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**CPD**

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PGN 02/12  
(as amended)

# Public Procurement: A Guide for Small and Medium Sized Enterprises (SMEs)

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## PROCUREMENT GUIDANCE NOTES

[Northern Ireland Public Procurement Policy](#) (NIPPP) was approved by the Northern Ireland Executive in 2002. In approving the policy, the Executive took the decision that legislation was not necessary to ensure that Departments, their Agencies, Non Departmental Public Bodies and Public Corporations complied with the policy. Instead, it considered that compliance could be achieved by means of administrative direction.

Procurement Guidance Notes (PGNs) are the administrative means by which Departments are advised of procurement policy and best practice developments. They apply to those bodies subject to NIPPP and also provide useful guidance for other public sector bodies.

PGNs are developed by the Central Procurement Directorate (CPD), in consultation with the Centres of Procurement Expertise (CoPEs), and are subject to the approval of the Procurement Board.

Once endorsed by the Procurement Board, they are issued to the Departments for implementation and copied to CoPEs to develop, if necessary, underpinning procedures supporting the implementation of this guidance in their particular sector. PGNs are also published on the [Department of Finance \(DoF\) website](#).

**The following PGN was endorsed by the Procurement Board with effect from 17 February 2012 for use by those bodies subject to NIPPP.**

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### **Definition of Terminology**

In the preparation of this guide, the term **contractor/supplier** has been used to denote an organisation that contracts directly with a Department, whether it is a supplier, a service provider or a construction contractor.

The term **Department** has been used to refer to those bodies subject to Northern Ireland Public Procurement Policy including Departments, Non-Departmental Public Bodies and Public Corporations.

The term [eTendersNI](#) has been used to describe the current web-based portal used by the wider Northern Ireland public sector to advertise and tender its available contracts.

The term **lowest acceptable price** has been used to refer to the lowest price after unacceptably low prices have been excluded. Each case should be treated on its merits. There should be no automatic exclusion and tenderers whose tenders are considered to be significantly low should be given the opportunity to justify their prices.

List of abbreviations

<b>CA</b>	Contracting Authority
<b>CoPE</b>	Centre of Procurement Expertise
<b>CPD</b>	Central Procurement Directorate
<b>DDA</b>	Disability Discrimination Act
<b>DETI</b>	Department of Enterprise, Trade and Investment
<b>EU</b>	European Union
<b>GCCG</b>	Government Construction Clients Group
<b>ISNI</b>	Investment Strategy Northern Ireland
<b>ITT</b>	Invitation to Tender
<b>MEAT</b>	Most Economically Advantageous Tender
<b>NDPB</b>	Non Departmental Public Body
<b>NI</b>	Northern Ireland
<b>OJEU</b>	Official Journal of the European Union
<b>PCL</b>	Procurement Control Limits
<b>PQQ</b>	Pre Qualification Questionnaire
<b>SEE</b>	Social Economy Enterprises
<b>SME</b>	Small and Medium sized Enterprises
<b>TED</b>	Tenders Electronic Direct
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UK</b>	United Kingdom
<b>VfM</b>	Value for Money

# 1 PURPOSE

- 1.1 This guide aims to help Small and Medium sized Enterprises (SMEs) increase their knowledge and understanding of public sector procurement (supplying goods, services and works to the public sector) and in so doing, help them to develop their capability to compete successfully for public sector contracts. Public sector procurement can be daunting and readers will find the additional guidance signposted throughout this document to be essential reading. The overview of procurement procedures at Annex A will also be helpful.

# 2 BACKGROUND

## 2.1 What is a Small and Medium Sized Enterprise?

- 2.1.1 The European Commission's definition of what constitutes an SME is based on the following criteria: **staff headcount** and either **turnover** or **balance sheet total**<sup>1</sup>. A diverse group of businesses fall into the SME category, ranging from sole traders to businesses and social enterprises.
- 2.1.2 In the Northern Ireland (NI) context, the commonly used definition is that SMEs have fewer than 250 employees. The table below shows the sub-categories of SMEs ranging from micro to small and medium-sized enterprises as defined by Department of Enterprise Trade and Investment (DETI).

<i>Enterprise Category</i>	Number of Employees
<i>Micro (a sub-set of small)</i>	< 10
<i>Small</i>	< 50
<i>Medium sized</i>	50 < 250
<i>Large</i>	250+

<sup>1</sup> [http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/index\\_en.htm](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/index_en.htm)

2.1.3 Within NI it is estimated<sup>2</sup> that there are 67,710 VAT and/or PAYE registered businesses. Small businesses (fewer than 50 employees) account for 98.8%, medium sized businesses (50 - 249 employees) make up 0.6%, and large businesses (250+ employees) the remainder. Micro businesses (with less than 10 employees) account for the majority of the NI total with a share of 88%. Micro-businesses therefore have a particularly prominent place in the local economy.

