



SIGMA

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Creating Change Together

SIGMA

Public Procurement

Training Manual

Update 2015

Module B

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B	ORGANISATION AT LEVEL OF CONTRACTING AUTHORITIES	PART 1	CONTRACTING AUTHORITIES' INTERNAL REGULATIONS
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SECTION 2 - NARRATIVE

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2.4.5 Controls

▼ The governance documentation must include specific statements on the following controls, which may be cascaded upwards from the procurement officer to the head of the contracting authority: ▼

- ° Authority to approve [modifications of contracts](#) ▼

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SECTION 2 - NARRATIVE

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1. Pre-planning and the annual procurement plan

▽This process will ideally take place during the year, before the procurement needs to be made. Procurement people ▽and deciding which items to include within a Prior [Information](#) Notice (PIN). Modules C4 and E2 describe the actions necessary to publish a PIN.

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The annual procurement plan may also indicate those cases where a contracting authority intends [to](#):

- [collaborate with other contracting authorities for occasional joint procurement](#)
- [acquire supplies and/or services from a central purchasing body](#)
- [acquire works, supplies and services by using contracts awarded by a central purchasing body](#)
- [acquire works, supplies and services by using dynamic purchasing systems operated by a central purchasing body](#)
- [acquire works, supplies and services by using a framework agreement concluded by a central purchasing body](#)

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3. Procurement planning - individual procurement level

Insert at end of final sentence

An individual procurement level plan could also involve co-operation with other contracting authorities [and/or one or more central purchasing bodies](#).

4. Market review

▽The market review may also reveal which other contracting authorities:▽

B	ORGANISATION AT LEVEL OF CONTRACTING AUTHORITIES	PART 2	THE PROCUREMENT CYCLE
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- have a similar need and may provide opportunities to collaborate for joint procurement.

Article 40 of the 2014 Directive confirms that the contracting authority “may conduct market consultations with a view to preparing the procurement and to informing economic operators of their procurement plans and requirements”.

Article 40 continues: “For this purpose, the contracting authority may, for example, seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.”

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Article 41 of the 2014 Directive provides that:

“ where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority or has otherwise been involved in the preparation of the procurement procedure, the contracting authority must take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.”

Article 41 continues:

“Such measures shall include the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.”

Article 41 emphasises that:

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“Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.”

See Module E6 for further information on articles 40 and 41 in the 2014 Directive.

5. Specification

▽With simple requirements a description may be adequate; however, a detailed “specification” is necessary for all but the simplest requirement.make a clear offer to the contracting authority that should meet its needs. ▽ At the same time, technical specifications must be drafted in such a way as to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. This process involves stakeholders in a major way, as well as procurement officers. The different types of specification are discussed in more detail in Module E1.

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2.4 THE PROCUREMENT CYCLE - RUNNING THE PROCUREMENT EXERCISE

23. Publishing a contract award notice

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PDF B-47

12. Publishing a notice

Insert after final sentence

The buyer profile may also include prior information notices, used as a means of calling for competition, which are published at national level.

13. Supplying an ITT

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Insert after final sentence

[According to the 2014 Directives, electronic availability of the procurement documents is mandatory with effect from 18 April 2016. There are also provisions in article 53 of the 2014 Directive requiring procurement documents to be available free of charge on the Internet on the date of publication of the contract notice. See Module E6 for further information on the requirements in the 2014 Directive relating to the availability of procurement documents.](#)

PDF B-48

15. Receiving tenders

Late tenders must not be accepted and must be returned unopened to the economic operators concerned.

Deleted: There is further discussion on the action required from procurement officers at this stage in module B3. ¶

[According to the 2014 Directives, the electronic submission of tenders shall be required \(no later than 18 October 2018\). Further discussion on the action required from procurement officers at this stage is provided in Module B3.](#)

PDF B-49

17. Evaluation

The evaluation [shall be based on the determination of the most economically advantageous tender, as redefined in the 2014 Directive. Article 67 provides that the “most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing....and may include the best price-quality ratio, which shall be assessed on the basis of criteria linked to the subject matter of the public contract in question, including qualitative, environmental and/or social aspects.”](#)

Deleted: can take the form of determining the lowest price offered by the tenderers or of assessing the Most Economically Advantageous Tender (MEAT)

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In the ~~case where only the price is used for identifying the most economically advantageous tender~~, where three tenderers have bid 170_000 EUR, 155_000 EUR and 160_000 EUR for a requirement advertised by the contracting authority, the tenderer bidding 155_000 EUR will be awarded the work, all other criteria being equal.

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In the ~~case where the best price-quality ratio is used for identifying the most economically advantageous tender~~, weighted criteria reflecting issues of vital importance to the purchase are specified and communicated to tenderers, who then submit a tender with that information in mind.

