



# TENDERIO

Improving SME's access to public procurement

## Guide to country specific elements on public procurement: United Kingdom



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## Deliverable 2.3a

# GUIDE TO COUNTRY SPECIFIC ELEMENTS ON PUBLIC PROCUREMENT: UK

Deliverable type

**Report**

Dissemination level

**Public**

Month and date of Delivery

**10/09/2017**

Organization

**Insight Publishers Ltd**

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## TENDERIO

IMPROVING ACCESS TO PUBLIC  
PROCUREMENT FOR SMEs

Programme

**COSME – Europe's programme for small  
and medium-sized enterprise**

Contact Number

**739966**

Duration

**18 Months**

Start

**10th April 2017**

[www.tenderio.com](http://www.tenderio.com)

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Co-funded by the COSME  
programme of the European Union

## List of Acronyms

Acronym	Title
EU	European Union
ESPD	European Single Procurement Document
GDP	Gross domestic product
HM	Her Majesty's
ITN	Invitation to negotiate
ITPD	Invitation to participate in dialogue
ITT	Invitation to tender
MEAT	Most Economically Advantageous Tender
MPER	Ministry for Public Expenditure and Reform
NHS	National Health Service
NPPPU	National Public Procurement Policy Unit
OGP	Office of Government Procurement
OJEU	Official Journal of the European Union
PCR	Public Contract Regulations
SME	Small and Medium sized Enterprise
UK	United Kingdom

*The current guide was prepared under the Task 2.5 of the TENDERIO project which is funded by the COSME programme of the European Union (Grant Agreement No 739966) and aims to increase SME's access to public procurement in EU.*

*Within this concept, a series of national guides on public procurement was developed for Czech Republic, Estonia, Greece, Ireland, Latvia, Lithuania, Portugal, Slovakia, Spain and United Kingdom targeting to support in particular SMEs who are interested in participating in public procurement processes in EU Member States and need to know more regarding the national procedures.*

*National guides are available in the project's official website: [www.tenderio.com](http://www.tenderio.com)*

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## Executive Summary

This report provides practical information on the UK's public procurement rules and processes. The aim is to provide a short and concise preliminary guide primarily for SMEs considering, and interested in applying for a contract.

The UK government has already made significant progress on the agenda for making the procurement processes open, fair and transparent. A lot of work is already being done in relation to providing open access to information at the tendering and contracting stages of procurement.

There are still gaps and inconsistencies in the information routinely published at the post-award stage: including information on contract value; additional conditions; performance management; and termination of contracts.

Just some of the challenges and opportunities for improved public procurement opportunities in the UK include: harnessing the power of open data to ensure greater transparency in public sector procurement through useful resources and not 'big data dump' for businesses, governments, and civil society groups; the need for clear and transparent information regarding the growing divergence in both policy positions and legislations that have an impact on the open contracting agenda; the direct participation of citizens in contracting would allow governments to demonstrate greater accountability over expenditure of public funds and give citizens greater control.

The data in this report is exclusively based on UK public procurement rules under The Public Contracts Regulations 2015 (PCR 2015). The PCR 2015 implement EU Directive 2014/24, the Public Sector Directive, in the UK and must be noted to be separate from the EU public procurement rules. This Directive was published in the Official Journal of the European Union (OJEU) on 28 March 2014.

This report is to highlight that contract opportunities are highly accessible to small businesses and encourage SMEs to participate in public contracts to increase competition, encourage innovation and provide value for money for public bodies.

This report lays out the national particularities so they can be easily communicated to other countries, project partners and SMEs.

## 1 Introduction

The current guide was elaborated under the activities of the TENDERIO project. The TENDERIO project is funded by the COSME programme of the European Union (Grant Agreement No 739966) and aims to increase access to public procurement opportunities for SMEs in the EU.

This guide is addressed to SMEs and to any other economic operator interested in participating in UK public contracts and who wishes to know more about the public procurement procedures in the UK.

Chapter one, introduces the scope and the content of this guide and lays out the concept within which it was developed.

The second chapter focuses on the potential of the EU's public procurement market, emphasising the performance of European SMEs in the cross-border procurement contracts and briefly presenting the key points of the new EU legislative framework (2014) on public procurement.

The third chapter highlights the current status of public procurement in the UK. In particular, it provides an overview of the public procurement framework in the UK along with a summary of key data regarding the UK market size, as well as data regarding cross-border procurement i.e. the implementation of UK public contracts by companies located in other EU Member States.

Chapter four briefly comments on the national procedures of public procurement in the UK. More specifically, it includes information regarding:

- the contracting authorities;
- the award procedures;
- the eligibility of the potential bidders;
- the publication of the contracts notices;
- the time limits for the submission of an offer;
- the bid submission and bid evaluation procedures;
- the award criteria;
- the complaints and the prejudicial objections.

Finally, the fifth chapter lists key points for SMEs that are interested in submitting offers for UK public contracts. The guide concludes with a reference on how the TENDERIO platform could support European SMEs in applying for a public contract abroad.

## 2 Public Procurement in the EU

According to the European Commission, the term “Public Procurement” refers to the process by which public authorities, such as government departments or local authorities, purchase work, goods or services from companies, i.e. the building of a state school, purchasing furniture for a public prosecutor's office, contracting cleaning services for a public university etc<sup>1</sup>.

