

# **Transparency**

# **Publication of Tender Documentation**

**Guidance Note**

**Updated September 2011**

**CONTENTS**

POLICY COMMITMENT	PAGE 2
SCOPE	PAGE 3
Organisational coverage	PAGE 3
Threshold for publication	PAGE 4
PUBLICATION	PAGE 5
Department's general preparation	PAGE 5
Releasing tender publications	PAGE 7
Timing	PAGE 8
Selecting tender documents	PAGE 9
PROCUREMENT STRATEGIES	PAGE 10
Below EU Threshold but above £10,000	PAGE 11
No tender documentation	PAGE 11
Open Procedure	PAGE 12
Restricted Procedure	PAGE 12
Competitive Dialogue	PAGE 12
Negotiated Procedure	PAGE 12
Framework Agreements	PAGE 13
Dynamic Purchasing Systems	PAGE 14
Dynamic Marketplace	PAGE 14
E-auctions	PAGE 14
E-procurement	PAGE 15
Limited and Single Tenders	PAGE 15
Contract Extensions	PAGE 15
Re-tendering a contract requirement	PAGE 15
Abandoning the procurement process	PAGE 15
<u>ANNEXES</u>	
ANNEX A – SUGGESTED TRANSPARENCY WEBSITE TEXT	PAGE 17
ANNEX B – CONTRACTS FINDER	PAGE 18
ANNEX C – TEMPLATE FOR PROCUREMENT TIMESCALES	PAGE 21

## **POLICY COMMITMENT**

- 1.1** In *'The Coalition: our programme for Government'* the government set out the need for greater transparency across its operations so that the public could hold to account public bodies and politicians.
- 1.2** To help achieve greater transparency in how central government spends public funds and to help deliver better value for money, the Prime Minister has set out the commitment:
- All new central government tender documents for contracts over £10,000 to be published on a single website from September 2010, with this information to be made available to the public free of charge.**
- 1.3** This document is targeted at Procurement functions in central government departments to help them meet this commitment with a consistent set of common principles as they make their decisions about publication. Departments are responsible for the publication of their tender documentation.
- 1.4** The Prime Minister has set out two other related requirements as follows:
- All new central government Information and Communication Technology (ICT) contracts to be published online from 1 July 2010.
  - All new central government contracts to be published in full from January 2011.
- 1.5** For consistency, the Minister for the Cabinet Office has decided that all three commitments will apply to contracts and tenders over the value of £10,000.

- 1.6** Separate guidance is available regarding the publication of all new central government contracts<sup>1</sup>, which also applies to the publication of new central government ICT contracts. Readers should refer to it for information about redactions, exemptions and appropriate clauses for inclusion in the Terms and Conditions (Ts&Cs) in contracts.
- 1.7** The Minister for the Cabinet Office has also set a separate requirement with effect from 1<sup>st</sup> January 2011, for departments to publish their estimated and actual procurement timescales (i.e. the time taken from placing the contract advertisement/OJEU notice/ [other notification of procurement] to contract award) for procurements with a contract value of above £10,000. This requirement does not apply to procurements with a contract value of below £10,000.

## **SCOPE**

### ***Organisational coverage***

- 2.1** This commitment applies to central government including departments, their agents, agencies, all Non-Departmental Public Bodies, Trading Funds and National Health Service bodies.
- 2.2** Central government departments are responsible for communicating to their delivery bodies the commitment and this guidance note.
- 2.3** Hereinafter 'departments' will be used to refer to organisations subject to this commitment.
- 2.4** Organisations not subject to this commitment or this guidance are:
- The Intelligence Agencies
  - Public corporations, whether financial or non-financial
  - Westminster Parliamentary bodies
  - Devolved Administrations in Wales, Northern Ireland and Scotland

---

<sup>1</sup> See Cabinet Office ERG publication 'Transparency – Publication of New Central Government Contracts'

- Local government and other parts of the wider public sector (for example, schools).

**2.5** However, they may choose to adopt the commitment and/or this guidance.

**2.6** Where an organisation comprises a public body and a public corporation (e.g. the BBC), this commitment applies to that part which is classed as a public body.

