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Broadband Delivery UK

2016 National Broadband Scheme for the UK

Guidance: Procurement Guidance

1. Introduction

- 1.1. A key principle of the 2016 National Broadband Scheme (NBS) is that implementing bodies are able to determine the procurement approach that is right for them. The following document outlines the available procurement models.
- 1.2. This guidance is designed for procurements, regardless of the delivery and funding model chosen by the implementing body. Details regarding the funding and delivery models can be found in separate guidance on the BDUK website.

2. Procurement models

- 2.1. With the implementation of Directive 2014/24/EU on public procurement, implementing bodies now have a wider choice of OJEU procurement routes.¹ Implementing bodies are able to choose the Open procedure or a procedure with a pre-qualification step such as the Restricted, Competitive Dialogue or Competitive with Negotiation procedures. The implementing body must conduct its procurement in an open, transparent and non-discriminatory manner.

¹ Directive 2014/24/EU is implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015, and in Scotland by the Public Contracts (Scotland) Regulations 2015.

2.2. BDUK envisages that broadband projects under the 2016 NBS will fall under either Services or Works categories when selecting a procurement procedure and as such, implementing bodies will be cognisant of the appropriate thresholds in place at the time of issuing an OJEU Contract Notice, making the procurement open to suppliers across Europe. BDUK will assure implementing bodies' procurement documents before they are issued to the marketplace, to provide bidders with additional confidence that they meet the requirements of the European Commission's State aid decision for the 2016 NBS.

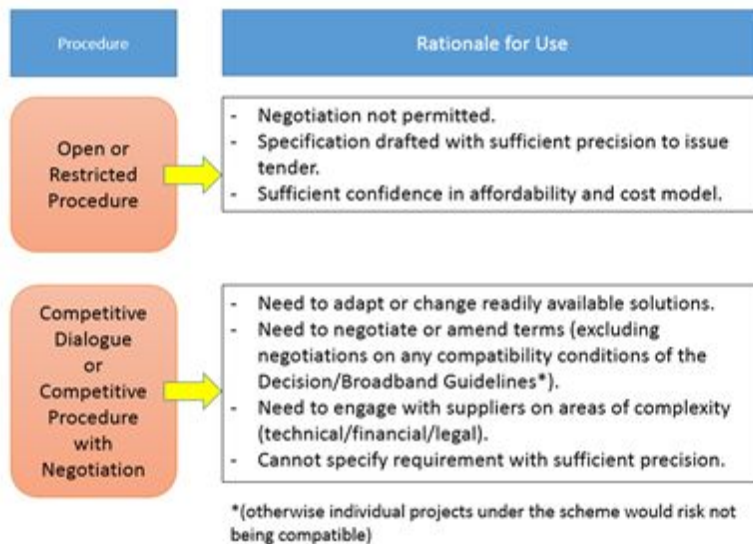


Fig 5.2 – Types of Procurement Models

2.3. Implementing bodies which are in a position to fully specify their requirements (e.g. the requirement in the area to be targeted is straightforward), and which are comfortable with the need only to clarify after receipt of tenders, could select an Open or Restricted Procedure. Alternatively, for more complex contracts where the implementing body has an understanding of the outline requirements but needs to interface with suppliers in order to develop and finalise solutions (technically, legally or financially), a Competitive Dialogue or Competitive with Negotiation procedure could be selected.

3. 'Use of Existing Infrastructure Code of Conduct'

3.1. The 2016 NBS requires that all bidders sign up to the Use of Existing Infrastructure Code of Conduct, which can be found on the BDUK State aid website.²

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524806/Use_of_Existing_Infrastructure_Code_of_Conduct.pdf

- 3.2. The Code of Conduct requires suppliers to provide access to their infrastructure consistent with what is already required under legislation or regulation. It also requires suppliers to provide information on that infrastructure at the request of other bidders, within a specified time.
- 3.3. Where a bidder does not meet the terms of the Code of Conduct, they will be excluded from all bidding processes, until such time as they comply with the requirements.

