

Thousands of companies have benefited from attending BiP's tendering events – Now you have direct access to that tendering expertise.

The PASS Mark Health Check considers your company's current organisational structures, strategies, processes, practices and related strengths and weaknesses in relation to public sector procurement. It delivers a detailed PASS Mark Health Check Outcome Highlight Report (OHR) that outlines your areas of strength as well as those requiring further attention, and provides an outline Project Initiation Document (PID) designed to deliver your company a more effective and efficient tendering process that will help you achieve even greater tendering success.

After the PASS Mark Health Check is completed and your OHR is delivered, you are free to choose whether to progress with the recommendations it contains and implement the next stage with the support of the PASS team, or to implement the proposals yourself without making further use of PASS. The choice is entirely yours.

The PASS Mark Health Check reviews your:

- resources for identifying tendering opportunities
- knowledge of public sector tendering legislation
- tendering process controls
- practices for responding to "Expressions of Interest"
- weaknesses in any of your current mandatory policies (health and safety/environment/equal opportunities, etc)
- presentation of tender response documentation
- knowledge of your clients' processes and practices, including their evaluation techniques
- understanding of when and how to address government initiatives



The PASS Mark Health Check is a process-based evaluation technique that helps identify how your company can develop more effective processes when tendering for public sector contracts.

For further information on the PASS service, contact our Customer Services Team on 0845 270 7055, email [pass@bipsolutions.com](mailto:pass@bipsolutions.com) or visit [www.bipsolutions.com/pass/](http://www.bipsolutions.com/pass/)

## TENDERING TO THE WELSH DEVELOPMENT AGENCY

**T**he Welsh Development Agency (WDA) is a major purchaser of goods and services which it needs in order to carry out the actions it undertakes in developing the Welsh economy. This encompasses a broad variety of activities, including the provision of services to business in Wales and meeting its own organisational needs.

In common with other public sector organisations in the UK, the WDA generally has to competitively procure all the goods and services it requires. In Wales, public sector procurement is subject to regulation and guidance from the Welsh Assembly Government and central government and to the requirements of the European Commission.

In order to achieve Value for Money competitive tendering must normally be followed by adequate recording and, unless written approval has been obtained from the Chief Executive or persons appointed by him for single tender action, tendering must be carried out as below. All amounts shown in this section are excluding VAT. For procurements in foreign currencies, the exchange rate to be used is that prevailing at the business planning stage.

The Agency aims to observe the highest standards of impartiality, integrity and objectivity in relation to the stewardship of public funds. Its procurement policies are therefore aimed at achieving best Value for Money and fairness in decision making. The number of quotations that are required is based on the value of the order which is to be placed.

With the exception of purchases of small value (below £750) the Agency obtains competitive quotations for all procurements (with special arrangements in place to cover the rare situations where this may not be practical). For purchases up to £7000 two quotations are obtained; for between £7000 and £50,000 three written quotations; and for purchases above £50,000 the Agency uses its formal tendering procedure, which is detailed below. In addition, some higher value purchases are subject to European Procurement Rules (see Guidance on European Procurement below).

### FORMAL TENDERING PROCEDURE

Where the Agency undertakes a formal tendering exercise there are a number of specific requirements which must be met by prospective tenderers.



These are designed to ensure fairness throughout the process:

- Tenders must be submitted in sealed envelopes, addressed to the Agency Secretary or Deputy Agency Secretary by a specified time (usually 12pm) and date (usually a Wednesday). The envelopes must not indicate who has submitted the tender, but they should identify the contract concerned.
- The Agency Secretary or person appointed by him opens the tenders in the presence of two witnesses, and the details are recorded. Tenders are then sent to the department concerned to be analysed for quality and cost, and a decision is subsequently made on the winning tender.
- Unsuccessful tenderers are notified and, in the case of larger value procurements, offered the opportunity of a debriefing meeting.

### MAIN THRESHOLDS

#### Contracts exceeding £50,000

At least three suitable organisations or individuals must provide tenders (so more than three may need to be invited) and the basis of selection should be recorded. In the event that fewer than three tenders are received, re-tendering will rarely be necessary, but any ensuing contract requires full justification and the approval of the Executive Director – Finance. If tenders are to be sought from only two prospective tenderers this requires prior approval from the Executive Director – Finance (also from the Welsh Assembly Government, if the value of the procurement is expected to exceed £100,000). European Procurement Rules also apply for project values which exceed the thresholds below.

### Contracts between £7000 and £50,000

A minimum of three competitive written quotations must be obtained and retained, and where this is impractical, formal written dispensation must be obtained from the relevant member of the Executive Management Team, or from the Chief Accountant if under £10,000.

### Contracts between £750 and £7000

At least two quotations must be received and recorded (in the case of estate maintenance under £2500 one will suffice) save where formal written dispensation has been obtained from the relevant member of the Executive Management Team or the Chief Accountant.

