

Procurement Policy Note - Update

April 2011

Welcome...

Purpose of this update

This periodic update is designed to raise awareness of issues happening in procurement that might not warrant their own specific Procurement Policy Note (PPN), but that we still feel will be of interest to buyers in central government and the wider public sector. We welcome any feedback and suggestions from readers on the content and format of this update.

Dissemination

You are encouraged to circulate this Procurement Policy Update within your organisation, agencies, non-departmental public bodies (NDPBs), and any other bodies for which you are responsible, in particular drawing this to the attention of anyone with a procurement or commissioning role. PPN notices and Procurement Policy Updates are also published on our website at the link below.

http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_procurement_policy_notes.asp

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SME Update

As part of the Government's ongoing commitment to SMEs, Francis Maude announced on 11th February a broad package of reforms designed significantly to open up the public sector marketplace to SMEs. These announcements highlight the government's commitment to driving growth in the economy, and removing unnecessary obstacles that make government procurement difficult for small businesses

Key new measures for this commitment include:

- The launch of Contracts Finder – a website to find public sector contract opportunities with a value of over £10,000.00. Buyers publish live opportunities, suppliers can search for these contracts and the public can see what government is buying.
- The elimination of PQQs for procurements with a value under £100,000.00 (the EU threshold) and for above threshold procurements, greater use of the open procedure so that an early separate selection stage is not required.
- SME Product Surgeries launched – SMEs can 'pitch' innovative products and services to a panel of senior procurement and operational professionals.

The Prime Minister outlined how these measures open up the way that Government does business and make sure that small companies, charities and voluntary organisations are in the best possible position to compete for Government contracts.

You may be aware that the Growth Review, published alongside the Budget, stated that Government will transparently monitor progress on the SME announcements by:

- Publishing whether departments are eliminating PQQs below £100,000 and provide the name of public sector organisations that are following central government's lead.
- Publishing the performance of departments in putting their procurement opportunities on Contract Finder and list on the website all those organisations that indicate they are committed to using this.
- Reporting against the aspiration that 25 per cent of the value of government contracts should be delivered by SMEs.

Please click here to <http://www.cabinetoffice.gov.uk/news/government-opens-contracts-small-business> for more information

Green Paper on the Modernisation of EU Public Procurement Policy

The European Commission published a Green paper on modernising EU public procurement policy on 27 January 2011. The Commission's intention to review the public procurement rules was covered in PPN 21/10, which sought feedback on the effectiveness of the rules and in PPN 4/11, which covered the Green Paper itself.

The green paper asks 114 questions about different aspects of public procurement policy, covering six main areas:

- The nature of the procurement rules
- Modernising the procurement procedures
- Creating a more accessible European procurement market
- Supporting common societal and policy goals
- Preventing and fighting corruption
- Access markets outside of the EU.

ERG will be drafting a UK response that will put forward proposals to radically simplify the procurement rules. The Green paper consultation closes on 18 April 2011

ERG also responded at the beginning of February to the Commission's Green Paper on the future of electronic public procurement, which was published in November last year. Our response included the following points:

- We support simplification of provisions governing e-procurement
- Centralised EU-wide imposition of e-procurement would not be appropriate
- We support simplification of European rules governing authentication and identification
- There is a role for the Commission in promoting e-procurement open standards, but investment in existing e-procurement infrastructure and solutions must be respected.
- We support the Commission's goal of encouraging SME access to public contracts, and believe e-procurement can have a role to play.

The Commission will take responses to its consultation into account in developing any future proposals for electronic public procurement.

Lean review - update

Francis Maude, the Minister for the Cabinet Office formally announced the publication of the Lean Review on the 11th February 2011. This review was first commissioned on 1st November 2010 to uncover wasteful practices and unnecessary complexity in the procurement process and to suggest actions to rectify them.

The objective of the review was to examine how the procurement process can be accelerated within central government to make doing business with government faster and cheaper for buyer and supplier. The Review was undertaken over a 6 week period and concluded on 14th December 2010.

Working with 'lean' experts across industry and government and using data gathered from procurement professionals and business and policy officials across government and a number of government's key suppliers, the Review identified that there is significant potential to:

- reduce turnaround time by up to 70% on competitive dialogue procurements (circa 430 to 130 working days) (dependent on size, complexity and risk)
- reduce costs across those suppliers involved of £3.5m per competitive dialogue
- reduce government resource and processing costs by £400k per competitive dialogue

The following reports describe the detailed findings that underpin these potential savings and provide the basis for improving government procurement, and the Review team has identified the opportunity to develop and implement an improved, more streamlined and simplified procurement process that embodies the principles and approaches from proven Lean techniques.

