

Expert public procurement consultancy for Buyers and Suppliers at your service



PASS CONSULTANCY

BiP's *Procurement Advice and Support Service (PASS)* provides organisations with access to experts in public procurement practices and procedures, thus helping you develop and deliver effective and efficient procurement. Our team offers a range of services to meet your specific needs. Whichever area you wish evaluated and improved, we have the experts to help.

The *PASS* consultancy's mission is to help you deliver the best in government procurement through:

- Practical solutions to improve procurement performance
- Innovative approaches to knowledge transfer within government
- Joined-up government
- Improved performance indicators
- Strategic direction and performance
- Opportunities offered by e-government
- Capacity to deliver change to meet identified needs
- Continuous improvement of services and challenging poor performance
- Sustainable development within decision-making processes and delivery of services
- EU-compliant processes
- Best practice procurement training

PASS HEALTH CHECK

The *PASS* service can help your organisation examine its current procurement organisational structures, strategies, processes, practices and related strengths and weaknesses. It delivers a detailed *PASS Mark Health Check Outcome Highlight Report (OHR)* that outlines areas of strength as well as those requiring further attention, and provides an outline *Project Initiation Document (PID)* designed to deliver a more effective and efficient tendering process that will help you achieve optimum performance and better value-for-money procurement.

PASS – HELPING YOU MEET KEY OBJECTIVES

The key objective of public procurement professionals is to ensure that the most suitable supplier is selected to provide goods and services on terms which are likely to offer the best value for money. The *PASS* service helps you meet this requirement and deliver contracts that offer best value-for-money terms with suppliers who will execute them efficiently.

PASS TRAINING

Our consultants can provide you with bespoke training packages to suit your needs. Consultancy and training is available for the following: environmental purchasing, partnering, evaluation, e-government, supplier debriefing, UK legal processes and precedents, contract management, EU-compliant tendering and much more.

PASS ONLINE GUIDANCE

The *PASS* service provides online guidances on all aspects of the public procurement process and legal requirements: www.bipsolutions.com/html/briefing.php

PASS – CAPS SERVICE

Introducing *CAPS* – the public sector's guardian through the EU public procurement process, helping you to quickly access in-depth, authoritative EU public procurement procedure assistance. We are now pleased to offer your organisation access to this vast knowledge base as and when required, through subscription to BiP's new *Contract Administration & Process Support (CAPS)* helpline service. The *CAPS* service level agreement aims to answer 99% of your enquiries within one working day and 85% of these within one working hour.

PASS IN-HOUSE PRESENTATIONS

PASS consultancy can provide you with in-house presentations directed to buyer or supplier. Each presentation will be bespoke to your requirements, whether they be with regards to improving your tendering practices or your procurement strategy or processes. Contact: pass@bipsolutions.com

E-PROCUREMENT UNDER THE NEW EU PUBLIC PROCUREMENT DIRECTIVES

PART TWO OF TWO



ELECTRONIC AUCTIONS

Electronic auctions are reiterative processes involving an electronic device that allows tenderers to present new prices and/or new values for some or all elements of their tenders (Articles 1(7) and 1(6)). Electronic auctions constitute a particular step of the awarding stage of the procurement procedure and as such they shall always be preceded by the full evaluation of the tenders received, which will result in a score (notation) that enables the contracting authority to rank the tenders using automatic evaluation methods.

Member States may regulate and limit the resort to e-auctions (Articles 54(1) and 56(1)) but if they are allowed, they must be organised in strict conformity with the requirements of the Directives.

Conditions for the use of electronic auctions

Electronic auctions can be used under most procedures but because they include automatic evaluation, they cannot be used for certain service contracts and certain works contracts having as their subject matter intellectual performances, such as the design of works (Articles 1(7) second indent and 1(6)).

The e-auction can be based either solely on prices (whether award criteria is the lowest price or the most advantageous tender) or on prices and/or new values for other features that are indicated in the specification. The features have to be quantifiable and expressed in figures. 'Second-price' auctions, where the auction is won by the lowest price bidder but at the price of the second lowest bidder, are not allowed.

The e-auction must be based on the award criteria published in the contract notice or tender documents. What can be offered in the auction are new technical characteristics in terms of values referring to features that can be expressed in figures or percentages, and/or new prices. The criteria and their relative weighting stay the same; before the start of the auction any range must be reduced to a specific value.

Contracting authorities have to announce their intention to hold e-auctions in the contract notice (Articles 54(3) and 56(3)). Once the e-auction has been announced it becomes mandatory to hold it, unless only one valid tender is received.

