

CENTRAL PROCUREMENT DIRECTORATE

PROCUREMENT GUIDANCE NOTE 02/04

SUBJECT: EVIDENCING BEST VALUE FOR MONEY

1. Introduction

1.1 The prime objective of the NI Executive's public procurement policy is to achieve best Value for Money (VFM).

1.2 Best VFM is defined in NI Procurement Policy as the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirement.

1.3 Paragraph 2.16 of the Procurement review states;

'The concept of "best value for money" is central to public procurement policy, but it is often misunderstood. Sometimes, it appears to be used as reflecting only "effectiveness" or "efficiency". We understand it in a wider, more encompassing sense as summing up the 12 principles we consider below. When a procurement process results in these principles being satisfied to an acceptable extent, we can say that the process has resulted in "best value for money".'

1.4 The procurement review also states that the definition of best value for money '...allows for the inclusion, as appropriate, of social, economic and environmental goals within the procurement process'.

- 1.5 The UK Procurement Regulations do not contain specific provision on the pursuit of social or environmental policy goals within the framework of public procurement procedures. However, there are a range of possibilities, which, if properly pursued, can make it possible to use public procurement to assist in attaining, desired social and environmental objectives. Separate Procurement Guidance exists on integrating environmental and social considerations into public procurement. (Refer to CPD Guidance Notes 03/04 and 04/04).
- 1.6 This Guidance Note provides direction on criteria for, and methods of, satisfying the 12 principles of procurement policy stated in the Procurement Review. Many of these principles are interdependent and failure to satisfy one will result in failure to satisfy others.

2. **Principle:** Transparency

Objective: To achieve openness and clarity in policy and its delivery.

- 2.1 Transparency refers to the clarity and openness to public scrutiny of the process through which contracting authorities make their procurement. This clarity can be defined in a number of ways, including in terms of how freely available or accurate information is on the procurement.
- 2.2 Transparency is concerned with the procurement process and not directly with what is being procured or who is supplying it. In short, transparency in public procurement is limited to the concept that there is no unnecessary secrecy or lack of openness when it comes to public procurement.
- 2.3 Procurement processes should demonstrate evidence of the following:
- Clearly defined contract objectives, requirements or outputs.
 - A contact point should be publicised for the procurement and as much information as tenderers need to respond to the bidding process made available.
 - Tender documentation stating the evaluation criteria, in order of merit, which will be used to identify best value for money and which must be directly related to the subject matter of the contract.
 - All tenderers should be notified of the outcome of evaluations promptly and, within the bounds of commercial confidentiality, offered the opportunity of a debrief on the outcome of the bidding process to facilitate better performance on future competitions.

- Publication of contract award notice where appropriate and where practical on the contracting authority's website.
- A system should be in place to deal with tender queries and complaints.

2.4 There will be occasions where the concept of transparency cannot be met. Such occasions must satisfy the circumstances set out in the UK procurement regulations.

3. **Principle:** Integrity

Objective: To ensure no corruption, no collusion with suppliers or others.

3.1 The highest standards of integrity in procurement are expected from contracting authorities and their procurement agents because procurement involves spending public funds. It is therefore important that the integrity of individuals and the contracting authority as a whole are visibly maintained.

3.2 Integrity in procurement requires that business is conducted in a reasonable manner with all suppliers or tenderers treated fairly, equally and honestly. The drive to achieve best value for money must not compromise ethical standards of conduct. Indeed best value for money is fostered by good practice in this context and by demonstrating high standards of integrity contracting authorities can demand similar standards from the suppliers with whom they do business.

3.3 In demonstrating integrity contracting authorities should ensure that procurement processes have the following examples of best practice:

- Nominated persons who are independent and have no direct interest in the procurement process should carry out activities such as receiving, holding and opening tenders.
- All companies who express an interest, or are invited to tender must receive equal information.
- Accurate records of tender inquiries or requests for clarification should be maintained. It is important that contracting authorities help potential suppliers to fully understand their objectives and requirements but they must ensure that any additional information as result of an inquiry is issued to all interested companies. This will avoid any company/tenderer being given an unfair advantage.
- Information provided by companies as part of the procurement process must be treated sensitively and restricted only to those persons directly involved in the procurement process and must not inadvertently be displayed or otherwise communicated to competitors.
- Tenderers should be requested to complete a 'certificate of bonafide tender' as part of the tender response.
- Contracting authorities should put into effect a code of ethics for persons involved in procurement. This code should have as a minimum systems and procedures to address;
 - Gifts and hospitality
 - Prohibition of inducements
 - Disclosure of interest
 - Confidentiality of information
 - Anti-fraud policy statement

4. Principle: Competitive supply

Objective: To procure goods and services via competition unless there are convincing reasons to the contrary.

