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CPD

Procurement Guidance Note
PGN 04/16

Selection and Tender Evaluation Procedures

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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 27 September 2016 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. A full list of such bodies is available in Annex A of the [Northern Ireland Public Procurement Policy](#).

1 PURPOSE

- 1.1 The purpose of this Procurement Guidance Note (PGN) is to provide guidance to Departments, selection and tender evaluation panel members (which will be referred to as “the panel/s” throughout the document) and procurement practitioners on the principles involved in the selection and tender evaluation¹ stages of a procurement process.
- 1.2 The PGN has taken due cognisance of the recommendations of the Public Accounts Committee Report on the Investigation of Suspected Contract Fraud², advice received from the Northern Ireland Audit Office and relevant case law. It also takes account of [The Public Contracts Regulations 2015](#) (PCR 2015), [The Utilities Contracts Regulations 2016](#) (UCR 2016) and [The Concession Contracts Regulations 2016](#) (CCR 2016).
- 1.3 Following these guidelines not only ensures that the selection and tender evaluation process is fair, but will reduce the risk of complaints and legal challenges, which are both very time consuming and costly.
- 1.4 The PGN focuses on the selection and tender evaluation process defined for contracts with an estimated value over the [EU thresholds](#). There is a separate ‘light-touch regime’ for certain social, health and education services above a threshold of €750,000³. Guidance on this can be found in [PGN 02/16: Light Touch Regime](#). There is also a simpler procurement regime, incorporating the general principles of transparency, equal treatment and non discrimination for procurements under the EU thresholds. Details can be found in [PGN 05/12: Simplified Approach to Procurement over £30k and Below the EU thresholds](#).

Note: The PCR 2015 are paraphrased throughout the PGN. The full provisions of these Regulations should be considered and legal advice sought where necessary. The UCR 2016 and the CCR 2016 are referenced where appropriate.

¹ Also known as the award stage.

² Session 2009/10 First Report.

³ The light touch regime threshold is €1,000,000 for utilities contracts and €5,186,000 for concession contracts.

2 BACKGROUND

- 2.1 The selection of economic operators and the evaluation of tenders are crucial stages in the overall procurement process to achieve best value for money. Departments, including public bodies to which [Northern Ireland Public Procurement Policy](#) (NIPPP) applies, engaged in procuring supplies, services or works must ensure that the selection and tender evaluation processes are compliant with EU and UK law, NIPPP and appropriate standards of probity. Personnel from Centres of Procurement Expertise (CoPEs) must be engaged to provide professional procurement advice and support to the panels throughout the course of the procurement.
- 2.2 The selection and tender evaluation stages are two distinct processes. The selection stage examines, amongst other things, an economic operator's economic and financial standing, technical capacity and professional ability to deliver a particular contract. The tender evaluation stage, on the other hand, examines how the economic operator, in its tender, proposes to deliver the contract in question. Selection is usually a precursor to the evaluation of tenders. However, in the open procedure, Departments may decide to evaluate tenders in advance of checking if economic operators meet the selection criteria and grounds for exclusion. Economic operators are permitted to self declare with only the 'winning' economic operator having to submit various certificates and documents for verification (Regulation 56(3) of PCR 2015)⁴.

3 SELECTION AND TENDER EVALUATION PANELS

- 3.1 Departments should, at the outset of the procurement, appoint a Chairperson and the members of the panels. The specific roles and responsibilities of each panel including the chairperson are listed at [Annex A](#).
- 3.2 The size, make up and experience of the panels will reflect the scale and complexity of the procurement, including the degree of specialist input required. Generally, a panel should have a minimum of three members and a number of experts in the relevant fields if necessary, to ensure a full and thorough evaluation of each economic operator and tender. A representative of the

⁴ Regulation 76(7) of the UCR 2016. This does not apply to concession contracts.

relevant CoPE should either be a member of a panel or act as a non-scoring adviser to a panel.

3.3 Before commencing the selection or tender evaluation process, the panel must have the relevant skills and knowledge (supported by professional procurement advice), to exercise judgement in:

- the process by which each economic operator and tender will be assessed;
- the criteria against which the economic operators and tenders will be evaluated;
- the regulatory environment and policy surrounding public procurement; and
- the subject matter of the contract.

