

Working with Small & Medium-sized Enterprises – A Buyer's Guide

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PART 1: What this guide aims to do

This guide is intended to raise awareness amongst Scottish public sector buyers of the value for money that small and medium-sized enterprises (SMEs) can offer. It explores ways in which SMEs may be encouraged to bid for contracts.

This is important as SMEs are considered to be the backbone of the economy¹ and the Scottish Government is committed to ensuring that they have the opportunity to compete fairly for public contracts.

The purpose of the Government Economic Strategy is:

“to focus the Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth”²

SMEs can contribute to increased employment opportunities and to the well being of local and regional communities. Increasingly competitive and transparent procurement processes will allow SMEs to unlock their growth and innovation potential with a positive impact on the Scottish economy.

PART 2: Definitions

The Scottish Government uses the Companies Act 1985 (Accounts of Small and Medium-sized Enterprises and Audit Exemption) (Amendment) Regulations 2004 definition of small and medium businesses:

- Small Enterprise – Less than 50 employees
- Medium Enterprise – Less than 250 employees

EU and Companies Act definitions of SMEs³ are slightly different in terms of values, but the above definition has been adopted by the Scottish Government

In 2006, there were 265,435 private sector enterprises operating in Scotland, with associated employment of 1.89 million, 99% of which employed less than 50 people, and 98% of which employed less than 250 people and provided 52% of all jobs.⁴

¹ European Charter for Small Businesses – http://ec.europa.eu/enterprise/enterprise_policy/charter/docs/charter_en.pdf

² The Government Economic Strategy, October 2007, <http://www.scotland.gov.uk/Publications/2007/11/12115041/0>

³ EU Definition of SMEs - http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm

UK Companies Act Definition of SMEs - http://www.opsi.gov.uk/acts/acts2004/en/ukpgaen_20040027_en.pdf

⁴ [Source: Scottish Executive, Office for National Statistics \(Inter Departmental Business Register\)](#)

PART 3: The Public Procurement Landscape

A Public Procurement Reform Programme was initiated in 2006. It aims to improve procurement across the Scottish public sector. Its vision is the implementation of structures, capability and processes to provide continuous improvement in procurement in order to deliver value for money improvements and support increased efficiency.

The reform programme has in some cases led to increased aggregation of requirements. Contracting authorities need to consider the economic impact of this aggregation and build this into the development of their procurement strategy. Careful consideration of what contract scope will constitute value for money can result in increased opportunities for a range of suppliers. For example, the national contract for office supplies does not include a range of specialist products as it was judged that value for money (VFM) would not be achieved by including these in the scope of the contract. Buyers may also ask for innovative suggestions on how their supplier will provide value for money in their sub-contracting arrangements. Again value for money can include social and environmental considerations where these are relevant to the subject matter of the contract.

The Scottish Government website has information on the [Reform Programme](#). The publication "[Tendering for Public Contracts – A short guide for businesses](#)" also summaries the procurement landscape and provides suppliers with information on how public sector buying operates.

PART 4: Why Choose SMEs?

SMEs may have characteristics that give them advantages over larger organisations. These can include:

- ▣ **Better levels of service** - relative to large organisations, your business will represent a much larger proportion of an SME's turnover and they may value you more as a customer and you may receive a better, and often more personal service;
- ▣ **Lower overheads** – small companies' running costs will usually be lower than those associated with larger organisations;
- ▣ **Innovative business solutions** - potential for taking a new approach to requirements, e.g. the early exploitation of new technology, or providing products or services in new/underdeveloped markets;
- ▣ **Greater flexibility** – their size lends them to being able to tailor solutions more effectively, e.g. short management chains and approval routes;
- ▣ **Specialism** – many are set up to cater for niche markets which may better match requirements;
- ▣ **Increased competitiveness in the longer term** - rather than limiting competition to a few large companies, who may be familiar with each others mode of operation, inclusion of smaller companies may lead to an increase in competition.

SMEs may further gain by having greater access to a large and stable public procurement market.

