, the contract should be restarted in order to ensure that companies which had already discounted the opportunity are given the chance to re-consider in light of the amended requirement.

**6.5 Issuing Documents (Reg 54)** Procurement Documents should be available at the time of publishing the Contract Notice. The term *Procurement Documents* is defined by Regulation 2 of the 2015 Regs and includes:

*“...any document produced or referred to by the contracting authority to describe or determine elements of the procurement, including the contract notice, the prior information notice (if used), the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by bidders, information on generally applicable obligations and any additional documents. Technical specifications are further defined in Regulation 43.”*

**6.6** It is acknowledged that having a complete suite of information is not always possible, for example, a works contract using a design and build form of contract, will require the successful tenderer to produce the design. All information that is ready must be made available and should be clear to enable competent tenders to be submitted.

**6.7** For a consultant appointment the procurement documents may include a detailed ‘scope of services’, project timescales, and a draft of the form of the appointment contract.

6.8 For a works appointment, procurement documents will comprise any design information available, including specifications, performance specifications, employer's requirements and timescales of the project. That is, sufficient information to allow an informed bidder to understand the works to be tendered. The information should also include the form of construction contract and any proposed amendments to the standard form of the chosen contract.

6.9 **Publication** All Procurement Documents should be made available via the internet, with free and unrestricted access. If exceptions apply, which mean that the Procurement Documents cannot be issued electronically, the contract notice must detail how this will be done instead.

6.10 **Clarification of Bids** Negotiation on fundamental aspects of contracts (especially price) which is likely to distort competition, is not allowed in either the open or restricted process. Dialogue with bidders should be limited to requests for clarification on the process or specification. By definition, Competitive dialogue procedures included extended dialogue with bidders but this is strictly defined and controlled.

6.11 Any discussions with bidders should be properly recorded and meetings which discuss proposals/requirements in any detail should generally be avoided and any clarification given must be shared with all bidders.

6.12 **Value for Money** Scottish Government policy is that all procurement should be conducted on the basis of value for money (VFM) and not lowest price alone. This is a legal requirement for all procurements above OJEU thresholds. The selection of the most appropriate procurement strategy, and the appointment of consultants and contractors, should therefore be on that basis. Regulation 67 of the 2015 Regs requires that *CAs must base the award of public contracts on the most economically advantageous tender assessed from the point of view of the contracting authority and may not use price only or quality only as the sole award criteria.*

6.13 **Advertising/Contract Notice** All contracts above or equal to the Act thresholds must be advertised electronically on PCS, those above the 2015 Regs OJEU thresholds must also be advertised in the Official Journal of the European Union. The content of the above OJEU notices is set by Regulation 50 of the 2015 Regs, these are reproduced at Annex A. Timescales are given in figure 3 above. As a matter of good practice, we would also recommend that once the contract has been awarded, the successful tenderer is encouraged to advertise their own sub-contracts on PCS, in cases where they have not fully identified their supply chain.

6.14 The main difference in advertising between Open and Restricted procedures is that in open tendering economic operators are invited to submit a an ESPD(S) along with their tender; whilst in restricted tendering, the notice only invites the submission of the ESPD containing selection and exclusion information, with the invitation to tender being sent out later to only those who have been selected.

## **Selection of Candidates and Award of Contract**

7.1 **General** Contracting authorities may award a contract or conclude a framework agreement provided it has verified that:

- the tender complies with the requirements, conditions and criteria set out in the contract notice and
- the tenderer is not excluded and meets the selection criteria set out by the authority.

7.2 Exclusion grounds, selection and award criteria must be clearly defined in the procurement documents to ensure a common understanding of the requirements by all economic operators. These criteria must not be changed or waived during the procurement process.

## Selection and Exclusion

8.1 **Introduction** Selection (sometimes known as pre-qualification) is the process by which economic operators are tested against a set qualification criteria to identify that they can be selected and should not be excluded from the competition. It looks at their general experience, probity as well as the ability and capacity of the company to perform the contract as opposed to the tender evaluation which looks at the bidder's specific proposal to deliver the contract. The statutory guidance requires the ESPD (Scotland) to be used for all procurements above the Act thresholds. An economic operator which fails the selection process cannot be awarded the contract. Regulations 57 to 66 of the 2015 Regs cover the selection of candidates to be invited to tender.

8.2 Selection in *open procedures* may be conducted either before or after the evaluation of the tender has been carried out. If it is carried out before tender evaluation only those tenders which have been selected need to be evaluated. It may, for example, be desirable to assess the tenders (award stage) prior to checking that the minimum criteria are met when only a small number of bids have been received. Where this is done, the absence of grounds for exclusion and of fulfillment of the selection criteria must still be verified prior to award of contract.

8.3 Selection in *restricted procedures* is carried prior to tender evaluation. Economic operators submit their ESPD (Scotland) which is assessed and scored then the contracting authority invites qualifying candidates to tender for the contract.

8.4 **Exclusion** There are two main categories of exclusion - *mandatory grounds* and *discretionary grounds*. In outline these two categories are defined as follows, a fuller list of these grounds is given at Annex B:

		Exclusion Criteria	Legislation Reference
Mandatory	<u>Must</u> be applied in all regulated procurements	Grounds relating to criminal convictions Grounds relating to the payment of taxes or social security contributions Blacklisting	Regs 58(1) & 58(3) of the Public Contract (Scotland) Regulations 2015 and Regs 8 & 9 of the Procurement S(Scotland) Regulations 2016
Discretionary	<u>May</u> be applied in regulated procurements	Grounds relating to insolvency, conflicts of interests or grave professional misconduct	Regs 59(4) & 58(8) of the Public Contracts (Scotland) Regulations 2015 and Regs 9(2) & 9(5) of the Procurement (Scotland) Regulations 2016

Figure 4: Exclusion criteria definitions

8.5 All exclusion criteria must be relevant and proportionate to the subject-matter of the contract. The specific requirements, the relevant exclusion grounds and the minimum standards that are relevant for the procurement exercise should be set out in the Contract Notice.

8.6 Candidates are required to disclose whether any of the discretionary or mandatory exclusion grounds apply to them in the ESPD (Scotland). Candidates will be excluded from the competition if they cannot provide suitable evidence that the grounds no longer apply, for example, because they have taken suitable action to 'self-cleanse' and may be barred from competing for up to three or five years dependent on the grounds. Economic operators must not be excluded indefinitely from participating in a procurement exercise. In all cases, a bidder should be allowed to provide evidence that they have taken remedial action to demonstrate their reliability (self-cleansing).

