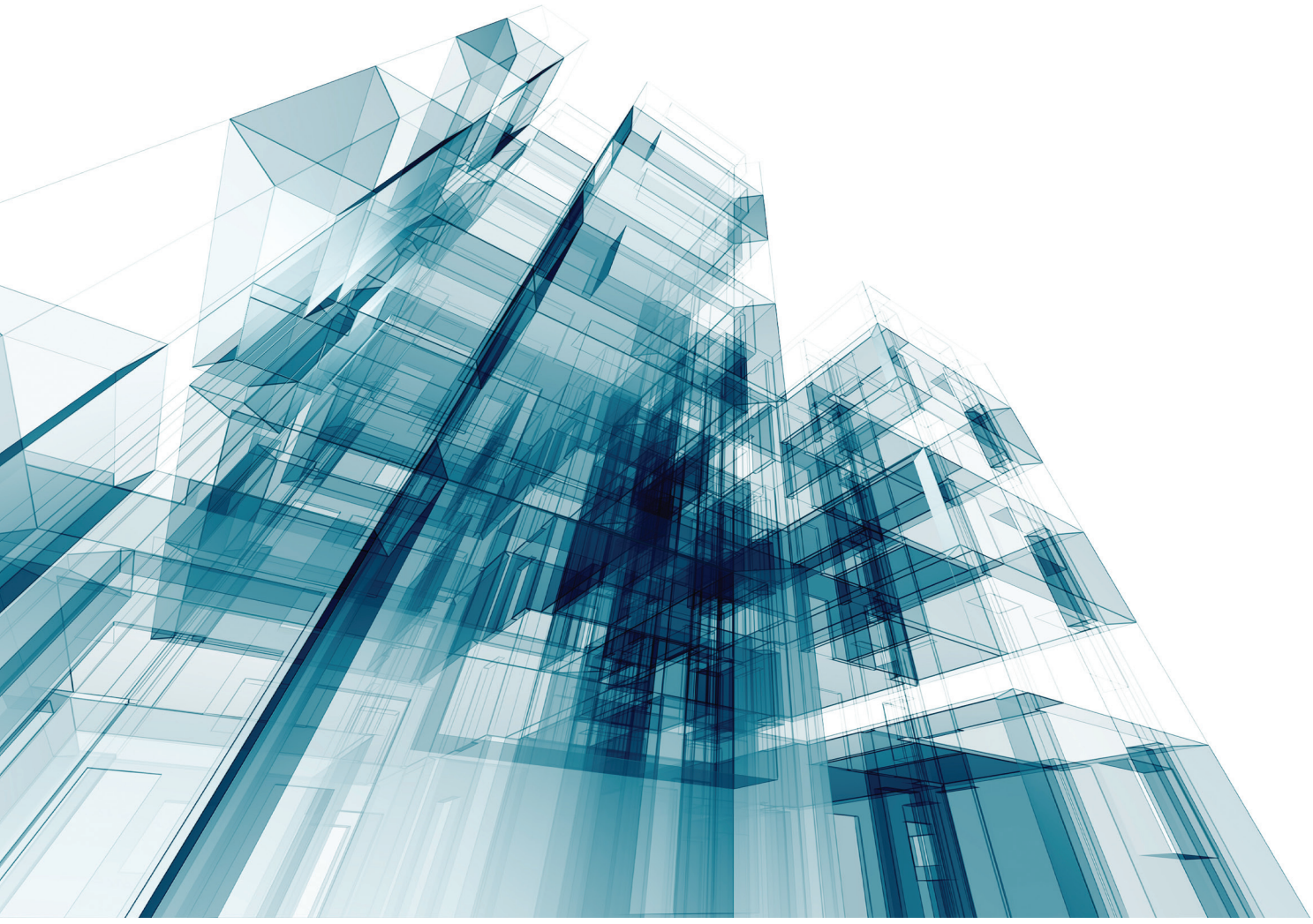
RICS guidance note

RICS Professional Guidance, UK

Tendering strategies

1st edition



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Contents

RICS professional guidance

International standards

RICS is at the forefront of developing international standards, working in coalitions with organisations around the globe, acting in the public interest to raise standards and increase transparency within markets. International Property Measurement Standards (IPMS –- ipmsc.org), International Construction Measurement Standards (ICMS), International Ethics Standards (IES) and others will be published and will be mandatory for RICS members. This guidance note links directly to and underpins these standards and RICS members are advised to make themselves aware of the international standards (see http://www.rics.orgwww.rics.org) and the overarching principles with which this guidance note complies. Members of RICS are uniquely placed in the market by being trained, qualified and regulated by working to international standards and complying with this guidance.