### ***Threshold for publication***

**2.7** The department will use its judgement on a case by case basis to establish what is to be published on Contracts Finder. The department will consider the type of procurement, the procurement strategy being used, and the nature and extent of the tender documentation. Note that tender documentation in this context does not refer to bids received from the suppliers but to the template tender documents. Departments are recommended to publish, where relevant, the following, or the nearest equivalent, as a minimum:

- Advertisement of the requirement (e.g. Prior Indicative Notice, OJEU notice)
- Estimated procurement timescales
- Pre-Qualification Questionnaire (PQQ)
- Invitation to Tender (ITT) – includes requirement and Ts&Cs.

Where tender specifications contain various diagrams (for example, in some construction contracts), departments should seek to publish these where practical (taking into account any necessary exemptions as set out in the guidance on publishing all new central government contracts) and where the diagrams are in an electronic format that is likely to be accessible to the public (e.g. word or pdf).

**2.8** Departments are required to publish tender documentation when the minimum threshold whole life contract value is £10,000 (net of

recoverable VAT) and above. This commitment is not retrospective and applies to tender documentation related to new procurement activity for the supply of goods, services and works where the formal procurement process (whether started by an OJEU or other notice, or a request for proposals for lower value requirements ) commences from 1<sup>st</sup> September 2010.

- 2.9** Departments may choose to publish tender documents below the threshold. Ministers may decide at a later date to set a lower threshold.
- 2.10** This commitment does apply to tender documents issued overseas by departments or their agents.
- 2.11** Departments should engage with current and future suppliers to ensure that they are aware of and understand the requirements of the transparency agenda with regard to publishing contracts and the implications this will have. It is departments' responsibility to manage their suppliers' expectations around what will be published and the scope for exemptions and redactions. Departments are therefore advised to consider incorporating the text at Annex A into the relevant commercial pages of their departmental website.

## **PUBLICATION**

- 3.1** Tender documents should be published on Contracts Finder<sup>2</sup>. Contracts Finder is the government's single platform providing access to public sector procurement related information and documentation, including the facility to publish both tender and contract documents in a single place. Annex B provides an introduction to Contracts Finder.

### ***Department's general preparation***

- 3.2** In anticipation of this commitment departments should take the necessary commercial legal and document / records management

---

<sup>2</sup> [www.businesslink.gov.uk/ContractsFinder](http://www.businesslink.gov.uk/ContractsFinder)

advice to track the documents and related content decisions from the organisation to the website. The Departmental Records Officer (DRO) will help to reflect this commitment in the department's publication schedule.

- 3.3** Departments should also take steps to ensure that potential suppliers are aware of the transparency commitment, the related transparency clauses<sup>3</sup> in their Ts&Cs, and the possible impact on the procurement process. Where departments are using non-governmental terms and conditions, such as model contracts owned by a third party (for example, NEC, JCT and PPC 2000 model contracts) and protected by copyright owned by that third party, departments should refer to the [guidance](#) on publishing contracts for details of what to publish.
- 3.4** Where the document to be published is Crown copyright, a department's documents should be released under the "copyright" terms and conditions set out under the Open Government Licence<sup>4</sup> for public sector information. This will license the public to reuse the documents provided they cite the source and do not misuse or deliberately mislead. Documents are made available in an open non-proprietary standardised format so that it can be re-used by third parties. The Transparency Practitioners' Group representative<sup>5</sup> (see below) will provide advice on the best techniques for your ICT environment for the cleansing and preparing of documents for publication.
- 3.5** The Open Government Licence does not cover the use/re-use of information that Government is not authorised to license, for example information that is protected by copyright owned by a third party. Where

---

<sup>3</sup> See "Annex C – Standard Transparency Clause" in the CO (ERG) guidance "Transparency-Publication of New Central Government Contracts"

<sup>4</sup> See further information on the Open Government Licence <http://www.nationalarchives.gov.uk/doc/open-government-licence/>

