



Procurement Guide for above Threshold Procurement

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SECTION 1. Introduction

This procurement guide applies to all procurements undertaken by the Group (excluding Southway Plus Limited) where the Group is required to follow an OJEU Process (ie. because the value of the procurement is above the EU threshold). This document should be read in conjunction with the Group's Procurement Policy.

SECTION 2. Before you begin

Before the process begins, you will need to consider the following:

- Whether you are really tendering under a contract, or giving out grant funding (the Regulations do not apply to grant funding)
- Whether you could call off from an existing OJEU compliant framework (one that the Group has set up or one that another contracting authority has set up from which the Group can benefit)
- Social value (please refer to the Group's procurement policy)
- Whether you want / need to undertake any pre-procurement engagement or consultation (with the marketplace, stakeholders or tenants) in order to build capacity in the market place, or better understand what you need to buy
- Whether you want to procure a one-off contract, or a new framework agreement
- The value of the contract ensuring the amount is an aggregate figure which takes into account all possible stages, phases, extensions and/or options
- Whether you will be recharging any tenants or leaseholders for the costs incurred under any proposed contract and therefore whether there is a duty to consult them before and during the procurement process
- Whether or not the procurement should be broken down into lots – and if not, you need to document this decision and the reasons for it – see more **below**
- Whether or not you want to “reserve” the competition to sheltered workshops or to organisations with a public service mission – see more **below**
- What procedure you will choose to follow – see more **below**
- The specification for your contract and what the documents you need to prepare before you start the procedure – see more **below**
- Suitable evaluation criteria – see more **below**

Dividing requirements into Lots

Lots can be used as a way of structuring requirements within a procurement exercise so that related requirements can be procured together in one procurement. This has numerous potential benefits, including:

- not having to undertake separate procurement exercises for multiple related needs;

- enabling SMEs and/or more specialist providers to bid, when they may not have been able to / may have chosen not to tender had the lots been aggregated.

Regulation 46 requires that, where the Group decides not to subdivide its requirements into lots, it must provide “*an indication of the main reasons for their decision*” (Regulation 46(2)).

Regulation 46 also sets out to how lots are to be tackled. The Group is expected to inform tenderers:

- whether they can submit tenders for one, several or all lots;
- if you choose to limit the number of lots that may be awarded to one tenderer, what that limit is;
- if you do choose to limit the number of lots that may be awarded to a single tenderer, the “*objective and non-discriminatory criteria or rules*” that will be applied to determine which lots will be awarded to which tenderer – this cannot be based solely on the tenderers’ preferences, as this would not be objective.

Lots can be used to ensure a variety / multiplicity of provision which, for example, can reduce risk of supplier failure for the Group. Equally, lots could be used to separate out specialist parts of a need and require different organisations to deliver each part.

Framework Agreements

A framework agreement is an agreement which establishes the terms governing contracts to be awarded during a given period in particular with regard to price and, where appropriate, quantity .

The intention behind a framework is to streamline the competitive process by enabling one OJEU process to set up the arrangements by which multiple contracts can be called off. They can be created so that one, or many, purchasers are able to benefit from the arrangements. Equally they can be created with one supplier, or a number (in which case often a “mini-competition” is used to decide which supplier is used each time there is a call-off).

Frameworks are therefore useful when you anticipate that you are likely to need the same – or similar – provision on a number of occasions over time. They are normally limited to four years in length.

If you are procuring a framework arrangement then seek the advice of a Director before beginning the procedure.

You should also consider whether you have access to frameworks procured by other organisations. This could give you a significant saving in terms of time and cost of running your own procurement. The Framework Agreement may have also secured significant costs savings.

Reserved Contracts

Regulation 20

Under Regulation 20 the Group can reserve competition to “*sheltered workshops*” and organisations “*whose main aim is the social and professional integration of disabled and disadvantaged persons*”, or provide for contracts to be performed through sheltered employment programmes. This is provided that at least 30% of the employees of the organisations concerned are “disabled” or “disadvantaged”. “Disadvantaged” is not defined in the 2015 Regulations, or in the Public Sector Directive. This means that if the Group wanted to use this option you will need to think about and explain what you consider “disadvantaged” to mean, and how to justify that view when targeting competition at a smaller pool of potential tenderers. Legal advice is recommended before using this option.