### ***The Public procurement market in the EU***

-  Every year nearly 2 trillion euros are paid in Europe for public contracts, i.e. 14% of EU GDP.
-  At least 250.000 public authorities conduct public procurements annually.
-  Public authorities are the major buyers in sectors such as energy, transport, waste management, social protection and the provision of health or education services.
-  The estimated value of general government expenditures on works, goods, and services -excluding utilities - has increased by 4,2% in 2015. Almost all EU Member States increased their expenditure on public contracts between 2014 to 2015<sup>2</sup>.
-  The estimated value of tenders published in the Tenders Electronic Daily<sup>3</sup> (TED) in 2015 was 450.21 billion euros which is 6.9% more than it was in 2014.

Overall, public procurement represents a substantial portion of the EU economy offering many opportunities and innovation prospects for European SMEs.

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<sup>1</sup> <http://ec.europa.eu/growth/single-market/public-procurement/>, 2017

<sup>2</sup> DG GROW G4, 2016. *Public Procurement Indicators 2015*.

<sup>3</sup> The online version of the 'Supplement to the Official Journal' of the EU, dedicated to European public procurement.

**European SME’s participation in cross-border procurement**

The term “cross-border procurement” refers to a procedure by which a public contract in a Member State is partly or fully performed by firms located in another EU Member State.

SMEs account 99,8% of the registered enterprises in Europe (20,8 million SMEs) and they are considered to be the backbone of the EU28 economy. European SMEs could participate in procurements across borders either directly or indirectly through its local subsidiaries. However, the past years the overall participation of European SMEs in public procurement across borders is considered to be low.

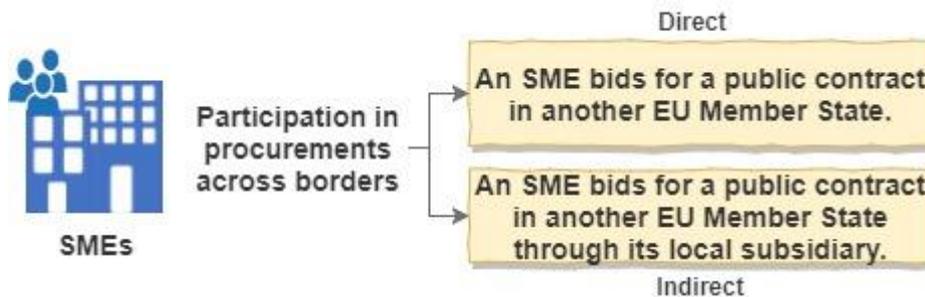


Figure 1: How European SMEs can participate in cross border public procurement

The share of European SMEs in direct cross-border procurement accounts for 27% in terms of number of awards and 24,5% in terms of the value of awards, which is significantly lower compared to their contribution to the European GDP (58%)<sup>4</sup>.

The share of European SMEs in indirect cross-border procurement is estimated at 3% both in terms of number and value of awards<sup>5</sup>.

<sup>4</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement.*

<sup>5</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement.*

**Obstacles to the participation of SMEs in cross-border procurement**

The low level of participation by SMEs in cross-border procurement in the past years was due to (Figure 2):



*Figure 2: Main obstacles that SMEs face when they participate in cross-border public procurement*

Despite the fact that SMEs are facing difficulties in their participation in cross-border public procurement, contracting authorities do, however, see high potential in using cross-border contractors. Using cross-border contractors brings potential benefit for contracting authorities by providing more and better choice in terms of quality and price and by enabling them to carry out contracts when there is an absence or limited availability of suppliers at their national level.



The European Commission has introduced legislative measures to improve access for SMEs to public contracts, aiming to open up national public procurement markets and increase the levels of cross-border public procurement.

**Legislative Framework**

In 2014, the EU Parliament and the European Council introduced a new common legislative framework in public procurement and concessions aiming to simplify the procedures and encourage SMEs to access public contracts and concessions contracts. The reform included the following directives:

- 2014/23/EU on the award of concession contracts;
- 2014/24/EU on public procurement;
- 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

More specifically the new EU directives aim to (Figure 3):



Figure 3: Objectives of the new EU directives on public procurement

The reform of public procurement legislation reduces bureaucracy and makes public procurement in Europe more efficient within a single market facilitating that way SMEs are able to participate in public contracts.

### 3 Public Procurement in the United Kingdom

EU public procurement rules are contained in two separate EU directives, the first is Directive 2014/24 (also known as the Public Sector Directive), and the second is Directive 2014/25 (Remedies Directive). The Public Contracts Directive was prioritised shortly after the 2014 EU Procurement Directives came into force to simplify the rules of procurement by enabling buyers to run procurements faster, with less red tape and remaining in accordance with sound commercial practice. This implementation was the Public Contracts Regulations 2015.