8.7 **Blacklisting** The Scottish Government regards blacklisting or the compiling of a blacklist as unacceptable. This is the practice of systematically denying individuals employment, who would otherwise be able to be employed, on the basis information, accurate or not, held in some type of database. An economic operator which has breached the relevant legislation is required to disclose full details of the breach including any successful action against it.

8.8 **Selection** The selection criteria for OJEU procurements are set out at Regulation 59 of the 2015 Regs and for regulated procurements at Regulation 10 of *the 2016 Regs* and are replicated in section IV of the ESPD (Scotland) standard form.

## **ESPD (Scotland)**

9.1 The 2015 Regs introduced the European Single Procurement Document (Scotland) (ESPD). The statutory guidance requires its use for all regulated procurements conducted in Scotland. This section of the guidance relates to the use of ESPD (Scotland) for construction related procurements. It includes the procurement of goods and services within the construction sector as well as works contracts. Services will generally be the appointment of professional advisers, for example members of a design team.

9.2 The ESPD (Scotland) is a formal, self-declaration by bidders providing preliminary evidence that they should not be excluded from the process. It also seeks to demonstrate that they meet the relevant selection criteria and where applicable they fulfil the objective rules and criteria that have been set limiting the otherwise qualified bidders to be invited to tender (short listing criteria).

9.3 It includes mandatory exclusion criteria required in Scotland, such as those for blacklisting. A copy of the ESPD (Scotland) standard form is available online. Bidders and buyers should take care to download the latest version when using this document to ensure that the most current version is used. This can be downloaded from: <https://www.procurementjourney.scot/node/134/>

9.4 The contract notice (or PIN if being used as a call for competition) is integral to the use of the ESPD (Scotland). The content is discussed at paragraph 6.13. This should include all information the Contracting Authority has available that may assist bidders to understand the project and allow them to decide if they wish to participate in the competition.

9.5 The contracting authority must set and publish exclusion grounds (mandatory and discretionary), together with selection criteria to allow a bidder’s capability, experience and capacity to be assessed. This is done by the setting of minimum standards (pass / fail questions), as well as seeking qualitative information that can be evaluated and scored. It is important that the number and complexity of questions being asked reflects the scale and complexity but should also consider and be proportionate to the contract value. Figure 5 sets out the sections of the ESPD which are evaluated.

	ESPD Part	Scoring Method
Suitability to pursue a professional activity	Part 4A	Not generally scored in UK Construction
Economic and financial Standing	Part 4B	Pass / Fail
Technical and professional ability	Part 4C	Weighted and Scored

Figure 5: ESPD, evaluated Sections

9.6 **Requesting information about others** Part II C of the ESPD requires the bidder to confirm if they rely on the capacities of other parties, this will normally be sub-contractors, in order to meet part of the selection criteria – refer to *example 1* below. This can be through a variety of relationships for example partners, however in construction this would generally be by subcontracting, where the other party perhaps offers specialist skills or services that the bidder doesn’t possess. If the answer to this question is yes, the bidder must provide a separate ESPD (Scotland) from those other parties, each party completing Part II and III, confirming their identity and that they do not breach any of the grounds for exclusion. All parties must individually demonstrate that they do not breach any of the exclusion criteria. The selection criteria within part IV of the ESPD– see below) are those criteria set by the contracting authority specifically for the subject contract. Their purpose is to provide assurance to the contracting authority that the bidder and those entities it is relying on collectively have the capacity and capability required to deliver the contract. Sub-contractors will be allowed to demonstrate that they have self-cleansed, in a similar way to the main contractor, however **should a sub-contractor, which is relied upon by the bidder to meet selection criteria, fail any of the pass fail criteria, the whole bid will be deemed to be non-compliant and will be rejected.**

9.7 Part II D is an optional requirement for the contracting authority and is not generally recommended to be included for construction contracts. It asks bidders to confirm if they intend to subcontract any share of the contract. If they do, the contracting authority may ask the identity of those parties, but only as far as they are known, and for the relevant questions in Part II and all of Part III of the ESPD(S) to be submitted by those sub-contractors. Sub-contractors identified, may be required

to complete. **As in 9.6 above, should a sub-contractor fail any of the pass/fail criteria the whole bid will be deemed to be non-compliant and will be rejected.**

9.8 The following example describes how this might apply in terms of a relied upon sub-contractor.

**Example 1**

**Tender for the construction of an office block which is adjacent to an electrified railway line.**

The contracting authority (CA) has identified the additional risk attached to working close to a live electrified railway and therefore seeks to appoint a contractor that can both demonstrate experience and expertise of general building contracting and of dealing with the exceptional circumstances that may result from the adjacency of the railway line.

The contracting authority should set selection criteria, within the contract notice, against which bidders would have to demonstrate how they intend to satisfy both these requirements, and any others they deem appropriate.

Not all contractors would necessarily have the in house experience of working adjacent to railways and thus may bring in other parties such as partners or specialist sub-contractor(s) as part of their bid, to allow them to satisfy this specific criterion.

In this circumstance an ESPD (Scotland) would be required from the sub-contractor(s) who provide this specialist expertise, and in the ESPDs submitted the parties would have to establish what expertise and experience each party contributes to the bid, this being an example of the bidder's "reliance on the capacities of other entities" – to meet the selection criteria.

The contracting authority may also seek information about those sub-contractors that the bidder does not rely upon to satisfy the notice criteria. *(This should not be the default position and given the time and cost to both the CA and the bidders, CAs should consider if there is any actual improvement to the selection process before adding this requirement.)*

This relates to those sub-contractors that will form the rest of the supply chain. Depending on the scale and complexity of a project this could include a significant number of separate trade/work packages.

9.9 **Suitability to pursue a professional activity.** This allows a contracting authority to require bidders to be enrolled in certain professional or trade registers. This has very limited use for UK based bidders as the only recognised register in the regulations for the UK is the register of companies held by Companies House.

**9.10 Economic and financial standing.** This allows the contracting authority to undertake a degree of financial due diligence on the bidder, including setting the levels of insurance that a bidder must be able to provide on appointment. It is not acceptable to simply ask for company accounts, the contracting authority must establish criteria, such as financial ratios, that the bidder must meet. In particular, a contracting authority cannot ask bidders to have a turnover greater than twice the annual value of the contract, except in duly justified cases.