### **3 WHAT IS THE PUBLIC SECTOR?**

3.1 The public sector employs approximately 31%<sup>2</sup> of the NI workforce and includes:

- Central government departments and agencies;
- The health sector;
- The education sector;
- NI Assembly;
- Public Corporations and Companies eg Northern Ireland Transport Holding Company (which includes Translink which buy goods, services and works for NI Railways, Metro and Ulsterbus) and Northern Ireland Water;
- Councils (District, Borough or City); and
- Cross Border Agencies.

3.2 The public sector in NI spends approximately £3bn a year on procurement. A spend of this magnitude offers considerable opportunities for SMEs to provide goods, services and works.

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<sup>2</sup> The [Inter Departmental Business Register \(IDBR\)](https://www.economy-ni.gov.uk/topics/statistics-and-economic-research/inter-departmental-business-register) contains information on all businesses in the United Kingdom which are VAT registered and/or operating a PAYE scheme. For Northern Ireland <https://www.economy-ni.gov.uk/topics/statistics-and-economic-research/inter-departmental-business-register> (see para 3.3 of report)

### 3.3 What does the public sector buy?

3.3.1 Given the scale of the public sector it is impossible to detail the full range of supplies, works and services that public bodies purchase, however it includes common areas such as:

- Advertising
- Chemicals/Reagents
- Clothing and Accessories
- Construction/Maintenance
- Consultancy Services
- Energy
- Environmental Services
- Facilities Management
- Financial Services
- Food stuffs
- Furniture and Fittings
- Office Machines and Supplies
- Plant and Machinery
- Postal & Telecoms Equipment
- Printing/Reprographic Services
- Publications
- Public Utilities
- Recruitment and Personnel Services
- Rental, Leasing or Hire Services
- Repair/Maintenance Services
- Research and Development
- Transportation Equipment
- Transport and Travel Services

## 4 THE LEGISLATIVE AND POLICY FRAMEWORK FOR PROCUREMENT

4.1 As an SME applying for public sector contracts, it is important to understand that there are both legislative and policy requirements which apply to NI public sector procurement. The next section provides an overview of these areas. More detailed information on the context within which NI Public Procurement Policy operates, the structure and operation of procurement in the public sector and the roles and responsibilities of key players within the procurement process, can be found in the NI Public Procurement Policy Handbook<sup>3</sup>.

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<sup>3</sup> <https://www.finance-ni.gov.uk/articles/policy-handbook-public-procurement-northern-ireland>



## 4.2 The legislation

- 4.2.1 The award of regulated public procurement contracts within the European Union (EU) Member States is subject to the EU Procurement Directives, the purpose of which are to open up the public procurement market and to ensure the free movement of goods, services and works within the EU. The Directives and implementing United Kingdom (UK) Regulations<sup>4</sup> set down procedures and standards (based on openness, non-discrimination and competition) for choosing tenderers and awarding contracts with an estimated value above the EU thresholds<sup>5</sup>.
- 4.2.2 All public sector procurement contracts within the EU, irrespective of value, are also covered by the Treaty on the Functioning of the European Union (TFEU, previously known as the European Community Treaty) principles of non-discrimination, equal treatment and transparency.

## 4.2 NI Public Procurement Policy

- 4.3.1 The [NI Public Procurement Policy](#) was agreed by the NI Executive in May 2002 and applies to Northern Ireland Departments, their Agencies, Non Departmental Public Bodies (NDPBs) and Public Corporations. A full list of the bodies which are subject to it can be found in the annex to the Policy.
- 4.3.2 Responsibility for the development, dissemination and co-ordination of Public Procurement Policy in NI rests with the Procurement Board.
- 4.3.3 Councils in Northern Ireland operate under a separate framework of accountability which means that compliance with NI Public Procurement Policy is on a voluntary basis. However, they are required to comply with the UK Public Procurement Regulations.

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<sup>4</sup> <https://www.finance-ni.gov.uk/articles/details-eu-directives-and-uk-legislation-impacting-public-procurement>

<sup>5</sup> <http://www.ojec.com/Thresholds.aspx>

4.3.4 Central Procurement Directorate's (CPD's) responsibilities include the development, dissemination and review of procurement policy, and the promotion of best practice within the NI Public Sector. CPD also has two CoPEs; one for the procurement of supplies and services and one for construction projects, who procure on behalf of Departments, their Agencies and NDPBs.

4.3.5 In addition to CPD there are a number of other CoPEs, each with its own unique procurement portfolio. These are Roads Service, NI Water, Translink, Health Estates, Procurement and Logistics Service (which procure supplies and services for the Health Sector), the Education and Library Boards and the NI Housing Executive.

## **5 IS PUBLIC SECTOR BUSINESS RIGHT FOR YOUR SME?**

5.1 Public sector contracts represent a valuable business opportunity for many SMEs. Public sector organisations are good customers. They ensure fairness, honesty, transparency and professionalism in the way they choose suppliers. They are also long-standing, stable customers, and have to pay promptly (refer to paragraph 11.5.2), in line with agreed contract terms.

