



# A Guide to...

## Helping SMEs



£60

# A PASS Guide to Helping SMEs

The New Thresholds	4
Defining SMEs	4
SME benefits to the public sector	4
SME market entry problems	4
Supply2.gov.uk – identifying new opportunities	4
Compliance with EC Treaty Principles	4
Social, environmental and sustainability selection and award criteria	5
Disaggregation of contracts under the EC Directive	5
Splitting into small lots	5
Good practice	5
Fair tender processes	5
Local authority commitments	5
Access to contract opportunities	6
Contract size and value	6
Subcontracting	6
Working together – buyers and suppliers	6
Operating as a supply chain partner	6
SMEs may identify potential subcontract opportunities via award notices	7
Framework agreements	7
Low-value contract advertising	7
Identification of contract value	8
Contract value banding	8
PIN notices/Buyer Profiles	8
Pre-Qualification	8
Common PQQ	9
Registration and accreditation	9
The process of initiation	9
Debriefing	9
Payments	10
Disputes and SMEs	10
Mediation – an ADR technique	10
Mediation – cost-effective	10
Training and development	10
A route map for public bodies helping SMEs	11
Annex	11



This PASS Guide Book has been produced by BiP Solutions Ltd (BiP) to provide assistance to those engaged in public procurement. The articles and reports herein have been published in good faith by BiP and BiP shall not incur any liability for any action or omission arising out of any reliance being placed on their content by any organisation or individual. Any organisation or other person in receipt of this content should take their own legal, financial and other relevant professional advice when considering what action (if any) to take in respect of any initiative, proposal or other involvement with public procurement, or before placing any reliance on anything contained herein.

# A PASS Guide to Helping SMEs

This PASS guide is concerned mainly with issues affecting public procurement and small businesses (usually defined as those with fewer than 50 employees). A diverse group of businesses fall into this category, ranging from sole traders and start-ups to substantial, established firms – including black and minority ethnic businesses (BMEs), voluntary and community organisations (VCOs) and social enterprises.

At the start of 2004 there were an estimated 4.3 million businesses in the UK, of which only around 6000 were large businesses (those with more than 250 employees). In fact firms with fewer than 50 employees accounted for over 99% of all businesses. The majority of UK businesses therefore fall into the Small and Medium-sized Enterprise (SME) category, and small firms account for around 37% of UK private sector business turnover and 46% of employment. (Source: OGC)

## THE NEW THRESHOLDS

There are tens of thousands of individual public sector organisations in the UK spending well in excess of £120 billion each year on procurement. This money in turn supports hundreds of thousands of jobs. Local government, for instance, has 800,000 suppliers. (Source: IDeA)

## DEFINING SMEs

*On 1 January 2005 the EU introduced new definitions for SMEs:*

- Medium-sized – up to 250 employees or up to €50 million turnover
- Small – up to 50 employees or up to €10 million turnover
- Micro – up to 10 employees or up to €2 million turnover

## SME BENEFITS TO THE PUBLIC SECTOR

Without doubt, SMEs provide public bodies with more competition – helping to drive down costs. They have smaller administrative overheads and management costs than larger firms and they can bring innovation through, for example, the early exploitation of new technology, and provide products or services in new or underdeveloped markets. Invariably SMEs have short management chains and approval routes, so they can respond quickly to changing requirements and are more willing to tailor a product or service to meet specific customer needs.

Being a large customer of a small business it is more than likely that your organisation's business is extremely important to them. This can result in better and often more personal levels of service and in a better relationship with the supplier. And many SMEs supply specialist products or services that larger suppliers find unattractive, for example because of limited demand.

## SME MARKET ENTRY PROBLEMS

Often contracts let by public bodies are too large for small and micro businesses. Suitable opportunities are frequently either not advertised or are not advertised openly enough. For small businesses with limited resources, the tender application process is also often too cumbersome, time-consuming and expensive, and what subcontracts there may be arising from a public contract can often be difficult to identify or access.

Unfortunately, buyers' perceptions of the worth of small businesses can be very negative. They too often believe that SMEs represent too much risk, cannot be relied upon, have no track record, are too small for the type of contract on offer, do not respond to opportunities or do not understand how the public sector buys.

Barriers on turnover which are unrealistic or unwarranted are also often put in place; for instance, imposing a requirement that a specified value or percentage of an organisation's overall turnover must relate directly to the requirement, even where such a requirement is for a service in which the company clearly has key expertise to offer.

## SUPPLY2.GOV.UK – IDENTIFYING NEW OPPORTUNITIES

While most public sector contracts valued at more than around £90,000 are normally required by law to be listed in the EU Official Journal, traditionally there has been no such mandate for lower-value contracts. However, the Small Business Service (SBS) has introduced a new online lower-value contract opportunities portal for the promotion of lower-value public sector contracts.

The new portal, Supply2.gov.uk, launched in spring 2006, is the first UK Government-backed online service for publicising lower-value public sector contracts. All UK public sector organisations can, free of charge, publicise their contract opportunities on the portal and, for the first time, all businesses now have access to such contracts in a single location. The new portal also saves buyers time and effort in sourcing new suppliers, and helps them provide public services more cost-effectively.

The aim of the new portal is to open up this market to all types of businesses and make it easier for them to work with the public sector. Many of the services available at the portal are free but suppliers may be charged a modest annual subscription for some services.

The portal is accessible via the national Business Link website which provides free access to all relevant information, guidance, funding and training from government and the business sector. As one of the leading sites for small business, the website has more than 600,000 visits every month from individuals involved in business.