In England the initial Directive, Public Sector Directive, is implemented by the Public Contracts Regulations 2015 (PCR) and therefore, still subject to the EU Treaty principles:

- ✚ Non-discrimination
- ✚ Free movement of goods
- ✚ Freedom to provide services
- ✚ Freedom of establishment

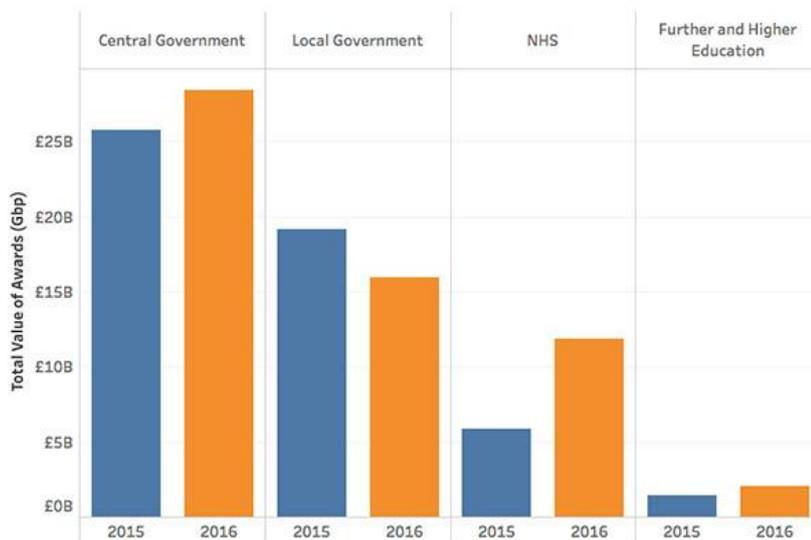


Figure 4: UK total value of awards across 2015-2016

Tussell, the authoritative source of data in the public-sector market for the UK, surveyed public procurement in 2016:

- ✚ There were over 17,000 officially published tenders worth a total of £301Bn. Since Brexit the total value of tenders has actually risen.
- ✚ Tender value grows 35% year-on-year.
- ✚ The total value of awards by Local Government declined by 17% year on year while Central Government increased by 10% and the NHS increased by 103% (Figure 4)<sup>6</sup>

<sup>6</sup> Tussell, *2016 Trends in UK Public Procurement*, 30 January 2017, <[www.tussell.com/newsfeed/2016-trends-in-uk-public-procurement](http://www.tussell.com/newsfeed/2016-trends-in-uk-public-procurement)>

- SMEs won 28% of directly awarded public sector contracts by value.
- MoD is the biggest Central Government buyer with over 700 supplier-level awards.
- The UK's top six suppliers by award value: Total GAS & Power Limited, TeleTracking EU Ltd, Gazprom Marketing & Trading, Engie Power Limited, Abellio East Anglia Limited, Boeing Defence UK Limited (Figure 5).<sup>7</sup>
- The UK's top six supplier by award volume: Capita Business Services, Aecom Limited, Ove Arup & Partners Limited, WSP UK Limited, Mott Macdonald Limited, Softward Box Limited.

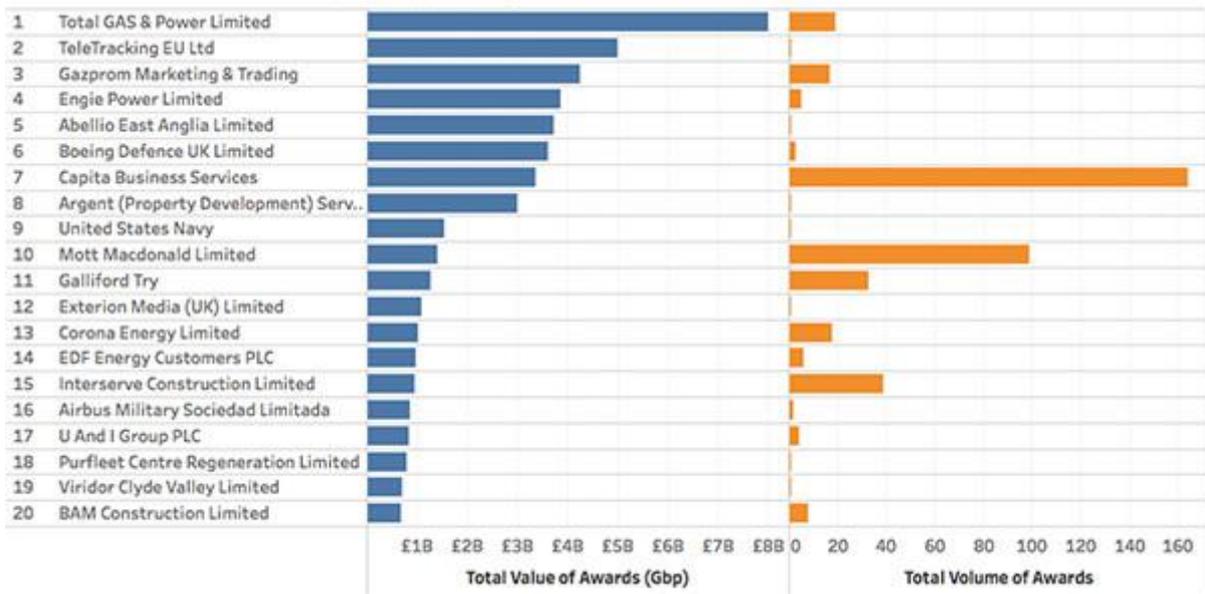


Figure 5: UK's top 6 award suppliers by award value

Between 2010 and 2015 data was collated on the UK's public procurement, published in the digital version of the *Official Journal of the European Union* (OJEU), and can be summarised by:

**Region:** highest regional distribution of contract was London at 16.22%; the lowest was the North East at 3.9%.

**Contract type:** service contracts were proportionately the largest at nearly 60%, with supply contracts at 31% and work contracts were the lowest at nearly 10%.

**Main contractors:** UK's EU Membership gives the UK access to the public procurement markets in 27 different states of the EU, and other non-EU countries, also known as third-countries.