4. Procurement steps

- 4.1. A procurement will include the following steps:
- 4.2. **Step 1 - Market Engagement and Market Warming:** Before commencing a procurement and before issuing a public consultation, implementing bodies are required to undertake market engagement and seek feedback on their potential approach to help ensure that the intervention is appropriately designed. (For more detail please contact the National Competence Center at stateaidforbroadband@culture.gov.uk)
- 4.3. **Step 2 - Issue OJEU Contract Notice/Pre-qualification/Expression of Interest:** Dependent on the procurement procedure used, suppliers may be required to complete a pre-qualification questionnaire, with selection criteria set below. Suppliers will also be asked to confirm that they have signed up to the Code of Conduct as outlined above.
- 4.4. **Step 3 - Launch tender/Dialogue with Suppliers:** All suppliers must be provided with equal treatment (e.g. authority clarifications, opportunities for dialogue) in accordance with the principles of openness, transparency and non-discrimination. During this period, bidders must have sufficient time to request information about access products made available by other bidders in the procurement process in order to design their solution.
- 4.5. **Step 4 - Submission of Sealed Bids:** Bidders will submit sealed bids to the Implementing Body. This will include their proposed technical solution, speeds and coverage outputs, implementation plans and cost model.
- 4.6. **Step 5: Bids Evaluated:** Bids will be evaluated against the scored evaluation criteria (set out below) in order to select the winning bid.

5. Selection and Evaluation guidance

- 5.1. The stages of a procurement described require objective evaluation criteria for their operation.³ The setting of these evaluation criteria must be compliant

³ Regulation 67– Award criteria - <http://www.legislation.gov.uk/ukxi/2015/102/regulation/67/made> and for Scotland Regulation 67– Award criteria http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf

with EU procurement law, clearly set out under what circumstances bids will be selected or rejected, and determine which bid is ultimately selected.

5.2. **Pre Qualification Questions Selection Criteria (Step 2 above):** Any implementing body which has selected a procurement procedure with a pre-qualification step will need to adhere to the requirements set out in regulations 57⁴ and 58⁵ of the Public Contracts Regulations 2015 and adhere to requirements set out by UK’s Crown Commercial Service^{6]}, in their current form or as modified to align with the European Single Procurement Document. In Scotland, any implementing body will need to adhere to the requirements set out in regulations 58⁷, 59⁸ & 60⁹ of the Public Contracts (Scotland) Regulations 2015 and adhere to requirements set out by the Scottish Procurement & Commercial Directorate within the Scottish Government.

5.3. A baseline set of pre-qualification questions that implementing bodies can incorporate within their evaluation is set out in the table below. The use of selection criteria, including the circumstances that would lead to a bidder’s de-selection, should be clearly set out in the implementing body’s invitation to tender.

PQQ Selection Criteria	Type of evaluation
<ul style="list-style-type: none"> ● Mandatory grounds for exclusion¹⁰ ● Discretionary grounds for exclusion¹¹ 	Pass/Fail
Economic and financial standing:	Satisfactory/Unsatisfactory

⁴ Regulation 57 deals with mandatory and discretionary criteria for excluding a supplier from any further consideration in the procurement procedure chosen - <http://www.legislation.gov.uk/ukxi/2015/102/regulation/57/made>

⁵ Regulation 58 covers selection criteria (i) Suitability to pursue a professional activity, (ii) Economic and financial standing, (iii) Technical and professional ability - <http://www.legislation.gov.uk/ukxi/2015/102/regulation/58/made>

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417963/4279-15_GN_PQ_Q_Lord_Young_Guidance.pdf

⁷ Regulation 58 deals with mandatory and discretionary criteria for excluding a supplier from any further consideration in the procurement procedure chosen.

⁸ Regulation 59 covers selection criteria (i) Suitability to pursue a professional activity, (ii) Economic and financial standing, (iii) Technical and professional ability.

⁹ Regulation 60 covers covers use, content and form of the European Single Procurement Document (ESPD).