5.2 A first and fundamental consideration for an SME is to decide if public sector business fits the resources and capability of their own business and how this links to their objectives.

5.3 Market research can assist the SME in deciding which, if any, public sector business opportunities to pursue. The services provided by Invest NI's Business Information Centre<sup>6</sup> may be of particular use in this regard.

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<sup>6</sup><https://www.nibusinessinfo.co.uk/content/invest-northern-ireland-business-networks>

5.4 In addition, the Enterprise Europe Network offers a “one-stop shop” for companies seeking to undertake work in Europe. The network provides help on researching markets, identifying new customers, or suppliers and resolving European business issues. It also advises on sources of tender information, as well as providing tender alert services. Further information on the network is available from [www.enterpriseeuropeni.com](http://www.enterpriseeuropeni.com).

## **5.5 Issues of scale and size**

5.5.1 Public sector procurement is not suitable for all SMEs. It can be challenging to win business in competition with many others trading in a similar field. This is especially the case for small or growing businesses, where there are significant risks and challenges.

5.5.2 An SME also needs to decide how many bids to make, and in which sectors of business, so that it can grow without becoming overstretched. Attending “Meet the Buyer” events can provide an insight into public sector procurement processes and provide an opportunity to meet informally with buyers. These events are mainly hosted by industry bodies and supported by the public sector.

## **5.6 How can SMEs participate in public sector business?**

5.6.1 One message is clear from those who have followed this path before: the best course of action is to take one careful step into the field. SMEs could consider going it alone taking on a modest contract. Alternatively, opportunities may be available as a sub-contractor, or as a member of a consortium, both of which are addressed further below.

## **5.7 Sub-contracting opportunities**

5.7.1 SMEs wishing to enter the public sector market can benefit from participation in public sector contracts as a sub-contractor. Where

possible, Departments will encourage main contractors to publish opportunities, for sub-contracting within their supply chain on the main contractor's website and/or, where appropriate, in the local Press. Looking for contract notices published in the Official Journal of the European Union (OJEU) is another means of identifying possible opportunities within the supply chain.

- 5.7.2 In support of this, the Government Construction Clients' Group (GCCG) has agreed a number of actions to monitor main contractors' delivery of their commitments, advertising supply chain opportunities, and adhering to the 'Code of Practice for Government Construction Clients and their Supply Chains' (including the Fair Payment Charter).

## **5.8 Consortium bids**

- 5.8.1 Membership of, or forming, a consortium may also provide a suitable alternative route for SMEs to bid for public sector contracts.
- 5.8.2 A consortium, in public procurement terms, describes a group of suppliers who come together to bid for a contract. While the term is often used where formal legal and financial arrangements exist between the participants, this is not a necessary condition for the consortium to be able to bid for public contracts. Any informal grouping of suppliers can bid as a consortium and the EU Procurement Directives provide that a consortium bidding for a public contract can be assessed based on the collective capabilities of all of the participants in the consortium.
- 5.8.3 The Department however needs to be confident that the consortium members can work together in the manner required and this can be tested through appropriate questions in the selection process (see Section 8).

- 5.8.4 Clear descriptions of the capabilities required in contract documentation will help suppliers identify how they can combine their skills to best effect. Where a Department awards a contract to a consortium, it may, if it is justified for satisfactory performance of the contract and before entering into a contract or as a term of the contract, require the consortium to form a legal entity.

