

2014

Simplified Open Procedure Guidance

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1. What is the “Winning in Tendering” Project?

“Winning in Tendering” is aimed at transforming the public tendering experience of Small Indigenous Suppliers (‘SISs’ - this include SMEs and the Third Sector) in the INTERREG Ireland/Wales region by undertaking evidence-based research to address skill gaps of SISs and public procurers via a number of unique, innovative and complementary targeted interventions.

It is a 3.7 million Euros, 41 month, Strategic Project part funded by the European Regional Development Fund through the Ireland Wales Programme (INTERREG 4A) led by Bangor University’s Institute for Competition & Procurement Studies, along with partners, Dublin City University (DCU) and the Irish Institute of Purchasing & Materials Management (IIPMM).

2. About this Guidance Document

This guidance document illustrates the changes that can be introduced in procurement practice to make it easier to advertise and award contracts with a value below the EU thresholds. It reflects the work undertaken in the “Winning in Tendering” project to develop a Simplified Open Procedure for contracts between £5,000 and £50,000 that would keep transaction and opportunity costs low for both public procurers and their suppliers. This procedure is to be used as an alternative to a traditional open procedure, which is not suitable for low value contracts due to the excessive costs involved. It is also an alternative to the practice of using request for quotes which function as a barrier to entry in the public procurement market for SMEs by restricting advertising. In the course of the “Winning in Tendering” project, 11 pilots in Carmarthenshire County Council and Gwynedd County Council were run. In addition to these pilots, other councils in Wales such as Swansea and Cardiff have adapted parts of this methodology as well. The underlying Case Study documents that underpin such pilots can be found at the Institute for Competition and Procurement Studies website (icps.bangor.ac.uk).

In this document you will find general information on how the Simplified Open Procedure can be run, lessons learned in the pilots carried out during the “Winning in Tendering” project, and best practices developed.

3. Introduction

According to figures from the European Commission (2010), contracts below the EU thresholds represented 75% of the total value of procurement spend in the UK. That is to say that the full spectrum of EU law is only applicable to around a quarter of the UK's procurement spend, with the rest subject in general primarily to any applicable national rules.

In the UK there is no law imposing comprehensive mandatory rules to contracts below the EU thresholds, thus leaving contracting authorities to decide how they will award contracts below the financial thresholds. Distinct practices have arisen in contracting authorities, with each creating a workflow that suits their own objectives and interests, thus imposing a compliance cost for suppliers interested in working with them. If a supplier wants to compete for contracts with an approximate £50,000 value offered by 10 different contracting authorities, it will have to comply with the specific rules and practices imposed by each. This lack of standardisation increases the perceived cost of participation, and constitutes a barrier for suppliers.

Practice is slowly changing due to governmental pressure, but contracts below the financial thresholds are usually not advertised widely. This lack of transparency in the market affects primarily SMEs, and particularly startups without a track record in winning public sector contracts. Not advertising contracts forces companies to routinely check with procurement officers on what opportunities are in the pipeline, assuming they know who to talk to. Otherwise, they will never get a chance to "show themselves" to a contracting authority.

When contracts below thresholds are advertised, they are usually done so via adaptation of procedures and processes developed for larger contracts, such as the open and restricted procedure. The consequence is that contracting authorities are essentially copying the practice used for contracts above the EU thresholds and applying them to lower value contracts: in effect they assume there is no need for change. However, that is not necessarily the case. Many of the timescales and details of those procedures are simply not appropriate for low value, low risk contracts.

In Wales, Welsh Government policy suggests contracts above £25,000 should be advertised. Such figure is, however, just indicative and the relatively low number of such contracts advertised on Sell2Wales seems to point out to this being the exception and not the rule. In England by contrast, the Government has demanded since 2011 that all central government contracting authorities are to use the open procedure for all contracts over £10,000.

The problem with the approach taken so far is that it implies the use of procurement procedures as conceived in Directive 2004/18/EC (and now Directive 2014/24/EU), i.e., the "open" and "restricted" procedures. Even where attempts are made to make the open procedure leaner, it is still too complex and takes too long for a small contract. It makes no economic sense to use them for low value contracts.