9.11 Regulation 59(8)(a) and (9) of the 2015 Regs refers. When setting financial criteria, assistance must be sought from financial professionals to ensure the criteria reflect the industry bidders will come from. For example, the financial profile of construction contractors is likely to be very different from consultants. **Again, criteria should be proportionate and appropriate to the scale and complexity of the project and different for consultants and contractors. The review of economic and financial information must be undertaken by individuals with suitable financial expertise.**

**9.12 Insurances.** Insurance criteria should be set at levels that reflect the contract in relation to risks, but also relative to the value of the contract being tendered, for example, the level of cover of Professional Indemnity Insurance cover required of, say, an engineer may be high in relation to their fee due to the consequence of a defective design. These should not be at levels that would act as artificial barriers to entry. The main types of insurance are noted below:

- **Public Liability Insurance.** PLI indemnifies the insured party against their legal liability for accidental death, disease, injury and damage to property caused to third parties (that is, non-employees) and arising out of the insured party's activities. Claims arising out of a breach of professional duty (professional negligence) may not be covered, therefore it may also be necessary to require the successful bidder to provide a professional indemnity policy. In general, the levels suggested for public liability are £10m for construction works and services contracts and £1m for supplies and services contracts.
- **Professional Indemnity Insurance.** PII indemnifies the insured party against claims for loss caused by alleged breach of professional duty/negligence in the exercising of a professional skill. This is usually taken out by architects, consulting engineers and quantity surveyors or building contractors (if they have a design input or responsibility, usually under a design and build contract). In the supplies and services sector, it could include management consultants, and legal and financial advisers. Unreasonably high levels of PII can act as a barrier to small and medium sized enterprises (SMEs) tendering for contracts. Levels of such insurance should be proportionate to the risks associated with the project and may be lower or higher than the value of the project.

9.13 Contracting authorities should carefully consider the levels of PII cover they require and make an informed decision as to the appropriate level for each project and each of the disciplines they require to have PII cover for. They should note that they may have to pay a premium for unnecessary cover and that they may also be

excluding competent small and medium size organisations from participating in their tender process.

- **Employers Liability Insurance.** ELI indemnifies the insured party against their legal liability for death, disease or injury caused to employees (there can be a wide definition of employee - it can include labour only subcontractors, students on work experience, etc.) arising out of their employment. Legally the minimum to be insured is £5m, but most companies are insured for at least £10 million. See [Employers Liability Insurance](#).
- **Contractors' All Risks Insurance.** CAR indemnifies the insured against claims for loss of or damage to the contract works (that is, works undertaken in the performance of a contract including temporary works and materials and including free issue materials) on or adjacent to the site of any contract, both before and after they are incorporated into the contract works, during the period of the works. Cover is normally provided during transit to and from the site, other than by sea or air. Cover is also usually provided on an 'All Risks' basis to include Fire and Specified Perils as well as Accidental Damage, Malicious Damage and Theft. The policy can be extended to cover Own Plant, Site Huts, Temporary Buildings, and Hired-In Plant as well as Employees' Tools. The suggested levels are project cost plus 15% to allow for consequential costs and inflation.

9.14 **Technical and Professional ability.** The aim of the process is to have bidders demonstrate they have the capacity and a sufficient level of experience in order to deliver the contract. This allows criteria to be set that can be scored and evaluated, as distinct from simply pass or fail.

9.15 Bidders will be tested against these criteria using standard questions within the ESPD (Scotland). The standard questions cannot be amended or added to, however the contracting authority may omit questions if they are not deemed appropriate to the specific project. The contract notice should make clear:

- what the subject matter of the contract is;
- the scope of the requirement; and
- any contract specific criteria required.

9.16 This information will allow bidders to understand the skills, capabilities and capacity that the contracting authority has identified as necessary to deliver the contract, and to reflect this in their request to participate. The contract notice together with the ESPD (Scotland) sets out the specific requirements of the contract, the relevant exclusion grounds and the minimum standards relevant for the procurement exercise. When setting criteria in the notice and choosing which questions of the ESPD (Scotland) to use, a contracting authority must take account of the following:

- Criteria should be proportionate in their number and complexity, relevant to and focused on the particular requirements of the subject contract.

- Quality criteria must be determined by the requirements of the project.
- The number of questions must be proportionate to the scale and complexity of the project, i.e. the same number of questions for a £0.5m and a £5m category value contract may not be appropriate.
- Both the creation of criteria and the assessment of ESPD (Scotland) returns for construction contracts must be undertaken by a panel consisting of construction professionals with the appropriate breadth of skills and experience to professionally assess and evaluate returns.
- Scoring methodology must be established and published as part of the contract notice.
- Any weighting given to each question must be agreed and published as part of the notice.

**9.17 Qualifying period for experience** Questions 4C.1 and 4C1.2 ask for the economic operators to provide relevant examples of experience they have had in the last five years for contractors and three years for consultants. These periods may be extended where the contracting authorities feel that adequate competition may not be achieved by limiting the period of experience.

**9.18 Selection Scoring** For those elements which are subject to scoring, as opposed to those which are pass/fail, the contracting authority should ensure that a scoring methodology is developed to assist with evaluation at the selection stage. The evaluation methodology must be published in the contract notice to allow bidders to clearly see how their responses will be evaluated. An example of a scoring methodology is provided below in Figure 6:

Evaluation Criteria for Selection		
Score	Classification	Definition
0 Unacceptable	Nil or inadequate response.	Fails to demonstrate previous experience/capacity/capability relevant to this criterion.
1 Poor	Response is partially relevant but generally poor.	The response shows some elements of relevance to the criterion but contains insufficient/limited detail or explanation to demonstrate previous relevant experience/ capacity/capability.
2 Acceptable	Response is relevant and acceptable	The response demonstrates broad previous experience, knowledge and skills/capacity/capability but may lack in some aspects of similarity e.g. previous experience, knowledge or skills may not be of a similar nature.
3 Good	Response is relevant and good.	The response is sufficiently detailed to demonstrate a good amount of experience, knowledge or skills/capacity/capability relevant to providing similar services to similar clients.
4 Excellent	Response is completely relevant and excellent overall	The response is comprehensive, unambiguous and demonstrates thorough experience, knowledge or skills/capacity/capability relevant to providing similar services to similar clients

*Figure 6: Scoring system for selection*

9.19 It is likely that each question asked will be weighted, and this must also be published as part of the evaluation. Weighting is an important part of ensuring that the correct consultant/contractor is selected, therefore time spent on consideration of the value of each part of the criteria and the importance of each question relative to the others is critical. For example, in general terms it is likely that the ESPD (Scotland) question relating to relevant past experience and examples of works undertaken (or services for a consultant appointment), will carry a greater weighting than other questions posed. This weighting should also be published as part of the notice. The objective of the selection part is twofold, firstly, to identify and remove bidders who don't meet the selection criteria. Secondly, and if necessary to generate a shortlist of bidders that best demonstrate the stated requirements in terms of being eligible and having the experience and capability that will enable them to deliver the contract.

