## CONTENTS

**INTRODUCTION** 3
**CHAPTER 1: GENERAL PRINCIPLES OF PUBLIC PROCUREMENT** 5
**CHAPTER 2: THE LEGAL FRAMEWORK** 13
**CHAPTER 3: STEPS IN THE PROCUREMENT PROCESS** 21
**CHAPTER 4: IDENTIFICATION OF NEED** 22
**CHAPTER 5: PREPARATION, PLANNING AND TIMETABLING** 23
**CHAPTER 6: MARKET SOUNDING** 28
**CHAPTER 7: MARKET CREATION** 32
**CHAPTER 8: OPTIONS APPRAISAL** 36
**CHAPTER 9: PREPARATION AND APPROVAL OF THE PROCUREMENT BUSINESS CASE** 39
**CHAPTER 10: PROCUREMENT AND CONTRACT STRATEGIES** 40
**CHAPTER 11: THE SPECIFICATION** 45
**CHAPTER 12: SOURCING** 53
**CHAPTER 13: APPRAISAL AND SELECTION OF POTENTIAL PROVIDERS** 57
**CHAPTER 14: PREPARATION AND ISSUE OF INVITATION TO TENDER** 65
**CHAPTER 15: ADVISING UNSUCCESSFUL APPLICANTS OF THE DECISION AND PROVIDING FEEDBACK WHERE REQUESTED** 70
**CHAPTER 16: CLARIFYING THE REQUIREMENT** 74
**CHAPTER 17: RECEIPT AND EVALUATION OF TENDERS** 76
**CHAPTER 18: CLARIFICATION OF BIDS** 80
**CHAPTER 19: PRESENTATIONS/INTERVIEWS** 81
**CHAPTER 20: SITE VISITS AND REFERENCES** 84
**CHAPTER 21: POST TENDER NEGOTIATION** 86
**CHAPTER 22: DECISION TO AWARD** 88
**CHAPTER 23: THE STANDSTILL PERIOD** 90
**CHAPTER 24: GIVING FEEDBACK TO UNSUCCESSFUL BIDDERS** 93
**CHAPTER 25: CONTRACT AWARD** 97
**CHAPTER 26: ANNOUNCEMENT OF SUCCESSFUL BIDDER** 99
**CHAPTER 27: CONTRACT MANAGEMENT** 100
**CHAPTER 28: POST-CONTRACT REVIEW AND EVALUATION** 108
**CHAPTER 29: RELATIONSHIP MANAGEMENT** 110
**APPENDIX A** 113
**APPENDIX B** 117
**APPENDIX C** 120
**APPENDIX D** 122
**APPENDIX E** 128
Introduction

The purpose of this manual

The purpose of this manual is to provide help and guidance to professional procurement staff (including contractors) who are involved in procurement on behalf of the Comptroller and Auditor General (C&AG).

Staff who are not procurement professionals may use it for reference, but they are not expected to undertake a procurement exercise alone. Guidance on how to obtain specific goods and services can be found at http://merlin/CorporateServices/procurement/home.htm.

Staff who need to buy consultancy or other professional services must consult the Central Procurement Team who can advise on all aspects of a procurement exercise and will provide template documents. In accordance with the NAO’s procurement policy http://merlin/CorporateServices/procurement/policy.htm, the Central Procurement Team must confirm that a procurement exercise has been conducted appropriately before a contract can be awarded so it is important that they are consulted at an early stage of any procurement.

Structure of this manual

Chapter 1 gives an overview of the general principles of public sector procurement, with Chapter 2 setting out the legal framework for it.

The remaining chapters each deal with a particular aspect of the procurement cycle. As far as possible the sequence of the chapters reflects the order of activity in the procurement process, but in reality some activities may take place concurrently or in a slightly different order. Note that an actual procurement may not include every step.

Guidance on specific topics relevant to procurement (eg framework agreements) can be found in the Appendices.

Further information/reading

Most of this manual is based on guidance produced by the Office of Government Commerce (OGC), part of the Cabinet Office’s Efficiency Reform Group (ERG), which can be found on their website: www.ogc.gov.uk.

Sources of further information on specific topics are referred to in the text of the manual and are listed at the end of the relevant chapter.
Abbreviations used throughout this manual

The following abbreviations are commonly used throughout:

- BS: Buying Solutions
- CPT: Central Procurement Team
- EC: European Community (now called the European Union)
- EU: European Union
- GPC: Government Procurement Card
- ITT: Invitation to Tender
- OGC: Office of Government Commerce, part of the Cabinet Office’s Efficiency Reform Group
- OJEU: Official Journal of the European Union
- PQQ: Pre-Qualification Questionnaire
- VFM: Value for Money

Definitions

The following terms are commonly used throughout the manual:

**Applicant** — this term is generally used for those providers who apply to be included on the shortlist of organisations to be invited to tender for a requirement (usually by completing a PQQ).

**Bidder** — both bidder and tenderer are used for those providers who submit a tender (which may also be referred to as an offer, proposal, or bid) for a requirement. Strictly, before the deadline for receipt of tenders those providers who have been invited to tender should be referred to as potential bidders/tenderers.

**Contracting Authority** — is the term used in the EU procurement directive and The Public Contracts Regulations 2006 for a public sector buying organisation, of which the NAO is one.


**Provider** — is used as a generic term for service provider, supplier or contractor, although all of these terms may also appear from time to time.

**Regulations** — refers to The Public Sector Contracts Regulations 2006

**EC Treaty** — is the original Treaty (Treaty of Rome 1957) by which the EC was formed and which set out certain principles (see para 2.24 et seq). The Treaty has been amended by later treaties signed by all member states.

**Internal customer** — means an individual, section or department who identifies the need to buy and/or is involved in a procurement exercise

**Tenderer** — see bidder.

Other terms are defined in each chapter as they arise.
Chapter 1: General principles of public procurement

Introduction

This chapter sets out the principles which govern procurement in the public sector.

Definitions and introduction

1.1 *Procurement* is a core organisational strategy, which is supported by four strategic process sets (Strategic Sourcing Analysis, Proactive Demand Management, Acquisition Pre-contract and Acquisition Post-contract), to enable the acquisition of external resources (i.e., goods, works and services) for the NAO from external sources. Procurement spans the whole life cycle from identification of need through to the end of a services contract or the end of the useful life of an asset. It includes options appraisal and the “make or buy” decision.

1.2 *Strategic Sourcing Analysis* is satisfying an organisation’s needs from markets via the proactive and planned analysis of supply markets and the selection of suppliers, with the objective of delivering solutions to meet pre-determined and agreed organisational needs.

In order to begin the process of strategic sourcing, various stages of analysis should be undertaken including reviewing the current situation (also known as ‘As is’ analysis). This might typically include:

- Processes and competences
- Spend analysis
- Supply/value stream mapping
- The supply base
- The political scene

The purpose of this analysis is to identify the current purchasing and supply management position and use it as a starting point, or base line, for developing the strategic sourcing activity.

The final piece of the strategic sourcing analysis is the generation of options for the supply requirements analysed. See http://www.cips.org/professionalresources/purchasingsupplymanagementmodel/strategicsourcinganalysis/

1.3 *Proactive demand management* is working with internal customers to ascertain the organisation’s requirements over a future given period, e.g., the next financial year, then working with them to identify the best sourcing options that have been generated from the strategic sourcing analysis.

Most organisations have two types of requirement; direct and indirect goods and services.
• Direct means requirements that go into the main value stream of the business; for example, in a car manufacturing plant it would be all the items such as sub-assemblies that go into the production of the cars. NAO examples are consultants to support VfM studies, or undertake Financial Audits

• Indirect generally refers to the rest of an organisation’s requirements and typically include energy, facilities management, IT and so on, all of which enable an organisation to operate effectively.

• See http://www.cips.org/professionalresources/purchasingsupplymanagementmodel/proactivedemandmanagement/

1.4 Acquisition pre-contract relates to the activities in the procurement cycle which begin with the identification of a requirement ie a need to purchase and end at the letting of the contract. This is sometimes misunderstood as being the totality of procurement, also it is often referred to as ‘sourcing’.

The key components of this stage are:

• Identification of need - Defining a requirement specification and budget

• Procurement plan - Planning procurement activity and team roles

• Marketplace solicitation / development - Communicating your requirement to potential suppliers

• Evaluate/select suppliers - evaluate and check suppliers’ credentials & capability

• Receive/evaluate offers - Assess against selection criteria and consider whole life costs and risk

• Create contract & relationship - Negotiating and agreeing final terms, deliverables and schedules

See http://www.cips.org/professionalresources/purchasingsupplymanagementmodel/acquisitionpre-contract/

1.5 Acquisition Post-contract is ensuring that the whole procurement cycle works effectively by ensuring that each contract performs successfully. This includes managing relationships with key suppliers.

At the end of this phase your purchasing and supply team need to decide whether to renew the contract and relationship with the supplier.

The key components of this stage are:

• Contract / Relationship Management - Striving for continual improvement from suppliers

• Receipt of Product/Service - Ensure that goods or service meet requirements
• Asset Management - Effective management, disposal and recycling of assets

• Lessons Management - Post contract review to identify key learning points

See http://www.cips.org/professionalresources/purchasingsupplymanagementmodel/acquisitionpost-contract/

1.6 **Value for Money** (VFM) is the term used to assess whether or not an organisation has obtained the maximum benefit from the goods and services it acquires and/or provides, within the resources available to it. It not only measures the cost of goods and services, but also takes account of the mix of quality, cost, resource use, fitness for purpose, timeliness, and convenience, to judge whether or not, when taken together, they constitute good value.

**Separation of duties**

1.7 To protect both individual members of staff and the organisation, no one individual should be responsible for all the key decisions in the procurement process, which are:

- the identification of the need to buy;
- the commitment of expenditure; and
- confirmation that goods/services have been received.

**Competition**

1.8 As set out in *Managing Public Money* it is government policy that all goods and services should be acquired by competition unless there are overwhelmingly convincing reasons not to do so.

1.9 Appendix B contains guidance on when single tender action may be appropriate.

1.10 The NAO strives for best practice procurement at all times through:

- encouraging procurement staff to become professionally qualified and to continuously develop their skills and experience;
- increasing the use of e-procurement, collaboration and other public sector efficiency strategies;
- adding value to the procurement process and achieving best value for money from its procurement exercises;
- acting as an intelligent customer; and
- having an effective contract management strategy.
Value for Money

1.11 Obtaining value for money from goods and services is the primary aim of every procurement exercise. Better value for money can be obtained by reducing the time, cost and administrative effort of the procurement process and/or by obtaining better prices and quality from the NAO’s providers.

1.12 The Government’s policy on VFM is set out in OGC’s policy note Value for Money.

The Legal Framework

1.13 Public sector procurement is governed by The Public Contracts Regulations 2006 which implement the EU procurement Directive 2004/18/EC. These Regulations apply to the majority of procurements with a total value over a specified financial threshold.

1.14 Procurements with a total value below the threshold fall outside the scope of the Regulations but the principles of the original EC Treaty still apply.

1.15 Further information on the Regulations and the EC Treaty principles can be found in Chapter 2.

Collaboration

1.16 Acting collaboratively is a key driver for delivering VFM in public sector procurement, and is particularly relevant in areas of common spend such as commodity goods and services.

1.17 Government policy requires central Government departments and their agencies to commit to a cross-government collaborative approach to the procurement of common goods and services. Departments are required to take up centrally-negotiated deals where these exist in order to use the Government’s collective buying power to get better VFM on a whole-life costing basis, agreeing any alternative only where justified.

1.18 The NAO supports this policy and must therefore participate in collaborative deals wherever possible.

eProcurement etc

1.19 eProcurement, eSourcing & ePayment are some of the terms used to describe various electronic methods used in every stage of the purchasing process from identification of requirement through to payment, and potentially to contract management. Specifically electronic enablement of the purchasing process is enabled by:

- eSourcing — for contractual processes. Tools include eTendering, eRFQs (Request for quotations and evaluations) and eAuctions.
• eProcurement — for transactional processes. Tools include marketplaces such as Zanzibar using Techniques such as eCatalogue and punch-out.

• ePayment — tools include virtual or embedded GPC, eInvoicing and self-billing.

1.20 The NAO uses the delta-ets system hosted by BiPSolutions which provides a secure document exchange facility and full audit trail for procurement exercises. GPC is available, and its use should be encouraged, for low-value purchases.

Equality

1.21 OGC’s Policy Note *Procurement and Equality*, from which the following paragraphs are taken, sets out the Government’s policy on equality issues in procurement.

1.22 The Government’s policy is that in their procurement activities central government departments and their agencies must ensure that they fulfil their legal obligations relating to equality legislation, and associated public sector duties, in a way that is consistent with VFM policy and the Regulations. In addition, departments must also meet their legal obligations under the public sector equality duties, which apply only to the public sector, including:

- the disability equality duty;
- the gender equality duty; and
- the race equality duty.

1.23 These duties mean that in its procurement activities the NAO must aim to eliminate discrimination and promote equality of opportunity with regard to disability, gender, race/ethnicity, age, sexual orientation, religion/belief and work-life balance. Where a service is contracted-out and the equality duty applies to that service, the NAO must consider whether the relevant obligations must be placed on the provider.

1.24 For further information see NAO guidance found at [http://merlin/Diversity/guidance.htm](http://merlin/Diversity/guidance.htm) and the OGC policy note *Procurement and Equality* which can be found at [www.ogc.gov.uk/documents/policy_principles_-_Equality.pdf](http://www.ogc.gov.uk/documents/policy_principles_-_Equality.pdf) and the following OGC publications which can be downloaded from their website:

- Make Equality Count
- Supported Factories and Businesses Buy and Make a Difference
- Social Issues in Purchasing

Fair Trade

1.25 OGC’s Policy Note *Fair Trade*, from which the following paragraphs are taken, sets out the Government’s policy on the procurement of
fair trade products. The term “fair trade” covers a range of activities aimed at helping producers and workers in developing countries. There are various fair trade labels that demonstrate that products have been produced in accordance with internationally recognised fair trade standards. Product groups covered include tea, coffee, wine, sugar, chocolate, cotton, bananas and honey.

1.26 There are no mandatory policy requirements in place for the procurement of fair trade products by public sector bodies but the Government is committed to substantially improving market access for producers in developing countries and to promoting growth and trade through increased participation of producers in developing countries in fair and sustainable retail supply chains. In addition to direct funding of fair and ethical trade initiatives, there is scope for Government to support fair trade through public procurement.

1.27 Public sector bodies can buy fair trade products in a way that is consistent with VFM and the procurement Regulations. The OGC policy note sets out positive steps that can be taken to encourage fair trade options.

1.28 For further information see the following OGC publication, which can be found on their website at www.ogc.gov.uk:

*Guidance on Fair Trade and Public Procurement* and the OGC policy note *Fair Trade*

**Small and medium sized enterprises (SMEs)**

1.29 The Government’s policy on SMEs is to encourage and support these organisations to compete for public sector contracts where this is consistent with value for money policy, the Regulations, the EC Treaty principles and the Directive.

1.30 The OGC publication Small Supplier….. Better Value explains that opening up opportunities to SMEs is not about giving them preferential treatment but about facilitating a more level playing field. The guidance suggests that small firms can offer better value for money and greater innovation, outlines the issues that can make it difficult for them to win public sector business, and sets out how public procurers can help level the playing field for SME participation in public procurement, including as sub-contractors in supply chains.

1.31 The Government supported web portal www.supply2.gov.uk offers access to lower-value opportunities from across the UK public sector, improving the visibility of public procurement opportunities particularly to SMEs.

**Sustainable procurement**

1.32 The UK Government’s Sustainable Development Strategy (Securing the Future) has committed the public sector to lead by example in delivering
its sustainable development objectives.

1.33 Sustainable development has been defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

1.34 Sustainable procurement refers to all Policy Through Procurement issues where public policy is seen as a lever to achieve wider environmental, social and economic policy objectives.

www.ogc.gov.uk/procurement policy and the EU sustainability.asp

Prompt Payment

1.35 The Government’s policy on Prompt Payment is set out in OGC policy note Prompt Payment.

1.36 To ensure that the NAO can pay its providers promptly, an invoice must be successfully matched to a valid purchase order (PO) on PARIS. All contracts require a PO, which will be issued by Finance prior to the award of the contract.

1.37 To request a PO for normal expenditure, a Procurement Requisition form should be completed and sent to z3-Purchasing.

Third sector organizations

1.38 The Government’s policy is to encourage and support third sector organisations to compete for public sector contracts where this is consistent with VFM policy and the Regulations and Directive.

1.39 Further information on working with third sector organisations can be found in the OGC/Home Office publication Think Smart, Think Voluntary Sector.

Further Information/reading

OGC publications which can be found on their website (www.ogc.gov.uk): An Introduction to Public Procurement

OGC’s policy note Value for Money

e-auctions — getting started, e-auctions — decision tools, Saving money with IT Auctions

Buying Solutions’ e-sourcing homepage, Public e-procurement in action

Promoting Skills through Public Procurement

Approaches to Support Workforce Skills — a Department for Education and Skills publication, Supported Factories & Businesses

Buy and Make a Difference — How to Address Social Issues in Purchasing
Social issues in purchasing which includes discussion on ensuring access to government contracts and how to assist SMEs

Social Issues in Purchasing

OGC policy principles Procurement and Equality, Make Equality Count

OGC policy principles — SMEs

Small Supplier..... Better Value

Aggregation — is bigger always better explains to buyers that bundling contracts together can exclude SMEs and is not always best for VFM.

Working Through Larger Suppliers looks at how smaller suppliers can access the public sector chain.

Tendering for Government Contracts is an SBS/OGC publication which advises small businesses on finding and bidding for public sector work.

Think Smart, Think Voluntary Sector — a Home Office publication

Guidance on Fair Trade and Public Procurement

OGC policy note Fair Trade

Sustainability - see [www.ogc.gov.uk/procurement policy and the EU sustainability.asp](http://www.ogc.gov.uk/procurement policy and the EU sustainability.asp)
Chapter 2: The Legal Framework

Introduction

2.1. This chapter gives an overview of the requirements of the EU procurement directive (2004/18/EC), implemented in the UK as The Public Contract Regulations 2006, with which the NAO, as a public body, must comply.

2.2. The purpose of the Regulations is to open up public procurement and to ensure the free movement of supplies, services, and works within the EU. The Regulations reinforce the government’s policy that all public procurement should be based on VFM, which should be achieved through competition unless there are convincing reasons not to do so.

2.3. Throughout this manual references are mainly to the Regulations, rather than the Directive.

Scope

2.4. Contracts for supplies (goods) and works, and for certain types of services (known as Part A or priority services) with a value over the specified threshold are subject to The Public Contracts Regulations 2006. Other services (Part B or residual services) fall outside the full scope of the Regulations but the principles of the original EC Treaty still apply.

2.5. Part A services are considered to be of interest to other member states and include cleaning, building maintenance, consultancy, IT-related services, and auditing services. Part B services are seen as of less interest to other member states and include catering, training delivery, and legal services.

2.6. Appendix C sets out which services fall within Part A and Part B.

Excluded contracts

2.7. Regulation 6 of the Regulations sets out the general exclusions which apply. Examples of excluded contracts are:

- where the requirement is classified as secret;
- where the contract is for the acquisition of land, including existing buildings;
- arbitration or conciliation services;
- central bank services;
- employment and other contracts of service; or
- where the contract is a services concession contract.
Financial Thresholds

2.8. The thresholds are set in euros and the sterling equivalent is re-evaluated every 2 years. From January 2010 the thresholds applicable to the NAO are as follows:

- Supplies £101,323
- Services £101,323
- Works £3,927,260
- Part B services £156,442

Aggregation

2.9. Rules exist to assist in the calculation of aggregated amounts to determine whether a number of contracts, when taken together, exceed the threshold and hence require full OJEU competition.

2.10. To determine whether the threshold has been, or is likely to be, reached for supply and service contracts, the rules require aggregation:

- of the estimated value of separate contracts for meeting a single requirement; and
- where a series of contracts or a renewable contract is entered into for supplies/services of the same type during a 12-month period.

Mixed contracts

2.11. There are some differences in the treatment of supplies, services and works contracts:

- Where contracts contain an element of both supplies and services, the classification should be determined by the respective values of the two elements.
- Where a contract covers both works/supplies and works/services, it should be classified according to its main purpose.
- Where a contract covers both the supply of equipment and an operator it should be regarded as a services contract.
- A contract for software is considered to be for supplies unless it has to be tailored to the purchaser’s specification, in which case it is a contract for services.

Advertising
2.12. Requirements which fall within the scope of the Regulations must be advertised by placing a Contract Notice in the *Official Journal of the European Union* (OJEU).

2.13. The minimum time allowed for responses or tenders is set out in the Regulations but some reduction is possible where:

- a PIN (prior information notice) has been published sufficiently far in advance of the procurement or when the accelerated procedures are used;
- the OJEU Contract Notice is submitted electronically in accordance with the requirements set out on the SIMAP website (generally this is transmission via an XML gateway such as BiPSolutions’s Project portal at www.delta-ets.co.uk); or
- the Contracting Authority offers full unrestricted website access to tender documents in accordance with the specific requirements set out in the Regulations (e.g. by the use of the Vault portal on www.delta-ets.co.uk).

2.14. All procurement exercises must comply with the principles (in particular transparency, equal treatment and non-discrimination on grounds of nationality) of the original EC Treaty, whether or not they fall within the scope of the Regulations. To demonstrate transparency some form of advertising is likely to be necessary for all but very low value requirements (e.g. below £20,000) although this need not necessarily be in the OJEU. However, such requirements can and should be advertised in the OJEU if they are thought to be of interest to other member states.

2.15. The Regulations do not permit the placing of an advertisement in the press or similar publications before the date on which the Contract Notice is dispatched to the OJEU. If a notice/advertisement is placed elsewhere it may not include any information which was not contained in the Notice sent to the OJEU.

2.16. All enquiries and expressions of interest received from prospective tenderers, no matter how they learned of the contract, must be treated in the same way and in accordance with the Regulations.

**Procurement Procedures**

2.17. **Open Procedure:** all those interested may respond to the OJEU Contract Notice by tendering for the contract.

2.18. **Restricted Procedure:** this is a two-stage process which allows the Contracting Authority to make a selection from those who respond to the advertisement [usually by way of a Pre-Qualification Questionnaire (PQQ)]. Only selected providers are invited to submit a tender for the contract. The Regulations require that a minimum of five providers are invited to bid in order to ensure genuine competition.

2.19. **Competitive dialogue procedure:** for use in very complex contracts where the open or restricted procedures cannot be used because the
Contracting Authority is unable to define the technical, financial or contractual solution to meet its needs. Following an OJEU Contract Notice and a selection process, the Contracting Authority enters into a dialogue with the providers admitted to the procedure with the aim of developing one or more suitable alternatives capable of meeting the requirement and on the basis of which the chosen providers are invited to tender. The Regulations require that a minimum of three providers are invited to bid in order to ensure genuine competition.

2.20. **Negotiated Procedure with advertising:** the Contracting Authority may select potential bidders with whom to negotiate the terms of the contract where the nature of the goods or services is such that the specification cannot be established with sufficient precision to allow award using the open or restricted procedure. The Regulations require that a minimum of three providers are invited to negotiate in order to ensure genuine competition. This procedure is much less used since the introduction of competitive dialogue.

2.21. **Negotiated Procedure without advertising:** in certain circumstances the contract does not have to be advertised in the OJEU (eg for technical or artistic reasons or where, because of the protection of exclusive rights, the contract can only be carried out by a particular bidder). This procedure may only be used in the limited circumstances set out in the Regulations.

