Implementing e-tendering

OGC

Introduction

This document sets out some of the benefits which can be achieved for both contracting authorities and suppliers from the effective use of electronic tendering (e-tendering) in public procurement. It also offers guidance on implementing e-tendering solutions.

The government e-procurement policy, published by OGC in October 2009,[1] discusses benefits to be achieved from the use of e-procurement. E-tendering is one element of electronic procurement, and this e-tendering guidance builds on and supplements that policy document.

This guidance also supports the Access for All programme, which was set up to implement the recommendations in the Glover Committee report *Accelerating the SME Economic Engine: through transparent, simple and strategic procurement,* published in November 2008. The Glover Committee review was established to inquire into the barriers small firms face in competing for public sector contracts and to make recommendations on the necessary action to reduce these barriers. The Glover Committee report recommended the use of e-tendering by public procurers as a means of reducing barriers to SMEs.

The European Union also has targets to increase the use of e-procurement, including e-tendering, as part of the drive to effectively use electronic government for the benefit of EU citizens.

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[1] http://www.ogc.gov.uk/documents/e-procurement_policy_oct_09.pdf

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Section 1

Background

Accelerating the SME Economic Engine: through transparent, simple and strategic procurement published in November 2008 by the Glover Review recommended:

"Government should issue all tender documentation electronically by 2010 and this should be kept as brief as possible. Businesses should be permitted to tender electronically for all public sector contracts by 2010; no "paper only" tenders should be required after this date, with an ambition for all tenders to be electronic by 2012."

Purpose of this guidance

To meet the requirements of the Glover report and the i2010 Action Plan,[2] government bodies and other public sector organisations which do not currently make full use of e-tendering should move to do so as soon as possible. The purpose of this guidance is to help such organisations with using e-tendering. It provides a brief description of e-tendering and its benefits, highlights the issues which need to be considered when using e-tendering solutions, and gives pointers to further sources of information.

Public bodies will further wish to be aware of the Government's eProcurement policy, published on the OGC website from October 2009. Links to this and other more detailed sources of information are provided.

EU i2010 Action Plan

These recommendations are also consistent with the targets of the European i2010 *eGovernment Action Plan; Accelerating eGovernment in Europe for the Benefit of All* which includes a commitment by Member States to give

"all public administrations across Europe the capability of carrying out 100%

of their procurement electronically (where legally permissible) and to ensuring that at least 50% of public procurement above the EC threshold is carried out electronically by 2010".

This action plan is aimed particularly at "pre-award" procurement activity, of which tendering is a crucial part. (Achievement of these targets is being measured by the EU through Member States' status on a range of e-procurement activities).

[2] http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2006&nu_doc=173

Section 2

What is electronic tendering?

At it simplest, e-tendering provides suppliers with electronic access to Invitations to Tender (ITT) and associated documents and permits suppliers to securely lodge their completed tenders electronically. These tenders are then released to authorised staff in the procuring organisation after the closing date for the submission of tenders. (This is the functionality which is specifically covered in the Glover recommendation).

However, e-tendering solutions typically go further than this including:

- tools to assist contract notice creation
- tools to assist collaborative working in producing ITTs and associated documents
- a means of receiving requests for clarification
- the sending of clarification or additional information to all tenderers
- evaluation tools to assist the management and control of the tender evaluation process
- informing suppliers of the results of the tender and providing feedback.

For the purposes of this guidance, an e-tendering service will be assumed to include secure hosting of electronic tender-boxes and possibly other related services, as well as the software solution.

E-tendering solutions are often available as part of a wider set of electronic sourcing offerings, which may include tools such as:

- requirement development
- advertising
- supplier selection and pre-qualification
- electronic auctions
- contract management
- vendor management.

Public bodies must consider the application of the public procurement rules in procuring the e-tendering solution or service itself.

It may seem an obvious statement, but e-tendering should only be used where tendering is required; procurers should always check if a suitable collaborative procurement arrangement already exists which offers value for money.

Section 3

Benefits

Improved procurement efficiency and lower cost

Electronic procurement, including e-tendering, can help to increase efficiency through process improvements and also to achieve improved VFM from goods and services purchased. In the current economic climate, with public sector budgets under pressure and strong expectations to maximise benefits from every pound of expenditure, the advantages of e-procurement are more pertinent than ever. E-procurement is only one element of an effective, structured procurement process carried out by skilled practitioners. If used properly, it can provide significant benefits in increased effectiveness, efficiency, and savings.

Benefits for Public Bodies

E-tendering can provide a number of potential benefits for procurers.