9.20 Figure 7, below, shows the selection and award process in terms that are common in construction:

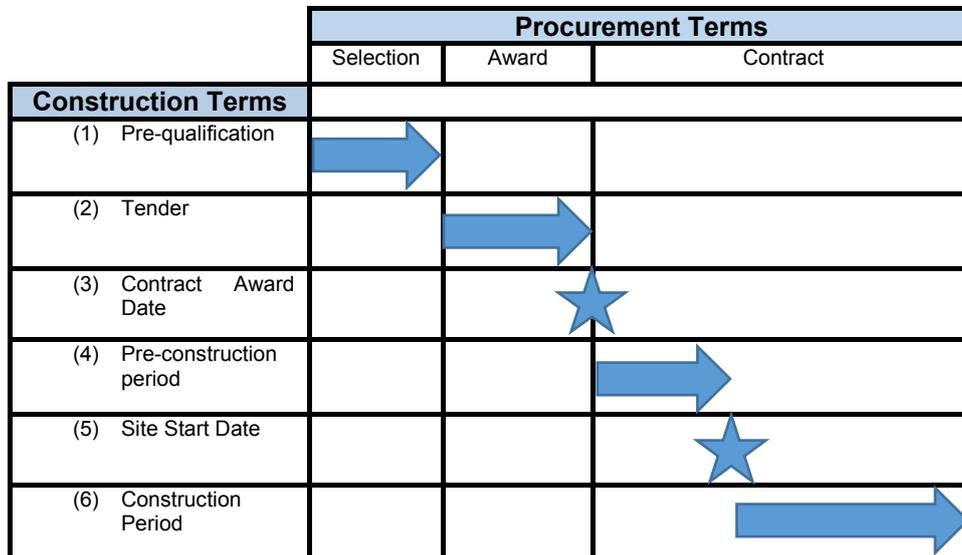


Figure 7: Selection and award process

## Award

10.1 The award part is distinct and separate from the selection part. For above OJEU threshold procurements, the tender evaluation must identify the most economically advantageous tender on the basis of price/quality ratio and must not be based on price or cost only. The statutory guidance requires this approach to be applied to any award criteria for regulated procurements below the EU contract threshold values.

10.2 **Invitation to Tender (Award)** In a restricted procedure, (in open procedures, there is no invitation to tender as the notice invites tenders from all who are interested) the invitation to tender and tender documentation (including a Pre-Interview Questionnaire, where appropriate) should be sent simultaneously in writing to each tenderer. They should be accompanied by "Instructions to Tenderers". These should describe clearly how the tender is to be completed and submitted. Care

should be taken to ensure that they only contain instructions and do not include any contractual information that should be included in the contract documents. The following information should be included:

- date and time of submission
- the award criteria
- the essential requirements of a compliant tender (including the information necessary to evaluate the tender in line with the award criteria)
- details for the submission of variant bids, if applicable (including the essential minimum requirements)
- instructions to visit site, where appropriate
- tender return labels (although the default position is that submissions will be made by e-communication)
- method of completing and submitting the tender
- explanation of the two-envelope system (if appropriate)

10.3 The golden rules of tender documentation are transparency, clarity, consistency and completeness. Tenderers will have limited time to carry out a lot of work and therefore the client should make the contract documents clear and as easy to understand as possible. As noted above the presumption is that submissions will be made by e-comms however where hard copies are used all documents should be typed with no manuscript amendments or inserts, all pages should be numbered and there should be a comprehensive index. Tenderers may want to split the documents into elements for response by different people.

10.4 All tenderers should be given identical information. Any clarification given to a tenderer during the tender period must be sent to all the others.

10.5 **Tendering System** There are a number of tendering systems available, the two envelope system allows the quality element of a bid to be evaluated without influence of price and requires tenders to be submitted in two envelopes, one being the qualitative section of the bid, the other the price. A minimum acceptable score for the quality element can be set with only those tenders achieving this having their price considered. This means that an unacceptably poor quality proposal cannot win the tender simply by virtue of having the lowest price.

10.6 Whether the two envelope procedure is used should be determined by the requirements of the project. There may be less need for the two envelope procedure where there is little room for variation in the quality elements of bids, (e.g. where the bid is based on detailed design, full specification and bills of quantities). But where there is scope for variation (e.g. Design and Build, partial design and build, or contracts based on performance specifications) a significant element of the bidders' proposals will be subject to detailed evaluation, and where a two-envelope system is

not used, it may be difficult to show that a quality evaluation has not been influenced by consideration of price.

10.7 The evaluation of the award is a forward-looking process and addresses how a bidder intends to deliver the contract with the contracting authority assessing the merits of the bids. The aim of the evaluation is to identify which of the eligible tenders will deliver the best value for money on the price quality ratio set out in the contract notice. Evaluation is conducted on the price and quality of the submission.

10.8 The process must involve a fair, transparent and accountable method of evaluating tender submissions. The invitation to tender must include a clear and unambiguous explanation to bidders on how tenders will be evaluated.

10.9 It should focus on the tenderer's proposals for the delivery of this specific contract and must not consider any other factors out with the scope of the tender. The contracting authority must establish the substantive criteria against which they will evaluate the tenders. These criteria must be specific to the particular project and relevant to assessing whether tenders represent value for money (VFM). The criteria must be established before tenders are invited and notified in the initial advertisement or subsequently in the instructions to tenderers, contained in the procurement documents. Regulation 67 of the 2015 Regs defines the Contract Award Criteria, these may include:

- Quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- Organisation, qualifications and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- After-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

10.10 Award criteria must:

- not have the effect of conferring an unrestricted freedom of choice upon the contracting authority;
- ensure the possibility of effective competition; and
- be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria.

10.11 In terms of construction-related contracts a list of examples of subjects that may be used as the listed criteria is provided in Annex C.

**10.12 Qualifications and Experience of Staff Assigned to Performing the Contract** For construction-related contracts the quality, experience and qualification of staff is likely to play a major part in the delivery of the project. At the selection stage where bidders are asked about experience, this will relate to the general experience of the bidding organisation, whereas at the award stage, and if important to the tender, this will relate to the staff specifically assigned to the contract and who will actually perform the contract. Within the pricing section of the tender it may be appropriate to seek a breakdown of the roles that the bidder proposes for delivery of the contract and the time allocation for each role against a project programme.

10.13 It is not unusual to seek hourly rates for each staff member, even if the bid is on a fixed sum basis. If there is just cause during the contract to extend the level of services, (not an unusual occurrence in construction) this will allow a basis for such an eventuality. Care must be taken to ensure that any necessary extension would not materially increase the scope of the contract to an extent that would require the contract to be retendered. If the quality of the staff assigned has a significant impact on the level of performance of the contract there should be a mechanism for the successful tenderer to change staff only with the prior approval of the contracting authority.