- 4.1 It is government policy that goods, services and works should be acquired through competition unless there are convincing reasons to the contrary. Competition promotes economy, efficiency and effectiveness in public expenditure and is a useful means of ensuring that the market is fully tested. Procurement through competition remains the best way of achieving best value for money and under normal circumstances it will assist in demonstrating transparency and integrity.
- 4.2 Although competition is not always appropriate nor cost-effective for low value items, or in some instances for complex procurements where a well developed market does not exist, it is still necessary to combine value competition with innovative methods of procurement while managing the risks associated with innovation effectively, and to utilise the latest advances in electronic commerce.
- 4.3 Subject to the legal requirements of national and international rules and regulations (the UK Procurement Regulations and the EC Treaty), Accounting Officers are responsible for determining the circumstances in which contracts may be awarded without competition.
- 4.4 Accurate records of the procurement process should provide:
- The reasons for selecting the procurement strategy and award procedure chosen i.e. open, restricted or negotiated, and how this selection satisfies maximising the competition in the market while being flexible enough to accommodate different market conditions.

- Copies of advertisements for publicly advertised competitions.
- The reasons for choice of competitors for competitions, which are not publicly advertised.

5. **Principle:** Effectiveness

Objective: To meet the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the requirement.

- 5.1 Best value for money is defined in NI Procurement Policy as the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirement.
- 5.2 Therefore, in determining the criteria for the award of contracts, contracting authorities should rarely rely on price alone. Appropriate investment appraisal techniques should be used in assessing which compliant bid offers best value for money.
- 5.3 Whole life cost takes into account all aspects of cost over time, including for example capital, maintenance, management, operating and disposal costs. For complex procurements, including large supplies and service contracts and construction projects, whole life cost may be very different, and only loosely related to, initial price. Higher expenditure on better quality might well be offset on a whole-life costing basis, for example by lower maintenance costs, longer life or higher residual value.
- 5.4 Any relevant Community, international and national regulations, rules and provisions which apply to the particular field in which the

contracting authority is seeking bids should be stated either in the contract notice or contract documents i.e. health and safety at work or employment law.

- 5.5 The term 'best value for money' allows for the inclusion, as appropriate, of social, economic and environmental goals into the procurement process. Not all socio-economic policies should be selected for integration into public procurement. Choosing which Government policies should be integrated will need to be carefully considered and justified, with criteria clearly specified. Policies should be selected to achieve the best results. Sometimes this may simply mean ensuring that procurement decisions do not cut across other policies negatively, or in some cases public procurement should be harnessed to help achieve other policy objectives.
- 5.6 Procurement resources should be concentrated on delivering the most effective policy goals, which can also achieve best value for money, so as not to over load the system. Separate Guidance Notes on integrating social and environmental considerations into public procurement (ref: to be inserted following approval form PB in April 04) provide advice on how to select appropriate policies and integrate them into the procurement process.
- 5.7 This principle can be satisfied by the following elements of best practice procurement:
- Award criteria should be directly associated with best value for money (most economical advantageous in UK Procurement Regulations).
 - All tenders should be checked to ensure full compliance with any relevant regulatory requirements of the contract prior to evaluation.

- Evaluation matrices should clearly identify and appraise the appropriate elements of whole life cost.
- The qualitative aspects of bids should be assessed against objective criteria and the benefits of increased quality above that specified in the contract must be tested critically for need, cost-effectiveness, and affordability.
- Socio-economic requirements should be specified within the contract and their inclusion in the contract justified in terms of any additional costs.

6. **Principle:** Efficiency

Objective: To ensure that procurement processes are carried out as cost effectively as possible.

6.1 Contracting authorities should regularly monitor and evaluate their procurement systems to ensure that they are efficient, effective and appropriate and continue to represent best value for money. Costs to contracting authorities and suppliers of procurement activities should be minimised as far as possible. Adopting the following practices will assist with satisfying this principle:

- Procurements are effectively planned and approved prior to commencement, and resources are allocated and are proportionate to the complexity and strategic importance of the procurement.
- The subject matter/technical specification of contracts should not be unnecessarily complex or onerous.