The success of this new SME-focused service will be substantially down to the support it receives from public sector organisations, particularly those active in local communities, such as councils.

If public authorities gain a greater appreciation of the role SMEs can play in the local community and the benefits they bring to the local economy, then the portal and the users – both buyers and suppliers – will obtain considerable value from the service.

## COMPLIANCE WITH EC TREATY PRINCIPLES

All public sector contracts should be awarded in terms of Best Value, taking into account whole-life costs in contract decisions. This means considering issues of quality and longer-term costs and benefits as well as price.

Among the fundamental principles of the European Union (EU) are the free movement of goods, freedom of establishment, and freedom to provide services – and the derived principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency. In short you must not do anything that could restrict, distort or prevent competition. THAT INCLUDES BUYING LOCAL.

Coordinating national procedures, based on EC Treaty principles to open up public procurement to competition, is a cornerstone of the EU. Hence these principles have been incorporated into the EC Public Procurement Directive for high-value contracts. These principles are, though, no less important when it comes to other contract opportunities, whatever their value.

When letting contracts, public organisations can and should make appropriate use of their legal powers, including the power to promote the economic, social and environmental well being of the community, whilst ensuring compliance with the EC Treaty principles of non-discrimination, equal treatment and transparency and other duties under UK law.

However, a reality check is required for those who consider the Directive deficient when it comes to delivering Best Value procurement: the fact is that the EC Public Procurement Directive is about delivering competition, not good procurement.

## SOCIAL, ENVIRONMENTAL AND SUSTAINABILITY SELECTION AND AWARD CRITERIA

When letting contracts public bodies can give consideration to social and environmental issues. However, these must always be linked to the subject matter of the contract and must not confer unrestricted freedom of choice on the contracting authority and must be interpreted in accordance with both the rules of the Directive and the principles of the EC Treaty.

Remember the EU mantra – nothing must be done to restrict, distort or prevent competition.

While consideration can be given to social, environmental and sustainability issues, this does not confer a right to use the criteria to achieve a buy local policy. Public bodies do not help SMEs in their area through the adoption of such a policy,

*Instead, they:*

- risk EU action
- distort the market
- restrict the ability of good SMEs to grow
- reduce the chances of achieving Best Value
- hit their citizens in the pocket
- ingrain inefficiency

There are better and safer ways of helping local small businesses.

## DISAGGREGATION OF CONTRACTS UNDER THE EC DIRECTIVE

There is within the scope of the EC Public Procurement Directive opportunities to adopt SME-friendly strategies, even for high-value contracts.

The Directive requires that where a proposed purchase may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots. Where the aggregate value of the lots is equal to or exceeds the financial threshold laid down, the Directive applies to the awarding of each lot.

However, contracting authorities may waive such application in respect of lots the estimated aggregate value of which (net of VAT) is less than €80 000 for services and supplies or €1 million for works, and provided that the aggregate value of those lots does not exceed 20% of the aggregate value of the lots as a whole.

## SPLITTING INTO SMALL LOTS

There are also opportunities to use the EC Directive Small Lots provision. The size of contracts indicated for small lots provision within the EC Public Procurement Directive is perfect for SMEs and helps public bodies use small lots as a mechanism to involve SMEs – so why not use them?

Remember – the full rigours of the EC process do not need to be followed for such lots. Splitting a small lot allowance from a main contract is not only good for SMEs, it also provides public bodies with a benchmark

to use when measuring the performance of the main contractor – and it may release some innovation that could be applied elsewhere. Also, consider the potential benefits of splitting the whole contract into lots.

*Public bodies need to consider their procurement strategies, in particular the scope of their procurements:*

- Are there elements best left outside the main contract?
- Is it really a good idea to place all the work with one supplier – for example:
  - would there be advantages in dividing it into lots? (If so, be clear about how the requirement is to be divided.)
  - if new work subsequently fell within the scope of the contract, would it be practical to reserve the right to source this separately?
  - should the contract be let in lots on either a product or geographical basis?

## CASE STUDY

The Department for Work and Pensions, when letting their stationery and computer consumables contract, organised the contract into four lots. To encourage SMEs the Department accepted national and regional bids as this allowed smaller organisations to bid for more manageable pieces of business. This resulted in a number of SMEs being successful and provided the Department with specialist local suppliers offering value for money.

## GOOD PRACTICE

As good practice public bodies should openly advertise their contracts to encourage greater diversity and competition. Public bodies should give potential suppliers an opportunity to discuss the procurement in order to understand its requirements and assess their own suitability. A core requirement is that nothing should be done which would give a particular business or provider an unfair advantage in competing for a specific contract.

## FAIR TENDER PROCESSES

It should go without saying that public bodies should apply their own rules and policies fairly and that these rules should be made available to all potential interested suppliers.

At pre-tender stage and during the tender process public bodies should ensure that all tenderers have equal access to relevant information and keep the tender process as simple as possible in order to help minimise the costs to suppliers.

If a pre-qualification stage is used, its use should be organisation-wide and contain only common core questions with limited bespoke additions for each contract. These should be developed in line with other interested organisations, both regional and national, and partner authorities to ensure a consistent approach to pre-qualification.

Supplier assessment should always be against published pre-qualification and tender evaluation criteria. These criteria should be proportionate to the risks of the individual contract process. In particular the criteria relating to financial standing should not be set so as to unreasonably exclude newer businesses.

## LOCAL AUTHORITY COMMITMENTS

Most local authorities now publish a corporate procurement strategy.