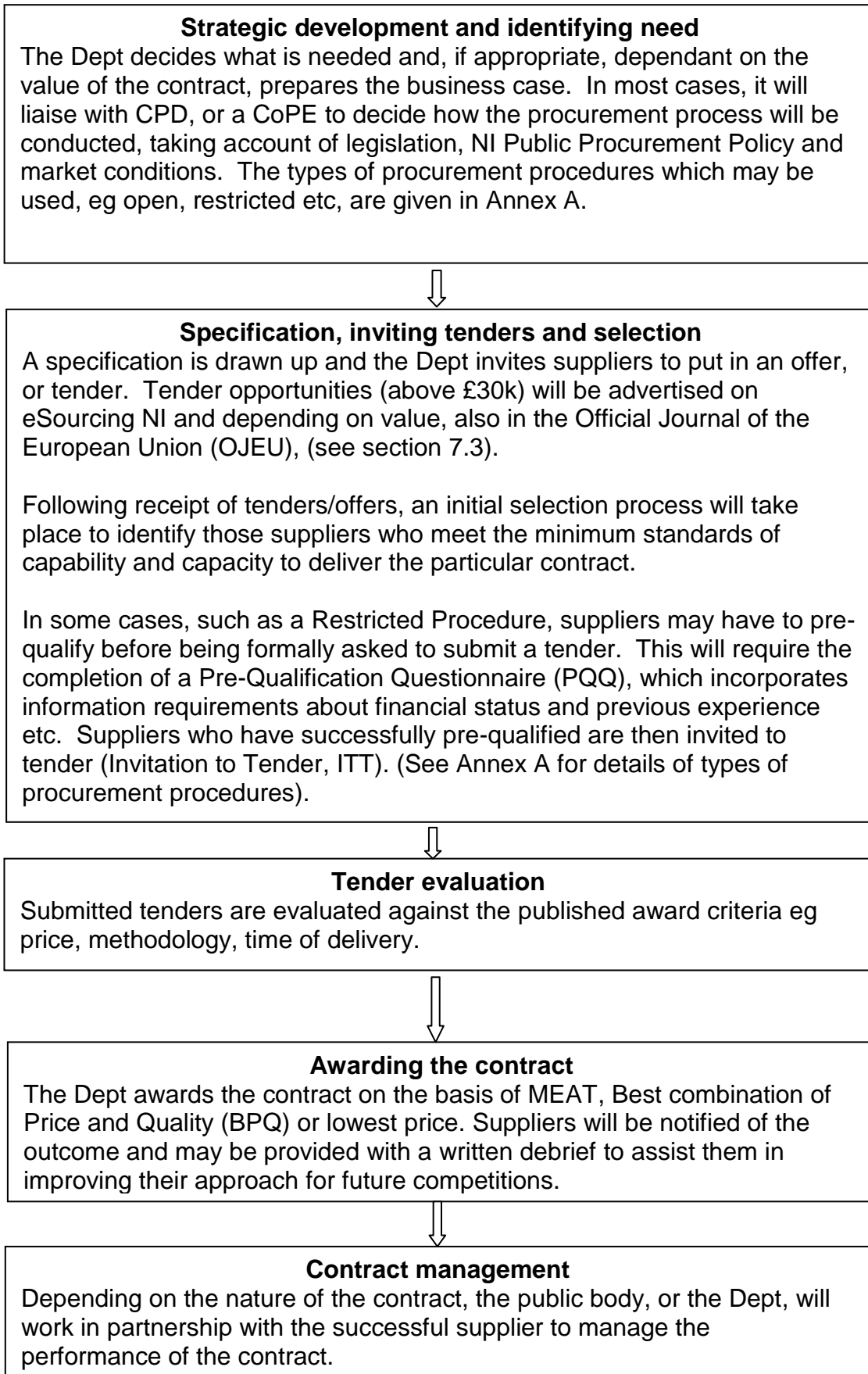
## 6 A TYPICAL PROCUREMENT PROCESS

- 6.1 The following diagram (Figure 1) shows a typical procurement process within the public sector and is discussed in further detail in the pages that follow. Low-value specific purchases will follow a simplified version to that described below (see paragraphs 7.6.1 and 7.6.2).
- 6.2 The tendering process used should be proportionate to the size, risk and complexity of the procurement in question. This approach will help to reduce barriers to all potential suppliers, including SMEs. It must be remembered however that the procurement process is a competition, and contracts are awarded on the basis of the Most Economically Advantageous Tender (MEAT).
- 6.3 MEAT can include assessment on the basis of price/cost only as well as other methods including the 'best price/quality ratio' which can include social and environmental requirements provided they relate to the subject matter of contract). [The Public Contracts Regulations 2015](#)<sup>7</sup> set out the criteria which a Department may use to determine that an offer is the most economically advantageous. The criteria may include quality including technical merit, aesthetic and functional characteristics and the organisation, qualification and experience of staff assigned to performing the contract.

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<sup>7</sup> See also [The Utilities Contracts Regulation 2016](#) and [The Concession Contracts Regulations 2016](#)

Figure 1. A typical procurement process within the public sector



## 7 HOW AND WHERE ARE TENDERING OPPORTUNITIES PUBLICISED?

7.1 Subject to the Department's legal obligations, the form of procurement competition (see Annex A) should be proportionate to the value, nature and complexity of the supplies, works or services required.

7.2 NI Departments, their Agencies, NDPBs and Public Corporations, which are subject to NI Public Procurement Policy, have in place Procurement Control Limits (PCLs) for the procurement of supplies, works and services. The PCLs recommend the optimum level of tenders/quotes that should be sought to ensure that the cost of the procurement is efficient whilst still achieving value for money (VfM) through competition. Detailed information on PCLs is available in [Procurement Guidance Note 04/12](#).