**Time Constraints**

2.22. The Regulations specify minimum time requirements to allow potential providers to express an interest and to submit their tenders. All time requirements are in calendar days. The limits vary according to whether the Open, Restricted or Negotiated Procedure is followed and may be reduced in circumstances identified in the Regulations (see 2.12). The table below sets out the minimum timescales and the potential for reduction.

<table>
<thead>
<tr>
<th>Procedure</th>
<th>No of days</th>
<th>Possible reductions to timescale</th>
<th>No of days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open</td>
<td>Receipt of tenders from date Contract Notice sent</td>
<td>52</td>
<td>PIN published</td>
</tr>
<tr>
<td></td>
<td>PIN published</td>
<td></td>
<td>XML transmission of Notice*</td>
</tr>
<tr>
<td></td>
<td>XML transmission of Notice*</td>
<td></td>
<td>ITT docs available online**</td>
</tr>
<tr>
<td></td>
<td>ITT docs available online**</td>
<td></td>
<td>Absolute minimum specified</td>
</tr>
<tr>
<td><strong>Restricted</strong></td>
<td>Receipt of requests to participate (PQQs) from date Contract Notice sent</td>
<td>37</td>
<td>XML transmission of Notice*</td>
</tr>
<tr>
<td></td>
<td>PIN published</td>
<td></td>
<td>ITT docs available online**</td>
</tr>
<tr>
<td></td>
<td>ITT docs available online**</td>
<td></td>
<td>Absolute minimum specified</td>
</tr>
</tbody>
</table>
Restricted accelerated
Receipt of requests to participate (PQQs) from date Contract Notice sent 15
Receipt of tenders from date ITT sent 10

Competitive dialogue
Receipt of requests to participate (PQQs) from date Contract Notice sent 37
XML transmission of Notice* -7

Negotiated
Receipt of requests to participate (PQQs) from date Contract Notice sent 37
XML transmission of Notice* -7

Negotiated accelerated
Receipt of requests to participate (PQQs) from date Contract Notice sent 15
XML transmission of Notice* -5
Receipt of tenders from date ITT sent 10

* The Notice must be prepared and submitted electronically in a way that is compliant with the requirements of the Office of the Official Publications of the European Union. This generally means transmission via an XML gateway using a provider such as BiPSolutions.

** Timescales for the return of tenders may be reduced by 5 days where the Contracting Authority provides full and unrestricted electronic access via a website to the ITT documents from the date of publication of the OJEU Notice and the Notice specifies the internet address where the documents are available.

Accelerated procedures

2.23. The "accelerated" procedure may only be used where the normal timescales are rendered impractical for reasons of urgency. There must be a valid reason for using the accelerated limits, which must be stated clearly in the advertisement. Poor planning is not generally considered a valid reason for reducing timescales.

2.24. Where, because of the nature of the requirement, tenderers are given the opportunity to inspect the premises, the time limits for submission of tenders must be extended to allow for such inspection.

Award Notice

2.25. A Contract Award Notice must be sent to the OJEU no later than 48 days after the award of the contract. An Award Notice is also required for Part B services where the contract value exceeds the specified threshold.

Contracts which fall outside the full scope of the Regulations

2.26. The European Commission has become increasingly interested in contracts
that fall outside the scope of the Directive. In 2006 the Commission issued an Interpretative Communication in which it set out best practice for the award of such contracts. The basis of this best practice is that, whether a contract is subject to the Directive or not, public bodies have a duty to carry out the procurement exercise in a way that is consistent with the principles of the original EC Treaty (ie non-discrimination, equal treatment, transparency, mutual recognition and proportionality). Some degree of advertising, appropriate to the scope and value of the contract, is likely to be necessary to demonstrate transparency.

2.27. Public bodies are required to open these contracts to competition by way of a “sufficiently accessible advertisement” if it is likely to be of interest to other Member States. It is for the public body to determine the likelihood of such interest and the most appropriate means of advertising it, taking into consideration the nature of the requirement and its value.

2.28. The contract award process must be fair and impartial and it is recommended that the best way to do this is by following the rules set out in the Regulations in relation to the specification, evaluation and award criteria.

Specifying the requirement

2.29. Requirements must be specified without using brand names or other references which have the effect of favouring or eliminating particular providers, products or services. Where standards are specified they must allow equivalents also. Performance as well as technical specifications are allowed.

2.30. Further information on writing a specification can be found in Chapter 11.

Selection criteria

2.31. The Regulations state that the selection or rejection of providers must be based on:

- evidence that they are not suitable on the grounds of, for example, insolvency, criminal conviction, failure to pay taxes. Some offences (eg fraud, money laundering) require mandatory exclusion;
- economic and financial standing – eg they are judged to be financially sound on the basis of their annual accounts; and
- technical capacity and capability – eg that they will be adequately equipped to do the job and that their track record is satisfactory.

2.32. For further information on supplier selection see Chapter 13 of this Procurement Manual.

Award criteria

2.33. The award criteria, together with any sub-criteria and weightings, must be
clearly set out either in the Contract Notice or the specification/ITT documents.

2.34. Two options are open to the Contracting Authority: lowest price or most economically advantageous tender (MEAT). As a general rule, particularly for services, the NAO favours the MEAT option as this is consistent with government policy and the obligation to obtain value for money. Care must be taken when using the lowest price option but in certain circumstances (eg commodity items which can be tightly specified) it may appropriate.

2.35. For further information see Chapter 14.

Enforcement

2.36. The enforcement regime is set out in the Regulations and derives from the Remedies Directive. The principal means of enforcement for a breach of the Regulations and other EU law such as the Treaty are:

- action by providers against individual purchasers in the High Court; and
- action by the Commission against the Member State in the European Court of Justice (ECJ).

2.37. The result of such an action could be the suspension of the procurement procedure where a contract has not yet been awarded. The High Court may also award damages. Where a contract has already been entered into, an award of damages is currently the only remedy the High Court can provide. The ECJ however has demonstrated that in certain circumstances it is prepared to overturn a contract that has been awarded. The new Remedies Directive which will be incorporated into UK law in December 2009 allows for contracts to be ruled ineffective in certain circumstances.

Standstill period

2.38. The Regulations require all purchasers to include a period of at least 10 calendar days between the point when the decision to award the contract is made known to tenderers and the conclusion of the contract to allow tenderers and other participants to seek debriefing from the Contracting Authority.

2.39. See Chapter 23 for more detailed information.

Further information/reading

From the OGC website: EU procurement guidance, Introduction to the EU procurement rules, Competitive Dialogue in 2008 — a joint OGC/HMT publication

OGC’s Procurement Policy Information Note 03/06 European Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives
OGC’s Procurement Policy Note 01 /09 Use of Accelerated Restricted Procedure

The EU public procurement Directive

http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm

The Public Contracts Regulations 2006

http://www.opsi.gov.uk/si/si2006/20060005.htm#32
Chapter 3: Steps in the Procurement Process

- Identify the need (Chapter 4)
- Planning and preparation (Chapter 5)
- Market sounding/creation (Chapters 6 and 7)
- Options appraisal (Chapter 8)
- Business case (Chapter 9)
- Define procurement and contract strategies (Chapter 10)
- Write specification (Chapter 11)
- Advertise the requirement (Chapter 12)
- Receipt and evaluation of Expressions of Interest (PQQs) (Chapter 13)
- Prepare and issue invitations to tender (Chapter 14)
- Provide feedback to unsuccessful applicants (Chapter 15)
- Clarification of requirement and bidders' forum (Chapter 16)
- Receipt and evaluation of tenders received (Chapter 17)
- Presentations (Chapter 18)
- Bid clarification (Chapter 19)
- Site visits and references (Chapter 20)
- Post tender negotiations (Chapter 21)
- Decision to award contract (Chapter 22)
- Standstill period and debriefing unsuccessful tenderers (Chapters 23 and 24)
- Contract award (Chapter 25)
- Announcement of successful bidder (Chapter 26)
- Contract management (Chapter 27)
- Post-contract review and evaluation (Chapter 28)
Chapter 4: Identification of need

Introduction

4.1. The first step in the Acquisition Pre-contract process is the identification of the need to buy. This may come about as a result of the impending expiry of an existing contract, or when an internal customer states they have a new requirement.

Challenge the need to buy

4.2. It is part of the role of procurement staff to challenge the need to buy a specific product or service. It may be that an alternative product exists that can be obtained at a lower price. More generally, for example, with professional services the question may be whether or not anything has to be bought at all — ie can the work be done in house?

Forward planning

4.3. Informing the market about long-term procurement plans gives providers time to react and to develop innovative solutions to the requirement. This can be done in various ways, for example by:

- the use of a Prior Information Notice (PIN) in the OJEU;
- advertising on the NAO’s website or buyer profile; and
- holding open days for potential bidders.
Chapter 5: Preparation, planning and timetabling

Introduction

5.1. Planning and preparation are vital for all procurements, particularly so for those advertised in the OJEU where the exercise will take several months. This chapter identifies the key areas that will need to be considered at the start of the exercise.

Possible procurement routes

5.2. The value and nature of the requirement and the availability of suitable framework agreements are the main factors which determine the procurement route. It is best to consider it at an early stage as it will affect the timetable, documentation required etc.

OGC Gateway Process

5.3. If the procurement is complex and/or high value, or is linked to a project, it may need to be subject to the OGC Gateway Process. This process examines programmes and projects at key decision points in their lifecycle, looking ahead to provide assurance that they can progress successfully to the next stage; the process is best practice in central civil government, the health sector, local government and Defence.

5.4. OGC Gateway Reviews are applicable to a wide range of programmes and projects including:

- policy development and implementation;
- organisational change and other change initiatives;
- acquisition programmes and projects;
- property/construction developments;
- IT enabled business change; and
- procurements using or establishing framework arrangements.

5.5. OGC Gateway Reviews deliver a "peer review" in which independent practitioners from outside the programme/project (and for major projects from outside the buying organisation) use their experience and expertise to examine the progress and likelihood of successful delivery of the programme or project and to challenge the robustness of plans and processes.
5.6. **Gateway Reviews are considered at key points in a project:**

<table>
<thead>
<tr>
<th>Gateway</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gateway 0</td>
<td>strategic assessment (programmes only) Investigates the direction and planned outcome of the programme and the progress of constituent projects</td>
</tr>
<tr>
<td>Gateway 1</td>
<td>business justification Takes place after the strategic business case has been written and prior to key decision on approval</td>
</tr>
<tr>
<td>Gateway 2</td>
<td>delivery strategy Takes place before any formal approaches are made to prospective providers</td>
</tr>
<tr>
<td>Gateway 3</td>
<td>investment decision Takes place before contract is awarded or funding committed</td>
</tr>
<tr>
<td>Gateway 4</td>
<td>readiness of service Reviews readiness to go live with business changes and arrangements for managing the services</td>
</tr>
<tr>
<td>Gateway 5</td>
<td>operations review and benefits realisation Confirms that the desired benefits of the project are being achieved, and the business changes are operating smoothly</td>
</tr>
</tbody>
</table>

5.7. Further information can be found at: [www.ogc.gov.uk/what is ogc gateway review.asp](http://www.ogc.gov.uk/what is ogc gateway review.asp)

**Internal approval process**

5.8. The NAO’s procurement policy [http://merlin/CorporateServices/procurement/ policy.htm](http://merlin/CorporateServices/procurement/ policy.htm) requires the internal customer to obtain approval for the procurement prior to the exercise starting. Depending on the nature, value and complexity of the requirement, approval may also be required at interim stages in the exercise. This must be allowed for in the timetable.

**Documentation**

5.9. The exact documentation will depend on the procurement route and will include some or all of the following documents:

- Contract Notice and/or other advertisement
- Pre-qualification questionnaire (PQQ)
- PQQ evaluation plan and matrix
- Instructions for Tendering/Request for Proposal
- Specification
- Price schedule
- Conditions of Contract

5.10. As a minimum there should be an outline specification before any advertisement is placed, particularly if the requirement is to be advertised in the OJEU. It is important to ensure that the scope set out
5.11. If a requirement is advertised in the OJEU and the Contract Notice contains an inadequate or incorrect description of what is to be bought, the result may be infraction proceedings by the European Commission against the UK. If there is any uncertainty about whether a particular element will be required, it is preferable to advertise it with a suitable caveat, rather than to omit it. See OGC’s PPN 03/09 the need to ensure published Contract Notices are accurate and cover the complete requirement.

Activities

5.12. Not all procurement exercises involve all the stages described in this manual. It is important to consider at an early stage which stages are likely to be needed and to allow for these in the timetabling.

5.13. New and/or complex requirements that cannot be met from existing framework agreements will require a two-stage process and may also involve market sounding and/or creation activity.

Selection and award criteria

5.14. It is helpful at this stage to consider at least in broad terms both the award criteria for the tender stage and the selection criteria for the PQQ stage. Both sets of criteria must be relevant to the subject matter of the contract.

5.15. Selection criteria, the weightings and scoring mechanism must be made known to applicants either in the Contract Notice or in the PQQ documents. Award criteria, sub-criteria and weightings must be made known to bidders either in the Contract Notice or in the ITT documents.

Scope

5.16. Determine and challenge the identified scope of the requirement. Could making it broader avoid future exercises for similar requirements? Would making it narrower (eg doing some of the work in-house?) reduce the cost and represent better value?

Timetable

5.17. The content and duration of the timetable will depend on the chosen procurement route and the complexity of the requirement. Generally a relatively straightforward requirement using a framework agreement will need a minimum of 10 working days for the submission of tenders, and a further 5 days for the evaluation and decision-making process.

5.18. For more complex requirements or those where a framework agreement cannot be used, four to six weeks should be allowed from the finalisation of the specification to the start of the contract. Where the requirement is advertised and a two-stage process is undertaken, three months should be
allowed for the exercise.

5.19. The procurement Regulations prescribe minimum timescales for requirements that are advertised in the OJEU (see para 2.22 in Chapter 2) and at least 4 to 6 months must be allowed for the completion of these exercises. More complex requirements may take 6 to 9 months or possibly longer.

5.20. Dates for the evaluation of the tenders, and presentations where appropriate, should be agreed as soon as possible and diarised.

Membership of the Tender Evaluation Panel

5.21. Even for relatively straightforward requirements under a framework agreement, there should be a Panel Chair who co-ordinates and takes responsibility for the evaluation, ensuring it is conducted in a fair, transparent and appropriate manner.

5.22. As a minimum there should be one Panel member apart from the Chair. Where possible, all Panel members should be NAO staff.

5.23. Panel members should have no real or apparent conflicts of interest relating to the tenders being evaluated. Each person involved in the evaluation must also declare any potential personal conflicts of interest which may arise from:

- a direct financial interest in a company with which a contract is under consideration, such as: remunerated directorships, remunerated employment, a shareholding amounting to controlling interest or other significant shareholding;

- a personal interest if they have a partner, relative or friend working for any of the companies involved in the tender process.

5.24. Paras 5.12 and 5.13 of the NAO’s Code of Conduct set out the action to be taken in the event of a member of staff having any conflict of interest in relation to a procurement exercise.

Ethics

5.25. Staff involved in short listing and bid evaluation must be objective. Personal interests should not impinge on the impartiality of staff. Where personal interests could conflict, the staff member should consider withdrawing from the procurement, reducing their involvement or arranging for their decisions to be reviewed. It would normally be appropriate to discuss concerns with a line manager at an early stage. At the very least staff should be open with colleagues about potential conflicts.

5.26. Staff involved in short listing and bid evaluation must be very careful about receiving business gifts and hospitality. The NAO Finance Manual and Code of Conduct set out rules detailing what may or may not be accepted and what needs to be declared. In addition, staff should consider the motives of potential donors, and how their own role in the process might be perceived by third parties.
5.27. If a member of staff has reason to believe that they are being offered an inducement, they must report the matter. Offering such inducements could be a criminal offence (see guidance in the Finance Manual). The matter will be considered at corporate level and will normally result, at least, in summary rejection of the relevant bid.

5.28. The NAO’s policy on the acceptance of gifts and hospitality is set out in section 6 of the Code of Conduct. Panel members should also bear in mind that hospitality that may be acceptable during the contract management phase of a requirement is likely to be completely inappropriate before the contract is awarded.

5.29. All NAO staff who are members of The Chartered Institute of Purchasing and Supply (CIPS) have signed to accept the CIPS Code of Professional Ethics.

Further information/reading

OGC’s PPN 03/09 the need to ensure published Contract Notices are accurate and cover the complete requirement.

The NAO’s Code of Conduct which can be found on Merlin the NAO’s Finance Manual which can be found on Merlin

CIPS Code of Professional Ethics – see http://www.cips.org/aboutcips/whatwedo/codeofprofessionalethics/
Chapter 6: Market Sounding

Definitions and introduction

6.1. Market **sounding** is the process of assessing the reaction of the market to a proposed requirement and procurement approach.

6.2. This chapter is based on OGC guidance and describes the process of engaging with the market at an early stage, in order to gather and consider market intelligence in relation to the aims of the procurement exercise.

Purpose

6.3. Early market engagement is aimed at establishing guiding principles for major procurements that:

- will involve significant business change for the buying organisation;
- involve high levels of risk or uncertainty;
- push the boundaries of what has been achieved before (technically, organisationally or in any other sense); and/or
- require the involvement and expertise of the private sector at the earliest possible stage in order to shape the procurement.

When market sounding is appropriate

6.4. Market sounding is not appropriate for every procurement exercise, but should be considered if the answer to any of the following questions is “yes”:

- Is there doubt over the existence of a market for the identified requirement?
- Assuming there is a market of some kind, are there doubts over its capacity, capability, maturity or competitiveness?
- Is first-hand in-house knowledge of the market superficial, incomplete or nonexistent?
- Is there uncertainty about the level of providers' interest?
- Is the desired outcome likely to involve significant business change? Is it unprecedented?
- Is there a need to manage expectations of the project?
- Is the requirement very unusual? Is the solution likely to be complex or innovative?

Timing
6.5. Market sounding should begin at the earliest possible stage in the procurement process, and involves gathering knowledge in these key areas:

- feasibility
- capability
- maturity
- capacity

Benefits

6.6. The benefits include:

- shaping the procurement exercise to align it with relevant markets;
- saving time and effort by bringing precise focus to later activities;
- early visibility of issues that will affect the procurement exercise;
- early understanding of procurement risks; and
- the opportunity to manage expectations of what the market can and cannot contribute to the procurement exercise.

Questions to be addressed

6.7. The following questions are ones which the buying organisation should expect to answer through dialogue with providers:

- Maturity: is the market ready to deliver what's required?
- Feasibility: will the market be technically capable of meeting the requirement?
- Competition: how many providers provide what is required; will procurement be sufficiently competitive?
- Capacity: are there enough providers, with sufficient capacity, to meet the requirement?
- Working together: will the requirement bring providers from different sub sectors together in a new way? How will this work?
- Traditions and prevailing attitudes: what are they in this market? How will they affect the project?

Possible questions for providers

6.8. Some possible questions to open productive discussions with providers:

- Are they interested in this opportunity?
• If not, why not?
• Is the business model realistic?
• Are the business aims realistic? Is the business attractive?
• What do they see as the risks?
• Can they give an early indication of cost?
• Can they give a broad indication of the likely timescales?
• Are there other, better approaches or solutions that we have not considered?
• What issues has the buying organisation missed? What assumptions has the buying organisation made?

6.9. It must be made clear to providers that any discussions of cost are purely indicative.

6.10. It is essential to talk to the right providers — ideally, those who have achieved outcomes of a similar nature and scale to the buying organisation’s requirement.

6.11. Impartiality and confidentiality must be maintained throughout the activity.

Who should be involved?

6.12. Carrying out market sounding requires specific skills. Any gaps in knowledge or skills may be filled by consultants; alternatively OGC may be able to assist. Ideally staff who carry out market sounding should have some previous experience of it and the following key skills:

• business knowledge
• market knowledge
• technical knowledge
• analytical and decision-making skills
• communication skills

Use of PINs (Prior Information Notices)

6.13. PINs can help to alert potential providers to the opportunity and open a dialogue with them.

6.14. PINs include details of the buying organisation, contact details and a brief overview of the requirement including background, type of service, timescales etc. They should be broad enough to allow for flexibility later, but precise enough to avoid sending mixed, contradictory or misleading messages to the market.
Further Information

6.15. See the Market Assessment pages of the Introduction to Procurement section on OGC’s website at www.ogc.gov.uk/introduction to procurement.asp on which this chapter is based.
Chapter 7: Market Creation

Definitions and introduction

7.1. *Market creation* is the process of stimulating the marketplace to ensure that there will be a healthy competitive response to the buying organisation’s requirements, thus contributing to the achievement of value for money in any resulting procurement exercises.

7.2. This chapter, which is based on OGC guidance, deals with the situation where the buying organisation believes that there may be an inadequate competitive response to its requirements. When any procurement exercise is planned, the buying organisation should, as far as possible, assure itself in the early stages of the exercise that a competitive market exists, or will exist, to meet the proposed requirement, and that any advertised procurement will receive an adequate competitive response.

7.3. The necessary activities should be undertaken during the period of initial investigation leading to the development of the Procurement Business Case.

The need for market creation

7.4. Market creation may be needed in relation to:

- a single specific requirement leading to a procurement exercise for the supply of goods or services;
- a generic requirement for the creation of a market which will be called upon to satisfy a range of requirements over a period of time, resulting in a number of procurements as specific needs arise.

This guidance applies to both of the above situations.

Reasons for the need for market creation

7.5. There may be several reasons for the need:

- Novel requirement — where the buying organisation has a novel or non-standard requirement, and there appear to be no current offerings in the marketplace which meet it, and little or no interest among providers to respond to it. Interest among potential providers will need to be stimulated in order to generate a competitive market response.

- Incumbent provider — where an existing service or product supply is being re-competed and there is an incumbent provider who is regarded by the market as strongly entrenched. Interest in a competitive procurement exercise will need to be generated and maintained, and the marketplace persuaded that the bid is "winnable" and that there is a level playing field for all prospective bidders.

- Lack of market interest — where there are potential providers able to meet the requirement in principle, but not enough bidders are willing to
respond. The lack of interest may arise from the scale of the requirement (too large or too small); the geographical or organisational scope; perceived problems in the commercial viability of the resulting contract; concerns about risk; unhappiness with the procurement procedures; lack of resources for bidding or for implementation, etc. The concerns of the marketplace will need to be addressed, and interest in meeting the requirement stimulated; this may require revisiting the nature or scope of the requirement or the procurement route, or changing culture patterns or behaviours within the buying organisation.

Approaching the market

7.6. Where the buying organisation discovers or suspects a lack of market interest in the requirement, it cannot sit back and wait for the market to come forward to meet the requirement. The buying organisation must demonstrate strong marketing skills in order to persuade a possibly reluctant supply side to take an interest in its requirements and to enter and maintain a competition for the supply.

7.7. The starting point for an approach to the marketplace is a good understanding of the relevant market including such factors as:

- the structure of the relevant market: number and size of providers;
- key players in the marketplace;
- the current market offerings of products and services;
- the drivers for the market: what business opportunities are regarded as most desirable;
- the scope for innovation and for expanding the market;
- current capacity and capability in the marketplace, and the demands currently being placed on the relevant supply markets; and
- the barriers to entry in the market.

Who is involved in market creation?

7.8. Responsibility for a successful procurement exercise, including demonstration of a successful competition, lies with the procurement team. Actions to ensure a competitive response should be included in the plans for the procurement exercise, together with contingency plans for the situation where the desired competitive response is not forthcoming — this eventuality should be recorded as one of the procurement risks.

