

# Managing the Tendering Process

IN THE EUROPEAN UNION



Most public authorities at some stage will engage in a tendering process, but it can be a daunting task. The purpose of this document is to provide a reference source with relevant, clear & objective information...

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## 1 | INTRODUCTION

**Most public authorities at some stage will engage in a tendering process as they seek to procure goods and services from a private organisation. Public procurement can be defined as the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. It ranges from the purchase of routine supplies or services, to formal tendering and placing contracts for large infrastructural projects by a wide and diverse range of authorities.**

Regardless of the type or scale of the project being run, entering into the area of tendering can be daunting and can often lead to unintended consequences. There are many case studies where the tendering process was not conducted in the appropriate manner and this can lead to delays, an over-run of costs, and in some cases legal challenges and costly court cases. It is very important that the public procurement function is discharged honestly, fairly, and in a manner that secures best value for public money. Contracting authorities (those public authorities who procure such goods or services) must be cost effective and efficient in the use of resources while upholding the highest standards of probity and integrity. Procurement practices are often also subject to audit by national audit agencies.



The purpose of this document is to provide a reference source with relevant, clear & objective information for public authorities, emergency service organisations, vendors & suppliers and any other stakeholder involved in the tendering process.



**Most public authorities at some stage will engage in a tendering process as they seek to procure goods and services from a private organisation. Regardless of the type or scale of the project being run, entering into the area of tendering can be daunting and can often lead to unintended consequences.**



In a report conducted by the accountancy firm PwC in 2011<sup>1</sup>, it was noted that the UK, France, Spain, Germany, Poland and Italy are responsible for about 75% of all EEA public procurement activity, both in number of contracts and in value. The UK tops the list in terms of value, while France has the highest number of contracts.

The purpose of this document is to provide a reference source with relevant, clear and objective information for public authorities, emergency service organisations, PSAP management, the vendor/supplier community and any such stakeholder involved in the tendering process. Such information is written for the purposes of the emergency service community, but many of the reference materials are applicable for general procurement rules.

To achieve a full 360-degree view of the process, EENA has consulted with organisations on the demand side (the public authorities, ministries, emergency service organisations etc.) and the supply side (the vendor community and consultants). These organisations have provided information without prejudice to any past, present or future tender that they may be involved in and thus, the information supplied by them is for the purposes of this document only. This document does not attempt to provide an exhaustive or detailed outline of their requirements, nor is it a legal interpretation of the obligations they impose. It is essential that officials directly concerned with placing contracts are familiar with the provisions of the Directives and national obligations.

EENA is most grateful for the time, energy and thought-leadership provided by all the contributors and we hope that it is of value to those who will use it in their tendering programmes.

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<sup>1</sup> "Public Procurement in Europe; cost and effectiveness", March 2011

## 2 | ABBREVIATIONS & GLOSSARY

All definitions of terms and acronyms related to 112 are available in the 112 Terminology EENA Operations Document.<sup>2</sup>

## 3 | EUROPEAN PROCUREMENT LEGISLATION

**Let's begin with one of the most important areas to be understood, which is also the cornerstone for decisions regarding the obligations and responsibilities for those conducting tendering programmes: the European legislation that governs the area of public procurement. Before we do this however, it should be noted that there are, most probably, national regulations regarding how public authorities conduct tenders and this should be carefully checked.**

In general, a competitive process should be carried out in an open, objective and transparent manner and it should achieve best Value For Money ("VFM"). Essential principles arising from the Treaty<sup>3</sup> which must be observed when carrying out the procurement function include non-discrimination, equal treatment of participants, freedom of movement, freedom to provide goods and services, as well as the general obligations of transparency of information and rules of proportionality. The Directives impose legal obligations on public authorities regarding advertising and the use of objective tendering procedures for contracts above certain value thresholds. European Court of Justice case law implies a requirement to publicise and advertise such contracts of significant value to a degree which allows parties in other Member States to have the opportunity to express an interest or to submit tenders.

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<sup>2</sup> <https://eena.org/wp-content/uploads/2018/11/112-Terminology.pdf>

<sup>3</sup> [Treaty on the Functioning of the European Union](#)

### 3.1 | EUROPEAN DIRECTIVE

The applicable legislation on public procurement rules consists mostly in Directives 2009/81/EC; 2014/23/EU, 2014/24/EU and 2014/25/EU. They govern the areas of "works" such as buildings and civil engineering contracts, "supplies" such as goods and supplies and "services" such as property management, financial and ICT services.