<sup>5</sup> To identify the department's transparency representative contact The National Archives at: [PublicData@nationalarchives.gsi.gov.uk](mailto:PublicData@nationalarchives.gsi.gov.uk)

information contained within the contract is protected by copyright owned by a third party, departments should assess the information against the Freedom of Information Act principles to ascertain whether or not an exemption applies and can be justified after applying the public interest test. Departments should note that where a piece of information has copyright protection, this will not automatically mean that redaction would be justified (especially if the information is already in the public domain). Where information cannot be redacted under the Freedom of Information Act principles, departments should state at the point of publication that the published documentation may contain information which is protected by copyright owned by a third party and which is not subject to the Open Government Licence and therefore the public will have no right to copy/reuse information which is protected by copyright owned by a third party. Departments should also make it clear that should the public wish to copy or re-use such information they will need to seek the necessary authorisation from the copyright owner (third party). Departments are also advised to identify which parts of the published contract are covered by a third party's copyright and therefore not subject to the Open Government Licence.

- 3.6** The wider transparency agenda requires departments to advise Data.gov.uk about datasets being published for the public to access. The tender documents being published on Contracts Finder are contributing to a dataset and will be referenced on Data.gov.uk. The information requirement for this dataset has been managed centrally. Departments need not take any further action other than to notify their transparency representative that this is the case.

### ***Releasing tender publications***

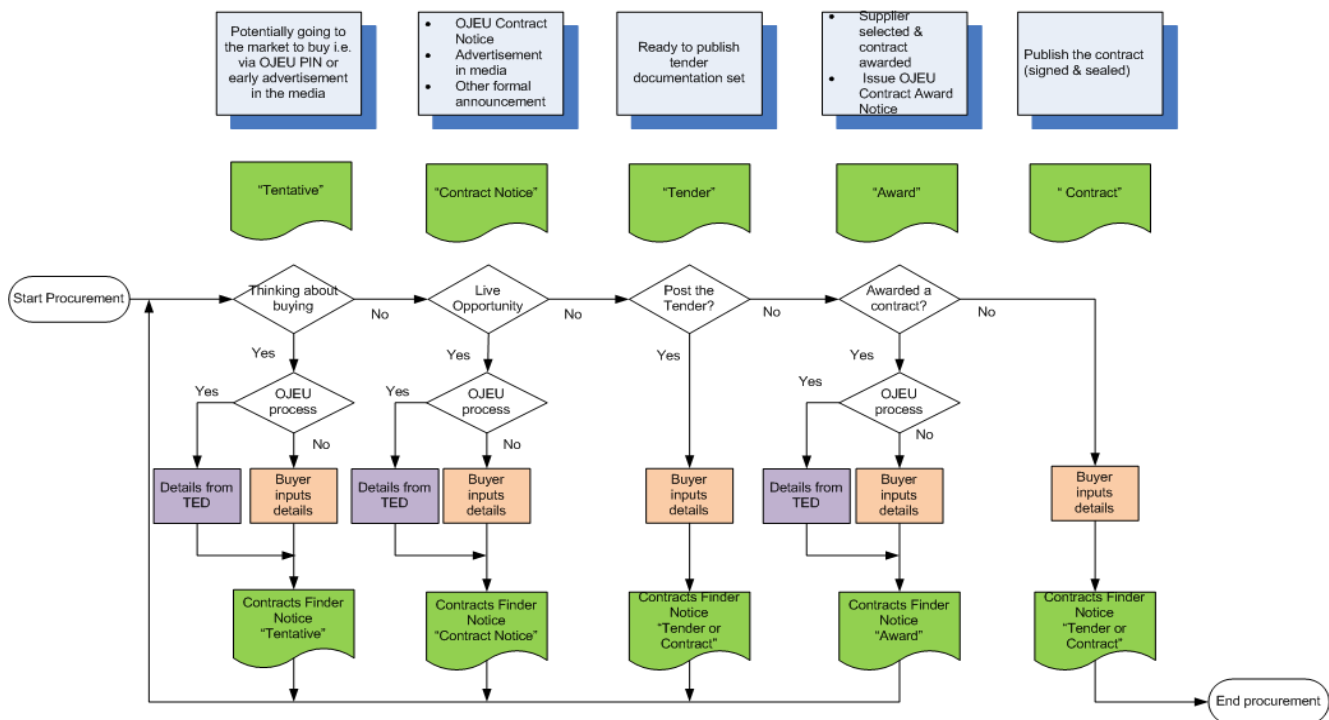
- 3.7** When considering tender documents for release to be published, there is a presumption in favour of transparency. In limited circumstances, certain information should not be published and therefore be redacted from the document prior to publication. See the guidance referred to in paragraph 1.6 for further details.