7.9. The buying organisation’s business users will wish to assure themselves that the solution emerging from the procurement exercise represents the best value for money. They should be kept informed of any developments to create a competitive market, and may be required to reconsider the scope or packaging of the business requirement in the
interests of generating a competitive response.

7.10. It is essential that senior management demonstrate their support for the contacts with the marketplace, and makes themselves available for top-level meetings with potential bidders.

7.11. Access to marketing expertise may also be helpful in designing the organisation's approaches to the marketplace.

The provider's perspective

7.12. Providers have to deal with many calls on their resources, and are necessarily selective in responding to business opportunities. Every business opportunity presents potential costs and risks as well as benefits. When presented with a prospective sales opportunity, a provider will generally assess the prospect against a number of factors and compare it with other potential calls on his resources. The senior management in a provider's organisation may need to be convinced that a particular opportunity is worth the time and effort that will have to be invested.

7.13. This is generally not a one-off exercise: the provider will generally review a prospect at each stage in the procurement process, and will be prepared to withdraw from the competition at any stage if the outcome of the review is negative. As the procurement process proceeds, the level of the provider’s involvement and the costs of responding and staying in the race increase.

7.14. Each succeeding stage in the process represents a decision point for the provider, based on his assessment of whether it is worth investing in the next stage and his prospects of ultimately winning the business. Ensuring a healthy competitive response to a requirement means maintaining the competition into the later stages of the procurement exercise, and it is important for the buying organisation to consider how it will maintain the commitment of bidders to the competitive process.

7.15. A number of factors influence a provider’s level of interest in a requirement:

- whether the business matches the provider’s commercial/technical/market strategy;
- whether the requirement is achievable and risks on both sides are manageable;
- the provider’s willingness to work with/for the buying organisation;
- whether there are sufficient suitable and available resources in the potential bidders’ organisations to put a bid together particularly if the requirement is large, complex or novel;
- whether the provider will have access to resources to do the job, in the right place at the right time;
- affordability of bid costs;
• commercial viability of the prospect;

• there is a real opportunity ie there is genuine commitment in the buying organisation to the requirement definitely going ahead — providers will be unwilling to invest major resources in pursuing a requirement which they perceive to be uncertain;

• there is a real competition — a provider will need to be convinced that the contract is winnable;

• assessment is based on value, not price;

• whether the buying organisation is open to innovative approaches; and

• whether the procurement process is well defined and managed.

Further information

7.16. See the Market Creation pages of the Introduction to Procurement section on OGC’s website at www.ogc.gov.uk/introduction_to_procurement.asp on which this chapter is based.
Chapter 8: Options Appraisal

Introduction

8.1. Generally it will be for the appropriate business area to undertake an options appraisal but procurement staff may need to contribute to, or comment on, an appraisal and must have an understanding of the principles and content.

Definition

8.2. Options appraisal is a means of testing the relative VFM of alternative expenditure options. It can be used prior to the commencement of a project to help select the subsequent course of action, which may involve one or more procurements. It can also be used at various stages of a project or a procurement exercise to help identify the best way forward.

Purpose

8.3. It is important to plan ahead, before options are closed off. The NAO needs to bid for funding from Parliament; lack of funding will obviously restrict the options which can be pursued. Other factors to be considered include anticipating when existing contracts are due to be re-competed, and staff availability.

8.4. Options appraisal in some form should precede every procurement exercise. The extent of the appraisal will depend on the importance, cost, size, complexity and urgency of the task in hand. The options appraisal for minor non-controversial decisions need not be documented, but more significant decisions, with details of how they were arrived at, should be formally recorded for future reference.

8.5. For major decisions a more detailed options appraisal, which may include costing estimates, risk analysis and sensitivity analysis, is likely to be required. It may be appropriate to involve consultants in this process. Sometimes a minor options appraisal is carried out to determine how to carry forward a more detailed appraisal. The extent of options appraisal must always be appropriate to the project being undertaken.

The Options Appraisal Process

8.6. There are five essential steps to a major options appraisal:

Specifying the Objective

8.7. The objective(s) of the project or procurement exercise must be defined to ensure that valid options are not ruled out. The overall objectives of the project should be considered rather than any immediate single problem that is being encountered.

8.8. The objective(s) of procurement activity in the NAO should be in
accordance with the NAO’s Vision, Mission and Values and its corporate objectives as set out in the Resource Account and in the Corporate Plan. If it is not immediately apparent that the objective of the project accords with the NAO’s Vision, Mission and Values and its corporate objectives, the reasons for this must be investigated and a question raised as to whether pursuing the procurement project can be justified.

**Identifying the options**

8.9. Although at the outset one option may be seen as the most probable way forward, steps should be taken to try to identify alternative options. These should include the "do nothing" or "do the minimum" option. If an apparently reasonable option is to be excluded, the reasons for doing so should be documented for the audit trail.

8.10. If choice is limited, it may be necessary to include options in the evaluation that do not fully meet the objectives or which, at face value, cannot be afforded. The latter may indicate the desirability of obtaining extra funding or perhaps delaying action until funds become available.

8.11. Extending contracts that do not include a specific extension clause is generally not an option. Even where an extension clause exists, there should always be a positive decision to continue based on a mini options appraisal which identifies costs and benefits.

8.12. When the options have been identified, the costs and benefits of each option should be evaluated as far as possible.

8.13. The full cost associated with each option should be determined, including NAO staff and management time and any costs involved in contracting out a function. Where an option involves procurement, a best estimate of the cost should be made. Qualitative factors should also be considered, such as adverse staff or client body reaction to a proposal or poor quality of product or service.

8.14. The benefits are less likely to be quantifiable in cash terms, although they will sometimes involve income-generation. Benefits may include better quality of service. Releasing NAO staff will only be of benefit if those released can be employed effectively elsewhere.

8.15. The risks associated with each option should also be identified. The risks associated with a “do nothing” option will often be the justification for doing something. The risks associated with change may lead to a “do nothing” decision. Every option will have some risks associated with it, but some risks will be much more likely to materialise and many risks can be mitigated by the adoption of safeguards. The following areas of risk could be considered:

- not meeting the objective at all;
- meeting the objective late;
- only meeting the objective partially;
- costs over budget;
• damage to the NAO’s reputation or adverse publicity;
• damage to staff morale;
• worsening relations with audited bodies and/or providers;
• (perceived) loss of independence or objectivity;
• loss of control.

Evaluating costs and benefits

8.16. The identification of costs, benefits and risks should be followed by evaluation. The expected costs and benefits should be quantified where possible, and the likelihood and impact of each risk actually materialising should also be considered along with ways in which the risk may be mitigated.

8.17. Scorecards are one method of evaluating costs and benefits. The business area can identify key factors with appropriate weightings to meet their particular needs. Where different options would involve different timetables, costs in future years will need to be identified and converted as necessary in order to maintain comparability. Evaluation will usually take the form of a written options appraisal statement.

8.18. The presence of risk should never in itself be used solely as the basis for rejecting options. The NAO should consider the likelihood of the risk materialising, and its impact. Rejecting options because of a risk may lead to the NAO denying itself better options. The effects of many risks can be mitigated if the risks are known and appropriately addressed.

Selecting the best option

8.19. The options appraisal should recommend which option to proceed with. It can be used by the NAO’s senior management to ratify a decision to proceed and as a reference point at later stages of the process (for example, if bids are higher than expected, whether in-house provision should be reconsidered). It also provides an essential element of the audit trail, demonstrating that a rational decision-making process has been followed.

Timetable

8.20. The recommended option should include a detailed timetable setting out key tasks from the outset to ensure that work is properly planned and that a contract is in place before the provider starts work or delivers goods. In particular, adequate time must be allowed if the UK Procurement Regulations require the contract to be advertised in the OJEU.
Chapter 9: Preparation and approval of the procurement business case

Introduction

9.1. The procurement business case is a key document in any procurement exercise as without approval and signature from the Project Director/budget holder the procurement cannot go ahead and the exercise should not commence.

9.2. Once the business area has identified the need to buy goods and/or services, they will need to prepare a procurement business case setting out:

- background to and purpose of the requirement;
- why the use of external resources is necessary;
- the expected benefits;
- the estimated costs;
- the proposed procurement route including, where appropriate, why a framework agreement cannot be used; and
- the proposed contract period.

9.3. The procurement business case is also the mechanism for seeking approval at the appropriate level for the expenditure, and exceptionally, for inviting a single tender, where this is considered appropriate.

9.4. In general procurement staff will not be involved in the production of the business case although, depending on the value and level of risk, it would be wise to include the view of the CPT on, for example, the procurement route or contract strategy.

9.5. A business case checklist template can be found in Keystone under Procurement Templates.

Further information/reading

9.6. See the Business Case pages of the Introduction to Procurement section on OGC’s website at www.ogc.gov.uk/introduction_to_procurement.asp on which this chapter is based.
Chapter 10: Procurement and contract strategies

Definitions and introduction

10.1. A **procurement strategy** identifies the best way of achieving the objectives of a procurement exercise and VFM, taking account of the risks and constraints.

10.2. A **contract strategy** should support the main objectives of the procurement in terms of risk allocation, delivery etc. It sets out the type of commercial arrangement that will be sought, the form of contract, contract duration etc. Depending on the nature and complexity of the requirement the contract strategy may also set out whether the requirement will be delivered by first tier providers, a single prime contractor, a consortium or a combination of these.

10.3. The **procurement route** delivers the procurement strategy and includes the contract strategy.

10.4. This chapter is based on OGC guidance and sets out the factors to consider when determining the procurement and contract strategies for a procurement exercise. Strictly, all procurement exercises should have both a procurement strategy and a contract strategy, but for low-value requirements these may not be documented other than in the business case. Paras 10.6 to 10.9 are mainly concerned with requirements with a value over the OJEU threshold. Para 10.10 et seq deal with the procurement route for requirements whose value is below the OJEU threshold.

10.5. The terms may be used loosely (particularly “procurement strategy” which may be used to cover a buying organisation’s strategy for all its procurement activity over a defined period of time). This chapter uses the definitions provided by OGC in their publication *Procurement and Contract Strategies*.

Content of procurement strategy

10.6. Depending on the nature of the exercise and any related project, the procurement strategy is likely to include:

- main objectives of the procurement exercise that will be met by the selected procurement strategy;
- sourcing decision, with justification (eg PFI, prime contractor);
- procurement route (Open, Negotiated, Restricted, Competitive Dialogue) with justification for the selected route;
- key milestones with target dates;
- high level specification of the requirement;
- evaluation strategy (including key criteria and weightings);
key stages in the exercise eg selection of bidders (including details of likely number of bidders); evaluation of proposals/tenders; negotiations, where appropriate; contract award; debriefing; and

budget and funding.

Points to consider

10.7. When writing the procurement strategy the following points should be considered:

- previous relevant procurement exercises — their outcomes, successes and problems
- the risks relating to achievement of business objectives and the factors which influence them which include:
  - uncertainty and/or innovation in the requirement
  - the complexity and scale of the procurement and any related project (particularly outsourcing)
  - the length and flexibility of the timescales for implementation
  - the priorities of the business benefits to be achieved
  - the possibilities of change in the buying organisation's operations
  - availability of project management and technical expertise
  - the ability of the market to respond to the requirement.

Content of a contract strategy

10.8. A contract strategy should include:

- the type of commercial arrangement being sought (eg PFI/PPP, partnering, single or multiple providers etc);
- the form of contract;
- the negotiation plan, where relevant, including draft contract schedules;
- the contract duration;
- the price mechanism and other commercial features such as incentives and rewards; and
- the payment mechanism.

Points to consider
10.9. The following points should be taken into account when determining the contract strategy:

- arrangements relating to any existing contracts which will be affected by the new contract;
- whether an existing framework agreement can be used;
- any staff transfer (TUPE), asset transfer, property leases/sales etc;
- implications if the procurement is a collaborative opportunity;
- ownership of intellectual property; and
- whether there will need to be arrangements like SLAs, MOUs etc with other public sector bodies or any contractual arrangements with other third parties (eg access agreements) covering data provision, usage etc.

**Requirements with a value below £10,000**

10.10. Requirements with a value below £10,000 are not required to go through a full competitive tendering process, as it is likely that this would not be cost-effective. However, there is a requirement for budget-holders to obtain 2 to 3 telephone quotations which should be recorded on file.

10.11. Where a small value contract is likely to lead to repeat or follow up work, the procurement method used should be appropriate to the estimated value of the combined work. A phased procurement approach may be appropriate where the subsequent stages of the work will commence only on successful completion of the first/early phase. When contemplating subsequent second purchases by single tender, consideration must be given to formal competition with appropriate advertising if a framework agreement is not used. The budget holder should clearly and formally document any decision not to pursue a formal procurement in these circumstances.

10.12. GPC should be used to pay for low-value (below £5,000) purchases wherever possible, provided that all financial delegations and authorities are observed.

10.13. Where the requirement is for professional services, it is likely that it will be necessary to draw up some form of specification and to receive proposals back to ensure that the contract terms including what is to be delivered under the contract are clear and unambiguous.

**Requirements with a value above £10,000 but below £20,000**

10.14. For requirements between these values, at least 3 written competitive quotations are required using the standard “Request for Quotation” template.

10.15. Less than three providers may be approached where there is a clear reason for doing so. This requires the written permission of the budget holder, setting out their approval and reasons for their decision.
10.16. The selection process must be fully documented, including the nature of any price or service benchmarking undertaken and how the decision to award the contract was arrived at.

10.17. See 10.13 above where the requirement is for professional services.

Requirements with a value over £20,000 and below £101,323 (as at January 2010)

10.18. Requirements with a value below £101,323 (as at January 2010) are not subject to the procurement Regulations and do not therefore need to be advertised in the OJEU. However, the EC Treaty principles (in particular transparency and non-discrimination) apply to all procurements and to demonstrate these some form of advertising, proportionate to the value and nature of the requirement, is likely to be necessary.

10.19. The CPT should be consulted to ensure that an appropriate process is followed, including giving consideration to whether or not the requirement is likely to be of interest to other member states.

Part B Services with a value over £101,323 (from January 2010)

10.20. Where the value of a requirement for Part B services is likely to meet or exceed the current threshold for advertising, the CPT must be consulted. Even though the requirement does not fall within the full scope of the procurement Regulations, adequate advertising will still be required eg in a UK trade journal, Contrax Weekly, on the NAO website or the supply.2.gov portal. If it is likely to be of interest to other member states, the requirement should be advertised in the OJEU.

Aggregation

10.21. Contracts should not be artificially split nor should values be underestimated in order to allow an award to be made under procedures appropriate to a lower threshold. Contracts awarded by the same Contracting Authority to the same provider should be considered as a single requirement unless there are convincing reasons to do otherwise.

10.22. The decision on how to take a procurement exercise forward should be made by the Project Director and budget-holder, in consultation with the Central Procurement Team, and should be documented on file.

10.23. Approval at AAG level should be sought if a non-standard approach is proposed at this stage. Documentation such as e-mails or minutes of meetings is acceptable for recording AAG approval.

Further information/reading

Further information on the operation of framework agreements can be found at Appendix A.

The NAO’s procurement policy can be found at
http://merlin/CorporateServices/procurement/policy.htm

See also the Procurement Strategy pages of the Introduction to Procurement section on OGC’s website at www.ogc.gov.uk/introduction_to_procurement.asp on which this chapter is based.

The following publications can be downloaded from OGC’s website www.ogc.gov.uk:

OGC’s Procurement Policy Information Note 03/06 European Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives

For construction projects, OGC’s publication Procurement and Contract Strategies: Achieving Excellence in Construction Procurement Guide
Chapter 11: The Specification

Definitions and introduction

11.1. A **specification** is a “statement of needs to be satisfied by procurement of external resources”. It may also be referred to as an "operational requirement", “statement of requirements”, “statement of user requirements”, "statement of service requirement", etc.

11.2. This chapter is based on OGC guidance and deals with the drafting of a specification, an essential step in the procurement cycle. It will form part of any subsequent contract with the successful bidder, and it is essential therefore that it is clear, unambiguous and comprehensive. Once the specification is included as part of the contract or order it can be changed only by agreement with the provider. Changes to specifications after the contract or order has been placed and accepted can incur cost and/or delay the delivery.

A template for a specification for professional services can be found in Keystone under Procurement Templates.

Purpose

11.3. The purpose of a specification is to give prospective providers a clear, accurate, and full description of the NAO’s requirements and to enable them to propose a solution to meet those requirements.

11.4. The specification is included with the invitation to tender, and should include performance targets or criteria for the acceptance of goods, services or works. The specification should also be the basis of the award criteria.

Types of Specification

11.5. A **performance or functional specification** describes what the product or service is to achieve, rather than the way it is to be achieved. This gives potential providers the opportunity to propose innovative solutions (or simply be more creative in their proposals), and also means the responsibility for ensuring the solution meets the requirement rests with the provider rather than the buying organisation.

11.6. A performance specification will specify the performance required of the solution by setting out details of inputs and outputs. Example performance measures are:

- throughput — the volume of inputs that can be handled within a specified time;
- accuracy — the number of outputs that are error free (usually expressed as a percentage);
- availability — the time the solution is able to be used as a percentage of the time it is supposed to be able to be used.
11.7. Some performance measures are easily defined by reference to existing operations, SLAs etc. Where this is not the case they need to be defined with users and can be informed by benchmarking information.

11.8. It is important to set performance measures at the right level:

- too high and they can be costly: the cost of meeting the higher performance level can be higher than the additional benefit obtained;
- too low and users' expectations will not be met, and there may be a detrimental effect on the business.

11.9. A **technical/design specification** defines the exact details of a product (eg its physical attributes, the materials to be used etc) or a service (eg the working methods to be used etc). There are some cases where it may be appropriate to specify particular types of equipment, provide drawings or in the case of clothing or textiles, sealed patterns, but as far as possible this should be avoided.

11.10. Where a technical specification is justified, it should, wherever possible, be written around recognised British or equivalent European or international standard.

11.11. It is Government policy to issue, wherever possible, specifications on a "performance" basis rather than in design terms.

**Who is involved?**

11.12. Drafting the specification is generally one of the first steps in any procurement exercise. Depending on the complexity of the requirement it may require involvement from several different areas of the NAO, including:

- Project Director/AAG — signoff in terms of the requirement
- Internal customer — drafting
- Stakeholders (including users) — contributing to the development of the requirement or reviewing the specification
- ITRC — if there are IT or communications elements
- HR — eg for TUPE issues
- Central Procurement Team — commercial issues and sign off in terms of compliance. A fundamental requirement of a procurement professional’s role is to challenge the user’s requirement.

**Content**

11.13. The overall scope will have been set out in the procurement business case. It now needs to be defined in detail, including:
<table>
<thead>
<tr>
<th>Section and Purpose</th>
<th>Content</th>
</tr>
</thead>
</table>
| **Introduction**    | • an introduction to the NAO and its work  
• an introduction to the specification & its purpose and composition  
• any disclaimers, caveats etc |
| **Background to the requirement** | • an overview of the work of the relevant business area and the role of this procurement in it  
• an overview of business objectives relevant to procurement  
• the objectives of the procurement  
• any history relevant to procurement — recent developments  
• description of the business activities in the area affected by procurement for example:  
  - business functions and processes  
  - organisation and staffing: roles and responsibilities  
  - stakeholders  
  - information flows  
  - current service support  
  - quantitative aspects of current operations  
• future developments relevant to procurement  
• policies, standards  
• objectives of PFI for procurement (where relevant) |
| **Scope** | • what is included  
• what is excluded  
• what is optional:  
  - extensions for which proposals will be considered;  
  - treatment of assets  
  - treatment of staff where TUPE transfers are anticipated |
| **The Requirement** | Background and supporting material should be kept separate from requirements (and ideally in the previous section to make the requirements easy to find). |
| **Standards** | Any standards relating to the goods or services being procured  
Eg health and safety, electrical etc should be set out.  
However care must be exercised when requiring conformance to standards, as the European Commission believes that organisations should consider any proposal that provides |
technical equivalence to, if not conformity with, the standard. As a rule of thumb, contracting authorities must therefore:

- specify by reference to national standards which implement European standards, or other European specifications, where relevant; and
- consider offers which purport to offer equivalent functionality or performance even though they do not conform to the standard in question. The burden of proving technical equivalence in this case will fall on the provider.

**Contract Duration**

The length of the contract should be specified, including an extension(s)

See 13.14 below for more information on points to consider

<table>
<thead>
<tr>
<th>Security requirements</th>
<th>Any specific security requirements appropriate to the requirement should be stipulated</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Other Requirements</strong></td>
<td>eg training</td>
</tr>
<tr>
<td>Constraints</td>
<td>Examples include:</td>
</tr>
<tr>
<td></td>
<td>- timing considerations (eg cannot start before, or must be complete by);</td>
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<td></td>
<td>- needing to work with other providers;</td>
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<tr>
<td></td>
<td>- needing to interface with other organizations' IT systems</td>
</tr>
</tbody>
</table>

**Implementation Requirements**

covers requirements for the period between awarding the contract and the entry of the goods or services into use, and includes acceptance.

In complex procurements it can be useful to request information on methodologies and processes the provider will use in implementing its solution such as:

- project management
- risk and issue management
- in IT projects, application development

**Contract/service management Requirements**

Any requirements covering contract/service management, for example:

- management information
- change management

**Procurement and contractual requirements**

These requirements are different to others in that they relate to the procurement process, not the resulting contract with the successful provider.

Things to consider include:

- expected nature of contracts proposed terms and conditions
- opportunities for suggesting different contract scopes
- proposed arrangements for management of service contracts
- roles and responsibilities

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**Contract duration**

11.14. For on-going requirements the costs of over-frequent tendering should be balanced against the risk of allowing a contract to run too long without further competition.

11.15. In the NAO contracts are usually awarded for a 2- or 3-year period with the option of 2 one-year extensions. Contracts for more than 5 years are rarely awarded, although contracts may be shorter if appropriate. However, in some cases eg where investment or continuity of provider is required, a longer
11.16. The Regulations set the maximum duration for framework agreements at 4 years; framework agreements required for a longer duration must be justified and agreed in advance with OGC.

11.17. Internal customers should be encouraged to consider the possibility of follow-on work when beginning a procurement exercise. Where the possibility of further work is high, this should be built into the initial specification, and the procurement route should be appropriate to the aggregate value of the full scope of likely work. A phased approach for contract delivery can be taken eg with Phase 1 of the work clearly specified, while Phase 2 may be indicative activity and pricing only, which can be firmed up on successful completion of Phase 1.

**Innovative solutions**

11.18. All procurement decisions made within the NAO must be based on VFM; this is not inconsistent with innovative solutions which may offer better quality, faster delivery, and/or reduced whole life costs.

11.19. Although innovation from providers should be encouraged at all stages of the procurement lifecycle, the greatest potential arises in the early stages eg in the formulation of the procurement strategy. During the procurement process the scope to accommodate innovative proposals may be limited by the exercise's documented requirements. The potential is greatest with a well-written output/outcome-based specification. Once the contract is let, the scope to incorporate innovation within the contract may be restricted by the nature of the contractual arrangements.

11.20. The Government is setting an enabling environment for seeking and procuring innovative solutions to better meet its needs. HM Treasury's report *Transforming Government Procurement* highlights the important role that innovation has to play in delivering high quality public services and recognises the need for Government to work with providers to find the best solutions to public needs even if they are not yet tried and tested.