Directive 2014/24/EU imposes obligations on contracting authorities to:

- advertise their requirements in the [Supplement of the Official Journal of the European Union \(OJEU\), called TED – Tender Electronics Daily](#);
- use procurement procedures that provide open and transparent competition;
- apply clear and objective criteria, notified to all interested parties, in selecting tenderers and awarding contracts;
- use broadly based non - discriminatory technical specifications;
- allow enough time for submission of expressions of interest and tenders.
- compared to the 2004 Directive, the 2014 Directive insists on basing the award of public procurement contracts on the most economically advantageous tender (which is not necessarily the cheapest).



Contracts with estimated values above certain thresholds (apart from some defined exceptions) are legally required to be advertised on TED and must be awarded in accordance with the provisions of the Directives. These thresholds depend on the type of contracts being awarded and are outlined below:

Central Government authorities	Works contracts, subsidised works contracts	€5,548,000	
	All services concerning social and other specific services listed in Annex XIV	€750,000	
	All subsidised services	€221,000	
	All other service contracts and all design contests	€144,000	
	All supplies contracts awarded by contracting authorities not operating in the field of defence	€144,000	
	Supplies contracts awarded by contracting authorities operating in the field of defence	Concerning products listed in Annex III	€144,000
		Concerning other products	€221,000
Sub-central contracting authorities	Works contracts, subsidised works contracts	€5,548,000	
	All services concerning social and other specific services listed in Annex XIV	€750,000	
	All other service contracts, all design contests, subsidised service contracts, all supplies contracts	€221,000	

**Service contracts** in the area of civil defence, civil protection and danger prevention services provided by non-profit organisations or associations (except patient transport ambulance services) are excluded from the scope of Directive 2014/24/EU.

Information on the applicable legislation is available on the website of the European Commission: [https://ec.europa.eu/growth/single-market/public-procurement\\_en](https://ec.europa.eu/growth/single-market/public-procurement_en)

### 3.2 | COMMON PROCUREMENT VOCABULARY

The Common Procurement Vocabulary (CPV) is a classification code developed by the EU Commission to describe thousands of types of works, supplies and services. It is being adopted as the official code for classifying public contracts and is maintained and revised by the Commission as markets evolve and develop. It should be used by the contracting authority when listing the tender inside TED.

The latest version of CPV is in use since 17/09/2008 and can be accessed on the [Simap](#)<sup>4</sup> website. A contracting authority should look for the most appropriate code(s) to be used in the procurement document: as there are thousands of categories, the closest one(s) to the scope of the tender should be identified and adopted in the tender document. The use of the CPV is mandatory in the European Union as of 1 February 2006.

### 3.3 | CHOICE OF TYPES OF TENDERING PROCEDURES

The revised EU public sector Directives permits four tendering procedures:

1) **Open:**

Under this procedure all interested parties may submit tenders. Information on tenderers' capacity and expertise may be sought and only the tenders of those deemed to meet minimum levels of technical and financial capacity and expertise are evaluated. If there are minimum requirements, it is important that they are made clear in the notice or the request for tenders, for quotation or for proposal (RFT, RFQ, RFP which are similar in purpose, see below) to avoid unqualified bidders incurring the expense of preparing and submitting tenders.

2) **Restricted:**

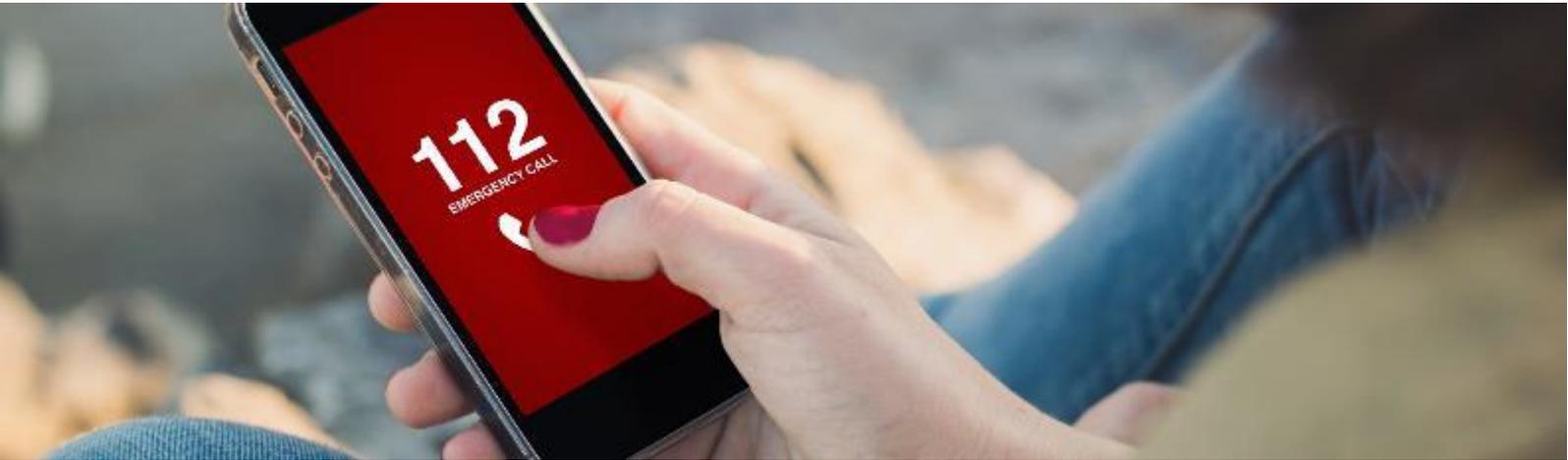
This is a process where only those parties who meet minimum requirements regarding professional or technical capability, experience and expertise, and financial capacity to carry out a project are invited to tender. In many other aspects, it is similar to the *Open* tendering type.