PART 5: Increasing Access to Public Sector Contracts

There are a number of benefits that may be associated with opening the Scottish public market to a wider supplier base.

- VFM should improve through increased competition.
- Buyers will have access to a range of potential suppliers who may be more competitive.
- They may find innovative solutions which otherwise might have been missed.
- There is less likelihood of the market stagnating through an ever decreasing number of large suppliers.

Increasing access by SMEs in the Scottish public market can be done in many ways which do not discriminate against firms of any size and which help to improve VFM by increasing competition across the board. A number of measures are already in place:

- Formation of the [Public Procurement Advisory Group](#) (PPAG), with representation from business organisations and social enterprise representatives, to provide advice to the [Public Procurement Reform Board](#) (PPRB) on public procurement practices.
- Publication of and compliance with the [Suppliers' Charter](#) and [core pre-qualification questionnaire](#), (developed in consultation with business organisations and the wider public sector), to improve transparency and reduce bureaucracy in the procurement process.
- A requirement for adequate publicity has been integrated into the Public Contracts (Scotland) Regulations 2006 to ensure that contract opportunities are widely advertised. To facilitate compliance with the adequate publicity requirement, the centrally-funded, national advertising portal, "[Public Contracts Scotland](#)", has been set-up.
- Debriefing is one way of helping suppliers to improve their competitive performance, which will in turn produce benefits to the Scottish public sector.
- The [Single Point of Enquiry](#) to address supplier complaints by offering advice, and, where relevant, pursuing supplier concerns with a view to improving Scottish public procurement practices.
- Removal of the standard ban on assignation of rights and obligations under public contracts without prior consent⁵, which was perceived as a barrier to SMEs which fund their businesses through factoring or invoice discounting (methods of finance which provide businesses with working capital and improve their cash flow).
- The Government Procurement Card (GPC) which has been in use now for several years across the Scottish public sector. GPC provides an efficient method of purchasing and paying for low value, non-recurring goods and services. Using the Card reduces the disproportionate time, effort and associated paperwork (and therefore cost) required to raise and process large numbers of low value purchase orders, invoices and payments. In addition, GPCs have the benefit of ensuring faster payment as suppliers are paid a few days after despatching goods or delivering services.
- eProcurement Scotland is one of the most comprehensive and successful Public Sector eGovernment initiatives. It is designed to be SME "friendly" and suppliers need only a fax or telephone to use it. There are no general joining or service management charges for suppliers nor any transaction fees. Adoption of ePS has

⁵ [SPPN 7/2007 Assignation of debt arising under Public Contracts](#)

been recommended by the Public Procurement Reform Programme as standard across the Scottish public sector. Further information is available on the [eProcurement Scotland website](#) .

PART 6: How an Individual Buyer can Involve SMEs

SMEs can be encouraged to bid for public contracts by:

- alerting the market well in advance of intended procurements and allowing more time for responses to tenders.
- dividing requirements into lots, this facilitates access by SMEs qualitatively in that the content of lots may correspond more closely to the specialised sector of an SME. Use of lots in public procurement is common in Austria, France and Ireland.
- accepting consortia bids from SMEs that have joined forces in order to enable bidding for a larger contract that would normally be outside the scope of a single SME.
- making greater use of Framework Agreements.
- taking a more active role in encouraging main contractors to publicise sub-contracting opportunities.

PART 7: Communicating with Suppliers

There are a range of ways that you can maximise the impact of communication with suppliers. Many organisations favour 'Meet the Buyer' events. To ensure success of these events you may wish to hold them in conjunction with business organisations, sector-specific trade bodies and/or business support groups. It is important that communications activities are coordinated on a regional basis to take account of the resource implications for business of attending these events.

[Public Contracts Scotland](#) enables contracting authorities to publish 'buyer profiles' in line with the Public Contracts (Scotland) Regulations 2006 (paragraph (2)), on the portal and to replicate this information on their organisation's website.

Pre-tender meetings can have an important role in briefing interested parties on procurement activities.

All of the Centres of Expertise have staff who meet regularly to coordinate activity and will be able advise on communications.