¹⁰ Mandatory exclusion criteria listed in regulation 57(1) of the Public Contract Regulations 2015. For Scotland, mandatory exclusion criteria is set out in regulation 58 of the Public Contracts (Scotland) Regulations 2015

¹¹ Discretionary exclusion criteria listed in regulation 57(8) of the Public Contract Regulations 2015. For Scotland discretionary exclusion criteria is set out in regulation 58 of the Public Contracts (Scotland) Regulations 2015

<ul style="list-style-type: none"> Confirmed adherence to Code of Conduct 	
<ol style="list-style-type: none"> I. Including minimum turnover¹² II. Other appropriate financial ratios based on submission of, but not limited to, annual accounts III. Other evidence of ability to access capital IV. Insurances (if required at pre-qualification stage) 	
<p>Technical and professional capability/capacity including:</p> <ol style="list-style-type: none"> I. Relevant experience: Case study for delivering NGA networks to rural area(s) II. Delivering NGA access speeds in rural areas III. Network operations 	Scored – answers should be for experience/case studies completed within the last 3 years
Self-certification (e.g. Health & Safety, Environmental Management, Compliance with equality legislation)	Not evaluated – further evidence requested should supplier be successful at contract award

5.4. Evaluation Scoring Principles (Step 5 above): the price-quality evaluation criteria that all procurements will use to determine the most economically advantageous tender are outlined below. Implementing bodies must adhere to the evaluation criteria below and set weightings within pre-set ranges. Implementing bodies are able to set sub-criteria, but cannot introduce new evaluation criteria or pass/fail criteria.

5.5. The objective, transparent and consistent approach to evaluating the relative position of the bids and for triggering an exclusion of a bid will be determined by the following approach:

- An evaluation criteria may represent a mandatory requirement (e.g. criteria 1.1 below), whereby a bid that fails to meet the requirement would be excluded; or otherwise
- An evaluation criteria may have a score of between 0 to [10], such that:

¹² Turnover will be assessed as set out in Regulation 58(8). For Scotland turnover will be assessed as set out in regulation 59 of the Public Contracts (Scotland) Regulations 2015

- a bid receives a score of 0 for a criteria where no response is provided or insufficient evidence is submitted to evaluate a criteria, whereby the bid would be excluded;
- a bid receives a score of under 5 if it failed to meet a described baseline capability for the criteria, whereby a bid receiving overall weighted score across all price-quality criteria of under 50% would be excluded.
- Implementing bodies need to ensure they set their level 1 and level 2 evaluation criteria within the prescribed weighting ranges below.

Award & Evaluation Criteria - Description	Scoring approach	Weighting ranges (%)
1. Price		[30-70]%
Price - Commercial compliance		
1.1 Contract acceptance Bidders will be assessed on whether they have confirmed their agreement to the key commercial principles/non-negotiable terms of the draft contract in their bid response. This applies to all procurement procedures.	Pass / Fail	n/a
1.2 Contract markup and risk transfer (Competitive Dialogue/ Competition with Negotiation only) Bidders will be assessed on the extent that their changes to the draft Contract have a negative impact on the Implementing Body and other stakeholders' contract requirements.	Bids will be scored between 0 and [10]	[0-10]%
1.3 Funding availability Bidders will be assessed on whether: i) the overall subsidy requirement in the bid is within the Implementing Body's budget; and ii) they have provided sufficient evidence (i.e. through a funding model) of their ability to fund the project (i.e. from private funding sources).	Pass / Fail	n/a
Price - Commercial Robustness		
1.4 Financial Model [Baseline Capability] The Bidder has ensured that the cost assumptions in its Financial Model are realistic and consistent with the design assumptions in their Solution and the milestone payments in the Implementation Plan. The Bidder must have completed the Financial Model fully so that outputs are clearly identifiable. [Maximum Capability] In addition to the baseline capability, the Bidder has evidenced a very high	Bids will be scored between 0 and [10] A score of 0 will be awarded if a Bidder has not provided a compliant Financial Model A score of [5] will be awarded if a Bidder has provided a Financial Model achieving the baseline capability.	[10-30]%