3) **Competitive Dialogue:**

This is a procedure designed to provide more flexibility in the tendering process for more complex contracts. Contracting authorities should advertise their requirements and enter dialogue with interested parties and use the same criteria as those of the restricted procedure mentioned above. Through the process of dialogue with a range of candidates, a contracting authority may identify arrangements or solutions that meet its requirements. Excluding candidates from this dialogue should be done with reference to the award criteria that have been published.

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<sup>4</sup> <https://simap.ted.europa.eu/web/simap/cpv>



#### 4) **Negotiated:**

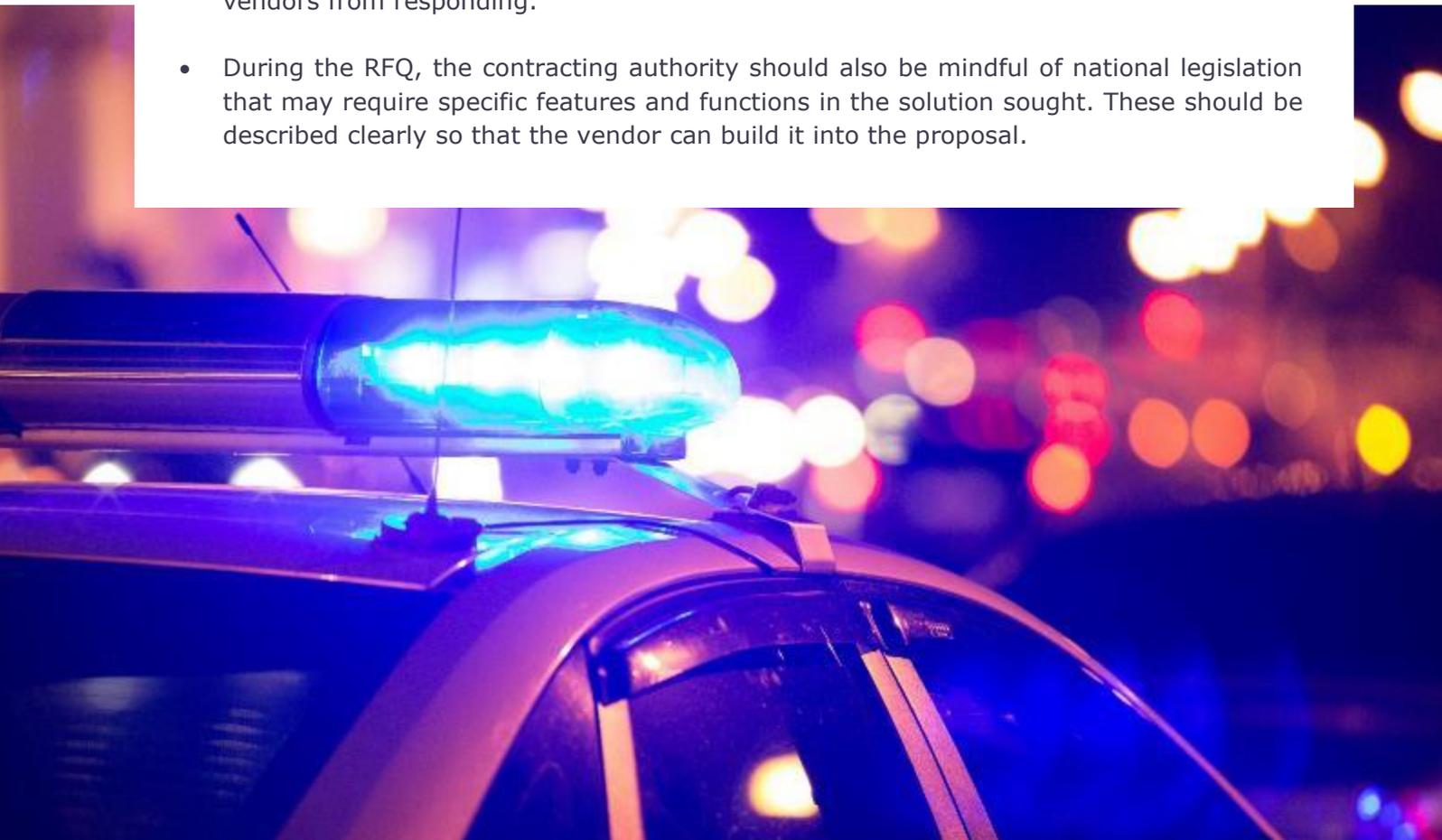
In some countries, negotiated procedures are only used in limited circumstances, such as where it is not possible to specify requirements for a service with the needed precision to enable vendors to respond with priced tenders or where an open, restricted or competitive dialogue has not attracted acceptable responses. Normally, contracting authorities using this methodology advertise and negotiate the terms of the contract, usually by using at least three candidates who have met the pre-qualification procedure. Contracting authorities can also decide not to advertise, but this goes against the principles of openness, fair competition and transparency. Reasons for not advertising may be because of extreme or critical urgency, when an open or restricted procedure has not attracted appropriate tenders or for the purchase of supplies on particularly advantageous terms (e.g. from either a supplier definitively winding up a business or the receiver or liquidator of a bankruptcy).

