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First steps with public tenders

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1. What is a Tender?

A tender is a document which specifies the need for the purchase of goods, services and works by a relevant buying organisation. This may be a public sector organisation, such as local authorities, government departments, a private sector company or the European Union organisations governed by public law (such as the NHS), or private sector companies.

Billions of pounds worth of UK public sector tenders are published each year. In 2009, this was in excess of £175 billion. The private sector can spend in excess of £350 billion on new goods and services every financial year. Tenders can provide a valuable source of new business, and can often lead to repeat orders between the tender winner and the awarding authority.

Tenders can apply to large projects such as construction, but also to smaller goods and services. They can cover anything which is needed by an organisation and there are more than 9000 categories to describe goods, services and works (see Table 1).

Table 1. Examples of categories for goods, services and works tenders.

Goods Code	Description	Services Code	Description	Works Code	Description
34700000	Aircraft and Spacecraft	55524000	School catering services	45211100	Construction work for houses
34520000	Boats	51146000	Installation services of aircraft engines	45248100	Canal locks construction work
37311100	Pianos	77341000	Tree pruning	45331100	Central-heating installation work
15842300	Confectionery	50822000	Repair services of shoes	45440000	Painting and glazing work

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(a) Public Sector Tenders

The EU Public Procurement Directives ([see directives](#)) state that all public sector organisations must publish details of tenders and contract opportunities that are above certain thresholds, in the Official Journal of the European Union (OJEU, formerly OJEC). These can be accessed online through the Tenders Electronic Daily website, TED ([see TED website](#)).

All national government bodies and institutions, local councils, Olympics projects, utility companies, NHS, educational bodies (schools, colleges, and universities), housing associations, museums & art galleries, public transport, financial institutions, police, MOD, prison service, fire brigades etc. are all required under EU legislation to openly advertise their OJEU, OJEC and TED tenders. All UK and EU companies have an equal chance to win these OJEU tenders.

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2. Tenders in Detail

(a) European Public Procurement Policy

European Public Procurement Policy applies to the 27 member states of the European Union plus Iceland, Norway and Liechtenstein. It aims to create a competitive, transparent, non-discriminatory public procurement markets in the European Union. This ensures value for money for taxpayers and consumers of public services and equal competition for European suppliers in domestic and world markets.

The policy ensures that all contracts above a certain value ([see link](#)) are awarded fairly. It covers public works contracts, public supply contracts, and public services contracts, and applies to the state, regional and local authorities, bodies governed by public law, utilities companies, and associations formed by regional or local authorities.

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(b) EU Legislation

(i) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (30.04.2004).

(ii) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (30.04.2004).

[For details of the documents click here.](#)

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(c) OJEU Notices

OJEU notices are published in the S series of the Official Journal of the European Union (OJEU, formerly OJEC). TED (Tenders Electronic Daily), is the on-line version of this.

TED publishes calls for tenders, PIN's, contract awards and other types of notices, collated directly from the awarding authorities in the EU member states.

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(d) Contract Types and Value Limits

There are three types of contract. These cover works, supplies and services.

(i) Public Works Contracts

Covers the execution or design and execution of works related to building and civil engineering as specified by the contracting authority.

(ii) Public Supply Contracts

Delivery of goods (equipment, commodities and manufactured products), including purchase, lease, rental, hire, purchase, siting and installation, with or without option to buy.

(iii) Public Services Contracts

These are services that are neither supply or works contracts, and are not awarded in the water, energy, transport or telecommunications sector. e.g.: studies, consultants services, advertising services, transport services, maintenance and repair, building cleaning, property management, engineering services, financial services, computer services, legal services, etc.

For the utilities sector (water, energy, transport and telecommunications), contracts cover the provision of services and the supply of products, building and civil engineering.

(iv) Value Limits

The procedures apply if the estimated value excluding VAT is in excess of the limits defined by the OJEU, (see [link](#) for up-to-date threshold limits as of January 2010). The threshold applies to the overall contract value and not the annual cost or budget.

Tenders above these thresholds are published in the S series of the Official Journal.

Although contracts below the EU thresholds are not subject to EU law, they should still comply with the best practice principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality. This ensures bidders are given an equal chance to apply for tenders, and prove their capability to carry out the contract on time and within scope.