PART 8: Advertising Contract Opportunities

Historically a common criticism of public procurement is that suppliers do not know where to find opportunities. Many Scottish public contracts fall below EU thresholds and do not have to be advertised in the Official Journal of the European Union (OJEU).

Regulation 8(21) of The Public Contracts (Scotland) Regulations 2006 requires a degree of advertising which is sufficient to enable open competition and meet the principles of equal treatment, non discrimination and transparency. These are the contracts that SMEs are often interested in, but may also be the opportunities that are often most difficult to locate. The advent of the "Public Contracts Scotland" portal mitigates this issue by providing a central point for all public bodies in Scotland to advertise their contract opportunities.

To ensure optimum advertising of public procurement opportunities, buyers can take the following action:

- Use [prior information notices](#) on a voluntary basis. This will allow potential tenderers to prepare themselves to bid in time for the contracts announced. This is particularly important in the case of large and complex contracts, where SMEs might need time to find partners for joint or consortia bidding;
- Advertise opportunities widely in low cost publications and websites, primarily the centrally-funded "[Public Contracts Scotland](#)" advertising portal, so that businesses can easily find them;
- Ensure advertisements are clear and concise and give a full description of the goods or services sought;
- Publish contact details for specific procurement opportunities so that potential suppliers can speak to someone if they are unclear about contract scope etc;
- Use a variety of sources to compile a tender list where there is sufficient justification not to advertise requirements e.g. the Public Contracts Scotland register of suppliers;
- Publish tender lists and contract award information: SMEs can search the [Public Contracts Scotland](#) portal or the official EU procurement website (<http://simap.eu.int/>) for details of contract award notices in order to identify subcontracting opportunities.

PART 9: The Procurement Process

There is an assumption in many quarters that the bidding process will be unnecessarily complex and costly, unfamiliarity with the processes and documentation involved can also be a concern. The following provides a list of considerations for buyers throughout the procurement process:

- Consistent with genuine competition, value for money and any legal obligations, procurement processes should place the minimum possible burden on suppliers. In defining the scope of the contract and the procurement strategy, the buyer should ensure that the range of goods and/or services to be included in the contract are such that it will provide the best opportunities for attaining VFM;
- The procurement should be based on a sound business case to avoid an unsuccessful procurement, or delays whilst funding is approved;
- The project and budget should have full approval;
- Set a realistic timetable and stick to it. Allow sufficient time to draw up tenders. SMEs have limited resources and need to use these carefully. A much higher proportion of their resources will be tied up in bidding for contracts than for large companies and unreliable timetables may result in severe resource problems;
- Explain the process. Make sure potential suppliers are aware of the various steps involved – the timetable, pre-qualification questionnaire (PQQ), ITT, legal and financial requirements. Relay procurement policy and include points of contact for contracts – generic guidance on tendering for public sector contracts is available on the [Public Contracts Scotland](#) site;
- Use the [core pre-qualification questionnaire](#);
- Make standard Terms and Conditions widely available, for example, on the internet. This may lessen the perceptions of how difficult it is to do business with the public sector and

instead of only becoming aware of them during the bidding process, potential suppliers could consider them at an earlier stage;