**3.8** It is recommended that departments manage the public's expectations by developing information for their website to explain their procurement practices and identify how and when the transparency commitment will be met.

**Timing**

**3.9** Figure 1 illustrates when the commitment for transparency applies within a generic procurement process. The ITT is normally published when the ITT is issued to the bidders. This recognises that publishing earlier may introduce additional risk into the procurement procedure whilst leaving it later will not meet this commitment. Any exceptions should be agreed with ERG via the Service Desk. Departments should now publish their live tender opportunities (contract advertisements) on Contracts Finder at the time the advertisement is issued (either on OJEU or elsewhere). This will not apply to processes where there is no contract advertisement to publish (e.g. single tenders).



**Figure 1 Tender document transparency in a generic procurement**

- 3.10** To meet the requirement to publish the estimated procurement timescales departments must indicate in the free-text section of the OJEU notice the estimated duration of the procurement from the time taken from placing the contract advertisement/OJEU notice to contract award. For procurements below the EU threshold or where no OJEU advertisement is used, departments must complete the template attached at Annex C and publish it together with the other tender documents to be published once the ITT has been issued.

### ***Selecting tender documents***

- 3.11** The terms used to describe tender documentation are those generally recognised by procurement professionals. Depending on the procedure and systems being used for the procurement, departments may find that sometimes these documents do not exist, have a similar/equivalent document, or be known by another name. Procurement professionals will use their expertise to determine which documents fulfil the purpose of the tender documentation for this commitment.
- 3.12** The flowchart in figure 2 below outlines the approach to selecting the tender documents and preparing them for publication. Departments will assess the tender documentation and consider any redaction activity.

