

Selling to Government : Guidance 15

Introduction

Public bodies spend a vast amount each year on goods and services. They are always looking for new suppliers. Whatever the size of your business, there are always opportunities to supply this market.

Even if you are already supplying one part of the public sector, it is always worth looking for opportunities in other areas. The public sector includes Central Government departments, local authorities, the National Health Service and academic institutions, so there is plenty of scope for business.

The aim of this Guidance is to help you make a start. It gives background on the way public purchasing is organised and where to get further information. The booklet also provides guidance on where and how you can gain access to this sector, an indication of the types and range of products purchased and the sorts of contract procedures required.

Selling to the Public Sector

Generally, all procurement contracts are subject to the Treaty of Rome, regardless of value. The Treaty sets down principles to prevent discrimination against firms from other Member States and promotes the freedom to provide goods, services and works throughout the Community.

The Treaty is reinforced by a series of EC procurement Directives. The Directives are implemented into UK law by the Public Works Regulations 1991, the Utilities Contracts Regulations 1996, the Public Services Contracts Regulations 1993 and the Public Supply Contracts Regulations 1995. These Regulations establish procedural rules which set down non-discriminatory and transparent criteria for the selection of tenders and the award of contracts with a value above the relevant threshold. Aggrieved tenderers can take action in the High Court where they believe Regulations have not been complied with.

Selling to Central Government Departments

There is increasing opportunity for small firms to do business with Government departments. Departments are not required to buy through central suppliers and are able to save money by purchasing direct from suppliers. They are increasingly aware of the merits of placing contracts with small firms.

Government buyers are seeking value for money. To become a successful supplier to this market you must:

- be able to compete with other firms;
- be able to complete contracts on time and to the required standards;
- have a sound financial and commercial reputation; and

- be able to familiarise yourself with Government purchasing procedures.

Sub-Contracting

Departments do not normally deal in component parts or materials, nor do they select sub-contractors - they expect their contractors to do this themselves.

If you only produce components, your best opportunities are likely to be as a sub-contractor. For names of the main contractors write to the relevant department(s) listed in the information sheets on page (iii) of this Guidance.

Private Finance Initiative

Through the Private Finance Initiative (PFI), the private sector is able to bring in a wide range of managerial, commercial, and creative skills to the provision of public services, offering potentially huge benefits to the taxpayer. The primary focus of PFI activity to date has been on services sold to the public sector. In particular, projects where the public sector purchases services from the private sector which is responsible for the upfront investment in capital assets. The three main types of PFI transaction are:

- Services sold to the public sector, where the public sector pays only on the delivery of specified services to specified quality standards. Typically, the private sector, often acting in consortia, aims to reap synergies across design, build, finance and operation (DBFO);
- Financially free-standing projects, where the private sector undertakes DBFO recovering costs entirely through direct charges on the private use of the asset (e.g. tolling) rather than from payments by the public sector. Public sector involvement is limited to enabling the project to go ahead through assistance with planning, licensing and other statutory procedures; and
- Joint ventures, where the costs of the project are not met entirely through charges on the end users, but are subsidised from public funds. In many cases, the public sector subsidy secures wider social benefits.

The PFI focuses on the purchase of services rather than assets . Private firms become long-term providers of services rather than simply upfront asset builders, combining the responsibilities of designing, building, financing and operating assets in order to deliver the services demanded by the public sector. By March 1999 £11.9 billion of private finance projects were signed.

Publications, including the guidance document "Partnership for Prosperity", can be obtained from the Public Enquiry Unit of HM Treasury.

BiP GUIDANCE 15/2000
The Way In

Lists of Potential Suppliers

Most firms interested in doing business with government have to be accepted onto a department's list of potential suppliers. There are, however, cases where this is not required, e.g. when a contract is worth less than £10,000, although this level may vary from department to department.

If your firm is accepted onto a list it does not necessarily mean that you will be invited to tender straight away. These lists are often graded into types of work for which different firms are suitable. The lists are also regularly reviewed so inclusion is not always permanent.

Press

Invitations to tender for contracts below threshold amounts are often advertised in national or regional newspapers, or in trade journals. Another useful publication is Government Opportunities which is published weekly and is available on yearly subscription*.