### Contracts below £750

These may be awarded by delegated authority holders from appropriate suppliers without competitive quotations.

### Emergency Expenditures

These may be made by delegated authority holders without competitive tendering or quotation up to £4000 (up to £10,000 with prior approval from the Executive Director – Finance) and up to £50,000 by the heads of Land Reclamation Departments for land reclamation emergencies, provided that their justification is reported to the Chief Executive within two working days.

## GENERAL RULES

### Contract Splitting and Tender Invitations

In seeking tenders, quotations, etc delegated authority holders must not artificially split purchases so as to avoid applying the requirements contained in the tendering procedures.

### Choice of Winning Tender

The choice of the winning tender must be documented and will be decided on a Value for Money basis. For purchasing decisions an analysis of Value for Money in this context is determined by fitness for purpose (quality), deliverability and availability against price, whole-life costs of ownership (ie maintenance or running costs), on-costs to the Agency, and the cost of the procurement process itself (mainly Agency staff time).

Generally, the cheapest acceptable tender will be selected, but this will not be the case if, in the Agency's judgement, the higher quality of another tender exceeds the price differential.

### Single Tender Contract

If, for good reasons – which must be documented – single tender action is necessary, this needs to be authorised prior to the placing of any contract at the appropriate level.

Proposed single tender contracts with an expected value below £10,000 may be authorised by the Chief Accountant, those below

£50,000 by the relevant member of the Executive Management Team, and those below £100,000 by the Chief Executive or the Executive Director – Finance.

Proposed single tender contracts with an expected value in excess of £100,000 must be approved by the Agency's Board, after which the relevant member of the Executive Management Team must send a request for approval to the Welsh Assembly Government, and obtain a satisfactory response before proceeding further.

### Subcontracting and Tendering

When work is effectively subcontracted to third parties, who in turn contract others to do the work (eg local authorities engaging companies to carry out land reclamation work), the Agency's Project Manager should seek reassurance that the arrangements for local authorities' procurement broadly comply with the Agency's aim to achieve Value for Money through competitive tendering wherever possible. If they are not satisfied that the arrangements will achieve Value for Money, Agency support should be declined. In some cases it is understood that there is no alternative to in house services by local authorities (though the Local Authority Standing Orders should be followed). Single tender actions in such cases are not governed by the above requirements.

### Material Change

In the event that there is a material change in the basis on which a Project was tendered, in the opinion of the appropriate delegated, eg type or level of service to be provided, then re-tendering will be required.

### Tender Invitations

- The Agency determines what is required. They then explore the options, and draw up a specification of what is needed, where it is to be delivered and when.
  - If the anticipated cost of the contract exceeds the European Union limits, the Agency will follow the procedure set out in Guidance on European Procurement below.
  - The Agency will select in a fair and defensible way a sufficient number of suitably experienced and qualified suppliers to invite. For large or complex contracts, they will carry out a supplier appraisal pre qualification exercise, including financial vetting by the Funding Department.
  - Invitations to tender will usually comprise the following sections:
    - a short summary of the Agency's activities; so that the procurement can be seen in an Agency context (perhaps including a copy of the latest annual report)
    - instructions for the return of tenders
    - a detailed specification of what is required
    - the form of the tender required to seek details of how the tenderer would set about the work, fees, etc
    - notification that the Agency's standard terms and conditions will apply to any contract, where applicable
    - a reservation clause such as "The Agency does not bind itself to accept any or all of the tenders submitted in response to this enquiry"
- All tender invitations will give a clear specification of the project and defined parameters for the response, the performance criteria, and the selection procedure.
- Instructions to tenderers will clearly set out to whom they should send their quote/tender, and provide a deadline date. Tenderers in Wales should also be advised that they may respond either in English or in Welsh.
  - Specifications will not be so prescriptive as to stifle innovative proposals from tenderers. They should set out clearly and concisely what is required and any performance requirements. They should not discriminate, eg by nationality.
  - All tenders received will be analysed for quality and cost, and a written conclusion made on the respective merits of all tenders received, with a recommendation on the winning tender. This will be endorsed by the delegated authority holder.
  - Unsuccessful tenderers will be notified by letter, or for procurements below £25,000 by letter, email, telephone or facsimile, and a record kept of the communications.



## FURTHER DETAILED GUIDANCE ON THESE PROCEDURES

### Single and Restricted Tenders

Single tender contracts are those which have been procured by approaching one organisation or individual only. Restricted tender contracts are either where only two prospective suppliers are invited to tender/quote, or when three or more are invited to tender/quote but only one or two do so. All requests for approval of restricted tender contracts must confirm that the proposed supplier's tender represents acceptable Value for Money and that any re-tendering exercise is unlikely to produce a better deal for the Agency.

