

**Procurement**

Procurement Policy Note

# Procurement Policy Note - Updates to guidance on Transparency in Procurement and Contracting and implications for use of Contracts Finder

## Information note 07/11

**Issue:**

1. The Cabinet Office's guidance on Transparency in Procurement and Contracting has been updated in light of a number of new policy initiatives. This has implications for the use of Contracts Finder.

**Dissemination:**

2. Please circulate this Procurement Policy Note (PPN) within your organisation, agencies, non-departmental public bodies (NDPBs), and any other bodies for which you are responsible for.

**Scope:**

3. This PPN applies to Central Government including departments, their agents and agencies and all Non-Departmental Public Bodies (NDPBs).

**Issues arising from new policy implementation:**

*Greater use of Prior Information Notices to promote early market engagement*

4. Early market engagement is known to enhance competition by enabling more suppliers, including SMEs, to respond. Prior Information Notices can be used to signal your intention to industry. Contracts Finder supports the publication of PINs by providing a direct data feed from OJEU and by providing pro formas for "Below OJEU" speculative notices.
5. Departments are therefore encouraged to use PINs/speculative notices if they relate to a specific procurement or industry sector-specific market engagement activity. We are aware that some market engagement activity such as "meet the buyer days" may fall outside of this scope.

### *Consultancy contracts*

- 6 Further to guidance issued by the Cabinet Office on 5 May, departments are now required to publish on Contracts Finder a statement of the value delivered by consultancy contracts above £20k. The transparency guidance has been updated to reflect this position and for ease of use we have included the pro forma as an additional annex.

## **Issues where further clarification is now required or available**

### *Use of Framework Agreements*

- 7 The Government Procurement Service (formerly Buying Solutions) have developed guidance on how to apply transparency requirements to their framework agreements. This is available at:  
[http://www.buyingsolutions.gov.uk/document/indexed/public/tiny\\_mce\\_uploads/transparencysolutions/The%20Transparency%20Agenda%20-%20Buying%20Solutions%20customer%20guidance%201.65%2009-5-11.pdf](http://www.buyingsolutions.gov.uk/document/indexed/public/tiny_mce_uploads/transparencysolutions/The%20Transparency%20Agenda%20-%20Buying%20Solutions%20customer%20guidance%201.65%2009-5-11.pdf)

### *Use of Dynamic Purchasing Systems*

- 8 We are beginning to see greater use of dynamic purchasing systems. Publication of documentation that is particular to the DPS rules is now specifically covered in the latest version of our guidance (see attached).

### *Dynamic Marketplace*

- 9 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. To comply with the Prime Minister’s commitment to publish low value opportunities on Contracts Finder, departments using the Dynamic Marketplace must post a below OJEU (low value) opportunity notice on Contracts Finder a minimum of 5 working days before the Request for Quote (RFQ) is placed on the dynamic marketplace. This opportunity notice needs to include clear text explaining what suppliers need to do, i.e. standard words from the Dynamic Marketplace detailing how to register and the RFQ process.

- 10 Departments must also publish tender documents and contracts resulting from procurement through the Dynamic Marketplace in accordance with the attached guidance.

### *Buying services from a public body*

- 11 The guidance has been updated to clarify that Crown MOU arrangements (i.e. agreements between Crown bodies to provide services) currently remain exempt from publication. Certain other arrangements which follow similar principles may also be exempt. Such circumstances would be limited, i.e. where a department

or public body can prove that they are receiving services from another public body where:

- i. it relates to the core business of the public body and
- ii. it is not something the market could provide, so therefore
- iii. they have implemented an SLA where there is no contract and no external competition.

These arrangements would be exempt from publication.

#### *Publication of industry-developed contracts*

13 In the construction sector (and others) some forms of contract used by government are protected by copyright owned by a third party and therefore cannot be published. These include JCT, NEC and PPC contracts. A way forward has been agreed for construction, and this is reflected in the new guidance. In brief, departments should publish details of the name and edition of the form of contract, together with the relevant contact point to enable the public to get specific contractual information in relation to the terms and conditions. Departments will also be required to publish any amendments that have been made to the standard form of contract.

#### *Reflecting greater use of open procedure*

14 Recognising the Government's drive to make greater use of the Open procedure, (in which the ITT is usually issued with the OJEU contract notice), we have amended the wording for tender documents on Contracts Finder to advise suppliers to check the contract history to ascertain whether an opportunity is still live. This is because previously if tender documents had been published the bidding process was assumed to be closed, which may not be the case when using the open procedure. The change will help to avoid confusion amongst potential bidders.

#### *Clearly marking closure dates on tender documents*

15 Following publication of tender documents, we have received reports of suppliers attempting to bid for opportunities that are already closed. Ensuring that applicable dates (for receipt of EOIs, tenders, etc) are clearly marked on the tender documents would help reduce the frequency of such enquiries.

#### **Contact:**

16 If you have further questions, please do not hesitate to contact the ServiceDesk on 0845 000 4999 or via [servicedesk@cabinet-office.gsi.gov.uk](mailto:servicedesk@cabinet-office.gsi.gov.uk)

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