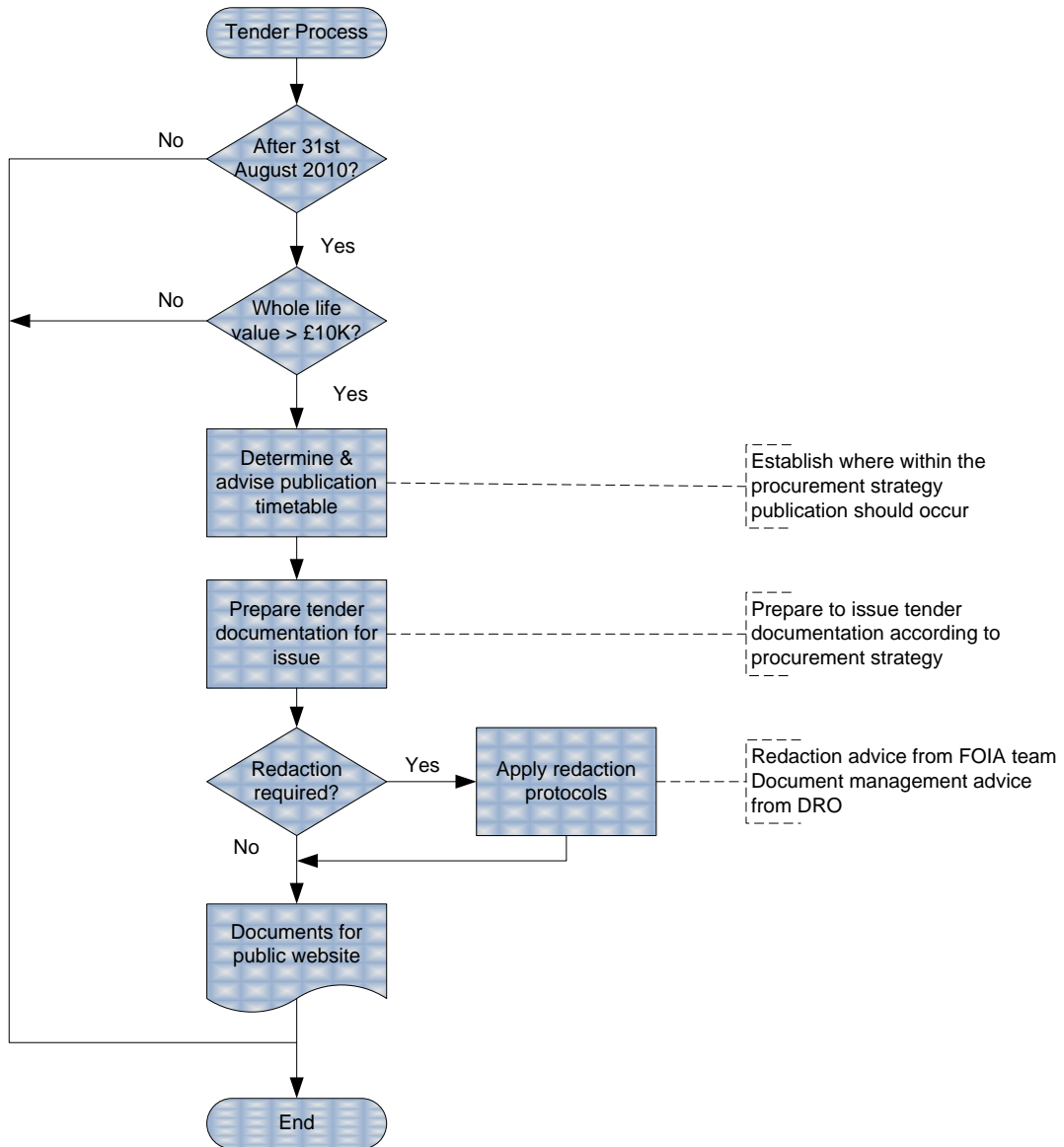


Figure 2 Selecting tender documentation for publication

## PROCUREMENT STRATEGIES

4.1 Departments are expected to consider the transparency commitment when designing their procurement strategy and use their judgement as to which documents constitute tender documents for the purpose of this commitment. The commitment applies to all procurements including “part B” procurements, research contracts or any requirements not covered by the full range of the public procurement rules.

**4.2** Hence departments should, for those tender exercises which meet this commitment's criteria for publication:

- Ensure the suppliers are aware of this commitment
- Identify early the tender documents for publication
- Establish a publication protocol which addresses the issues of exemption, redaction, document management and publication
- Use their legal, FOIA and information management teams to establish consistency in assessment and publication.

***Below EU Threshold but above £10,000***

**4.3** Departments have differing procedures for handling procurements below the EU Thresholds or otherwise outside the scope of the EU public procurement rules, which do not require an OJEU notice. Good practice requires that quotes are obtained and evaluated before a procurement decision is made. Hence departments may well have documentation suitable for publishing to meet the transparency commitment.

***No tender documentation***

**4.4** There are valid procurement processes which may not need, or have, tender documentation or equivalent. For example:

- A department's buyers obtain telephone quotes for the supply of commodities and then issue a purchase order.
- The authorised use of a Procurement Card does not require a formal tendering process.
- Framework agreements allow for direct awards and there might not be a tender document available for publication as the framework may set out the mechanisms for securing certain requirements.

**4.5** The department will need to consider, in such circumstances, what information will be required to provide the public with an understanding of what is being bought, why and from whom. It may be that the

documentation set available for publication only occurs once the deal has been struck and a contract agreed.

### ***Open Procedure***

- 4.6 In the Open Procedure departments will not pre-qualify bidders but will establish the capability of the suppliers during the tender phase. Hence there may not be a separate PQQ. However, the ITT will reflect the department's application of selection criteria to identify the most suitable suppliers to meet the requirement. In this situation the final version of the ITT documentation (as issued to the bidders) would normally be published.

### ***Restricted Procedure***

- 4.7 This is the most frequently used procedure and will map most readily to the generic approach discussed in this guidance. In this situation the PQQ and the ITT documentation would normally be published as the ITT is issued to the bidders.