- Procurement strategies should be designed to deliver the desired outcome of the procurement and should not be unnecessarily complex or resource intensive.
- Pre-qualification, short-listing and staged procurement should be undertaken where appropriate and where they add value to the procurement process.
- Contract monitoring should be designed to ensure that best value for money is achieved within the duration of the contract but the degree of monitoring should reflect the value or significance of the contract and should be the responsibility of those best qualified to complete the task.

6.2 Contracting authorities should have systems in place to demonstrate the cost of their procurement activities and where possible should benchmark those costs with comparable activities elsewhere.

7. Principle: Fair-dealing

Objective: To treat suppliers fairly and without unfair discrimination, including protection of confidentiality where required, and without imposing unnecessary burdens or constraints on suppliers and potential suppliers.

7.1 Fair dealing is especially important in public procurement because the expenditure of public funds is involved and procurement activities are thus subject to public scrutiny. Fair dealing promotes public confidence in the procurement process and mutual trust and respect between contracting authorities and suppliers, which includes a clear understanding by all parties to the proposed transaction in regard to

their obligations and expectations. This will in turn encourage participation and contribute to achieving best value for money.

- 7.2 Procurement staff should be honest, fair and impartial in their dealings with suppliers and in particular should not discriminate against contractors or their staff on grounds of religion, race or gender. Contracting authorities must ensure that procurement staff have due regard to the obligations of Section 75 of the Northern Ireland Act in carrying out their duties.
- 7.3 Procurement processes, involving contracts with values above specified thresholds, are subject to the UK Procurement Regulations, which provide criteria for both the selection of tenderers and the award of contracts. One of the primary aims of these regulations is to ensure fair and non-discriminatory treatment of suppliers during the award process. Although, procurement processes for awarding contracts with values which are less than these thresholds are not subject to the UK Regulations, contracting authorities are still obligated to satisfy the provisions of the EC Treaty which require, among other things, that the procurement process respects the principle of fair treatment of all tenderers.
- 7.4 To satisfy the principle of fair dealing, contracting authorities must ensure that both the procurement process and the contract requirements do not result in unnecessary restrictions to potential suppliers. This will require that any pre-qualification is made on the basis of objective criteria, taking into account only the evidence permitted by the legislation highlighted above and that any minimum standards of technical, financial or economic standing are proportionate to the contract requirements in question. Similarly, contract clauses must be directly related to delivering the specification of requirements and must not be over-burdening in managing risk i.e. excessive indemnity cover, or prepared, adopted or applied with a view to, or with the effect of, creating unfair advantages to some suppliers.

8. Principle: Responsiveness

Objective: To meet the aspirations, expectations and needs of the community served by the procurement.

- 8.1 The need to achieve outcomes from procurement, which meet the expectations and aspirations of the community, presents a major challenge to contracting authorities. The desired outcomes from procurement need to take cognisance as appropriate of the public good and political decisions in relation to the subject matter of the contract.
- 8.2 The basic tenet of public procurement is straightforward: acquire the right item at the right time and at best value for money to support government policies. Although the formula is simple the outcomes of procurement decisions have effects far beyond the actual contracting authority/supplier transaction at its centre.
- 8.3 Therefore, to assist in identifying the aspirations, expectations and needs which the procurement decision must satisfy, particularly in respect of strategic procurements it is necessary to integrate consultation with the wider community and other stakeholders, into the procurement process, especially where the outcomes of the procurement decision will have a direct effect on members of the public. In particular, contracting authorities must satisfy the extensive public consultation requirements arising from Section 75 of the Northern Ireland Act.

9. Principle: Informed decision-making

Objective: To base decisions on accurate information and monitoring to see that requirements are being met.

9.1 Every procurement process will involve making a number of key decisions such as:

- Determining the requirement.
- Determining affordability or funding.
- Selecting the most effective and efficient procurement strategy.
- Selecting suppliers with the best potential to offer best value for money.
- Selecting which bid offers best value for money.
- Determining the extent to which the supplier has delivered best value for money.

9.2 The ability to make good decisions is influenced by the amount and quality of information available. Therefore, it is necessary for contracting authorities to maintain systems which collect quality data to make information available in relation to:

- The amount spent on procurement, what has been purchased and from whom.
- Supplier prices, and the facility to benchmark these to ensure that they remain competitive against the market.

- How effective the supplier has been at delivering the requirements of the contract.
- How effective the contract has been at delivering best value for money.
- The cost of procurement processes and transactions in relation to the procurement expenditure.

9.3 This information will assist in identifying the strategic areas of procurement where opportunities exist to achieve better savings or process efficiencies, and where resources should be concentrated.