*This strategy should include a commitment to:*

- the role procurement plays in delivering the council's objectives and its contribution to the community strategy, workforce issues, diversity and equality, and sustainability
- encouraging a diverse and competitive supply market, including small firms, social enterprises, ethnic minority businesses and voluntary and community sector suppliers

- ensuring that our approach to individual contracts, including large contracts and framework agreements, etc, is supported by a sound business case and options appraisal
- inviting bidders to demonstrate their track record in achieving value for money, through effective use of their supply chain, where we decide that the Best Value option is to aggregate supply or let a longer-term contract or framework agreement
- considering the role of SME specialist suppliers in delivering elements of larger contracts and framework agreements

## ACCESS TO CONTRACT OPPORTUNITIES

Local authority websites should host:

- guidance for suppliers on how to do business with the council
- details of forthcoming bidding opportunities
- contact details for each contract, with appropriate links to any regional site and the national public sector small business opportunities portal, Supply2.gov.uk
- details of key suppliers to promote subcontract opportunities

## CONTRACT SIZE AND VALUE

The drive for greater efficiency in public sector procurement has resulted in a trend to replace many small contracts with fewer, larger (and longer) contracts. It is accepted that big partnership-style contracts can bring benefits, sometimes in better value, but also in reduced procurement and contract management costs, single points of contact when problems arise, and a closer working relationship with the supplier.

However, larger contracts do not necessarily deliver better value for money. They can in fact hurt the supply base and therefore the potential for competition in the future. Purchasing authorities therefore need to consider the impact of their procurement strategies on the supply base and undertake a risk assessment before they adopt a specific single-supplier strategy.

## SUBCONTRACTING

In order to encourage the involvement of small and medium-sized undertakings in the public contracts procurement market, it is advisable to include provisions on subcontracting.

Under the EC Public Procurement Directive there are certain requirements relating to subcontracting for works concession contracts.

The contracting authority may either:

- require the concessionaire to award contracts representing a minimum of 30% of the total value of the work, for which the concession contract is to be awarded to third parties, at the same time providing for an option for the candidate to increase the percentage, this minimum percentage being specified in the concession contract; or
- request the candidates for concession contracts to specify in their tenders the percentage, if any, of the total value of the work for which the concession contract is to be awarded, which they intend to assign to third parties

The EC Directive also states that in the contract documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties and any proposed subcontractors. Remember, this indication is without prejudice to the question of the principal economic operator's liability. Care must be taken by public bodies not to become too engaged with the relationship and day-to-day management of subcontractors of a prime contractor.

So there are things public bodies can do to help. For instance, in large procurements smaller suppliers may express an interest, not because they are planning to become a prime contractor, but because they are

interested in subcontracting opportunities. Open supplier meetings also provide a forum for potential prime contractors and subcontractors to get together as well as finding out more about the project.

Some departments, for instance the MoD, publish the names of companies involved during a procurement, which can also aid potential subcontractors.

Public bodies should also be open to considering consortium bids from SMEs and encourage main suppliers to adopt supply chain management practices that integrate, incentivise and reward good performance throughout the supply chain.

Public bodies should work with prime contractors – both at tender stage and during the life of a contract – to establish the contribution that small firms, ethnic minority businesses, social enterprises and voluntary and community sector suppliers can play in the supply chain. They should openly advertise details of their prime contractors most appropriately via their website in order to assist SMEs source subcontractor opportunities arising from their major contracts.

## WORKING TOGETHER – BUYERS AND SUPPLIERS

Public procurement is rapidly changing and it is increasingly important that SMEs and the public sector understand each other's processes and expectations.

In an effort to stimulate local government procurement from SMEs the Office of the Deputy Prime Minister (ODPM), which has overall responsibility for local government in England, has issued a Charter which sets out for SMEs and local government a minimum level of good practice for both sides to create an SME-friendly procurement environment.

Overall, government is committed to adopting SME-friendly procurement to encourage a mixed range of suppliers in order to help develop and stimulate a varied and competitive marketplace. Indeed this is not only UK policy but European Union policy. Both recognise the important contribution that small businesses can make to the delivery of public services and the vital role these businesses play in the European, Member State and local economies.

Even if your organisation is not an English local authority there is nothing stopping it from adopting a similar charter. This not only provides your organisation with a key focus for creating an SME-friendly environment but also highlights to such businesses that your authority is ready and willing to work with them.

## OPERATING AS A SUPPLY CHAIN PARTNER

Although SMEs may not always be in a position to be a prime contractor, there are frequent opportunities for them to be subcontractors, particularly where they can provide specialist products or services. While the choice of specific subcontractors is a commercial decision and usually rests with the prime contractor, it is appropriate to consider the supplier's subcontractor management arrangements and ensure there is visibility of the supply chain.

## CASE STUDY

The MoD has a contract clause in their prime contracts requesting the prime contractor to advertise their subcontract opportunities arising from the contract. They facilitate this process by allowing the prime contractors to advertise such contracts in MoD Defence Contracts Bulletin and online at the MoD procurement website at no cost. This is backed up by a concordat with the defence industry trade bodies.

## SMEs MAY IDENTIFY POTENTIAL SUBCONTRACT OPPORTUNITIES VIA AWARD NOTICES

While the EC Directive requires contracting authorities which have awarded a public contract or concluded a framework agreement to send a notice of the results of the award procedure no later than 48 days after the award of the contract or the conclusion of the framework agreement, less than 70% actually do so. The result is that vital potential subcontractor market intelligence is lost to SMEs. Sending a notice is not only a legal requirement; it is also good practice.

