Procurement Guidance Note
02/12

PUBLIC PROCUREMENT:
A GUIDE FOR SMALL AND
MEDIUM SIZED
ENTERPRISES (SMEs)

17th February 2012
Northern Ireland Public Procurement Policy was approved by the Executive in 2002. In approving the policy the Executive took the decision that legislation was not necessary to ensure that Departments, their Agencies, non-Departmental Public Bodies and Public Corporations complied with the policy. Instead it considered that compliance could be achieved by means of administrative action.

These Procurement Guidance Notes are the administrative means by which the Northern Ireland Public Sector is advised of procurement policy and best practice developments. They are developed by Central Procurement Directorate (CPD), in consultation with the Centres of Procurement Expertise (CoPEs), and are subject to the approval of the Procurement Board.

Once endorsed by the Procurement Board, they are issued to Departments for implementation and copied to CoPEs to develop, if necessary, underpinning procedures supporting the implementation of this guidance in their particular sector.

CPD is responsible for disseminating advice and guidance to the NI public sector on public procurement policies and for monitoring implementation. Procurement Guidance Notes are also published on CPD’s website.

The following Procurement Guidance Note was endorsed by the Procurement Board and issued with effect from 17 February 2012 for use by those bodies covered by Northern Ireland Public Procurement Policy.
## LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>CA</td>
<td>Contracting Authority</td>
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<td>CoPE</td>
<td>Centre of Procurement Expertise</td>
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<td>CPD</td>
<td>Central Procurement Directorate</td>
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<tr>
<td>DDA</td>
<td>Disability Discrimination Act</td>
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<td>DEL</td>
<td>Department for Employment and Learning</td>
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<td>DETI</td>
<td>Department of Enterprise, Trade and Investment</td>
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<td>DFP</td>
<td>Department of Finance and Personnel</td>
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<td>EU</td>
<td>European Union</td>
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<td>GCCG</td>
<td>Government Construction Clients Group</td>
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<td>ISNI</td>
<td>Investment Strategy Northern Ireland</td>
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<tr>
<td>ITT</td>
<td>Invitation to Tender</td>
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<tr>
<td>MEAT</td>
<td>Most Economically Advantageous Tender</td>
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<td>NDPB</td>
<td>Non Departmental Public Body</td>
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<td>NI</td>
<td>Northern Ireland</td>
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<td>OJEU</td>
<td>Official Journal of the European Union</td>
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<td>PCL</td>
<td>Procurement Control Limits</td>
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<tr>
<td>PQQ</td>
<td>Pre Qualification Questionnaire</td>
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<td>SEE</td>
<td>Social Economy Enterprises</td>
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<td>SME</td>
<td>Small and Medium sized Enterprises</td>
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<td>TED</td>
<td>Tenders Electronic Direct</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>VfM</td>
<td>Value for Money</td>
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1. PURPOSE

1.1 This guide aims to help Small and Medium sized Enterprises (SMEs) increase their knowledge and understanding of public sector procurement (supplying goods, services and works to the public sector) and in so doing, help them to develop their capability to compete successfully for public sector contracts. Public sector procurement can be daunting and readers will find the additional guidance signposted throughout this document to be essential reading. The overview of procurement procedures at Annex A will also be helpful.

2. BACKGROUND

2.1 What is a Small and Medium Sized Enterprise?

2.2 The European Commission’s definition of what constitutes an SME is based on a combination of the following criteria: number of salaried workers, turnover, balance sheet and independence\(^1\). A diverse group of businesses fall into the SME category, ranging from sole traders to businesses and social enterprises.

2.3 In the Northern Ireland (NI) context, the commonly used definition is that SMEs have fewer than 250 employees. The table below shows the sub-categories of SMEs ranging from micro to small and medium-sized enterprises as defined by Department of Enterprise Trade and Investment (DETI).

<table>
<thead>
<tr>
<th>Enterprise Category</th>
<th>Number of Employees</th>
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<tbody>
<tr>
<td>Micro (a sub-set of small)</td>
<td>&lt; 10</td>
</tr>
<tr>
<td>Small</td>
<td>&lt; 50</td>
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<tr>
<td>Medium sized</td>
<td>50 &lt; 250</td>
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<tr>
<td>Large</td>
<td>250+</td>
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2.4 Within NI it is estimated\(^2\) that there are 67,955 businesses, with medium sized businesses (50 - 249 employees) making up 1.5%, small businesses (fewer than 50 employees) accounting for 98.2% and large businesses (250+ employees) making up the remainder. Micro businesses (with less than 10 employees) accounted for the majority of the NI total with a share of 89%. Almost 48% of all businesses in NI in 2011 were registered as ‘Sole Proprietors’. Micro-businesses therefore have a particularly prominent place in the local economy.