3.4 Best procurement practice would advocate that, where possible, the membership of the selection panel should be consistent with that of the tender evaluation panel if a two stage process is being used. This helps to ensure retention of knowledge and a consistent approach during both stages of the procurement process.

3.5 Panel members must agree, before the relevant stage of the procurement process the selection and award criteria, their respective weightings, also any minimum standards, pass marks and discretionary exclusions (if applicable). Some exclusions are mandatory (see paragraph 4.2).

3.6 It is important that panel members adhere to the principles underlying probity. Their behaviour must be consistent with [NIPPP](#), the [Principles of Public Life](#), the [NICS Code of Ethics](#) and any ethical standards governing the particular professions of those involved in the process. In addition, the panel must be suitably trained⁵ and have no conflict of interest at any stage of the process (see paragraph 3.8).

⁵ It is mandatory for tender evaluation panel members above the EU thresholds to have appropriate training in evaluation best practice.

3.7 If a panel member is a current contract manager or end user, they should ensure their previous experience of, or relationship with, the economic operator does not influence the evaluation. Economic operators and tenders must only be assessed against the published criteria based on the information provided.

3.8 Conflict of Interest

3.8.1 The procurement regulations for the first time contain provisions in relation to Conflict of Interest. Regulation 24 of PCR 2015⁶ requires Departments to take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators. This should at least cover any situations where relevant staff members have, directly or indirectly (eg through a family member), a financial, economic or other personal interest which might compromise their impartiality and independence or be reasonably perceived to do so. A relevant staff member is someone who is involved in the conduct of the procurement procedure or may influence the outcome of that procedure.

3.8.2 Panel members are required to complete a Conflict of Interest declaration. This record must be retained. The purpose of this is to confirm that they do not have any external personal, professional or monetary interests in the responses they evaluate.

3.8.3 Panel members must not accept gifts or hospitality from economic operators and should not discuss any procurement process with any economic operator in the course of their normal working interactions. Any possible conflict of interest or issue of bias should be discussed with the Chairperson of the evaluation panel as soon as it arises and brought to the attention of the CoPE. The Chairperson will decide on the appropriate course of action, taking account of advice from the CoPE, to ensure there is no distortion of competition and record the outcome. The Chairperson should likewise decide on any personal conflict of interest taking account of CoPE advice.

⁶ Regulation 42 of the UCR 2016. Regulation 35 of the CCR 2016.

3.9 Confidentiality

- 3.9.1 The contents of each request to participate or tender must not be disclosed to any party outside of the procurement process. Each request to participate or tender should be viewed as 'commercial in confidence' until after the disclosure of the award decision. A confidentiality agreement should be signed by panel members who are not public servants.

4 SELECTION STAGE

- 4.1 The restricted, competitive dialogue and innovation partnership procedures and the competitive procedure with negotiation have a distinct selection stage. The selection stage ensures that only those economic operators who are eligible and have the ability to perform the contract are included in any short-listing exercise and invited to tender.

4.2 Mandatory exclusion of economic operators

- 4.2.1 Regulation 57 of PCR 2015⁷ requires Departments to exclude economic operators from participation in a procurement procedure where they have been convicted of certain offences, including those related to organised crime, corruption, fraud and money laundering, and for convictions for terrorism, child labour and human trafficking related offences. Departments must, as a minimum, seek a declaration from all economic operators confirming that they have not been convicted of any offences referred to in Regulation 57.
- 4.2.2 There is also an obligation to exclude an economic operator which has been the subject of a binding judicial or administrative decision which found a breach of legal obligations to pay tax or social security obligations except where disproportionate (eg where there were only minor amounts involved).
- 4.2.3 Departments may use their discretion to exclude an economic operator where the Department can demonstrate, by any appropriate means, that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions in the absence of a judicial or administrative decision.

⁷ The rules concerning the exclusion of economic operators from participation in utilities and concession procurements are contained in Regulation 80 of the UCR 2016 and Regulation 38 of the CCR 2016 respectively.

4.3 Discretionary exclusion of economic operators

4.3.1 Regulation 57(8) of PCR 2015⁸ list the discretionary grounds under which a contracting authority may choose to exclude an economic operator These include where:

- grave professional misconduct can be demonstrated (including any conviction related to its business) which affects the economic operator's integrity or where the economic operator is guilty of serious misrepresentation;
- there are conflicts of interest, including those arising from prior involvement of the economic operator in preparation of the procedure (eg specifications) that cannot be remedied by other, less intrusive measures (eg Chinese Walls);
- there are 'significant or persistent' deficiencies in the performance of a contract that led to early termination of the contract or other sanctions; and
- the economic operator has negligently provided misleading information.