Regulation 77

Under Regulation 77, the Group can also reserve competition for contracts for certain (limited) services to organisations that have as their objective the pursuit of a “public service mission”. The option is available for “health, social and cultural services”, meaning the following:

- administrative educational, healthcare and housing services;
- services for the supply of domestic help, nursing, and medical personnel;
- pre-school education services;
- higher education services;
- e-learning services;
- adult education services at university level;
- staff training services;
- training facilities;
- tutorial services;
- health and social work services (including a wide range of discrete medical, health, social, rehab and counselling services);
- library, archives, museums and other cultural services;
- sporting services;
- services furnished by social membership organisations;
- services provided by youth associations.

If the Group intends to procure any of these services, then it can choose to ring-fence competition, though the maximum contract period is three years .

To be eligible to tender, an organisation must meet the following tests:

- it must have as its objective the pursuit of a public service mission that is linked to the delivery of the relevant services;
- its profits must be:
 - reinvested with a view to achieving its objective; or
 - distributed based on participatory considerations;
- its structures of management or ownership must be:
 - based on employee ownership or participatory principles; or
 - require the active participation of employees, users or shareholders; and
- it must not have been awarded a contract for the relevant services by the Group using this rule within the preceding three years.

SECTION 3. Key stages in the procurement process

Stage 1 – Chose your procurement process

There are several procedures available under the Regulations and choosing the right one is important. A brief overview of the main procedures can be found in Section 3 of this guide.

Stage 2 – Get your procurement documents ready

The Regulations require the Group to:

- offer “*unrestricted and full direct access free of charge*” on the internet to the procurement documents **from the date of publication of the OJEU contract notice** or ‘invitation to confirm interest’ (where a prior information notice (PIN) has been issued); and
- specify in the OJEU contract notice or invitation to confirm interest (if applicable) the internet address at which the procurement documents are accessible.

The definition of procurement documents is very broad and includes the technical specifications, the proposed contract conditions and any descriptive document, as well as any ‘additional documents’ relating to the tender process. This means that the PQQ and ITT (or equivalent) should also be issued from the date of publication of the notice.

In certain circumstances, it may be appropriate not to publish all procurement documents from the outset and the Cabinet Office has issued guidance to this effect. If you are considering not publishing all procurement documents from the outset, you should take advice from a Director or take legal advice.

Stage 3 – Advertise

Any procurement via OJEU of a contract valued above the EU Threshold will require the following:

- publication of a Contract Notice in OJEU before any other advertising;
- publication of a notice on Contracts Finder following the Contract Notice in OJEU containing at least the following information:
 - the internet address at which the procurement documents are accessible;
 - the time by which any interested economic operator must respond if it wishes to be considered;
 - how and to whom such an economic operator is to respond; and

- any other requirements for participating in the procurement.

On top of the advertising requirements above, you may want to advertise more widely. So long as the OJEU Contract Notice is the first advertisement to be published and that no additional information is included in other adverts, you can then choose to advertise elsewhere.

Stage 4 – Mark/Evaluate the PQQ; Exclusion and selection stage

The PQQ will have been drafted and issued at the advertisement stage.

The PQQ stage of any procurement using the restricted, competitive procedure with negotiation or competitive dialogue process should use the Crown Commercial Service's standard PQQ and related guidance:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417963/4279-15_GN_PQQ_Lord_Young_Guidance.pdf

The Group must specify its minimum requirements for suppliers' financial standing and technical ability and can add "project specific questions" to the standard PQQ, but these must be relevant and proportionate to the requirement. The relevant officer should also include in the PQQ how they will evaluate responses.

Stage 5 – Evaluation and Contract Award

Evaluation criteria should be used to determine which supplier to award a contract to and based on identifying the "most economically advantageous tender" from the Group's point of view. This can be identified based on:

- Price or cost (using a cost effectiveness approach such as life-cycle costing);
- The best price-quality ratio (taking into account qualitative, environmental and/or social aspects linked to the subject matter of the contract), including:
 - quality: technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
 - organisation, qualification and experience of staff assigned to performing the contract (where this can have a significant impact on the level of the performance of the contract);
 - after-sales service and technical assistance, delivery conditions such as delivery date, process and period, or period of completion.