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\(^2\) The Inter Departmental Business Register (IDBR) – Edition 14 (29 December 2011) contains information on all businesses in the United Kingdom which are VAT registered and/or operating a PAYE scheme. [http://www.detini.gov.uk/idbr_publication_december_2011-2.pdf](http://www.detini.gov.uk/idbr_publication_december_2011-2.pdf)
3. WHAT IS THE PUBLIC SECTOR?

3.1 The public sector employs approximately 31% of the NI workforce and includes:

- Central government departments and agencies;
- The health sector;
- The education sector;
- NI Assembly;
- Public Corporations and Companies eg Northern Ireland Transport Holding Company (which includes Translink which buy goods, services and works for NI Railways, Citybus and Ulsterbus) and Northern Ireland Water;
- Councils (District, Borough or City); and
- Cross Border Agencies.

3.2 The public sector in NI spends approximately £3bn a year on procurement. A spend of this magnitude offers considerable opportunities for SMEs to provide goods, services and works.

3.3 What does the public sector buy?

3.4 Given the scale of the public sector it is impossible to detail the full range of supplies, works and services that public bodies purchase, however it includes common areas such as:

- Advertising
- Chemicals/Reagents
- Clothing and Accessories
- Construction/Maintenance
- Consultancy Services
- Energy
- Environmental Services
- Facilities Management
- Financial Services
- Food stuffs
- Furniture and Fittings
- Office Machines and Supplies
- Plant and Machinery
- Postal & Telecoms Equipment
- Printing/Reprographic Services
- Publications
- Public Utilities
- Recruitment and Personnel
- Rental, Leasing or Hire Services
- Repair/Maintenance Services
- Research and Development
- Transportation Equipment
- Transport and Travel Services

4. THE LEGISLATIVE AND POLICY FRAMEWORK FOR PROCUREMENT

4.1 As an SME applying for public sector contracts, it is important to understand that there are both legislative and policy requirements which apply to NI public sector procurement. The next section provides

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3 The Inter Departmental Business Register (IDBR) – Edition 14 (29 December 2011) contains information on all businesses in the United Kingdom which are VAT registered and/or operating a PAYE scheme. [http://www.detini.gov.uk/idbr_publication_december_2011-2.pdf](http://www.detini.gov.uk/idbr_publication_december_2011-2.pdf)
an overview of these areas. More detailed information on the context within which NI Public Procurement Policy operates, the structure and operation of procurement in the public sector and the roles and responsibilities of key players within the procurement process, can be found in the NI Public Procurement Policy Handbook⁴.

4.2 The legislation

4.3 The award of regulated public procurement contracts within the European Union (EU) Member States is subject to the EU Procurement Directives, the purpose of which are to open up the public procurement market and to ensure the free movement of goods, services and works within the EU. The Directives and implementing United Kingdom (UK) Regulations⁵ set down procedures and standards (based on openness, non-discrimination and competition) for choosing tenderers and awarding contracts with an estimated value above the EU thresholds⁶.

4.4 All public sector procurement contracts within the EU, irrespective of value, are also covered by the Treaty on the Functioning of the European Union (TFEU, previously known as the European Community Treaty) principles of non-discrimination, equal treatment and transparency.

4.5 NI Public Procurement Policy

4.6 The NI Public Procurement Policy⁷ was agreed by the NI Executive in May 2002 and applies to Northern Ireland Departments, their Agencies, Non Departmental Public Bodies (NDPBs) and Public Corporations. A full list of the bodies which are subject to NI Public Procurement Policy can be found in the annex to the Policy.

4.7 Responsibility for the development, dissemination and co-ordination of Public Procurement Policy in NI rests with the Procurement Board.

4.8 Councils in Northern Ireland operate under a separate framework of accountability which means that compliance with NI Public Procurement Policy is on a voluntary basis. However, they are required to comply with the UK Public Procurement Regulations.

4.9 Central Procurement Directorate’s (CPD’s) responsibilities include the development, dissemination and review of procurement policy, and the promotion of best practice within the NI Public Sector. CPD also has two Centres of Procurement Expertise (CoPEs); one for the

procurement of supplies and services and one for construction projects, who procure on behalf of Departments, their Agencies and NDPBs.

4.10 In addition to CPD there are a number of other CoPEs, each with its own unique procurement portfolio. These are Roads Service, NI Water, Translink, Health Estates, Procurement and Logistics Service (which procure supplies and services for the Health Sector), the Education and Library Boards and the NI Housing Executive.