Tendering is regulated by two major types of documents, called Request for Interest (RFI) and Request for Quotation/Tender/Proposal, where these latter terms usually assume very similar meanings (RFQ/RFT/RFP). We will use RFQ in the following paragraphs for ease of use. One type of document does not imply the other, even if usually RFIs are followed by RFQs. They can be found both in type 1) and type 2) of tendering procedures and a variation of RFQ can be also found in type 3).

- The objective of the RFI document is to understand which potential vendors are interested in the tender, company information, capacity and capabilities, and reference case study-type information. Normally, the RFI document is not specifically technical and should also include information about the strategic vision for the tender. However, the RFI should consider important issues such as innovation and provide the vendor with a sense of what levels of innovation are needed. During this phase, it's also common that vendors are

invited to present their solutions and in turn, this will help to inform the contracting authority of the market capabilities and vendor competence.

- The RFQ document should contain a detailed description of the required solution and should also demonstrate to the vendor the nature, scope and extent of what is needed.
- It's important not to make the RFQ "fit for purpose". In other words, the RFQ should match the solution needed and be aligned with the overall scope. In general terms, the contracting party should avoid specifying particular components, but rather outline what functionality is required and what service parameters it should be able to meet. To achieve this, the functionality specifications should be obtained from a users' perspective (i.e. the call-taker, dispatcher etc.). This will ensure that the specification is relative to the user. Remember, if the functionality is not well described in the document, there is an inherent risk that the solution purchased will not fully meet your requirements.
- If there are special pre-qualification criteria required, these should be stated in the RFQ. For example, if the contracting authority requires that the new solution should interface with an existing product, then it should be clearly stated. The existing product should also be described clearly. Vendors will then be able to decide whether their products are "qualified" to meet the criteria. However, as a general principle, such pre-qualification criteria should be transparent and ideally kept to a minimum so as not to exclude potential vendors from responding.
- During the RFQ, the contracting authority should also be mindful of national legislation that may require specific features and functions in the solution sought. These should be described clearly so that the vendor can build it into the proposal.





### **3.4 | CONFLICTS OF INTEREST**

The area of conflicts of interest can be an uncertain one and it is often an issue which can present legal issues with candidates claiming such conflicts. A confusing or unclearly written RFQ could potentially cause conflicts of interest, so the contracting authority should be mindful of this. Therefore, contracting authorities should be aware of potential conflicts of interest in the tendering process and should take appropriate actions to avoid them.

Care should be taken to ensure that the project specifications and criteria are as open and generic as possible in order to avoid favouring any one solution or any one party. It is often worth identifying internal colleagues to "proof-read" documentation to ensure that the language within the tender documentation is generic so that there is equity amongst all the possible candidates. Also, avoid local company-specific terms or acronyms, as they can be misleading and misunderstood.

