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Public Procurement

Advertising

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Why is advertising important?

Advertising is a foundation stone of public procurement. Full and open advertising:

- **facilitates appropriate competition** – by informing as many potential economic operators as possible about contract opportunities and thereby enabling them to compete, which leads to the best value-for-money outcomes for contracting authorities;
- **develops markets** – by showing potential economic operators that business opportunities are available, which encourages the development of the marketplace with new and more diverse economic operators and a wider source of economic operators at local, regional, national and international levels;
- **helps in the battle against corruption** – by increasing transparency and ensuring that economic operators, the public, the press and other stakeholders are aware of contract opportunities and have the opportunity to find out more about the contract opportunities that are available and to whom contracts have been awarded.

Where do you advertise?

Notices for contracts of a certain type and value, which means that they are subject to the Directive, must be advertised in the Supplement to the Official Journal of the European Union (OJEU). Notices are published free of charge. A free online version of the Supplement of the OJEU called 'TED' (Tenders Electronic Daily) is available at <http://ted.europa.eu>.

Many EU member states also require the advertisement, at national level, of notices for contracts which are not subject to the requirement to advertise in the OJEU.

Other publications: Contract opportunities may also be advertised in other international, national or local publications. Where additional advertisement is used, the Directive stipulates that this advertisement must not take place before the contract notice has been despatched to the OJEU and that the additional advertisement must not contain any information that is not included in the OJEU contract notice.

When do you need to advertise?

There are three main occasions when you advertise:

- Before the start of the formal procurement process – an optional advertisement, to pre-warn the marketplace of potential future opportunities, using a Prior Information Notice;
- At the start of a contract-specific procurement process – to invite economic operators to participate in the procurement process, using a Contract Notice;
- At the end of a contract-specific procurement process – to notify economic operators and others that the procurement process has been concluded, using a Contract Award Notice or a Voluntary Ex Ante Notice.

Advertising before the start of the formal procurement process using a Prior Information Notice: The Directive permits, but does not oblige, a contracting authority to pre-warn the marketplace of potential future contract opportunities by advertising, using a Prior Information Notice.

Advertising in advance in this manner provides benefits to both the contracting authority and potential economic operators:

- Before advertising the contracting authority needs to have thought carefully about its requirements, and so the preparation of the Prior Information Notice can assist in ensuring that advance planning and budgeting are taken seriously.
- Economic operators that have been given advance warning of potential opportunities can also plan accordingly. This planning assists in ensuring good levels of competition and better outcomes in terms of value-for-money for the contracting authority.
- If a Prior Information Notice is used, then in certain circumstances statutory tender time scales can be reduced.

There is a standard format Prior Information notice which is published by the European Commission on its website at www.simap.europa.eu. The format is the same for all types of contracts.

We would like to keep the market informed of future potential opportunities. Is there an alternative to advertising Prior Information Notices in the Official Journal of the European Union?

Yes, a contracting authority can set up its own Internet-based 'buyer profile'. The buyer profile includes general information about the contracting authority together with information on ongoing invitations to tender, scheduled purchases, contracts concluded, and procedures cancelled.

A contracting authority can also use its buyer profile to publish Prior Information Notices. Where a contracting authority uses its own buyer profile to publish Prior Information Notices, it does not need to despatch a Prior Information Notice to the OJEU provided that it complies with certain conditions.

Advertising at the start of a contract-specific procurement process by using a Contract Notice: The Contract Notice is an extremely important part of the procurement process. It marks the commencement of the formal procurement process for a specific contract and notifies potential economic operators of the opportunity to participate in the procurement process.

The standard format notices must be used. These are published by the European Commission on its website at www.simap.europa.eu. The standard format Contract Notice is used for the majority of procurement processes, but there are different formats for different types of procurement. For example, there are special forms of contract notice to be used for design contests, works contracts for subsidised housing schemes, and public works concessions.

