Open Procedure

If your research has shown there are few bidders who could meet your needs, you may decide to use the Open Procedure. This is where you send all bidders (who responded to the advertised opportunity) the full Invitation to Tender documents. This means there is no separate selection stage.

The Open Procedure can be used freely in any circumstances and for any type of contract and **Framework Agreement**. Any interested bidder may submit a tender.

However, in some cases it can be beneficial to choose a procedure where the number of the bidders can be reduced at the selection stage based on their capability and capacity, especially if the Organisation does not have enough resources (such as time) to conduct a full Open Procedure.

Using the Open Procedure will depend upon the number of tenders received and the nature of the evaluation criteria. If the Organisation receives a large number of tenders, the evaluation of them is likely to be time consuming.

Please Note

In all cases "days" are calendar days and not working days. The final day must however be a working day in Scotland.

Care and Support Services

Open or close

For many care and support services contracts, an Organisation may use the procurement procedures and tools and techniques of its choosing. You should follow a procurement procedure, as a matter of best practice, that is proportionate to the value of the contract and to take account of some fundamental considerations e.g. the **Principles of Procurement** and **Fair Work Practices**.

When doing so you may choose to adapt or streamline the Open Procedure described in **The Public Contract (Scotland) Regulations 2015**. If you do so, you are not obliged to follow the detailed procedural requirements set out in those Regulations. You should therefore not refer to the Regulations in the tender documentation issued to participants; this may create an expectation that the detailed procedural requirements will be followed. In all cases you should ensure that the procurement process is described accurately and clearly and is adhered to.

Selection and Award Criteria

Open or close

The selection and award criteria must be developed and managed separately. It is however possible for you to conduct these stages simultaneously or in any order where the procedure allows.

For instance, when using the Open Procedure you may assess the tenders (award stage) prior to checking minimum criteria are met. This should only be done if a small number of bids have been received. You must still verify exclusion grounds and that the bids meet the selection criteria.

This evaluation needs to be carried out in an impartial and transparent manner. No contract can be awarded to a bidder that should have been excluded or does not meet the selection criteria.

Timescales to Consider

Open or close

After despatching the contract notice, at least 35 days must elapse before the tender closing date. Where tenders may be submitted electronically, the number of days decreases to 30.

Your Organisation may publicise their future, planned procurement exercises by publishing a **Prior Information Notice (PIN)** on **Public Contracts Scotland (PCS)**. However publishing a PIN does reduce your tender timescales later on. If using a PIN, only a minimum of 15 days need to elapse after the dispatch of the Contract Notice before the tender closing date if:

- the PIN includes certain information required for the contract notice (if it is available when the PIN is published); and

- the PIN is sent for publication between 35 days and 12 months before the contract notice is sent.

Your Invitation to Tender (ITT) time limits for the receipt of bids should be long enough and reasonable for the bidders to tender, taking into account:

- the contract complexity; and
- the time required to prepare and submit a bid.

Extending or Changing a Tender Deadline

Changes to a tender closing date must be made if:

- significant changes are made to the **Procurement Documents**; and/or
- if information requested by a bidder (in a timely fashion) has not been supplied - a minimum of six days before the tender deadline (or 4 days in accelerated procedures).

Extending a tender deadline should be proportionate to the complexity of the change and /or the additional information being provided.

To proceed with a tender extension, the necessary approval must be obtained in accordance with your internal governance procedures.

If the date is amended, the new date should be notified to all bidders. If any bidder has already submitted a bid, they should be given the opportunity to withdraw their original bid and submit a revised one (in line with the extended tender deadline).

Urgency

Organisations are allowed to shorten certain deadlines in case of urgency. This needs to be suitably justified.

To use this procedure, you must provide a justification in the contract notice. The need must be genuinely urgent (e.g. a matter of safety) and it must have been caused by unforeseeable events and/or not your Organisation’s fault.

If your Organisation can appropriately justify urgency, the closing date for receipt of tenders can be 15 days after the contract notice was sent for publication.

Issuing Documents

Open or close

Given the shortened timescales for this procedure you must make the Invitation to Tender (ITT) available from the start of the procurement i.e. when the contract notice is published.

If you decide to use an Open Procedure, you must provide full information about the requirements and qualitative selection process. The **ITT documents** must be issued to all bidders that request them.

All Procurement Documents, including the ITT, must be made available:

- for free direct download;
- from the internet;
- from the time they are sent to participants in the process; and
- with unrestricted access.

The contract notice must specify the internet address at which the Procurement Documents can be accessed.

If exceptions apply, which mean the Procurement Documents are not available electronically, the contract notice must detail how access can be achieved. Timescales must be extended by five days if the documents cannot be accessed immediately by electronic means. An exception is in a case of a substantiated urgency.

The Open Procedure allows for ITTs to be issued on request at any point prior to the date set for submission of tenders.

When an ITT is issued near to the closing date, the recipient should be made aware that the submission date is imminent.

Clarification of Bids

Open or close

You can clarify some aspects of the tender. You cannot clarify fundamental aspects where any changes may distort competition or cause discrimination.

Any discussions you have with bidders should be properly recorded. Meetings which discuss proposals/requirements in any detail should be avoided as they may distort competition. For more information, please refer to **Post Tender Clarification.**

Principles of Procurement

Open or close

The activities at this stage must be carried out in a carefully managed manner that supports the **Principles of Procurement**.