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Good practice note – make the most of ~~the best price-quality ratio~~

Make the most of ~~the best price-quality ratio~~. This principle allows you to ~~determine~~ the best solution. ~~However, keep in mind that the best price-quality ratio must always include a price or cost element.~~

One city authority describes ~~the best price-quality ratio~~ as ~~the “criteria which the authority may use to determine that an offer is the most economically advantageous, including delivery date, running costs, cost effectiveness, quality (including technical merit), aesthetic and functional characteristics, accessibility, suitability of design for all users, social, environmental and innovative characteristics, after-sales service, technical assistance and price.”~~

~~According to the 2014 Directives, where the quality of the staff assigned can have a significant impact on the level of performance of the contract, the organisation, qualifications and experience of staff assigned to perform the contract may also be used as contract award criteria.~~

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20. Standstill period

~~Following an ECJ decision (Alcatel C-81/98), it is now a requirement for a contracting authority to establish~~ a standstill period of a minimum of ten (10) calendar days between advising tenderers by fax, e-mail or post (whichever is the fastest method) of the contract

Deleted: Following a court case involving Alcatel

Deleted: that all procurement carried out under the EC procurement directives must include

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award decision and entering into a contractually binding agreement with the successful tenderer. [The requirement for a standstill period applies to most contracts awarded following a procurement process carried out under the EU procurement directives.](#)

This standstill period allows unsuccessful tenderers an opportunity to challenge the decision of award of the contract and, if they so choose, to bring a legal action for the suspension and setting aside of the decision.

The [requirements for notification](#), standstill period and challenges are discussed in more detail in [Module F1](#).

[PDF B-55](#)

26. Enabling ordering mechanisms

A call-off Order linked to a contract or a purchase order constitutes the first of three transactions that auditors refer to as a three-way match. Module [C4](#) deals with framework agreements in more detail.

[PDF B-60](#)

35. Payment

insert at end of section 35. Payment

[Direct payments to subcontractors are explicitly permitted according to the 2014 Directives where the nature of the contract so allows and without prejudice to the issue of the main contractor’s liability. Such measures may include appropriate mechanisms permitting the main contractor to object to undue payments. Module G1 provides more information.](#)

Deleted: Within the first two days after notification of the intended award, tenderers can ask for feedback, which must be supplied by the contracting authority by the seventh day following the award notice. This leaves the tenderer three days to consider challenging the award decision if they feel that such a course of action is appropriate.

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2.6 CO-OPERATION WITH OTHER CONTRACTING AUTHORITIES

According to one model, a separate organisation is set up to act as a central purchasing body, for example, on behalf of local authorities within a geographical area, making all of their major purchases. The authorities may or may be not free to purchase outside the organisation, and the organisation may levy a small percentage on each purchase it makes so as to recover its operating costs.

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Another model involves sharing out purchasing between the organisations concerned and running occasional joint procurement activity as a virtual organisation. For this model, charges are usually not levied.

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The 2014 Directive contains provisions relating to central purchasing in article 38 and to occasional joint procurement in article 39.

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Conclusion

For small or local contracting authorities, using the services of a central procurement body or joining a consortium can be a way of achieving benefits that are otherwise not available to them. In the case of consortium organisations, they frequently succeed only when all participants actively support and participate in the joint procurement activity.

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SECTION 2 - NARRATIVE

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2.4 ADVICE AND LEADERSHIP PROVIDED BY PROCUREMENT OFFICERS TO STAKEHOLDERS

- Best value-for-money concepts, for example

- Most economically advantageous tender principle

- Compliance with EU Directives

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3.5 Reporting on procurement activity

According to article 84 of the 2014 Directive, contracting authorities are obliged to prepare reports

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Paragraph 3.5.1 lists the mandatory reporting requirements under article 84 of the 2014 Directive, and paragraphs 3.5.2, 3.6 and 3.7 provide....

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3.5.1 Mandatory reporting under Article 84

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▽ The written report must contain (as a minimum) the following: ▽

- ▽ Value of the contract, framework agreement or dynamic purchasing system ▽
- Where applicable, the result of the qualitative selection and/or reduction of numbers

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- [▽](#) Name of the successful economic operator and the reason for its selection. If known..... sub-contract to third parties [▽](#); and, where known at that point in time, [the names of the main contractor's subcontractors, if any](#)
- For [the competitive procedure with negotiation and for the competitive dialogue](#), the circumstances specified in the [EU Directive](#) justifying the use of these procedures
- [For the negotiated procedure without prior publication, the circumstances specified in the EU Directive justifying the use of this procedure](#)
- [Where a contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system, the reason\(s\) why](#)
- [Where applicable, the reason\(s\) why means of communication other than electronic means have been used for the submission of a tender](#)
- [Where applicable, conflicts of interest detected and subsequent measures taken](#)
- [Where applicable, the reason\(s\) for the decision not to subdivide a contract into lots, if those reasons are not set out in the procurement documents](#)

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- [▽](#)Number of transactions processed by the procurement team: [▽](#) [Modifications of the contracts during their term](#)

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Step 12 - Publishing procurement notice

Procurement officer actions	Procurement officers will need to despatch the contract notice (or the prior information notice as a call for competition) for publication.a mailing address and an e-mail address. The buyer profile may also include prior information notices as a means of calling for competition, which are published at the national level.
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Step 13- Supplying ITT