5. IS PUBLIC SECTOR BUSINESS RIGHT FOR YOUR SME?

5.1 Public sector contracts represent a valuable business opportunity for many SMEs. Public sector organisations are good customers. They ensure fairness, honesty, transparency and professionalism in the way they choose suppliers. They are also long-standing, stable customers, and have to pay promptly (refer to paragraph 11.7), in line with agreed contract terms.

5.2 A first and fundamental consideration for an SME is to decide if public sector business fits the resources and capability of their own business and how this links to their objectives.

5.3 Market research can assist the SME in deciding which, if any, public sector business opportunities to pursue. The services provided by Invest NI’s Business Information Centre\(^8\) may be of particular use in this regard.

5.4 In addition, the Enterprise Europe Network offers a “one-stop shop” for companies seeking to undertake work in Europe. The network provides help on researching markets, identifying new customers, or suppliers and resolving European business issues. It also advises on sources of tender information, as well as providing tender alert services. Further information on the network is available from [www.enterpriseeuropeni.com](http://www.enterpriseeuropeni.com).

5.5 **Issues of scale and size**

5.6 Public sector procurement is not suitable for all SMEs. It can be challenging to win business in competition with many others trading in a similar field. This is especially the case for small or growing businesses, where there are significant risks and challenges.

5.7 An SME also needs to decide how many bids to make, and in which sectors of business, so that it can grow without becoming overstretched. Attending “Meet the Buyer” events can provide an insight into public sector procurement processes and provide an

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\(^8\) [http://www.investni.com/index/grow/strategic_development/business_information_services.htm](http://www.investni.com/index/grow/strategic_development/business_information_services.htm)
opportunity to meet informally with buyers. These events are mainly hosted by industry bodies and supported by the public sector.

5.8 How can SMEs participate in public sector business?

5.9 One message is clear from those who have followed this path before: the best course of action is to take one careful step into the field. SMEs could consider going it alone taking on a modest contract. Alternatively, opportunities may be available as a sub-contractor, or as a member of a consortium, both of which are addressed further below.

5.10 Sub-contracting opportunities

5.11 SMEs wishing to enter the public sector market can benefit from participation in public sector contracts as a sub-contractor. Where possible, Contracting Authorities\(^9\) (CAs) will encourage main contractors to publish opportunities, for sub-contracting within their supply chain on the main contractor’s website and/or, where appropriate, in the local Press. Looking for contract notices published in the Official Journal of the European Union (OJEU) is another means of identifying possible opportunities within the supply chain.

5.12 In support of this, the Government Construction Clients’ Group (GCCG) has agreed a number of actions to monitor main contractors’ delivery of their commitments\(^10\), advertising supply chain opportunities, and adhering to the ‘Code of Practice for Government Construction Clients and their Supply Chains’ (including the Fair Payment Charter).

5.13 Consortium bids

5.14 Membership of, or forming, a consortium may also provide a suitable alternative route for SMEs to bid for public sector contracts.

5.15 A consortium, in public procurement terms, describes a group of suppliers who come together to bid for a contract. While the term is often used where formal legal and financial arrangements exist between the participants, this is not a necessary condition for the consortium to be able to bid for public contracts. Any informal grouping of suppliers can bid as a consortium and the EU Procurement Directives provide that a consortium bidding for a public contract can be assessed based on the collective capabilities of all of the participants in the consortium.

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\(^9\) The definition of Contracting Authorities includes e.g. NI Government Departments and Councils. A full list of Contracting Authorities may be found in Regulation 3 of The Public Contracts Regulations 2006 (SI 2006 No 5, as amended)

5.16 The CA however needs to be confident that the consortium members can work together in the manner required and this can be tested through appropriate questions in the selection process (see Section 8).

5.17 Clear descriptions of the capabilities required in contract documentation will help suppliers identify how they can combine their skills to best effect. Where a CA awards a contract to a consortium, it may, if it is justified for satisfactory performance of the contract and before entering into a contract or as a term of the contract, require the consortium to form a legal entity.

6. **A TYPICAL PROCUREMENT PROCESS**

6.1 The following diagram (Figure 1) shows a typical procurement process within the public sector and is discussed in further detail in the pages that follow. Low-value specific purchases will follow a simplified version to that described below (see paras 7.12 – 7.14).

6.2 The tendering process used should be proportionate to the size, risk and complexity of the procurement in question. This approach will help to reduce barriers to all potential suppliers, including SMEs. It must be remembered however that the procurement process is a competition, with the majority of contracts being awarded on the basis of the Most Economically Advantageous Tender (MEAT).