## FRAMEWORK AGREEMENTS

Where framework agreements are concluded with several undertakings (suppliers, contractors or service providers), contracts based on the framework agreements can be concluded:

- either by applying the terms laid down in the framework agreement without re-opening competition;
- or where not all the terms are laid down in the framework agreements in accordance with a prescribed procedure (ie when the parties are again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the framework agreement

For every contract to be awarded, the contracting authority should, in writing, invite all the undertakings capable of meeting the specific requirement to complete their tenders for it.

Channel	Application Services	Managed Services	Telecomms Services	1. WAN	2. Fixed PSTN	3. LAN
Alcatel Telecom Ltd	.	.	.			
Amey Business Solutions				.		
Atos Origins IT Services UK Ltd	.	.	.			
BiP Solutions Ltd		.				
British Telecommunications Plc	.	.	.	.	.	.
Business Systems Group Ltd	.					

As with large contracts, frameworks can bring benefits including economy of scale pricing, simplified ordering, reduced procurement and contract management costs and greater flexibility to the purchasing authority. For the same reasons, frameworks can be particularly beneficial to SMEs that have secured contracts. However, the widespread use of frameworks can cause considerable difficulties to many SMEs.

Things to consider when running a framework procurement include:

- advertising widely to maximise the potential bidders
- considering the benefits of including small suppliers – particularly for more specialist items and niche products or services
- considering the optimum number of suppliers (too many – lose economy of scale; too few – reduce choice)
- encouraging supply chain management and visibility of the supply chain
- considering whether use of the resulting framework by buyers should be mandatory. There may be occasions when better value could be obtained by a separate procurement

When considering buying off a framework, identify requirements early – frameworks are sometimes used because there is no time to run a separate procurement. Ensure time is made available to consider all sources of supply, which may be a framework or may equally be an SME with a particularly novel solution or better fit to the requirement. Remember, short-term market conditions may mean the buyer could get better value by buying elsewhere.

Ask yourself first:

- Do public bodies always have to use the framework?
- Are there clear advantages in using small, possibly local, suppliers?

## CASE STUDY

In seeking suppliers of office furniture the Inland Revenue set up a framework arrangement that included large and small enterprises. Large furniture suppliers were able to bring economy of scale savings for standard office furniture; SMEs were able to provide flexibility in meeting requirements for special items, such as reception and conference room furniture and specialist seating.

The latter items are typically specified to a higher standard and vary from order to order. In doing this the Inland Revenue achieved value for money in both standard and specialist items of furniture.

## LOW-VALUE CONTRACT ADVERTISING

Recent actions by the European Commission against Member States have clearly identified their consideration that European Court of Justice case law confirms that even when the financial sums involved are below the EC Procurement Directive thresholds (above which the full procedural requirements of the Public Procurement Directive apply) contracting authorities must ensure a degree of advertising sufficient to ensure competition, to avoid discrimination on the grounds of nationality and to allow the impartiality of procurement procedures to be reviewed.

The precise scope and form of the advertising required depends on the nature of the requirement in question and the extent to which the contract is of interest to purely regional, national or EU-wide potential providers of the service.

The ECJ judgment covers all contracts not already captured by the EC Public Procurement Directive.

This includes:

- Low-value contracts (under the EC Directive thresholds)
- Concession contracts (non-works)
- Contracts for Annex II B services
- Works contracts under the EC thresholds

## CASE STUDY

### FINLAND KITCHEN EQUIPMENT – FEBRUARY 2003

The Finnish contracting authority in charge of government real estate, Senaatti-Kiinteistöt, awarded a contract for kitchen equipment. The sum involved was below the threshold above which the full procedural requirements of the Public Procurement Directive apply. However, the case law of the European Court of Justice confirms that the contracting authority in such cases must ensure a degree of advertising sufficient to ensure competition, to avoid discrimination on the grounds of nationality and to allow the impartiality of procurement procedures to be reviewed.

In response to this judgment, the Scottish Executive has stated that in Scotland there is a requirement to advertise contracts below the EU thresholds, as well as all Part B services and exempt contracts.

## IDENTIFICATION OF CONTRACT VALUE

We often refer to contracts that are sent to the Official Journal of the European Union as high value; that is often not the case. Public bodies are required to advertise in OJEU contracts valued at above approximately £100,000 – £150,000. This figure is not the annual total value of the contract, but the total potential value of the contract for the lifetime of that contract. Accordingly the per annum value could be well under £100,000 and therefore applicable to micro-SMEs. For instance, a contract for a central government body with a value of £120,000 for three years is only £40,000 per annum: a sum well within the range of most micro-SMEs.

When public bodies consider the annual value and not the total value, they see that many opportunities which appear at first sight to be high value and beyond the abilities of micro-SMEs, are in fact well within their capability.

So make SMEs aware how you determine the overall values of your contracts, and that the annual value of even OJEU contracts may be of a size applicable to them.

## CONTRACT VALUE BANDING

For SMEs the difficulty still remains to find out exactly what value contracts are. Public authorities are always wary of telling suppliers the budget they have in mind because, rightly or wrongly, they believe that all bids will then come within a few pounds of the budget limit.

Authorities may well have a point but there is a very simple and effective way round this problem: it is called value banding.

If public authorities uses value banding then suppliers can easily identify what opportunities may fit their capabilities and no longer need waste their time applying to tender for contracts that are well outwith their capacity.