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(e) Notice Types

(i) Prior Information/Periodic Indicative Notice

This is an advance warning of a works, supplies or services contract to be awarded at some time in the future. Even though a PIN is issued (PIN = Prior Information Notice in the Public Sector or Periodic Indicative Notice for Utilities companies) it does not guarantee that a contract will be awarded.

(ii) Contract Notice Opportunities

These are formal calls for competition, and follow one of the four types of procedure: open, restricted, negotiated or accelerated restricted/negotiated, (see [procedure types](#)). Design service contracts are also advertised as notices.

(iii) Award Notice

These are published by the awarding authority after the award of a contract. The awarding authority is the organisation that is asking the companies to bid for the tender. The award notice states the date the contract was awarded, the award criteria, the number of offers made, the name of the successful bidder(s) and the value of the contract (unless omitted for reasons of confidentiality). OJEU award notices must be sent no later than 48 hours after the contract has been awarded.

(iv) VEAT Notice

From December 2009, a new type of notice will be published. This is called a Voluntary Ex Ante Transparency (VEAT) notice. A public body may use this when they have awarded a contract which has not been published in the OJEU, such as contracts using the Negotiated Procedure (without prior advertising), Part B services, (which do not need to be advertised in the OJEU, e.g. catering, security, educational, legal, recreational) or service concessions.

The content of a VEAT notice will include full details of the awarding authority, justification for awarding the contract without prior publication in the OJEU, and the details of the successful supplier.

This notice allows more transparency by notifying the marketplace that a supplier has been awarded a contract which was not advertised. This may provide key market intelligence, and may also allow a sub-contracting opportunity. It also affords suppliers the right to contact the awarding authority and raise an objection if they believe that a competitive process could have been run and they could have fulfilled the contract.

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(f) Procedure Types

(i) Open Procedure

This is a procedure where any supplier can apply. There is no selection of suppliers prior to their application. Once all the applications have been made, suppliers are selected based on a number of factors, as laid down by EU directives, (see section on [awarding criteria](#)).

(ii) Restricted Procedure

This is a procedure where suppliers are selected by an open first-round invitation. The procedure is in two parts:

- Pre-qualification questionnaire (PQQ): companies apply to the awarding authority for qualification to take part in the tender procedure. It is extremely important that all the requested information is supplied, as at this stage a minor omission can lead to disqualification.
- Invitation to tender (ITT): those who meet the qualification criteria are invited to bid for the tender and will receive the tender documentation from the awarding authority. The number of qualified companies invited to bid is usually between 5 and 20, as processing bids can be very time consuming and costly.

(iii) Negotiated Procedure

A procedure where only chosen suppliers are invited to negotiate for contracts.

There are two types of negotiated procedure:

- negotiated procedure with publication of a notice in the Official Journal;
- negotiated procedure without publication of a notice.

These may be used in limited circumstances - e.g. extreme urgency, failure of open/restricted procedures to yield valid tenders, repetition of similar work etc.

(iv) Accelerated Restricted Or Negotiated Procedure

A procedure where the length of time of the procurement response process may be shortened to accommodate unforeseen circumstances and/or emergency situations.

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(g) The CPV Code

The CPV (Common Procurement Vocabulary) codes were developed by the EU for use in public procurement. This standard vocabulary ensures contracts can be classified consistently and correctly. The [updated CPV codes](#), adopted by Regulation (EC) No. 213/2008, have been used since 17/09/2008.

The CPV code consists of a main vocabulary which defines the subject of the contract, and a supplementary vocabulary for adding additional information. The main vocabulary is based on a tree structure using codes of up to 9 digits (an 8 digit code plus a check digit) and wording which describes the type of supplies, works or services in the tender.

Example:

Division:	35000000-4	Other transport equipment
Group:	35100000-5	Ships and boats
Class:	35110000-8	Ships
Category:	35112000-2	Ships and similar vessels for the transport of persons or goods
Subcategory:	35112110-6	Ferry boats
Verification digit:	35112110-6	Ferry boats

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(h) The NUTS Code

The **Nomenclature of Territorial Units for Statistics (NUTS)**, for the French *nomenclature d'unités territoriales statistiques*) is a geographical code which covers the subdivisions of countries. The standard is developed and regulated by the European Union, and thus only covers the member states of the EU in detail.

A NUTS code begins with a two-letter code referencing the country, except *UK* instead of *GB* for the [United Kingdom](#). Generally, the subdivision of the country is then referred to with one number. A second or third subdivision level is referred to with a subsequent number.