4.4 Application of mandatory and discretionary exclusions

4.4.1 Economic operators do not have to be excluded if they have provided sufficient evidence of reform (eg payment of compensation, changes in organisation/personnel) – 'self cleaning'. Regulation 57(13)-(16) of PCR 2015 outlines the sort of measures which may be taken by the economic operator in order to demonstrate its reliability. The panel must evaluate the measures taken, taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the Department considers such measures to be insufficient, it must give the economic operator a statement of the reasons for that decision.

⁸ The rules concerning the exclusion of economic operators from participation in utilities and concession procurements are contained in Regulation 80 of the UCR 2016 and Regulation 38 of the CCR 2016 respectively.

- 4.4.2 The maximum period of exclusion allowed is 5 years from the date of the conviction in the case of mandatory exclusions or 3 years from the date of the relevant event in the case of discretionary exclusions⁹.
- 4.4.3 Exclusions can be applied after the selection stage. Economic operator could be excluded if necessary evidence (eg of conviction) arises at any part of the procedure (eg at the stage where tenders are being evaluated).
- 4.4.4 Legal advice should be taken on any decision to exclude an economic operator.

4.5 Selection criteria

- 4.5.1 Regulation 58 of PCR 2015¹⁰ contains a list of selection criteria which can be taken into account when assessing an economic operator's:
- suitability to pursue a professional activity;
 - economic and financial standing; and
 - technical and professional ability.
- 4.5.2 Regulations 58(7) – 58(12) of PCR 2015 provide details on how an economic operator's economic and financial standing can be assessed. This can include requiring it to:
- have a minimum yearly turnover (however, this cannot exceed twice the estimated contract value except in justified cases); and
 - have an appropriate level of professional risk indemnity insurance.
- 4.5.3 Regulations 60(6) – (8) of PCR 2015 detail how proof of an economic operator's economic and financial standing can be provided including appropriate statements from banks and presentation of financial statements.
- 4.5.4 Regulations 58(15) – 58(18) of PCR 2015 provide details on what information can be used to assess an economic operator's technical or professional ability.

⁹ The maximum exclusion period does not apply to mandatory and discretionary exclusions for the non-payment of taxes.

¹⁰ The rules concerning selection criteria and the qualitative assessment of economic operators for utilities and concession procurements are contained in Regulation 80 of the UCR 2016 and Regulation 38 of the CCR 2016 respectively.

Departments may set minimum requirements to ensure that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate standard.

4.5.5 Regulation 60(9)¹¹ of PCR 2015 describes the means by which technical and professional ability may be proven including:

- the provision of a list of works carried out over at most the past **five** years; and
- a list of the principal supplies sold or services provided at most in the last **three** years.

4.5.6 For works contracts, where necessary, in order to ensure an adequate level of competition, Departments may indicate that evidence of relevant works carried out more than 5 years before will be taken into account. Likewise for supplies and services contracts, Departments may indicate that evidence of relevant supplies/services delivered or performed more than 3 years before will be taken into account¹².

Note: Selection criteria must not be repeated as award criteria.

4.6 Pre-Qualification Questionnaires (PQQs)

4.6.1 The selection process may involve the completion of a PQQ which provides a structured means of capturing the information required. There are benefits to using a PQQ eg it helps to make the selection process more manageable, transparent and efficient for all parties. Not all selection processes need to involve PQQs as the information required can be requested in the notice sent to the Official Journal of the European Union (OJEU), or other procurement documents.

4.6.2 It should also be made clear what the subject matter of the contract is and the scope of the requirement so that economic operators can determine the skills,

¹¹ Utilities should refer to Regulation 80 of the UCR 2016.

¹² For more information on this please see [PGN 02/13](#) - Construction Procurement - Selection Process Relating to Experience Time Frame.

capabilities and capacity needed to deliver the contract and reflect this in their request to participate.