Ordinarily the Group will use 60% Quality and 40% Price as the split. However, there may be good reasons to deviate from this requirement.

If a contract is for a fixed price, you can use just quality criteria.

You **must** consult with a Director to receive approval of each of your evaluation criteria.

The remainder of the process for leading up to Contract Award will vary depending on the type of procedure used and these steps are detailed in “main choices of procedure” in Section 4.

Stage 6 – Issue a Standstill Notice

A “standstill notice” (also referred to as an “award decision notice” or a “Regulation 86 notice”) must be sent to all tenderers that have not been definitively excluded that have taken part in the tender process.

The standstill notice must contain the following information:

- a) the award criteria;
- b) the name of the tenderer to be awarded the contract;
- c) the reasons for the decision, including the characteristics and relative advantages of the successful tender;
- d) the score of the recipient and the score of the successful tenderer; and
- e) confirmation of the date before which the Group will not enter into the contract (ie. the date after the end of the standstill period).

It is important that each tenderer is informed of the advantages of the winner’s tender relative to their own tender, which means that each standstill notice ought to be drafted individually. It is best practice to include a couple of sentences about the relative advantages in relation to each criterion used.

All standstill notices should be sent out at the same time, so as not to breach the principle of equal treatment.

Stage 7 – Observe a Standstill period

The standstill period is required by Regulations and provides for a short pause between the point when the contract award decision is notified to tenderers, and the earliest point at which

the contract can be signed. This allows a period during which a tenderer could issue a claim at Court to prevent signature of the contract.

The minimum standstill period is calculated depending on the means of communication used to transmit the standstill notice:

- the period ends at midnight at the end of the 10th day after sending when the notice is communicated using electronic means (eg. fax or email); or
- the period ends on midnight at the end of either 10 calendar days from the date of receipt by all tenderers of the standstill notice, or 15 days from the date of sending the contract notice, when the notice is communicated using non-electronic means (eg. post).

The standstill period will need to be extended to the end of the next working day if it was due to have expired on a non-working day.

Any legal challenge of the Contract Award decision prior to entry into the contract triggers the automatic suspension of the Contract Award, and the Group must not sign the contract and seek legal advice if a challenge is received in these circumstances.

Stage 8 – Debrief (optional)

Where the Group wishes to hold a debrief meeting with unsuccessful tenderers, a date and time for the debrief meeting should be suggested in the standstill notice. A debriefing meeting should take place as soon as possible after the standstill notice has been issued, preferably within 2 weeks, so that all parties are still familiar with the content of the standstill notice when any such debriefing meeting takes place

Care must be taken to ensure that all information provided to a tenderer at the debrief is both accurate and consistent with information previously provided within the standstill notice.

It is essential that the tenderer understands that any discussion is being carried out with the object of mutual longer term benefits and that the tenderer will be told honestly of strengths and areas for improvement contained in their tender. The meeting must not be viewed as a forum for debate as to the validity of the scoring or tender process.

It must be made clear to each tenderer that only their own tender will be discussed in relation to the successful tender. Under no circumstances will such things as commercial terms, innovative ideas put forward by another tenderer etc., be disclosed.

The briefing must be factual and would ideally only amplify the matters raised in the standstill notice. Debriefing meetings must be carefully planned and executed and only carried out by experienced personnel. A record of the debriefing meeting should be made and placed on the appropriate registered file.