Value banding is a simple mechanism that can be adopted by any public sector body at no cost and delivers to them the benefit of receiving bids from companies more appropriate to the opportunity offered.

months, and where the total estimated value is equal to or greater than €750 000, is good for SMEs. Better still would be to publish the full details on your Buyer Profile site.

PIN notices must be sent to the OJEU or published on an authority's registered Buyer Profile website as soon as possible after the beginning of the budgetary year and after the decision approving the planned spend.

A notice announcing their publication on a Buyer Profile website must also be sent to the OJEU using a specific notice proforma.

Remember, publication of PINs is compulsory only where contracting authorities intend to take the option of shortening the time limits for the receipt of tenders. It is important to note that the product area for PINs shall be established by contracting authorities by reference to the CPV nomenclature.

*A contracting authority's Buyer Profile should include:*

- what we buy – how we buy
- Prior Information Notices
- information on ongoing invitations to tender, scheduled purchases, contracts concluded, and procedures cancelled
- useful general information, such as a contact point, a telephone and a fax number, a postal address and an email address

BiP Solutions' aXcess service helps public bodies comply with the EU proposals for allowing public authorities to reduce their tendering timescales, by providing a fully managed, real-time online contract information service for suppliers.

*Current aXcess portals include:*

- LCSG: <http://www.lcsg.g2b.info/>
- DVLA: <http://www.dvla.g2b.info/>
- University of Edinburgh: <http://www.edinburghac.g2b.info/>
- East Sussex County Council: <http://www.escs.g2b.info/>

### CASE STUDY

- Value bands are used by the MoD to indicate the approximate value of the contract being advertised. They are provided for guidance only, but are useful in helping to assess whether an organisation should consider responding to the contract notice.
- *The bandings are:*
  - Category A: £400m and above
  - Category B: £100m to £400m
  - Category C: £20m to £100m
  - Category D: £10m to £20m
  - Category E: £5m to £10m
  - Category F: £1m to £5m
  - Category G: £500k to £1m
  - Category H: £100k to £500k
  - Category I: Below £100k

The introduction of value banding could revolutionise access to public contracts by SMEs. When using value banding, contract opportunities suitable to SMEs become visible. Public bodies can even use value banding to band suppliers by turnover, so that they can match them against appropriate opportunities, for instance through bespoke select lists.

## PIN NOTICES/BUYER PROFILES

Publishing PIN notices where the estimated total value of supplies and services contracts which you intend to award over the following 12

### CASE STUDY

On 21 June 2005, Scottish Borders Council held a 'Selling to the Council' event which was the first of its kind for the Council. The purpose of the day was to develop links with the local business community and social economy and to launch the Council's Procurement Buyer Profile which was developed with BiP's aXcess service.

Before the event questionnaires were sent to those who would be attending asking them to identify what problems they had encountered when trying to do business with the Council.

The overwhelming response was difficulty in finding out who to speak to within the Council and how to find out about contract opportunities.

Over 50 suppliers attended the event and the feedback was very positive. The Council was very encouraged that the majority of those attending commented on how useful they felt the Buyer Profile portal would be in enabling them to sell to the Council and overcome the problems they had previously encountered.

To view the Profile log onto: <http://scotborders.g2b.biz/>

## PRE-QUALIFICATION

The fact is if public bodies do not select the right suppliers at the pre-qualification stage, they close off potentially excellent innovative solutions later. On the other hand, simply relaxing the selection criteria will allow more suppliers (including SMEs) to get through, with each supplier having a reduced chance of winning the business.

Some suppliers may weigh their chance of winning against the costs and decide it is not worth continuing – and these are more likely to be SMEs because cost of sale is more significant to them.

While it is important to select suppliers that are financially sound and capable of delivering the solution, government advice is to request only two years' accounts or, if these are not available, other appropriate information.

When viewing financial data, take into account the nature, size and risks of specific procurements, as well as any risks associated with individual suppliers (for example, health and safety records are a particular issue in construction).

For example:

- Does it matter if the estimated value of the procurement is more than x% of turnover if the company is growing rapidly?
- Does it matter that it is a very young company if it has the right products and there is a limited need for ongoing support or services?
- Does it matter if it is a small company if it has sufficiently skilled staff to meet your requirements without becoming overstretched?
- Does it matter if the company's experience is all in the private rather than public sector?

General guidance on producing requirements applies to suppliers of all sizes.

When drawing up requirements:

- make requirements clear and unambiguous and avoid jargon
- focus on the outputs required, not on how they are to be delivered (the 'what' rather than the 'how')
- avoid over-specifying the requirement
- specify standards where they are necessary, rather than including a standards list as routine
- be clear on what the supplier has to do in responding to the requirement – the types of information required, the format of the response and the deadline for receipt
- let them know the evaluation criteria and their relative importance
- provide a contact point for suppliers requiring further information
- ensure the contact point is staffed, ideally by the same people, and all enquiries are recorded

## COMMON PQQ

The Office of Government Commerce (OGC) has developed a common Pre-Qualification Questionnaire (PQQ) which enables public sector purchasers to identify the most suitable suppliers to invite to tender for contracts ([www.ogc.gov.uk](http://www.ogc.gov.uk)). The model PQQ is specifically intended for use in procurements with a financial value beneath applicable EU thresholds. The Scottish Executive is developing a similar standard PQQ for use by all public bodies in Scotland.

The PQQ asks simple questions to establish suppliers' suitability to tender against the requirement and operates on a 'self-certification' basis, where supporting evidence need not be submitted (although it may be requested at tender stage). Accompanying guidance for completion of the PQQ (for suppliers) and evaluation of submitted PQQs (for purchasers) has also been developed.