6.3 MEAT is the combination of quality and price. The Public Procurement Regulations 2006 set out the criteria which a CA may use to determine that an offer is the most economically advantageous. The criteria may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after sales service, delivery date and delivery period or period of completion.

6.4 As an alternative to MEAT, contracts may be awarded subject to Head of CoPE approval on the basis of lowest price, where quality requirements have been assured through contract specification(s) or other appropriate mechanism(s)
Strategic development and identifying need
The CA decides what is needed and, if appropriate, dependant on the value of the contract, prepares the business case. In most cases, it will liaise with CPD, or a CoPE to decide how the procurement process will be conducted, taking account of legislation, NI Public Procurement Policy and market conditions. The types of procurement procedures which may be used, e.g. open, restricted etc, are given in Annex A.

Specification, inviting tenders and selection
A specification is drawn up and the CA invites suppliers to put in an offer, or tender. Tender opportunities (above £30k) will be advertised on eSourcing NI and depending on value, also in the Official Journal of the European Union (OJEU), (see section 7.3 below).

Following receipt of tenders/offers, an initial selection process will take place to identify those suppliers who meet the minimum standards of capability and capacity to deliver the particular contract.

In some cases, such as a Restricted Procedure, suppliers may have to pre-qualify before being formally asked to submit a tender. This will require the completion of a Pre-Qualification Questionnaire (PQQ), which incorporates information requirements about financial status and previous experience etc. Suppliers who have successfully pre-qualified are then invited to tender (Invitation to Tender, ITT). (See Annex A for details of types of procurement processes).

Tender evaluation
Submitted tenders are evaluated against the published award criteria e.g. price, methodology, time of delivery.

Awarding the contract
The CA awards the contract on the basis of MEAT. Suppliers will be notified of the outcome and will be provided with a written debrief to assist them in improving their approach for future competitions.

Contract management
Depending on the nature of the contract, the public body, or the CA, will work in partnership with the successful supplier to manage the performance of the contract.
7. **HOW AND WHERE ARE TENDERING OPPORTUNITIES PUBLICISED?**

7.1 Subject to the CA’s legal obligations, the form of procurement competition (see Annex A) should be proportionate to the value, nature and complexity of the supplies, works or services required.

7.2 NI Departments, their Agencies, NDPBs and Public Corporations, which are subject to NI Public Procurement Policy, have in place Procurement Control Limits (PCLs) for the procurement of supplies, works and services. The PCLs recommend the optimum level of tenders/quotes that should be sought to ensure that the cost of the procurement is efficient whilst still achieving value for money (VfM) through competition. Detailed information on PCLs is available in Procurement Guidance Note (PGN) 03/1011.

7.3 **Official Journal of the European Union (OJEU)**

7.4 Almost all public procurement contracts for business worth more than the EU threshold\(^12\) must be published in the supplement of the OJEU. The threshold changes every two years and varies according to the type of contract (supplies, works or services) and the public sector entity (Central Government, another public authority, or Utility). The OJEU can be accessed via Tenders Electronic Daily (TED), free of charge, from: [http://ted.europa.eu/TED/main/HomePage.do](http://ted.europa.eu/TED/main/HomePage.do)

7.5 Copies of the OJEU (available in CD-ROM format) can also be obtained from The Stationery Office Ltd at [www.tso.co.uk](http://www.tso.co.uk)

7.6 **Tendertap -Tender Alert Service - Invest NI**

7.7 Tendertap\(^13\) is the new Tender Alert Service provided by Invest NI which sends companies’ daily alerts for relevant tender opportunities published in TED, as well as some smaller value UK and local opportunities. The service currently costs £100 plus VAT annually. Under the previous tender alert service, which was free of charge in 2010, some 58 companies won 114 contracts potentially worth £239 million.

7.8 **eSourcing NI**

7.9 eSourcing NI\(^14\) is a web based portal which provides access to Central Government procurement opportunities. This increases accessibility for SMEs, Social Economy Enterprises (SEEs) and other potential suppliers who wish to do business with the public sector. The portal

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\(^12\) Current thresholds can be found at [http://www.ojec.com/Thresholds.aspx](http://www.ojec.com/Thresholds.aspx)


\(^14\) [https://e-sourcingni.bravosolution.co.uk/web/login.shtml](https://e-sourcingni.bravosolution.co.uk/web/login.shtml)
provides secure, web-based tools for buyers and suppliers to conduct the tendering process online. Using eSourcing NI helps to reduce the time and cost of tendering, and simplifies and standardises the tendering process.