**10.14 Weightings for award criteria** Bids are assessed on how well they satisfy the award criteria (including any mandatory components). The relative importance of each award criterion should be established by giving it a weighting, based on the requirements of the specific project.

**10.15 Quality / Price Ratio** The tender should be evaluated on the basis of a best price quality ratio, which will be assessed on the basis of criteria linked to the subject matter of the contract and which must include the price or cost using a cost effectiveness approach. A cost effectiveness approach may include life cycle costing.

10.16 The price/quality ratio appropriate to the type and stage of the project should be established. When setting the appropriate ratio, the Scottish Government encourages the promotion of quality in bids, however contracting authorities should consider the following aspects before setting a ratio appropriate to their tender, further information on these is provided in the section in this handbook on *Contract Selection*:

Contract type:

- Works
  - Design & Build
  - Traditional
  - Design, build, finance & maintain
  - Frameworks
- Consultants

- Designer
- Non-designer
- Contract Value
- Project complexity
  - Number of sub-contracts
  - Simple single contractor
- Requirement for innovation
  - Design
  - Construction techniques
- Repeat projects
  - Framework call offs
  - Maintenance

10.17 Ratios are determined by the balance required to be struck between price and quality taking into account the factors described in paragraph 11.2. Each part of the ratio sits on a sliding scale proportionate to its relative importance. *Figure 8* shows this relationship graphically, 0% and 100% are shown to describe the inter-relationship between price and quality, however it should be noted that it is not permissible to score on the basis of price or quality alone.

Quality	100%		0%	Quality
Complexity	Very Complex	Moderate complexity	Very Simple	Complexity
Price	0%		100%	Price

*Figure 8: Price/Quality ratio.*

10.18 **Award Mechanism** The award mechanism, scoring and weighting ratios, provides a structured approach to evaluating bids. The mechanism must be published in either the notice or the ITT documents; therefore, it must be established before inviting expressions of interest, placing advertisements and/or issuing the ITT documents.

10.19 **Quality Scoring** When scoring individual questions at the award stage, a similar scoring methodology to that for the selection stage could be adopted. There has been some criticism from the industry suggesting scoring bands are too narrow, leading to a clustering effect when marking. Simply put the view is that following a selection process where all short listed parties should be capable of delivering the contract, most bids will cluster round the good / acceptable range. This will lead to

greater reliance on the price scoring no matter what price/quality ratio is adopted. For this reason, it is recommended that a scoring system with a wider quality range be adopted, which would allow a greater separation between bids. The table at **Annex C** sets out a 10 point (0 – 9) scoring range. The use of this allows greater definition of bids in relation to each other and therefore a greater ability to separate bids which are relatively close in quality.

10.20 When scoring Contracting authorities must do so accurately and resist inappropriate banding around the middle range. Using the wider range (0-9) should assist in differentiating quality between bids rather than diluting differences. Using such an evaluation scoring system may require more considered marking than the narrower 0-4 system as detailed at table 5 above which is appropriate for selection but less so for tender evaluation. It requires those evaluating to record and justify their scoring and to be prepared to explain the score should a challenge be raised. However, if the marking has been carried out by experienced professionals with knowledge of the commodity being tendered, this should not present an additional risk of challenge for the contracting authority.

### **Pricing Scoring**

11.1 Considering the prices returned as part of a tender requires that these are converted to scores. The scoring model should create figures that are comparable across the bids and the price scoring and quality scoring systems should be compatible with each other.

11.2 There are a number of different models that can achieve this, and the contracting authority should select an approach that meets their requirements. The following example evaluates MEAT, based on the highest combined technically and financially scored tender. This method is where the technical mark and the price are allocated a score depending on the percentage difference from the highest technical mark and the lowest price.

### **Most Economically Advantageous Tender (MEAT) Evaluating Technical and Price using a Percentage Score<sup>4</sup>**

12.1 The method used in the following example is appropriate for use in the majority of requirements.

12.2 **General comments** If the Contracting Authority intends to have a minimum pass mark it must state in the tender documentation that the quality element is a simple PASS / FAIL test with regard to whether the tender meets the minimum quality requirements as was stated in the tender documentation. This minimum standard will generally be around 70%.

12.3 The technical elements are marked against the individual award criteria and totalled. Anything below the minimum total technical mark (in the example 140) will be considered technically non-compliant and will not be allocated a technical score. The technical score is the score given to the best compliant technical tender.

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<sup>4</sup> Source – MOD Tender Evaluation

12.4 The evaluation is out of 100 (this representing 100% of the total score) and in this example the split is 40/60 price/quality. A score of 60 is allocated to the best technically compliant tender and the technical (quality) scores of the other tenders are calculated as a percentage difference in relation to the best one. Similarly, a score of 40 is allocated to lowest price and again a percentage difference is used to calculate the other tenders. This ensures that the technical (quality) and price scoring are treated in the same way to produce a consistent result.

12.5 The contracting authority must ensure that the scoring method is fair and reasonable, proportionate and does not discriminate in favour of any tenderer.

12.6 The following boxes show the scenario and an example of one method of price and technical scoring using that scenario:

### Scoring Example

Scenario:

Five bids have been received by the contracting authority, a price/quality ratio of 40/60 has been set and the bids are as follows:

Tender	Technical Mark	Technically Compliant	Price	Commercially Compliant
A	176	Yes	£1,235,732	Yes
B	112	No	£950,000	Yes
C	153	Yes	£1,356,721	Yes
D	151	Yes	£1,189,621	Yes
E	196	Yes	£1,798,598	No

### Price Scoring

The formula for calculating the price score is:

Total available marks × (lowest priced technically and commercially compliant price ÷ tender price)

The price score for tender C is calculated as follows:

$40 \times (\pounds 1,189,621 \div \pounds 1,356,721) = \mathbf{35.07}$  (35.1 rounded up to nearest one decimal place)

### Technical Scoring

The formula for calculating the technical score is:

Total available marks × (tender technical mark ÷ highest technical mark)

The technical score for tender C is calculated as follows:  $60 \times (153 \div 176) = \mathbf{52.16}$  (52.2 rounded up to nearest one decimal place)

12.7 Based on that example the following two tables show the scoring against each bid and the final outcome:

Tender	Technical Mark	Technical Score	Commercial Compliance	Price	Pricing Score
A	176	60	Yes	£1,235,732	38.5
B	112	0	Yes	£950,000	Not scored, technically non-complaint
C	153	52.2	Yes	£1,356,721	35.1
D	151	51.5	Yes	£1,189,621	40
E	196	0	No	£1,798,598	Technically compliant but not allocated a score as commercially non-compliant

12.8 The technical and pricing score are added together to give a total score that takes account of all award criteria. The successful tender is the one with the highest complaint total score.