Who to Approach

You can write or telephone the contact points listed under the various departments listed in the annex sheets on page (iii) of this Guidance. Your firm's abilities will then be matched to the needs of the various contracts divisions within that department. You will also be given an idea of the sort of information they need from you on page (iii) of this Guidance.

How to Apply

When applying you should state your case clearly. Try to include the following points:

- A description of your product and services in simple, non-technical language.
- A list of all of your products, so that your application can be distributed to a wide range of purchasers.
- A client list, showing any large companies, public bodies or Governments abroad to which you have already contracted.
- An outline of any business you have done with UK Government departments in the past.

Remember to enclose trade brochures if you have them.

If You are Successful

If your application is of interest, you may be asked to fill out a questionnaire, unless you are only interested in small-value contracts. Inspectors may also visit your premises to discuss your business in more detail. They will want to be sure that your business is financially sound and has the ability to complete contracts to the required standard and on time.

If You are Unsuccessful

If your application to be invited to tender for business is unsuccessful, try to find out whether you provided the right information and whether you approached the right department(s). Departments can give advice if you are unsuccessful and let you know the reasons why - this will help you when applying in the future.

Quality Assurance

Government departments may want to assess their contractors against certain quality assurance standards. If you are in an industry where external assessments are the norm, or are becoming the norm, if it is appropriate to the contract, then you are likely to find this a requirement of purchasing departments.

ISO 9000

ISO 9000 is the international quality management systems standard. The standard is published in the UK by the British Standards Institution as BS EN ISO 9000 (formerly BS 5750). Firms operating an ISO 9000 system should be able to assure the consistent quality of their products or services. It is for this reason that a number of purchasers, including some Government procurement agencies, encourage their suppliers to adopt the standard. Added confidence can be obtained if the supplier seeks independent, third-party assessment of the system in operation.

The Department of Trade and Industry publishes advice both to firms considering adopting ISO 9000 and to purchasers considering specifying, as part of the tendering process, the use of ISO 9000 by suppliers. These booklets "BS EN ISO 9000 - A Guide to Small Firms" and "Purchasers and BS EN ISO 9000" are available from the Department's mailing house. Details are available in Useful Publications and Information on page (iii) of this Guidance.

Purchasing Procedure

Government departments usually place contracts after a period of widely based competitive tendering. However, suppliers may not be asked to tender every time.

Types of Contract

Government departments place contracts for a great variety of work including:

- research and development;
- production of equipment;

- supplies for stores;
- general services; and
- local purchase orders.

Framework agreements or call-off contracts are common and are based on an estimate of a department's total requirement over a stipulated period. Orders are placed when the need arises during the period of the contract.

Contract Conditions

Most Government contracts are based around model documents which may vary from department to department. There may also be variants where special needs are required.

It is important to understand the conditions on which these contracts are based. The documents are usually divided into two parts: the first consisting of general conditions as with all contracts; the second containing a series of additional conditions if the contract warrants them.

For smaller contracts, simpler standard forms may be used. Details are available from the departments concerned and listed in the information sheets on page (iii) of this Guidance.

Payment on Time

Government departments are required to pay promptly in accordance with agreed contract terms - normally within 30 days, or other agreed credit period, of the department receiving a valid invoice.

Any changes made during the period of the contract should be agreed in writing.

Make sure that the department is informed of any changes to details such as your business name or address.

Also check information required on invoices as well as which payment office to use and the name of the person who deals with enquiries. Some departments produce guidance literature which includes this information.

Further information is published by the Department of Trade and Industry in its booklet "Better Payment Practice", a guide to credit management.

The Government introduced legislation on 1 November 1998 to give businesses a statutory right to claim interest if another business pays its bills late. Previously, businesses had only been able to claim interest on a late paid debt if it was included in the contract or if they pursued the debt through the courts and the courts decide to award interest.

The legislation is called the Late Payment of Commercial Debts (Interest) Act 1998. Further information about the Act may be obtained from DTI Small Firms Publications accessible at the following website: www.dti.gov.uk/latepay

Some Cautionary Advice

Although there are clear benefits from doing business with the Government, it is important to be aware of the differences there might be in this market.

In general, you should expect bidding procedures to be more testing since, unlike the private sector, Government's aim is to ensure value for money for the taxpayer.