7.10 Suppliers can view current opportunities on the portal and then, if interested, register to respond to a particular tender. Registration is free and is only required once. As part of the registration process, SMEs should also specify the categories of procurement against which they might be interested in providing supplies, services and, where appropriate, works. Buyers can then search the system to help identify potential suppliers for specific categories of procurement.

7.11 Advertisements in newspapers, under “What’s New”, can also be used to highlight new tender opportunities and direct potential suppliers to the eSourcing NI site.

7.12 **Low Value Contracts**

7.13 Where a contract does not require advertising, i.e. below £30k (as per the PCL guidance, paragraph 7.2); buyers can make use of the categorisation on e-Sourcing NI to help them identify potential suppliers.

7.14 e-quotes is an electronic service which allows accepted suppliers to bid for printing work which has been requested by CPD clients i.e., Departments and Agencies. Potential suppliers can obtain an e-quotes pack by e-mailing communicationsandadvertisingsxxxxx.xxx@xxxxx.xxx.xx Potential suppliers should then return the requested documentation and samples to the Communication and Advertising Sector Team in CPD. After assessment and if accepted, suppliers will be notified of this acceptance and will be forwarded a user name and password to access e-quotes.

7.15 **Meet the Buyer events**

7.16 Representatives from CPD and the CoPEs support “Meet the Buyer” events across NI hosted by a range of organisations including Invest NI, InterTrade Ireland and Councils etc, covering the supplies, services and construction works sectors. These well attended events provide opportunities for suppliers to gain information on future tendering competitions, how to access opportunities on eSourcing NI and may offer one to one interviews.

7.17 **Investment Strategy Northern Ireland (ISNI) Information Website**

7.18 The ISNI Information Website, launched in June 2009, also provides public access to information on infrastructure investment programmes, projects and procurements, including key milestone dates. The website can be accessed at [www.isni.gov.uk](http://www.isni.gov.uk)
Reserved contracts for supported factories and businesses

Provision exists within the UK Procurement Regulations\(^\text{15}\) to enable CAs to reserve the right to participate in public contract award procedures to supported factories and businesses, or to economic operators, which operate supported employment programmes. These terms are defined in the Regulations as follows:

- **A supported business is:** ‘A service where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.’

- **A supported employment programme is:** ‘A scheme under which work is provided for disabled persons and where more than 50% of the workers so supported are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.’ Under the EU Directive, these are known as sheltered employment programmes.

- **A supported factory is:** “An establishment where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.”

The Disability Discrimination Act 1995 (DDA) defines\(^\text{16}\) a disabled person as someone with “a physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities.” Further advice can be sought from the Department of Employment and Learning (DEL)\(^\text{17}\) on whether or not your organisation can be classified as a supported factory or business.

‘Reserving’ a contract means that only supported factories and businesses or economic operators operating supported employment programmes can bid for that particular contract. These organisations can be from anywhere in the EU, but where a contract has been reserved under this provision, the process must allow for fair and open competition amongst the suppliers that bid for such contracts. Contracts cannot therefore be reserved for a specific organisation and all bids from supported factories and businesses submitted under the reserved contracts arrangements are still assessed on a VfM basis, with award to the bid offering MEAT.


\(^{16}\) Changes to coverage of the definition of disability were made to the DDA by the Disability Discrimination (Northern Ireland) Order 2006. This came into effect on 31 October 2007. [http://www.ofmdfmn.gov.uk/index/equality/disability/new-disability-discrimination-order.htm](http://www.ofmdfmn.gov.uk/index/equality/disability/new-disability-discrimination-order.htm)

7.23 Where a contract is reserved, the CA should indicate in the OJEU notice that the contract is “reserved for sheltered workshops under Article 19 of the Directive”.

8. **SELECTION**

8.1 The selection stage is a precursor to the evaluation of tenders. Some selection processes also require the completion of a Pre-Qualification Questionnaire (PQQ) which can help to make the selection process more manageable, transparent and efficient for all parties. The number of questions on the PQQ will be proportionate to the scale and complexity of the project.

8.2 A detailed PGN 04/10 on the Selection and Pre-Qualification of Contractors is available from CPD’s website\(^\text{18}\).

8.3 Suppliers will be notified of the outcome of the selection stage, and unsuccessful candidates provided with written debrief information. Further advice on information disclosure throughout the procurement process is available in PGN 01/10\(^\text{18}\).

