

“Thousands of companies have benefited from attending BiP's tendering events – Now you have direct access to that tendering expertise.”

The PASS Mark Health Check considers your company's current organisational structures, strategies, processes, practices and related strengths and weaknesses in relation to public sector procurement. It delivers a detailed PASS Mark Health Check Outcome Highlight Report (OHR) that outlines your areas of strength as well as those requiring further attention, and provides an outline Project Initiation Document (PID) designed to deliver your company a more effective and efficient tendering process that will help you achieve even greater tendering success.

After the PASS Mark Health Check is completed and your OHR is delivered, you are free to choose whether to progress with the recommendations it contains and implement the next stage with the support of the PASS team, or to implement the proposals yourself without making further use of PASS. The choice is entirely yours.

The PASS Mark Health Check reviews your:

- resources for identifying tendering opportunities
- knowledge of public sector tendering legislation
- tendering process controls
- practices for responding to "Expressions of Interest"
- weaknesses in any of your current mandatory policies (health and safety/environment/equal opportunities, etc)
- presentation of tender response documentation
- knowledge of your clients' processes and practices, including their evaluation techniques
- understanding of when and how to address government initiatives



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 Customer Services Team on +44 (0)141 332 8247, email pass@bipsolutions.com or visit www.bipsolutions.com/pass/

E-PROCUREMENT POLICY: FREQUENTLY ASKED QUESTIONS

New electronic purchasing techniques are continually being developed. Such techniques help to increase competition and streamline public purchasing, particularly in terms of the savings in time and money which their use will allow. Contracting authorities may make use of electronic purchasing techniques, providing such use complies with the rules drawn up under EU Public Procurement Directive 2004/18/EC and the EU Treaty principles of equal treatment, non-discrimination and transparency.

The following questions and answers provided by the Office of Government Commerce (OGC) to help suppliers and buyers have not been designed to be exhaustive but rather to evolve in light of comments and enquiries.¹

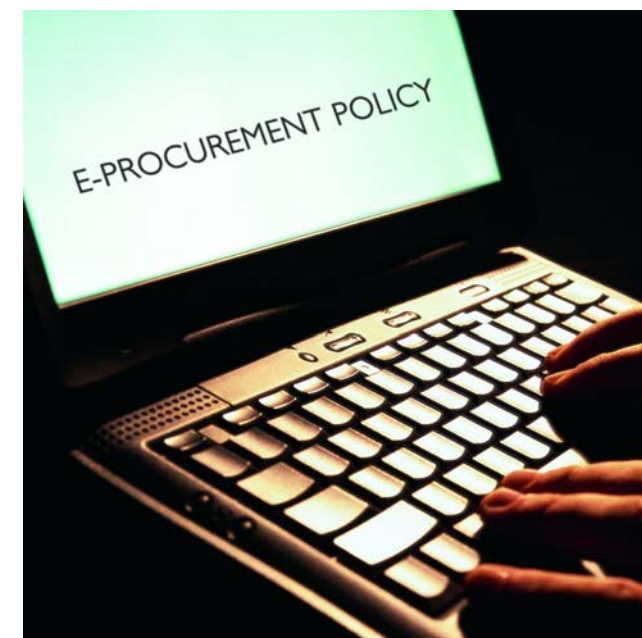
Q Is there a written policy statement that reflects the Government's position on e-procurement?

A There is currently no policy specific to e-procurement. Departments using e-procurement must ensure that they abide by the same legal and policy obligations that govern all public procurement. Specifically, e-procurement must be compatible with the EC rules and the Government's value for money policy, as set out in chapter 22 of *Government Accounting*.

The OGC website, and in particular the document *eProcurement: Cutting through the hype* (www.ogc.gov.uk/index.asp), reflects the Government's findings following projects conducted across the public sector. However, the procurement policy landscape in which the public sector operates continues to move on and so OGC intends to publish a comprehensive update of this document in early 2005. This update will take account of the new Consolidated Public Procurement Directive (2004/18/EC),² technical innovation, and the increase in the level of government e-procurement experience

Q What impact will the new Consolidated Public Procurement Directive have on e-procurement?

A The current Procurement Directives pre-date e-procurement, and so one of the aims of the new Consolidated Directive (2004/18/EC) is to encourage the use of e-procurement by making explicit provision for its use.