<p>level of transparency and quality in its Financial Model and accompanying memoranda to show the key assumptions and underlying economic drivers for the Bidder's solution. The Bidder has included justification as to how its assumptions deviate from national baselines and have been customised to reflect the particular circumstances of a project. The Bidder's Financial Model provides a clear understanding of where contingency has been included and of how actual costs are expected to reduce if the Bidder were to win and aggregate other contracts.</p>	<p>A score of [10] will be awarded if a Bidder has provided a Financial Model achieving maximum capability.</p>	
<p>1.5 Commercial sustainability and viability [Baseline Capability] Analysis of the Bidder's Financial Model demonstrates how the network (and downstream retail providers) are able to operate on a stand-alone and sustainable basis for the contract term under reasonable conservative baseline assumptions considering a sensitivity analysis of adverse scenarios (including higher debt servicing costs or lower revenue per customer or lower take-up than forecast).</p> <p>[Maximum Capability] In addition to the baseline capability, analysis of the Bidder's Financial Model demonstrates how the business remains economically viable under a range of adverse scenarios across the value chain to allow ongoing take up and use of retail and end user services. The Bidder has also demonstrated how its subcontractor arrangements mitigate risks to the on-going service provision.</p>	<p>Bids will be scored between 0 and [10]</p> <p>[A score of 0 will be awarded if a Bidder's Financial Model does not demonstrate a sustainable network.]</p> <p>A score of [5] will be awarded if a Bidder has provided a solution design that achieves the baseline capability.</p> <p>A score of [10] will be awarded if a Bidder provides a solution design that achieves maximum capability</p>	<p>[10-40]%</p>
<p>Price - funding and coverage: <i>BDUK Note:</i> <i>(i) if an Implementing Body's requirement is to maximise coverage exhausting the available budget, then it may apply zero weighting to 1.6 (given that bidders would be unlikely to differentiate themselves on the overall funding requirement anyway) and allocate more weighting to criteria 1.7 instead.</i> <i>(ii) if an Implementing Body's requirement is to optimise the project and the trade-off between increasing coverage and the increasing additional cost per premise, then it may allocate weighting to both criteria 1.6 and 1.7 to incentivise bidders to propose the optimum efficient coverage for their solution design rather than the maximum possible coverage.</i></p>		
<p>1.6 Funding levels Bidders will be assessed on the overall cost to the public sector of the project (either in absolute terms, on a per-premise basis, or relative to the overall private sector contribution.)</p>	<p>Scores will be awarded on a relative basis (e.g. the bid with lowest subsidy receives full marks, and a bid 10% more expensive receives a 10% reduction in score)</p>	<p>[0-40]%</p>

	An Implementing Body would set a score of 0 where it did not want to assess the funding levels.	
<p>1.7 Solution coverage at NGA speeds Bidders will be assessed on whether their coverage forecast is consistent with their Solution Design and Implementation Plans, as well as providing the required step change.</p> <p>Implementing Bodies may also choose to set priority areas to be covered (e.g. a business park).</p> <p>Bidders will be assessed on the extent of NGA coverage to target premises in the intervention area at 30Mbps and higher speeds.</p>	<p>A score of 0 will be awarded if a Bidder has not provided a compliant Speed & Coverage Template (SCT) or has failed to commit to the minimum required coverage</p> <p>Scores will be awarded in accordance with the evaluated response to the SCT. The Implementing Body will configure the SCT such that it weights the overall score as a function of:</p> <ul style="list-style-type: none"> (i) number of premises covered overall (ii) number of premises covered in priority areas (iii) overall speed of coverage provided (iv) relative increase in speed (i.e. step change) 	[20-80]%
2. Quality		[30-70]%
Quality - solution quality and viability		
2.1 Solution design compliance Bidders will be assessed on whether the Solution is NGA Technology compliant.	Pass / Fail	n/a
<p>2.2 Solution design quality [Baseline Capability] The Bidder adequately describes its Solution, including the service management processes for the support of the Solution and has adequate design principles including considering reuse of infrastructure, mitigating environmental impacts and minimising single points of failure). Each of the underlying infrastructures in the Bidder's solution also meets baseline standards for jitter, latency, committed information rate, and service levels for installation and fix (as set out in tender documents).</p> <p>[Maximum Capability] In addition to the baseline capability, each of the underlying infrastructures in the Bidder's Solution significantly exceed baseline standards for jitter, latency, committed information rate, and service levels for installation</p>	<p>Bids will be scored between 0 and [10]</p> <p>A score of [5] will be awarded if a Bidder has provided a solution design that achieves the baseline capability</p> <p>A score of [10] will be awarded if a Bidder provides a solution design that achieves maximum capability</p>	[20-40]%