### 7.3 Official Journal of the European Union (OJEU)

7.3.1 Almost all public procurement contracts for business worth more than the EU threshold<sup>8</sup> must be published in the supplement of the OJEU. The threshold changes every two years and varies according to the type of contract (supplies, works or services) and the public sector entity (Central Government, another public authority, or Utility). The OJEU can be accessed via Tenders Electronic Daily (TED), free of charge, from: <http://ted.europa.eu/TED/main/HomePage.do>

7.3.2 Copies of the OJEU (available in CD-ROM format) can also be obtained from The Stationery Office Ltd at [www.tso.co.uk](http://www.tso.co.uk)

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<sup>8</sup> Current thresholds can be found at <http://www.ojec.com/Thresholds.aspx>

## 7.4 Tendertap -Tender Alert Service - Invest NI

7.4.1 Tendertap<sup>9</sup> is a Tender Alert Service provided by Invest NI which sends companies' daily alerts for relevant tender opportunities published in TED, as well as some smaller value UK and local opportunities. The service currently costs £100 plus VAT annually. Under the previous tender alert service, which was free of charge in 2010, some 58 companies won 114 contracts potentially worth £239 million.

## 7.5 eTendersNI

7.5.1 eTendersNI<sup>10</sup> is a web based portal which provides access to Central Government procurement opportunities. This increases accessibility for SMEs, Social Economy Enterprises (SEEs) and other potential suppliers who wish to do business with the public sector. The portal provides secure, web-based tools for buyers and suppliers to conduct the tendering process online. Using eTendersNI helps to reduce the time and cost of tendering, and simplifies and standardises the tendering process.

7.5.2 Suppliers can view current opportunities on the portal and then, if interested, register to respond to a particular tender. Registration is free and is only required once. As part of the registration process, SMEs should also specify the categories of procurement against which they might be interested in providing supplies, services and, where appropriate, works. Buyers can then search the system to help identify potential suppliers for specific categories of procurement.

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<sup>9</sup> [http://www.enterpriseeuropeni.com/inx/services/tender\\_information.asp](http://www.enterpriseeuropeni.com/inx/services/tender_information.asp)

<sup>10</sup> <https://etendersni.gov.uk/epps/home.do>



7.5.3 Advertisements in newspapers, under “What’s New”, can also be used to highlight new tender opportunities and direct potential suppliers to the eTendersNI site.

## **7.6 Low value contracts**

7.6.1 Where a contract does not require advertising, ie below £30k (as per the PCL guidance, paragraph 7.2); buyers can make use of the categorisation on eTendersNI to help them identify potential suppliers.

7.6.2 e-quotes is an electronic service which allows accepted suppliers to bid for printing work which has been requested by CPD clients ie, Departments and Agencies. Potential suppliers can obtain an e-quotes pack by e-mailing [communicationsandadvertisingsector.cpd@finance-ni.gov.uk](mailto:communicationsandadvertisingsector.cpd@finance-ni.gov.uk). Potential suppliers should then return the requested documentation and samples to the Communication and Advertising Sector Team in CPD. After assessment and if accepted, suppliers will be notified of this acceptance and will be forwarded a user name and password to access e-quotes.

## **7.7 Meet the Buyer events**

7.7.1 Representatives from CPD and the CoPEs support “Meet the Buyer” events across NI hosted by a range of organisations including Invest NI, InterTrade Ireland and Councils etc, covering the supplies, services and construction works sectors. These well attended events provide opportunities for suppliers to gain information on future tendering competitions, how to access opportunities on eTendersNI and may offer one to one interviews.

## 7.8 Investment Strategy Northern Ireland (ISNI) Information Website

7.8.1 The ISNI Information Website, launched in June 2009, also provides public access to information on infrastructure investment programmes, projects and procurements, including key milestone dates. The website can be accessed at [www.isni.gov.uk](http://www.isni.gov.uk)

## 7.9 Reserved contracts

7.9.1 [The Public Contracts Regulations 2015](#)<sup>11</sup> permit Departments to reserve the right to participate in all public contract award procedures:

- to sheltered workshops or suppliers whose main aim is the social and professional integration of disabled or disadvantaged persons; or
- to be performed in the context of sheltered employment programmes.

7.9.2 The above are permissible provided at least 30% of the employees are disabled or disadvantaged persons it is specified in the contract notice. Such 'reserved' contracts must be open to all relevant suppliers.

7.9.3 The Disability Discrimination Act 1995 (DDA) defines<sup>12</sup> a disabled person as someone with “a physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities.” Further advice can be sought from the Department for Communities (DfC)<sup>13</sup>.

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<sup>11</sup> See also [The Utilities Contracts Regulation 2016](#) and [The Concession Contracts Regulations 2016](#)

<sup>12</sup> Changes to coverage of the definition of disability were made to the DDA by the Disability Discrimination (Northern Ireland) Order 2006. This came into effect on 31 October 2007. [Disability Discrimination \(Northern Ireland\) Order 2006](#)

<sup>13</sup> Disability Employment Service <https://www.communities-ni.gov.uk/topics/finding-employment>

7.9.4 The Regulations also allow Departments to reserve certain services contracts (mainly social, health and educational) to organisations that meet **all** of the following conditions:

- has as their objective the pursuit of a public service mission linked to the delivery of these services:
- reinvests profits to meet this objective (where profits are distributed this should be based on participatory considerations);
- owned/managed on the basis of employee ownership/participatory principles or the active participation of employees, users or stakeholders; and
- not have been awarded a contract for the services concerned by the contracting authority concerned pursuant to this reservation within the past three years.