Tender	Technical Score	Price	Pricing Score	Total Score	Outcome
A	60	£1,235,732	38.5	98.5	Successful Tender Technically and commercially compliant. Highest total score
B	0	£950,000	0	0	Unsuccessful Tender, technically non-compliant so cannot be awarded contract
C	52.2	£1,356,721	35.1	87.3	Unsuccessful Tender Technically and commercially compliant. Lower total score
D	51.5	£1,189,621	40	91.5	Unsuccessful tender, technically and commercially compliant lower total score
E	0	£1,798,598	0	0	Unsuccessful tender Commercially non-compliant so cannot be awarded the contract

### Tender Evaluation - Quality

13.1 Each compliant bid will be evaluated according to the advised quality scoring system. This may include the completion of a questionnaire by each bidder and, where appropriate, a tender interview. The questionnaire and any subsequent interview must be structured in advance to permit evaluation against the pre-determined award criteria. Quality and price should be evaluated separately and one should not be allowed to influence the other.

## **Tender Evaluation - Price**

14.1 Each bid should be evaluated using a price scoring system. Lower than expected price tenders should be reviewed to ensure that they are deliverable and sustainable and do not reflect a failure to understand the contract requirements. Where the 2015 Regs apply, abnormally low tenders should be dealt with as prescribed by Regulation 69 and tenders should only be rejected as abnormally low where the tenderer has been given an opportunity to explain why its bid was low. Chapter 8 of this handbook provides guidance on dealing with abnormally low tenders.

## **Tender Evaluation - Whole Life Cost**

15.1 Price or cost is clearly an important part when identifying the most economically advantageous tender on the basis of the best price quality ratio. Under the 2015 Regs this can include a whole life costing approach taking account of all aspects of cost from the cradle to the grave, including acquisition costs, operational costs such as energy consumption, maintenance and end of life costs such as decommissioning and demolition. For works contracts, particularly major contracts, this should be a consideration.

15.2 Costs can include those that are not directly attributable to the project such as the cost of emissions of greenhouse gases or other pollutant emissions, provided their monetary value can be determined and verified. The method used to assess the costs of environmental externalities must be objectively verifiable.

15.3 Where an authority intends to use a life-cycle approach to evaluate tenders they must include within the tender documents:

- the data they require bidders to provide with their bids
- the method by which the contracting authority will determine the life-cycle costs based on that data.

15.4 If the EU has adopted a standard method of life-cycle costing this must be used. At present there is only one method adopted and this is for road transport vehicles.

15.5 Scottish Futures Trust has produced a [Whole Life Appraisal Tool for the Built Environment](#) that contracting authorities should refer to when considering life cycle costing in construction projects. This consists of guidance and a support tool for the development and reporting of whole life outcomes within projects. The key output for the tool is a new whole life dashboard that provides a consistent method of reporting and will support the decision making process. The tool promotes a whole life outcome approach through the assessment of costs, environmental and service delivery performance.

15.6 **Discussion with Tenderers** Contracting authorities must exercise great care when entering into discussions with candidates or tenderers in procurements subject to the open or restricted procedures. In particular, any such discussions must not

amount to negotiation which might distort competition. Discussion with tenderers should generally be limited to requests for clarification (by the tenderer or by the Contracting Authority). Even where discussion does not in fact constitute negotiation, it can be perceived as such. Care should therefore be exercised as to the nature and extent of discussion with tenderers. For example, open days where candidates' or tenderers' questions are answered in open forum and confirmed by way of identical notes sent to all potential bidders will usually be acceptable. Bilateral meetings which discuss individual proposals/requirements are not appropriate and could result in challenge.

### **Notification of Award, Debriefing and Mandatory Standstill Period**

16.1 The bidder offering the “Most Economically Advantageous Tender” and therefore receiving the highest score, is judged as the competition winner. Before proceeding the Contracting Authority must confirm that any information provided by bidders at the selection stage through the ESPD is correct and up to date.

16.2 The successful and unsuccessful bidders should be informed of the contracting authority's intention to award the contract and commencement of the standstill period. It is prudent to await confirmation of acceptance from the successful bidder before advising those who were unsuccessful.

16.3 The standstill period is a defined period between the notice of the contract award decision and the award of the contract. The purpose is to enable unsuccessful tenderers to consider the feedback on their submissions and to allow them an opportunity to seek further information or call for a review of the decision.

16.4 The standstill period where the standstill notice is sent electronically is 10 calendar days, ending at midnight at the end of 10<sup>th</sup> day, after the last notice has been sent.

16.5 If sent by post, or other means, the standstill period is 15 calendar days.

16.6 If unsuccessful tenderers have any concerns with regard the process and/or its outcome, they may be raised during this period. Before approaching the court seeking legal remedies, a tenderer must inform the contracting authority, explaining the basis for its application to the court.

16.7 If an action is raised in court within the standstill period the contract cannot be awarded, unless the court gives its authority. It should be noted that, even after the award of the contract, a supplier can approach the court seeking damages for inappropriate processes.

### **Feedback to Bidders**

17.1 **Introduction** Providing feedback to both successful and unsuccessful bidders is an important element of the tendering process. Besides being a courtesy, which breeds good relationships and trust, it helps suppliers to improve their competitive performance, which in turn improves the quality of future bids for public sector work. Unsuccessful suppliers for OJEU and PRA regulated procurements have a legal right

to know the reasons for their rejection, while successful bidders are also entitled to seek feedback in order to understand any improvements that they could have made, even though they won a bid.

**17.2 Statutory Requirements** The Act and the 2015 Regs provide the timings and the information that must be supplied to bidders when advising them of decisions made by a contracting authority for regulated and OJEU regulated procurements respectively. This is the minimum information that should be made available to bidders. Notwithstanding this we believe that below threshold, unsuccessful bidders should also be offered feedback on their bids.

**17.3 Objectives** In order to be successful, a debrief should have the following objectives and the contracting authority must allow sufficient time and resource to achieve them:

- Assist suppliers in improving their performance. Feedback should cover the positive aspects and suggest areas for improvement of the unsuccessful (or successful) bid. Suppliers will then have the opportunity to address these issues in any future bids.
- Offer tenderers the opportunity to provide feedback to the Contracting Authority on the tender process, to assist with continuous improvement of the process.
- Establish and maintain a reputation as a fair, honest and ethical customer.
- Help ensure that qualified suppliers will be encouraged to submit high quality, compliant tenders in the future.