Feedback from previously successful suppliers suggests:

- Be persistent in searching for information.
- Use available sources of information to assess the market. Do not wait for Government buyers to come to you.
- Find out where, if appropriate, invitations to tender are published. If they are not published, get your name onto relevant tender lists. Do not rely on trade gossip.
- Make sure you fully understand any buyer's requirements before submitting a tender - include these in your tender price.
- Ask for - and learn from - feedback if your tender is unsuccessful.

Useful Publications and Information

Government Opportunities*

Business Information Publications Ltd

(agents for EUR-OP)

Park House

300 Glasgow Road

Shawfield

Glasgow G73 1SQ

Tel: 0141 332 8247

Fax: 0141 331 2652

BS EN ISO 9000 Publications

Admail 528

London

SW1W 8YT

Tel: 0870 1502 500

Private Finance Initiative

"Partnerships for Prosperity" guidance document

Public Enquiry Unit, HM Treasury, Tel: 020 7 210 4558/4860/4870

Private Finance Policy Team Helpline

Treasury Taskforce, HM Treasury, Tel: 020 7 210 5527

Department of Trade and Industry Business in Europe Directorate

DTI Business in Europe Directorate

Kingsgate House

66-74 Victoria Street

London

SW1E 6SW

Tel: 020 7 215 4707

Above EC Threshold contracts are also published in the Official Journal of the European Communities (OJEC).

Department of Health

Purchasing Policy - A Summary

Significant Thresholds

For purchases where the value is likely to be between £3,000 and £10,000 DoH staff should seek at least three written quotes from potential suppliers. For values in excess of £10,000, a minimum of 3 formal tenders should be sought. Formal tenders are different from quotes because the Department should fully explain its requirements to tenderers and may often assess information other than price (such as CVs) before

awarding the work. If the estimated value of the contract is greater than £90,000, EC policy and procedures will usually have to be followed.

The Tendering Process

The overall aim is to obtain the best Value for Money (VFM). That is, the goods/services shall be of the right quality, available at the right time, fit for their intended purpose and affordable.

Pre-Qualification

The Department may seek tenders via advertisements in newspapers or the trade press. Over the £90,000+ threshold, the Department will usually be required to advertise in the OJEC. Where the level of interest is likely to be high, applicants may be required to complete a pre-qualification questionnaire in order to be considered. The questionnaire will require information on areas such as the applicant's company size, experience, technical capabilities, CVs and company accounts.

It is important to remember that the Department only asks for information that it intends to evaluate. Each item from each company will be scrutinised and assessed against criteria that have been agreed in advance for the particular contract. For example, the Department may want to make sure that the company has enough staff to operate the contract or enough large contracts to maintain economic viability whether or not they are awarded the work again at the end of the contract term. It is therefore vital to submit all the information required if you want to be considered for the tender list.

Invitations to Tender

These consist of a letter and package of documents stating the Department's terms and requirements. The package includes several sections. Section 1 usually includes:

Part 1 - The bidder's declaration that he understands the Department's requirements and his warranty that the bid is made in good faith.

Part 2 - A form for the tenderer to complete if he will not be able to comply with any of the Department's requirements. Each area of non-compliance must be explained and the implications should be fully costed in the space provided. The Department is at liberty to reject non-compliant bids.

Part 3 - Parent Company Guarantee - The Department needs to understand the relationship that the tenderer has with its parent or subsidiary companies so that it can be sure that:

- it has assessed information on the appropriate enterprise (i.e. the one that will be performing the contract);
- the parent company (having power over the subsidiary) will not seek to nullify the tender or contract or interfere with the contract's operation in any way; and
- the parent company will take over the performance of the contract in the event of the subsidiary ceasing to trade.

Section 2 comprises the Department's General Conditions of Contract. Tenderers should not include their own terms and conditions when submitting tenders or bids as it is standard practice for the Department to either seek to reinstate their own (in the interests of protecting public money) or view the bid as non-compliant, which could result in it being excluded. However, tenderers may wish to query any issues in the terms that adversely affect their bid.

Section 3 is the Price Schedule. Where relevant and possible, DoH will consider the "whole life" costs of all purchases to determine what is good VFM. There are many ways in which to show and break down prices
 - this and the need to compare bids fairly will have an impact on the information tenderers are asked to provide. It is therefore very important that prices are submitted in the same format as the Department's Schedule form which will vary from contract to contract.

