EU Regulations: Jan 10

PUBLIC CONTRACTS (SCOTLAND) REGULATIONS
(Commonly referred to as the “EU Regulations”)

Summary of Regulations and Timescales
This note is intended as an update for staff who need to acquire equipment or services valued at over £150k to provide them with a brief description of the current EU/UK legislation and to guide them through the procedures. The process needs to be properly planned with adequate time allowed for it.

Background
The European Directives were first introduced into UK law as the Public Supply (and Services) Contracts Regulations on 21 December 1991. These were amended in 1995 and further revised before being published in Scotland as the Public Contracts (Scotland) Regulations in 2006. The University has an obligation to comply with the regulations, proceedings as a result of any breach of this duty are assigned to the Court of Session in Scotland, and more serious cases are referred to the European Court of Justice. The value threshold above which contracts for supplies and services have to be advertised is £156,442 and this rate shall remain valid until 31st December 2012.

Responsibilities
It is the responsibility of the University Procurement section to manage the tendering procedure for contracts in accordance with these Regulations. It is important for Heads of Colleges and Schools, and Directors of Sections, to ensure that there is a strategy in place to comply with the prescribed tendering periods, and be aware that quotations received before the notices have been advertised must be set aside.

Please note that the “Remedies Directive” which came into force in December 2009 provides a more detailed legal entitlement for suppliers in terms of their treatment in the course of a tendering process, with more significant penalties for contracting authorities which don't comply.

These regulations apply to all procurement transactions within the public sector, regardless of the source of funding.

Procedures
There are four tendering options within the Regulations. The Negotiated Procedure and the Competitive Dialogue are not described here as they generally relate to property or works contracts and are not applicable in most circumstances.

Both of the following procedures require a contract notice to be advertised in a supplement to the Official Journal of the European Union (OJEU), and an award notice to be similarly advertised once a contract award has been made.

Open Procedure
The date for receipt of tenders shall be not less than 52 days from the date of despatch of the notice, but if the premises have to be inspected and meetings or presentations arranged, then allowance has to be made for these. We have to provide full tender papers in response to requests within 4 days.

Our recommendation would normally be against using this process for two reasons: the prescribed response time means that the contract documents should be prepared before the notice is sent; the procedure is indeed “open”, and we have to provide papers for any party who requests them, and then consider and document our reasons for rejection of all unsuccessful offers to supply.
**Restricted Procedure**

This is generally the most suitable of the four options available to the University. The benefit of the Restricted Procedure is that it allows for a pre-qualification process, meaning that applications to tender have to contain details of relevant experience, technical ability, financial stability etc., and these may be used to select suitable potential suppliers to receive tender papers. This considerably reduces the tender analysis and recording which is required.

The date fixed for receipt of requests to tender shall be not less than **37 days** from date of despatch of the notice. This is followed by a date for receipt of tenders not less than **40 days** from despatch of invitations. In addition, the suppliers are afforded an opportunity to challenge any award made and are allowed **10 days** (the “mandatory standstill period”) following announcement of selection. Excluding any time needed to consider the submissions, the **minimum process time therefore amounts to 87 days**.

Within the Regulations it is possible to reduce process times by using electronic means to publish our contract notices and make our documents available. Procurement has access to systems to do this and the schedule may be brought down to **30 days** for the notice to be advertised and **35 days** for the tenderers to submit. With the mandatory standstill remaining this takes the total minimum process time to **75 days**.

**Time**

It is common for buyers to underestimate the time needed to consider the applications to tender at the first stage and then the tender documents when they have been received. Depending on the complexity of the supply, we recommend that a minimum of 7-10 days is scheduled for reviewing the pre-qualification documents as sufficient time has also to be allowed for these to receive a full financial analysis by an accountant.

Tenders over £100k should be considered by a panel which includes the departmental client, their line manager, the accountant for their College or Section, a member of the Procurement team and possibly a technical adviser. Following this review a fully reasoned de-selection note will have to be prepared for each of the unsuccessful firms as well as the letter of appointment for the winning supplier, so, as a guide, at least 14 days should be allowed for this stage.

Even with the shorter periods allowed for an electronic exchange of documents it can be seen that the minimum period you should schedule for an over-threshold tender exercise would be 100 days. For a complex tender which might involve site-visits, meetings, presentations or demonstrations, 120 days might be a reasonable programme time.

**How to Get Started**

If specification documents are prepared and sent to Procurement, with a brief generic description of our requirements and the criteria to be used for selection, then the notice can be fully completed and sent electronically to the Commission within hours. If you would like to have a blank form so you may see the sort of information required, then please contact Procurement on ext 4467 (King’s) or email procurement@abdn.ac.uk.

**Gary McKinnon**

Procurement

15 January 2010

*(More detailed guidance on Tendering for Goods and Services valued at £100k and over will be accessible from mid-Feb 2010 on the Procurement web-page: www.abdn.ac.uk/procurement.)*