8.4 **Invitation to tender (ITT), evaluation and award**

8.5 Shortlisted suppliers will be provided with ITT documents, with clear instructions on how they should submit their tenders, and the deadlines for receipt. The ITT will include detailed requirements, instructions to tenderers, contractual terms and conditions, any associated pricing and technical schedules, and award criteria and weightings.

8.6 The CA will award the contract to the tenderer who provides the MEAT. Further information on Procedures and Principles for the Evaluation of Tenders is available in PGN 02/09\(^\text{18}\).

9. **UNSUCCESSFUL BIDS**

9.1 It is a requirement under the UK Procurement Regulations to provide feedback even when not sought by a supplier. For those contracts below the EU thresholds, CoPEs should be able to provide general advice and feedback on the tendering process on request.

9.2 If unsuccessful, the SME can use the information provided by the CA to see how it can improve its approach to future competitions. The information disclosed by the CA has been significantly impacted by the Remedies Directive (2007/66/EC). This was transposed into UK law via the Public Contracts (Amendment) Regulations 2009 and Utilities Contracts (Amendment) Regulations 2009\(^\text{19}\). These took effect from 20

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\(^{18}\) [link](http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation/content_-_cpd_-_policy_-_procurement_guidance_notes.htm)

\(^{19}\) [link](http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-policy-and-legislation.htm)
December 2009 and set out the information to be given to unsuccessful tenderers and the rules concerning the minimum mandatory standstill period (sometimes referred to as the Alcatel period) in relation to contracts over the EU Thresholds.

9.3 The standstill period refers to the time between a buyer notifying tenderers of the decision to award a contract and contract signature. This is to allow tenderers time to review the award decision and provides an opportunity for unsuccessful suppliers, to decide whether to seek further information concerning the award decision, prior to contract award. SMEs should refer to PGN 01/10, entitled 'Information Disclosure throughout the Procurement Process and Application of the Rules on the Standstill Period’, for further details.

10. **CONTRACT TERMS AND CONDITIONS**

10.1 Most government contracts are based on standard contract documents appropriate to the supplies, works and services being purchased. For routine tenders, the tenderer will receive a copy of the tender documentation which includes the terms and conditions of contract. When submitting their tender, the tenderer will be legally bound by the terms and conditions set out in the tender documentation, if awarded a contract.

10.2 More complex contracts, such as IT systems will not be concluded until the winning tenderer and the CA have agreed the terms and conditions. It is therefore important for all parties to fully understand their responsibilities under the contract. If in doubt, legal advice should be sought.

11. **DELIVERING THE CONTRACT**

11.1 Contract management is the phase of the procurement cycle in which the successful tenderer delivers the required supplies, works and services in accordance with the CA’s specification. The CA’s and supplier’s approach to managing their relationship is critically important to ensuring successful contract delivery and VfM. When things go wrong, the failure can be expensive in human, financial and reputational terms.

11.2 Good management of this operational phase of the procurement is therefore critical. It ensures that both parties fully meet their respective obligations as efficiently and effectively as possible, in order to meet the business and operational objectives required from the contract.

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20 In some cases, the relationship may be between the successful tenderer and the client itself.
11.3 The SME therefore needs to be in a position to deliver the contracted requirement in full and to the agreed performance standards to ensure and enable an effective commercial relationship.

11.4 PGN 01/12 on Contract Management - Procedures and Principles provides more information and is available from the CPD website.  

11.5 Getting paid on time – what to expect from CAs

11.6 Having won the tender, the successful SME should expect that CAs will have clearly defined the payment terms within the contract.

11.7 Public Sector organisations will:
- pay invoices in accordance with agreed terms, or as required by law;
- tell suppliers without delay when an invoice is contested; and
- settle as quickly as possible when a contested invoice gets a satisfactory resolution.

11.8 In November 2008, the Minister for Finance and Personnel made a commitment to speed up the payment process on presentation of a valid invoice. NI Departments will therefore aim to pay suppliers, wherever possible, within 10 working days. Where the main contractor benefits from earlier payment, and on presentation of a valid invoice, this should be passed on to the sub-contractor.

11.9 Public sector organisations are also bound by The Late Payment of Commercial Debts (Interest) Act 1998. This provides a statutory right for suppliers to claim interest on late payments of commercial debt. Payment is regarded as late if made outside the agreed terms, or 30 days after receipt of a valid invoice, where no terms are agreed.

11.10 Government Construction Clients also agreed to expand the ‘Code of Practice for Government Construction Clients and their Supply Chains’ to include a ‘Fair Payment Charter’ and to require main contractors to report payment progress to sub-contractors at project meetings.