### ***Competitive Dialogue***

- 4.8 When the department issues its Invitation to Participate in Dialogue (ITPD), it will contain sufficient information to satisfy the transparency commitment to inform the public of the department's procurement process. Hence it is recommended that the department publish the ITPD with the PQQ.
- 4.9 A successful dialogue phase will deliver a more sharply defined and focused requirement, the department will then issue the final ITT to those remaining participating bidders. The department should consider how quickly they will move to a contract. If it is likely to be a similar duration to the dialogue phase then it is suggested the final ITT is published taking account of commercial/IPR sensitivities.

### ***Negotiated Procedure***

- 4.10 The negotiated procedure with notice is used when the nature of the requirement requires discussion with a single supplier or a very limited

pool of suppliers. The procedure will have an initial prequalification stage and when the procurement reaches a point where the supplier (or suppliers) is invited to present its bid for the work, typically the final Invitation to Negotiate (ITN), that is the point at which the documentation becomes eligible for publication to the public.

- 4.11** For a negotiated procedure without notice there would not normally be a formal notice of the requirement; this is allowed for in certain circumstances. A commitment to publish tender documents where this procedure is used would change the nature of the procurement procedure, as legally defined, and so departments are not required to publish tender documents in a procurement under this form of the negotiated procedure.

### ***Framework Agreements***

- 4.12** Departments commencing a new framework agreement from 1 September 2010 will follow the advice provided above since a procurement process will be followed. To help in the transparency commitment, the framework owner will need to take account of the commitment to publish new contracts (ICT from 1 July 2010 and all others from 1 January 2011) and:
- Ensure that the framework agreement sets out the transparency commitment and how this applies to call-offs with an anticipated whole contract value over £10,000. It is important to explain the difference between direct awards (may not be any tender documents to publish) and mini-competitions (likely to be tender, or equivalent, documents).
  - Provide departmental framework users with appropriate advice on how the commitment impacts on the call-off activity.
- 4.13** Departments which manage framework agreements finalised prior to 1 September 2010 are encouraged to help framework suppliers become aware of, and understand, the transparency commitment. They should review their mini-competition/call-off procedures to ensure “tender

documentation” is identified and published, where appropriate. This will also need to address the situation where call-offs are awarded directly.

### ***Dynamic Purchasing Systems (DPS)***

- 4.14** The same principles apply to DPS as to frameworks. Therefore documentation used to establish the DPS must be published. When procuring individual contracts under the DPS, The department must first advertise its intention using a simplified Official Journal of the European Union (OJEU) Contract Notice specifically designed for a dynamic purchasing system. These will automatically be published on Contracts Finder through a direct data feed.
- 4.15** Subsequent invitations to submit tenders for a particular order or contract should also be published, along with a link to the original terms and conditions of the DPS (unless the award criteria have been amended, in which case these should also be published with the ITT).

### ***Dynamic Marketplace***

- 4.16** The Dynamic Marketplace is a dynamic request for quote system set up to cater specifically for low complexity requirements of a value below the EU threshold. Departments using the Dynamic Marketplace will need to post their tender documents manually to the Contracts Finder website in accordance with this guidance. The service provider is developing an interoperable link so that notices will automatically be published on Contracts Finder. This will be available following completion of the pilot phase.

### ***E-auctions***

- 4.17** The department establishing and running the e-auction will issue an ITT, which will describe the e-auction and its rationale, to the suppliers interested in taking part. Once the bids have been evaluated and the suppliers invited to take part, there will follow a cycle of electronic

tendering activity which is not suited for publishing. It is considered that the ITT will be published on the Contracts Finder website.

### ***E-procurement***

**4.18** E-procurement tools may not have or generate paper documents during the procurement. Departments will need to consider whether it is possible to provide either access to the actual tender documentation (or copies) used for any particular procurement. In some circumstances it may not be possible to provide such documentation for reasons such as system constraints or because such publication could breach a third party's intellectual property rights. Departments are responsible for identifying and resolving any issues relating to the publication of tender documents that are used in an e-procurement environment.