### **3.5 | TREATMENT OF VALUE-ADDED TAX**

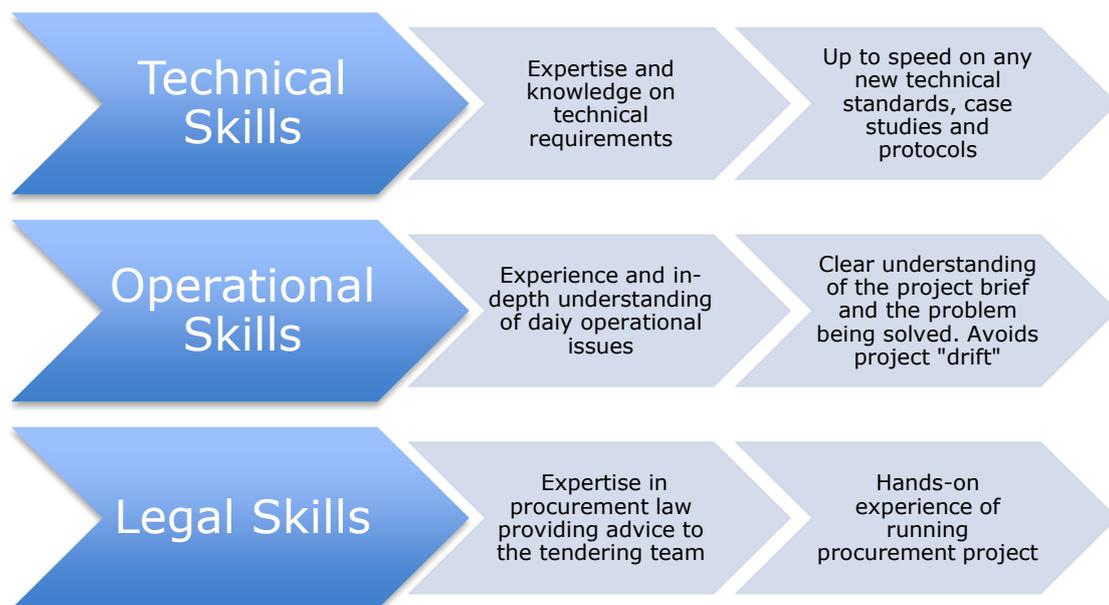
Tenderers should be invited to express their tender prices exclusive of VAT. VAT law provides for equal treatment in the supply of goods and services, therefore no competitive advantage or disadvantage should arise from the correct application of VAT rules.

### **3.6 | RECEIPT AND OPENING OF TENDERS**

In terms of good practice, contracting authorities should ensure that proper procedures are in place for opening tenders. It is therefore advisable that tenders should be opened together and at the earliest possible time after the closing date. The contracting authority should have the correct procedures in place to prevent abuse or impropriety. To safeguard against this, at least two officials of the contracting authority should be present and witness the opening of the tenders. The procedure should ensure that there is a clear and formal, independently vouched report of the tenders received. Tenders received after the closing time for receipt of tenders should not be accepted unless there are clear and mitigating circumstances.

## 4 | THE TENDERING PROCESS - DEFINING YOUR RESOURCES

To run any tender effectively and efficiently, the tendering authority needs to ensure that it has the optimum resources in place with the right skills. As such, the skills need to cover the technical, operational and legal challenges within a tender, as well as the need to have procurement experience available. These are described below:



In terms of a tendering team and depending on the scale and complexity of the project, it is often advisable to have a review of the process. The review should ensure that the decisions taken are meeting all the obligations and avoid any future challenges by unsuccessful tenders. Such a review should be taken by an expert in the field and could be either inside or outside the organisation.

## 5 | THE TENDERING PROCESS - YOUR NEEDS, ANALYSIS AND SCOPE

The most fundamental element of a procurement project, especially one involving the development of an emergency service/public safety service, is to have a very clear vision of the issue that is being solved. Understanding the issue in depth will give rise to clarity when it comes to specifying what is required. To that end, undertaking a needs analysis with all the actors inside the operation is very important. This ensures that the requirements are specified and not the solution. There are many tools and templates to assist the development of needs analysis but the more rigorous and thorough the needs analysis is, the better the outcome when it comes to writing a tender document.

Also, fundamentally important to running a tender is the breadth and depth of its scope. Without the defined scope, the tender can "drift" and cause untold difficulties down the line. Tenders should be specific, whenever possible, addressing few core elements at a time (ideally one tender for each component: CAD, communications, hardware, radio platform, etc.), to keep budget under control and to avoid dealing with too many vendors / subcontractors at the same time. The wider the scope of the tender, the more complex the management of vendors after the award. In the case of a tender for a new PSAP, multiple components/topics can be aggregated into a single tender. However, in this case it is necessary to have budgetary figures for each component, to be able to map the vendors' responses and see how their vision on budget matches the contracting authority's idea.