10. **Principle:** Consistency

Objective: To ensure that suppliers are able, all other things being equal, to expect the same general procurement policy across the public sector in Northern Ireland.

10.1 Bidders are often faced with varying procurement processes and contract documentation across contracting authorities. This is wasteful for both the public and private sectors, and can be a particular problem for Small and Medium Sized Enterprises which do not have the resources to become familiar with different procurement policies or complete tender documentation asking for the same information in different formats.

10.2 To satisfy this principle contracting authorities will need to ensure that their procurement systems are based on best practice techniques and current government policy, and they should have a sufficient degree of flexibility to incorporate changes required by relevant procurement guidance notes.

10.3 Standardised procurement processes, and in particular documentation such as conditions of contract, will reduce both the timescale and resource costs associated with procurement processes for both bidders and the contracting authority. This will allow more effort to be focused on the complex project-specific issues.

10.4 Contracting authorities should have:

- Documented procurement procedures consistent with best practice procurement policy.
- Accurate records of procurement guidance notes received and evidence of their dissemination to procurement staff.
- Standardised templates for procurement documentation i.e. pre-qualification questionnaires and conditions of contract.

11. **Principle:** Legality

Objective: To conform to EC and other legal requirements.

11.1 Contracting authorities are responsible for ensuring that they comply with their legal obligations. The legal framework for public procurement includes:

- EC and other international obligations, as implemented by UK legislation or by virtue of direct effect.
- Specific national or local legislation (for example, on corrupt gifts or unfair contract terms).

- Contract and commercial law in general; and

11.2 EC and international obligations include the EC Treaty provisions which prohibit:

- Discrimination on grounds of nationality, either directly or indirectly;
- Restrictions on the free movement of goods and services;
- Restrictions on the freedom of establishment of service-providers; and
- Measures of equivalent effect;

11.3 EC Procurement Directives, which are implemented by the UK Procurement Regulations:

- Reinforce the above Treaty provisions for contracts above certain values;
- Are based on principles of equal treatment, transparency and competitive procurement;
- Establish a framework of rules to which procedures for the award of supplies, works and certain services contracts by public bodies and various utilities must be adapted; and
- Provide for remedies where a duty owed to the supplier has been breached.

11.4 Where the procurement process conforms to these EC and other legal requirements then this principle can be said to have been met.

12. **Principle:** Integration

Objective: To achieve joined up government, meaning that procurement policy should pay due regard to other Northern Ireland government economic and social policies, rather than cut across them.

12.1 The Review of Public Procurement, which reported in 2002, stated that best value for money allows for the inclusion, as appropriate, of social, economic and environmental goals into the procurement process.

12.2 Not every public policy can, or should be, taken into account in procurement. Procurement resources should be concentrated on delivering the most effective policy goals, which can also achieve best value for money.

12.3 Choosing which policies should be integrated will need to be carefully considered and justified, with criteria clearly specified. Policies should be specifically selected to achieve the best results. Sometimes this may simply mean ensuring that procurement decisions do not cut across other policies negatively, or in some cases public procurement should be harnessed to help achieve other policy objectives.

12.4 Only those policies, which can become operational within the contract and are consistent with other values of the procurement process, should be selected.

12.5 Policies selected must also be justifiable in terms of any additional expenditure incurred as a result of their inclusion in the contract.

13. **Principle:** Accountability

Objective: To ensure effective means are put in place in order to enable Accounting Officers and their equivalents in other bodies to discharge their personal responsibility on issues of procurement risk and expenditure.

13.1 All procurement must be processed in accordance with the principles of Government Accounting NI (GANI). In particular it is important to separate procurement functions such as identifying the need, selecting the supplier, approving the award of contract or purchase order and the approval of payment. Contracting authorities must ensure that there is adequate separation between the following functions in order to minimise the risk, and maximise the likelihood of the detection of unethical behaviour, fraud or corruption:

- Authority to spend (i.e. should the procurement be undertaken? Are the funds available?)

- Identification of the method of procurement

- Supplier/product selection

- Placing orders

- Certification of receipt/completion

- Approval of invoice

- Authorisation of payment

13.2 Internal auditors should provide a check on the adequacy and effectiveness of control systems and should appraise procurement activities periodically.

13.3 Any queries relating to this guidance should be directed to:

Central Procurement Directorate
Procurement Policy & Performance Branch
Level 3
Causeway Exchange
1 – 7 Bedford Street
Belfast BT2 7EG

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