### ***Limited and Single tenders***

**4.19** If the department has selected a supplier(s) for a single or limited tender process, they will need to consider the point at which the supplier(s) is formally invited to make a bid for the work. Once this invitation has been decided upon then the department will have candidate documentation for public publication.

### ***Contract Extensions***

**4.20** An extension to an existing contract may result in a new contract which should be published under transparency commitments. Departments are encouraged to consider whether the change in contractual requirements merits publishing the Invitation to Quote (ITQ) as part of the transparency commitment.

### ***Re-tendering a contract requirement***

**4.21** When re-tendering a contract, this is a *new* procurement and so departments are required to publish the related tender documentation in a manner appropriate to the procedure being used.

### ***Abandoning the procurement process***

**4.22** Where departments make the decision to abandon the procurement there will be no commitment to publish the related tender documents.



However, where documents have already been posted to the website, it is suggested that departments publish a note to the website providing the reason for the abandoned status of the procurement.

## **Annex A – Suggested Transparency website text**

### ***Procurement Transparency***

The government has set out the need for greater transparency across its operations to enable the public to hold public bodies and politicians to account. This includes commitments relating to public expenditure, intended to help achieve better value for money.

As part of the transparency agenda, government has made the following commitments with regard to procurement and contracting:

- All new central government ICT contracts over the value of £10,000 to be published in full online from July 2010
- All new central government tender documents for contracts over £10,000 to be published on a single website from September 2010, with this information to be made available to the public free of charge.
- New items of central government spending over £25,000 to be published online from November 2010.
- All new central government contracts to be published in full from January 2011.

Suppliers and those organisations looking to bid for public sector contracts should be aware that if they are awarded a new government contract, the resulting contract between the supplier and government will be published. In some circumstances, limited redactions will be made to some contracts before they are published in order to comply with existing law and for the protection of national security.

## **ANNEX B – CONTRACTS FINDER**

### **Introduction**

Contracts Finder<sup>6</sup> is a single platform providing access to public sector procurement related information and documentation. The government Buyer will post details about their procurement and contracting activities thereby meeting all of the Prime Minister's Transparency in Procurement and Contracting commitments from January 2011. Suppliers can search for opportunities, and, the public are able to see what government organisations are spending, on what and with whom.

This annex describes how Buyers from departmental procurement functions will use the Contracts Finder to deliver their Transparency Agenda obligations for opportunity, tender and contract documentation. Contracts Finder provides detailed on-screen help drop down menus and an on-line user manual.

### **Contracts Finder**

Contracts Finder provides:

- Buyers with the capability to publish live tender opportunities and contract award documentation/notices, along with tender and contract documentation.
- The public with the means to see, access and download from a single place public sector tender and contract documentation.
- Access to a download of summary data from multiple procurement activities according to interest (e.g. by department, by value, by start date, etc.).
- Suppliers with access to the procurement intentions and needs of the public sector.
- Email alerts about contracts of interest.