In all situations, it is strongly suggested to clearly scope out the volume of expected calls and related dispatches, as well as the geographic footprint that is being served or shared with other PSAPs.





One other crucial piece of the scope is the balance between encouraging an innovative response from the suppliers and the need to be very specific on the needs. Whilst the latter is clearly important, care should be taken to ensure that innovation is not stifled. Are you in a position to engage with suppliers before the tendering process officially begins (after which you will most likely not be permitted to do so)? Perhaps run an open day with several suppliers and discuss capabilities and possible advancements in technology. It should involve discussions outside of the incumbent supplier, which may bring many new opportunities and new perspectives. This behaviour particularly fits the model of Market Consultation.

When writing the tender document itself, the contracting authority should ensure that the flow of information reads well and is clear to the supplier. Getting a colleague who is outside the project team to review it in advance could save time and effort later when it comes to clarification questions and will yield better quality responses from the suppliers. Also be aware of the costs associated to a supplier who responds to your tender. Ensure that the document is clear, unambiguous and if possible, that the costs of the tender have been reflected accurately in the published budget (or at least that it is in line with the internal budget if the budget figure is not being published). Thus, hidden costs are avoided.

The tendering authority should also look for case studies from the supplier where similar deployments have been made. This will bring a sense of credibility and experience of the supplier and will allow the contracting authority to check on how the deployment went from a peer colleague. One other method of bringing credibility is for the contracting authority to check if

the supplier is a member of EENA and if there is any track record of the company's association with any of EENA's conferences or workshops.

In terms of timing, avoid publishing the tender document just before a holiday season (i.e. 24th December), as many suppliers could possibly exclude themselves from responding because of the lack of resources and capacity. The contracting authority should therefore give the vendors sufficient time to respond meaningfully. If insufficient time is given, it may reduce the overall quality and breadth of responses that you receive and would be counterproductive. There are time limits allowed for the receipt of tender responses specified depending on the type of procedure followed. Contracting authorities should be aware of these as they are subject to change from time to time. The elapsed days are usually specified in calendar days.

*A note for suppliers:*

When responding to the tender, ensure that the response is clear and follows the flow of information requested. It is obvious to suggest that the mandatory criteria should be clearly recognised by the supplier and responded to in full, but it is often such an oversight that can lead to the dismissal of the supplier from the competition. Avoid using "template" responses to the tender document where "stock answers" are simply copied and pasted into the response.

Additionally, the supplier should be careful to clearly outline which functionality or service is excluded in the costs which it has outlined as its response. The supplier should also make sure that any add-ons are itemised as costing extra. This will help to compare bids more easily and show which items are not catered for within the solution offered by the supplier.

## 6 | THE TENDERING PROCESS - DEFINING YOUR CRITERIA AND SCORING SYSTEM

There are in effect two methods to establish a scoring system; the lowest price method and the Most Economically Advantageous Tender (MEAT) method. The lowest price method is often used for straight-forward contracts and the contracting authority may reject the lowest bid if it is "abnormally low".

The criteria and weighting system should be indicated in the published tender documentation and the contracting authority should not apply any weighting to the criteria without the interested party being made aware. The MEAT scoring system should follow four main characteristics:

- They should be linked to the subject matter of the tender;
- They should be transparent and explicitly mentioned in the tender documents;
- They should comply with the fundamentals of EU law; and
- They should not give the contracting authority any unrestricted freedom of choice.

For more complicated and possibly larger projects, the MEAT method is the best choice. For tenders being awarded based on the MEAT method, it should be the normal practice to have the

evaluation of tenders carried out by a team with the requisite competency. This may include independent representation, i.e. a competent person from outside the area directly involved with placing the contract. Some contracting authorities use the expression shall or should, where



shall indicates a mandatory function and should is a “nice to have” function. Normally, the vendor needs to be 100% compliant with the mandatory functions in order to be considered. Non-compliance with mandatory requirements can result in dismissal from the tender.

Another type of MEAT is designed to judge the technical work of the bidders through a demo session that is aimed at proving the adherence of the bidder to the technical requirements. This type of MEAT scores the demo scenario(s) instead of the technical answer document, by proving the validity of the proposed solution by each tenderer in real time.