**17.4 Timing** The point at which debriefing takes place is determined by the 2015 Regs for above OJEU threshold contracts and the Act for regulated contracts.

#### **OJEU Regulated Contracts**

- a. Candidates eliminated at the Selection (pre-qualification) Stage
  - Legal requirement to notify candidates eliminated at the selection stage “as soon as reasonably practicable” (based on commercial judgement)
  - Candidates are entitled to receive feedback on request.
  - If candidates make a written request, debrief information, including reasons for rejection, must be provided within 15 days
- b. Unsuccessful tenderers
  - All tenderers must receive a standstill notice with the required information as soon as possible after the contract award decision has been made, including a summary of the reasons why they were

unsuccessful. This summary to include reasons if they failed to meet technical in an equivalent manner.

- If tenderers make a written request, additional de-brief information including reasons for rejection

### **Regulated Contracts**

#### a. Candidates eliminated at Selection Stage

- Requirement to notify candidates eliminated at the selection stage “as soon as reasonably practicable”
- candidates are entitled to receive feedback on request.
- If candidates make a written request, feedback information must be provided within 30 days

#### b. Unsuccessful tenderers

- As soon as reasonably practicable after deciding to award a contract notify all unsuccessful tenderers
- If tenderers make a written request, de-brief information must be provided within 30 days

**17.5 Feedback Meeting** Where a formal feedback/debriefing meeting is considered appropriate this may include both procurement professionals and technical professionals to ensure that the debriefing is carried out by experienced and fully trained personnel. It is recommended the following suggestions are followed:

- The meeting must not be viewed as a forum for debate as to the validity of the tender.
- It must be made clear to each tenderer that only their tender will be discussed in relation to the successful tender. Under no circumstances will such things as commercial terms or innovative ideas put forward by another tenderer be disclosed.
- If reasons have been given in writing previously by the contracting authority, new or conflicting reasons for the decision should not be introduced as part of the debriefing.
- At the end of the interview, suppliers should be asked if they have any constructive comments on the tender documentation and the tendering process generally.
- A record of the debriefing meeting should be made and retained on file.

17.6 The point at which a debriefing takes place should be determined by commercial judgement and certainly within a reasonable timescale of the award decision.

17.7 More in depth guidance on giving feedback can be found in Chapter 9 of this handbook.

17.8 **Audit Trail** Records should be kept of the selection and award process, for audit purposes or in the event of a challenge to any decision made. These records should be retained for at least five years or the duration of the contract if longer.

## **Contract Notice Content**

### **Information to be included in contract notices**

1. Name, identification number (where provided for in national legislation), address including Nomenclature of Territorial Units for Statistics (NUTS) code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge. Where unrestricted and full direct access, free of charge, is not available for the reasons set out in the second and third subparagraphs of Article 53(1), an indication of how the procurement documents can be accessed.
3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication that the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
5. Common Procurement Vocabulary (CPV) codes; where the contract is divided into lots, this information shall be provided for each lot.
6. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.
7. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
8. Estimated total order of magnitude of contract(s); where the contract is divided into lots, this information shall be provided for each lot.
9. Admission or prohibition of variants.
10. Time-frame for delivery or provision of supplies, works or services and, as far as possible, duration of the contract.
  - In the case of a framework agreement, indication of the planned duration of the framework agreement, stating, where appropriate, the reasons for any duration exceeding four years; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded, number and, where appropriate, proposed maximum number of economic operators to participate.
  - In the case of a dynamic purchasing system, indication of the planned duration of that system; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded.

11. Conditions for participation, including:

- where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
- where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision,
- a list and brief description of criteria regarding the personal situation of economic operators that may lead to their exclusion and of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation) [EN L 94/212 Official Journal of the European Union 28.3.2014](#).

12. Type of award procedure; where appropriate, reasons for use of an accelerated procedure (in open and restricted procedures and competitive procedures with negotiation);

13. Where appropriate, indication whether:

- a framework agreement is involved,
- a dynamic purchasing system is involved,
- an electronic auction is involved (in the event of open or restricted procedures or competitive procedures with negotiation).

14. Where the contract is to be subdivided into lots, indication of the possibility of tendering for one, for several or for all of the lots; indication of any possible limitation of the number of lots that may be awarded to any one tenderer. Where the contract is not subdivided into lots, indication of the reasons therefor, unless this information is provided in the individual report.

15. In the case of a restricted procedure, a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, where recourse is made to the option of reducing the number of candidates to be invited to submit tenders, to negotiate or to engage in dialogue: minimum and, where appropriate, proposed maximum number of candidates and objective criteria to be used to choose the candidates in question.

16. In the case of a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, indication, where appropriate, of recourse to a staged procedure in order gradually to reduce the number of tenders to be negotiated or solutions to be discussed.

17. Where appropriate, particular conditions to which performance of the contract is subject.

18. Criteria to be used for award of the contract or contracts. Except where the most economically advantageous offer is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting shall be indicated where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.

19. Time limit for receipt of tenders (open procedures) or requests to participate (restricted procedures, competitive procedures with negotiation, dynamic purchasing systems, competitive dialogues, innovation partnerships).

20. Address to which tenders or requests to participate shall be transmitted.

21. In the case of open procedures:

- time frame during which the tenderer must maintain its tender,
- date, time and place for the opening of tenders,
- persons authorised to be present at such opening.

22. Language or languages in which tenders or requests to participate must be drawn up.

23. Where appropriate, indication whether:

- electronic submission of tenders or requests to participate will be accepted,
- electronic ordering will be used,
- electronic invoicing will be accepted,
- electronic payment will be used.

24. Information whether the contract is related to a project and/or programme financed by Union funds.

25. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning deadlines for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

26. Date(s) and reference(s) of previous publications in the Official Journal of the European Union relevant to the contract(s) advertised in this notice.
27. In the case of recurrent procurement, estimated timing for further notices to be published.
28. Date of dispatch of the notice.
29. Indication whether the contract is covered by the GPA.
30. Any other relevant information.