**Who are the big spenders?**

<sup>7</sup> Tussell, *2016 Trends in UK Public Procurement*, 30 January 2017, <[www.tussell.com/newsfeed/2016-trends-in-uk-public-procurement](http://www.tussell.com/newsfeed/2016-trends-in-uk-public-procurement)>

According to HM Treasury, the UK public sector spent a total of £242 billion on the procurement of goods and services in 2013/14 this accounted for 33% of public sector spending. The National Audit Office estimates £187 million was spent with private sector providers comprising central government spend of £40 billion each year and NHS, local government and devolved administrations accounting for a further £147 billion. These are significant sums, and a reliable source of revenue your business cannot afford to miss out on.<sup>8</sup>

 Ministry of Defence	 Department for Work & Pensions	 Ministry of JUSTICE	 Department for Transport	 Home Office BUILDING A SAFE, JUST AND TOLERANT SOCIETY	 Department of Health
£19,951m	£3,448m	£2,847m	£2,798m	£1,916m	£1,773m

Figure 6: Top 6 Central Government Spenders 2013-2014

## BREXIT

How procurement will be affected after Brexit trade negotiations is hard to predict. The UK had a great deal of input into EU procurement rules and the majority of UK procurement legislation, from the EU Directives, has been implemented into UK law through UK Regulations. There should be no immediate impact on procurement legislation however, there will be some inconsequential practical issues that arise. In the long term, there are many different turn-of-events that can impact public procurement, one being that the government will definitely gain more freedom to make some changes to the current system. For now however, the rules apply as they always have done.

In the latest pronouncement from the European Commission (DG ENVI) Tenders Specification, they state: “For British candidates or tenderers: Please be aware that after the UK’s withdrawal from the EU, the rules of access to EU procurement procedures of economic operators established in third countries will apply to candidates or tenderers from the UK depending on the outcome of the negotiations. In case such access is not provided by legal provisions in force candidates or tenderers from the UK could be rejected from the procurement procedure.”

This is a fluctuating position and certainty will not be reached until the outcomes of the complex negotiations are known. This could be as late as 2019.

<sup>8</sup> Shine Bid, *How to win government contracts in the UK 2017*

## 4 National Procedures on Public Procurement

### 4.1 Contracting Authorities & Contracting Entities

The regulatory authorities responsible for public procurement enforcement under EU rule are generally enforced at the member state level, by contracting authorities and national courts. These must apply the national legislation that was adopted by the respective member states to transpose the EU Procurement Directives. While the EU procurement rules contain the rules for procurement at member state level, they are not binding on EU institutions, bodies and agencies that award works, services and supply contracts. These regulations broadly follow the general principles contained in the Procurement Directives, in particular the principles of:

- ✚ Equal treatment
- ✚ Non-discrimination
- ✚ Mutual recognition
- ✚ Proportionality
- ✚ Transparency

Other public entities include:

- ✚ **Contracting authorities:** The State, regional or local authorities, bodies of government by public law or associations formed by one or several of such authorities, public sectors including NHS
- ✚ **Public works contracts:** the execution and design of works relating to the outcome of building or civil engineering works
- ✚ **Public supply contracts:** the purchase, lease, rental or hire-purchase
- ✚ **Public service contracts:** the provision of services other than those under public works contracts
- ✚ **Light-touch Regime:** for certain social and services with limited cross-border dimensions such as: health, social and related; administrative social, educational, healthcare and social services; compulsory social security services; other community, social and personal services; youth associations and other membership organization services; postal services etc.

## 4.2 Threshold Amounts

Under the Public Contracts Regulations (Regulation 6), the Commission has provided finalised and agreed threshold values.

	Supply Contracts	Work Contracts	Services Contracts
<b>Central Government Authorities</b> i.e. Cabinet Office, Crown Prosecution Services, Met Office, Department of Education, Department for Energy and Climate Change, Ministry of Defence	£106,047	£4,104,394	£589,148
<b>Other sub-central contracting authorities</b> All of those except which are Central Government authorities	£164,176	£4,104,394	£589,148
<b>Small lots</b>	£62,842	£785,530	
<b>The Defence and Security public contracts regulations</b>	£328,520	£4,104,394	

*Table 1: Thresholds triggering EU-wide rules on public procurement contracts*

The PCR 2015 details that social and other specific services are subject to the new 'light touch regime', where the estimated value of contracts for these services exceeds €750,000 threshold.

- ✚ Every two years the European Commission shall revise the lowest thresholds amounts presented in Table 2.

### 4.3 Award Procedures

There are five main Public Contracts Directive award procedures in the UK, a contracting authority is free to use either the open or restricted procedures.

For all award procedures, a standstill period of at least 10 days is required to allow rejected bidders to decide whether to challenge the award and to initiate a review procedure.