The Simplified Open Procedure developed by Bangor University's ICPS team tries to answer the above questions and provides a blueprint for contracting authorities to review their practices regarding the advertising of contracts below the EU thresholds.

BOX 1 – Shortcomings of the traditional open and restricted procedure for low value contracts

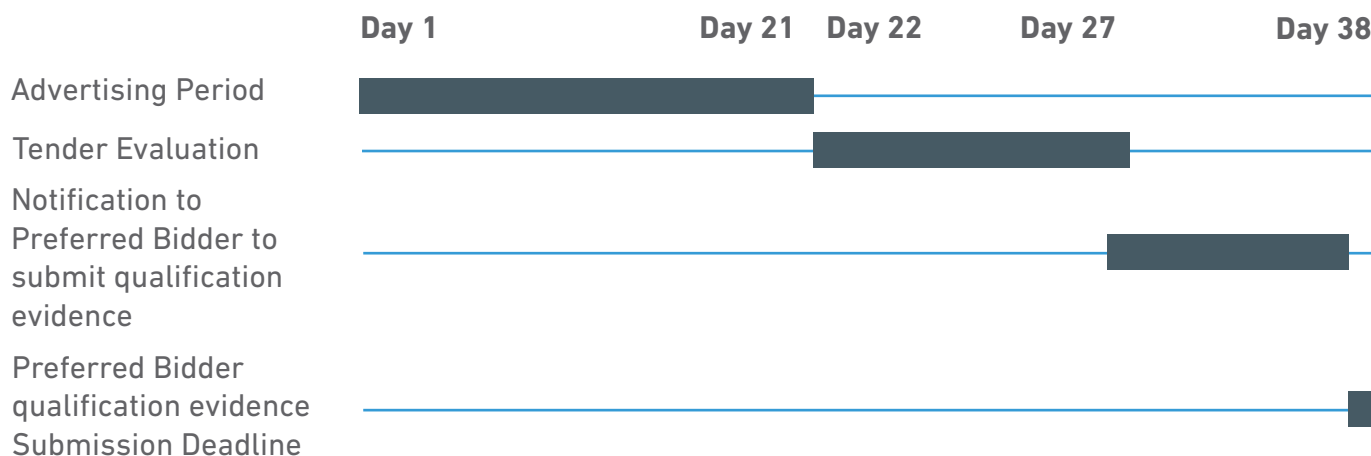
- Too long (average of 172 days for contracts above EU thresholds: Source-Spendnetworks)
- Too expensive for both procurers and suppliers in transactional and opportunity costs
- Perceived as inflexible

4. Simplified Open Procedure

4.1 Simplified Open Procedure in a nutshell

The Simplified Open Procedure is a light touch public procurement procedure designed from the start for the award of low value contracts (£5-£50,000), with limited transaction and opportunity costs for both public procurers and their suppliers.

The procedure starts with a notice in a procurement portal and is conducted completely in electronic format from start to finish. The selection stage is replaced with a self-declaration and suppliers present their bids right from the start. The preferred bidder will have to provide evidence that it complies with the necessary conditions set forth in the self-declaration. In total, with good project management, any Simplified Open Procedure can be run in less than 40 calendar days from start to finish. These are roughly divided into 21 days for proposals to be submitted; 4 for them to be marked internally; and 10 for the selection information to be provided by the preferred bidder; and 48 hours to check this information and sign the contract.



- Quick & Short
- Simple & Easy
- “When in doubt, do not ask”

4.1 Duration: Quick & Short

The Simplified Open Procedure is meant to be quick both in terms of overall duration and person hours involved. It is also meant to be short in terms of the size of the document and questions. To be quick, the procedure must be short.

The objective of making a procedure quick and short is achieved by getting rid of all questions unnecessary for the awarding of the contract. The procedure should be focused on those few key questions that will make a difference in identifying the winning bid. In modern procurement, too much effort is devoted to gathering and processing information about bidders, when the focus should be on assessing the bid. The more questions that are asked, the more time suppliers will have to spend filling them in, and the more time procurers will spend marking them. By restricting the number of questions and reducing their overall number, transaction costs are lowered for all parties in comparison with an open procedure. It provides as well an added benefit to the supplier, by reducing its opportunity cost as the total commitment to participate is lower than in a comparable open procedure.