Stage 9 - Record Keeping

To the extent that any such information is not included in a Contract Award Notice published in the OJEU, the Group will draw up a written report for every purchase of works, services or supplies valued over the OJEU threshold, which shall include at least:

- the name and address of the contracting authority;
- the subject-matter;
- the value of the contract, framework agreement or dynamic purchasing system;
- where applicable, the results of the qualitative selection and reduction of numbers, including the names of selected and rejected candidates and reasons for their selection or rejection;
- the reasons for the rejection of any tenders found to be abnormally low;
- the name of the successful tenderer and reasons why its tender was selected;
- if known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;
- if known, the names of the successful tenderer's subcontractors (if any);
- in the instance of negotiated procedures with no prior publication, the circumstances which justify the use of this procedure;
- where applicable, the reasons why the decision was made not to award a contract or framework agreement or to establish a dynamic purchasing system; and
- where applicable, any conflicts of interests detected and subsequent measures taken.

The Group shall document the progress of all procurement procedures, and shall keep for three years, sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as:

- communications with suppliers and internal deliberations;
- preparation of the procurement documents;
- dialogue or negotiation (if any); and
- selection and award of the contract.

SECTION 4. “Main” Choices of Procedure

This section details the main procurement procedures available to the Group and an outline of the steps involved in each.

1. Open Procedure (Regulation 27)

- Always available
- **Has the following steps:**
 - OJEU Contract Notice and advert placed in Contracts Finder. Please refer to “advertising requirements” above for more information on making Procurement Documents available.
 - Tenders submitted by interested parties
 - Tenders evaluated by the Group
 - Contract awarded and tenderers notified
 - Standstill period adhered to
 - Contract entered into with successful tenderer
 - Contract award notices placed on OJEU and Contracts Finder
- No selection (prequalification) stage – any interested party can submit a tender. This is a single stage procedure.
- Suitable when you expect that tenders will be easy to evaluate and/or you don’t expect to need a shortlisting (selection) process.

2. Restricted Procedure (Regulation 28)

- Always available
- **Has the following steps:**
 - OJEU Contract Notice published and advert placed in Contracts Finder. Please refer to “advertising requirements” above for more information on making Procurement Documents available.
 - Interested parties submit PQQs
 - PQQs analysed to exclude interested parties who do not meet minimum standards and those scored against selection criteria by the Group
 - At least 5 shortlisted parties invited to tender (ITT)
 - Tenders submitted by shortlisted bidders

- Tenders evaluated by the Group
- Bidders notified of intention to award by standstill letter
- Standstill period held
- Contract entered into with successful bidder
- Contract award notices placed on OJEU and Contracts Finder
- Shortlisting of interested parties is carried out through the selection stage (PQQ), and shortlisted parties are invited to tender.
- Useful when you wish to restrict the number of bidders because either you anticipate significant interest from the market or where the tender will take a significant amount of time to either complete or evaluate.

3. Competitive Procedure with Negotiation (Regulation 29)

- The competitive procedure with negotiation (“**CPN**”) (Regulation 29) and competitive dialogue (“**CD**”) (Regulation 30) are both available in the same circumstances:
 - works, supplies or services fulfilling one or more of the following criteria:
 - the needs of the purchaser cannot be met without adaptation of readily available solutions;
 - they include design or innovative solutions;
 - the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them;
 - the technical specifications cannot be established with sufficient precision by the purchaser with reference to a standard, European Technical Assessment, common technical specification or technical reference;
 - works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders were submitted.
- **Has the following steps:**
 - OJEU Contract Notice and advert placed in Contracts Finder. Please refer to “advertising requirements” above for more information on making Procurement Documents available.
 - Interested parties
 - PQQs analysed to exclude interested parties who do not meet minimum standards and those scored against selection criteria by the Group
 - At least 3 shortlisted parties invited to submit initial tenders (ITSIT)
 - Initial tenders submitted by shortlisted bidders
 - Initial tenders evaluated by the Group

- The Group decides either to award the contract based on initial tenders, or negotiate.¹
- If the Group considers that Tenders could be improved, the Group negotiates with bidders to “improve the content of their offers”.
- The Group may invite further tenders to be submitted. There is no limit to the number of rounds of tenders and negotiation – and this can be used to reduce the number of bidders
- Final tenders are invited from the remaining bidders (ITSFT)
- Final tenders submitted by remaining shortlisted bidders
- Final tenders evaluated by the Group
- Bidders notified of intention to award by standstill letter
- Standstill period held
- Contract entered into with successful tenderer
- Contract award notices placed on OJEU and Contracts Finder
- CPN is useful when the Group is Reasonably certain about its requirements, but wishes to have the ability to negotiate with bidders to improve value for money.