To ensure as much competition as possible and to comply with the basic requirements for transparency, the Contract Notice must be drafted in a way that clearly describes the nature, scope and estimated value of the contract and how economic operators can apply to participate in the process. The Contract Notice must also be completed fully and correctly. Failure to draft a clear, complete and compliant Contract Notice could result in a disappointing level of competition, poor quality or inappropriate tenders, or a flawed procurement process that might have to be re-started.

What can we do if the Contract Notice is incorrect or if we need to change information in the Contract Notice?

There is a standard form of Notice for Additional Information, Information on Incomplete Procedure or Corrigendum. This standard form notice is available on the Commission's Simap website (form number 14) and can be used for: an incomplete procedure – where a procedure has been discontinued, declared unsuccessful, or the contract has not been awarded, a correction and additional information.

Advertising at the end of a contract-specific procurement process by using a Contract Award Notice: A contracting authority must advertise the conclusion of a contract-specific procurement process by using a Contract Award Notice and must do so within 48 days of the award of the contract.

This final notice is important because it ensures the transparency of the process, as economic operators and others are made aware that the procurement process has been concluded and on what basis. The European Commission also uses this information to prepare statistical data on the level and nature of procurement activity and to monitor procurement processes.

The obligation to advertise a Contract Award Notice applies to all contracts where a Contract Notice has been advertised and also to some other contracts where such a notice has not been advertised.

Are there rules about how quickly notices must be published? Yes, all notices despatched electronically and in the correct format must be published within five days of despatch. Notices despatched by other means must be published within 12 days.

Electronic procurement

Can we complete and despatch contract notices electronically? Yes, and the Directive and the European Commission encourage you to do so. There is a free online system directly available from the European Commission at www.simap.europa.eu.

To encourage electronic procurement, some of the statutory minimum time scales are reduced and there is no maximum word count if contract notices are completed and despatched to the OJEU by using the online system. The format and procedure for sending notices electronically are accessible on the Simap website: www.simap.europa.eu.

Utilities

Utilities are required to advertise contracts of a specified type and value, but there is more flexibility in terms of the choice of advertising method. Utilities also have additional purchasing methods available to them.

Choice of advertising: Utilities have a free choice between three main forms of competitive procedure: open procedure, restricted procedure, and negotiated procedure with a prior call for competition.

Utilities also have flexibility in terms of how they advertise – referred to in the legislation as a ‘call for competition’. When conducting a restricted procedure or a negotiated procedure with a prior call for competition, utilities can choose to use:

- a contract notice or
- an annual ‘periodic indicative notice’ or
- a notice on the existence of a qualification system

When conducting an open procedure, utilities have no choice and must use a contract notice.

Statutory time limits apply and in each case a standard format contract notice must be used.

Local notices: Notices may also be published nationally, in which case they must not contain any information other than that contained in the notice sent to the Commission, and they must not be published locally before the date of despatch to the Commission.

Qualification systems: Utilities are permitted to set up and run qualification systems. A qualification system is a system in which economic operators interested in contracting with the utility apply to be registered as potential providers. The utility then registers some or all of those economic operators in the system. The registered economic operators then form a pool from which the utility may draw those that are to be invited or to negotiate contracts.

When setting up a qualification system, the utility uses a ‘periodic indicative notice’ to advertise. The periodic indicative notice can be published either in the Official Journal of the European Union or on the utility’s own buyer profile (with a notice of publication being sent to the OJEU). For pre-qualification systems with a duration of three years or less, a periodic indicative notice is published only when the pre-qualification system has been established. For pre-qualification systems lasting longer than three years, an annual periodic indicative notice is required.

Framework agreements: Utilities can set up framework agreements by using the standard form Contract Notice.

Dynamic purchasing systems: Utilities are also permitted to set up dynamic purchasing systems, and calls for competition under those systems involve the use of a simplified Contract Notice.

Contract award notices: Utilities are required to send a Contract Award Notice in a standard format to the Office of the OJEU within two months of the award of

a contract or framework agreement. Contract Award Notices for dynamic purchasing systems can be grouped and sent on a quarterly basis within two months of the end of the relevant quarter.

Further reading:

[SIGMA Public Procurement Training Manual](#)

www.simap.europa.eu