The core areas are Contact Details, Finance, Health and Safety, and Equal Opportunities.

Q Heading	Weighting	Response	Score
2.1 Type of company	2	Public Limited	5
		Limited	4
		Sole Trader	3
		Partnership	2
2.2 Date of formation	2	Other	1
		20 yrs plus	5
		10-20 yrs	4
		5-10 yrs	3
		3-5 yrs	2
		2-3 yrs	1
Less than 2 yrs	0		
Less than 1 yr	-1		

## REGISTRATION AND ACCREDITATION

Supplier assessment is an essential element of procurement as purchasing organisations need assurance that potential suppliers are suitable to tender for contract opportunities in terms of their legal, financial and technical capacity. A formalised mechanism to assess this is therefore part of the vast majority of procurement operations and is commonly referred to in the public sector as 'pre-qualification'.

A good supplier accreditation system is a data-entry and report-generation system of all suppliers who applied for accreditation as a prerequisite for participation in a public authority's tenders.

It should:

- be an up-to-date list of accredited suppliers
- provide information that will help top management in making their decision
- ensure suppliers' capability
- improve the quality of public bidding through a system of accreditation of all suppliers

## THE PROCESS OF INITIATION

- develop, manage and administer a system of accreditation
- accredit new suppliers through the system
- demonstrate value and process cost savings
- establish a system of review of accreditation decisions
- do not use the system to restrict, distort or prevent competition, nor should the system be costly to suppliers
- establish a database of supplier information that can be used by all
- ensure that, once qualified, suppliers are able to be considered for all the public body's tenders without submitting the same type of information again and again

Over recent years various trade bodies have expressed concerns over public purchasers' use of commercial supplier accreditation services. To be fair to suppliers a common pre-qualification/assessment system should, as a minimum, be adopted across each public sector body. Better still for SMEs would be if one system was adopted across the whole of the public sector, with niche contract-by-contract issues being dealt with by each authority as the need arose.

One model for such a system is Constructionline, which is promoted by government and supported by BiP and is used by many public bodies to assess works providers. This service has recently been extended to supplies and services under the banner of the National Prequalification Service (NPQS).

## DEBRIEFING

As good practice suppliers – large or small – should always be offered meaningful debriefing following the procurement process in order that they can improve their bids for future tenders. Feedback from suppliers on the tender process can also be beneficial for a public body so that it can identify and address any problems.

In relation to performance management, suppliers should receive honest and constructive feedback on their performance and be given early notice of any performance problems and an opportunity, if appropriate, to put matters right.

Poor-quality or non-existent feedback can reinforce a belief already common amongst suppliers that the public sector selects its suppliers on the basis of lowest cost, not value for money.

Whilst complaints may be rare, all public sector organisations should make their suppliers aware of their complaints procedure and they should, as best practice, adopt Alternative Dispute Resolution as the first formal legal process before resorting to court action.

Remember that it is a requirement under the EC Procurement Directive to provide feedback and it should always be given if requested, even for contracts below the EC thresholds. Also bear in mind that suppliers who are unfamiliar with working with the public sector may not know they are entitled to a debrief: let them know.

A winning supplier may also benefit from feedback – it can be helpful to know which aspects of its bid were seen as strongest, and whether there were any weaknesses.

## PAYMENTS

Small businesses suffer disproportionately from cash-flow difficulties. Thankfully, government guidance commits to suppliers being paid 30 days from receipt of an undisputed invoice. It is, of course, appropriate for the contract to likewise require suppliers to pay their subcontractors, throughout the supply chain, within 30 days from receipt of an undisputed invoice. Public bodies should ensure compliance with these requirements. Suggest to suppliers that you pay them using the Government Procurement Card – this will help their cash flow.

## DISPUTES AND SMEs

One major fear SMEs have when working for public bodies is the high cost and stress of potential dispute resolution/litigation. Public bodies can help SMEs and other suppliers by adopting as a first stage to dispute resolution the Alternative Dispute Resolution (ADR) process.

The OGC and the EU are supportive of this process and the new Consolidated Procurement Directive 2004/18/EC now requires public authorities to use new model contract notice forms that ask for details of the body responsible for appeals, mediation procedures and information concerning the issuing authority's appeals process.

ADR is appropriate to most instances of dispute and helps protect future commercial relations.

The prime benefits of using ADR are that it is carried out on a 'without prejudice' basis, that it is conducted in private and that, following ADR, if no settlement is achieved neither party may use anything from the ADR procedure. ADR is also fast, efficient, cost-effective and voluntary. It is commenced only subject to mutual agreement and the result does not become binding on the parties until they have come to an acceptable enforceable agreement.

ADR is designed to help break down entrenched positions and resolve disputes before either party embarks on expensive legal public procedures by providing remedies not available through the judicial process, yet recognised as a valuable process by the courts.

*Government departments and agencies have made commitments on the resolution of disputes involving them:*

- a) Alternative Dispute Resolution (ADR) will be considered and used in all suitable cases wherever the other party accepts it.
- b) In future, departments will provide appropriate clauses in their standard procurement contracts on the use of ADR techniques to settle disputes.
- c) The precise method of settlement is tailored to the details of individual cases.
- d) Central government will produce procurement guidance on the different options available for ADR in government disputes and how they might be best deployed in different circumstances. This will spread best practice and ensure consistency across government.

- e) Departments will improve flexibility in reaching agreement on financial compensation, including using an independent assessment of a possible settlement figure.