### Consultants

Consultants operating professional standard scale charges (eg architects) may be engaged without competitive tendering, up to a value of £10,000, provided that the scale charges have prior approval of a member of the Executive Management Team.

### Information Systems

Separate arrangements apply for the procurement of computer and telecommunications equipment, software and services by the Information Systems Department (ISD) through the Office of Government Commerce schemes known as S Cat and G Cat. These have the agreement of HM Treasury.

### Formal Tendering

This procedure applies to procurements in excess of £50,000 in value.

Tenders should be submitted in sealed envelopes, addressed to the Agency Secretary or Deputy Agency Secretary by a specified time (usually 12pm) and date (usually a Wednesday, unless agreed otherwise). The envelopes should not indicate who has submitted the tender, but they must identify the contract concerned. The Agency Secretary or Deputy Agency Secretary should be informed in writing by way of a Tender Proforma (obtainable from the Agency Secretary) at least a week beforehand of the tenderers' names and the date/time deadline. The Agency Secretary, or person appointed by him/her, opens the tenders and records the details on the Tender Proforma, signed by him/her and two witnesses. The Agency Secretary or Deputy Agency Secretary then sends a copy of the proforma and the tender documents to the department/division concerned. Arrangements for local tender opening require the approval of the Agency Secretary.

### Finance Wales plc

The above tendering arrangements also apply to Finance Wales plc and its subsidiaries.

## GUIDANCE ON EUROPEAN PROCUREMENT

The relevant types of contract covered by the European Procurement Directives are:

- Public Works general building and civil engineering activities, including the demolition or construction of buildings (residential and non residential) and the provision of specific building or engineering services (eg waterproofing or insulation work, or the installation of fixtures and fittings, eg heating systems).
- Public Supplies the buying, hiring or leasing of goods (including their siting and installation). If the contract includes the provision of a service, then this Directive applies only if the cost of goods (plus siting and installation, if any) is greater than or equal to the value of the services. If separate contracts are placed for the supply of one type of goods, the value of the contracts is aggregated over a period of 12 months for the purpose of determining whether thresholds (see below) are exceeded.

- Public Services any contract in writing covering services and which is not covered by any of the other Directives (with certain exceptions, eg contracts of employment). If a contract is 'mixed' (ie does not relate exclusively to the provision of services) and the services element exceeds 50% of the contract's value, then the contract should be covered by the Services Directive except as explained in (b) above. Less demanding rules apply to Part B as opposed to Part A services (the Compliance Officers hold lists of these).

The threshold limits, the equaling or exceeding of which bring the Directives into effect, are:

Type of Contract	Special Drawing Rights	Value in sterling
(a) Works	5,000,000	£3,861,932*
(b) Supplies	200,000	£154,477
(c) Services	200,000	£154,477**

\* For subsidised works contracts the threshold is £3,093,491 (exc.VAT)

\*\* For residual (Part B) services, research and development services, certain types of telecommunication services and subsidised services contracts the threshold is £123,740 (exc.VAT)

NB: limit is the contract value excluding VAT.

### Aggregation

In determining whether the threshold has been reached the rules require aggregation of: the estimated value of separate contracts for meeting a single requirement; and in particular defined circumstances, the consideration paid or expected to be paid when a series of contracts or a renewable contract is entered into for supplies of the same type.

Tendering Procedures are specified in the Directives as follows:

- Open – a notice inviting all interested contractors/consultants to tender. All contractors/consultants who respond are then entitled to participate in the tender process.
- Restricted – contractors/consultants are selected to tender from those who have expressed an interest following a notice in the Official Journal of the European Union (OJEU).
- Negotiated – only available in certain strictly limited circumstances where an authority negotiates directly with one or more contractors/consultants.

Notification in the OJEU is required:

- of any relevant contract as soon as possible after the Agency has decided to put it out for tender.
- prior to the beginning of each financial year of all the relevant services, supplies and works contracts which the Agency considers it may put out to tender in the following financial year.

Selection criteria are laid down in the Directives for the application of technical specifications in contracts, and also for objective selection of the contractor/consultant.

The main rule is that the contract must be awarded on the basis of the lowest or most economically advantageous price to the Agency (ie Value for Money as defined above).

Records of the selection process must be kept by the relevant employees of the Agency because the European Commission can request this information, and an unsuccessful contractor/consultant can request details of why the contract was not awarded to them as well as the name of the successful contractor/consultant. Any such request will be passed immediately to the Head of Compliance & Audit who will supervise the reply.

## FURTHER INFORMATION

Further information on the Welsh Development Agency can be found at [www.wda.co.uk](http://www.wda.co.uk)

NOTE: This guidance has been developed from the Welsh Development Agency's document 'WDA Tendering Procedures.'