11.21. Further information can be found in:

- OGC's PPN 05/07;
- Finding and Procuring Innovative Solutions (a joint OGC/DIUS publication)
- Capturing Innovation: Nurturing suppliers' ideas in the public sector
- Driving Innovation through Public Procurement (a Department for Business, Innovation and Skills publication)

**Early Market Engagement**

11.22. This activity needs to happen during policy formulation or at the time of project inception if the full benefits are to be realised. To be sure of
capturing the potential for innovative solutions, the NAO should consult
with providers and/or their representative bodies to enable providers to
help shape requirements, provide feedback on feasibility and affordability
and gear up to be able to respond to future procurements. See also the
chapters on market sounding and market creation.

11.23. Procurement staff should try to understand the market, the environment in
which it operates the companies within it and their capabilities and needs.

11.24. Care must be taken to ensure that providers are dealt with on an
open and equitable basis in early engagement to avoid later accusations of
favouritism; to avoid locking into a particular solution and to maintain healthy
competition.

11.25. Further information can be found in the OGC publication *Early Market
Engagement: Principles and examples of good practice*, which can be
downloaded from their website.

Acceptance of variants

11.26. Innovative responses can be encouraged by allowing bidders to submit
variants to the standard specification. However, any such approach should be
in line with the scope of the project and with the Regulations where
applicable.

Drafting checklist

11.27. A good specification should:

- state the requirement specification completely, clearly, concisely,
  logically and unambiguously;
- focus on outputs, not how these are to be met;
- contain enough information for potential providers to decide which
goods and/or services they will offer and their cost;
- permit offered goods or services to be evaluated against the defined
criteria by examination, trial, test or documentation;
- state the criteria for acceptance by examination, trial, test or
documentation;
- contain only the essential features or characteristics of the
requirement;
- provide equal opportunity for all potential providers to offer a product
or service which satisfies the needs of the user and which may
incorporate alternative technical solutions; and comply with any legal
obligations eg under UK law, the EC Treaty, an EU Directive or the
GPA Agreement.

Review and Signoff
11.28. The specification is a key procurement document. It forms the basis against which the successful provider will be chosen and will become incorporated into the contract setting out what the provider will deliver. Its final review and signoff is therefore a key decision point in the procurement process, and it is important that those undertaking it have the necessary knowledge, authority and experience.

11.29. The key criteria for the review are:

- the requirements are complete and accurate;
- for IT projects, that COTS software is preferred over bespoke development
- stakeholder needs have been taken into account;
- future developments have been taken into account;
- the requirement is deliverable (i.e. a market exists or can be created);
- requirements are compatible with the scope set out in the OJEU notice
- issues and risks raised in its development have been addressed;
- business implications associated with the requirement have been identified and addressed;

consistent with:

- business case
- business requirements
- OJEU advertisement
- procurement and contract strategies
- evaluation plan

Sources of further information

See the Produce Requirement pages of the Introduction to Procurement section on OGC’s website at www.ogc.gov.uk/introduction_to_procurement.asp and Specification writing at www.ogc.gov.uk/briefings_specification_writing.asp on which this chapter is based.

The following publications can be found on OGC’s website: Capturing Innovation: Nurturing suppliers’ ideas in the public sector

Driving Innovation through Public Procurement (Department for Business, Innovation and Skills)

OGC’s Procurement Policy Note 05/07 Encouraging and embedding innovation in public sector purchasing — Guidance on finding and procuring innovative solutions
Chapter 12: Sourcing

Introduction

12.1. Procurement staff should encourage internal customers to use framework agreements wherever possible since they save time and process costs and involve a reduced amount of contract paperwork. Using a compliant framework agreement also means that the requirement will not need to be advertised.

12.2. See Appendix A for further information on the operation of framework agreements.

12.3. This chapter deals with the identification of potential providers where a framework agreement cannot be used. For all but very low value (under £20,000) contracts, it is likely that the requirement will need to be advertised in some way, although other forms of sourcing may also be appropriate.

12.4. The process for formally short listing the most suitable providers to invite to tender is dealt with in Chapter 13.

Requirements with a value below £20,000

12.5. For contracts under £20,000 formal competitive tendering is not necessary. The NAO’s Procurement Policy http://merlin/CorporateServices/procurement/policy.htm sets out the process to be followed for low value requirements. Where a more formal process is considered appropriate (eg for some professional services requirement), a standard one-stage procurement method can be adopted where the NAO identifies, and invites to bid, a minimum of three providers who are able to provide the NAO with the services required, and who will be likely to respond to the invitation.

12.6. A number of traditional methods to identify providers may be used including:

- recommendations from client departments and existing business contacts;
- the Internet;
- trade associations, professional bodies, management consultants' associations or similar organisations;
- enquiries amongst known experts;
- organisations who regularly receive the NAO’s forward work programme;
- standard reference sources, eg British Consultants Bureau Directory, buyers’ guides/directories, eg “Kelly’s Directory”; trade magazines/catalogues; and technical magazines, ie “What to Buy for Business” / “Which”;
- Yellow Pages;
- providers’ own advertisements.

12.7. Internal customers may investigate markets in which likely providers will operate — for example, those undertaking VFM studies may identify technical experts in the field and those procuring goods should be aware of the market players.

12.8. From time to time providers may put themselves forward as able to help the NAO. In such cases it may be appropriate to meet with providers to find out what they have to offer. Care should be taken not to unduly raise their expectations that they will be awarded work. Providers who are interested in supplying the NAO and government generally can register on Select, a provider database maintained by BiP Solutions on the delta-ets.co.uk website.

12.9. Occasionally it may be appropriate to trial the goods and services of an alternative provider, providing it is cost effective to do so. In such cases a careful trial should be set up so that the results may be evaluated. However, providers who provide a trial must be told that there is no guarantee that the NAO will continue to buy their product and that a competition, with appropriate advertising, is likely to precede any contract for a continuing requirement.

12.10. It is important that firms are selected to tender for defensible reasons. Potential providers may well complain to the C&AG, OGC or the courts if they perceive that they are being denied a reasonable opportunity to bid for NAO work. Particular care should be taken when selecting a firm for a single tender approach. Any risks to the NAO, which will be related to the value of the requirement, must be set out in the business case.

Contracts with a value over £20,001 but below £101,323

12.11. The principles of the original EC Treaty apply to all public sector procurement, irrespective of value. In order to demonstrate transparency, requirements that exceed £20,000 are expected to require some form of advertising proportionate to their nature and value. Where the requirement may be of interest to another member state, consideration should be given to advertising in the OJEU.

12.12. The advantage of advertising forthcoming work is that potential providers make themselves known thus saving the NAO time in identifying them. It can also help to identify previously unknown firms able to undertake assignments on behalf of the NAO.

12.13. NAO procurement usually requires the involvement of between 3 to 6 bidders, sometimes more dependent on the value of the requirement. Where the requirement has been advertised, it may be necessary to restrict the number invited to tender, using a two-stage process similar to that of the Restricted Procedure.

12.14. Although the requirement will not fall within the full scope of the Regulations, it is good practice to work within the same framework and to follow the basic principles set out in the Regulations. A simplified Pre-Qualification Questionnaire should be used to ensure responses are all in the
same format.

**Contracts with a value over £101,323**

12.15. As set out in Chapter 2, not all services are subject to the EU and UK procurement regulations. However, most of the services bought by the NAO (e.g., consultancy, market research, audit, financial services, and IT services) do fall within the full scope of the Regulations. These requirements must always be advertised in the OJEU and the CPT must be fully involved in the exercise from the very early stages.

**Placing a Contract Notice in the OJEU**

12.16. The Contract Notice must contain a clear and accurate description of the full scope of the requirement. It is important to describe the requirement fully and accurately so that potential providers are able to assess their ability to deliver it and whether or not they are interested in doing so.

12.17. Failure to advertise the full scope may result in the Notice having to be withdrawn and the procurement re-started to avoid a breach of the Regulations.

12.18. The NAO uses the delta-ets Project portal for the completion and submission of all notices that appear in the OJEU. A Notice must be approved by the CPT before it is submitted.


**Engaging ex-NAO staff**

12.20. Special care needs to be taken when employing ex-NAO staff. Staff who may be accused of personal bias, either for or against the ex-NAO staff member, should consider whether they can be objective, and be seen to be objective, before evaluating bids and act accordingly. Conflicts of interest should be declared at the earliest opportunity and the procurement referred to a more objective individual.

12.21. Where an ex-NAO staff member is employed by a potential provider, there will not normally be any objection to their involvement. The fact that a firm is involving an ex-NAO staff member may not work to its advantage if the NAO is seeking an innovative approach. Such bids should be judged on their own merits and on an equal basis to other bids.

12.22. Where an ex-NAO staff member is a sole practitioner in an unlimited or limited company, is a partner in a small organisation, or is one of a group of associates, the advice of the Director-General of Finance, Facilities and Commerce should be sought before tenders are invited. The approval of the D-G is required before any contract may be awarded to an ex-NAO staff member. In such cases, approval will normally be given only where the individual concerned is uniquely qualified to offer particular services. Consideration must also be given to any redundancy, pension and tax
implications.

Further information
From OGC’s website:

Procurement Policy Note 03/09 The need to ensure published Contract Notices are accurate and cover the complete requirement.
Chapter 13: Appraisal and selection of potential providers

Introduction

13.1. The level of interest from potential providers will depend on the nature and value of the NAO’s requirements, and on the maturity of the supply market. Wherever possible the number of potential providers short listed for the ITT stage should be reduced but without compromising competition. This chapter deals with the process of drawing up a shortlist of potential providers who will be invited to tender for a requirement.

13.2. The main focus of the chapter, which is based on OGC guidance, is the process to be followed for requirements which are advertised in the OJEU under the Restricted Procedure but the same principles should be applied to all major procurement exercises. The process can also be used for the Negotiated Procedure.

13.3. This chapter does not deal with procurement exercises to be sourced under an existing framework agreement — nor with low value requirements where the simplest way forward is often to approach organisations informally to assess whether or not they are interested in the work the NAO has to offer.

The use of a Pre-Qualification Questionnaire (PQQ)

13.4. The purpose of the PQQ is to obtain relevant information from potential providers so that the NAO can assess their suitability to deliver the advertised requirement.

13.5. The advertisement (or Contract Notice if advertised in the OJEU) will usually inform interested providers that they must complete a PQQ. PQQs are commonly used throughout the public sector, although they are not compulsory (ie their use is not specified in the Regulations). The use of a PQQ helps to ensure that all the requested information is provided by all applicants and in a common format, which assists the evaluation process. However, they may not be the best method for very complex and/or unusual requirements.

13.6. The information requested from applicants must be relevant to the advertised requirement and must be derived from the evaluation criteria to be used in the selection process. Where the requirement has been advertised in the OJEU, the Regulations set out the criteria that may be used to select/reject providers (see 13.8 below).

13.7. An important part of pre-qualification is to remove providers who have weaknesses that would make them unlikely to be able to meet the business need. Under the “technical capacity and capability” section, applicants should be asked to provide information which will demonstrate that they would be able to deliver the contract eg details of similar contracts in the previous two years, qualifications and experience of key staff, management structure, quality management systems etc.

Selection criteria
13.8. Selection criteria are used to determine the suitability of a provider to meet the specific requirement. At this stage the emphasis should be on the provider rather than the NAO’s requirement. For requirements advertised in the OJEU, the Regulations set out the criteria that may be used to determine the suitability of a provider to meet the advertised requirement.

13.9. Selection criteria must not be mixed with award criteria (which are used to determine the winning tender) nor used at the tender stage of the procurement.

There are three main areas which can be assessed:

i. economic and financial standing – eg they are judged to be financially sound on the basis of their annual accounts; and

ii. technical capacity and capability – eg that they will be adequately equipped to deliver the requirement and that their track record is satisfactory. The criteria must be appropriate to the requirement.

iii. suitability — providers may be excluded on the basis of evidence that they are not suitable on the grounds of, for example, insolvency, criminal conviction, failure to pay taxes. Some offences (eg fraud, money laundering) require mandatory exclusion.

13.10. The same principles for selection are generally followed for substantial requirements which are not advertised in the OJEU.

**Information to be requested in the PQQ**

13.11. Based on the possible selection criteria, the information requested in the PQQ is likely to include some or all of the following:

- **General information**
  - identity and address of organisation
  - ownership
  - general background to the organisation
  - principal activities (past and present)
  - details of any parent organisation
  - organisational chart
  - approach to use of sub-contractors
  - any professional/commercial affiliations

- **legal information**
  - details of insurance protection in respect of public liability, employer’s liability and professional indemnity cover
- details of any contract disputes or court action over the last three years and whether there are any actions pending

- **financial information**
  - copies of the last two annual reports and audited accounts, where available (including those of the ultimate parent if applicable)
  - a statement of turnover in respect of the requirement.

- **technical capability and capacity**
  - experience and track record
    - principal activities and experience
    - experience and track record including practical experience during the last three years in providing similar services
    - whether the required services constitute the applicant’s core activity
  - capability and capacity
    - the number of staff directly involved in the provision of the services to which the PQQ relates; the number, experience and qualifications of professional and technical staff responsible for providing the services
    - the amount of work in hand and the availability of resources
  - organisation and management
    - the use and management of sub-contractors
    - organisational structure for the delivery of services
    - quality: details of quality accreditation, documentation and procedures
    - training: evidence and experience of staff training and development programmes, where relevant to the requirement.

13.12. A template questionnaire, which is based on the OGC model, can be found on Keystone under Procurement Templates.

**Timetable**

13.13. The time allowed for submission of PQQs will depend on the chosen procurement route and the complexity of the requirement. For requirements advertised in OJEU under the restricted procedure a minimum of 37 calendar days is set out in the Regulations, although this may be reduced by 7 days if the Notice is submitted to OJEU via an XML gateway (eg delta-ets Project
portal). See para 2.20 for more details of minimum timescales specified in the Regulations.

13.14. For requirements below the threshold which are advertised only through the supply2.gov.uk portal or on the NAO website, a reduced timescale is acceptable but 15 to 21 calendar days is a reasonable minimum to allow providers to respond.

**Evaluation Panel**

13.15. PQQs should be evaluated by a panel comprising at least two members of staff; for complex exercises three is preferable. For requirements advertised in the OJEU, one member should be procurement professional. The membership of the Evaluation Panel for the PQQs need not be the same as for the tenders, although some continuity is desirable. Where advertisements generate a lot of interest a Tender Evaluation Team may be convened to conduct a preliminary analysis of the PQQs and prepare a report for the Tender Evaluation Panel.

**Evaluation plan**

13.16. The evaluation plan should set out the criteria on which providers’ applications are to be assessed and how they are to be applied. It should also include the arrangements for any provider or client reference site visits and should ensure that criteria for such visits are properly defined.

13.17. The plan must be consistent with the information requested in the OJEU and the PQQ. Applicants can only be selected or rejected against the criteria and evaluation plan agreed at this point. The plan must not include criteria for which no supporting information has been requested, nor should the OJEU Notice or PQQ request information that does not relate to specific evaluation criteria.

13.18. The selection stage is critical to the success of the whole procurement and the resulting contract. Failure to include key criteria or the use of inappropriate ones will cause problems later.

**Scoring mechanism**

13.19. The scoring mechanism is an element of the Evaluation Plan. Together with the criteria and weightings to be used in the selection process, it must be made known to the applicants either in the Contract Notice or the PQQ documents. If a minimum pass mark is to be applied, or if a question is so critical that an unsatisfactory answer may lead to exclusion, irrespective of the marks in other parts of the PQQ, this must also be made known to the applicants.

13.20. At the selection stage it is generally preferable to keep the scoring mechanism as simple as possible, for example:

\[ 0 = \text{question not addressed or answer irrelevant} \]
1 = meets some of the NAO’s requirement but elements not addressed

2 = meets the NAO’s requirement

3 = meets and exceeds the NAO’s requirement in a way that adds genuine value*

- Higher marks should only be awarded for responses that go beyond the minimum and add genuine value for the NAO. It must be made clear in the advert or PQQ documentation that this approach to scoring is being taken.

**Evaluation matrix**

13.21. A matrix should be developed for the selection stage of the evaluation. It provides a template on which evaluators record their marks and their supporting comments. Where an applicant is to be rejected, the matrix must identify the reasons for this and contain sufficient detail to inform the debriefing process.

**Evaluating responses on technical capacity and capability**

13.22. It is likely that information will have been requested on some or all of the following areas in this section of the PQQ:

- **Capability** — a broad assessment must be made to establish the applicant’s capability to meet the requirement — eg does the applicant’s staff have the necessary skills and experience, including any specialist/technical knowledge required, to enable the applicant to deliver the advertised requirement?

- **Organisation and management** — eg does the applicant have the roles and responsibilities in place (or could put them in place) to deliver the requirement; how does the applicant manage their own business, and what systems and processes do they have in place for quality management, risk management, information assurance etc.

- **Experience and track record** — how much of the applicant’s past experience is relevant to the advertised requirement; how the evidence the applicant has provided demonstrates that they have provided similar requirements previously. For complex, high value requirements, visits to customers of the applicant or to the applicant’s premises may be necessary.

- **Capacity** — it is important to establish whether the applicant has adequate capacity and resources to deliver the requirement eg how many experienced staff they have working in relevant areas; how peaks in workload are dealt with; what other current contracts might affect capacity.

**Financial appraisal**

13.23. Financial appraisal should be carried out on all applicants for significant (in
terms of value, duration, strategic importance or complexity) contracts. The aim is to assess as far as possible the financial health of the applicant and to identify any potential risks. These will then be considered along with other relevant qualitative and quantitative selection factors.

13.24. In most cases a range of factors will need to be considered and various financial statistics, ratios and figures will need to be analysed. Financial appraisal should form part of a broader, overall assessment that will include the organisation’s ability to deliver (capacity) to a required standard (capability).

13.25. The scope and effort of financial appraisal should be proportionate to the size and risk of the contract. OGC recommends a broad business approach which assesses risk in relation to the specific requirement and the provider. This risk assessment should be based on sound business judgment rather than solely on the application of financial formulae.

13.26. The financial assessment can be used to identify the level of risk presented by each applicant eg low (retain) medium (retain with caution) and high (consider elimination).

13.27. Credit ratings and financial data from specialist on-line databases provide a snapshot view of a provider but should not be used as a substitute for detailed assessment by the buying organisation.

13.28. If an applicant is not short listed there must be clear evidence of financial risks and of capacity or capability issues — more than that of just a turnover or ratio measure. A contract limit based on turnover may be used as part of the assessment of whether an applicant has the capacity to deliver the requirement. However, applicants should only be eliminated on the strength of contract limit alone if they clearly have insufficient capacity to deliver the requirement and there is no support available from a parent organisation or other third party.

13.29. Applicants should only be excluded from further consideration on financial grounds if they are clearly unrealistic candidates with inadequate resources to undertake the work. However, an applicant who meets the minimum standard may still be unsuccessful if other applicants attain higher scores on the key selection criteria.

13.30. All applicants must receive equal and fair treatment during the financial appraisal process. Small and medium-sized enterprises should not be inadvertently disadvantaged.

13.31. If there are doubts about an applicant’s financial status or questions about whether a deed of guarantee would be available, the applicant should be included for further consideration. Formulae should not be applied mechanistically.

13.32. The above paras are based on the OGC publication Supplier financial appraisal guidance which contains more detailed information and can be found on the OGC website.

Taking up references
13.33. For requirements advertised in OJEU, references on supplier performance should be taken up at PQQ stage when it is the provider’s capability that is being considered, rather than the most economically advantageous tender.

13.34. The PQQ should clearly state that references are to be taken up and the applicant’s permission, as well as contact details, requested.

13.35. A reference may be sought by letter, e-mail or telephone, although telephone conversations by their nature may be more revealing. When telephoning it may be helpful to give an indication of the questions in advance. Notes should then be taken (and recorded) of previous clients’ perceptions of the range and type of service provided by the provider.

Questions that might be asked of referees include:

- How long has the referee dealt with the applicant?
- What value of business has the referee placed with the applicant?
- How wide a range of goods or services has the applicant provided?
- How does the referee rate the quality of their service or product?
- How efficient has the referee found the applicant’s delivery/invoicing system?
- How effective is the applicant’s management support and backup?

Site visits to provider and/or provider's clients

13.36. Visits to a provider’s own site or to client reference sites at this stage are generally only necessary for high value and complex procurements. Visits will usually be required to validate the information provided by an applicant, particularly with reference to their facilities and or production/development capacity.

13.37. All visits should be attended by a member of the procurement team. More information on the content of site visits is given in Chapter 20.

Evaluation moderation meeting

13.38. This meeting should be held once all the Panel members have completed their assessment of the PQQs. Its purpose is for all the Panel members to consider the marks and comments and discuss any significant differences with the aim of reaching a consensus mark for each provider.

13.39. A mechanism for dealing with any unresolved differences should be agreed. Where necessary, applicants should be approached for clarification on any points which are unclear.

Short listing
13.40. The number of providers selected will depend on the procurement route and the requirements of the procurement Regulations. The number must be sufficient to ensure genuine competition and is at least equal to the minimum number specified by the Contracting Authority and Contract Notice. For the restricted procedure the Regulations specify a minimum of five, assuming there are sufficient suitable applicants. Where there are fewer than five, it will be necessary to consider whether the exercise should be reviewed and restarted to ensure competition and value for money.

**Costs to service providers**

13.41. It is important to avoid causing providers extra work for no benefit — for example, asking for completion of a long questionnaire or short listing too many providers. Minimising the cost of the exercise to providers leads to improving VFM as applicants have to recover their costs at some point.

**The evaluation report and recommendation**

13.42. The evaluation process and its outcome should be formally documented in the form of a report which is agreed by all the Panel members. The report should include a detailed analysis of the scores and results, details of any discussions or further deliberations that may have occurred, together with a recommendation on the applicants to be taken forward to the next stage.

**Internal approval processes**

13.43. Where necessary, customers should ensure that the proposed shortlist is approved by their line manager, the NAO’s senior management or any relevant project board to indicate approval of the selection before applicants are advised of the outcome of the selection process.

**Further information/reading**

See the Supplier Selection pages of the Introduction to Procurement section on OGC’s website at www.ogc.gov.uk/introduction_to_procurement.asp on which this chapter based.

**The following publications can be downloaded from OGC’s website:**

*Mandatory Exclusion — OGC Guidance on the Mandatory Exclusion of Economic Operators in the 2006 Procurement Regulations*

*Supplier financial appraisal*

OGC’s Procurement Policy Note 04/09 — *Requirement to distinguish between “selection” and “award” stages of a public procurement, and to give suppliers complete information about the criteria used in both stages*
Chapter 14: Preparation and issue of invitation to tender

Definitions and introduction

14.1. An invitation to tender (ITT) is a standard document by which the NAO invites short listed providers to tender (or bid) for a contract and includes the conditions for the submission of tenders and a detailed specification of the requirement. In contract law it is an invitation to treat, inviting offers which the NAO may then accept or reject as it sees fit. It is not a binding offer and the NAO is not bound to accept any of the offers made to it.

14.2. A tender is an offer which in contract law is defined as an expression of willingness to contract on certain terms with the intention that it will become binding as soon as it is accepted.

14.3. Issuing an ITT is the usual way the NAO invites offers for a proposed contract. The main focus of this chapter is the formal ITT process which is to be used for procurements covered by the Regulations, but the basic principles can be applied to all procurement exercises.

14.4. The ITT is the main means of communicating the NAO’s needs to potential tenderers. It must be prepared carefully and sufficient time must be given to the process to ensure that potential tenderers are able to assess and cost the requirement accurately.