## MEDIATION – AN ADR TECHNIQUE

A mediator, like a facilitator, makes primarily procedural suggestions regarding how parties can reach agreement. It is sensible to ask a neutral organisation to provide Alternative Dispute Resolution through the use of mediation.

The mediation procedure is designed to allow parties involved in a procurement-related dispute to use mediation as a method of resolving their dispute more quickly, cost-effectively and privately than through litigation or arbitration.

It may be invoked by parties who are already in dispute or by reference to the terms of a contract between them.

A mediation hearing is informal and the procedure has been designed to assist parties in resolving their disputes economically and more quickly than through the traditional court system or arbitration or through any industry Regulator or other Statutory Enforcement Authority.

The value of this procedure and of mediation in general lies in avoiding or reducing the time, cost and uncertainty of litigation; and, being provided by experts in the public procurement process, the service can assure parties using it of a fair process.

The PADRE service is the first service specifically designed for the public procurement marketplace. It is provided by BiP Solutions Ltd, the UK's leading public procurement solutions provider, and supported by the Chartered Institute of Arbitrators to which all PADRE mediators are fully accredited.

For further details see the PASS ADR Guidance or visit <http://www.bipsolutions.com/padre/index.htm>

It is of paramount importance that all parties to the dispute have signed the application form (Application for Mediation) and that they and the mediator endorse the Mediation Agreement. This will confirm the confidentiality of all information learned during the mediation joint session and will explain that the information cannot be used later against someone in court or other proceedings.

## MEDIATION – COST-EFFECTIVE

- A typical mediation fee is in the order of £1750 plus VAT and is payable by each party.
- This provided, the mediation itself lasts no more than 12 hours.

## TRAINING AND DEVELOPMENT

Public bodies can provide as much information as they like on contract opportunities but the truth is that if suppliers do not understand an organisation's procurement processes and practices, when they respond they are inevitably wasting their time and that of the organisation.

*It is therefore essential to both parties that you provide advice and training for SMEs on how to do business with your authority:*

- meet the buyer
- how we buy
- understanding wider public sector marketplace opportunities
- pre-tender events – the authority's requirements
- EC Directives
- the evaluation process
- how to complete your tenders
- provide winning grants advice

- where to access opportunities
- the importance of environmental procurement
- provide downloadable slide presentations

It is equally important to train public body buyers and their clients as they often do not understand the legal framework under which procurement must operate or indeed how to achieve best value when purchasing. To get their full attention ensure they secure buy-in from the Chief Executive and make an overview of procurement part of staff induction, where appropriate. Also explain to them the importance of SMEs to the future prosperity of the local and national economy.

## A ROUTE MAP FOR PUBLIC BODIES HELPING SMEs

- Review and align public body procurement strategies with new SME-friendly processes.
- Create and promote a Buyer Profile site.
- Introduce a pan-organisation supplier registration service against a common PQQ.
- Where required introduce a single accreditation service across the organisation and do not impose the use of chargeable accreditation on suppliers.
- Promote pre-supplier vetting as a benefit, not a requirement.
- Offer training through low-cost seminars.
- Advertise lower-value contracts and include information on future contract opportunities, including a named contact for each advertised contract.
- Introduce a 'Selling To' (including Buyer Profile) website to include information on contracts for tender, forthcoming contract opportunities and guidance on how to do business with your authority.
- Introduce value banding.
- Use the disaggregation/small lots option.
- Reduce the information requirement so that you only ask for information that you need when you need it.
- Ensure adequate debriefing.
- Use the Government Procurement Card to improve prompt payment.
- Ensure that SMEs are able to compete on a fair basis with others.
- Assess the impact of framework agreements and contract aggregation on SMEs.
- Ensure that the business case for the choice of tendering route brings value for money.
- Ask your prime contractors during the procurement process to demonstrate their track record in achieving value for money through an effective use of their supply chain – including use of SMEs.
- Promote in the contract an obligation for prime contractors to openly advertise subcontractor opportunities.
- Promote to prime contractors the open advertising of subcontractor opportunities. Offer them a free listing on a Buyer Profile site at no cost so that they can advertise subcontractor opportunities.
- List details of all your prime contractors on your websites.
- Ensure that prime contractors pay subcontractors on time and that the payments then flow right down through the supply chain.
- Include in your procurement policy statements steps to engage SMEs.
- Have an SME-friendly procurement strategy document which sets out how your authority will engage with small businesses and ensure the strategy is implemented across the whole authority.

# Annex

## National Local Government Procurement Concordat for Small and Medium-sized Enterprises

The following are the main principles on which our commitment to SME friendly procurement is based.

*We welcome the opportunity to do business with SMEs and will:*

- Become more familiar with the SMEs in our region, and the services provided.
- Take steps to find out what the barriers are to us doing business with appropriate SMEs, and seek to remove or lower them.
- Not assume that larger suppliers always offer better value for money.
- Publish guidance, including on-line documents, and brief SMEs on our requirements, the opportunities we have available, who to contact, and how to tender for our business.
- Make it easier for SMEs to talk to us.
- Ensure all our processes create a level playing field for SMEs.
- Look for the best overall outcomes from our procurement activities using broad value for money criteria to make decisions.
- Ensure genuine and fair competition that does not discriminate against SMEs
- More widely advertise our contracts over £25,000 in value, making best use of the National Procurement Website – [sell2wales.co.uk](http://sell2wales.co.uk).
- Welcome applications from new businesses.
- Actively encourage our main suppliers to provide opportunities for SMEs to deliver elements of appropriate contracts.
- Welcome bids from small businesses that are collaborative or are on a consortia basis.
- Comply with all applicable EU and UK procurement legislation, in particular the principle of non-discrimination, and apply the rules to all tenderers in a fair and transparent manner.