BOX 3 – How short can we make the tender documents?

By excluding all the information and additional questions that crept in to the open procedure over the years, allowed Carmarthenshire County Council to reduce the length of their documents from over 100 pages to fewer than 16.

To make the procedure quick, timescales have to be reduced. Currently, the UK Central Government suggests 120 working days as an appropriate turnaround for the open procedure for EU threshold contracts. This makes sense for complex contracts, but is too long for small, simple contracts, particularly if one wants to increase SME participation. Making it short as (suggested above) allows for the timescales to be shrunk, without compromising the objectives of awarding the contract to the best bid. How can the timescales be reduced then?

As the objective is awarding the contract to the best bid and not the best bidder, details about the bidder are (almost) irrelevant. A selection stage is unnecessary as it adds complexity to the procedure, forcing timescales to increase accordingly. In addition, a full blown selection stage imposes transaction costs for both suppliers, who need to fill in the Pre-Qualification Questionnaire (PQQ), and the contracting authority which will have to mark the answers received. Furthermore, the selection stage functions as a funnel and barrier, dissuading suppliers from presenting themselves, and tends to make life more difficult for SMEs. Finally, a selection stage where suppliers are ranked may contribute to a negative bias when assessing the bids received later.

As such, the Simplified Open Procedure replaces the traditional selection stage by a self-declaration signed by each participating supplier. This self-declaration typically covers the following topics, with benchmarks defined by the contracting authority as being appropriate for the contract at hand:

- Insurance levels
- Experience
- Financial Capacity
- Health and Safety Policy
- Sustainability Policy

In general, these are the questions needed to assess if a bidder is good enough to make it to the bidding stage. Their purpose is not to rank bidders against one another, or identify the best, but simply to ensure they achieve the minimum thresholds set for the contract.

In a traditional open procedure with selection stage where five bidders present themselves, the work of assessing the four that will not win the contract is simply wasted. The work put into filling in the questionnaires by those losing suppliers is also lost (and is one of the reasons supplier organisations are so vocal against PQQs). With each procedure a lot of person hours are consumed. It is no surprise then that the upcoming Public Procurement Directive will allow for open procedures to be carried out with self-declaration instead of the old pre-selection stage.

4.2 Simple & Easy

The second key tenet of this procedure is simplicity and ease of use. By being simple, the Simplified Open Procedure ensures that life is made as easy as possible for both procurers and suppliers. Simplicity demands removing all unnecessary information, questions and stages of the procedure. This is another justification to adopt a self-declaration system over a traditional selection stage, including re-drafting questions in a simpler, more easy to understand fashion. In addition, it explains as well the addition of an executive summary at the start of the procedure. Simplicity also implies having a procedure which is logical and easy to understand, not only for procurement experts, but for lay people.

Simplifying the procedure aims as well to increase the attractiveness of public procurement to SMEs, particularly those suppliers who can present a competitive bid. Procurement complexity imposes transaction and opportunity costs which affect SMEs disproportionately, due to their own nature of having more limited resources than larger entities.

For a procedure to be easy, it needs to be accessible to people with limited or only occasional experience in undertaking public procurement procedures. This is equally applicable to the staff of contracting authorities. For example, in both authorities where pilots were run, Carmarthenshire and Gwynedd, the changes introduced broke down the barriers between the procurers and internal stakeholders (e.g., end users, technical specialists, service departments) allowing said stakeholders to be empowered in the process. By providing clients with a simpler and easier procedure, they were able to run it by themselves with minimal oversight from central procurement.

For suppliers, making the process easy goes along way in addressing some of their key concerns with public procurement: that procurement is too complex and difficult for people who are not experts in it. By making it easy, a significant barrier that keeps SMEs from being involved in public procurement is removed.