Section 4: The specification or "Scope of Work" contains the particular requirements of the contract. Departmental staff will make this as clear, concise and unambiguous as possible but remember that it is better to query anything that is unclear (or for example any significant omissions) and get a response before tendering. If you have to make any assumptions in a tender they should be clearly stated so that bids can be compared fairly on a "like for like" basis.

Section 5 is the Administration Instructions which are self-explanatory but include a section for the tenderer to complete.

Evaluation

The Invitation package may also contain questions for the tenderer to answer or a note of information to be provided. The relative weight of each area is agreed by the evaluators prior to the opening of the tenders and each one is considered during the evaluation process. Evaluation should be performed by a small Panel of DoH staff but may include experts from outside agencies; the end user will always be included. Each Panel member should evaluate bids individually by reference to their own copy of the information before the group meets to discuss the bids and agree a final shortlist. Each member should also start their evaluation with a different tender to ensure no tender is unfairly advantaged because it is particularly lengthy or brief. All tenders are scored and a shortlist is produced before prices are considered.

Presentations

Where possible the likely dates for presentation should be included in the Invitation to Tender. In any case, it is worth confirming such dates as soon as possible because they may be difficult to change later on. To avoid wasting the time and effort of bidders that are unlikely to win, only shortlisted tenderers are invited to present their tender to the Panel. At the presentation, marks are awarded for areas such as the communication skills of the presentees and their ability to work as a team. The scores are added to the ones awarded for the bid. This is the subjective part of the evaluation but the Panel will still agree their decision as a team - not rely on the opinions of one Panel member. The marks that tenderers have scored for their tenders will be added to those gained at presentation. To avoid over-emphasis on this second stage, the maximum possible scores gained at presentation will not constitute more than approximately 40% of the total maximum available throughout the tendering process.

Post-Evaluation

It is essential for the Department to ensure that the final contract agreed constitutes the best VFM possible and incorporates everything that has been agreed with the winning tenderer. This is why any outstanding issues have to be clarified in writing and will be referred to in the Form of Agreement or the Letter of Acceptance that the successful tenderer receives at the end of the process. Some issues may be particularly important to the Department of Health and very detailed questions may be asked even at this stage, but great care is taken not to distort competition. It is important to remember that:

- this detailed questioning does not automatically mean that the contract will be awarded to the tenderer being asked the question - it just means that the decision has not been made yet; and
- public sector procurement rules and EC Regulations clearly forbid "Dutch Auctions" - where several tenderers are asked in turn to improve their offers or risk losing the contract on cost grounds.

Debriefing

The EC rules require that unsuccessful parties are offered a debrief and it is also encouraged as a matter of policy. The object of the discussion is to help the supplier to find out which areas of his application or tender were particularly good and which parts need improvement - it should help him to submit better work in the future. The Department of Health aim to encourage increased competition as this will improve VFM and result in added value to the Department and its customers. It is also useful for winning tenderers who may still have areas that they need to improve even though their bids were acceptable. The information provided will be an extract from the audit trail created by the procurement about the tenderer's own bid. No information can be given about any other bids as this is commercially confidential. It is not therefore usually possible to make comparative statements such as "your tender did not cover point x as well as company y's did". In addition, the Department has been advised that written debrief information should not be given out because it is only a record of why decisions were made and should not be available to be used for any other reason.

Legal Obligations

The Department attempts to ensure that, if a contractor breaches certain types of legislation, such as anti-discrimination and Health and Safety, it will have a contractual effect as well as being illegal. The Department of Health therefore make this a specific requirement of the Department's Conditions of Contract.

Environmental Issues

These will affect each contract differently. Where possible the Department will draw the bidder's attention to any areas of particular environmental concern relating to the product or service being sought. Although the environment can form only one aspect of the evaluation, credit will be given where bidders show that they have taken any detrimental impact on the environment into account and minimised it as far as possible.

This is a dynamic area and the Department will also be seeking to monitor and decrease negative environmental impacts throughout the term of any contracts formed in line with its Operational Objectives In Respect of Greening Practices.

All information in this guidance is checked and believed to be correct, but cannot be so guaranteed and the publishers shall not be liable for any loss suffered directly or indirectly as a result of its use.