12. COMPLAINT HANDLING

12.1 CPD and the CoPEs aim to provide a high quality, efficient and professional service, but occasionally things can go wrong and there are formal complaints procedures in place to resolve such matters if they arise.

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21 http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd_publications/content_-_cpd_-_policy_-_procurement_guidance_notes.htm
22 (as amended by the Late Payment of Commercial Debt Regulations 2002 (SI 1674)
12.2 NI Public Procurement Policy requires each CoPE to have a formal complaints procedure through which complaints can be formally investigated. Details of these procedures can be found on the relevant CoPE websites.

12.3 It is important to note that the complaints procedure is not an appeal mechanism for tenderers who are dissatisfied with the outcome of a procurement competition. The relevant procedures for challenging an award decision are set out in The Public Contracts Regulation 2006 (SI 2006 No 5) as amended and The Utilities Contract Regulations 2006 (SI 2006 No 6) as amended. Such a challenge will be a matter for the High Court to decide.

13. CONCLUSION

13.1 There are considerable opportunities for SMEs in bidding for public sector procurement contracts. However, like all business opportunities, the risks have to be assessed and weighed against the potential benefits. Organisations can also avail of networking opportunities or “Meet the Buyer” events to improve their ability to tender for public sector contracts.

14. FURTHER INFORMATION

14.1 Additional useful websites and sources of information are listed at Annex B. Any queries on this PGN should be addressed to:

Central Procurement Directorate
Procurement Policy Branch
2nd Floor East
Clare House
303 Airport Road West
BELFAST
BT3 9ED

Phone: 028 9081 6518
e-mail: procure.policy@dfpni.gov.uk
All PGNs can be found at http://www.dfpni.gov.uk/cpd

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Annex A

TYPES OF PROCUREMENT PROCEDURES

The EU Procurement Directives provide for four main procurement procedures to be used by CAs.

For straightforward procurements, for example of commodity supplies and services, the open, or restricted procedures are used. For complex procurements, CAs normally use the Competitive Dialogue procedure. This can be used where a CA wishes to award a particularly complex contract and considers that the open or restricted procedure will not allow the award of that contract. In exceptional circumstances or where other procedures fail to produce a contract, CAs may use the Negotiated Procedure.

The Open Procedure

Under the Open Procedure, all interested suppliers who respond to an OJEU advertisement must be invited to tender. This procedure does not allow any form of pre-qualification. If the supplier meets the selection criteria, the CA must consider and evaluate the submitted tender.

The Restricted Procedure

Under the Restricted Procedure, interested suppliers are invited to respond to an OJEU advertisement by submitting an “Expression of Interest” (a completed PQQ) in which they reply against defined selection criteria such as technical capability, financial standing, or experience of supplying similar projects. A shortlist of suppliers is then drawn up and invited to submit tenders (an ITT).

The submitted tenders are then evaluated against the award criteria, e.g. price, quality and time of delivery. The CA will then award the contract to the tenderer that best satisfies all the criteria.

The Competitive Dialogue Procedure

For complex procurements, the restricted procedure is usually too inflexible as it allows only limited discussion and dialogue with suppliers. CAs will therefore normally follow the Competitive Dialogue Procedure, unless there are exceptional circumstances that would justify the use of the Negotiated Procedure.

Competitive Dialogue is a flexible procedure, suitable where there is a need for CAs to discuss aspects of the proposed contract with suppliers. For
example, the procedure would be used where CAs cannot define clearly in advance the technical means capable of satisfying their needs or objectives, or where there is a range of options for the legal and/or financial structure of a project.

Under Competitive Dialogue, a similar pre-selection procedure is undertaken to that used for the restricted procedure. Shortlisted suppliers are then invited to participate in dialogue, which may have several stages. This helps to refine the requirement through supplier input and gives the opportunity for meaningful dialogue. Once this stage is concluded, suppliers are invited to submit a final tender.

**The Negotiated Procedure**

The Negotiated Procedure is a procedure leading to the award of a contract whereby the CA negotiates the terms of the contract with one or more economic operators selected by it. It is limited to specified circumstances for each type of contract and is intended for use when other procedures will not work. It may be valid when: competition is not viable, or appropriate; other procedures have not produced an acceptable tender; work is needed for research and development purposes; or where prior overall pricing is not possible. There are also circumstances where this procedure can be used without a call for competition for example, where it is strictly necessary for the completion of a project and the services cannot be provided separately without major inconvenience to the CA or where the services are a repetition of the services already provided and the notice advertising the original contract provided for such a repetition.

Use of the Negotiated Procedure has been reduced since the introduction of the Competitive Dialogue procedure and the direction from both the EU and the Cabinet Office is that the Negotiated Procedure should only be used in exceptional circumstances and any use will be scrutinised by the EU.