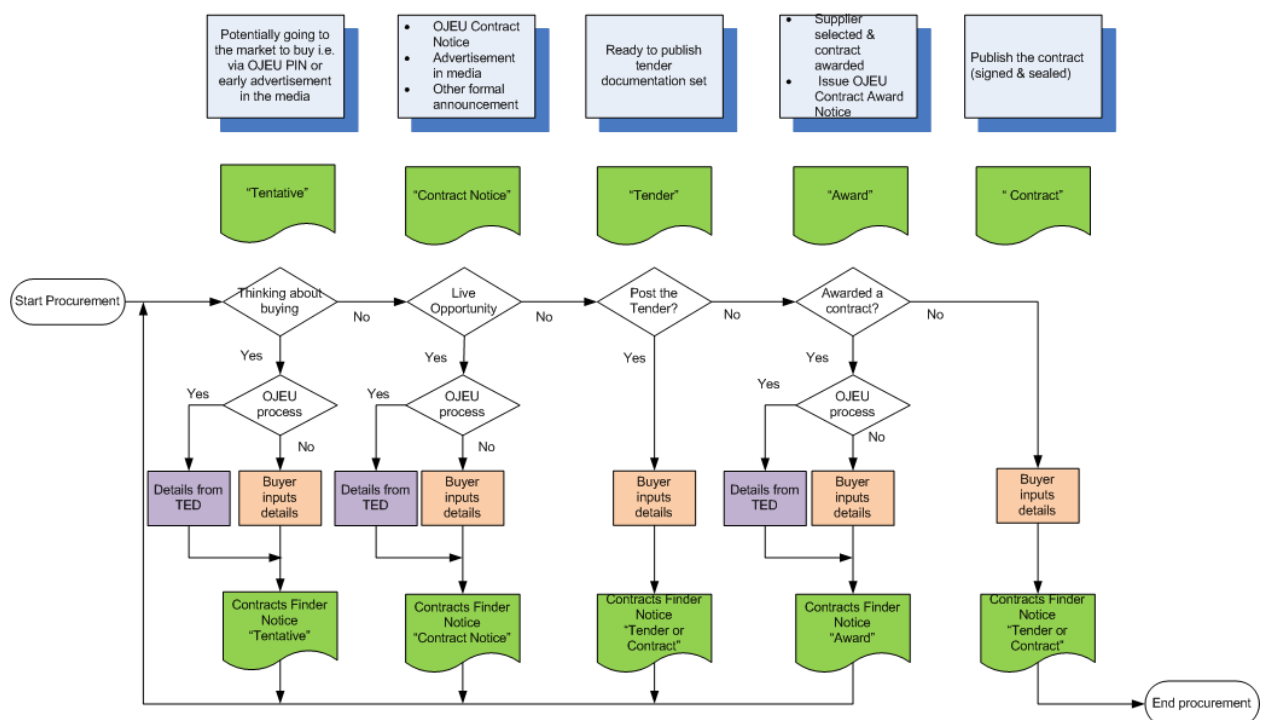
---

<sup>6</sup> The Contracts Finder service is accessible via the web-site:  
[www.businesslink.gov.uk/ContractsFinder](http://www.businesslink.gov.uk/ContractsFinder)

Further development will give buyers an option to publish some documentation electronically via their e-Procurement systems.

## Procurement Lifecycle

Buyers will meet their Transparency agenda commitments by using Contracts Finder to post tender and contract documentation and other information/documentation to form a coherent documentation set for the individual procurement's lifecycle. This diagram illustrates where transparency commitment arise during a "generic" procurement lifecycle.



The Contracts Finder service supports the procurement lifecycle in:

1. Opportunity phase – Advertising via an OJEU PIN, Contract Notice/Simplified Contract Notice or an advertisement
2. Tender phase – managing the Tender documentation
3. Contracting Phase – taking the final Contract documentation
4. Award – posting the change status for a procurement and link to the OJEU Contract Award Notice for those above the threshold

5. Service Delivery Phase - posting updates to documents such as contract changes where they result in a new contract or where a contract is terminated.

## **Preparing for Publication**

Buyers will have ensured their suppliers are aware of the Transparency Agenda and have formally acknowledged and agreed the Transparency clauses included in department's general Ts&Cs. In practice, the suppliers should be advised and encouraged to identify (and segregate where possible) such information / data / images which they believe are commercially sensitive. Buyers will work with the Suppliers on this, but also remember that the final decision about publishing information rests with the department.

Buyers are recommended to consider the following:

- Identify the "best" time for publishing with respect to the procurement approach being used.
- Identify the documents required for publication – this guidance recommends a minimum set for transparency, but underlines that a greater degree of transparency is to be encouraged.
- Ensure the documentation is in the correct file format.
- Ensure that confidential information has been identified and dealt with (redacted or cleared for publication).
- Collate the information required for Contracts Finder to help it link other sets of documentation relating to the same procurement activity.

## ANNEX C – TEMPLATE FOR PROCUREMENT TIMESCALES

<b>ESTIMATED PROCUREMENT TIMESCALES</b>	
<b>Department/organisation</b>	
<b>Title of procurement</b>	
<b>Start date</b>	
<b>Planned date of contract award</b>	