Reductions in:

- tender cycle times
- timescales under the public procurement Regulations
- time and labour costs of distributing tender documents
- time and cost of receipt, recording and distribution of tender responses.

Improvements in:

- speed and accuracy of prequalification and evaluation (depending on the functionality of the e-tendering solution used)
- speed and ease of response to queries from all suppliers during the tendering process
- transparency and integrity of audit trail
- provision of management information
- storage and archiving of tender documentation.

Help with:

- compliance with European procurement rules
- management of tender deadlines.

Early feedback from public bodies that use, or plan to use, e-tendering indicate that a majority found the overall benefits exceeded expectations and that some or substantial benefit has been achieved through:

- reduced paperwork
- easier despatch of documents
- easier compliance with processes
- improved audit trail
- increased process speed and wider supplier base.

OGC aims to provide a more detailed analysis based on a wider sample, when this guidance is updated.

Benefits for suppliers

E-tendering is also beneficial to suppliers.

Benefits claimed mirror those for purchasing organisations and include:

- reduced tendering costs
- reduced time on completing tender responses
- reduced overheads on printing, copying, collating and postage/courier services
- potentially longer lead times
- online access to all tender documents
- easier and swifter response to queries during the tender process
- unnecessary reliance on postal or courier services.

Business case and quantifying benefits

In 2004, NePP published detailed guidance on quantifying and realising the benefits from the use of e-tendering, (concentrating in particular on process savings). It was written for local government but it continues to offer useful ideas for other public sector organisations.

http://www.localtgov.org.uk/webfiles/NePP/Guidance/8.0%20e-Sourcing/8.2.1.8.pdf

The suggested measures for capturing and measuring the financial benefits were chosen for their robustness and ease of measurement; of course each public body must consider whether these are relevant and appropriate. The measures include:

- time savings in the tender process
- reductions in advertising costs
- reductions in overhead costs (including printing, posting etc)
- process compliance ie, what proportion of tenders received go through the e-tendering system.

The NePP guidance also recognises that there may be further, but less tangible, benefits. In particular, it is likely that significant savings can be achieved if e-tendering is used in conjunction with other e-sourcing tools such as e-evaluation.

E-tendering and e-procurement solution and service providers will often be able to provide information and advice on achieving and measuring benefits from e-tendering. Of course, they will wish to promote their own particular service but should be asked to provide evidence of specific savings achieved by their customers.

The business model will depend on the circumstances of the case, but for hosted e-tendering the costs will typically be borne by the purchaser, as a subscription service. Usually there is no charge to tenderers for using e-tendering solutions.

Section 4

Implementation

How should e-tendering be undertaken?

E-tendering can be relatively straightforward to implement, as the processes are similar to a traditional paper-based process. It can be a self-contained set of activities, which does not require substantial changes to procurement processes or alterations and upgrades to other systems. Where e-tendering is used as part of a wider e-sourcing solution it can also be implemented relatively easily.

In order to meet legislative requirements governing public sector tendering, and to demonstrate probity of the tendering process, public sector bodies are advised to use e-tendering solutions and services specifically designed for the purpose.

There is a range of providers, some of which offer a "hosted" service which can be readily accessed by procurers and tenderers. In many cases these e-tendering solutions are available as part of a wider "e-sourcing" or e-procurement solution. Of course, public bodies must take into account the public procurement rules in acquiring the e-sourcing solution or service itself. A hosted service can be used without acquiring additional IT infrastructure in-house thus reducing the lead time to implementation (but of course the time taken to procure a solution or service will need to be taken into account).

Solution providers who offer a hosted service may be able to offer this through a branded "portal" which is specific to the purchasing organisation. Many small and medium sized purchasing organisations are likely to find a hosted service offers the easiest solution.

Migrating to all- electronic tendering

In order to streamline processes and gain the maximum advantage from e-tendering, some contracting authorities may wish to undertake all their tenders electronically. This will save the costs of running electronic and paper-based tendering systems in parallel, and can enable the use of electronic evaluation and storage for all tenders. The Glover Committee report recommends that all tenders should be undertaken electronically by 2012, the expectation being that this will be beneficial to suppliers as well as to purchasers.

Contracting authorities should carefully consider the following issues in order to achieve full acceptance and migration to e-tendering:

- ensuring non-discrimination, including taking into account bidders who may have religious or moral scruples about electronic communications
- giving plenty of notice and taking account of any likely problems
- providing bidders with access to suitable information and advice
- contingency in the event of problems with electronic transmission
- ensuring that the e-tendering solution or service is accessible and user friendly.