Information to be provided in the specification

The specification shall indicate those features whose values will be the subject of the auction, information about the electronic equipment used and the arrangements and technical specifications for connection (Articles 54(3) and 56(3)).

It shall also contain the main rules of the auction, in particular:

- whether there are any limits on the new values which may be submitted (limitations are inherent to the technical characteristics indicated in the specification which cannot be modified);
- what information will be made available to the tenderers in the course of the auction, and the relevant timetable (the minimum requirement should be to ensure equal treatment by providing the same information to all participants at the same time);
- relevant information on the process; and
- the bidding conditions (in particular the minimum amount by which a bid must be higher or lower to qualify as a new bid).

Finally the specification should also indicate how the invitations to auction will be sent.

Information to be provided in the invitation to submit new prices/values

A full evaluation of the tenders based on the award criteria published in the notice or in the specification and their relative weighting must precede the auction. At the end of the full initial evaluation, all tenderers who have submitted admissible tenders shall be invited simultaneously to submit new prices and/or values (Articles 54(4) and 56(4)). Rejected tenderers shall be informed in conformity with Articles 41(2) and 49(2).

Invitations shall be sent individually by electronic means to each admissible tenderer.

The use of email with acknowledgement of receipt and compliance with the requirement of traceability can provide the necessary certainty. In comparison, the posting of the invitation on an internet site is not sufficient.

The invitation shall indicate the result of the full initial evaluation (Articles 54(5) and 56(5)) by communicating the notation (ie the number of points allocated to the individual tenderer). There is no obligation to communicate at this stage the precise ranking (ie the relative position of the individual tenderer compared to the other participants) so long as this is done when the auction starts.

The invitation shall also provide the mathematical formula (if it has not already been announced in the specification) which will be used to determine new rankings on the basis of new values submitted. The formula shall incorporate the weighting of all the criteria used to determine the most advantageous tender. To this purpose any ranges must be reduced to a specified value beforehand and a separate formula provided for each variant. Making the formula available to interested parties constitutes the minimal safeguard against potential distortions in the application of the award criteria.

The invitation shall also contain all the details of the auction:

- the date and time of the start of the auction (no sooner than two working days after the date the invitations are sent – see Articles 54(4) and 56(4));
- how and when the auction will close (Articles 54(7) and 56(4)); and
- the timetable for each phase of the auction (Articles 54(7) and 56(7)).

Finally the invitation shall indicate all relevant information concerning individual connection to the electronic equipment being used (Articles 54(4) and 56(4)).



Thus, while the specification indicates the general rules for the auction, the invitation should state practical details that could not be or were not fixed beforehand. For example, if the specification indicates the general number and duration of rounds to be completed before the end of the auction, the invitation should indicate the exact time and date for each round.

Auction device and running of the auction

Contracting authorities shall communicate instantaneously to all tenderers sufficient information to enable them to ascertain their relative ranking at any moment (Articles 54(6) and 56(6)). The ranking shall be provided at least as from the beginning of the auction but the contracting authority may also communicate this information before it starts.

Contracting authorities shall not disclose the identities of the tenderers at any point in the auction. Apart from these mandatory requirements contracting authorities may choose to communicate other information provided this was stated in the specification, eg the number of participants, prices or values provided by all other participants or only by some of them, their relative ranking, etc.

The rules of the auction may change if this possibility has been announced and precisely specified in the specification. If the device for running the auction is technically incapable of dealing with the number of admissible tenders, the auction must be postponed and participants must be informed. If the device runs out of capacity during the auction, it must likewise be cancelled and postponed. In case of system failure it is the responsibility of the contracting authority to decide if either the entire auction or one of its phases must be postponed to a later date; only if it is possible to provide timely and appropriate information to each participant can extension of deadlines and resubmission of bids be envisaged. Secure transmission of data, confidentiality of communication, authentication and identification of participants, as well as traceability of communications and of processing/calculations must all be ensured appropriately.

The contracting authority could in theory require advanced signatures for each bid where this is technically feasible; however, at this stage the process takes place in a closed environment and this appears to be neither required nor necessary.

Incorrect or unacceptable entries should be registered for reasons of traceability but not taken into account and appropriate feedback provided to the participants.

If everything has been correctly organised there is no need to foresee any communications during the auction other than the submission of prices/values. In any case no human intervention by the contracting authority side should be allowed during the running of the auction. In case of errors, violations of the rules or abnormal behaviour, traceability shall ensure that events can be reconstituted.

Contracting authorities must organise the closure of the auction by choosing one of the options given (Articles 54(7) and 56(7)) or by combining them:

- on the date and time fixed in the invitation;
- when no more new prices/values are received after the time indicated in the invitation has elapsed; or
- when the number of phases fixed in the invitation has been completed.