Type of Procedure	Short Description
Open Procedure	It is considered as the most common award procedure. A notice that the contract is being tendered is announced and any economic operator may submit an offer.
Restricted Procedure	<b>Stage 1:</b> Any economic operator may submit a request to participate in response to a call for competition containing the information requested by the contracting authority.
	<b>Stage 2:</b> Only those economic operators invited to do so by the contracting authority following its assessment of the information provided, may submit an offer.
Competitive Procedure with negotiation	<b>Stage 1:</b> Any economic operator may submit a request to participate in response to a call for competition containing the information requested by the contracting authority.
	<b>Stage 2:</b> Only those economic operators, invited to do so by the contracting authority following its assessment of the information provided, may submit an offer. Contracting authorities open a dialogue with the participants selected, aiming to identify and define the means best suited to satisfying their needs.
Competitive Dialogue	<b>Stage 1:</b> Any economic operator may submit a request to participate in response to a call for competition containing the information requested by the contracting authority.
	<b>Stage 2:</b> Contracting authorities open a dialog with the participants selected, aiming to identify and define the means best suited to satisfying their needs.
Innovation Partnership	The contracting authority identifies the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. <b>Stage 1:</b> Any economic operator may submit a request to participate in response to a call for competition containing the information requested by the contracting authority.
	<b>Stage 2:</b> The contracting authority invites the selected candidates to participate.

*Table 2: Types of award procedure*

#### 4.4 Who are Eligible to Participate?

The Government set a new target to award 33% of spends with third-party supplier to SME by the end of 2020. With nearly 5.4 million small businesses in the UK, SMEs are considered the backbone of the UK economy and the stimulation for economic growth. Potential bidders include:

- Individuals
- Legal partnerships
- Cooperatives
- Suppliers

Contracting authorities can exclude any economic operator from participating in a public procurement procedure where they have established or are aware that the economic operator has been subjected of a conviction for participation in:

- i. a criminal organisation;
- ii. corruption;
- iii. economic fraud;
- iv. terrorist offences or offences linked to terrorist activities;
- v. money laundering or terrorist financing;
- vi. child labour;
- vii. other forms of trafficking of human beings.

Above that, any economic operator may be excluded in case:

- i. is bankrupt or being wound-up;
- ii. has not paid taxes or social security contributions;
- iii. has been found guilty of grave misconduct;
- iv. has entered into agreements with other economic operators aimed at distorting competition;
- v. has violated environmental, social or labour law.

Bidders can be excluded at any stage during the procedure when it turns out that any abovementioned criteria are valid. On the other hand, any bidder that is in one of the above situations may provide evidence in order to demonstrate its reliability to participate in a public contract.

## 4.5 Publication of Public Contract Notices

All public procurement contract notices irrespective of the award procedure and whether their value is above or below the EU thresholds, are published in the following repository:

 Contraction Electronic Public Procurement Registry  
[www.gov.uk/guidance/public-sector-procurement-policy](http://www.gov.uk/guidance/public-sector-procurement-policy)

The public contracts whose value is above the respective EU thresholds are also published, in full, in the following repository:

 Tenders Electronic Daily – TED  
[www.ted.europa.eu](http://www.ted.europa.eu)

Tender announcements can also be found at:

Public Procurement Policy at **gov.uk**  
Contracts Finder at **gov.uk**  
Tenders Direct at **tendersdirect.co.uk**  
Supply at **supplycontracts.co.uk** – specific for SMEs  
EUR-Lex at **eur-lex.europa.eu**

Access to public contracts all around the EU is provided also by the **TENDERIO** platform (<http://www.tenderio.com/>). SMEs can access public procurement in their country or abroad by using a tender search engine that aligns live tender opportunities most suited to their business needs and expertise.

With the publication of the contract notice, the contracting authority may invite the potential bidders to participate in a consultation regarding the contract at a specific place/date/time at least thirty (30) days before the deadline for submission of bids or requests to participate. Within ten (10) days of the consultation any interested party may submit comments on the contract indicating any technical, financial or contractual errors/inaccuracies.

In the case that the comments are valid, the contracting authority publishes an issue of amendments to the initial contract notice within five (5) days from the last day of comments' submission.

The amendments issue will include:

- the new requirements/specifications of the contract;
- a new invitation to interested parties to submit a bid or to modify any already submitted offers in accordance with the new requirements.

## 4.6 Time Limit of Submitting an offer for a Public Contract

The statutory minimum time limits by which suppliers have to respond to advertised procurements and submit tender documents have been reduced by about a third.

This flexibility could be helpful for speeding up simpler or off-the-shelf procurements, but still permits longer timescales for requirements where suppliers will need more time to respond.

Type of Procedure	Normal minimum time limit for submitting an offer for public contracts above EU thresholds	
Open Procedure	Deadline for the receipt of tenders 35 days.	<p>All candidates that respond to the Contract Notice are entitled to submit a tender for the contract.</p> <p>There is no initial selection stage limiting the number of tenderers who can submit tenders.</p> <p>It may be quicker than the other award procedures but may also be more onerous in terms of the number of tenders to be evaluated.</p>
Competitive Procedure with Negotiation	<p>Deadline for receipt of pre-qualification information 30 days.</p> <p>Followed by the deadline for the receipt of tenders 30 days.</p>	<p>The authority may limit the number of candidates using an initial selection stage to shortlist a limited number of tenderers. At least three qualifying tenderers must be invited by the authority to negotiate the contract.</p>
Restricted Procedure	<p>Deadline for receipt of pre-qualification information 30 days.</p> <p>Followed by the deadline mutually agreed with tenderers, otherwise 30 days, 10 days minimum.</p>	<p>Authority may limit the number of candidates using an initial selection stage to shortlist a limited number of tenderers. The selection is generally performed by means of a Pre-Qualification Questionnaire (PQQ), which candidates complete and submit.</p> <p>The restricted procedure requires that a minimum of five qualifying candidates be invited to tender (ITT).</p>
Competitive dialogue	<p>Deadline for receipt of pre-qualification information 30 days. No explicit time limits for submission of initial/subsequent tenders.</p>	<p>This restriction is the same as for an open procedure however, after the initial pre-qualification information is received, there is no prescribed minimum time for return of tenders.</p>

Table 3: Minimum time limit for submitting an offer for public procurements in the EU

## 4.7 Public Contract Notice Contents

A typical public contract notice includes the following information.