Attention to these points will be particularly important if a contracting authority intends to use only e-tendering. In such cases it would be prudent for contracting authorities to take specific legal advice. However if approached carefully, these matters should not present insurmountable obstacles and there are some public bodies which have already successfully moved to all-electronic tendering.

Section 5

Legal considerations

Public procurement rules and legislative requirements

Public sector procurers will be aware that many public contracts are governed by the Public Contract Regulations 2006, which implement the Directive 2004/18/EC.

The Regulations do not apply to contracts below the applicable "thresholds", nor do they apply in full to Part B service contracts. However, the European Treaty requirements of transparency, non-discrimination and equal treatment apply to all procurements including those below the threshold and Part B services. E-tendering solutions may be used for contracts both above and below the threshold and e-tendering and e-procurement solutions will need to demonstrably meet these principles.

In general, e-procurement, including e-tendering, is subject to the same requirements under the Regulations as procurement activities carried out by traditional paper-based methods. The Regulations require that the integrity and confidentiality of tenders and requests to participate, are maintained and that these documents will only be opened after the due time; this applies irrespective of the means of communication, and covers paper-based processes as well as electronic means of communication (see Regulation 44(3)).

Technical requirements under the public procurement rules

The Regulations also contain some specific requirements on the use of electronic means of communication and where tenders and expressions of interest are required to be transmitted by electronic means. These can be found in Regulation 44 (4) – (6). In summary, the contracting authority must ensure that:

1. The equipment used is non-discriminatory, generally available, and interoperable with IT technology in general use.
2. Information about the equipment, including software and encryption, is available to all interested suppliers.
3. The date and time of tenders and requests to participate are determined precisely; material is not accessed before the due date and time; only authorised persons can access the material; any unauthorised access is detected; and opening of tenders requires more than one authorised person.
4. The rules on electronic signatures are complied with (to the extent applicable).

On the first requirement, while there is no precise definition of terms such as "generally available" or "IT technology in general use", we consider that this can be achieved through the use of password and/or token-protected access to a secure internet site. This will normally only require the supplier to have access to the internet from a typical desktop or notebook PC, and they will be able to access and complete response documents in widely accessible formats, such as, Word, jpeg, tif, Adobe PDF).

Hosted e-tendering solutions typically require access to only modest IT, such as is likely to be available to the great majority of public bodies and IT-enabled businesses, including SMEs.

For example, one e-tendering service provider quotes the following minimum requirements:

- Internet Explorer version 5 or above/Netscape version 6 and above
- Windows 98 or above
- The ability to access sites on the https: secure protocol.

Contracting authorities are recommended not to provide documents only accessible in the latest or recent versions of software which may not yet be "generally used".

Once a contracting authority has established what generally available and interoperable system it will be using, it must inform would-be bidders of this, including the details of any encryption, in order to satisfy the second requirement above.

It is the third requirement in particular which will require a specifically-designed e-tendering solution (so for example, simple email attachments will not be sufficient). Public bodies should ensure that any e-tendering solution used meets these requirements contained in the Regulations.

Where solutions and tender boxes are hosted in-house, public bodies should ensure that their IT systems are sufficiently robust to meet these requirements ("in-house" in this context includes services run by an outsourced service provider, as well as those cases where services are provided by the public body's own staff).

Legal requirements to keep suppliers informed

Recent UK and European case law makes it clear that suppliers are entitled to know, in advance, the detailed scoring and weightings scheme for tenders, for all stages of the procurement.

There is increasing pressure to ensure that marking and scoring schemes, and results, are available to suppliers. The 2007 "Remedies Directive" (2007/66), which affects the requirements to inform tenderers and other candidates, has been transposed into UK Regulations with effect from 20 December 2009. Under the Regulations, bidders must be informed of the outcome of the tender, and should be informed of the scores of their tenders as well as those of the winning tender(s). Unsuccessful bidders must also be informed as to why their bid was unsuccessful, and contracting authorities must inform them of the "characteristics and relative advantages" of the winning bidder. (Detailed guidance on the new "Remedies" rules can be found on the OGC website:
http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_guidance_on_the_UK_regulations.asp)

It is recommended that tender documents be kept as brief as possible. Given the wide differences in complexity and nature of requirements, it is not practicable to state prescriptively how this is to be achieved. However, a generally applicable comment, supported by findings from the OGC Supplier Feedback Service, is that purchasers should be clear and unambiguous about the information they are seeking from tenderers, in what format it is to be presented and the details of how that information will be assessed. Reasonable queries from suppliers during the tender process should be answered helpfully and quickly and all tenderers kept informed.