- 4.6.3 A standard PQQ template for construction related contracts has been developed by the Construction Industry Forum for Northern Ireland (CIFNI) Procurement Task Group. CoPEs have agreed to use a PQQ based, as far as practicable, on the template PQQ. The template is available from CPD.

4.7 Selection methodology

- 4.7.1 A selection methodology that sets out the selection process, including the selection criteria (see paragraph 4.5), sub-criteria and their weightings, and any scoring mechanisms and minimum standards, must be published in the PQQ, OJEU notice or other procurement document. This should precisely replicate the selection methodology given to economic operators.

5 TENDER EVALUATION (AWARD) STAGE

- 5.1 The tender evaluation (award) stage, examines how the economic operators propose to deliver the contract in question.

5.2 Award criteria

- 5.2.1 Contracts must be awarded on the basis of the Most Economically Advantageous Tender (MEAT) (Regulation 67 of PCR 2015)¹³. The definition of MEAT allows contracts to be awarded on the basis of the best price-quality ratio but also allows them to be awarded on the basis of price or cost only. When cost is used as an award criterion, it should be done so on the basis of a cost effectiveness approach. Life cycle costing is an example of this approach (see paragraph 5.2.7).
- 5.2.2 The Regulations contain a non-exhaustive list of award criteria (that should be linked to the subject matter of the contract), including social, environmental and innovative characteristics, technical merit, after sales service and delivery conditions such as delivery date.

¹³ Regulation 82(1) of the UCR 2016. MEAT does not apply to concession contracts. For the rules regarding award criteria for concession contracts please see Regulation 41 of the CCR 2016.

5.2.3 Award criteria are considered to be linked to the subject matter of the contract where they relate to¹⁴.

- the specific process of production, provision or trading of the works, supplies or services; or
- a specific process for another stage of their life cycle, even where such factors do not form part of their material substance.

5.2.4 The evaluation panel must strictly adhere to the award criteria. Tenders must be evaluated against the published criteria and not against each other and only using the information contained in the tender offer. The panel must not bring any personal knowledge of the economic operator any speculation or suspicion to bear when evaluating tenders.

5.2.5 The panel may request clarification from economic operators to ensure they are clear about the information received. This should be sought by the CoPE on behalf of the panel. The process must be handled carefully with full regard to equal treatment for all economic operators. Consideration must be given to seeking legal advice. Post tender negotiations cannot be carried out after tenders are received in the open or restricted procedure or after final tenders are received in the competitive procedure with negotiation. The competitive dialogue procedure allows for negotiation with the preferred bidder to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract.

5.2.6 Organisation, qualification and experience of staff

5.2.6.1 A further assessment of the professional/technical ability of the economic operator is prohibited at the tender evaluation stage. However, the regulations¹⁵ make it clear that the organisation, qualification and experience of staff assigned to perform the contract can be taken into account as part of the award criteria where the quality of the staff assigned can have a significant impact on the level of performance of the contract.

¹⁴ The CCR 2016 do not contain this stipulation.

¹⁵ Regulation 67(3)(b) of the PCR 2015. Regulation 82(3)(b) of the UCR 2016.

5.2.7 Life cycle costing

5.2.7.1 There is a difference between price and cost. Cost is the acquisition price plus other economic costs. Life cycle costing should cover, to the extent that they are relevant (Regulation 68(1) of PCR 2015)¹⁶:

- Costs, borne by the Department or other users, such as—
 - costs relating to acquisition,
 - costs of use, such as consumption of energy and other resources,
 - maintenance costs,
 - end of life costs, such as collection and recycling costs.
- Costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified. These costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

5.2.7.2 The method used for the assessment of costs imputed to environmental externalities must meet the requirements set out in Regulation 68(3) of PCR 2015, the aim of which is to make sure that this approach does not favour a particular economic operator.

5.2.7.3 Where a common method for the calculation of life cycle costs has been made mandatory by a legislative act of the EU that method has to be used.

5.3 Tender evaluation methodology

5.3.1 A tender evaluation methodology that sets out the tender evaluation process, including the award criteria (see paragraph 5.2), sub-criteria and their weightings, and any scoring mechanisms, must be published in OJEU notice or procurement documents. A standard score sheet and guidance for the tender evaluation panel should also be prepared. This should precisely replicate the evaluation methodology given to economic operators.

¹⁶ Regulation 83 of the UCR 2016. The CCR 2016 do not contain rules in relation to life cycle costing.