The contract notices are split into five sections:

1. Contracting authority, name and type of contract
2. Participation general and specific terms
3. Public procurement procedure and bid evaluation
4. General terms of carrying out the contract
5. Specific terms in carrying out the contract

Plus annexes, the general structure of a public contract notice includes the following:

- + Official name, address and national ID
- + Contact details: email, telephone
- + Does the contract involve joint procurement?
- + Where to obtain further information and additional documents, such as competitive dialogue
- + Where tenders or requests must be sent to
- + Type of contracting authority
- + Main activity i.e. environment, defense, health, education
- + Detailed description on the object of the contract
  - i.e. title of contract;
  - type of contract – works, supplies, services, and location of works;
  - estimated value;
  - information about lots; duration of agreement;
  - estimated value; duration of contract, framework agreement or dynamic purchasing system; short description of the contract or purchase(s);
  - information on Government Procurement Agreement;
  - information about variants;
  - information about electronic catalogues
- + Award criteria –made up of sub-criteria which is usually found within the tender document rather than contract notice
- + Legal, economic, financial and technical information i.e. conditions relating to the contract, conditions for participation, conditions related to contracts
- + Type of procedure and detailed description i.e. information about negotiations and Government Procurement Agreement
- + Administration information i.e. conditions for opening tenders, minimum time frames
- + Procedures for review with contact details

## 4.8 How to Submit a Bid

When a contracting authority publishes a contract notice, any interested candidate may prepare and submit an offer.



Figure 7: Bid's preparation & submission workflow

### 4.8.1 What are the specific elements that a bid must include

The PCR 2015 set out an exhaustive list of the types of information that authorities can request from candidates for the purposes of setting minimum (pass/fail) requirements and any scored evaluation. The prescribed types of information fall within three broad categories: personal standing (with mandatory and discretionary exclusion grounds); economic and financial standing; and technical and/or professional ability:

- ✚ **Personal standing, self-cleaning:** A candidate must be permitted to provide evidence to show it has taken measures sufficient to demonstrate its reliability.
- ✚ **Economic and financial standing:** Authorities may require; certain minimum yearly turnover, information on their annual accounts, appropriate level of professional risk indemnity insurance
- ✚ **Technical and/or professional capabilities of candidates may be demonstrated:** list of works contracts; lists of services contracts; indication of technical bodies available to candidate; description of technical facilities to ensure quality; educational and professional qualifications; statement of average annual labour resources of the candidate

- ✚ **Required to comply with central government spending controls in relation to:** advertising, marketing and communications; commercial; technology; digital service delivery; consultancy; civil service learning; property

Clients will expect you to:

- State the purpose and origin of the bid
- Summarise your work as a contractor, past experience and credentials for this job
- Say how you'll carry out the work, and how and when the client's aims will be achieved
- Explain the benefits and value for money of your bid
- Detail when and how goods and services are to be delivered, and provide a timetable
- Demonstrate your team's skills, experience of similar work and their responsibilities if you win the contract
- Explain how you will manage the project
- Give details of your pricing and any aftercare arrangements within the price
- Be practical and identify potential problems without promising what's clearly impossible for you to deliver

Tender documents must include particular technical solutions:

- ✚ **Non-discriminatory performance and functional requirements:** the tender document must use common specifications and not specific technical specifications of products or services such as: the make, sources, particular processes and characteristics of the product or service
- ✚ **'Or equivalent':** any reference to a particular technical standard should include these words
- ✚ **Labels:** environmental requirements may lay down environmental characteristics such as production method, specific environmental effects, appropriate eco-labels and national eco-labels but only if adopted on the basis of scientific information using a procedure in which stakeholders can participate and accessible to all interested parties.

#### 4.8.2 Where you submit the tender and what are the steps

The new 2015 Regulations established a requirement surrounding the issuing of procurement documents electronically. Under the EU rules, this is to be made mandatory by the UK Government by 2018, while currently it just remains incentivised. Under the previous 2006 Regulations, bidders were free to choose whether they required submissions to be made electronically or by paper, or both.

With regards to the minimum timescales for the various procedures, for open procedure electronic submission can reduce the time-scale but for the majority, electronic submission does not guarantee further time reductions.

2015 Regulations require contracting authorities to electronically submit tenders, this means all documents now have to be made electronically available. Electronic bid submission saves time, resources and money for purchasing departments and their suppliers by allowing bid proposals to be submitted online.

The requirements are applicable to notices both above and below the EU thresholds.

You can submit a bid in a variety of places:

- ✚ **Tenders Electronic Daily (TED)** for high-value public sector contracts in other European Union (EU)

countries – the online version of the ‘Supplement to the Official Journal’ of the EU, publishing 460,000 calls for tenders per year

**SourceSuite’s** electronic bid submission feature allows for the secure submission of quotes, qualification information, and supporting documents by suppliers during the procurement process.

Any economic operator that is interested in submitting an offer should follow the steps:



Registration can be [completed here](#). Thereafter, the bidder is able to submit the supporting documents electronically in .pdf format within the indicated time limit and the whole process is carried out electronically without his physical presence.