The new provisions on e-procurement cover the following areas:

- Dynamic Purchasing Systems (DPS)
- Rules applicable to communication
- Electronic reverse auctions (e-auctions)
- Requirements relating to equipment for the electronic receipt of tenders, requests to participate and design contest plans and projects.

Whilst the Directive sets out the principles and requirements, Member States will be responsible for its implementation, and contracting authorities will be responsible for its application. The Directive must be transposed into UK legislation as Regulations by 31 January 2006.³

The full text of the new Consolidated Directive is included within a consultation document published by OGC which can be accessed at: www.ogc.gov.uk/embedded_object.asp

Q What does OGC recommend in respect of commodity classification coding?

A It is an EU requirement for contracting authorities to include Common Procurement Vocabulary (CPV) codes on tender documentation transmitted across the SIMAP system. UK contracting authorities legally have to comply with this requirement in order to fulfil the UK's obligations under the EC rules. Doing so provides valuable information on procurement activity across the EU.

However, OGC recommends that UN-SPSC⁴ be adopted in the post-award transactional environment, the application being the capture and manipulation of data on purchasing transactions. The reason for this is that UN-SPSC is an internationally recognised convention that offers a sufficient level of detail (through its four-tier hierarchical structure) to provide valuable management information to the contracting authority. OGC therefore recommends that contracting authorities adopt both coding conventions, but that each is used for a very discreet application.⁵

UN-SPSC can be viewed and the latest version downloaded free of charge at: www.unspsc.org

Q Am I allowed to use e-auctions in government procurement? ⁶

A e-Auctions have already been carried out by a number of government departments, and for a variety of goods and services. They have been shown to be entirely consistent with a value-for-money approach and the UK Government intends to fully implement the specific Article on e-auctions (Article 54) in the new Consolidated Directive (2004/18/EC). Article 54 explicitly provides contracting authorities with the option of using an e-auction as part of a procurement. The new Consolidated Directive allows e-auctions to be used for almost all types of procurement. ⁷

Q What rules should I follow if I want to use an e-auction?

A Until its implementation in UK law, contracting authorities are advised to follow the text in the new Consolidated Directive when they use e-auctions. This Directive places certain obligations on departments in using e-auctions. For example, departments will be required to state in their OJEU advertisement that they intend to use an e-auction (see below for suggested wording).

The Directive also identifies certain information that departments will have to provide to suppliers in tender documents and during the tendering process relating to:

- Award criteria that are the subject of an e-auction
- The technology requirements for the e-auction
- Details of the e-auction process including length, extensions and bid decrements
- Arrangements for training suppliers and users
- Dates, timing and physical arrangements
- Anything else that may affect the supplier's ability to participate effectively

OGC recommends that the risks and benefits be assessed for using e-auctions in all procurements. OGC has developed an online eAuction Decision Tool to provide assistance in evaluating whether an e-auction is suitable for a procurement. Guidance on e-auctions, and the eAuction Decision Tool, are available at: www.ogc.gsi.gov.uk

OGCbuying.solutions offers an Electronic Reverse Auction Framework that is available to the entire public sector. Under the Framework, public sector organisations have easy access to contract-managed e-auctions and associated support services from an approved service provider. The Framework significantly reduces the investment start-up costs and provides access to all of the critical components required to host a successful e-auction event. More information is available at: <http://www.ogcbuyingsolutions.gov.uk/RAF/default.asp>

Q What wording should I use in an OJEU notice if I want to use an e-auction as part of my procurement?

A The OGC Procurement Policy Unit suggests the following standard wording be used in OJEU notices: "The Contracting Authority intends to use an electronic reverse auction in this procurement exercise."

Q What is the current policy position with respect to Dynamic Purchasing Systems?

A Dynamic Purchasing Systems (DPS) are not currently utilised within the UK but are allowed under the new Directive (Article 33). DPS are a completely electronic process for making commonly used purchases. They are open to suppliers to join or leave throughout their period of operation, providing that they meet the selection criteria and have submitted an indicative tender that complies with the specification.

OGC is working with the EU and other Member States to establish the practicalities of DPS. Once this work is complete OGC will share the findings.