As is normal with tenders, the balance between quality and price needs to be struck and therefore MEAT is a valuable scoring methodology. If the contracting authority decides to put a value on the solution sought, this information should be transparent and should not change. Awarding tenders to the lowest price supplier can have knock-on effects and therefore price should not be the sole determinant. Quality and support are other possible criterion to consider.

Regardless of this, the contracting authority should be very clear in its scoring system and also clear about whether it is intending not to accept and award the tender to the lowest price supplier.

## 7 | THE TENDERING PROCESS - HANDLING CLARIFICATIONS

In terms of handling clarification questions, the methodology and timing of doing so should be clearly outlined in the tender document. This should be set at a reasonable time in terms of the overall tender timetable and could be done via email or via conference call. Whatever method is used, it is advisable to ensure that the clarification questions and responses are noted in writing and copied (blind copied) to all the suppliers. The contracting authority should also have the

capacity to ensure that any clarification questions are handled quickly and clearly. This will increase the overall level of transparency and ensure that all advice or clarifications are visible to all.

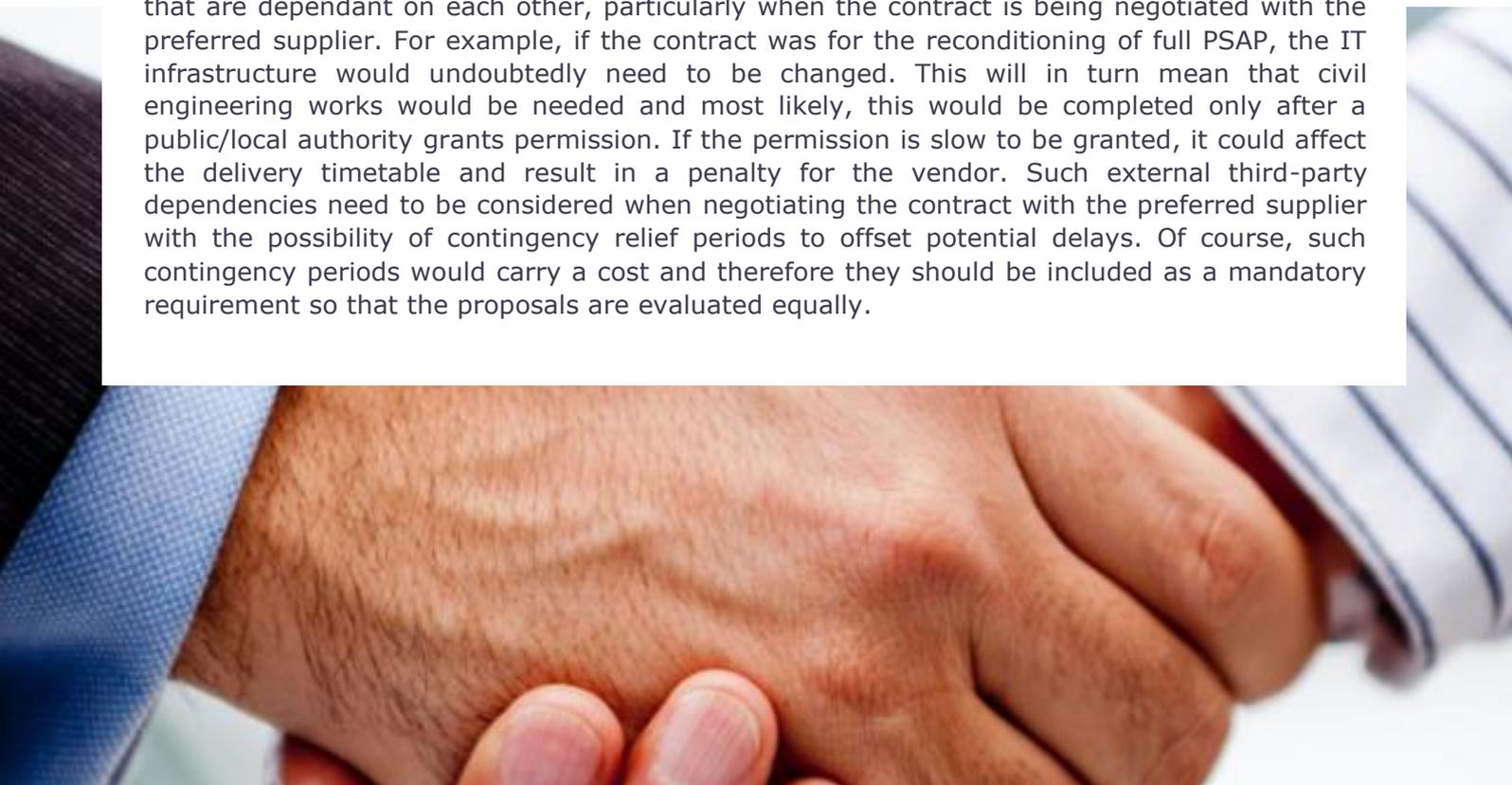
The contracting authority should also be mindful of the need to protect the intellectual property rights of the vendors and ensure that best efforts are maintained when it comes to protecting confidential information.