General principles

14.5. All potential tenderers must be treated equally and fairly and the NAO must be able to demonstrate that they have been given the same basic information.

14.6. A poorly constructed ITT may result in poor quality tenders (which may result in the Tender Evaluation Panel being unable to recommend an award) and will reflect badly on the NAO’s reputation.

14.7. ITTs may be sent out any time after the final date for the receipt of PQQs, but they must all be sent out at the same time. Where an indicative timetable for the procurement has been published, every effort should be made to keep to it. Where this is not possible, applicants should be informed of the delay and updated regularly.

Contents of ITT

14.8. The exact contents of the ITT will vary depending on the procurement route and the nature of the contract, but in general an ITT will consist of an "Instructions for Tendering" document which contains details of the procurement requirements, timetable, and award criteria and includes the following Annexes:

- Annex A: Form of Tender for signature and return with the tender
- Annex B: Certificate of Bona Fide Tendering for signature and return with the tender
- Annex C: Standard Conditions of Contract
- Annex D: Specification
- Annex E: Price Schedule
- Annex F: Tenderer’s Response document which, when completed, will form the basis of the tenderer’s offer

A template ITT with related annexes can be found in Keystone under Procurement Templates.

**Instructions for Tendering**

14.9. The Instructions for Tendering must define clearly how bids are to be submitted to ensure they are compliant with the NAO’s requirements.

14.10. In most exercises which are not conducted under an existing framework agreement, tenderers should be asked to complete (and in the case of Annexes A and B, sign) and return:

- Form of Tender (Annex A) which confirms they accept the NAO’s standard conditions of contract
- Bona Fide Tendering Certificate (Annex B)
- Tenderer’s Response Document which sets out the information to be supplied by tenderers
- Price Schedule

14.11. Tenders are to be submitted by the due date and time by uploading the completed documentation using the delta-ets portal Vault. Full instructions must be given in the ITT and tenderers should be advised that bids which are submitted late or by a different route cannot be accepted.

**Timetable**

14.12. The amount of time allowed for the submission of tenders will depend on the chosen procurement route and the complexity of the requirement. Generally a minimum of 10 working days should be allowed for a relatively straightforward requirement where an existing framework agreement is being used. Overall, from the time the specification is finalised a procurement exercise under a framework agreement should take from 4 to 6 weeks.

14.13. The Regulations prescribe minimum timescales for requirements that are advertised in the OJEU and a minimum of 40 days must be allowed for the submission of tenders when using the Restricted procedure although this may be reduced in certain circumstances. See Chapter 2 for more detail on OJEU timescales.
14.14. Where, because of the nature of the requirement, potential tenderers are given the opportunity to inspect the premises, the time limits for submission of tenders must be extended to allow for the inspection.

14.15. Dates for the evaluation of the tenders and any presentations/interviews should be agreed at an early stage and diarised. Customers should be encouraged to be realistic about the time they will need to set aside for the evaluation process.

Award criteria

14.16. The procurement Regulations allow two options for the award criteria:

- lowest price; or
- most economically advantageous tender (known as MEAT).

14.17. As a general rule, particularly for services, the NAO favours the MEAT option as this is consistent with government policy and the obligation to obtain value for money. The MEAT criteria may include:

- delivery timescales
- quality
- technical merit
- aesthetic and functional characteristics
- after sales service
- price (whole life costs)

depending on the nature of the requirement. Other criteria may be included providing they are relevant and essential to the requirement.

14.18. Care must be taken when using the lowest price option but in certain circumstances (eg commodity items) it may appropriate.

14.19. Agreeing the award criteria must be done at an early stage in the procurement exercise — as a minimum before the invitation to tender is issued. Where a requirement is advertised in the OJEU, the award criteria (including any sub-criteria) and weightings must be set out either in the Contract Notice or in the ITT documents. Even where the requirement does not come within the full scope of the Regulations, it is good practice to inform potential bidders of the basis on which their proposal will be assessed and the relative importance of each of the criteria.

14.20. The criteria must relate directly to the information bidders are asked to supply and must be relevant to the requirement as set out in the specification.

14.21. The bidder’s track record of delivering similar goods or services, and similar criteria which focus on the supplier rather than the requirement, must be used at the selection stage and not as part of the basis for the award of contract.
14.22. Where possible, the criteria and the weightings should be agreed by each member of the Evaluation Panel and, where appropriate, by senior management or any relevant project board.

Weighting

14.23. The individual criteria are usually subject to a weighting mechanism which must also be made known to tenderers in the OJEU Notice or the ITT documents. These may be expressed as percentages or on a scale of 1 to 10.

Scoring mechanism

14.24. Options include:

- criteria which can be described as either “met” or “not met” can be marked on a pass/fail basis
- a numeric mark based on objective assessment
- a qualitative assessment to determine the degree of compliance where the mark allocated reflects the extent to which the proposal meets the NAO’s requirement

14.25. Depending on the nature of the requirement, the mechanism may have a wide range of marks (eg 0 to 10) with narrow descriptive differences between each point, or a smaller range of marks (eg 0 to 4) with marked differences between the definitions.

14.26. Higher marks should only be awarded for responses that go beyond the minimum and add genuine value for the NAO. Where this approach is taken, it must be made clear in the advert or ITT documentation.

Evaluation model

14.27. The evaluation model should set out the criteria on which tenders are to be assessed and how they are to be applied. It must include the scoring mechanism and weightings which must be agreed before the ITT is issued. The model is best drawn up by someone who has good knowledge of the requirement and/or any technical requirements — this may mean involving other specialist areas.

14.28. The purpose of the model is to set out the award criteria on which tenders are to be evaluated and how each of them will be applied. The model must include clear guidance to all Panel members on how individual criteria are to be evaluated. It may be helpful to agree a score that will be indicate a satisfactory response — eg, if the marking is 0-4, 3 could be used for the “satisfactory” response, with 4 being reserved for those that go beyond this and add genuine value for the NAO. Where marks are to be awarded for exceeding the minimum requirement, this should be made clear to tenderers in the Contract Notice and/or in the ITT.

14.29. The model must be consistent with the award criteria set out in the OJEU
Notice and/or the ITT. Tenderers can only be assessed against the criteria and evaluation plan agreed at this point. The plan must not include criteria which have not been made known to the tenderers, and the latter should not be asked to provide information that does not relate to specific evaluation criteria.

Price

14.30. In most cases, providers should be asked to submit a fixed price tender for the requirement. Where appropriate, an estimate of expenses should be requested and where possible capped for the duration of the contract. For longer-term contracts of several years' duration, it may be inappropriate and unrealistic to expect the price to remain firm throughout. Where this is the case, the specification should set out the mechanism for price changes.

14.31. Effective evaluation of bids can be achieved only when bids are comparable, so standard pricing schedules must be used to ensure that pricing information is submitted in the same format by all tenderers.

Non-compliant tenders

14.32. Non-compliant bids, as implied by their name, do not comply with the requirements of the ITT. Although an advantage of non-compliant bids is that providers may propose better ways of achieving the required outcomes, they may suggest unacceptable methodologies (perhaps options that the NAO has already rejected). Limiting consideration to solely compliant bids ensures that tenders will have been prepared on a similar and comparable basis.

14.33. Where the NAO seeks innovative bids, it is advisable to request that firms submit a variant tender (which may or may not be considered compliant) in addition to a clearly compliant tender. This provides additional choice and enables both compliant and non-compliant bids to be considered in a competition.

Further information/reading

See the Introduction to Procurement pages on OGC’s website www.ogc.gov.uk. The following publications can be downloaded from their website:

OGC’s Procurement Policy Note 04/09 — Requirement to distinguish between “selection” and “award” stages of a public procurement, and to give suppliers complete information about the criteria used in both stages.
Chapter 15: Advising unsuccessful applicants of the decision and providing feedback where requested

Introduction

15.1. Once the PQQs have been fully evaluated and a shortlist of applicants who are to be invited to tender has been arrived at, the remaining applicants must be informed that they have been unsuccessful. Many will want to understand the reasons for this, and the main focus of this chapter, which is based on OGC guidance, is the debriefing process.

15.2. It is essential that the debriefing process is given the time and effort it requires and that the feedback sessions with unsuccessful applicants are handled appropriately. Dissatisfied applicants may pursue their concerns with the NAO, OGC and/or the European Commission.

Letters to unsuccessful applicants

15.3. It is important to do this sensitively, by a personal letter where possible, and to recognise the work the applicant will have put into completing their PQQ. An offer of feedback on the applicant’s lack of success should also be included.

A template letter can be found in Keystone under Procurement Templates.

Benefits of debriefing

15.4. Debriefing unsuccessful potential providers is regarded as good procurement practice. In broad terms, the benefits are seen to be:

- To establish and sustain the reputation of the public sector as a fair, honest, open and ethical customer;
- To offer unsuccessful potential providers the opportunity to learn from the exercise and to understand the strengths and weakness of their PQQ, with the view that this will be of help to them for future exercises.

Timescale

15.5. Where a requirement has been advertised in the OJEU, the Regulations stipulate that feedback must be given to the unsuccessful applicant within 15 days of a written request being received.

Who is involved

15.6. Ideally (and particularly for procurement exercises advertised in OJEU) debriefs should be undertaken by two members of the Evaluation Panel, one of whom should be a procurement professional and one from the relevant business area. This enables one person to take notes and to witness what is said. Debriefs are only provided where a potential provider
requests one.

Methods of debriefing

15.7. The method of debriefing will be determined by the number of unsuccessful PQQs. At the PQQ stage debriefs are usually conducted in writing or by telephone.

Debriefing meetings are usually discouraged, even if an applicant requests it, although in some circumstances a meeting may be appropriate.

15.8. **Written debriefs** should be clear, concise and factually accurate. The strengths and weaknesses of the PQQ submission should be highlighted and the applicant should be thanked for their interest in the requirement.

15.9. **Telephone debriefings** are sometimes seen as the easy option but they require careful preparation. Conversations with unsuccessful applicants should be managed and controlled to ensure no mixed messages are given. It is also essential to be aware of the sensitivities and issues that may arise. Unsuccessful applicants will have invested time, effort and money into their response and are likely to be disappointed that they did not succeed.

15.10. **Face-to-face debriefs** also require careful preparation. The guidance given below for telephone debriefings applies also to face-to-face debriefings.

15.11. Both telephone and face-to-face debriefing sessions provide an opportunity for the applicant to gain some benefit from the process. NAO staff should be constructive and open, not defensive, in providing its views.

15.12. The debriefing should be managed in a way that ensures that the applicant has had a fair opportunity to gain useful feedback, and is reassured about the process.

Documenting the evaluation and debriefing processes

15.13. An unsuccessful and/or dissatisfied applicant may make an FOIA request. Staff engaged in the evaluation process may find their e-mail and other exchanges are subject to an FOIA disclosure and must avoid inappropriate comments or informality.

15.14. It is essential that the PQQ Evaluation Team keep thorough and accurate records throughout the evaluation process and any subsequent debriefing.

15.15. During the debriefing, a note of the meeting should be made for the file. **Content and structure of telephone/face-to-face debrief**

15.16. The debrief should cover the following:
<table>
<thead>
<tr>
<th><strong>Welcome and introduction</strong></th>
<th>The applicant should be advised that debriefing is offered on an informal basis with the aim of offering an explanation of how the Evaluation Team made its selection and to assist the applicant in future bids for public sector/central government/NAO business. Honest feedback must be provided, highlighting any particular strengths or comparative weaknesses in the PQQ response that contributed to the Evaluation Team’s decision.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Description of the evaluation process</strong></td>
<td>The applicant should be advised that the PQQ technical capacity and capability evaluation was carried out by an Evaluation Team on an individual basis and then as a group in order to arrive at a collective/consensus recommendation. The applicant should be advised that the financial aspects of the PQQ were assessed by the CPT (or other suitably qualified members of staff) and that the NAO will only contract with a stable financial entity. If it is necessary to deal with this area, care must be taken to deal with it sensitively, especially when dealing with SMEs who may feel they are being discriminated against.</td>
</tr>
<tr>
<td><strong>Highlight strengths and weaknesses</strong></td>
<td>Using the evaluation sheets, the strengths and weaknesses should be highlighted in high level terms, minute detail should be avoided. Where appropriate, details from site and customer reference site visits should be provided including who from the NAO undertook the visit; confirmation that the site visit templates were used; who was visited and the outcome of the visits.</td>
</tr>
<tr>
<td><strong>Obtain feedback from applicant on the PQQ process</strong></td>
<td>The applicant should be asked whether the PQQ document and the process used was clear. It is important to get feedback from the applicants on their experience of the PQQ process.</td>
</tr>
<tr>
<td><strong>Closing statement from the applicant</strong></td>
<td>Ideally the applicant will signal that they are content with the feedback session.</td>
</tr>
<tr>
<td><strong>Closing statement from the NAO</strong></td>
<td>The NAO should make a positive closing statement expressing hope that the debriefing has been useful, wishing the applicant well in the future, repeating thanks for their involvement in the procurement process.</td>
</tr>
</tbody>
</table>

**Tactics/behaviour**
15.17. Preparation for the session is essential. Staff conducting the debrief must familiarise themselves with the evaluation report and the key features of the applicant’s responses. Any areas of difficulty or contention should be anticipated and potential key questions and answers should be rehearsed in advance.

15.18. The session must be conducted appropriately. NAO staff should avoid getting drawn into contentious debate about individual questions, scores or comparisons. It is important to avoid being dogmatic on facts (eg saying “you didn’t do this”) when the applicant might seek to respond with chapter and verse.

15.19. NAO staff should stress that they represent the procurement exercise and that the Evaluation Team’s findings which were the result of a collective and structured exercise.

Further information/guidance

This chapter is based on the OGC best practice template which can be found on the OGC website www.ogc.gov.uk

The following publication can be downloaded from their website. Supplier briefing
Chapter 16: Clarifying the Requirement

Introduction

16.1. This chapter deals with queries or requests for further information from potential bidders in response to the NAO’s specification and other ITT documents.

Requests from potential bidders

16.2. Organisations invited to bid may have questions about the requirement and may wish to seek clarification or more information on certain aspects.

16.3. It is usual to specify a deadline for the submission of written questions/requests for further information in the ITT. The deadline should allow sufficient time for the NAO to respond to potential tenderers in good time for them to be able to complete their bids.

16.4. Questions/requests should generally be submitted through the delta-ets portal Vault. Oral requests for clarification should be discouraged.

Managing the enquiries

16.5. All communication to and from the NAO should be managed by procurement staff. This is particularly important where the requirement is advertised in the OJEU.

16.6. The NAO must respond promptly to all questions/requests as failure to do so may impact on the quality of bidders’ tenders, or even deter them from bidding at all.

16.7. Where the request/query refers to the technicalities of the requirement, rather than a procurement issue, the procurement team will generally act as a "postbox" between the potential bidders and the internal customer. This too will need to be managed to ensure that a prompt response is sent to potential bidders.

16.8. All questions/requests (unless very trivial and not material to the requirement) together with the responses must be copied anonymously to all potential tenderers invited to bid. It is unfair to respond to a question from one potential tenderer but refuse to answer another who asks the same question. All potential tenderers should have equal access to information to ensure fairness.

16.9. However, care must be taken to ensure fairness to all potential tenderers by not disclosing details from one that may be of advantage to their competitors. If there is any doubt whatsoever about the appropriateness of issuing information to all parties, advice should be obtained from the CPT.

16.10. Questions and discussions about specific approaches should generally be avoided as it is not for the NAO to advise potential tenderers on the contents of their tender.
16.11. In general, procurement staff should advise any potential bidder who submits a question/request after the deadline that the NAO is unable to deal with it after the deadline has passed.

16.12. All potential tenderers must be notified promptly if a major deficiency is identified in the ITT.

**Bidders’ conference/forum/briefing**

16.13. If the requirement is very complex it may be helpful to invite all potential tenderers to a briefing (sometimes called a conference or forum) which will allow more information to be given to potential tenderers, as well as permitting them to ask clarification questions. Holding this type of briefing does not preclude allowing written requests for clarification from potential tenderers, both before and after the conference.

16.14. A note should be taken of the relevant points discussed at the conference and circulated to all potential tenderers, even those who did not attend.

16.15. Sufficient time must be built into the timetable to allow for briefings and clarification.

**Requests from potential bidders for a meeting**

16.16. Sometimes in procurement exercises where a bidders’ conference was not considered necessary, potential bidders will ask for a meeting in order to clarify the requirement. Generally this should be avoided because, to maintain a level playing field, it will be necessary to offer a meeting to all the organisations who were invited to bid, and to ensure that they all receive the same information. Time constraints generally do not permit this. However, there may be times (eg where requests are received from several potential tenderers) when this course of action is advisable and the timetable may need to be extended as a result. Any such requests should be discussed with CPT who will be able to advise further, depending on the individual circumstances.

**Audit trail**

16.17. The clarification process must be fully documented to ensure that the audit trail for the procurement exercise is maintained.
Chapter 17: Receipt and Evaluation of Tenders

Definitions and introduction

17.1. A **tender** is an offer from a provider, in response to the NAO’s ITT, to provide goods and/or services on the specified terms. In contract law an offer is defined as an expression of willingness to contract on certain terms with the intention that it will become binding as soon as it is accepted.

17.2. This chapter covers the secure receipt and opening of tenders and what is involved in the initial evaluation of tenders, before they are short listed for presentations/ interviews and before any site visits are conducted.

Receipt and opening of tenders

17.3. Tenders are received via the delta-ets Vault portal into a dedicated tender box. The Vault tender box cannot be opened until the deadline for submission of bids has passed, thus ensuring a secure and fully auditable method of receipt.

17.4. Once tenders have been received and opened they need to be evaluated to determine which one is the most economically advantageous (ie offers the best VFM).

Award criteria

17.5. The award criteria must be established at an early stage. They must be fair and relevant to the subject matter of the contract.

17.6. The Contract Notice, or the ITT documents, must set out the award criteria, including any sub-criteria, and their respective weightings (or their relative importance if weightings are not used). The scoring mechanism must also be made known to potential bidders, including whether the maximum score can only be attained by exceeding the specified minimum requirement.

Evaluation plan

See paras 14.27 to 14.29

Scoring mechanism

See paras 14.24 to 14.26

Evaluation matrix

17.7. A matrix should be developed for the tender stage of the evaluation. It provides a template on which evaluators record their marks and their supporting comments. Where a tender is to be rejected, the matrix
must identify the reasons for this and contain sufficient detail to inform the debriefing process.

Evaluation of price

17.8. Price should be evaluated in relation to the lowest price bid. The lowest tender should receive maximum marks, with deductions for the degree which a bid price exceeds the lowest price. There are several methods to use depending on the type of outcome which is required, eg one successful bidder or a number of successful bidders such as for a framework.

Unexpectedly high prices

17.9. If all tenderers’ proposed costs are higher than those estimated in the business case, consideration must be given to the possible reasons. For example, the requirement may have been over-specified or not scoped sufficiently clearly and tenderers have misunderstood what they have been asked to do.

Tenders with very low prices

17.10. Where the qualitative assessments are reasonably equal across a number of tenders but the price of one bid is substantially lower than the others — and price will therefore be the deciding factor — a relatively low-priced tender may seem to offer the best VFM. However, it is important to establish why the price is low as it may indicate one of a number of situations which present a risk to the NAO:

- the tenderer has misunderstood the requirement particularly in relation to factors which affect price;
- the tenderer has misunderstood the risks they have been asked to take on;
- the tenderer has priced aggressively, reducing or omitting their margins, to maximise their chance of winning the work; or
- the tenderer plans to interpret the contract in the narrowest possible sense after contract award in order to claw back what they have lost.

17.11. It is important to fully analyse and investigate, and to understand the possible consequences if any of the above factors apply, before a decision is made on the award of contract.

17.12. If after a full investigation the Evaluation Panel is satisfied that there is nothing untoward in the pricing, the lowest price bid will represent the best value for money. Other tenderers may have misunderstood the requirement and/or the risks and so built a contingency into their pricing.

Evaluation of variant bids

17.13. If variant bids (ie where tenderers have proposed features that are not
in the requirement or alternative contract terms or payment mechanism) the Panel must check that any such alternatives are in line with the scope of the procurement and any OJEU Notice. Where a proposal is significantly different to what the NAO wishes to achieve through the procurement, it must be ruled out.

17.14. Tenderers may be asked to also supply a compliant bid to enable the Panel to make a comparison. This will increase tenderers' costs and may discourage innovation.

Methodology

17.15. Each tender should be fully examined and assessed against the award criteria which were set out in the ITT and using the scoring mechanism and guidance set out in the Evaluation Plan. New criteria cannot be introduced.

17.16. Panel members must be as objective as possible and should evaluate bids only on the basis of the information supplied.

17.17. Panel members should make an initial assessment and score the tenders individually but should then meet with the other evaluators to agree a consensus score.

17.18. If CVs of those individuals who will be involved in delivering the services have been requested, they should be reviewed in detail for evidence of relevant skills and experience. Where a tenderer scores sufficiently highly to be shortlisted for presentation, the organisation should be asked to include any key personnel amongst their representatives.

17.19. Panel members should not presume the meaning of any part of a proposal that is not completely clear to them. Unclear or ambiguous wording must be clarified in writing and, where appropriate, further information may be sought to clarify any elements of a tender.

17.20. Panel members must bear in mind that information is submitted by bidders in confidence. Tenders, documents and notes relating to the evaluation should be designated “Protect – Commercial”.

Evaluation moderation meeting

17.21. This meeting should be held once all the Panel members have completed their assessment of the tenders. Its purpose is for all the Panel members to consider the marks and comments and discuss any significant differences with the aim of reaching a consensus mark for each provider.

17.22. A mechanism for dealing with any unresolved differences should be agreed in advance. Where necessary, tenderers should be approached for clarification on any points which are unclear.

Short listing for presentations
17.23. The number of providers selected for presentations/interviews will depend on the number of bids received and the range of their respective scores. Where possible there should be a clear differential between the lowest scoring bidder invited to present and the highest scoring of those discarded at this stage. Where necessary bids and scores should be revisited to ensure that marking is consistent and fair.

Further Information

The NAO’s policy on the acceptance of gifts and hospitality is set out in section 6 of the Code of Conduct which is available on Merlin.

See the Bid Evaluation pages of the Introduction to Procurement section on OGC’s website at www.ogc.gov.uk/introduction to procurement.asp on which this chapter is based.
Chapter 18: Clarification of Bids

Introduction and definitions

18.1. If there are doubts about any of the tender content, or about precisely what the tenderer is offering, it will be necessary to seek clarification.

18.2. If bid clarification is dealt with at a meeting, it is important not to regard it as post tender negotiation (see Chapter 21). Rather it is a process of seeking a clear understanding by both parties of what is required and what is being offered, and to understand the meaning of the words being used by both parties.

Purpose

18.3. When evaluating tenders the NAO is looking for the tender that will provide the best VFM. The NAO needs to assure itself that it is choosing the tender best able to meet its requirements and that the tenderer both understands the requirements and is committed to delivering.

18.4. If there are ambiguities in a tenderer’s proposal or the Evaluation Panel does not feel a question has been adequately addressed, the relevant elements will need to be clarified.

Timing

18.5. Bid clarification is often dealt with during the course of a more general interview (see Chapter 19). However, it may be required at an earlier stage, for example as bids are being evaluated.

18.6. Sometimes clarification of a bid may be necessary if during discussions at presentation it becomes clear that a bidder has misinterpreted an element of the requirement.