Q What is the situation regarding the retention and management of records within e-procurement systems?

A Departments are responsible for the retention and maintenance of commercial records. The same requirements apply to the retention

of electronic records as paper records. As a result, policy on this issue should be consistent with general agreed policy on retention of records.⁸ There is no requirement to retain paper versions in addition to electronic records. However, any documents or data transactions that may be required as evidence in a court of law should be managed as secure records, and according to the relevant codes of practice.⁹

Q What are the security and accreditation requirements for e-tendering solutions in government?

A Contracting authorities will need to adopt solutions that comply with the new Consolidated Public Procurement Directive, and with standards set internally by government, eg the IAG Framework.¹⁰

Broadly, Article 42 of the new Directive requires the following:

- Means of communication must not restrict access to a tendering procedure for potential participants. They must be non-discriminatory, generally available and interoperable with IT products in general use
- The communication and storage of tenders must protect the integrity of the content
- The storage of tenders and requests to participate must ensure that contracting authorities are not able to open tenders before the deadline has passed
- Specifications necessary for electronic submissions of tenders and requests to participate, including encryption, have to be made available to all parties

OGCbuying.solutions plans to have an e-sourcing (including e-tendering) solution in place for use by government contracting authorities in October 2004. They will ensure that their solution is suitably compliant with both the Consolidated Directive¹¹ and government policy.

Q Must digital signatures¹² be employed in e-procurement in government?

A Applying the definitions of the IAG Framework to procurement transmissions suggests that trust service levels 2 or 3 be applied.¹³ However, both trust levels require that procurement transmissions should, where possible,¹⁴ use PKI¹⁵ and electronic signatures.¹⁶ The OGC e-tendering pilot (part of the ePilots)¹⁷ demonstrated practical difficulties in taking this approach, because of the administrative difficulties of obtaining and using advanced digital certificates, smart cards and card readers.

The e-Government Unit is running a PKI project called HMG PKI, and has developed policies to support this programme. From summer 2004, the UK Government will have the capability to issue digital certificates¹⁸ to departments that voluntarily apply. In turn, these departments will be able to issue individual certificates to staff in accordance with Article 42 (5)(c) of the Consolidated Directive. This covers government users – under normal circumstances departments would not issue certificates to third parties. This means that suppliers need to obtain certificates from providers that are acceptable to government. However, whilst widespread PKI is unavailable users might consider other forms of security, such as using username and password protection across a 128-bit secure socket layer (SSL) connection.

OGC recommends that departments carefully consider how their transactions are classified by looking at the risks and how they are mitigated. The OGCbuying.solutions e-sourcing solution will be able to accommodate the use of advanced digital signatures, and so provide departments with a path to adoption.¹⁹

Q What is the impact of e-procurement on government contracts?

A The implementation of electronic systems in the purchasing cycle does not affect the normal practice of contracting with government. However, departments do need to consider whether any additional contractual provisions are required that relate to electronic trading. Departments can require that activities in the contractual relationship be enacted electronically provided that technology is generally available and non-discriminatory.

Aspects identified by OGC as potentially needing consideration by departments include:

- Provision for order, invoice and payment to be conducted by electronic means
- Relevant legislation including the Data Protection Act and the Freedom of Information Act
- Management of risk and indemnities (including liability for system failure)
- Requirements for relevant government standards
- Use of digital forms of identification

In case of doubt, departments should consult their appointed legal advisers.

Q Do I need any special accounting controls in my e-procurement system?

A Implementation of electronic systems should neither detract from nor significantly alter how departments discharge their obligations under Government Accounting. Government Accounting notes that there is no single system of controls that will suit all circumstances. It is a department's responsibility to make sure there is proper control in its systems over expenditure and payment. The introduction of an electronic system in no way detracts from this requirement, and if implemented correctly should in fact enable departments to increase their reliance on preventative controls as opposed to more traditional detective measures.

No one person should control all aspects of the payment process and electronic systems can and should be designed to ensure that the adequate segregation of duties is mirrored in the system workflow. The design of the system should include absolute clarity about the roles and responsibilities of those involved at each stage of the process.

Q Are electronic invoices permitted?

