Receipt of Tenders

It is best practice to use **PCS-Tender** to receipt tenders - if you have access. Alternatively, **Public Contracts Scotland** advertising can be used.

If your Organisation does not use PCS-Tender or Public Contracts Scotland for the receipt of tenders, you should refer to your internal governance procedures for information on how to manage this stage.

It is best practice for the buyer to notify the bidders if the late tender has been accepted or rejected. **The Freedom of Information Act (Scotland) 2002** has led to a notable increase in the amount of documentation relating to the evaluation of tenders and contract awards being released into the public domain and it is your duty to ensure that any procurement process can withstand such scrutiny.

As with all aspects of the Procurement Journey, the activities at this stage must be carried out in a carefully managed manner that supports the **Principles of Procurement**. As a minimum the evaluation must be carried out in a transparent way that ensures there is no distortion of the marketplace, the outcome cannot be a procurement that unduly favours or disadvantages a particular bidder and it is the responsibility of the Organisation to make sure that these requirements are met.

It is important that the evaluation of tenders use the criteria disclosed to bidders. The assessment must be clear and robust in order to provide a full justification and audit trail for the resultant award decision.

Limiting the Number of Candidates

Open or close

The Organisation should invite enough bidders to generate competition.

Organisations may limit the number of candidates meeting the selection criteria invited to tender or to conduct a dialogue. The minimum number of qualified bidders that may be indicated by an organisation are:

- Restricted Procedure: the minimum number of bidders is five;
- Competitive Procedure with Negotiation, Competitive Dialogue Procedure, and Innovation Partnership procedure: the minimum number of candidates is three.

Late Bids

Open or close

Bidders must ensure their bid is submitted under the rules of the competition and before the specified deadline.

In exceptional circumstances a tender that arrived after the deadline may be accepted into the competition. The policy for addressing late tenders are subject to the internal governance for your organisation, legislation and case law.

If there is any doubt about whether to allow a late tender into the competition, advice from your Procurement Department and/or legal advice should be sought. There will need to be a clear audit trail of the handling of late tenders and any decision taken.

If PCS-Tender is being used, the buyer will be able to identify the bidders which have submitted late tenders. The buyers can then determine whether to open the late tender or reject it.

It is best practice for the buyer to notify the bidders if the late tender has been accepted or rejected.

What if you Haven’t Received Enough Responses?

Open or close

You may continue with the procedure if the number of candidates meeting the selection criteria and minimum requirements is below the minimum number set. However, to do so you must invite all candidates with the required capabilities.

Where bidders issued with a copy of the ITT do not submit a response, you should ask for reasons why. These reasons should be recorded and filed to aid future strategy development.

If the only tenders which are received for an Open or Restricted Procedure are irregular or unacceptable (including tenders above the established budget), then you may apply:

- a competitive procedure with negotiation; or
- a competitive dialogue.

In these cases, you do not need to publish a Contract Notice when the procedure includes all of, and only, the bidders meeting the selection and exclusion criteria (who submitted tenders as part of the original procedure).

If only one tender response is received you should consider why this is. For example, has the market been restricted in some way or has the opportunity been unattractive? In such cases you should consider restarting the process.

If you are satisfied that there are no particular reasons for the submission of only one tender response you can continue with the procedure. This can only happen is the one bid is compliant with all requirements.

The above should be conducted in accordance with your internal governance procedures.

Non-Competitive Action

Open or close

You may consider the use of a Non-Competitive Action (NCA) in cases of exceptional circumstances. You must receive approval from the appropriate person in your Organisation e.g. Head of Procurement, before proceeding.

Please note, there is no single checklist of situations or factors to be considered. The decision whether to approve a NCA request will need to be made on a case-by-case basis.

Some situations may include:

Extreme urgency - competition is not required when a contract needs to be put in place urgently to respond to a circumstance which is unforeseeable by, and out-with the control of your organisation (e.g. severe and unprecedented weather conditions, emergency pandemic conditions). Any contract awarded through the NCA process must only cover the urgent (immediate) need.

Only one possible supplier - you will need to provide objective evidence that will withstand scrutiny and audit to support the decision that there is not an alternative or equivalent product or service available in the market which will meet your needs.

The **Public Contracts (Scotland) Regulations 2015 (Reg 33)** provides further guidance on when you may award a public contract following the **negotiated procedure without prior publication** of a contract notice or prior information notice.

For example, only to be used when:

1. No tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure. This is provided that the initial conditions of the contract are not substantially altered, and that a report is sent to the Ministers if requested;

2. Where the supplies or services can only be supplied by a particular supplier for any of the following reasons:

(i) The procurement aim is the creation or purchase of a unique work of art or artistic performance;

(ii) There can be no competition for technical reasons (where no reasonable alternative or substitute exists and the lack of competition is not due to artificially narrowing the scope of the procurement);

(iii) To protect exclusive rights, including intellectual property rights (where no reasonable alternative or substitute exists and the lack of competition is not due to artificially narrowing the scope of the procurement);

3. Where (but only if strictly necessary) due to extreme urgency as a result of events unforeseeable by your organisation, the time limits for the **open procedure**, **restricted procedure** or **competitive procedure with negotiation** cannot be complied with.

Consideration must also be given to Planning, Sustainable Procurement and Risk Management throughout this stage of the Journey.