7.9.5 The 'reserved' contracts referred to in 7.9.4 must be open to all relevant suppliers and there must be a call for competition. The full rigours of the Regulations however, will not apply to such contracts and they will be awarded using a 'light touch' regime. They must not exceed a duration of three years.

## **8 SELECTION**

8.1 The selection stage is a precursor to the evaluation of tenders. Some selection processes also require the completion of a Pre-Qualification Questionnaire (PQQ) which can help to make the selection process more manageable, transparent and efficient for all parties. The number of questions on the PQQ will be proportionate to the scale and complexity of the project.

8.2 Suppliers will be notified of the outcome of the selection stage, and unsuccessful candidates provided with written debrief information. A

detailed [Procurement Guidance Note 04/16](#) on Selection and Tender Evaluation Procedures is available from [DoF's website](#).

### **8.3 Invitation to Tender (ITT), evaluation and award**

8.3.1 Shortlisted suppliers will be provided with ITT documents, with clear instructions on how they should submit their tenders, and the deadlines for receipt. The ITT will include detailed requirements, instructions to tenderers, contractual terms and conditions, any associated pricing and technical schedules, and award criteria and weightings.

8.3.2 The Department will award the contract to the tenderer who provides the MEAT (if over the relevant EU threshold) or to the tenderer who provides Best combination of Price and Quality (BPQ) or lowest price if below the relevant EU threshold. Further information on tender evaluation procedures is available in [Procurement Guidance Note 04/16](#).

## **9 UNSUCCESSFUL BIDS**

9.1 It is a requirement under the UK Procurement Regulations to provide feedback even when not sought by a supplier. For those contracts below the EU thresholds, CoPEs should be able to provide general advice and feedback on the tendering process on request.

9.2 If unsuccessful, the SME can use the information provided by the Department to see how it can improve its approach to future competitions. The Regulations set out set out the information to be given to unsuccessful tenderers and the rules concerning the minimum mandatory standstill period (sometimes referred to as the Alcatel period) in relation to contracts over the EU Thresholds.

9.3 The standstill period refers to the time between a buyer notifying tenderers of the decision to award a contract and contract signature.

This is to allow tenderers time to review the award decision and provides an opportunity for unsuccessful suppliers, to decide whether to seek further information concerning the award decision, prior to contract award.

## **10 CONTRACT TERMS AND CONDITIONS**

- 10.1 Most government contracts are based on standard contract documents appropriate to the supplies, works and services being purchased. For routine tenders, the tenderer will receive a copy of the tender documentation which includes the terms and conditions of contract. When submitting their tender, the tenderer will be legally bound by the terms and conditions set out in the tender documentation, if awarded a contract.
- 10.2 More complex contracts, such as IT systems will not be concluded until the winning tenderer and the Department have agreed the terms and conditions. It is therefore important for all parties to fully understand their responsibilities under the contract. If in doubt, legal advice should be sought.

## **11 DELIVERING THE CONTRACT**

- 11.1 Contract management is the phase of the procurement cycle in which the successful tenderer delivers the required supplies, works and services in accordance with the Department's specification. The Department's<sup>14</sup> and supplier's approach to managing their relationship is critically important to ensuring successful contract delivery and VfM. When things go wrong, the failure can be expensive.
- 11.2 Good management of this operational phase of the procurement is therefore critical. It ensures that both parties fully meet their respective

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<sup>14</sup> In some cases, the relationship may be between the successful tenderer and the client itself.

obligations as efficiently and effectively as possible, in order to meet the business and operational objectives required from the contract.

11.3 The SME therefore needs to be in a position to deliver the contracted requirement in full and to the agreed performance standards to ensure and enable an effective commercial relationship.

11.4 [Procurement Guidance Note 01/12](#) on contract management procedures provides more information and is available from the CPD website.

### **11.5 Getting paid on time – what to expect from Departments**

11.5.1 Having won the tender, the successful SME should expect that Departments will have clearly defined the payment terms within the contract.

11.5.2 Public Sector organisations will:

- pay invoices in accordance with agreed terms, or as required by law;
- tell suppliers without delay when an invoice is contested; and
- settle as quickly as possible when a contested invoice gets a satisfactory resolution.

11.5.3 In November 2008, the Minister for Finance and Personnel made a commitment to speed up the payment process on presentation of a valid invoice. NI Departments will therefore aim to pay suppliers, wherever possible, within 10 working days. Where the main contractor benefits from earlier payment, and on presentation of a valid invoice, this should be passed on to the sub-contractor.