## 8 | THE TENDERING PROCESS - AWARDING A CONTRACT

Depending on the type of contract being awarded and procedures chosen by the contracting authority, the awarding of the contract should be done carefully. Initially indicating whom the "awarded supplier" is and thus indicating to the other suppliers that they have been unsuccessful would be a useful step to take. The contracting authority should also outline to the unsuccessful suppliers as to why they had been not awarded (if possible). The contracting authority should also make a comparison of the suppliers available with all scores.

In addition, before the awarding of any contract, the contracting authority should allow for a "standstill period" whereby the awarded supplier is notified and then the unsuccessful suppliers can consider the explanation as to why they were not selected. Such a cooling-off period will also give the unsuccessful supplier the opportunity to appeal the decision of the contracting authority.

On a practical basis, the contracting authority should be mindful of parts of the solution sought that are dependant on each other, particularly when the contract is being negotiated with the preferred supplier. For example, if the contract was for the reconditioning of full PSAP, the IT infrastructure would undoubtedly need to be changed. This will in turn mean that civil engineering works would be needed and most likely, this would be completed only after a public/local authority grants permission. If the permission is slow to be granted, it could affect the delivery timetable and result in a penalty for the vendor. Such external third-party dependencies need to be considered when negotiating the contract with the preferred supplier with the possibility of contingency relief periods to offset potential delays. Of course, such contingency periods would carry a cost and therefore they should be included as a mandatory requirement so that the proposals are evaluated equally.





## 9 | REFERENCE MATERIAL - EENA

To assist the contracting authority with specific related topics, EENA has published many documents over the past years on both operational and technical matters. These documents could be used as reference material for the scoping work mentioned in chapter 5 above. These documents are available on the EENA website and can be accessed via the link below:

### [EENA Documents](#)

The EENA Documents webpage is organised into topics and for public tendering the most relevant filters may be:

- eCall
- NG112
- Apps
- PSAP technology

## 10 | THE TENDERING PROCESS - SUMMARY OF QUICK TIPS

Below is the summary of quick tips, which should be kept in mind when conducting a tender:

1. Ensure a thorough analysis of your needs is conducted before beginning the process. Engage the widest possible research to get the most up-to-date information available.
2. Use the EENA documentation such as PSAP trends, national reform information and conference presentations when carrying out your research;
3. Do not lead by the technology. Instead, define your functional requirements and boundaries clearly and scope out the possibility of doing other similar works at the same time: it could reduce costs later;
4. Ensure specific items such as system upgrades are fully covered in the scope, are fully costed and are included in the final contract.
5. Be aware of the relevant international standards such as Quality, Business Continuity, Security and consider them as relevant acceptance criteria for vendors to have;
6. Ensure the tender design and evaluation team have the required skill sets i.e. technical, operational, procurement, legal etc; do not be afraid to get your decision and justification peer reviewed;
7. When looking at the solution provider, ensure that they have the relevant experience on similar projects, obtain references and think about asking for "references" on a similar scale/topic;
8. Ensure the solution provider is up to speed with the most recent information (such as NG112) and is a member of organisations such as EENA;
9. If you intend to use consultants to assist and advise you during the process, ensure they too are up to speed on all the relevant subject material. EENA has many members who can provide consultancy assistance. Ensure your consultant is a member of EENA also;
10. Be aware of the time constraints (and holiday periods) when setting deadlines for RFIs/RFQs;
11. Ensure that if you are responding to an RFI/RFQ that you fully understand the requirements, especially any mandatory ones set by the awarding authority;
12. Ensure the criteria and scoring matrix for awarding the tender is clear and understood; this is relevant for both the awarding authority and the vendor.



## 11 | EENA RECOMMENDATIONS

Stakeholders	Actions
European Authorities	Ensure that the relevant legislation is clear and easily transposable into national law. Where relevant, issue guidance material to assist national authorities.
National Government	Ensure that there are enough support systems in place to assist the emergency service organisations to run their tender.
National / Regional Authorities	Offer whatever assistance is required by the emergency service organisation and ensure all the individuals responsible for procurement are up-to-speed on the necessary best practices.
Emergency Services	Adhere to all national and European procurement legislation.



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