*We are totally committed to sustainable development and therefore will:*

- Put our sign up to Sustainable Procurement into practice by joining the Value Wales Sustainable Procurement Programme and continually monitor our progress.
- Use sustainable development criteria in determining value for money, including assessing the impact of economic, environmental and social factors.
- Encourage SMEs also to embrace sustainable development.

We are modernising our procurement processes, to ensure that they are transparent and fair for all SMEs. To achieve this, we will:

- Ensure skilled and professionally qualified personnel manage the processes.
- Keep our tendering process as simple as possible to minimise cost.
- Look at the whole life cost, and not just the initial cost of the product / service when considering value for money.
- Explain our procurement processes to SMEs and how they are influenced by the need to comply with the EU and UK procurement law.
- Give SMEs sufficient notice about changes in our processes to allow time to adapt.
- Cut down on administration needed to tender, simplify our documents, provide clear briefs that identify all of our requirements, and use plain language.
- Move towards a consistent all-Wales approach to pre-qualification and standardised contract documentation.
- Adopt e-procurement including e-auctions, procurement cards and electronic invoicing, in order to improve efficiency.
- Consider the most appropriate approach to achieve value for money and manage risk, for every procurement.
- Package large contracts into separate elements or make use of regional lots if appropriate, to ensure that SMEs are not excluded from tendering.

- Give potential SME suppliers an opportunity to discuss the procurement, in order to understand our requirements and assess their own suitability.
- Inform SMEs of the criteria we use to evaluate applications to tender and tenders.
- Decide what our financial qualification requirements are on a tender-by-tender basis, having assessed the risks involved.
- Not ask for more than two years audited accounts, and accept alternative information from newer businesses.
- Use outcome specifications and consider alternative products or services SMEs may wish to offer.
- Offer feedback to successful and unsuccessful tenderers, to help SMEs improve.
- Treat all SMEs fairly, and pay within 30 days from receipt of a correct invoice.

To make sure our procurement processes continuously improve, we will:

- Adopt good practice procurement guidance and standard tender templates developed by Value Wales.
- Ask SMEs to help us, by providing feedback on our processes and procedures, and suggest innovative solutions.
- Publish and implement a complaints and continuous improvement procedure.

# TRAINING MATTERS

Whatever your training needs, PASS can develop and deliver a programme tailored to fit.

For further information on the **PASS** service, contact our **PASS Team** on **0845 270 7055** email [pass@bipsolutions.com](mailto:pass@bipsolutions.com) or visit [www.bipsolutions.com/pass/](http://www.bipsolutions.com/pass/)









# Expert public procurement consultancy for **Buyers and Suppliers** at your service

## PASS CONSULTANCY

BiP's *Procurement Advice and Support Service (PASS)* provides organisations with access to experts in public procurement practices and procedures, thus helping you develop and deliver effective and efficient procurement. Our team offers a range of services to meet your specific needs. Whichever area you wish evaluated and improved, we have the experts to help.

*The PASS consultancy's mission is to help you deliver the best in government procurement through:*

- Practical solutions to improve procurement performance
- Innovative approaches to knowledge transfer within government
- Joined-up government
- Improved performance indicators
- Strategic direction and performance
- Opportunities offered by e-government
- Capacity to deliver change to meet identified needs
- Continuous improvement of services and challenging poor performance
- Sustainable development within decision-making processes and delivery of services
- EU-compliant processes
- Best practice procurement training



## PASS MARK HEALTH CHECK

The *PASS* service can help your organisation examine its current procurement organisational structures, strategies, processes, practices and related strengths and weaknesses. It delivers a detailed *PASS Mark Health Check Outcome Highlight Report (OHR)* that outlines areas of strength as well as those requiring further attention, and provides an outline *Project Initiation Document (PID)* designed to deliver a more effective and efficient tendering process that will help you achieve optimum performance and better value-for-money procurement.

## PASS – HELPING YOU MEET KEY OBJECTIVES

The key objective of public procurement professionals is to ensure that the most suitable supplier is selected to provide goods and services on terms which are likely to offer the best value for money. The *PASS* service helps you meet this requirement and deliver contracts that offer best value-for-money terms with suppliers who will execute them efficiently.

## PASS TRAINING

Our consultants can provide you with bespoke training packages to suit your needs. Consultancy and training is available for the following: environmental purchasing, partnering, evaluation, e-government, supplier debriefing, UK legal processes and precedents, contract management, EU-compliant tendering and much more.

## PASS ONLINE GUIDANCE

The *PASS* service provides online guidances on all aspects of the public procurement process and legal requirements: [www.bipsolutions.com/html/briefing.php](http://www.bipsolutions.com/html/briefing.php)

## PASS IN-HOUSE PRESENTATIONS

*PASS* consultancy can provide you with in-house presentations directed to buyer or supplier. Each presentation will be bespoke to your requirements, whether they be with regards to improving your tendering practices or your procurement strategy or processes. Contact: [pass@bipsolutions.com](mailto:pass@bipsolutions.com)

The *PASS Mark Health Check* is a process-based evaluation technique that helps identify how your company can develop more effective processes when tendering for public sector contracts.

For further information on the **PASS** service, contact our **PASS Team** on **0845 270 7055**, email [pass@bipsolutions.com](mailto:pass@bipsolutions.com) or visit [www.bipsolutions.com/pass/](http://www.bipsolutions.com/pass/)