4. Competitive Dialogue (Regulation 30)

- Available in the same circumstances as CPN (**above**)
- **Has the following steps:**
 - OJEU Contract Notice and advert placed in Contracts Finder. Please refer to “advertising requirements” above for more information on making Procurement Documents available.
 - Interested parties submit PQQs
 - PQQs analysed to exclude interested parties who do not meet minimum standards and those scored against selection criteria by the Group
 - At least 3 shortlisted parties² invited to participate in dialogue (ITPID) and submit Outline Solutions for dialogue in response to a document prepared by the Group outlining its needs and requirements.
 - Dialogue takes place on a range of topics to enable the Group to understand the bidders’ proposed solutions to its needs and requirements.

¹ You can award a contract on the basis of an initial tender (much like the restricted procedure) without further negotiation, if you feel no need for further negotiation at that stage and you have indicated that you may do this in the OJEU Contract Notice.

² assuming enough meet the selection criteria

- Dialogue closes when the Group has decided on one or more viable solutions and Detailed Solutions (ie. a final tender) are invited from the remaining bidders (ITSFT)
- Final tenders submitted by remaining shortlisted bidders
- Final tenders evaluated by the Group
- Contract awarded and bidders notified
- Standstill period held
- Contract entered into with successful tenderer
- Contract award notices placed on OJEU and Contracts Finder
- Dialogue does not have a set format, but usually includes meetings with each bidder to develop bidders' solutions. These can focus on different aspects of the procurement, including the financial, technical and legal make-up of the final solution.

“Other” Routes

For more complex procurements, be aware that other routes are available, including:

- Innovation Partnership
- Negotiated Procedure without Notice
- Concession contracts
- Dynamic purchasing systems
- Electronic auction
- Electronic catalogue

Seek advice from a Director if you think any of the above may be relevant.

SECTION 5. Timescales for different procedures

Open Procedure

| | | Standard | If tenders accepted electronically | Accelerated procedure |
|---|--|----------|------------------------------------|-----------------------|
| Min. time for receipt of tenders following Contract Notice and notice in Contracts Finder | Without PIN | 35 days | Less 5 days (30) | 15 days |
| | With PIN | 15 days | | |
| Time allowed for evaluation of tenders and clarification | No set timescales | | | |
| Total Minimum timescales from Contract Notice to receipt of tenders | Without PIN | 35 days | 30 days | 15 days |
| | With PIN | 15 days | 15 days | |
| Time allowed for evaluation of tenders / clarification | No set timescales | | | |
| Minimum time between contract award notification being sent and entering into contract (“standstill”) | Sent electronically | 10 days | | |
| | Sent by other means | 15 days | | |
| Maximum time for publication of Contract Award Notice following contract award | | 30 days | | |
| Time allowed for notice to be given on Contracts Finder | Not before the Contract Award Notice is posted in OJEU | | | |

Restricted Procedure

| | | Standard | If tenders accepted electronically | Accelerated procedure |
|---|--|----------------------|------------------------------------|-----------------------|
| Deadline for expressions of interest (PQQs) following Contract Notice and notice in Contracts Finder | | 30 days | | 15 days |
| Time allowed for assessment of PQQs (sending of ITT) | No set timescales | | | |
| Minimum time for receipt of tenders from ITT | Without PIN | 30 days ³ | Less 5 days (25) | 10 days |
| | With PIN | 10 days ⁴ | | |
| Time allowed for evaluation of tenders / clarification | No set timescales | | | |
| Total Minimum timescales from Contract Notice to receipt of tenders | Without PIN | 60 days | 55 days | 25 days |
| | With PIN | 40 days | | |
| Minimum time between contract award notification being sent and entering into contract ("standstill") | Sent electronically | 10 days | | |
| | Sent by other means | 15 days | | |
| Maximum time for publication of Contract Award Notice following contract award | | 30 days | | |
| Time allowed for notice to be given on Contracts Finder | Not before the Contract Award Notice is posted in OJEU | | | |

³ But may set a different time limit with the agreement of tenderers of (generally) at least 10 days

⁴ So long as the PIN included the information required in section 1 of Part B of Annex V of the Directive, and was sent between 35 days and 12 months before the Contract Notice.