Importance

18.7. Clarification of material elements of a tender should form part of any resulting contract. It is important therefore that the clarification is in writing and is itself clear and sufficiently detailed to ensure that both parties have the same understanding of it.
Chapter 19: Presentations/Interviews

Introduction

19.1. This chapter deals with the interview stage of tender evaluation. Not all procurement exercises will involve this stage, although it is usual and necessary to hold presentations for all high value and/or complex requirements. In general the decision is likely to depend on:

- the value and nature of the requirement;
- the clarity and quality of the bids received; and
- whether or not the NAO (and especially the NAO staff members who own the requirement) has worked previously with the short listed tenderers’ organisations.

Purpose

19.2. Interviews may be held for a number of reasons: they can be used to confirm details of written bids, to separate bids or to clarify bids.

Selecting which tenderers to invite to interview

19.3. The short listing process is dealt with in the previous chapter. In general, and particularly when several tenders are received, only the highest scoring ones will be invited to interview.

19.4. In certain circumstances — usually where a small number (ie 2 or 3) tenders are received — it will be reasonable to interview all tenderers particularly if after the initial evaluation of the bids the overall scores are reasonably close. However, if there is a clear leading bid with a large gap between it and the second highest scoring, it may be more appropriate to interview only the leading tenderer.

Format

19.5. The format can vary according to individual requirements but is generally:

- a 10-minute presentation by the tenderer, which focuses on the requirement and their tender, rather than general marketing/background info; followed by
- about 20 minutes (longer for more complex requirements) of questions from the Evaluation Panel.

Content

19.6. The scope of the presentation should cover all aspects of the bidder’s tender.
New award criteria may not be introduced at this stage.

19.7. Interviews are used to confirm the various elements of a tender eg that the tenderer fully understand the requirement, the tender price fully reflects the methodology, and the proposed team is suitable. An assessment can also be made of the quality of management that is being offered by a tenderer, and their understanding and commitment to the project.

19.8. Interviews may also help the Evaluation Panel to assess whether a potential provider will work well and, where appropriate, integrate with NAO staff.

19.9. The Evaluation Panel should test the tenderers' familiarity with the requirement and their own bid. The Panel should satisfy themselves that the key personnel proposed by the bidder have the relevant skills and experience and that they “live up” to their CVs.

19.10. It is important to remember that it is the quality of the tender and the tenderer’s proposed team that should be assessed, not the presentation itself. Marks should not be awarded for the effectiveness of the presentation.

19.11. At the end tenderers should have an opportunity to ask the Panel any questions they may have relating to the procurement process, although the Panel clearly cannot give a tenderer any indication of the relative merits of their submission.

Bid clarification during presentations

19.12. Presentations are often used as a means of clearing up uncertainties in bids. A record should be kept of questions and responses and their impact, if any, on evaluation scores. Any clarification that arises out of the presentation must be clarified by the bidder in writing before contract award.

Effect of presentation on scoring

19.13. Marks should not be allocated to the presentation alone. Following presentation, all scores for the interviewed tenderer should be revisited and adjustments made where appropriate.

19.14. Tenderers must not be penalised because of their delivery of the presentation. The NAO is interested in how well they will deliver its requirement, not how well they can conduct a presentation (unless the importance of conducting presentations or interviews forms part of the requirement and so is included in the specification).

Logistics

19.15. Tenderers should be given reasonable notice of interviews and where possible their preferences taken into account when arranging times. For example, the middle of the day may be preferred where the tenderer has to
travel a significant distance, or early morning or late afternoon may be more suitable for sole traders.

19.16. Interviews should normally be held on NAO premises. The NAO should make available to tenderers appropriate facilities such as overhead projectors with IT support.

NAO representatives

19.17. Ideally the NAO’s representatives at the presentation should be members of the Tender Evaluation Panel who carried out the evaluation of the tenders. The budget holder should always be invited to, though need not attend, interviews. The same NAO interviewers should see all candidates, but where this is not possible every effort should be made to maintain at least one common interviewer.

Tenderer’s representatives

19.18. The short listed tenderers should be invited to attend by a formal letter which, in addition to the advising them of the time and venue, should tell them what to expect, and who the NAO representatives will be. In general, the tenderer should be asked to send those individuals who will be directly responsible and involved in the delivery of the requirement. All tenderers should be advised that they may send a maximum number of representatives which, unless circumstances require otherwise, should be the same as the number of NAO representatives.

Circumstances when an interview may not be necessary

19.19. In some cases, particularly for complex procurement exercises, there will be significant ongoing discussions with potential providers before the final submission of bids. (In these circumstances it is unlikely that the Restricted procedure will have been used – it is more likely to be Competitive Dialogue or the Negotiated procedure.)
Chapter 20: Site visits and references

Introduction

20.1. This chapter deals with the process of visiting a tenderer’s and/or their client’s premises, following the evaluation of the tender and the presentation/interview stage.

Visits to the tenderer’s premises

20.2. Visits to the tenderer’s premises provide an opportunity to see the provider’s facilities; to meet their technical and support staff involved in similar requirements appropriate; to establish their customer support structure or their warehouse and distribution system. When such visits take place, detailed reports should be prepared assessing performance against specific criteria.

20.3. The visits should be used to validate information provided in the tender and/or at presentation. Separate marks should not be allocated to the site visit. In some circumstances a visit to the prime site of the provider may be appropriate to ensure their ability to perform.

20.4. All visits should be attended by a member of the procurement team.

Reference site visits (to the tenderer’s client)

20.5. Depending on the nature of the requirement, it may be helpful to visit the premises of a client for whom the tenderer provides similar services. Before the visit is important to establish what information is being sought and how it will relate to the evaluation criteria.

20.6. Tenderers are likely to provide reference details for clients who they believe will give a favourable report. It may be helpful to ask the tenderer to provide a choice of sites, from which one can be selected by the NAO.

20.7. Visits to a provider’s own site or to client reference sites at this stage should be made where justified by the value and significance of the contract — for example, where the failure of a provider could embarrass the NAO. A visit will enable NAO staff to see first hand how the tenderer has performed in an operational setting.

20.8. All visits should be attended by a member of the procurement team.

References

20.9. Taking up references from the tenderer’s clients can also help to validate information provided by the tenderer. References can be obtained by phone or email, and may include:

- Was the referee satisfied with the provider’s performance in providing the required product/service?
• Did the provider work effectively with the referee’s organisation?
• How were problems and unforeseen issues handled?
• Over the life of the contract did it deliver VFM?
• Would the referee use the provider again – and if not why not?
• How did the provider handle the implementation process?
Chapter 21: Post Tender Negotiation

Definitions and introduction

21.1. OGC defines post tender negotiation as:

*Negotiation after receipt of formal bids or tenders and before the letting of contract(s) with those companies submitting tender(s) offering the best value for money with a view to obtaining an improvement in content in circumstances which do not put the other tenderers at a disadvantage, distort competition or affect adversely trust in the competitive tendering process.*

21.2. During the competitive tendering process PTN may be used to obtain value for money providing that the adverse effects on competition referred to above are avoided. This chapter describes the process to be followed during PTN and the key principles involved and is based on OGC’s guidance on PTN.

21.3. In many instances where it is necessary to hold post-tender discussions with providers, what is needed can be achieved through the process of bid clarification. Where PTN is required, experienced procurement professionals must be involved.

Principles of PTN

21.4. **PTN must be conducted within the scope of the EU Procurement Directive.** The Commission has issued the following statement:

> "in open and restricted procedures all negotiation with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held but only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting authorities and provided this does not involve discrimination"

21.5. **PTN must be a controlled and documented process** and should not be used automatically on all procurements. Before engaging in PTN, the following criteria must be met:

- there must be a considered and soundly-based prospect of improving value for money;
- it must be possible to justify the resource costs;
- it must be subject to senior management's prior approval;
- trained and experienced procurement staff must conduct negotiations; and
- the negotiations must be fully documented, so that there is a clear audit trail which must include:
  - the justification for the use of PTN;
  - the approval for PTN;
the aim of the negotiations;
- the methods used;
- a precise record of all exchanges, written and verbal; and
- management approval for the award of contract.

21.6. PTN must not be conducted in any way which puts any tenderer at a disadvantage, distorts competition or adversely affects trust in the competitive tendering process. In particular there must not be any form of "Dutch auction" (unfairly trading one tenderer off against another by using the lowest tender to seek a reduction in time or costs from the other tenderers and then repeating the process).

The PTN Process

21.7. A detailed comparative analysis of all the technical and commercial aspects of the tenders (and any necessary clarification), including whole-life costs where appropriate, will identify those offering the best potential value for money.

21.8. It is at this stage that PTN may be considered to identify whether any improvements in the tenderers' offers are available. Even if one tenderer is ahead of the others in value for money terms, it may still be possible to achieve improvements. Hence PTN is the exploration by the parties of the means by which the buyer can achieve a better deal on a mutually-acceptable basis. The potential areas for negotiation will differ for every contract but typical topics might be the terms of payment; quality of goods or services; supply and cost of spare parts; earlier delivery or completion dates; warranties and guarantees; documentation requirements; expediting and inspection procedures; maintenance, repair or after-sales service; compensation for failure to meet specified requirements (eg of delivery, quality etc); and procedures for remedial action for unsatisfactory service. The list is not meant to be exhaustive — it is a concept of procurement that "everything is negotiable".

21.9. Following any such negotiations, the outcome should be documented, and substantiated by revised bids. Final bid evaluation can then be completed, the contract approved at the appropriate authority level and the contract concluded with the chosen provider. Thereafter the unsuccessful tenderers will be informed.

21.10. Additionally and equally important, competition must not be distorted by allowing a competitor, not clearly in the lead, a chance to improve its offer without giving the same opportunity to all other competitors. At all stages the competing tenderers must be treated in an honest, fair and ethical manner, whilst retaining confidentiality of their bids.

Further information/reading

For further information/guidance see OGC's guidance on PTN at briefings-post-tendernegotiation.asp on which this chapter is based.
Chapter 22: Decision to award

Introduction

22.1. This chapter deals with the process to be followed following the evaluation of bids, presentations and any bid clarification and/or PTN.

Tender Evaluation Report and recommendation

22.2. The evaluation process must be fully documented, with a completed evaluation matrix for each tenderer and a Tender Evaluation Report which summarizes the major steps and decisions which are agreed by all the Panel members. The report should summarise the main points of the competition and include a detailed analysis of the scores and results, details of any discussions or further deliberations that may have occurred, together with a recommendation on contract award and the reasons for it. The detail required should be proportionate to the profile and value of the contract.

22.3. For professional services requirements, or whether the value if over £20,000, the CPT must confirm that the procurement has followed an appropriate process and a recommendation on the award of the contract can then be made to the appropriate senior manager.

Internal approval processes

22.4. Where necessary internal customers should ensure that the proposed shortlist is approved by their line manager, the NAO’s senior management or any relevant project board to indicate approval of the selection.

22.5. Staff who have been involved in the procurement exercise should ensure that they keep the budget holder fully informed, for example by consulting on the PQQ and ITT documents and short listed suppliers at each stage in the process. Budget holders should never be presented with a fait accompli.

Audit Trail

22.6. The Tender Evaluation Panel report and evaluation matrices, and any submission to senior management must be saved into the designated Keystone folder.

Contracts to be awarded under a framework agreement or with a value of under the OJEU threshold

22.7. Contracts which are to be awarded under a compliant framework agreement and those below the threshold for advertising in the OJEU may be awarded by the person who commits the expenditure. For professional services requirements, the CPT will draft the appropriate documentation. See Chapter 25 on how to proceed further.

22.8. Contracts awarded under a framework agreement where the value exceeds the threshold will fall within the scope of the new Remedies Directive, incorporated into UK law in December 2009.

Contracts to be awarded following advertisement in OJEU
22.9. Where a requirement has been advertised in the OJEU, a contract cannot be awarded until the process described in the following chapter has been completed without incident. As a first step all tenderers must be advised of the NAO’s intent to award at which point the “standstill period” begins. The standstill period is dealt with in Chapter 23.

Separate template letters can be found in Keystone for:

- the successful bidder,
- the unsuccessful bidder and
- other participants in the process
Chapter 23: The Standstill Period

Introduction

23.1. Following the European Court of Justice’s judgments in two cases (C81/98 Alcatel Austria and Others -v- Bundesministerium für Wissenschaft und Verkehr and C212/02 Commission v Austria), and subsequent detailed negotiations with the European Commission, a mandatory 10-day standstill requirement was incorporated into The Public Contract Regulations 2006 (which implemented the revised EU procurement Directives). This standstill period enables the contract award decision to be set aside by a court where an aggrieved bidder has been prejudiced by a breach of the rules, even though there is the possibility of damages being awarded after contract conclusion.

23.2. This chapter, based on OGC guidance, covers the application of the standstill period in the circumstances which are most likely to occur at the NAO, given the nature of its expenditure on goods and services.

Scope

23.3. The mandatory standstill period applies to contracts which fall within the full scope of the public procurement Directives. OGC advise that, although not specifically covered by the Regulations as they stand, a 10-day standstill period should be applied to works concessions contracts as well.

23.4. However, in cases which fall outside the full scope of the Regulations, aggrieved tenderers may still seek a judicial review of the contracting authority’s decision and processes.

Exceptions to the requirement for the mandatory standstill period

23.5. The mandatory standstill period does not apply to below threshold procurements or to procurements otherwise outside the full scope of the Regulations. This means it does not apply to procurements of Part B services, or to procurements where there is only one tenderer following the extreme urgency provision under the negotiated procedure.

23.6. Recent case law however suggests that there may be circumstances where it will be appropriate to apply a standstill period within a Part B procurement exercise, for example if it has been advertised in the OJEU.

Requirements of the mandatory standstill period

23.7. The NAO must notify any provider, contractor or service provider who has:

- submitted a tender; or
- applied to be on the shortlist of those invited to tender for or negotiate the contract (ie submitted a PQQ);
- has applied to be party to a framework agreement;
- of the NAO’s decision in relation to:
• the award of the contract; or

• the conclusion of a framework agreement.

23.8. This must be done in writing by the quickest means available, as soon as possible after the award decision has been made, by sending a "notice of award" which includes details of:

• the award criteria;

• the name of the winning tenderer(s) to be awarded the contract, or to be part of the framework agreement; and

• where practicable, the score obtained by the unsuccessful tenderer to whom the letter is addressed, and the score obtained by the tenderer to be awarded the contract or to be part of the framework agreement.

23.9. A template letter can be found in Keystone for each of the following:

• the successful bidder,

• the unsuccessful bidder and

• other participants in the process

23.10. There must be at least 10 days between the date of dispatch of the notice of award, and the date on which we propose to enter into the contract, or conclude the framework agreement.

Request for debrief

23.11. Any provider who has been sent a notice of award may request an accelerated debrief, provided the NAO receives the request, in writing, by midnight of the second working day of the standstill period.

23.12. The NAO must then provide the debrief at least 3 full working days before the end of the standstill period. Where this is not possible, the standstill period must be extended to allow at least 3 working days between the provision of the feedback, and the date on which the NAO proposes to enter into the contract.

23.13. If a request for feedback is received outside of the accelerated time limit, the NAO must provide a debrief within 15 days of receipt of the request. The standstill period does not need to be extended in these circumstances.

Framework Agreements

23.14. For framework agreements, the mandatory standstill period applies at the stage at which a framework agreement itself is awarded, but not during subsequent call-offs or mini-competitions within framework agreements.

Further information

For more detailed guidance (especially on the treatment of Dynamic Purchasing Systems and e-auctions) see OGC's guidance note 10-day Mandatory Standstill Period (last updated January 2008 and available from their website)
www.ogc.gov.uk/documents/10day_mandatory_standstill_period.Pdf. On which this chapter is based.

Guidance on how to conduct the debriefing process for unsuccessful bidders is given in the following chapter.
Chapter 24: Giving feedback to unsuccessful bidders

Introduction

24.1. As set out in the previous chapter, there are specific rules within the Regulations on debriefing unsuccessful bidders for procurements subject to the legislation.

24.2. This chapter provides guidance on the process of providing feedback to unsuccessful tenderers and is based on the OGC publication Supplier Debriefing Guidance.

24.3. The Regulations require contracting authorities to debrief any unsuccessful tenderer who requests it. It is also good practice to do so — it aids provider competitiveness, helping them to compete more effectively in future exercises. For the buying organisation it is also a mechanism for gaining gain feedback on the procurement process and its own performance.

Advising unsuccessful bidders of the outcome of the procurement exercise

24.4. Unsuccessful tenderers must be advised of the outcome of the procurement exercise at the same time as the successful tenderer is told. For procurement exercises not subject to the Alcatel ruling, this will be when the Contract Award Letter is issued. Where the standstill period does apply, see Chapter 23.

24.5. These letters should thank the provider for their interest and offer providers the opportunity for feedback on the reasons for their lack of success. Generally, these letters should be sent at the same time as the contract award letter(s). A template rejection letter can be found in Keystone under Procurement Templates.

Time constraints

24.6. Where the standstill period applies, the following minimum timetable must be adhered to:

| Day 0 | issue of letter of intent |
| Day 2 (midnight) | deadline for written request for feedback |
| Day 3 to 8 | provide feedback |
| Days 9 to 10 | must be working days to allow access to courts |
| Day 11 | earliest date for confirmation of award if standstill period complete without incident |

24.7. For other debriefs the Regulations state that debriefs must be completed within 15 days of receipt of the request. For contracts where the Alcatel ruling is applied, rejected tenderers who request feedback within the prescribed timescale must be debriefed before contract conclusion — see Chapter 23.

How to debrief
24.8. It is preferable to debrief unsuccessful tenderers face to face or by telephone. Generally providers should be given the choice of how they would prefer the debrief session to be conducted; however for a small contract it may be appropriate to offer telephone debriefs only. Face to face debriefs are held on NAO premises.

Who should attend

24.9. Debriefing should always be carried out by at least 2 people (using telephone conference facilities where appropriate) who have been involved in the procurement process. It is good practice to include a customer representative to provide technical input.

24.10. When deciding who should attend, the sensitivity of the situation and who will be representing the provider should be considered when compiling the NAO team appropriately; for example, if the Managing Director of a large company is attending the Chair of the Evaluation Panel may wish to attend. It is usual to have a similar number of attendees from both parties.

24.11. Debriefing should never be delegated to staff that do not have necessary experience or sensitivity to carry out the interview successfully. Debriefing requires skill and should not be carried out unprepared.

24.12. Where feedback is to be given on a requirement advertised in the OJEU, a member of the CPT must be present during the debrief.

Recording the debrief

24.13. It is best practice not to keep a formal record of the meeting or telephone conversation, but procurement staff should retain an informal note. At the start of the conversation/meeting providers should be informed that there will be no formal record nor written confirmation of what was discussed.

Content of the debrief

24.14. Following the welcome and introductions, an explanation should be given of the evaluation approach and, in broad terms, of the methodology used. It should be made clear that the merits of the outcome/award are not for discussion, but the intention is to be as frank and open as possible about the process.

24.15. The tenderer should be given a balanced view of the strengths and weaknesses of their bid and why they were not successful. The provider should have the opportunity to explore the issues raised. It is important to be tactful when referring to perceived weaknesses and wherever possible these should be balanced by referring to perceived strengths. Specific characteristics of competitors’ bids must not be discussed, particularly areas which are commercially sensitive or confidential.

24.16. If the tender price was competitive, this should be acknowledged and an indication can be given of the broad percentage difference between the tenderer and the winner.
Benefits of debriefing

24.17. The benefits of debriefing unsuccessful tenderers include:

- It helps providers to improve their performance — sensible providers will address any deficiencies so that the NAO can expect to receive a better tender from them in the future.
- It offers unsuccessful tenderers some return on the time and money they have expended in preparing their tenders.
- It establishes a reputation for the NAO as a fair, honest and ethical client. This is valuable in itself but it also ensures that the "best" providers are keen to bid for NAO work and that their tenders are fully responsive to the NAO’s ITT documents.

Debriefing Technique

24.18. Debriefing must be tailored to each tenderer, but there are a few basic rules which should be followed:

- providers must not be encouraged to believe that the debriefing process can be utilised to change the NAO’s decision on the choice of provider;
- prior to the interview, it is essential that the tenderer understands that the interview is being carried out on an informal basis with the object of mutual longer-term benefits and that the tenderer will be told, honestly (and diplomatically!) of perceived weaknesses, but that argument will not be entertained as to whether the perceptions are right or wrong;
- it is vital that, at the start of the interview, the tenderer understands that the weaknesses to be mentioned are not those perceived by one person only but by the Tender Evaluation Panel as a whole;
- it must be made clear to each tenderer that only their tender will be discussed and that there is no direct comparison with the tenders of their competitors;
- under no circumstances should such things as the commercial terms, innovative ideas, etc, put forward by one tenderer be disclosed to another;
- debriefings should normally be handled by interview — tenderers may want to take notes during the interview but requests for formal minutes should be refused;
- above the EU threshold, tenderers may require written reasons for rejection — letters may also be more appropriate for overseas based organisations;
- any written debriefings must be carefully constructed;
• in concluding debriefing interviews, it is both courteous — and can be very illuminating to ask the unsuccessful tenderer to comment on the invitation to tender documentation;

Audit Trail

24.19. The results and conclusions of debriefing interviews should be recorded in the relevant Keystone file for that contract for future reference.

Further information

See OGC’s supplier debriefing guidance at www.ogc.gov.uk/supplier_debriefing.pdf

http://www.ogc.gov.uk/documents/ITT_Debriefing_Suppliers-Service_Providers.doc on which this chapter is based.
Chapter 25: Contract Award

Introduction

25.1. This chapter sets out the process that the NAO follows when awarding a contract.

25.2. A contract is created by the NAO unconditionally accepting the offer (tender) made by the successful bidder. This need not be in writing so care must be taken to ensure that no commitment is made to a tenderer before the award of contract has been approved and, where appropriate, the standstill period has been completed without incident.

Authority to commit expenditure

25.3. Only staff named in the NAO’s schedule of Delegated Financial Authority may commit the NAO to expenditure. This document sets out the approved limits for nominated members of staff. Expenditure must be approved prior to being incurred.

Authority to award contracts

25.4. NB This may change to “Buying decisions in the NAO are made jointly by business areas and procurement staff”. Buying decisions in the NAO are made by business areas, not by procurement staff. Therefore contracts should be awarded by the person who approves the financial commitment, providing the Central Procurement Team has confirmed that an appropriate procurement process has been followed.

25.5. The Central Procurement Team will not approve the award of a contract where the procurement has not been conducted appropriately and would pose a risk to the NAO’s reputation.

Low value requirements

25.6. When ordering low value goods and services, the NAO will normally issue a Purchase Order to the provider as evidence that the commitment has been correctly authorised. Goods and services with a value below £5,000 may be paid for by GPC at the time they are ordered.

25.7. Contracts for professional services are more likely to be arranged by a letter, but a purchase order must then be raised to allow the commitment to be captured by the NAO’s accounting system (PARIS), and to enable invoices to be paid.

25.8. Staff should be careful not to acknowledge the provider’s terms and conditions (this can sometimes happen inadvertently) and always make it clear that business is to be conducted on the NAO’s terms and conditions.

Contracts to be awarded under a framework agreement or with a value under the OJEU threshold

25.9. Contracts which are to be awarded under a compliant framework agreement and those below the threshold for advertising in the OJEU may be awarded by the person who commits the expenditure. The CPT will
draft the confirmation of award letter for professional services contracts.