<p>and fix. The Bidder provides evidence and reasonable confidence that an upgrade path is achievable in the future (e.g. to ultrafast speeds or higher), and is designed to facilitate access and extension to the network to reduce the barriers to incremental coverage (up to 100% coverage of speeds of at least 30Mbps) in the area (either from the selected supplier or from other access seekers).</p>		
<p>Quality - customer choice/acceptance and solution value add</p>		
<p>2.3 Wholesale network design/Wholesale and retail pricing [Baseline Capability] The Bidder has documented its wholesale products and services and provided a high degree of confidence that at least one one ISP (which may be the Bidder itself) will be ready to provide broadband services over the NGA infrastructure to all premises in the intervention area, and has adequately documented how its wholesale pricing is compliant with the benchmarking principles.</p> <p>[Maximum Capability] In addition to the baseline capability, the Bidder's wholesale offering meets a wide range of retail and end user requirements, and has optimised its approach to attract and bring onboard ISPs to use wholesale products. The Bidder provides a high degree of confidence that it is able to attract a large number of ISPs (including major ISPs) who offer a wide breadth of services using the network.</p>	<p>Bids will be scored between 0 and [10].</p> <p>A score of 0 will be awarded if a Bidder has not documented its wholesale products and services, or they are not compliant with the benchmarking principles.</p> <p>A score of [5] will be awarded if a Bidder has provided a wholesale design that achieves the baseline capability.</p> <p>A score of [10] will be awarded if a Bidder provides a wholesale design that achieves maximum capability.</p>	<p>[20-40]%</p>
<p>2.4 Economic Value Add Bidders will be assessed on the extent to which they have provided credible evidence of their ability to create/safeguard jobs within the Bidder's organisation or supply chain, to create apprenticeships and/or to create opportunities for the long-term unemployed.</p>	<p>Bids will be scored between 0 and [10], dependent on the level of jobs created/safeguarded and opportunities provided</p>	<p>[0-10]%</p>
<p>Quality - Deliverability</p>		
<p>2.5 Implementation Plan [Baseline Capability] The Bidder has provided a compliant Implementation Plan, which meets specified delivery dates for completion of network deployment (if any), and is consistent with the speeds and coverage outputs and the Financial Model. The Bidder has documented an acceptable approach to deployment.</p>	<p>Bids will be scored between 0 and [10]</p> <p>A score of 0 will be awarded if a Bidder has not provided a compliant Implementation Plan or it shows deployment extending beyond the specified date for delivery.</p>	<p>[10-40]%</p>

<p>[Maximum Capability] In addition to the baseline capability, the Bidder has in its proposal allowed for appropriate resources and has provided confidence to the Implementing Body in describing its approach to planning, deployment, testing and overall project management. The Bidder in its proposal provides confidence in its approach to including sufficient contingency in its Implementation Plan and has aligned it with the Implementing Body's priorities in the coverage area, including sequencing and pace of delivery.</p>	<p>A score of [5] will be awarded if a Bidder has provided an Implementation Plan and overall deployment approach that achieves the baseline capability.</p> <p>A score of [10] will be awarded if a Bidder has provided an Implementation Plan and overall deployment approach that achieves maximum capability.</p>	
<p>2.6 Contract and stakeholder management</p> <p>[Baseline Capability] The Bidder has provided an adequate description of how it will comply with the contract management requirements for Reporting and Financial transparency, including how it will meet the obligations set out under the Milestone Claims process and how it will interface with BDUK at the programme level. The Bidder has also included sufficient costs for contract and stakeholder management in its Financial Model.</p> <p>[Maximum Capability] In addition to the baseline capability, the Bidder in its proposal has included appropriate resources and has provided confidence to the Implementing Body in describing its approach to engage with the Implementing Body and other stakeholders through the operation of the contract. This would include commitments to strong governance arrangements, to sharing data on its deployment plans to different audiences, to joint-working with Implementing Body project team, to community engagement (in particular in priority areas), to demand stimulation to maximise coverage opportunities, and to managing subcontractors (in particular SMEs).</p>	<p>Bids will be scored between 0 and [10]</p> <p>A score of [0] will be awarded if the Bidder does not submit a response that is compliant with the requirements for Report and Financial transparency, or does not include costs for contract and stakeholder management.</p> <p>A score of [5] will be awarded if a Bidder's contract and stakeholder management approach achieves the baseline capability.</p> <p>A score of [10] will be awarded if a Bidder's contract and stakeholder management approach achieves maximum capability.</p>	<p>[10-40]%</p>

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