Examples:

UKK41, Plymouth, UK:

Level Zero:	UK	United Kingdom
Level One:	UKK	South West England
Level Two:	UKK4	Devon
Level Three:	UKK41	Plymouth

DE71E, Wetteraukreis, Germany:

Level Zero:	DE	Germany
Level One:	DE7	Hessen
Level Two:	DE71	<u>Darmstadt</u>
Level Three:	DE71E	Wetteraukreis

ES618, Seville, Spain:

Level Zero:	ES	Spain
Level One:	ES6	Sur
Level Two:	ES61	<u>Andalucia</u>
Level Three:	ES618	Seville

For a list of current NUTS codes, [click here](#).

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3. The Tender Process

(a) Procurement Methods

The size of a tender will affect the way in which public organisations will operate their procurement process. There can also be variations between the procedures for different organisations, and even between practices in central and local government. Therefore it is important to be aware of the process used for each individual tender.

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(b) Expressing An Interest

In many cases the first step in the tender process is a formal Expression of Interest (EOI). Each tender notice will include details of the awarding authority to contact to express an interest in

making a bid.

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(c) Deadlines

Within the tender process, there will be fixed deadlines for the various stages. These deadlines may include a time as well as a deadline date. These deadlines must be adhered to. Bids will be rejected if they do not arrive before the deadline.

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(d) Documentation

Awarding authorities may require certain documents or evidence to confirm the legal existences of the bidder and their economic and technical capacities to carry out the works, provide the services or supply the products concerned.

(i) Legal Existence

- Circumstances of the bidder (an extract of the “judicial record” or an equivalent document proving they are not bankrupt/wound up, another extract or equivalent document proving they are not firmly convicted for an offence that concerns their professional conduct, certificate issued by the competent authority certifying the fulfilment of the obligations relating to the payment of social security contributions and taxes);
- Enrolment in a professional or trade register or an oath or a certificate in accordance with condition laid down in the law of the Member State in which they are established.

(ii) Financial And Economic Standing

- Appropriate statements from bank;
- The company balance sheet, where required;
- A statement of the company’s overall turnover and its turnover in respect of the services, works or supplies to which the contract relates;
- Other documentation, where required, which must be appropriate to the subject matter of the contract, and must be non-discriminatory.

(iii) Technical Capability

Each EU directive contains a long list of evidence that contracting authorities may require depending on the nature, the quantity and/or the use of the works and the services concerned.

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(e) Status of Offer

A proposal to tender by a bidder is legally binding. Once an offer is accepted, if the offer is withdrawn, or the prices modified, a penalty will be applied.

Often there will be a note in the tender documents in TED which reads "Tenders may lapse after three months." This indicates that the offer as described in the bid, must be adhered to during this period of time.

Therefore, offers should be carefully prepared, with special attention to any subcontractors prices, and the bidder's capability to ensure the contract is completed on time and within scope.

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(f) Split Contracts

Contracts may be split into lots. Providing the awarding authority allows it, it is possible to bid for some or all of the lots.

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(g) Awarding Criteria

Contracts can be awarded on the basis of lowest price or the most economically advantageous tender (MEAT). The latter can involve a non-exhaustive list of criteria, such as delivery or completion date, technical merit, quality, aesthetic and functional characteristics, running costs, cost-effectiveness, after-sales service and technical assistance. Once a contract has been awarded, an award notice is published.

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(h) Payment

Payment methods used in public procurement differ from those used in the private sector. It can take longer to get paid for public contracts than for private contracts. However, public procurement payments are usually guaranteed due to the public status of the awarding authority.

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4. Glossary of terms

BV	Best Value
CPV	Common Procurement Vocabulary (Codes)
EOI	Expression of Interest
EU	European Union
ITT	Invitation to Tender
MEAT	Most Economically Advantageous Tender
NHS	National Health Service
MOD	Ministry of Defence
NUTS	Nomenclature of Statistical Territorial Units
OJEU	Official Journal of the European Union (formerly OJEC)
OJEC	Official Journal of the European Community
PIN	Prior Information Notice/ Periodic Indicative Notice companies
PQQ	Pre-qualification questionnaire
TED	European public procurement journal Tenders Electronic Daily

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5. Further information

[Business Link](#) is a free business advice and support service, providing information on many aspects of tendering.

The [National Procurement Strategy for Local Government 2004](#) sets out what small firms and others supplying local government can expect when tendering for local authority contracts.

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