**Framework Agreements**

Framework Agreements are put in place with one, or more (usually several), suppliers of the same product or service. The Framework Agreement sets out the general terms and conditions under which specific purchases can be made as and when they are required. They are mainly used when the quantity of supplies, works or services is undetermined.

The competition for awarding a place on a Framework is usually very similar to that for winning an ordinary contract. There may well be a formal pre-qualification process, and/or a tendering stage which suppliers must complete successfully before they can be party to the agreement. Framework Agreements normally last a maximum of four years.
A supplier who has succeeded in being awarded a place on a Framework Agreement, can receive a call-off order directly, or (since a Framework Agreement does not mean an automatic agreement to purchase) may be asked to take part in a mini-competition with other suppliers on the Framework. The formal contract is formed when the customer places a ‘call-off’ order against the Framework requesting specific delivery of supplies or services.
USEFUL WEBSITES

(This is not an exhaustive list)

NORTHERN IRELAND

Central Procurement Directorate (CPD)
http://www.dfpni.gov.uk/index/procurement-2/cpd.htm
CPD provides a professional procurement service to the NI Government Departments, their Agencies and other public sector bodies in respect of a wide range of supplies, service and construction works. This ensures best value for money, legal compliance and competitiveness. Current tender opportunities are advertised on the CPD website.

eSourcing NI https://e-sourcingni.bravosolution.co.uk/web/login.shtml
This is an electronic tendering portal which provides increased accessibility for SMEs, SEEs and other potential suppliers who wish to do business with the NI public sector.

Department for Employment and Learning
The Disablement Advisory Service can be contacted via the link above.

NI Business Info
http://www.nibusinessinfo.co.uk/bdotg/action/home?site=191
Northern Ireland’s online business advice service.

NI Departments
http://www.northernireland.gov.uk/gov.htm
Website providing links to all of the NI Departments.

NI Public Procurement Policy
Includes the 12 guiding principles which govern the administration of public procurement and the procurement structures within NI such as the Procurement Board and the CoPEs.

NI Public Procurement Policy Handbook
The handbook provides details on the context within which NI Public Procurement Policy operates, the structure and operation of procurement in the NI public sector and the roles and responsibilities of key players within the procurement process.

Trade Social www.tradesocial.net
Trade Social aims to promote opportunities for social economy enterprises to do more business – by selling to each other, selling to the public and private sectors and selling to the general public. Entries in the Directory are free to social economy enterprises set up and trading in Northern Ireland.
UK WIDE

UK Treasury [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

**Winning the Contract**  
This is a free online course designed to address the small business knowledge gap on public procurement. Although focused on Great Britain, SMEs will find useful background information and strategies to enable them to compete for public sector contracts.

**Government Procurement Service (Buying Solutions)**  
[www.buyingsolutions.gov.uk/](http://www.buyingsolutions.gov.uk/)  
The supplier zone of this website provides valuable information, advice and guidance to existing and potential Buying Solutions suppliers.

**Business Link**  
This provides businesses of all sizes with access to guidance and support to meet their business needs and carry out transactions with government online, thus helping to save time and money.

**Efficiency and Reform Group within the Cabinet Office**  
This site provides information on supplying to the UK government, publications and other programmes and initiatives for public procurement.

The Scottish Executive Procurement & Commercial Services Division is responsible for ensuring that public funds are utilised to achieve value for money for the taxpayer. [www.scotland.gov.uk/procurement/](http://www.scotland.gov.uk/procurement/)

Sell2Wales is an initiative from the Welsh Assembly Government helping SMEs work successfully with public sector clients. [www.sell2wales.co.uk/](http://www.sell2wales.co.uk/)

IRELAND

**InterTrade Ireland**  
This organisation provides business development initiatives offering companies practical advice and support in targeting new cross-border business opportunities, developing new products and processes and attracting equity investment.

**Public Sector Opportunities in the Republic of Ireland**  
[www.e-tenders.gov.ie](http://www.e-tenders.gov.ie)  
This site is designed as a central facility for all public sector Contracting Authorities to advertise procurement opportunities which currently exist in the Irish Public Sector.

EUROPE
Gateway to the European Union
A website which gives an overview of the Public Procurement market in Europe, provides information on various issues such as legislation, tenders and signposts useful links for both buyers and suppliers (includes links to SIMAP and Tenders Electronic Daily).

Enterprise Europe Network www.investni.com
The Enterprise Europe Network offers a “one-stop shop” for companies seeking to undertake work in Europe.