11.5.4 Public sector organisations are also bound by The Late Payment of Commercial Debts (Interest) Act 1998<sup>15</sup>. This provides a statutory right for suppliers to claim interest on late payments of commercial debt.

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<sup>15</sup> (as amended by the Late Payment of Commercial Debt Regulations 2002 (SI 1674))

Payment is regarded as late if made outside the agreed terms, or 30 days after receipt of a valid invoice, where no terms are agreed.

11.5.6 The Government Construction Clients Group also agreed to expand the 'Code of Practice for Government Construction Clients and their Supply Chains' to include a 'Fair Payment Charter'<sup>16</sup> and to require main contractors to report payment progress to sub-contractors at project meetings.

## 12 COMPLAINT HANDLING

12.1 CPD and the CoPEs aim to provide a high quality, efficient and professional service, but occasionally things can go wrong and there are formal complaints procedures in place to resolve such matters if they arise.

12.2 NI Public Procurement Policy requires each CoPE to have a formal complaints procedure through which complaints can be formally investigated. Details of these procedures can be found on the relevant CoPE websites.

12.3 It is important to note that the complaints procedure is not an appeal mechanism for tenderers who are dissatisfied with the outcome of a procurement competition. The relevant procedures for challenging an award decision are set out in The Public Contracts Regulation 2015. Such a challenge will be a matter for the High Court to decide.

## 13 CONCLUSION

13.1 There are considerable opportunities for SMEs in bidding for public sector procurement contracts. However, like all business opportunities,

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<sup>16</sup> <https://www.finance-ni.gov.uk/articles/code-practice-government-construction-clients-and-their-supply-chains>

the risks have to be assessed and weighed against the potential benefits. Organisations can also avail of networking opportunities or “Meet the Buyer” events to improve their ability to tender for public sector contracts.

## 14 FURTHER INFORMATION

- 14.1 Additional useful websites and sources of information are listed at Annex B.
- 14.2 Any queries on this Procurement Guidance Note should be addressed to:

Procurement Policy Branch  
Central Procurement Directorate  
2<sup>nd</sup> Floor East  
Clare House  
303 Airport Road West  
Belfast, BT3 9ED  
Phone: 028 9081 6518  
Email: [procure.policy@finance-ni.gov.uk](mailto:procure.policy@finance-ni.gov.uk)

Construction Procurement Policy Branch  
Central Procurement Directorate  
2<sup>nd</sup> Floor East  
Clare House  
303 Airport Road West  
Belfast, BT3 9ED  
Phone: 028 9081 6871  
Email: [ConstructionProcurementPolicy@finance-ni.gov.uk](mailto:ConstructionProcurementPolicy@finance-ni.gov.uk)



## ANNEX A

### TYPES OF PROCUREMENT PROCEDURES

1.1 [The Public Contracts Regulations 2015](#) provide for six award procedures:

- the **open procedure**, under which all those interested may respond to the advertisement in the OJEU by submitting a tender for the contract;
- the **restricted procedure**, under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the contract;
- the **competitive dialogue** procedure, under which a selection is made of those who respond to the advertisement and the contracting authority enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender.
- the **competitive procedure with negotiation** under which a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract. The contracting authority may then open negotiations with the tenderers to seek improved offers.
- the **innovation partnership procedure**, under which a selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on the market. The contracting authority is allowed to award partnerships to more than one supplier; and

- the **negotiated procedure without prior publication**. This can only be used in narrowly defined circumstances. Here the contracting authority would approach one or more suppliers seeking to negotiate the terms of the contract. One of the permitted circumstances is where, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular supplier.

1.2 Departments have a free choice between the open and restricted procedures. The competitive dialogue procedure and the competitive procedure with negotiation are available where certain criteria are met, including where the contract is complex or cannot be purchased 'off the shelf'. The 'negotiated procedure without prior publication' may only be used in the limited circumstances described in the Public Contracts Regulations.

1.3 Departments using the restricted procedure, competitive dialogue procedure and the competitive procedure with negotiation must aim to select a number of suppliers sufficient to ensure genuine competition. Provided there are sufficient suitable candidates, the Public Contracts Regulations require a minimum of five for the restricted procedure, and three for competitive dialogue and competitive procedure with negotiation.

1.4 Procedures to be used when awarding Utilities and Concession contracts are detailed in those Regulations<sup>17</sup>.

## **2. Framework Agreements**

2.1 Framework Agreements are put in place with one, or more (usually several), suppliers of the same product or service. The Framework Agreement sets out the general terms and conditions under which specific purchases can be made as and when they are required. They

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<sup>17</sup> [The Utilities Contract Regulations 2016](#) and [The Concession Contracts Regulations 2016](#)

are mainly used when the quantity of supplies, works or services is undetermined.

