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An Roinn
Airgeadais

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Procurement Guidance Note

PGN 05/12

(as amended)

Simplified Approach to Procurements Over £30,000 and Under EU Thresholds

Revised: 19 May 2016



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 21 May 2012 for use by those bodies subject to NIPPP.

Revision History

First issued as a Procurement Guidance Note PGN 05/12	21 May 2012
Revised to take account of The Public Contracts Regulations 2015	26 March 2015
Minor corrections and simplification of construction procedures	23 December 2015
Revised to reflect LTR/higher advertising threshold for Utilities	19 May 2016

CONTENTS

1	Purpose	4
2	Background.....	4
3	When to Use This Guidance	5
4	Light Touch Regime.....	5
5	General Principles	6
6	Award and Debriefing.....	7
7	Further Information	8
	Annex A: Goods for Public and Utilities Contracts.....	9
	Annex B: Non-Construction Services for Public and Utilities Contracts	10
	Annex C: Construction Works for Public and Utilities Contracts	11
	Annex D: Construction Services for Public and Utilities Contracts	13

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](#).

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.

1 PURPOSE

- 1.1 The purpose of this guidance is to provide CoPEs with a simplified approach to the procurement of goods, works and services with an estimated contract value over £30,000, but under the [EU threshold values](#). This approach supports the Procurement Board's objective of achieving greater consistency.

2 BACKGROUND

- 2.1 In Northern Ireland, procurements with estimated values under the [EU threshold values](#) are not subject to the detailed requirements and procedures set out in the EU Procurement Directives or the corresponding UK Regulations¹. However, even when contracts are not subject to the requirements of EU law they must comply with the fundamental principles of the Treaty on the Functioning of the European Union where there is a cross border interest. These principles include the free movement of goods, the right of establishment, the freedom to provide services, non-discrimination and equal treatment, transparency, proportionality and mutual recognition.
- 2.2 Within Northern Ireland, there is also a requirement on all bodies subject to Northern Ireland Public Procurement Policy to comply with the [12 Procurement Principles](#) contained within the policy. These include the principles of transparency and competitive supply. A full list of the bodies to which the policy applies is set out in Annex A of the [Northern Ireland Public Procurement Policy](#).

¹ [The Public Contracts Regulations 2015](#), [The Utilities Contracts Regulations 2016](#) and [The Concession Contracts Regulations 2016](#)

3 WHEN TO USE THIS GUIDANCE

- 3.1 Before deciding on whether this guidance is applicable, the value of the procurement needs to be estimated. The estimated value of a contract must be calculated over its whole life (including options), but excluding VAT. For example, a one year contract with options to extend for two further periods of one year, with an estimated spend of £25,000 per year, excluding VAT, has an estimated value of £75,000. When the estimated value of a contract is over the applicable EU threshold, the procedures set out in the EU Directives and the UK Regulations must be followed.
- 3.2 If the estimated value of a contract is over £30,000² and under the relevant EU threshold, and it is a one-off procurement which cannot be procured using an existing framework, call off arrangement, standing list or e-catalogue, then this guidance should be followed.

4 LIGHT TOUCH REGIME

- 4.1 This guidance does not apply to certain service contracts mainly in social, health and education services that tend to be of lower interest for cross-border competition. A Light Touch Regime (LTR) has been provided for in [The Public Contracts Regulations 2015](#), [The Utilities Contracts Regulations 2016](#) and [The Concession Contracts Regulations 2016](#) which include a relatively high threshold value and a flexible approach, provided minimum criteria are met.
- 4.2 Below the EU threshold, Departments can determine the procedure to award contracts though they must observe:
- the NIPPP requirement that procurement should be managed via service level agreement with a CoPE;
 - the need to use competitive tendering where possible and that a balance is maintained between the value of the contract and the transaction cost of the procurement process;

² £50,000 in the case of Utilities

- the requirement to process all tender competitions through eTendersNI;
- the requirement to publish award criteria in procurement documents and the need for an appropriate use of quality and price criteria to assess best value for money;
- the rules on aggregation; and
- the removal of arbitrary requirements which discourage SME participation.

4.3 Procurement Guidance Note [PGN 02/16](#) provides further guidance on the LTR.

5 GENERAL PRINCIPLES

- 5.1 Specifications should be unambiguous and include a clear statement of requirements. This is particularly important in a single stage competition to ensure that only those tenderers capable of delivering the contract, submit tenders.
- 5.2 Contracts with an estimated value over £30,000³ should be publicly advertised on the eTendersNI portal and the procurement taken forward in accordance with the terms of a Service Level Agreement with a CoPE.
- 5.3 It should be made clear in all tender documents that the process is not subject to the 'Regulations', but is subject to [Northern Ireland Public Procurement Policy](#).
- 5.4 CoPEs should not impose arbitrary minimum requirements which may have the unintended effect of deterring new or small businesses from bidding. Tenderers will however be expected to meet minimum standards in respect of supplier acceptability; for example, they should not have been convicted of any offences in relation to non-compliance with employment, financial or legal obligations.