25.10. A purchase order must be raised, and the number quoted in the Contract Award Letter, to allow the commitment to be captured by the NAO’s accounting system (PARIS), and to enable invoices to be paid.

25.11. Rejection letters should be prepared for each of the unsuccessful tenderers who have not been successful. These should thank the provider for their interest and offer providers the opportunity for feedback on the reasons for their lack of success. Generally, these letters should be sent at the same time as the contract award letter(s).

Contracts to be awarded following advertisement in the OJEU

25.12. Where a requirement has been advertised in the OJEU, a confirmation of award letter may be sent once the standstill period has been completed without incident (see Chapters 23 and 24). It is important that the contract is not created until this point. The CPT will draft the confirmation of award letter for professional services contracts.

25.13. A purchase order must be raised, and the number quoted in the Contract Award Letter, to allow the commitment to be captured by the NAO’s accounting system (PARIS), and to enable invoices to be paid.

Part B Services over the OJEU threshold

25.14. In line with recent case law Part B services over the OJEU threshold may be subject to the Alcatel standstill period. See para 23.6.

Content of the Contract Award Letter

25.15. The Contract Award Letter must set out the documents which form the contract. For more complex exercises it may be helpful to make up a pack of contract documents for both the NAO and the successful bidder.

Standard template Contract Award Letters can be found in Keystone under Procurement Templates.

25.16. The Contract Award Letter must be unequivocal and must not contain any elements that have not previously been made known to, and agreed by, the tenderer. Otherwise it may constitute a counter-offer which the tenderer may reject. At the very least it will void the tenderer’s original offer.

25.17. The relevant Purchase Order number should be quoted, and the successful bidders advised of the requirement to reference this on any invoices they submit.
Chapter 26: Announcement of Successful Bidder

Introduction

26.1. No announcement of a successful bidder should be made, and no work should be allowed to take place, until the contract award letter has been issued.

26.2. Where a contract is awarded following advertisement in OJEU, a further Notice (an Award Notice) must be placed in the OJEU within 48 days of the award. This Notice will give details of the award and should include the name of the successful tenderer(s), the award criteria etc. Staff awarding contracts should liaise with the CPT to prepare such notices.

26.3. This principle of openness also applies to all other contracts, unless there is a convincing for it not to. Unsuccessful bidders who have competed for a contract may be told who the successful bidder is. Where the standstill period applies this information will be provided in the letter of intent.

26.4. Many firms will wish to announce that they are working for the NAO. As a general rule they should be permitted to acknowledge this when bidding for work from other bodies, providing confidences are not breached.

Placing a Contract Notice in the OJEU

26.5. The NAO uses the delta-ets Project module for the completion and submission of all notices that appear in the OJEU. Guidance on the use of the Project module and the completion of OJEU Notices can be found at www.delta.ets.co.uk.

26.6. All Notices must be approved by the CPT before they are submitted.
Chapter 27: Contract Management

Definitions and introduction

27.1. Contract management is the active monitoring and control of all aspects of a contract between the provider and the NAO to ensure that the outcome of the contract meets the contractual agreement i.e. the work is completed to the specified timescale, to the specification, and at the agreed price; this includes managing a robust, progressive & harmonious relationship between the provider and the NAO in order to facilitate continually improving performance.

Why contract management is important

27.2. In addition to the quality of the contract, the provider’s capabilities and whether the procurement resulted in a good deal, the success of a contract depends on the effectiveness of the contract management.

27.3. It is harder to specify a requirement for services than it is for a physical item, e.g. a piece of furniture, or the weight of type of paper. Monitoring progress and effective regular communication help to ensure that both parties understand what is to be delivered, overcome any difficulties/problems at an early stage, and that the original requirement does not get lost or sidetracked by unforeseen factors.

27.4. If the provider can see that the contract is being actively managed by the NAO, they are more likely to actively manage their own responsibilities.

27.5. The NAO's key principles for contract management are:

- to clearly set out roles, responsibilities and standards;
- to have meaningful two-way communication;
- to have a full audit trail and performance measurement appropriate to the contract;
- to be proactive, flexible and professional;
- to act as "partner" not policeman.

Managing contractors and other temporary staff

27.6. Sometimes contract management involves managing people rather than work. Where contractors or other agency staff are used to supplement resources within teams, a different contract management approach may be needed.

27.7. When a piece of work is contracted out to a consultancy firm on a fixed price contract, the risk of delivery and of cost over-runs generally lies with the firm. Where temporary staff are engaged, either through an employment agency or from a consultancy firm as
sometimes happens, this is not the case. The individuals will work to an NAO manager’s direction and under their management, and the manager must monitor individual progress and performance. Payment will be on a day rate basis, rather than fixed price so the employment agency’s time sheets will need to be authorised and invoices compared against timesheets.

**Getting the right contract**

27.8. The foundations for contract management are laid in the stages before contract award, including the procurement process. The terms of the contract should set out clearly and unambiguously:

- the required products/outputs/services/deliverables;
- where/how these will be delivered;
- the cost of the goods/services/work; and
- timetable for delivery etc.

27.9. These elements form the framework around which a good relationship between the provider and the NAO can form and grow. It will be much more difficult to make a successful relationship around a badly constructed contract.

**Appointing contract managers**

27.10. A named NAO individual (contract manager) should be appointed to take responsibility for the performance of the contract.

27.11. During the tendering process the tenderers should be asked to nominate an account/project manager who will be responsible for the provider’s performance.

27.12. Depending on the nature and length of the contract, both parties may appoint one individual who will have strategic oversight of the contract and another who will be responsible for day to day liaison and management.

27.13. Contract management is a challenging task but without it VFM will not be achieved. The actual management of the contract is the provider’s responsibility; the NAO contract manager’s role is to monitor and control the provider’s performance to ensure compliance.

27.14. Adequate time must be allowed for contract management activity (see below). One of the most common causes of problems stems from insufficient time and resources being allowed for the contract management phase.

**Responsibilities of contract managers**

27.15. The responsibilities of contract managers include:
• setting up effective liaison arrangements, agreeing the timings and meetings at key stages;

• keeping the provider fully briefed on any developments relevant to their contract/assignment;

• briefing the provider on expected or emerging problems;

• encouraging initiative by the provider but with appropriate NAO supervision;

• ensuring that the provider conforms to their own quality assurance standards; and

• being an "intelligent customer" — the contract manager must combine their knowledge of the NAO and the specified requirement with an understanding of what the provider can and cannot do. This is key to reducing misunderstanding between the NAO and the provider, and to avoiding problems, issues and mistakes before they happen.

Allocating time to contract management

27.16. It is difficult to be prescriptive about the amount of time contract management will take as this will vary according to the particular circumstances of the assignment — eg its nature, length, complexity and how closely the specification requires NAO staff to work with the provider.

27.17. On a contract where NAO staff, including its contract manager, are working closely with the provider, the contract manager may have up to date knowledge of progress and any issues as part of their day to day work, and this will reduce the time they need to spend on management activity.

27.18. Where the provider is providing services with very little NAO input, the contract manager is likely to want a regular report on progress. The exact frequency will depend on the nature of the services and the contract duration and may be weekly, monthly or even quarterly. Depending on the content of the updates, the contract manager may want to investigate further any issues/problems that arise and may therefore need to spend more time on the contract.

27.19. A provider should never be allowed to work in a vacuum with no contact at all with the NAO, and the contract manager, or a suitable colleague, should always be available to help/address any questions that arise. Large and/or complex services contracts may require both parties to have a contract management team to manage them.

Agreeing a service level agreement or a work plan

27.20. At the ITT stage tenderers for services contracts are usually asked to include in their proposals a description of their approach and methodology. This should be sufficiently detailed to be used as the base of a service level agreement. For consultancy assignments a work plan, based on the methodology and against which the NAO’s contract manager
can monitor progress, should be agreed.

**Content of SLA**

27.21. Depending on the nature of the contract an SLA may include:

- delivery schedule;
- availability of helpdesk;
- response times for maintenance/support call-outs;
- turn round times for providing agency workers;
- frequency – eg of cleaning tasks, security patrols;
- hours of service eg for catering;
- how complaint/problems will be handled and the escalation process;
- any obligations/responsibilities on the NAO with timescales where appropriate.

**Content of a work plan for a consultancy assignment**

27.22. The work plan should include (in no particular order):

- where the consultant(s) will work;
- key deliverables of the assignment;
- details of any sub-contractors to be used;
- programme of client visits, interviews etc;
- roles and responsibilities of key individuals on both sides;
- information and/or resources to be provided by the NAO;
- key risks and proposals for mitigating and managing;
- the decision-making process and how problems/issues will be resolved, together with an escalation process for use where necessary;
- key milestones and dates when stage payments are to be made;
- timetable/project plan for completion of the work including dates of any interim/draft reports, the final report and presentation of it where appropriate;
- any particular format, presentational standards, drafting style, etc that the report must comply with.

**Provision of information and resources by NAO**
27.23. Where the contract (or SLA/work plan) requires the NAO to provide information or resources, this should be done promptly. If there is delay, it may be difficult to hold the provider to their own obligations. This could adversely affect the quality and cost of the assignment and the time required for its completion. To avoid such problems:

- the contract, work plan or SLA should set out exactly what the NAO’s responsibilities are;
- the format and presentation of the information should be agreed; and
- a timetable for providing the information should be agreed.

27.24. If the timetable slips or resources become unavailable the providers should be informed as soon as possible and both parties should agree what impact (if any) this will have on the contract/assignment.

**Briefing providers or individual consultants on NAO procedures (where appropriate)**

27.25. Some providers will be working on NAO premises where they will have contact with NAO staff and in some cases visitors. The NAO contract manager should make sure that arrangements are in place to ensure that the provider’s staff are fully briefed on any requirements with which they must comply. These may include:

- any NAO policy with which they must comply eg health and safety, equality and diversity, information assurance; and
- physical security requirements (eg to display their pass at all times, access controls, clear desk policy etc.

27.26. Consultants and other professional services providers may visit NAO clients or the public. They will be regarded as representatives of the NAO throughout the assignment and should be treated as such. The contract manager should:

- outline clearly the NAO’s arrangements for dealing with its client bodies and ensure that the provider’s staff follows these;
- keep the provider’s staff up to date with the work of the rest of the team, involving them as necessary in team discussions;
- monitor any risk of confrontation between the provider’s staff and the client organisation;
- encourage initiative by the provider but ensure that all important discussions are led by NAO staff; and
- ensure that the provider’s staff operate under the overall management of the NAO team leader.

27.27. Where the provider’s staff are working on NAO premises, see also 27.17.
Regular progress reports and meetings

27.28. To help the NAO’s contract manager monitor progress against the SLA/work plan regular reports from the provider will be needed and, depending on the length of the contract, meetings will probably be necessary as well.

27.29. The agenda for the meeting should focus on progress against the SLA/work plan and any issues/problems arising. The NAO’s contract manager should take charge of the meeting, and prepare and circulate an agenda in advance to ensure the provider knows in advance what the scope of the meeting will be. There is little point in raising an issue that comes as a surprise to the provider as it is very unlikely they will be prepared to deal with it at the meeting.

27.30. To ensure that nothing said can be misconstrued later, it is helpful to have meeting notes, which should be written by the NAO and circulated to all parties.

27.31. Any changes to the scope or method of work should be the subject of a formal contract variation — see below 27.32 et seq.

Changes to the requirement (where appropriate)

27.32. It will sometimes be necessary, particularly for contracts whose duration is a number of years, to agree changes with the provider. These changes may be to the scope (providing this is permitted by the Regulations), the price or the timescale.

27.33. The process for varying the contract should be set out in the contract terms and should be followed in all cases. Mostly the contract will state that changes must be agreed in writing by both parties in order to be effective.

27.34. Sometimes a provider may claim that the scope of the work as set out in the specification has changed, or that they are being asked to do something which is outside the scope of the work they tendered for. Such claims — and any resulting impact on delivery and cost — should be fully investigated and challenged where appropriate. If the NAO concludes that changes to the contract are necessary these should be formally documented and a variation notice using the agreed format and procedure should be issued.

27.35. Where there is an increase in the contract price, additional approval from the budget holder is likely to be necessary before the variation can be issued.

Changes to price

27.36. Where the contract duration is less than two, or sometimes three years (depending on the particular circumstances) the contract price may be firm for the duration of the contract. In other circumstances or for where the duration is longer, there may be provision for either party to apply for a variation in the price. The mechanism for agreeing such a variation should be set out in the contract.
Contract extensions

27.37. Any extension to the contract duration must be explicitly allowed for in the terms of the contract (usually within the specification) and, for those contracts advertised in OJEU, the contract term advertised in the original Notice must allow for the extension. Without such provision, any contract "extension" will in fact be a single tender and as such will require approval at the appropriate level.

Resolving problems (where appropriate)

27.38. Many problems with service contracts arise out of poor contract documentation, and/or inadequate resource being allocated to monitoring the progress and performance of the provider. Some problems can be minimised by building in counter-measures at the right stages, or tackling difficulties promptly as they arise.

27.39. Relationships between the NAO and the provider must operate effectively at all levels and issues such as personality clashes, response times, attitudes, etc should be addressed promptly and openly. Communication must be frequent enough and channels must be clear so that there are no misunderstandings.

27.40. Procedures should be agreed as to when, how and by whom improvements, changes or progress will be monitored and how that will be communicated. Risks should be identified and monitored and both the NAO and the provider should be clear on their potential impact.

What to do when things go wrong

27.41. Even in the best of contracts problems are sometimes unavoidable. If this happens a face to face meeting should be arranged as early as possible with key individuals. The specification/work plan/SLA and progress to date should be reviewed; any agreed changes should be recorded and clearly understood by both parties. The quality of service/outputs/deliverables to date should also be reviewed and any areas for improvement identified and agreed — there needs to be an open, honest discussion on key issues, risks etc and how these are to be addressed.

27.42. During the meeting, or shortly afterwards, an action plan should be agreed to bring performance and/or delivery back in line with the contract requirements.

Accepting the contract deliverable(s)

27.43. If the NAO has been working closely with the provider, monitoring progress against the SLA/specification/work plan and constructive feedback on any interim reports has been given, nothing about any final deliverable should come as a surprise.

27.44. Nevertheless it may be that the final deliverable is less than satisfactory, in terms of either quality or time, and if this is the case the NAO’s contract manager should:

- assess the deliverable against the business case, specification, provider’s tender and work plan;
• make clear to the provider what is wrong;
• discuss how to rectify the situation;
• withhold payment until the agreed outputs have been delivered to a satisfactory standard; and
• keep a record of all communications with the provider.

27.45. Once the NAO’s contract manager is satisfied with the deliverable, (s)he should confirm this to the provider who can then submit their (final) invoice.

27.46. Payment should not be authorised if the work and the deliverable continue to be unsatisfactory. It will be necessary to have a dialogue and probably to meet with the provider to resolve the issue. If necessary the dispute should be escalated to more senior levels in both the NAO and the provider’s organisation.

**Further Information**

See the Contract Management pages of the Introduction to Procurement section on OGC’s website at [www.ogc.gov.uk/introduction to procurement.asp](http://www.ogc.gov.uk/introduction to procurement.asp) on which this chapter is based.
Chapter 28: Post-contract review and evaluation

Introduction

28.1. Every contract has its strengths and weaknesses and it is important to learn from both. Procurement staff should encourage all internal customers to undertake an objective assessment of the provider’s performance.

Content of the review

28.2. It is important to confirm the value of the contract and/or identify successes or failures in the work done or in the contract itself. The review will generally cover:

- a comparison of actual performance against what was promised;
- an assessment of the value and impact of the work; and
- identification of any unforeseen or additional costs.

28.3. For consultancy assignments internal customers should complete a VFM Contractor Evaluation Form which can be found on Merlin.

28.4. The information is collected centrally and used to assess and monitor performance across the organisation.

Vendor rating

28.5. Vendor rating refers to an objective, numerical assessment of a provider’s performance after a contract has been completed, and it is used to help providers improve their performance to contribute to future decisions about their suitability. It usually covers aspects of performance such as

- quality
- delivery
- price
- administrative effectiveness

28.6. These factors are weighted to reflect their importance to the buying organisation and a perfect provider would obtain 100% if they performed the contract with no delivery or quality failures, were the most competitive on price and dealt with correspondence and invoices accurately and promptly. It is generally used to assess suppliers of goods, where the data can be measured objectively.

Monitoring invoices and payment

28.7. Payments to providers must be in line with the contract terms and the government’s prompt payment policy. Where stage payments have been agreed, there must be evidence that the relevant milestone has been reached before the invoice is paid.
28.8. For consultancy contracts, any expenses claimed should have been agreed in advance with the contract manager, be in line with NAO policy and fully receipted.

28.9. Payment should not be authorised if the quality of the deliverable is unsatisfactory. Instead, agree with the service provider how the work will be rectified. If you cannot resolve the issue with the service provider, consult CPT for advice on how to proceed.
Chapter 29: Relationship Management

Introduction

29.1 In order to facilitate effective & improving supply arrangements it will often be necessary to manage relationships with providers.

29.2 For crucial contracts it is vital to manage a robust, progressive & harmonious relationship with the provider in order to facilitate continually improving performance.

Why relationship management is important

29.3 Positive relationships are an essential lubricant which encourages other organisations to willingly try to satisfy the NAO’s requirements.

29.4 If the NAO is perceived to pursue positive relationships with its providers, it will encourage more organisations to tender for contracts, thereby increasing competition and chances for improved value for money.

29.5 Positive pre-contract relationships increase the chances that potential providers will offer excellent terms in their tenders.

29.6 Positive post-contract relationships will increase the likelihood that providers will work hard to impress the NAO by fulfilling, and often exceeding, the terms of the contract.

Types of Relationships

29.7 There is a spectrum of relationship types ranging from low level indifference to highly integrated joint venture relationships, with varying degrees of adversarial relationships at the indifference end of the spectrum and varying degrees of collaborative relationships at the other end.

29.8 Relationship types are influenced by the relative power of the two relationship parties to each other. Buyer/supplier relationships broadly fall into one of four boxes in a matrix. Where the buyer has relatively more power than the supplier, the relationship is buyer dominated. When the supplier has most power the relationship is supplier dominated. When each party has little power the relationship is low and each party is independent of the other. When each party has strong power their relationship is one of interdependence on each other. Generally, the NAO will benefit from relationships where it has relatively strong power, either to extract more value for money from the provider or to develop increasing value for money for both the NAO and the provider. If the NAO is in relationships which are supplier dominated it should either exit those relationships or increase its power relative to the provider.
29.9 Many organisations misuse the terms “Partnership” and “partner”, by incorrectly attributing them to generally harmonious relationships; there are two appropriate uses of “partnership”. The traditional use relates to a type of organisation ownership which describes when two or more parties jointly own the organisation. Since 1990 a joint government/CBI initiative has described “partnership” as a type of collaborative buyer/supplier relationship with both parties committed to jointly achieve an agreed set of goals/benefits for both parties.

29.10 The selection of an appropriate relationship type to fit the specific type of contract should be part of the procurement and contract strategy. In making the selection the NAO should take into account the relative power of each party, how crucial the relationship needs to be and the length of the desired relationship.

Developing & managing relationships

29.11 Once a required relationship type has been selected, the extent of relationship development needs to be assessed and planned.

29.12 Some buyer/supplier relationships will be new whereas many will have been active for some time. Even current relationships may need to change to a different type, typically to become more collaborative.

29.13 If a relationship is new the NAO should develop a plan to establish the relationship, particularly into the selected type.

29.14 If a relationship is already established, but needs to change, the NAO should develop a plan to change the relationship into the selected type.

29.15 If the required relationship is a collaborative type the NAO will need to invest sufficient relationship building skills and resource, especially if there is a current non-collaborative relationship. For effective relationship management the NAO should only appoint staff who will wholeheartedly input the necessary time and effort into developing and managing the relationship and have effective inter-personal skills as relationship managers, preferably having received relationship management training; it is much less important that relationship managers are staff who have roles involved with managing the service or goods being provided.

29.16 Relationship managers will require development and sufficient time to enable them to be effective in this role. Relationship managers should deploy appropriate up to date relationship management techniques from internal & external sources.

29.17 Relationship management requires regular contact between the parties. This will often include face to face meetings. This can be achieved by including relationship issues on the agenda of contract management meetings, as well as by separate specific relationship
management meetings. Regular meetings are more important for critical relationships with high needs for collaboration.

**Ending relationships**

29.18 Some buyer/supplier relationships end when a contract ends and any replacement contracts are placed with a different provider; if the relationship contained more than one contract, the ending of a contract will not end the relationship but will change it to some extent.

29.19 In most cases when the ending of a contract causes at least a temporary ending to the relationship it will be useful if the ending is cordial, especially if there is a likely potential of future contracts with this provider.

29.20 Feedback on the relationship itself, in addition to contract performance feedback, is recommended. This should be recorded in order to inform any future relationship management activity with the provider.
Appendix A

Framework Agreements

Definition and introduction

A.1 The procurement Regulations define a framework agreement as an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies.

A.2 In most cases a framework agreement itself is not a contract as defined by the procurement Regulations, but the procurement to establish the framework agreement is subject to the Regulations. Framework agreements set out the terms and conditions under which specific purchases ("call-offs") will be made, but place no obligation on the buying organisation to purchase anything. Contracts are formed only when goods, services or works are called off under the agreement. Because the buying organisation is not tied to the agreement, it is free to go elsewhere if the framework agreement does not provide VFM.

Deciding whether to set up a framework agreement

A.3 It is important to establish whether a framework agreement, as defined above, is the right approach for the particular goods, works or services to be purchased. This will be a VFM judgment, taking account of what is to be purchased and how precisely it can be specified at this stage. In particular the framework agreement should be capable of establishing a pricing mechanism that will be applied to pricing particular requirements during the period of the framework, although this does not mean actual prices should always be fixed. It should also be possible to establish the scope and types of goods and/or services that will need to be called-off. Upgrades to the specified product, service or works should be allowable so long as they remain within the scope of the original specification.

Setting up a framework agreement

A.4 The OJEU Notice must state:

- that a framework agreement is being advertised;
- the length of the agreement — the maximum term is four years unless exceptionally a longer period can be justified. OGC advise that they understand that a longer period might be justified in order to ensure effective competition if four years would not be long enough to provide a return on investment. However, a framework agreement may not be the best vehicle for a longer-term project; and
- The estimated total value of the goods, services or works for which call-offs are to be place and, as far as possible, the value and frequency of the call-offs to be awarded under the agreement. This information is necessary to enable providers to assess the likely
values involved and to provide a figure which, as with other contracts, should not normally be exceeded without a new competition being held.

A.5 The procurement exercise should be conducted in accordance with the procedures set out in the Regulations eg the open or restricted procedure.

A.6 Framework agreements may be concluded with a single provider or with several for the same goods, services or works. In the latter case there must be at least three providers, so long as there are sufficient candidates satisfying the selection criteria who have submitted compliant bids which meet the award the criteria. The agreement will establish the terms that will apply to call-offs including delivery timescales and daily/hourly rates.

A.7 The mandatory “Alcatel” standstill period will apply to the framework agreement, but not to the call-offs under it. However, the new Remedies Directive (incorporated into UK law in December 2009) provides for a standstill period for call-offs whose value is over the OJEU threshold.

**Call-offs under a multi-supplier framework agreement**

A.8 When awarding call-offs under a framework agreement, it is not necessary to follow the full procedure set out in the Regulations, providing the appropriate process was followed in setting up the framework agreement. The EC Treaty principles including non-discrimination still apply and the call-off exercise must be conducted in a way that is not discriminatory nor distorts competition.