- 2.2 The competition for awarding a place on a Framework is usually very similar to that for winning an ordinary contract. There may well be a formal pre-qualification process, and/or a tendering stage which suppliers must complete successfully before they can be party to the agreement. Framework Agreements normally last a maximum of four years.
  
- 2.3 A supplier who has succeeded in being awarded a place on a Framework Agreement, can receive a call-off order directly, or (since a Framework Agreement does not mean an automatic agreement to purchase) may be asked to take part in a mini-competition with other suppliers on the Framework. The formal contract is formed when the customer places a 'call-off' order against the Framework requesting specific delivery of supplies or services.

## USEFUL WEBSITES

(This is not an exhaustive list)

### NORTHERN IRELAND

**Central Procurement Directorate (CPD)** <https://www.finance-ni.gov.uk/topics/procurement/procurement-policy-and-guidance>

CPD provides a professional procurement service to the NI Government Departments, their Agencies and other public sector bodies in respect of a wide range of supplies, service and construction works. This ensures best value for money, legal compliance and competitiveness. Current tender opportunities are advertised on the CPD website.

**eTendersNI** <https://etendersni.gov.uk/epps/home.do>

This is an electronic tendering portal which provides increased accessibility for SMEs, SEEs and other potential suppliers who wish to do business with the NI public sector.

#### **Department for Communities**

<https://www.communities-ni.gov.uk/topics/finding-employment> The Disability Employment Service can be contacted via the link above.

#### **NI Business Info**

<https://www.nibusinessinfo.co.uk/>

Northern Ireland's online business advice service

#### **NI Departments**

<http://www.northernireland.gov.uk/gov.htm>

Website providing links to all of the NI Departments.

### **NI Public Procurement Policy**

<https://www.finance-ni.gov.uk/articles/introduction-ni-public-procurement-policy-document>

Includes the 12 guiding principles which govern the administration of public procurement and the procurement structures within NI such as the Procurement Board and the CoPEs.

### **NI Public Procurement Policy Handbook**

<https://www.finance-ni.gov.uk/articles/policy-handbook-public-procurement-northern-ireland>

The handbook provides details on the context within which NI Public Procurement Policy operates, the structure and operation of procurement in the NI public sector and the roles and responsibilities of key players within the procurement process.

### **Buy Social NI <http://www.buysocialni.org.uk>**

Buy Social NI aims to promote opportunities for social economy enterprises to do more business – by selling to each other, selling to the public and private sectors and selling to the general public. Entries in the Directory are free to social economy enterprises set up and trading in Northern Ireland.

## **UK WIDE**

### **UK Treasury [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)**

### **Winning the Contract**

<http://www1.learndirect-business.com/business-courses/winning-the-contract/>

This is a free online course is designed to address the small business knowledge gap on public procurement. Although focused on Great Britain, SMEs will find useful background information and strategies to enable them to compete for public sector contracts.

**Crown Commercial Service** <http://ccs.cabinetoffice.gov.uk/>

The Crown Commercial Service is part of the Cabinet Office and provides commercial and procurement services for Government and the

**Efficiency and Reform Group within the Cabinet Office**

<http://www.cabinetoffice.gov.uk/government-efficiency>

ERG is, amongst other things, responsible for supporting UK growth by allowing a wider range of UK businesses to bid for government contracts and making new commercial partnerships and businesses,

**Tendering for Public Sector Contracts**

<https://www.gov.uk/tendering-for-public-sector-contracts> This site provides businesses of all sizes with guidance on how to tender for public sector contracts.

The Scottish Executive Procurement & Commercial Services Division is responsible for ensuring that public funds are utilised to achieve value for money for the taxpayer. [www.scotland.gov.uk/procurement/](http://www.scotland.gov.uk/procurement/)

Sell2Wales is an initiative from the Welsh Assembly Government helping SMEs work successfully with public sector clients. [www.sell2wales.gov.uk/](http://www.sell2wales.gov.uk/)

**IRELAND**

**InterTrade Ireland** <http://www.intertradeireland.com/>

This organisation provides business development initiatives offering companies practical advice and support in targeting new cross-border business opportunities, developing new products and processes and attracting equity investment.

### **Public Sector Opportunities in the Republic of Ireland**

<http://www.etenders.gov.ie/>

This site is designed as a central facility for all public sector Contracting Authorities to advertise procurement opportunities which currently exist in the Irish Public Sector.

### **EUROPE**

#### **Gateway to the European Union**

[http://europa.eu/policies-activities/tenders-contracts/index\\_en.htm](http://europa.eu/policies-activities/tenders-contracts/index_en.htm)

A website which gives an overview of the Public Procurement market in Europe, provides information on various issues such as legislation, tenders and signposts useful links for both buyers and suppliers (includes links to SIMAP and Tenders Electronic Daily).

#### **Enterprise Europe Network [www.investni.com](http://www.investni.com)**

The Enterprise Europe Network offers a “one-stop shop” for companies seeking to undertake work in Europe.