**Mandatory and Discretionary Grounds for Exclusion**

Exclusion Ground	Mandatory exclusion ground	Discretionary exclusion grounds
Conviction by final judgment of any of the following criminal offences: <ul style="list-style-type: none"> <li>• Participation in a criminal organisation or serious organised crime,</li> <li>• Bribery or Corruption,</li> <li>• Fraud,</li> <li>• Terrorism offences or offences linked to terrorist activities,</li> <li>• Money laundering,</li> <li>• Slavery, compulsory labour (including in respect of children) or human trafficking, or</li> <li>• Offences in connection with the proceeds of drug trafficking</li> </ul>	x	
Breach of The Employment Relations Act 1999 (Blacklists) Regulations 2010	x	
Breach of tax and social security obligations <ul style="list-style-type: none"> <li>• established by <i>judicial or administrative decision having final and binding effect</i></li> </ul>	x	
Breach of tax and social security obligations <ul style="list-style-type: none"> <li>• established by <i>any appropriate means</i></li> </ul>		x
Breach of environmental, social and labour laws		x
Bidder: <ul style="list-style-type: none"> <li>• Subject to bankruptcy or insolvency or winding up proceedings,</li> <li>• Has its assets being administered by a liquidator or court?</li> <li>• Is in an arrangement with creditors,</li> <li>• Has suspended its business activities, or</li> <li>• Is in any analogous situation.</li> </ul>		x
Grave professional misconduct, which renders the bidder's integrity questionable		x
Where the organisation has sufficiently plausible indications that the bidder has entered into agreements with others to distort competition		x
Conflict of interest which cannot be effectively remedied by other less intrusive measures		x
Distortion of competition from the prior involvement of the bidder in the preparation of the procurement exercise, that can't be remedied by other less intrusive measures		x
Bidder has shown significant or persistent deficiencies in the performance of a substantive requirement under a previous public contract, which led to early termination of that contract, damages or other comparable sanctions		x
Bidder is guilty of serious misrepresentation in supplying the information required for the verification of absence of grounds for exclusion or fulfilment of the selection criteria or has withheld this information or is not able to submit the ESPD supporting documents		x
Bidder has or has undertaken to unduly influence the decision making process of the organisation, to obtain confidential information that may confer undue advantages or to negligently provide misleading information that may have a material influence on decision concerning exclusion, selection and award		x

## **Annex C**

### **Award Criteria**

The following is a non-exhaustive list of some of the factors which should be considered when developing award criteria. These must be considered within the overall context of appropriateness and proportionality.

#### **Technical merit:**

- appropriate to the client's needs and constraints
- degree of flexibility in carrying out the contract
- method of carrying out contract
- approach to Construction Design and Management Regulations
- how health and safety issues will be identified, assessed and managed during the design and construction stages (see CDM Regulations)
- quality of documentation
- method of presenting information
- standards of materials, checks and independent inspections

#### **Aesthetic and functional characteristics:**

- design
- operating costs
- ease of use
- adaptability for changes in use
- demonstration of innovation in proposals
- maintainability

#### **Accessibility design all users**

- including compliance with disability and discrimination legislation

### **Social, environmental and innovative characteristics**

- Compliance with BREEAM, WRAP etc
- Innovative construction techniques, use of new technology

### **Organisation** - proposals for managing the contract:

- procedures for planning, programming and management
- programme for completing contract, including milestones for achieving objectives
- risks identified and proposals for their management
- communication arrangements
- quality plan

### **Team working arrangements:**

- partnering with client
- partnering with sub-contractors and suppliers

### **Project team organisation:**

- qualifications and experience of team members, relevant to the project
- appropriately experienced senior managers/partners
- responsible senior managers
- qualifications
- length of service
- directly relevant experience
- quality of other senior personnel:
- suitably qualified
- position within the organisation
- amount of time devoted to the project
- resources

**Services provided from external sources**

- joint-venture arrangements proposed
- if so, are responsibilities of the joint venture parties clear
- arrangements made for sub-contracting:
- proposals for managing the delivery of any sub-contracted services successfully

**Ten Point Tender Scoring Range**

Score	Classification	Definition
0	No response (non-compliance)	No response at all or insufficient information provided in the response such that the solution is totally un-assessable and/or incomprehensible.  Would represent an unacceptable risk solution for the contracting authority.
1	Unsatisfactory response (potential for some compliance but very major areas of weakness)	Substantially unacceptable submission which fails in most areas to set out a solution that addresses and meets the requirements.  No detail has been provided and, where evidence is required or necessary, no evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.  Considerable reservations as to the tenderers proposals in respect of relevant ability, understanding, expertise, skills /or resources to deliver the requirements.  Would represent a very high risk solution for the contracting authority.
2		Substantially unacceptable submission which fails in several significant areas to set out a solution that addresses and meets the requirements.  Little or no detail has been provided and, where evidence is required or necessary, little or no evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.  Significant reservations as to the tenderers proposals in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.  Would represent a high risk solution for the contracting authority.
3	Partially acceptable response but with significant areas of weakness	Weak submission which does not set out a solution that fully addresses and meets the requirements.  Little or poor detail has been provided and, where evidence is required, or necessary, little or poor evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.  Some reservations as to the tenderers proposals in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.  Would represent a medium risk solution for the contracting authority.
4		Unconvincing submission which struggles to set out a solution that fully addresses and meets the requirements.  Poor detail has been provided and, where evidence is required, or necessary, poor evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.  Lack of clarity as to the tenderer's proposals in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.  May represent a medium risk solution for the contracting authority.

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5	Satisfactory and acceptable response (substantial compliance with no major concerns)	<p>Submission sets out a solution that largely addresses and meets the requirements.</p> <p>Some detail has been provided and, where evidence is required or necessary, some evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.</p> <p>Minor reservations or weakness in a few areas of the solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.</p> <p>Represents a low risk solution to the contracting authority.</p>
6		<p>Submission sets out a solution that addresses and meets the requirements.</p> <p>Significant detail has been provided and, where evidence is required or necessary, some significant evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.</p> <p>Some weakness in a few areas of the solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.</p> <p>Represents a low risk solution to the contracting authority.</p>
7	Fully satisfactory /very good response (fully compliant with requirements).	<p>Submission sets out a robust solution that addresses and meets the requirements.</p> <p>Details have been provided and where evidence is required, or necessary, full and relevant evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.</p> <p>Solution provides confidence as to the relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.</p> <p>Represents a minimal risk solution for the contracting authority.</p>
8		<p>Submission sets out a robust solution that fully addresses and meets the requirements.</p> <p>Full details have been provided and where evidence is required, or necessary, full and relevant evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.</p> <p>Solution provides confidence as to the relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.</p> <p>Represents a minimal risk solution for the contracting authority.</p>
9	Outstanding response (fully compliant, with some areas exceeding requirements)	<p>Submission sets out a robust solution, as for an 8 score and, in addition, provides or proposes additional value and/or elements of the solution which exceed the requirements in substance and outcomes in a manner acceptable to the contracting authority.</p> <p>Solution provides full confidence as to the relevant ability, understanding, expertise, skills and/or resources not only to deliver the requirements, but also exceed it as described.</p> <p>Represents a minimal risk solution for the contracting authority.</p>