- [Lean Study - Accelerating Government Procurement Study - Management Summary report](#)
- [Lean Procurement Project Diagnostic Findings](#)

We will now be implementing this initiative through new pathfinder procurement projects in Government.

UK Regulations – Quick Bites

Cancelling an OJEU notice

Further to the last PPN Quarterly Update, we have been contacted for more information on the cancellation of procurement exercises – in particular, where to find the form to submit to OJEU.

To recap, whenever a procurement process is cancelled it is important that all involved parties are informed of the fact as soon as the decision is taken. It is also necessary to notify the OJEU if a contract notice had previously been issued. This should be done by submitting a Standard Form 14 – “Notice for additional information, information on incomplete procedure or corrigendum”. A PDF copy can be accessed [here](#). Section VI.2 has a tick box to say that the awarding procedure has been discontinued.

Authorities are encouraged to submit this form to cancel the contract notice as failure to do so could mean that the authority will receive the automated reminders which the OJEU office send to authorities who have failed to submit an award notice.

Accession of Armenia to the Government Procurement Agreement (GPA)

On 7 December the World Trade Organisation Committee on Government Procurement adopted a decision to invite Armenia to accede to the Government Procurement Agreement. Once formalities have been completed Armenia will become the 42nd member.

Membership means that bidders from Armenia who partake in OJEU procurements will have the same rights as those from other EU and GPA states (including access to the domestic courts in cases of non compliance). All UK contracting authorities should therefore have regard to bids from GPA countries. The Agreement applies to most civil public sector procurements, exceptions being Part B services, R & D services, works concession contracts, subsidised contracts (regulation 34 of the Public Contracts Regulations) plus a few broadcast and telecommunication services.

For reference the GPA signatories are the EU itself plus the 27 member states, Armenia (soon), Aruba, Canada, Hong Kong China, Iceland, Israel, Japan, Republic of Korea, Liechtenstein, Norway, Singapore, Switzerland, Taiwan and the USA. Other countries in the process of negotiating accession are Albania, China, Georgia, Jordan, the Kyrgyz Republic, Moldova, Oman and Panama.

Supplier Feedback Service (SFS) Update.

SFS has now been joined by 'Mystery Shopper', another avenue based on the SFS to challenge procurement processes. This was one of a package of reforms launched in February, designed to open up the public sector marketplace (more details are in the SME update section). Mystery Shopper should be used where a potential supplier encounters what they regard as unnecessary bureaucracy and complexity in procurement which act as a barrier to SMEs. In these cases the SFS will take the matter up with the authority with a view to preventing a reoccurrence and if possible simplifying the procurement in hand. This is a new process, but we will let you know more in the future.

SFS itself is being extended and so we will continue to investigate problem areas and champion best practice!

Over the last year two main themes have emerged from the feedback submitted to the Supplier Feedback Service, particularly in relation to overly burdensome Pre Qualification Questionnaires and, for Part B and below threshold procurements, the debriefing of unsuccessful suppliers.

The Use of "Mechanical" Pre Qualification Questionnaires:

Many of the concerns raised through the Feedback Service relate to the assessment of prequalification questionnaires. The issues have included requiring onerous liability cover and indemnities from the potential supplier, excessive turnover thresholds, accepting only public sector work experience and unclear scoring/weighting criteria.

The use of rigid, inflexible PQQ criteria designed solely to eliminate suppliers during the selection stage of above threshold procurement is discouraged. Contracting authorities should take a holistic approach to financial appraisal, taking into consideration the value, duration and risk that individual procurements represent.

The new mandated PQQ core questions (See section 6 – 'Latest PPNs') are designed to ensure this holistic approach is taken. These questions cover legal status, economic and financial standing and elements of technical and professional ability. In many circumstances, Contracting Authorities will need to add relevant project/sector specific questions. These questions must be proportionate to the individual procurement and in accordance with the Public Contracts Regulations 2006. The Supplier Financial Appraisal Guidance has further practical advice and is available at:

http://www.ogc.gov.uk/documents/commodities_database/Financial_Appraisal_Guidance.pdf.pdf

Further to the announcements made by Francis Maude on the 11th February, PQQs are no longer required for those procurements which are below threshold or not fully caught by the rules, such as Part B services.

