



## 05 Procurement and contracts

Understanding the legal and regulatory basis of the procurement system. Having the knowledge and skills to negotiate consultant procurement and win work, and to ensure that you have the right building or professional services contract or agreement in place for a project.

### The legislative framework

- WTO GPA (The World Trade Organisation's Agreement on Government Procurement).  
[https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm)
- EU Directive 2014/24.
- Public Contract Regulations 2015, and what they allow and require.
- The Social Value Act.
- Small Businesses and Enterprise Bill.
- English, Welsh, Scottish and Northern Ireland Regulations, and authorities' standing orders.
- Threshold values of OJEU (Official Journal of the European Union).
- Obligations on tenders below thresholds under trade treaties and regulations.
- Restraint on abnormally low tenders.
- RIBA Plan of Work 2013: procurement task bar.
- RIBA 'Ten Principles for Procuring Better Outcomes'  
<https://www.architecture.com/knowledge-and-resources/resources-landing-page/ten-principles-for-procuring-better-outcomes>

### What is possible and what to look out for

- Preliminary Market Engagement (PME).
- How procurement tender and its value is defined.
- Award criteria: cost-effectiveness, life cycle costing, balanced score cards and MEAT (most economically advantageous tender).
- Appropriate cost/ quality ratio.
- Understanding requirements and evaluating detailed brief requirements.
- The programme, resources and cost of competing

### Reading an OJEU notice

- The contract value.
- The contracting authority.
- The object of the contract, including whether variants are acceptable and consortia are allowed.
- Legal, financial and technical information.
- Economic and financial ability, and whether the service is reserved for a particular profession.
- Likely number of procurement stages.
- The cost quality weighting in the assessment.
- The procedural type route and contract terms and conditions revealed.
- Complementary information.
- Accessing detailed briefs and bid-uploading facilities.
- Understand OJEU layouts, notice access, the CPV (common procurement vocabulary) and NUTS (Nomenclature of Territorial Units for Statistics) codes.

### Developing a proactive practice procurement strategy

- How to decide which competitions to enter, and being clear on why you are entering.
- How to evaluate your chances and whether you meet the baseline criteria.
- Attend preliminary market engagement opportunities to learn what the client is looking for.

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- How to evaluate the time, effort and level of competition and opportunity of different procedures.
- Learn how and when to consider consortia or partnerships to meet economic, capacity and experience requirements.

### Tactics in tendering for work

#### Pre-qualification:

- How to use centralised purchasing arrangements and pre-qualification services.
- Learn what a good EOI (expression of interest) looks like.
- Learn how to complete a PQQ (pre-qualification questionnaire).
- Learn how to demonstrate track record and previous experience.

#### Tendering:

- What a good tender return looks like.
- How to submit cost-effective bids.
- How to demonstrate the social value demanded by a Social Value Levy.
- How to demonstrate cost-effectiveness through quality criteria (MEAT and balanced score cards).
- How to demonstrate a design approach that meets client outcomes.
- How to demonstrate that you understand and can deliver client outcomes in a negotiation or dialogue.
- How to get onto frameworks and how to be called off.

#### Frameworks:

- Selection from a framework by mini-competition.
- The third competitive stage assessment.
- Assessment models for design, fee bid or other.
- Other techniques: full house or pack thinned; by lot, rotational, randomised, ranking from initial assessment, level playing fields.

#### Understanding the client (See also 03 'Business, clients and services'):

- Understand client drivers in consultant selection: e.g. project certainty, complexity, design solution or team, capacity or emerging talent, design approaches and previous projects, project definition, time pressure.
- How to have positive conversations with clients in interviews to demonstrate your interest and capability.
- Understanding the client's fields of enquiry and their weighting matrix for assessment.

#### Things to do better:

- Understand your practice's strengths and weaknesses.
- Identify your practice's unique qualities and distinctions and learn how to articulate them.
- Learn how to communicate your values.
- Ensure that your fee bid or matrix is well considered and researched.
- Respond in clear, succinct and simple language, and relevantly, to the specific questions, in the format requested.
- When writing text, avoid excessive listings of matters.
- Wherever possible, allow sufficient time to get oversight on your bid.
- Network and establish bid-ready consortia.
- Develop arrangements in consortia for regularly screening bids, and doing the initial evaluations, consideration and reporting.
- Share consortia bid costs and feedback.

### Procurement methods

- Selecting the appropriate procurement method.
- Nature and scope of work proposed.
- How the risks are to be apportioned.

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- How and where design responsibility is placed.
- How the work is coordinated.
- On what price basis the contract is to be awarded:
  - Traditional;
  - Design and build;
  - Management.
- The effect of different procurement routes on programme, cost, risk, quality.
- Design responsibility and third-party rights.
- Claims, litigation and alternative dispute resolution methods.
- Collaboration and briefing in construction, and provisions for team working.
- Site processes, quality monitoring, progress recording, payment and completion.

### The right contract

- Understanding the different contracts and forms of appointment.
- Advising the client on the right/ best form of contract to be used, and keeping up to speed on updates and amendments to the various forms of contract.
- Duties and powers of a lead consultant and contract administrator.
- Agreeing and knowing how specific contracts are to be adjudicated, and adjudication agreements.
- Collateral warranties.
- Contract law and case law.
- Contracts for professional services.
- Contracts for building projects:
  - Standard forms of contract;
  - Non-standard forms of contract.
- Selecting the appropriate type of contract:
  - Traditional:
    - Lump sum;
    - Measurement;
    - Cost reimbursement.
  - Management:
    - Management contracts;
    - Construction management contracts;
    - Design, manage, construct and (in some cases) maintain.
  - Design and build.
  - RIBA Contracts for domestic and simple commercial projects.
  - RIBA agreements for the appointment of architects and specialist consultants.
  - Other types of contracts and agreements for specific issues:
    - Public sector consultancy agreements.
    - Framework agreements and guides.
    - Homeowner contracts.
    - Intermediate building contracts.
    - Major projects.
    - Minor works.
    - Pre-construction services.
    - Prime cost.
    - Repair and maintenance.

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### Links to other organisations and resources

RIBA Bookshops <http://www.ribabookshops.com/topic/construction-contracts-and-forms-riba-jct-nec-icc-fidic-and-more/02/>

Joint Contracts Tribunal (JCT) <http://www.jctltd.co.uk/>

OJEU <http://www.ojeu.com/>