- Clarify the format, content and timing of the response required. Do not assume that all suppliers are familiar with the tendering process used. Outline how responses should be laid out in notes associated with the Invitation To Tender documents e.g. Instructions to Tender;
- The process should be proportionate to the size and complexity of the requirement. It is important to ensure that technical and financial thresholds are relevant and proportionate;
- Use risk assessment to determine whether there is a genuine risk from using an SME, and if so whether the risk is containable. It is not appropriate to rule out potential suppliers on the basis of their location or size;
- Assess what experience is relevant to the subject matter of the contract. Traditionally public sector experience is specified - is this more relevant than private sector experience? SMEs may be relatively new companies and lack the track record that larger organisations have. They may however have been started up by individuals with vast experience in the sector who wished to 'strike out' on their own. There should be scope to take this experience into consideration;
- Current requirements for financial records from companies bidding for business are for one copy of the organisation's audited accounts (or equivalent) and the accounts of the group (if any) for the last two years, together with details of any significant changes since the last financial year end. It may be adequate to simply request evidence of the organisation's financial standing, giving those involved in the procurement discretion to decide whether organisations are sufficiently financially stable to be included in the tender evaluation process;
- Tender documentation should be concise and jargon-free;
- Consider the use of lots, i.e. sub-divide a single requirement for services relating to a project into lots and framework agreements;
- Consider setting flexible payment terms, i.e. phased payment linked to delivery of various stages of the contract. Due to their lower costs, some companies may be able to offer better terms but may require flexibility of payment schedules due to their size/ability to obtain credit;
- Reassure SMEs that payments will be made on time. The European Commission is currently reviewing the provisions of Directive 2000/35/EC on late payments in commercial transactions. This on-going assessment may lead to a proposal for an amending Directive which may strengthen discipline in this area;
- Provide feedback to organisations on their bids, so that they can see why their bid succeeded or failed and can use this information to the benefit of their business subsequently increasing market competitiveness. The right to debrief applies above EU thresholds, and is recognised for all contract values by signatories to the [Suppliers' Charter](#).

PART 10: Framework Agreements

Framework Agreements offer the public buyer convenience and can deliver a number of benefits e.g. reduced procurement and contract management costs and lower pricing achieved through aggregation of demand. Buyers should consider how frameworks are perceived by SMEs; they could be more attractive to SMEs if they include specialist items and niche products or services. Frameworks may present particular challenges for SMEs:

- ▣ They may not understand what they are and how to bid for them;
- ▣ The belief that the scope precludes their involvement;
- ▣ The reduction of future opportunities for those SMEs not party to the framework.

However, they are increasingly viewed as a real opportunity for achieving value for money through engagement of a variety of suppliers.

PART 11: Subcontracting Opportunities

Given the nature and often comparatively large size of public sector contracts there will inevitably be circumstances when SMEs will have the best opportunities to tender for contracts as sub-contractors, particularly where they can provide specialist or innovative products or services, or as part of a consortia. Buyers may help to facilitate these opportunities by:

- ▣ considering within the procurement strategy, what degree of consolidation will provide optimum VFM in supply of the goods and/or services required;
- ▣ facilitating pre-tender meetings;
- ▣ publishing tender lists so that SMEs can approach tenderers to identify subcontracting opportunities;
- ▣ publishing contract award details so SMEs can contact the prime contractor.

PART 12: Intellectual Property Rights (IPR)

Where SMEs have links to research or provide new products, IPR may be a barrier to their supplying these goods or services to the public sector. Buyers can take steps to allay concerns about protection of intellectual property and confidentiality. Consider the implications of where ownership of IPR rests. It is common for buyers to try and ensure that any IPR arising during a contract belongs to them. This is not always of great importance; it may be more valuable to allow the supplier some access to IPR depending on the nature of the contract e.g. letting suppliers use research information once it has been used for its original purpose.

PART 13: Checklist for Buyers

DO	DON'T
<ul style="list-style-type: none">▣ Adhere to the Suppliers' Charter and use the core PQQ▣ Consider optimum scope of contract to ensure VFM – Use of frameworks, lots etc.▣ Set a realistic timetable▣ Advertise contracts on the Public Contracts Scotland advertising portal▣ Include specific procurement contacts in adverts▣ Refer to range of potential suppliers when sourcing▣ Explain process in PQQ/ITT documentation▣ Simplify format▣ List evaluation criteria▣ Assess relative risk of using SMEs▣ Consider variable invoicing within VFM▣ Where appropriate consider Intellectual Property Rights (IPR)▣ Provide feedback to help companies to improve their performance	<ul style="list-style-type: none">▣ Automatically consolidate contracts into the largest mass possible▣ Change timescales if possible▣ Expect suppliers to be familiar with procurement policy and processes▣ Automatically rule SMEs out of competition▣ Automatically assume IPR should rest with the contracting authority