E-tendering solutions which incorporate tender development and evaluation tools can assist in meeting these requirements to keep suppliers informed both before and after tenders have been received.

eTendering opportunities

Rules applying to sub-threshold procurement

While the Regulations referred to above do not explicitly apply to "sub-threshold" tenders, the general EC Treaty principles of equal treatment, non-discrimination and transparency continue to apply and therefore OGC suggests that all e-tendering complies with the requirements set out in the Regulations.

The basic requirements for availability, security and data integrity discussed above must apply to all e-tendering if it is to:

- meet the needs and gain the confidence of suppliers and buyers
- be acceptable to auditors
- demonstrate financial and contractual probity.

It is also important that e-tendering avoids opportunity for potential challenge by disappointed bidders. And of course in most cases the same e-tendering solution will be used for **both** above and below-threshold tenders.

As mentioned above hosted solutions which are designed to achieve appropriate levels of integrity, security and availability can be accessed without significant costs and complexity for bidders. OGC therefore recommends that public bodies consider ensuring that *any* e-tendering solution used, whether for "above or below threshold" tenders, complies with these requirements.

Section 6

e-tendering solutions and services

Most contracting authorities will not need to look beyond a "Commercial Off the Shelf" (COTS) e-tendering solution; generally, bespoke or heavily customised solutions should not be necessary.

Where a public body regularly undertakes highly complex procurements with commensurately complex evaluation processes, it might be that a specific bespoke solution will need to be considered and some public bodies have chosen to develop their own solution.

Public procurement rules apply to the acquisition of e-tendering solutions or services, (whether or not as part of a wider e-sourcing or e-procurement solution) and if above the applicable "threshold", the procurement process must comply with the public procurement Regulations. Even if the value falls below the threshold, Treaty principles of transparency, equal treatment and non-discrimination apply, and it is recommended that there is a proportionate degree of advertising (unless a framework is used).

The use of an existing, compliant framework may be advantageous for many contracting authorities. E-tendering and other e-sourcing services may be obtained through framework agreements compliant with the public procurement rules, set up by central purchasing bodies.

Public bodies that do not have an existing solution are recommended to explore relevant frameworks in the first instance, and only seek a separate solution if the services available through frameworks do not meet their needs or there is better value for money elsewhere.

The "contracts database" maintained by OGC, includes frameworks which include e-tendering solutions. These may be found under the "E-solutions" and E-managed services" categories.

http://www.ogc.gov.uk/contractsdatabase/list_all_contracts.asp

Contracting authorities may wish to consider whether these potentially provide services which they are eligible to use and which meet their needs.

There is a range of services and solutions available to under these frameworks from a number of solution and service providers include:

1. Electronic tendering

2. Electronic evaluation

3. Electronic contract management

4. Electronic vendor management

5. Electronic auctions

6. Electronic document exchange

These are available as web-based hosted secure solutions, either as stand-alone modules or as a set of interoperable tools. Related services including consultancy, change management, training and helpdesk support are also available.

Section 7

Existing guidance

There is existing guidance from a number of sources on the benefits and implementation of e-tendering. Some of this is several years old, but the underlying principles and advice remain valid. The following documents are still freely available and provide information, pointers and suggestions which may be useful. Public sector organisations should use this material in the context of their own circumstances; the guidance may not be wholly applicable in every situation.

You can find out more by visiting these websites:

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eProcurement in Action - a guide to eProcurement for the public sector

Also known as "Blue Frog two" **www.ogc.gov.uk/documents/cp0025.pdf**

Section 3.6 of the report in particular provides guidance on e-tendering

Improvement and Development Agency for local government (IDeA)

There is a short introduction and overview to e-tendering available on the IDeA website at http://www.idea.gov.uk/idk/core/page.do?pageId=82667

The IDeA website also includes links to a number of outputs of the NePP and to other documents used by local government bodies (including template questionnaires and case studies).

NePP

The NePP was run by local authorities under the auspices of the then Office of the Deputy Prime Minister to provide information, guidance, good practice and exemplars to help local authorities to gain the maximum benefit from e-procurement tools and techniques. Although largely published in 2003 and 2004, the principles remain useful and may be relevant to other public sector bodies as well.

This link provides access to a number of documents

http://www.localtgov.org.uk/default9878.html?sID=1165399705072

Two "how-to" guides may be of particular interest:

What is e-Tendering?

http://www.localtgov.org.uk/webfiles/NePP/Guidance/8.0%20e-Sourcing/8.2.1.7.pdf

How to quantify and realise the benefits from e-Tendering

http://www.localtgov.org.uk/webfiles/NePP/Guidance/8.0%20e-Sourcing/8.2.1.8.pdf

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