BID's Submission		
Action	Who	Short Description
Public Contract Notice	Contracting Authority	Public Contract Notice is announced in the Publications Office of the EU (for contract value above the EU the thresholds)
Questions	Bidders	Up until 6 days before the submission deadline, bidders could ask for clarifications on the contract notice.
Bid's Submission	Bidders	The bidders should submit: i) the supporting documents, ii) the technical offer and iii) the financial offer.
Bids' receipt	Tender's Committee	Upon the submission deadline, the Tender's Committee records all the submitted offers along with the supporting documents and issues minutes of the action.

*Table 4: Actions towards bid's submission*

## 4.9 What are the Key Phases after Submitting the Bid

At this point we can add a diagram showing the steps of the overall procedure.



Figure 8: Key phases after submitting the bid

1. **Opening of tenders:** validation of bids
2. **Evaluation:** for this phase, there are two distinct stages:
  - First is the evaluation of the candidates who have expressed an interest in tendering for the contract (selection stage or pre-qualification)
  - Second is the evaluation of the tenders then submitted by those tenderers invited to tender. Generally conducted using a Pre-Qualification Questionnaire (PQQ) – unless using the open procedure.
  - Authorities may also wish to set minimum requirements in relation to annual turnover, credit rating, insurance, quality assurance or environmental management standards. Any such minimum requirements must be related and proportionate to the contract to be awarded and must be disclosed in the Contract Notice (or PIN).
3. **Ranking:** scored evaluation: authorities using the restricted, competitive dialogue or competitive procedure with negotiation procedures may wish to further reduce the number of qualifying candidates to be invited to tender or participate in dialogue or negotiations. Must be non-discriminatory.
4. **Exclusion grounds:** offences relating in the last five years: participation in a criminal organization; corruption; fraud; terrorism; sexual offences; drug and/or people trafficking.
5. Approval
6. **Tender stage:** depending on the contract award procedure being used, the tender stage will generally commence with the authority issuing an Invitation to Tender (ITT), an Invitation to Participate in Dialogue (ITPD) or an Invitation to Negotiate (ITN) to the shortlisted tenderers. When using the single-stage open procedure the selection and award stages are combined and the ITT effectively incorporates any minimum eligibility requirements.
7. Contract
8. **Standstill period:** The standstill period provides for a short (at least 10 calendar day) pause between the point when the contract award decision is notified to bidders, and the final contract conclusion, during which time suppliers can challenge the decision. It is a legal requirement imposed through the remedies directives.

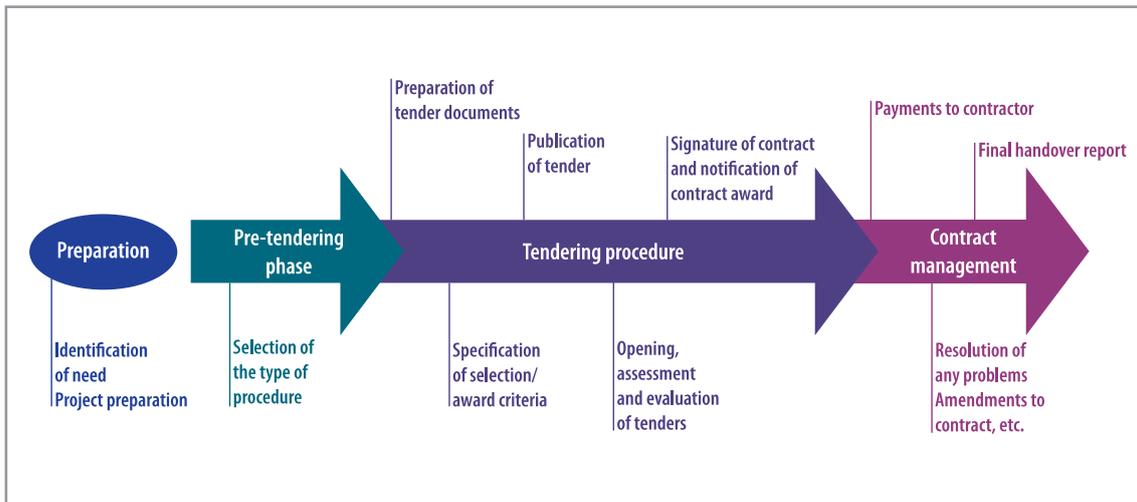


Figure 9: Detailed diagram of the processes of submitting a bid

Upon the completion of every action listed above, the candidates have the right to challenge the results and the decisions of the Tender’s Committee and of the Financial Committee by submitting a complaint or a prejudicial objection.

## 4.10 Award Criteria

The choice of contract award criteria must be objective and be applied in compliance with the principles of non-discrimination and the tenders are assessed in condition of effective competition.

The most common contract award criteria are as follows:

- ✚ **MEAT**, sole award criterion: To achieve this, the PCR 2015 require that authorities base the award of public contracts on the 'most economically advantageous tender' (MEAT), as assessed from the point of view of the authority.
- ✚ Cost effectiveness approach, **life-cycle costing** (LCC): Life-cycle is defined in the PCR 2015 as meaning all stages which are consecutive or interlinked, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation.
- ✚ **Best Price-Quality Ratio** (BPQR): The new (cost effectiveness) approach to MEAT incorporates 'old MEAT', which is now referred to as the 'best price-quality ratio' (BPQR). As explained by the Crown Commercial Service, BPQR is in essence price or cost plus other criteria and equates to value for money (consistent with UK Government policy of securing value for money as set out in Annex 4.6 of HM Treasury's Managing Public Money). The PCR 2015 offer authorities more flexibility as to the other (quality) criteria in their chosen BPQR, in particular around social and environmental aspects.