Another example of making life easier for suppliers can be found in the use of e-procurement. By moving all the procedure online, as it will be mandatory in the near future for contracts above EU thresholds, the workflow of suppliers is improved. It is much easier to insert information online and press enter to send it, than filling the documents in a word processor, printing and binding them multiple times and then running to the Post Office before the deadline.

4.3 “When in doubt do not ask”

One of the reasons public procurement procedures have become so bloated over the years is the lack of perception of the costs involved with adding “just one more question”. Unnecessary questions do have costs for all parties involved. Suppliers (who answer them) and procurers or buyers (who evaluate them) incur transaction costs. It is simply not true they are cost-free.

In a Simplified Open Procedure, only relevant questions for the contract at hand should be asked. By relevant it is meant “a question that helps the procurer to identify the best bid” in that procurement exercise. In consequence, the Simplified Open Procedure promotes the vetting of each question that is being considered for inclusion.

Without regular pruning and re-evaluation of tender documents it is very easy to allow inertia to creep in and irrelevant questions to stay within the documents for the simple reason they were useful once and are still “in there”. Identifying the unnecessary questions being used in low value tenders was one of the key findings from the workshop held with Carmarthenshire County Council when developing the Simplified Open Procedure.

5. Developing a Simplified Open Procedure in your organisation

In this section we will show you how to develop a Simplified Open Procedure tailored to the needs of your organisation. To achieve the stated aims of speed, simplicity and ease, the best way to start the implementation of a Simplified Open Procedure is to start with a whiteboard and a workshop involving the following participants:

- Corporate Procurement Unit
- Clients/Buyers/End Users
- Other Stakeholders usually involved in your procurement processes (i.e, Risk Managers, Equal Opportunities Officers)

BOX 4: Why starting with a whiteboard is crucial!

- Quick & Short
- Simple & Easy

The effects of inertia coming from previous behaviours and aversion to loss or change are well known in psychology. The same can be said of risk aversion. To counteract these effects, it is important to ensure people are removed from their comfort zone. Doing the easy thing - starting with a current procedure and trying to take elements off - would not achieve that aim. Starting the development of a Simplified Open Procedure from scratch with the whiteboard is the best way to ensure that everyone involved will be undertaking the exercise with the right frame of mind.

Having the right frame of mind to question previous assumptions and the status quo is key to ensuring that undertaking the Simplified Open Procedure is possible.

BOX 5 : Implementation challenges

Preparing the skeleton of a Simplified Open Procedure is just the beginning of the challenges in actually implementing the procedure. The next stage of the development process raises a number of specific challenges, mostly to the difficulties of getting an organisation (or even a team) to change longstanding practices. Resistance should be expected, and it not always easy to overcome.

Workshop Exercise 1

Brainstorm what questions you would like to ask to award a consultancy services contract. Focus on the information you would consider crucial to identify the best bid.

What information is really necessary? After the first set of answers, analyse each question and ask what are the reasons for it to be important: Why? Why should suppliers provide this information? What is its purpose? Is it really necessary or just nice to have? It is crucial at this stage to vet thoroughly all questions being proposed by the workshop participants.

It may be helpful to start with a (real) contract that your organisation wants to award in the near future, as it helps focus the minds of the participants.

Workshop Exercise 2

After undertaking the exercise above, compare your prototype with a similar contract tendered via an open procedure (or even a request for quote procedure). Take note of the questions you did not include in the prototype and consider why was that case. More often than not, if you did not remember the question, it is because the answer was irrelevant for defining the best bid.

Revise the prototype adding any crucial questions missed in exercise 1 and send it to the Legal department for analysis and confirmation of the elements that should be included.

At the end of this process, you should have the skeleton of what constitutes the bulk of the contract you want to award, to which you should look into adding in the following elements:

- Executive Summary
- Checklist for bidders
- Self-Declaration information
- Word limits for answers

These elements will be discussed in detail in section 6.

Based on the pilots undertaken in Carmarthenshire and Gwynedd County Councils, introducing a new procurement practice may lead to resistance from affected staff. This resistance to change should be expected, is understandable, and needs to be addressed constructively. For example, if the change is coming from the top, the importance of adopting this methodology should be incorporated into the key performance indicators of affected officers. In addition, public procurement in general, and this methodology in particular, touches officers only indirectly connected with public procurement, e.g., risk managers and health and safety officers.