A Government contracting authorities are permitted to issue, receive and store invoices in electronic format. They must contain the same information as paper invoices and guarantee both the authenticity of the origin and the integrity of the data. Further information on electronic invoicing can be found in Notice 700/63 *Electronic Invoicing* available on the HM Customs and Excise website (www.hmce.gov.uk).

Q What 'standards' might I use when sending/receiving e-procurement messages to/from my suppliers?

A Consultation between central civil government, the NHS Purchasing and Supply Agency and local authorities resulted in a joint OGC/e-Government Unit team designing a core procurement and payment process. This process was then developed in Unified Modelling Language (UML) and resulted in a model containing 15 electronic message specifications ranging from inquiry to payment. These 'standards' are recommended within the eGovernment Interoperability Framework (eGIF). This can be viewed on the e-Government Unit website (<http://e-government.cabinetoffice.gov.uk>).

Unlike many other standards the OGC model is very precise in defining the optionality and cardinality of the message attributes, eg a document must (optionality) have one (cardinality) identifier. Other standards tend to list all the possible attributes a message may have and state that you can have any number of them.

Throughout its development, the OGC Interoperability Model has also been exposed to public consultation in the EU, and internationally; a large portion of the current Interchange of Data between Administrations (IDA) EU interoperability model is based on the OGC model. OGC is committed to the development of a set of independent and non-proprietary e-procurement standards and will work with recognised standards bodies to ensure interoperability.

Notes:

- 1 Version 1.0, dated 10 July 2004.
- 2 Directive 2004/18/EC on the coordination of procedures for the award of public works, supply and services contracts.
- 3 The Directives are implemented in the UK via Regulations (Statutory Instruments) under Section 2(2) of the European Communities Act 1972.
- 4 UN-SPSC is a hierarchical commodity coding classification that has sufficient granularity to allow full visibility of spend. It can provide detailed management information on what is being bought and can classify indirect spend.
- 5 The OGC Interoperability Model (which developed e-procurement XML schemas for central government) specifies UN-SPSC as the data type for commodity code. The model currently specifies the first two levels of UN-SPSC as mandatory and the third and fourth as optional in the relevant messages.
- 6 An e-auction is an online exercise in which suppliers compete against each other with open bids for the right to provide goods or services to the buyer.
- 7 According to the Consolidated Directive "non-quantifiable elements should not be the object of electronic auction. Consequently, certain works contracts and certain service contracts having as their subject matter intellectual performances... should not be the object of electronic auctions."
- 8 Further information on the retention and management of electronic records can be obtained from the National Archives website at: www.nationalarchives.gov.uk
- 9 BSI standard BIP0008:2004: *Legal admissibility and evidential weight of information stored electronically*.
- 10 This stands for the Information Age Government Framework and can be found on the e-Government Unit website: <http://e-government.cabinetoffice.gov.uk>
- 11 Covered by Annex 10.
- 12 Information added to digital data to authenticate the identity of the sender and to make data tamper-proof.
- 13 Level 2 trust services are appropriate for e-government transactions in which significant damage might arise from failure to keep any commitments made. This covers transactions of an official nature in which failure to complete the transaction may be interpreted as a statutory infringement that may incur a penalty, or which may have a significant impact on a third party. Level 3 trust services are appropriate for e-government transactions in which substantial damage might arise from failure to keep any commitments made. This level would cover transactions of an official nature in which failure to complete the transaction might have a substantial financial impact, or impact on the health or safety of installations or individuals. Such transactions may be attractive to criminal exploitation, ie substantial risk of fraud or criminal damage. Further information is available at: <http://e-government.cabinetoffice.gov.uk>
- 14 The guidance regarding trust level 2 does state that other mechanisms, based, for example, on username and password, may be acceptable (though strongly deprecated) while widespread PKIs are unavailable.
- 15 PKI stands for Public Key Infrastructure. This is an infrastructure supporting secure transmission over the internet of information encrypted using public and private pairs.
- 16 A definition of an 'advanced' electronic signature can be found in Article 5 of Directive 1999/93/EC.
- 17 The ePilots project carried out research into e-procurement systems and services to understand their applicability to central civil government. Results were incorporated into *eProcurement: Cutting through the Hype*.
- 18 A form of digital signature that authenticates the identity of the sender of data using public and private pairs.
- 19 However, this functionality will not be available initially.