6 INDIVIDUAL AND CONSENSUS SCORING

- 6.1 If there is a selection stage panel members must individually score the expression of interest submitted by each economic operator. They must also individually score all the tender proposals submitted at the award stage. Once they have been scored individually the panel must meet to develop consensus scores. Such meetings encourage open debate among panel members and help ensure nothing is overlooked. The panel must consider each expression of interest/tender against each of the mandatory and discretionary exclusions, minimum requirements/standards and selection and award criteria used. They should discuss the strengths and weaknesses of each economic operator/tender. The discussion may provide additional insights and correct any misperceptions of individual panel members and hence the consensus score arrived at may differ from the initial scores of some panel members.
- 6.2 The on-line evaluation functionality in eTendersNI must be used for completing the individual and consensus scoring.
- 6.3 These records will provide an audit trail leading up to the decision to award a contract and form the basis of debrief information to be provided to economic operators. The records should be stored in accordance with the Department's disposal schedule. eTendersNI will record the information.

7 FURTHER INFORMATION

- 7.1 Any queries on this Guidance Note should be addressed to:

Procurement Policy Branch
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2nd Floor East
Clare House
303 Airport Road West
Belfast, BT3 9ED
Phone: 028 9081 6518
Email: procure.policy@finance-ni.gov.uk

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ROLES AND RESPONSIBILITIES OF THE CHAIRPERSON AND PANEL MEMBERS

The role of the Chairperson is to:

- determine what training¹⁷ or guidance the panels need to conduct the selection and tender evaluation processes;
- ensure all panel members appointed, have received the necessary training, have the necessary knowledge, skills and competency and are available to carry out the selection and tender evaluation process;
- ensure that the selection and award criteria and their weightings are agreed and published in the OJEU notice or procurement documents;
- ensure panel members have no conflict of interest at any stage of the competition and that they complete the appropriate conflict of interest declarations/confidentiality agreements. The Chairperson must place particular emphasis upon Regulation 24 of PCR 2015¹⁸. (See paragraph 3.8);
- ensure all requests to participate and tenders are in the requested format and have been received by the stated deadline. This should be treated with a degree of caution and the principles of equal treatment, transparency and proportionality adhered to. The panel may wish to seek clarification regarding an expression of interest or tender. Where this is the case care should be taken to ensure the information received is clarification and not additional information. Legal advice should be taken in every instance where an economic operator wishes to submit documents or information or the panel requests it after the deadline;

¹⁷ For procurements above EU thresholds tender evaluation panels must receive appropriate training in evaluation best practice

¹⁸ Regulation 42 of the UCR 2016. Regulation 35 of the CCR 2016

- determine, if appropriate, which members of the panel will be responsible for evaluating the various aspects of the requests to participate and tenders;
- ensure panel members individually evaluate each economic operator and/or tender before the consensus meeting/s;
- ensure all documents used in the evaluation of economic operators and tenders, including all comments, justifications, marks, and any amendments are recorded and signed off and dated by both the panel members and the Chairperson as appropriate;
- ensure selection and tender evaluation panel membership is, where possible, consistent and members are available for the duration of the process;
- seek and ensure due cognisance is taken of professional procurement advice provided by the CoPE;
- be available, if requested, to provide support with the debriefing process for unsuccessful economic operators;
- act as Moderator during the consensus meeting; and
- sign off all relevant documentation.

The role of panel members is to:

- confirm that they have the necessary skills, competency and availability to carry out the selection and tender evaluation process;
- confirm that they have no conflict of interest at agreed/designated stages of the procurement process and submit an appropriate signed declaration to the Chairperson or CoPE. If a conflict of interest should arise, it should be reported immediately to the Chairperson. If an external panel member has a conflict of interest which is not declared that panel member could be in breach of his Terms of Engagement;

- confirm they have received and understood the required training or guidance;
- individually evaluate, in an open, proportionate and transparent manner each economic operator for evidence of how they meet the selection criteria, minimum requirements/standards and mandatory and discretionary exclusions and each tender for evidence of how it meets the award criteria before the consensus meeting/s;
- be available, if requested, to provide support with any necessary debriefing of unsuccessful economic operators;
- ensure due cognisance is taken of the professional procurement advice provided by the CoPE; and
- sign off all relevant documentation.