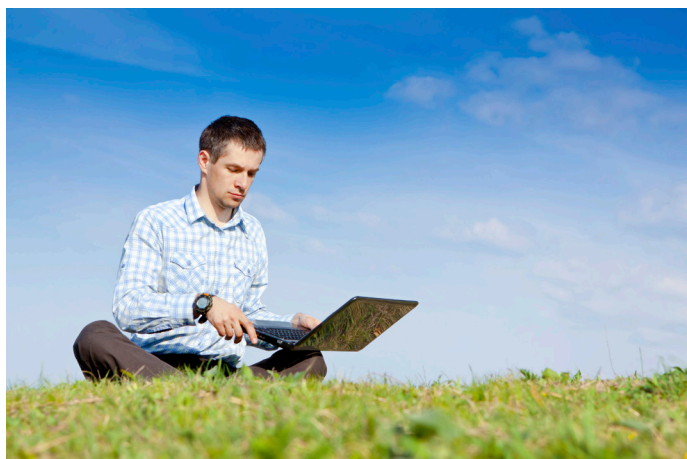
For the success of the proposed methodology it is critical to get these other participants onboard. As such, when planning the implementation, all stakeholders affected by running this procedure need to be involved. If that is done, it becomes possible to shave off an extra few days from the procedure and perhaps ensure that such officers can be supporters of this new methodology. For example, during the first pilot with Carmarthenshire County Council, the risk manager was only informed about the procedure while this was already ongoing, and so was unable to turnaround the assessment of the winner's documentation as quickly as anticipated.

By learning from this mistake, it was possible to improve on the 44 days from the original pilot down to 37/38 days. The risk manager was very enthusiastic with the reduction in workload arising from the analysis of a single set of documents, and was able to devote more attention to this single set of documents than in the past.

6. Simplified Open Procedure components

6.1 Executive Summary

To help suppliers, the Simplified Open Procedure includes a detailed executive summary right at the start of the document. The executive summary is expected to include all the key information necessary for a supplier to decide to bid, or not to bid for the opportunity. For example, it should contain a full paragraph describing the contract, key dates (submission deadline, expected start and end of contract), price (if possible), award criteria with breakdown, and key information such as insurance or experience levels required.



The Executive Summary fulfills two functions. First, it gives any prospective supplier all the key information at a glance. This will help them make a clear decision as to whether to bid for the contract or not. Providing an executive summary with the proposed level of information helps keep the numbers of actual tenders submitted to a low number by ensuring that only motivated bidders, will actually submit a bid.

Second, by forcing the contracting authority to distill the key information mentioned above and to review what is crucial to award the contract for a final time, the Executive Summary functions as a last checklist for the contracting authority before the procedure is signed off for advertising.

Box 6 – Examples of Information provided in an Executive Summary

Contract Reference
Contract Description (including award criteria)
Insurance Requirements
Key Contract Dates
Submission instructions
Date/time for Tender return

6.2 Checklist for bidders

The checklist for bidders ensures that they are aware of the key milestones for the procedure. For example, it should mention the self-declaration and also the deadline for the winner to provide the self-declaration evidence information.

6.3 Self-declaration and submission of evidence

The purpose of a self-declaration is to reduce transaction costs for both the contracting authority and its potential suppliers. Furthermore, specifically for SMEs, it removes a barrier to participation in public procurement, and eliminates the perception that procurers want to restrict the bidding stage to larger suppliers only.

With self-declaration, the supplier should clearly state its compliance with whatever requirements are set for participation, and should confirm that it will provide the necessary evidence should the supplier be deemed to have submitted the best bid within the set deadline. By adopting a self-declaration approach, the contracting authority signals to the market that competition is encouraged, and everyone is welcome, as long as they can be certain they comply with the minimum requirements.