³ £50,000 in the case of Utilities

- 5.5 Departments should, depending on the nature and value of the contract, undertake a financial check as part of the supplier evaluation process. However, in the spirit of encouraging supplier growth, suppliers should not be ruled out unless there is clear evidence that the supplier's financial position places public money or services at unacceptable risk. For construction contracts, a financial check through Constructionline⁴ is recommended.
- 5.6 Details of the approach to be adopted in respect of the procurement of goods and non-construction services contracts are set out at **Annexes A and B** respectively.
- 5.7 Construction related contracts may be procured in a number of ways:
- as orders placed under an existing term contract;
 - through a framework agreement;
 - using standing lists of pre-qualified contractors; or,
 - separately, on an individual basis.
- 5.8 Details of the approach that might be followed where construction works and services are to be procured on an individual basis are set out at **Annexes C and D**.

6 AWARD AND DEBRIEFING

- 6.1 Consideration should be given to a short period of notice between the notification and award of contract. An award letter or a notification of award letter should be issued to the winning tenderer and, at the same time, unsuccessful tenderers should be informed of the outcome of the process and the name of the winning bidder.
- 6.2 Due to the emphasis in the guidance on the award of contracts on either the basis of the Best combination of Price and Quality ratio (BPQ) or lowest acceptable price, it is recommended that the general policy of providing

⁴ Constructionline is a register of construction related contractors and consultants pre-qualified to work for public sector clients.

debriefing on low value contracts is not necessary. However CoPEs should be prepared to provide information to tenderers on request, sufficient to meet EU Treaty requirements, as to why they were unsuccessful.

6.3 All contracts should use the Department's/CoPE's Conditions of Contract.

7 FURTHER INFORMATION

Any queries on this guide should be addressed to:

Procurement Policy Branch
Central Procurement Directorate
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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ANNEX A: GOODS FOR PUBLIC AND UTILITIES CONTRACTS

Value	Goods Procedure
Goods For use over £30,000 to EU Thresholds For use over £50,000 to EU Thresholds (Utilities)	<p>Advertised on eTendersNI.</p> <p>A one stage procurement process or, at the CoPE's discretion, when particular business circumstances require, a two stage process.</p> <p>Award on the basis of the lowest acceptable price⁵ which meets the specification and any mandatory requirements/minimum quality standards that have been set.</p> <p>When bids are received that are significantly lower than the average bid price, in the opinion of the CoPE, bidders should be notified of this and offered an opportunity to withdraw. They must be made aware that, if successful, their performance will be carefully monitored by the contract manager and that poor performance may lead to sanctions.</p> <p>Tenderers should be informed of the outcome of the process and the name of the winning bidder.</p>

⁵ *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.

ANNEX B: NON-CONSTRUCTION SERVICES FOR PUBLIC AND UTILITIES CONTRACTS

Value	Non-Construction Services Procedure
<p>Non-Construction Services</p> <p>For use over £30,000 to EU Thresholds</p> <p>For use over £50,000 to EU Thresholds (Utilities)</p>	<p>Advertised on eTendersNI.</p> <p>A one stage procurement process or, at the CoPE's discretion, where particular business circumstances require a two stage process.</p> <p>Award on the basis of the lowest acceptable price⁶ which meets the specification and any mandatory requirements/minimum quality standards set.</p> <p>Exceptionally, quality (non price criteria) may also be used; for example, previous experience/capability, methodology, etc. If quality criteria are used, there should be no more than two and the quality element should be a minimum of 30% of the price quality ratio.</p> <p>Criteria must be selected on a clear rationale that ensures that the award is based on the Best combination of Price and Quality (BPQ). This rationale should be documented on the contract file.</p> <p>Tenderers must be told what the criteria are and the allocated marks for each in advance of tender submission.</p> <p>When tenders are evaluated purely on price, and bids are received that are significantly lower than the average bid price, bidders should be notified of this and offered an opportunity to withdraw. They must be made aware that, if successful, their performance will be carefully monitored by the contract manager and that poor performance may lead to sanctions.</p> <p>Tenderers should be informed of the outcome of the process and the name of the winning bidder.</p>

⁶ 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.

