Competitive Procedure with Negotiation

This procedure lets you clarify bids with bidders after their submission of fully formed initial tenders.

You should use this procedure If you are unable to define how to meet your needs technically and/or you cannot specify the legal or financial requirements of your contract.

Examples

This procedure may be used:

- **for procuring services or goods that require adaptation or design inputs.**
- **in cases of complex purchases, such as sophisticated products, intellectual services or major information and communication technology tools**

You may have to start a dialogue with the bidders to guarantee the satisfactory outcome of the procurement process.

This procedure should not be used for ‘off-the-shelf’ services or goods, where many suppliers can deliver the service or product.

The use of Competitive Procedure with Negotiation must be justified and the reasons recorded.

You can also use the Competitive Procedure with Negotiation where all of the submissions received for an Open or Restricted Procedure that you have conducted are classed as either irregular or unacceptable.

Quickfire Guide

Irregular or Unacceptable Tenders

A tender is irregular where:

- It does not comply with the **Procurement Documents**
- There is evidence of collusion or corruption
- The bid is abnormally low

A tender is unacceptable where:

- It was submitted by a bidder that does not have the required qualifications
- The price tendered exceeds your Organisation's budget (as determined and documented before the Procurement Procedure started).

Please Note

In all cases "days" are calendar days and not working days. The final day must however be a working day in Scotland.

Competitive Procedure with Negotiation

Quickfire Guide

Quickfire Guide

The Usual Rules

1. In the case of the basic Competitive Procedure with Negotiation, you must allow at least 30 days (from despatch of the **Contract Notice**) for suppliers to submit their selection stage documents.

2. After applying selection criteria, you invite the shortlist of those meeting the selection requirements to submit a final tender. Those invited must be allowed at least 30 days (25 if you have indicated you will accept electronic submissions) from the Invitation to Tender, to submit tenders.
3. Sub-central organisations may set the time limit for the receipt of initial tenders via agreement with the selected bidders. This date must be the same for all bidders. In the absence of an agreement, the time limit must be at least 10 days from the date on which the invitation to tender was sent. A sub-central organisation is any organisation which does not belong to Central Government or National Health Services.
4. After the evaluation of initial tenders, you may decide to award the contract to one of the bidders, without negotiation, if this option was indicated in the contract notice or invitation to confirm interest, as per **The Public Contract (Scotland) Regulations 2015**. Alternatively you may negotiate on an equal treatment basis with the bidders.
5. There are no statutory timescales for the negotiation phase. However bidders must be informed of the rules to be applied, including details of the process and timings before the process starts. When you decide to conclude the negotiations you must inform the remaining bidders and set a common deadline to submit any new or revised tenders. At the end of this process (which may include a best and final offers stage) you must award the contract to the supplier with the most economically advantageous tender (using the award criteria in the procurement documents).

Different Types of Competitive Procedure with Negotiation

There are three variations of the Competitive Procedure with Negotiation with slightly differing timelines:

Competitive Procedure with Negotiation

Find out more

Competitive Procedure with Negotiation - with Publication of a Prior Information Notice

Find out more

Competitive Procedure with Negotiation - Urgency

Find out more

Care and Support Services

Open or close

For many care and support services contract, an organisation may use the procurement procedures, tools and techniques of its choosing. You should follow a procurement procedure, as a matter of best practice, that is proportionate to the value of the contract and to take account of some fundamental considerations (for example, the **Principles of Procurement** and **Fair Work Practices**).

When doing so, you may choose to adapt or streamline the Competitive Procedure with Negotiation described in the **Public Contract (Scotland) Regulations 2015**. If you do so, you are not obliged to follow the detailed procedural requirements set out in those Regulations. You should therefore not refer to the Regulations in the tender documentation issued to participants, as this may create an expectation that the detailed procedural requirements will be followed. In all cases, you should ensure that the procurement process is described accurately and clearly, and then adhered to.

Variants

Open or close

You may authorise or require variant bids. However this must have been specified:

- in the **Contract Notice**
- where a PIN is used in the invitation to confirm interest.

The Procurement Documents must set out the minimum requirements and how any variant will be evaluated. Variants cannot be considered unless this has been done, they are linked to the subject matter and they meet the minimum requirements.

Where it is relevant, you should also consider whether to allow bidders to set out different TUPE scenarios within their bids. If you elect to include this in your tender, you should provide clear directions to tenderers to ensure that bids can be compared on a like-for-like basis.

All variant bids should be evaluated using the same criteria as the standard bids and compared on a like-for-like basis.

You may authorise or require variants on the contract requirements, as long as it has been specified:

- in the Contract Notice; or
- You may authorise or require variant bids. However this must have been specified in the **Contract Notice**.

The Procurement Documents must set out the minimum requirements and how any variant will be evaluated. Variants cannot be considered unless this has been done, they are linked to the subject matter and they meet the minimum requirements.

Where it is relevant, you should also consider whether to allow bidders to set out different TUPE scenarios within their bids. If you elect to include this in your tender, you should provide clear directions to tenderers to ensure that bids can be compared on a like-for-like basis.

All variant bids should be evaluated using the same criteria as the standard bids and compared on a like-for-like basis.

Issuing Documents

Open or close

Since your final documents may be dependent upon the negotiations held, it is not practical to expect you to publish all Procurement Documents with the Contract Notice.

Invitations to Tender (ITT) should be sent to all selected bidders:

- for free
- simultaneously
- in writing;
- by electronic means
- include all ITT documents (unless exclusions apply, for example confidentiality).

As per the **Public Contracts (Scotland) Regulations 2015**, The minimum number of bidders is 3.

If an ITT is issued near to the closing date, bidders should be made aware that the submission date is imminent.

The ITT time limits for receipt of tender submissions should be proportionate to the contract complexity and the time required to prepare and submit a bid (bearing in mind minimum requirements).

Tender Extensions

Open or close

As per **The Public Contract (Scotland) Regulations 2015**, your Organisation must extend the time limits for the receipt of tenders so that all bidders are aware of all of the information needed. When:

- additional information has been requested by a bidder in good time and not supplied at least 6 days (or 4 days in accelerated procedures) before the receipt of tenders deadline or
- where there are significant changes made to the procurement documents.

Any extension should be proportionate to the complexity of the change and /or the additional information being provided.

To proceed with a tender extension the necessary approval should be obtained in accordance with your internal governance.

If the date is amended, the new date should be notified to all bidders. If any tenderer indicates that they have already submitted a tender, they should be able to withdraw their original bid and submit a revised one (in line with the extended tender deadline).

Care must be taken to guard against fraud. A full audit trail must be documented to ensure no information is passed to a bidder, allowing them to amend bids already seen by the Organisation.

Principles of Procurement

Open or close

The activities you undertake at this stage must be carried out in a carefully managed manner that supports the **Principles of Procurement**.