Bidder's need to remember that for the evaluation process, procurers gather information on, and make assessments of prospective bidders' credentials before considering tenders and this includes information about the companies' track records, financial credentials, corruption, and whether they meet various selection criteria.

To gather this information, bidder's must complete Selection Questionnaire so procurers can understand: 1) basic information about supplier, 2) self-declaration on exclusion grounds, 3) self-declaration on meeting the selection criteria for example.

## 4.11 Complaints/Prejudicial Objections

A challenge can be submitted within 30 days of publication of the contract notice: the strict timing rules mean that if, for example, a bidder believes that the wrong procedure was used, it should issue proceedings.

You can also challenge a decision excluding a party from the award process at pre-qualification stage, but this must normally be done within 30 days of receiving notification of the exclusion. Each application will be looked at critically, although time limits may be extended at the discretion of the High Court.

During contract-making a challenge can suspend this where:

- ✚ A claim form has been issued in respect of a contracting authority's decision to award the contract.
- ✚ The contracting authority has become aware that the claim form has been issued and that it relates to that decision.
- ✚ The contract has not been entered into, the contracting authority is required to refrain from entering into the contract.

The requirement continues until any of the following occurs:

- ✚ The Court brings the requirement to an end by interim order under regulation 96(1)(a).
- ✚ The proceedings at first instance are determined, discontinued or otherwise disposed of and no order has been made continuing the requirement (for example in connection with an appeal or the possibility of an appeal).
- ✚ This regulation does not affect the obligations imposed by regulation 87.

More specifically:

- ✚ In case the value of a public procurement is **below** £50,000 the economic operator can submit a **complaint**.
- ✚ In case the value of the public procurement is **above** £50,000 the economic operator can submit a **prejudicial objection**.

The procedures you should follow:

1. **Grounds for challenge:** the breach of duty has to cause loss or risk of a loss to be actionable and enforceable
2. **Courts function:** to review the contracting authority's actions
3. Time limits for challenges
4. **Declarations of ineffectiveness:** three grounds of serious failure to observe the rules, on which the court has power to declare a contract ineffective; this ineffectiveness remedy nullifies any future obligations in the contract and comes with a financial penalty – other remedies for breaches of the rules depending on whether the contract has been entered into
5. **Tender evaluation:** the aggrieved bidder can challenge an evaluation by arguing that: the contracting authority did not provide information about how it was going to undertake the evaluation; argue that the authority made an obvious error in its marking; whether the disclosed award criteria were sufficiently clear to permit a uniform interpretation by tenderers.
6. **Awards of damages:** Claimants who successfully challenge procurement decisions are entitled to damages based on the profits they would have made, which can be very substantial. A contracting authority that enters into a challenged contract is faced with the prospect of paying under the contract and also paying damages.

## 5 Key Points when Submitting a Tender in the United Kingdom

What to pay attention to when submitting a bid – top tips:

- ✚ Tell the buyer you will meet their requirements and offer them value for money
- ✚ Your proposal is critical; it is the main and only opportunity to introduce your business, explain your approach and solutions to the buyer's needs and stand out.
- ✚ A tender is also known as 'silent salesperson' – you need to know your competition, know your business' unique selling points
- ✚ Know your buyer's requirements, the evaluation criteria, attend potential 'Industry Days' or 'Clarification meetings'
- ✚ Buyers expect that certain minimum criteria standards are met i.e.: offer value for money, positive approach, follow deadlines
- ✚ Tenders fail: simple admin failures such as not signing the tender, supporting information not being provided, questions not answered, inconsistencies, and the bid not being competitive lead to failure
- ✚ Preparation and planning: make sure you want to bid for this contract and that you have the resources you need
- ✚ Pay special attention to the issuance of letters of guarantee and complete the declaration documents in order to comply with the standards set out in the contract notice.
- ✚ Make sure you respond to the special requirements e.g. ISO certifications and that you can provide all of the requested documentation for those.

## 6 What Tenderio Offers

The TENDERIO project is funded by the COSME programme of the European Union (Grant Agreement No 739966) and aims to increase the participation in public procurement by SMEs in the EU through the development and the implementation of innovative activities that will inform, educate and support European SMEs to access international tenders.

TENDERIO helps SMEs to overcome the barriers that inhibit their participation in cross-border procurement, i.e. the language, the bureaucracy, the difficulties in finding local partners and the lack of knowledge about local tender procedures, by providing the following tools and services:

- a tender search engine which allows access to 1,500 new tenders in Europe every day;
- a benchmarking model on public procurement;
- national training sessions;
- business-to-procurers' days and matchmaking opportunities;
- tailored coaching and mentoring services;
- e-conference and webinars on "how to win a tender abroad".

Other services include a helpdesk, through which companies can access valuable information about specific tenders, country guides on public procurement, regular workshops, and an innovative "bidding laboratory" where guidance on developing successful bids is delivered.

TENDERIO also identifies possible partners and recommends expert consultancies to help companies write bids and translate materials into the appropriate language for each offer.

Registration to Tenderio is free and is performed through the project's official website: [www.tenderio.com](http://www.tenderio.com).

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