The contracting authority must award the contract to the best tender following the auction, according to the criteria of the specification. This does not impede the application of Articles 55 and 57 on abnormally low tenders. Contracting authorities may not have improper recourse to e-auctions nor may they use them to prevent, restrict or distort competition or to change the subject matter of the contract as indicated in the contract notice and in the specification (Articles 54(7) and 56(9)).

DYNAMIC PURCHASING SYSTEMS

By deciding to resort to a dynamic purchasing system (DPS), contracting authorities place themselves and the purchasing process in

an entirely electronic context. This means contracting authorities shall use solely electronic means to set up the DPS and to award the contracts, according to Articles 33 and 15.

Member States may regulate and limit the resort to DPS (Articles 33(1) and 15(1)) but if they are allowed, they must be organised in strict conformity with the requirements of the Directives.

Contracting authorities may decide to set up a DPS in order to purchase over several years (maximum four, except in duly justified cases) commonly used goods or services which are generally available on the market (ie off-the shelf products for which the evaluation can be made quickly).

The DPS is an open electronic multi-supplier system, which allows for repetitive purchases while granting tenderers the possibility to join throughout its duration. To join the DPS, economic operators shall satisfy the selection criteria and submit an indicative tender which is evaluated for compliance with the specification. Based on their indicative tender, which may be renewed at any time during the DPS life cycle, admitted economic operators can then submit tenders for the specific contracts advertised in a simplified procedure.

No charges may be billed to the interested economic operators or to parties to the DPS (Articles 33(7) and 15(7)) and the rules of the open procedures must be followed during all steps necessary to set up, manage and award each single contract under the DPS (Articles 33(2) and 15(2)).

Admission to the DPS

To set up the DPS contracting authorities have to publish a contract notice that must indicate that a DPS is involved, how long it will last and the internet address at which the specification and any additional documents may be consulted. Direct and full access to the specification and any additional documents shall be made available on publication of the notice and remain available as long as the DPS lasts. Award criteria have to be indicated already at this stage even if they can be formulated more precisely later in the invitation to tender. The possible use of electronic auctions shall also be indicated at this stage.

The specification must describe the nature of the purchases envisaged as well as the necessary information concerning the DPS, the electronic equipment and the technical connection arrangements and specifications used.

To be admitted to the DPS tenderers shall satisfy the selection criteria and submit an indicative tender which complies with the specification. At any time during the entire period of validity of the DPS indicative tenders can be submitted and evaluated within a maximum of 15 days. (The period for evaluation can be extended in which case no invitation to tender may be issued in the meantime.)

Upon setting-up the DPS, the time limit for submitting the indicative tenders is that of the open procedure (which may be shortened because of the electronic transmission of the contract notice accompanied by the unrestricted and full and direct access to the specification). However, as the evaluation of indicative tenders is continuous against the selection criteria and the specification of the DPS, they can be opened progressively as they arrive. In this case, therefore, the device for the receipt of indicative tenders does not need to comply with the requirements of Annexes X and XX relating to the date for opening tenders.

Opening for competition of contracts to be awarded under the DPS

Each time contracting authorities want to award a contract under a DPS, they must publish a simplified contract notice inviting all interested economic operators (both those which are already part of the DPS and those who are not) to submit an indicative tender. The time limit for this may not be less than 15 days from the date the simplified notice is sent, to allow new tenderers to join the DPS.



All indicative tenders received by that deadline, either received in response to the simplified contract notice, or previously submitted, shall be evaluated before issuing the invitations to tender.

After evaluating all indicative tenders, contracting authorities send invitations to tender to all the admitted tenderers (both those already in the DPS and those newcomers who satisfy the selection criteria and have submitted indicative tenders which comply with the specification) and set an appropriate deadline for the submission of tenders. At this stage, the award criteria which were already stated in the contract notice setting up the DPS may be formulated more precisely.

After full evaluation of the tenders received, contracting authorities have two possibilities to proceed: either they award the contract to the tenderer who submitted the best tender on the basis of the criteria set out in the contract notice setting up the DPS or on the basis of the more precisely formulated criteria indicated in the invitation to tender; or, if they had announced in the contract notice setting up the DPS that they would run an auction, they determine the admissible tenders and proceed with the auction by sending the invitations to auction according to Article 54(4). All the rules related to electronic auctions are applicable to auctions held in the context of a DPS.

The result of the award of contracts based on the DPS shall be published. To this end, contracting authorities either send each contract award notice to the Publications Office within 48 days from the award of each contract, or they group such notices on a quarterly basis and send them within 48 days of the end of each quarter.

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