ANNEX C: CONSTRUCTION WORKS FOR PUBLIC AND UTILITIES CONTRACTS

Value (Band A)	Construction Works Procedure 1
<p>Construction Works</p> <p>For use over £30,000 to £2,000,000</p> <p>For use over £50,000 to £2,000,000 (Utilities)</p>	<p>In advance of the competition:</p> <p>Contractors must be registered with Constructionline and hold:</p> <ul style="list-style-type: none"> • a valid 3rd party certification of their Health and Safety (H&S) management system satisfying the requirements of the Buildsafe-NI initiative; and • a valid health and safety competence assessment certificate issued by an organisation that is a member of the Safety Systems in Procurement (SSIP) Forum. <p>The competition:</p> <p>Contract advertised on eTendersNI.</p> <p>Interested contractors submit their H&S certificates, Constructionline Category Value and experience details which will be assessed on a pass/fail basis.</p> <p>Use a random selection process to select six contractors, who meet requirements, to be invited to tender. The random selection process should be transparent and fully auditable.</p> <p>Selected contractors submit a price only tender plus experience and H&S details of their key subcontractors, if required, which are assessed on a pass/fail basis.</p> <p>Contract awarded on the basis of lowest acceptable price⁷ but exceptionally, quality (non price) criteria may be used. [If a price/quality ratio is used then the ratio should follow those set out in BS 8534:2011 but with a minimum quality of 30%.]</p> <p>Tenderers should be informed of the outcome of the process and the name of the winning bidder.</p>

⁷ 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.

Value (Band B)	Construction Works Procedure 2
<p>Construction Works</p> <p>For use over £2,000,000 to EU Thresholds (may also be used for lower value works that are complex or critical)</p>	<p>In advance of the competition:</p> <p>Contractors must be registered with Constructionline and hold:</p> <ul style="list-style-type: none"> • a valid 3rd party certification of their health and safety management system satisfying the requirements of the Buildsafe-NI initiative; and • a valid health and safety competence assessment certificate issued by an organisation that is a member of the SSIP Forum. <p>The competition</p> <p>Contract advertised on eTendersNI.</p> <p>Interested contractors submit a simplified PQQ, excluding details of subcontractors.</p> <p>PQQs are assessed and scored and the top six contractors are invited to tender.</p> <p>Straightforward contracts:</p> <p>Contractors invited to tender submit a price only tender plus H&S and experience details of their key subcontractors, if required, which are assessed on a pass/fail basis.</p> <p>Contract awarded on the basis of lowest acceptable price⁸.</p> <p>Tenderers should be informed of the outcome of the process and the name of the winning bidder.</p> <p>Other contracts:</p> <p>Contractors invited to tender submit tenders which are assessed on the basis of quality and price. The price quality ratio shall follow those set out in BS 8534:2011 but with a minimum quality of 30%. Unacceptably low prices may be excluded.</p> <p>Tenderers should be informed of the outcome of the process and the name of the winning bidder.</p>

⁸ 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.

ANNEX D: CONSTRUCTION SERVICES FOR PUBLIC AND UTILITIES CONTRACTS

Value	Construction Services Procedure
<p>Construction Services</p> <p>For use over £30,000 to EU Thresholds</p> <p>For use over £50,000 to EU Thresholds (Utilities)</p>	<p>In advance of the competition:</p> <p>Consultants must be registered with Constructionline and hold a valid health and safety certificate issued by an organisation that is a member of the Safety Systems in Procurement (SSIP) Forum.</p> <p>The competition</p> <p>Contract advertised on eTendersNI.</p> <p>Interested consultants submit their H&S certificate, Constructionline Category Value and experience details which will be assessed on a pass/fail basis.</p> <p>Use a random selection process to select six consultants. The random selection process should be transparent and fully auditable.</p> <p>Straightforward contracts.</p> <p>Selected consultants invited to tender submit a price only tender plus experience details of their sub-consultants, if required, which are assessed on a pass/fail basis.</p> <p>Contract awarded on the basis of lowest or most acceptable price⁹.</p> <p>Tenderers should be informed of the outcome of the process and the name of the winning bidder.</p> <p>Other contracts</p> <p>Selected consultants are invited to submit tenders which are assessed on the basis of quality and price. The price/quality ratio shall follow those set out in BS 8534:2011 but with a minimum quality of 30%. Unacceptably low prices will be excluded.</p> <p>Tenderers should be informed of the outcome of the process and the name of the winning bidder.</p>

⁹ Refer to PGN 07/14: Sub-economic Tendering in Construction Professional Services Contracts for details of most acceptable price.