Box 7 – Example Self Declaration information requested (Gwynedd pilot)

Mandatory grounds for exclusion of Regulation 23(1)
Grounds under which a services provider may be deemed ineligible Regulation 23(4)
Evidence of two similar contracts completed to satisfaction within the last three years (including referees)
Conflict of interest statement
Last year's Accounts
Public Liability Insurance (above value of £2,000,000)
Professional Indemnity Insurance (above £500,000)
Employers Liability Insurance (above £5,000,000)
Technical capacity (two similar projects)
Availability of Resources
Equal Opportunities
Anti-Collusion certificate

As can be seen in the Box above, the information required is very similar to what would be requested in a traditional pre-qualification questionnaire. The difference in the Simplified Open Procedure is that only the preferred bidder will have to provide it, and only after bids have been analysed.

The preferred bidder should be given 5 to 10 days to supply the necessary documentary evidence and you can use this period for the standstill period if you wish to grant one. As the Simplified Open Procedure is designed for contracts below EU thresholds only, the standstill is not legally required. In the pilots carried out, most preferred bidders submitted their documentation within 48 hours and all complied with the deadline. This rush is easy to understand on the grounds of incentives: providing the documents is the only hurdle between being the preferred bidder and signing the contract. The sooner the contract is signed, the sooner they can start working and getting paid.

By moving the analysis of self-declaration information subsequent to the bidding stage, there is a risk that the preferred bidder will not provide the requested information on time, perhaps because it does not have it or because it is no longer interested in the contract. There is a risk as well of collusion between bidders (e.g. where the best refuse) to provide the documentation, forcing the contracting authority to move to a "worse bid"). These risks are real, but they were not observed in practice in the pilots run. The easiest way to defend against abuse by bidders is to include a clause stating that in case the information is not provided, the contracting authority will reserve the right either to move to the following bidder or to cancel the award and start a fresh procedure.

Another possibility is to include a clause stating the preferred bidder would have to reimburse the contracting authority the difference between its bid and second best. A final option is to demand a bond for participation. These are courses of action we do not strongly advocate, as they increase the transaction cost for all bidders and disproportionately affects smaller suppliers.

“FSB Wales wants smaller businesses to have a fair chance to compete for public sector procurement contracts and believes lower value procurement opportunities should be far more open and transparent. A system such as the proposed Simplified Open Procedure which means small businesses are only asked to provide the necessary details, policies and assurances once they have actually won a tender would save everyone time and money.”

Lestyn Davies, FSB Senior Head of External Affairs: Wales, Scotland & Northern Ireland

6.4 Word limits

In general, public procurement procedures do not routinely impose word limits on bidders' answers. By not using word limits, bidders are indirectly incentivised to refrain from providing tailored answers to questions and worse still, can encourage them to adopt the 'kitchen sink' approach (e.g. by including irrelevant marketing materials or generic text copied from previous tenders). Without word limits there is no downside for suppliers to include such information (other than the investment in extra time which is justifiable in their belief that it can make the difference between winning or losing the contract). This leads to ever larger bids, which again leave SMEs at a disadvantage. For low value, low complexity contracts, this approach makes no sense, as it increases the transaction costs for all involved: the longer the answer, the more time it will take for procurers to mark it.

The problem with word limits is finding the right balance between limiting the risk of very long answers, and ones that are too short such that they cannot include the level of detail needed to assess the bid. It is tempting for a procurer to shorten answer length to a very restrictive word limit, and there is some evidence of such happening in practice, pointing towards the need of monitoring by the appropriate agents on each contracting authority.

It is not possible to determine in abstract what is the “right number” in all circumstances, and the answer depends on the experience of the contracting authority and the complexity of the contract at hand. In consequence, those limits should be considered afresh for each new tender and contracting authorities refrain from the temptation of establishing “template” word limits to be applicable in all cases.

Box 8 – Word limits imposed in consultancy contract pilot in Gwynedd

Outline of general approach to brief	500
Key issues and risks	1500
Outline draft project plan	2500
Staff allocated to project	2000
Resource plan	1000

7. Conclusion

Advertising contracts below the EU thresholds should not be a negative experience for neither suppliers nor contracting authorities. If done well, as proposed with the Simplified Open Procedure, low value contracts can easily and transparently be widely advertised without burdening either the market or procurers.

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