A.9 Criteria used for mini-competitions leading to call-offs may differ from those used to set up the framework agreement providing they are related to the original criteria.

A.10 The weightings may be varied at the call-off stage to reflect that requirements vary from time to time in terms of cost and quality.

A.11 The length of call-offs under a framework agreement is not specifically limited by the Regulations although Commission guidance states that they should not last for more than 4 years. Individual call-offs may extend beyond the four-year term of the framework agreement itself but this should not be done to avoid the Regulations. It would be difficult to justify a two-year contract awarded towards the end of the framework agreement where the normal pattern for goods or services was for a much shorter period.

A.12 Where the terms of the framework agreement are sufficiently precise to cover the particular call-off, it may be awarded without reopening competition. The Regulations do not specify how this should be done but, in order to ensure VFM, the call-off should be awarded to the provider who is considered to provide the most economically advantageous (VFM) offer based on the award criteria used at the time that the framework agreement was established. When that provider is not capable or interested in providing the goods, services or works in question, the buying organisation should turn to the next best provider.

**Further competitions under multi-supplier framework agreements**
A.13 Where the terms laid down in the framework agreements are not precise enough or complete for the particular call-off, a competition should be held with all those providers within the framework agreement capable of meeting the particular need. The basic terms cannot be renegotiated, nor can the specification used in setting up the framework be substantively changed. It is more a matter of supplementing or refining the basic terms to reflect particular circumstances for the individual call-off. Examples of such terms are:

- particular delivery timescales;
- particular associated services, eg installation, maintenance and training;
- particular mixes of quality systems and rates;
- particular mixes of rates and quality;
- where the terms include a price mechanism; or
- individual special terms (eg specific to the particular products/services that will be provided to meet a particular requirement under the framework).

A.14 Where a further competition is held for a particular call-off, the buying organisation must invite to tender the providers within the framework who are capable of meeting the particular need. This does not necessarily mean that every provider in the framework must be included — it may be divided into categories, each covering different supplies or services. In that case, the CA need consult only providers in the categories which cover the goods or services required.

A.15 There is no scope, at this stage, to run a selection procedure, based on technical ability, financial standing etc. This will have been carried out before the framework agreement was awarded and should not be repeated at the further competition stage. The decision on who should be consulted should be made on the basis of the kinds of supplies or services required and which providers can supply them, based on their offers at the time the framework agreement itself was awarded.

A.16 Contracting authorities should state the subject matter for the call-off for which tenders are being requested, and also a time limit which is sufficient to enable the selected providers to submit their bids for the particular call-off. This time limit should take account of the complexity of the call-off and the time needed for the different tenderers to submit their bids.

A.17 Where the CA has decided to make use of the option to hold an electronic auction for the further competition, it must abide by the rules covering e-auctions as set out in the Regulations.

A.18 Tenders should be submitted in writing, and they should remain confidential until the time limit has expired. The contracting authority should award the call-off to the provider which has submitted the most economically advantageous tender on the basis of the award criteria set out in the framework agreement itself focusing on the particular requirement.
New award criteria should not be added, but weighting may need to vary to reflect the particular requirement.

**Single supplier framework agreements**

A.19 Call-offs should be awarded on the basis of the terms laid down in the agreement, which may be refined or supplemented by other terms in the framework agreement but not agreed at the time. There can be no substantive change to the specification or the terms and conditions agreed at the time the framework agreement was awarded.

**Deciding whether or not to use an existing framework agreement**

A.20 For all but very low value requirements, the possibility of using an existing framework agreement should always be investigated. A framework agreement will be appropriate where:

- the requirement can be adequately met by this method;
- the providers available have sufficient capacity and capability to meet the requirement and there are enough of them to allow appropriate testing of the market and competition; and
- the terms and conditions are appropriate.

**Further Information**

See OGC’s publication *Framework Agreements — OGC Guidance on Framework Agreements in the new procurement Regulations* on which this appendix is based and which can be downloaded from their website at:

[www.ogc.gov.uk/introduction to procurement.asp](http://www.ogc.gov.uk/introduction to procurement.asp)
Appendix B

Single Tender Action

Introduction

B.1 It is government policy (as set out in Managing Public Money) that all goods and services in the public sector should be acquired by competition, as this is considered to be the best way to obtain VFM.

The role of the Central Procurement Team (CPT)

B.2 The CPT’s role is to advise internal customers on the benefits of competition versus single tender. Any verbal advice from CPT should be followed up in writing to ensure there is a full audit trail.

B.3 It is not the CPT’s role to write the business case justifying single tender action. It is the CPT’s role to support only appropriate single tender action. CPT will provide any required guidance regarding the business case and comment on the overall approach.

When single tender may be appropriate

B.4 Competition is not the only way to demonstrate VFM and there may be situations where it is more appropriate to approach a single provider. Whilst single tenders are unlikely to be appropriate for requirements of £25,000 or more, for some requirements below £25,000 there may be reasonable grounds for single tender action in the following circumstances:

- follow-up work where the provider has already carried out initial work in the same area assuming there was competition for the initial work, and that this single tender action does not start a series of several on the same grounds;
- where there is a "compatibility issue" - for example, with office equipment, IT, or where a proposed business model or other recommendation made by a consultancy is to be implemented;
- where there is genuinely only one provider who is capable of meeting the requirement or will be interested in doing so;
- in the case of an individual contractor where it is necessary for business continuity to retain a specific individual; or
- where there is sufficient evidence that competition will not result in a better price.

Where single tender is unlikely to be appropriate

B.5 Each case must be judged on its own merits, bearing in mind the factors listed in paragraph 4 above.

B.6 Whilst it is for the internal customer (and their approver) to recommend single tender action, the CPT will advise against it if any or all of the following apply:
• the requirement will cost £25,000 or more;
• the market is very competitive;
• there are no apparent factors which suggest single tender would secure best value for money;
• the VFM Strategic Partners or a similar framework agreement is being used (note competitive bids are required within frameworks); or
• there is a potential breach of procurement law.

Factors which do not justify single tender action

B.7 The following circumstances can never justify single tender action:

• The customer is under time pressure to complete the procurement.
• The customer is familiar with a particular provider, or has a good working relationship with them, or the provider has a good track record with the NAO over several years.

The need for genuine competition

B.8 Requirements should never be competed just for the sake of it or to get a “tick in the box” in terms of procedure. It takes time and effort to run a competition, and time and effort to bid. Providers who, for whatever reason, have no chance of winning the work should not be invited to bid for it.

B.9 This situation should not apply with framework agreements such as the VFM Strategic Partners. All partners satisfied the same criteria during the procurement exercise for the framework agreement and are deemed capable of meeting the requirement. Further competition will determine who offers the best VFM for a particular requirement.

Single tender under the NAO’s VFM Strategic Partner framework agreements

B.10 The VFM Strategic Partner framework agreements have been competitively tendered following an advertisement in OJEU. The specification for these framework agreements requires there to be further competition for individual assignments (contracts) to be awarded under them.

B.11 There is therefore no scope for single tender action under these framework agreements. If a single partner is invited to bid, the resulting contract will be outside the framework agreement and if the value exceeds the OJEU threshold it will result in a breach of procurement law.

Single tender under Buying Solutions’ framework agreements

B.12 These framework agreements have been competitively tendered following an advertisement in OJEU. These agreements require that “all capable providers” must be invited to bid for any requirement which is to be filled under the framework agreement.

B.13 Buying Solutions advice is that if a customer can determine from the information available under the framework agreement that only one provider
can meet their requirement, or offers the best VFM, a single bid approach is acceptable. For commodity items this approach may be feasible, although further competition may result in better value. However, for professional services such as consultancy, it is extremely unlikely that a single tender approach will be viable.

**Approval for single tender action**

B.14 The approval sequence is as follows:

a) Business Case finalised following any CPT guidance

b) Single tender recommendation initially approved by Head of Commerce

c) Approved by Director General Finance & Commerce
Appendix C

Part A and Part B Services

(Schedule 3 of The Public Contracts Regulations 2006)

Part A (Priority) Services

1. Maintenance and repair of vehicles and equipment services
2. Transport by land, including armoured car services and courier services but not including transport of mail and transport by rail
3. Transport by air but not transport of mail
4. Transport of mail by land, other than rail and by air
5. Telecommunications services
6. Financial Services:
   (a) insurance services
   (b) banking and investment services other than financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services
7. Computer and related services
8. Research and Development services (where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the services are to be wholly paid for by the contracting authority)
9. Accounting, auditing and book-keeping services
10. Market research and public opinion polling services
11. Management consultancy services and related services, but not arbitration and conciliation services
12. Architectural services: engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services
13. Advertising Services
14. Building-cleaning services and property management services
15. Publishing and printing services on a fee or contract basis
16. Sewage and refuse disposal service: sanitation and similar services
Part B (Residual) Services

17. Hotel and restaurant services
18. Transport by rail
19. Transport by water
20. Supporting and auxiliary transport services
21. Legal services
22. Personnel placement and supply services
23. Investigation and security services, other than armoured car services
24. Education and Vocational Education Services
25. Health and social services
26. Recreational, cultural and sporting services
27. Other services
Appendix D

Guidance for Procurement staff on Data Security Requirements

Introduction

D.1 This guidance is intended to help procurement staff understand the principles of data security, in particular in relation to the Data Protection Act 1998 and the Cabinet Office’s Security Policy Framework, and how these affect the specification of a requirement and the contract terms.

D.2 It is not intended to be a comprehensive guide on the data security and details of further reading and sources of help in the NAO are listed at the end of the document.

Background Information

Data Protection Act 1998

D.3 The current Data Protection Act came into force in 1998. It provides a framework to ensure that personal data is handled appropriately and sets out 8 principles that anyone handling personal data must comply with:

D.4 Personal data must be:
- fairly and lawfully processed
- processed for limited purposes
- adequate, relevant and not excessive
- accurate and up to date
- not kept for longer than is necessary
- processed in line with the individual’s rights
- secure
- not transferred to other countries without adequate protection

D.5 The second area covered by the Act provides individuals with important rights, including the right to find out what personal information is held on computer and in most paper records.

Security of data in the public sector

D.6 Several incidents of data being mislaid, lost or inadequately safeguarded have come to light over the last couple of years. Following the particularly high profile loss of data by HM Revenue & Customs, the NAO conducted its own internal review and has now taken steps to improve its own processes including encryption of laptops and enforcement of the “clear desk” policy.

D.7 In June 2008 the Cabinet Secretary published the Data Handling Procedures in Government: Final Report following a review prompted by the
HMRC incident. As a result of the review central government has been required to put in place a core of minimum measures to improve the security of the data they hold.

Security Policy Framework

D.8 In April 2009 the Cabinet Office replaced the Manual of Protective Security (which is still referred to in some OGC material) and the Counter-Terrorist Protective Security Manual. For the first time the majority of the Framework is in the public domain, which allows greater access and increases awareness, transparency and the sharing of good practice.

D.9 The core principles of the SPF are:

- Ultimate responsibility for HMG security policy lies with the Prime Minister and the Cabinet Office. Departments and Agencies, via their Permanent Secretaries and Chief Executives, must manage their security risks within the parameters set out in this framework, as endorsed by the Official Committee on Security (SO).

- All HMG employees (including contractors) have a collective responsibility to ensure that government assets (information, property and staff) are protected in a proportionate manner from terrorist attack, and other illegal or malicious activity.

- Departments and Agencies must be able to share information (including personal data) confidently knowing it is reliable, accessible and protected to agreed standards.

- Departments and Agencies must employ staff (and contractors) in whom they can have confidence and whose identities are assured.

- HMG business needs to be resilient in the face of major disruptive events, with plans in place to minimise damage and rapidly recover capabilities.

D.10 The SPF covers seven security policy areas:

- Governance, risk management and compliance
- Protective marking and asset control
- Personnel security
- Information security and assurance
- Physical security
- Counter-terrorism

Impact of data security on the procurement process

Conditions of contract

D.11 A key element in the NAO’s Data Policy, along with the policies of other public sector bodies, are the requirements placed on service providers
in terms of protection of personal data and data security generally.

D.12 OGC has mandated a number of contract conditions which, although designed for ICT contracts, are to be used in all contracts where data security is required. These have been incorporated into the NAO’s standard conditions of contract.

**Further competitions under existing framework agreements**

D.13 Where a contract is awarded as a result of further competition under the new VFM Strategic Partners (effective from 1 October 2009) the conditions of contract for the framework agreement (ref NAO/CON/F1) already include the OGC model terms. The relevant conditions are:

19 (Confidentiality)

21 (NAO Data)

22 (Protection of Personal Data)

24 (Security Requirements)

37 (Malicious Software)

Schedule 3 (Security Requirements and Plan)

D.14 Where a Buying Solutions framework agreement is used, the terms will need to be checked to ensure they include the relevant clauses.

**Long-term contracts awarded after 1 July 2009**

D.15 The NAO/CON/LT1 set, which contain conditions based on the OGC model terms, must be used. The relevant conditions are:

19 (Confidentiality)

21 (NAO Data)

22 (Protection of Personal Data)

24 (Security Requirements)

37 (Malicious Software)

Schedule 3 (Security Requirements and Plan)

D.16 These are intended primarily for consultancy and other professional services but can be adapted if necessary for other services.

**Short-term “one-off” contracts**

D.17 The NAO/CON/ST1 set of terms must be used. These contain terms similar to the OGC terms but they are not quite as stringent and there is no requirement for bidders to submit a security plan, and they do not have to complete a Certificate of Compliance. The relevant conditions are:
19 (Confidentiality)

21 (Data Security)

22 (Data Protection)

**Low-value low risk contracts**

D.18 A set of conditions for low-value (under £20,000) low-risk (provider will have no access to any data not already in the public domain) contracts is in preparation. In the meantime NAO/CON/ST1 should be used.

**Questions for the ITT (for long-term contracts)**

D.19 Bidders should be asked to state whether their Information Risk Management processes and procedures are compliant with ISO/IEC 27001 and ISO/IEC 27002, the FIPS 140-2 encryption standard and that data is handled within their organisation in line with the NAO Data Policy. If they are not compliant, bidders must identify the processes and procedures they would need to introduce to be compliant and the expected timeframe to achieve this, and must confirm that they would implement them if they were successful.

D.20 Bidders must also submit a copy of their security plan in accordance with para 3.1.2 of Schedule 3 of the Conditions of Contract. A copy of the successful bidder’s security plan must be appended to the Conditions of Contract where indicated in the document.

D.21 **Specification:** the following wording can be used to draw bidders’ attention to the NAO’s position on data security.

> *The NAO places great emphasis on confidentiality, integrity and availability of information and therefore on the security of the Contractor’s sites and the Contractor’s system. The Contractor’s attention is drawn to:*

- Conditions [19, 21, 22, 24 and Schedule 3] of the Conditions of Contract;
- the Cabinet Office’s Security Policy Framework which can be found at:
- the Cabinet Office’s report Data Handling Procedures in Government (http://www.cabinetoffice.gov.uk/media/65948/dhr080625.pdf);
- the Government’s Mandatory Minimum Measures
  - (http://www.cabinetoffice.gov.uk/media/cabinetoffice/csia/assets/dhr/crossgov080625.pdf);
- the FIPS 140-2 encryption standard (http://csrc.nist.gov/groups/STM/cmvp/standards.html#02) and
- the Information HMG Information Assurance Maturity Model and Assessment Framework

NAO Data Policy

D.22 An abbreviated form of the NAO data policy has been compiled by the DSO and should be appended to the specification where appropriate.

Working with service providers

D.23 In November 2008 the Cabinet Secretary chaired a meeting with the government’s largest service providers to government (in terms of personal data) to stress the importance for both parties of responsible and secure data handling. Work to improve the way that government and its major providers co-operate and collaborate on this subject is ongoing.

Further Reading

The following documents can be found in:

NAO\joint working\procurement\procurement templates\security

- Full details of the Cabinet Secretary’s review of data handling can be found in Data Handling Procedures in Government: Final Report
- Office of Government Commerce’s Procurement Policy Note 08/08: Mandatory inclusion of security provisions in contracts
- Office of Government Commerce’s Procurement Policy Note 13/08: Data Handling Review
- The Cabinet Secretary’s letter of 1 December 2008 to SIROs which was copied to Heads of Procurement
- Abbreviated form of NAO Data Policy

Other sources of information

- NAO’s policies and procedures on data protection: http://merlin/Data_Policy/Default.htm
- The public version of the Cabinet Office’s Security Policy Framework and link to the public version on the Cabinet Office website
- the Cabinet Office’s report Data Handling Procedures in Government (http://www.cabinetoffice.gov.uk/media/65948/dhr080625.pdf)
- the Government’s Mandatory Minimum Measures
- (http://www.cabinetoffice.gov.uk/media/cabinetoffice/csia/assets/dhr/cross_gov080625.pdf)
- the FIPS 140-2 encryption standard (http://csrc.nist.gov/groups/STM/cmvp/standards.html#02)
- the Information HMG Information Assurance Maturity Model and Assessment Framework
- (http://www.cesg.gov.uk/products_services/iacs/iamm/index.shtml)

NAO contact for further information/assistance Ian Rogers (Deputy Departmental Security Officer)
Appendix E

Guidance for procurement staff on personnel security requirements

Introduction

E.1 This guidance is intended to help procurement staff understand the principles of personnel security, in particular in relation to the Baseline Personnel Security Standard, and their relevance to the procurement process.

E.2 It is not intended to be a comprehensive guide on personnel security and details of further reading and sources of help in the NAO are listed at the end of the document.

Background Information

Baseline Personnel Security Standard

E.3 New recruitment/pre-appointment checks for both new recruits to the Civil Service and Armed Forces and for government contractors were introduced in 2006. These checks replace the “Basic Check” that previously applied, and are known collectively as the Baseline Personnel Security Standard (BPSS). The BPSS applies to the NAO which means that all new staff (temporary and permanent) and any agency staff we engage will be subject to the checks. The BPSS will also apply to many of the employees of our service providers, but is less likely to be needed for the employees of suppliers of goods, who do not usually have unsupervised access to NAO data, systems or premises, the main criterion for the BPSS checks where contractors are concerned.

E.4 The purpose of the BPSS checks is to:

- verify the identity and integrity of the individual;
- establish the individual’s right to work in the UK and, where appropriate, in government service; and
- to help prevent the engagement of any individual seeking employment for commercial or personal advantage.

E.5 The BPSS itself is not a form of security clearance but it forms the basis for any higher level of vetting - known as National Security Vetting - that may be required.

Scope of the BPSS

E.6 The BPSS checks include obtaining **and checking** the following:

- Identity including confirmation of name, date of birth and address
- Employment history for the past 3 years
- Educational details and references for individuals new to employment
- Where appropriate a full account of any significant periods (6 months or more) spent abroad
• Nationality and immigration status
• Criminal record declaration (unspent convictions only)

Nationality checks

E.7 The Civil Service Nationality Rules, which apply to the NAO, are complex and, rather than try to interpret the Rules for them, it is generally wiser to refer any queries from prospective bidders to:

http://www.civilservice.gov.uk/jobs/Nationality-Requirements/NationalityRequirements.aspx

E.8 Although there are some exceptions so reference to the Rules in individual cases is essential, in general the majority of Civil Service posts are open to Commonwealth citizens and nationals of any member state of the European Economic Area (EEA) as well as UK nationals. However, a significant number, which are considered to require special allegiance to the state, are reserved for UK nationals only. In general, when applied to NAO contractors, Commonwealth or EEA citizenship will be sufficient but bidders and service providers should be asked to confirm that the people they are proposing to work for the NAO are qualified to do so under these Rules.

Responsibility for the nationality and BPSS checks

E.9 Where the NAO has a long-term relationship with a service provider, the specification and contract conditions now require the service provider to undertake these checks on any individual who will be involved in the delivery of the requirement. As part of the contract management process, an audit should be conducted on the service provider’s records and processes at regular intervals to ensure compliance.

E.10 For smaller one-off contracts where the service provider will have unsupervised access to the NAO’s data, systems or premises the specification must include a requirement for the BPSS and nationality checks. Where, exceptionally, there is a genuine reason for the selected provider not being able to carry out the checks, HR will undertake these but they must be given sufficient notice in order to do so. It is the responsibility of the internal customer to arrange this with HR.

National Security Vetting (NSV)

E.11 A very limited amount of work that is outsourced to an external provider may require the provider’s staff to undergo a higher level of security checking. There are 3 levels of NSV:

• Counter-Terrorist Check (CTC)
• Security Check (SC)
• Developed Vetting (DV)

E.12 A requirement for NSV should be the exception as the checks can be intrusive and take time to complete, so they are not undertaken lightly. Circumstances which require NSV would involve the provider’s staff having,
for example, unsupervised access to sites which are considered to be at risk of terrorist attack, or constant and frequent access to material classified as SECRET and/or TOP SECRET.

List X companies

E.13 The Ministry of Defence maintains a database of companies who have been awarded a defence contract and cleared to have access to, and hold on their premises, protectively marked material. Their security measures and processes have been scrutinised and much meet minimum standards set by the MoD. List X premises must have suitable access controls and the personnel working on them will be subject to the appropriate level of security checking.

Impact of personnel security requirements on the procurement process

Further competition under existing framework agreement

E.14. Questions for the ITT: where further competitions are held for requirements under a framework agreement such as the VFM Strategic Partners or a framework set up by Buying Solutions, there must be a specific question in the RfP/ITQ which asks the bidder to confirm that the BPSS and nationality checks have been carried out on all the personnel they are proposing to deliver the requirement.

Non-framework exercise

E.15 Questions for the ITT: bidders should be asked to state whether they currently carry out the BPSS and nationality checks and to describe the processes/procedures they have in place to do so. If they are not currently carrying out either or both checks, they must indicate what processes/procedures they would need to introduce to be compliant and confirm that they would implement these if they were successful.

E.16 Specification: the specification template contains standard wording regarding the requirement for the contractor to carry out the BPSS and nationality checks.

E.17 Standard Conditions of Contract: The requirement for BPSS checks is reinforced in the Conditions of Contract:

22.3.7 in NAO/CON/ST1

and in 13.5 and 24.3 in NAO/CONS/LT1 and NAO/CONS/F1

National Security Vetting

E.18 There is an optional para in the specification template which advises the service provider of the need for security clearance and requires them to cooperate with the NAO who will arrange for the appropriate level of check to be carried out.

Requirement for contractors to have existing National Security Vetting

E.19 Following a communication from the Cabinet Office on this subject, OGC
issued Procurement Policy Note (09/08) on the use of NSV in contracts. The PPN is a reminder that CTC, SC and DV should only be demanded in very limited circumstances and that it is potentially discriminatory to decline to consider someone for a role solely on the grounds that they do not have security clearance.

E.20 However, the PPN recognises that in certain very exceptional circumstances a pre-existing clearance may be required. These are described in full in the PPN which should be referred to in all circumstances where an internal customer has specified pre-existing clearance.

**Further Reading**

The following documents can be found in:

NAO\joint working\procurement\procurement templates\security

- Full details of the BPSS checks and how to conduct them can be found in HMG Baseline Personnel Security Standard: A Good Practice Guide to the Pre-
- Employment Screening of Government Staff and Contractors published by the Cabinet Office
- Office of Government Commerce’s Procurement Policy Note 09/08: Appropriate use of national pre-vetting requirements for contractors employed on public sector contracts
- NAO guidance for managers (on Merlin): Unsupervised Access to NAO Premises or the NAO Network

**NAO Contact for further information or assistance** Steve Dugmore (HR)