Part B and below threshold:

A number of the cases we have reviewed cite issues with procurement that was not, or not fully, caught by the Public Contracts Regulations. The particular concerns fed back to the Service include cases where procurement processes were unclear and issues with contract award and debriefing unsuccessful suppliers.

It is important when procuring these kinds of contracts that the process being used by the department is made clear to those suppliers invited to submit a bid, including expected timescales and clear concise criteria for both selection and award as for any above threshold contracting opportunity.

It is considered best practice to offer debriefing to unsuccessful suppliers noting where their scores differed from the successful bidders and the relative advantages and disadvantages of their bid, in a similar fashion to that required by the rules. Suppliers use this information to improve future submissions, and departments should include the arrangements for debriefing in any tender documentation so that a supplier is clear as to the level of information they can expect back at the end of the process.

How you can help.

We would be grateful for your support in spreading awareness of the Supplier Feedback Service. This may be helpful in case your stakeholders are ever approached by the SFS, or in case they wish to use the SFS themselves (despite the name, it is not only suppliers that can use the service).

Our case studies booklet, aimed at potential customers of the Supplier Feedback Service includes information on our scope and remit, as well as some of our success stories. For a copy of the brochure please see the following link: http://www.ogc.gov.uk/documents/Supplier_Feedback_Service-examples.pdf

One suggested avenue might be to include a reference to the Supplier Feedback Service in your guidance on relevant dispute resolution procedures, or, if appropriate on the procurement pages of your website. A link to our webpage may also be of use. This can be found at http://www.ogc.gov.uk/procurement_policy_and_practice_ogc_supplier_feedback_service.asp

Use of “Equality” Related Criteria in Procurement.

The European Commission has raised concerns about the manner in which contracting authorities have taken into account equality-related matters in some procurement exercises.

Under the public procurement rules, it may be possible in some circumstances to exclude or mark-down an economic operator where they have been found guilty of breaching anti-discrimination legislation, where that breach constitutes grave professional misconduct. However any decision to exclude an economic operator on the grounds of grave misconduct (in equality –related or other matters) must be justified and proportionate, taking into account the gravity of the offence and any remedial action taken by the economic operator. Where a potential supplier has been found guilty of an act of grave misconduct, this should not result in automatic exclusion.

In particular, if there is no legal requirement to have a written equal opportunities policy, the absence of such a policy does not constitute grave professional misconduct and is not a permissible ground for exclusion. However, where relevant, it may be permissible to ask an economic operator how it meets its equalities obligations if it does not have a written equal opportunities policy.

Contracting authorities should not place disproportionate or unnecessary “selection” criteria, or marking schemes, including those related to equality, on economic operators. As a particular example, a sole trader without staff should not be expected to provide information or policies concerning employees.

Latest Procurement Policy Notes (PPNs).

PPN 19/10 [Package of announcements to support small businesses](#)

This Information Note relates to the package of support announced on 1 November by the Minister for the Cabinet Office, Francis Maude, to open up government procurement as part of an initiative to help Small and Medium Enterprises (SMEs).

PPN 20/10 [Mandated use of core pre-qualification questions in Central Government](#) and [Core pre-qualification questions](#).

This Action Note provides instructions on adopting a standard set of core pre-qualification questions (PQQ) for relevant procurements from 1 December

PPN 21/10 [Feedback request- European Union evaluation of Public Procurement Directives](#)

This Action Note is seeking your views on the effectiveness of the public procurement rules within the parameters that are set out in the PPN

PPN 22/10 [Withdrawal of Two-Tier Code.](#)

This information note advises on the withdrawal of the 'Two-Tier Code' in Central Government service contracts.

PPN 01/11 [Use of the Accelerated Restricted Procedure in 2011.](#)

This information note advises that the European Commission has extended its relaxation of the rules on the Accelerated Restricted procedure.

PPN 02/11 [Guidance on Implementing Requirements for Greater Transparency in Central Government Procurement](#)

This information note advises on further guidance published to assist departments in meeting the requirements of transparency in public procurement.

PPN 03/11 [Use of Open Standards when specifying ICT requirements.](#)

This action note advises that, where appropriate, open standards should be specified for ICT related procurement.

PPN 4/11 [Consultations](#)

This Information note covers the following two consultations:

1. The European Commission has launched a consultation on the modernisation of the public procurement rules; and
2. The Ministry of Defence (MOD) is consulting on the implementation of the Defence and Security Directive

PPN 05/11 [Further Measures to Promote Small Business Procurement](#)

This Information Note relates to the further measures announced by the Minister for the Cabinet Office, Francis Maude, on 11 February at an SME Strategic Supplier Event.