Competitive Dialogue

| | | Standard | If tenders accepted electronically | Accelerated procedure |
|---|--|----------|------------------------------------|-----------------------|
| Deadline for expressions of interest (PQQs) following Contract Notice and notice in Contracts Finder | | 30 days | | |
| Time allowed for assessment of PQQs (sending of ITPID) | No set timescales | | | |
| Total minimum timescales from Contract Notice to beginning competitive dialogue | | 30 days | | |
| Time allowed for dialogue with chosen tenderers | No set timescales | | | |
| Minimum time for receipt of final tenders from ITSFT | No set timescales | | | |
| Time allowed for evaluation of tenders / clarification | No set timescales | | | |
| Minimum time between contract award notification being sent and entering into contract ("standstill") | Sent electronically | 10 days | | |
| | Sent by other means | 15 days | | |
| Maximum time for publication of Contract Award Notice following contract award | | 30 days | | |
| Time allowed for notice to be given on Contracts Finder | Not before the Contract Award Notice is posted in OJEU | | | |

Competitive Procedure with Negotiation

| | | Standard | If tenders accepted electronically | Accelerated procedure |
|---|--|----------------------|------------------------------------|-----------------------|
| Deadline for expressions of interest (PQQs) following Contract Notice and notice in Contracts Finder | | 30 days | | 15 days |
| Time for assessment of PQQs (sending of ITSIT) | No set timescales | | | |
| Minimum time for receipt of initial tenders from ITT | Without PIN | 30 days ⁵ | Less 5 days (25) | 10 days |
| | With PIN | 10 days ⁶ | | |
| Total Minimum timescales from Contract Notice to receipt of Initial Tenders | Without PIN | 60 days | 55 days | 25 days |
| | With PIN | 40 days | | |
| Time for negotiation with tenderers / interim tenders | No set timescales | | | |
| Minimum time for receipt of final tenders from ITSFT | No set timescales | | | |
| Time allowed for evaluation of tenders / clarification | No set timescales | | | |
| Minimum time between contract award notification being sent and entering into contract (“standstill”) | Sent electronically | 10 days | | |
| | Sent by other means | 15 days | | |
| Maximum time for publication of Contract Award Notice following contract award | | 30 days | | |
| Time allowed for notice to be given on Contracts Finder | Not before the Contract Award Notice is posted in OJEU | | | |

⁵ But may agree a time limit with tenderers of (generally) at least 10 days.

⁶ So long as the PIN included the information required in section 1 of Part B of Annex V of the Directive, and was sent between 35 days and 12 months before the Contract Notice.

Appendix 1. Glossary

| | |
|---------------------------|--|
| Appendices | The appendices to this Procurement Policy. |
| Contracts Finder | The national portal on which contract opportunities must be advertised, and contract awards notified, in accordance with Part 4 of the Regulations: https://www.gov.uk/contracts-finder |
| EU Thresholds | The financial thresholds above which a procurement via OJEU will normally be required. |
| General Principles | The General Principles set out in the Statement of Principles in the Procurement Policy. |
| The Group | Southway Housing Trust and all its group members, with the exception of Southway Plus Limited. |
| ITPID | Invitation to Participate in Dialogue. |
| ITSFT | Invitation to Submit Final Tender. |
| ITSIT | Invitation to Submit Initial Tender. |
| ITT | Invitation to Tender. |
| OJEU | The Official Journal of the European Union. |
| PQQ | Prequalification Questionnaire |
| Procurement Policy | The Group's Procurement Policy (including the Appendices). |
| Regulations | The Public Contracts Regulations 2015. |
| Social Value Act | The Public Services (Social Value) Act 2012. |
| Value for Money | The optimum combination of whole-of-life costs and quality (or fitness for purpose) of the goods, works or services to meet the Group's requirement. |
| VAT | Value Added Tax. |