Step objectives	<i>Insert after first sentence</i> NB: The 2014 Directive requires procurement documents to be made
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	<p>available, free of charge, by direct access on the Internet on the date of publication of the contract notice (or the invitation to confirm interest where a PIN as a call for competition is used).</p>
Procurement officer actions	<p>NB: This step will not follow step 12 on the restricted, competitive procedure with negotiation, competitive dialogue or innovation partnership procedure, where the economic operators will first be selected on the basis of the initial request to participate.</p>

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PDF B-99

Step 15- Receiving tenders

Step objectives	<p><i>Insert after first sentence</i></p> <p>NB: The 2014 Directive requires contracting authorities to have in place systems which permit tenders to be submitted by electronic means. These e-procurement provisions will apply in Member States by 18 October 2018 at the latest.</p>
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PDF B-100

Step 16 - Selection (qualification) of economic operators

Procurement officer actions	<p>Procurement officers will need to:</p> <ol style="list-style-type: none"> 1. Evaluate the information submitted by economic operators 2. Check that the economic operator must not be excluded in accordance with the provisions relating to mandatory exclusion grounds <p><i>Re-number rest of Step 16</i></p>
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Step 17 - Evaluation

Procurement	Procurement officers will need to:
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officer actions	<p>2. Ensure that each economic operator's tender is evaluated fairly and in an unbiased manner in accordance with the pre-set contract award criteria</p>
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SECTION 2 - NARRATIVE

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2.4 GROUNDS FOR EXCLUSION OF PERSONS FROM THE EVALUATION PANEL

Insert new paragraphs at the end of 2.4 GROUNDS FOR EXCLUSION OF PERSONS FROM THE EVALUATION PANEL

Article 24 of the 2014 Directive requires Member States to ensure that “contracting authorities take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators”.

Article 24 explains that the concept of conflicts of interest “shall at least cover any situation where staff members of a contracting authority...who are involved in the conduct of procurement procedures or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.”

Where a conflict of interest cannot be effectively remedied by other less intrusive measures, it will then constitute a discretionary ground for exclusion under article 57(4)(e).

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2.6 TASKS FOR THE EVALUATION PANEL - SPECIFIC “MUST DO’S”

▽final bullet point in list ▽

- Make an award decision on the basis of the most economically advantageous tender.

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B	ORGANISATION AT LEVEL OF CONTRACTING AUTHORITIES	PART 5	CONTRIBUTIONS FROM EXTERNAL CONSULTANTS AND EXPERTS
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SECTION 2 - NARRATIVE

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2.1 WHAT IS A CONSULTANT?

Insert at end of 2.1 What is a consultant?

Provision of ancillary purchasing activities by central purchasing bodies: Support to the procurement process can take various forms, including support in the form of “ancillary purchasing activities”, as described below.

The 2014 Directive includes special provisions covering the situation where a central purchasing body provides “ancillary purchasing activities”. Ancillary purchasing activities in this context may include certain consultancy services. These services are described in the 2014 Directive as:

- advice on the conduct or design of public procurement procedures
- preparation and management of procurement procedures on behalf of and for the account of the contracting authority concerned
- technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services

A contracting authority is permitted to purchase ancillary services, as described in the 2014 Directive under “ancillary purchasing activities”, directly from a central purchasing body without using the competitive tender process.

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2.6 WHAT TO LOOK FOR AND BE AWARE OF WHEN SEEKING CONSULTANTS

- run the procurement process for the appointment of consultants in accordance with the requirements of the 2014 Directive and any local or national laws. Note: Public service contracts for the provision of ancillary purchasing activities that are not performed by a central purchasing body in connection with its provision of central purchasing activities to the contracting authority concerned should be awarded in accordance with the 2014 Directive and with any local or national laws (see 2.1 above)

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SECTION 1 - INTRODUCTION

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1.1 OBJECTIVES

2. How performance measurement – in particular, the methodology employed – can be exercised at the contracting authority level within a procuring organisation, but also at a national level

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1.3 LINKS

There is a particularly strong link between this module, and

- Module B2 on the responsibilities of the contracting authority

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1.4 RELEVANCE

This module is important for all procurement professionals involved in public procurement, but especially for those managing contracting authorities and heads of procuring organisations.

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1.5. LEGAL INFORMATION HELPFUL TO HAVE AT HAND

This module is not governed by any specific legal requirement. However, indirectly, the principles and objectives laid down in the EU Directives and the Treaty for the role and conduct of public procurement provide strong arguments for making performance measurement a priority area.

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SECTION 2 - NARRATIVE

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2.1 INTRODUCTION

▽Final paragraph on page B-197▽

The recent [2014](#) Directives reflect the need for modernisation, more flexibility and simplification of the legal framework in order to adapt to a decade of extensive technological and commercial developments, as well as a continuous evolution in the provision and organisation of public services.

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Performance Area 4. External and Internal Relations and Collaboration

Indicator 4.4 Internal compliance (to identify maverick spending)

Baseline:

- a) Procurement spending that is carried out by means of 'maverick spending' (by contracting suppliers that are not covered by a ~~contract/framework agreement~~[/dynamic purchasing system](#)) should not exceed X% of the total framework contract volume.

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