RICS guidance notes

This is a guidance note. Where recommendations are made for specific professional tasks, these are intended to represent 'best practice', i.e. recommendations which in the opinion of RICS meet a high standard of professional competence.

Although members are not required to follow the recommendations contained in the note, they should take into account the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal may take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member had acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

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In addition, guidance notes are relevant to professional competence in that each member should be up to date and should have knowledge of guidance notes within a reasonable time of their coming into effect.

This guidance note is believed to reflect case law and legislation applicable at its date of publication. It is the member's responsibility to establish if any changes in case law or legislation after the publication date have an impact on the guidance or information in this document.

Document status defined

RICS produces a range of professional guidance and standards products. These have been defined in the table below. This document is a guidance note.

Type of document	Definition	Status
Standard		
International Standard	An international high level principle based standard developed in collaboration with other relevant bodies	Mandatory
Practice Statement		
RICS practice statement	Document that provides members with mandatory requirements under Rule 4 of the Rules of Conduct for members	Mandatory
Guidance		
RICS Code of Practice	Document approved by RICS, and endorsed by another professional body / stakeholder that provides users with recommendations for accepted good practice as followed by conscientious practitioners	Mandatory or recommended good practice (will be confirmed in the document itself)
RICS Guidance Note (GN)	Document that provides users with recommendations for accepted good practice as followed by competent and conscientious practitioners	Recommended good practice
RICS Information Paper (IP)	Practice based information that provides users with the latest information and/or research	Information and/or explanatory commentary

1 Introduction

This guidance note summarises what tendering is and how tendering processes are used to establish a contract price. It also reviews different types of tendering and negotiation strategies and their advantages and disadvantages. It seeks to enhance the knowledge and understanding of the tendering and negotiation processes involved in procurement.

This guidance note also looks at the practical issues of producing an invitation to tender and assessing tender returns on a practical level. It does not cover online live auctions (also known as 'Dutch auctioning'). Practical consideration such as advising on tendering strategies and analysing and reporting on tender returns is also considered.

This guidance note does not provide a detailed reference to public procurement techniques such as the use of competitive dialogue: it is restricted to the tendering of construction projects (as opposed to private finance initiative (PFI)/public–private partnerships (PPP) arrangements), although these arrangements are briefly reviewed in subsection 4.18.

Additionally this guidance note does not seek to replicate the information included in the JCT *Tendering practice note 2012*. Instead it refers to this information where necessary and gives an overview of the information contained in this practice note and why it is important to consult.

For the purposes of giving guidance, the client is referred to as the 'employer' and the main contractor as the 'contractor'. However, much of the guidance can equally be applied to a contractor/subcontractor or supplier arrangement.

Guidance is given in relation to the main forms of contract and main procurement routes under the following headings, which map to the Assessment of Professional Competence (APC):

- General principles (Level 1 – Knowing)
- Practical application (Level 2 – Doing); and
- Practical considerations (Level 3 – Doing/advising).

1.1 Minimum level of service

The quantity surveyor is expected to fulfil the following duties, notwithstanding the detailed terms of any appointment or contractual obligation:

- take an initial brief from the employer in order to understand their requirements for tendering
- choose a suitable tendering strategy with the project team
- collate and produce the invitation to tender documents and issue them in an appropriate manner
- deal with tender queries and ensure they are answered in a timely manner
- open and analyse tender returns, collate tender queries from the design team and produce a tender report, which should include recommendations of preferred contractor status, agreed by the whole project team; and
- advise the client on more complex tendering issues, as appropriate.

2 General principles (Level 1 – Knowing)

Guidance is given in this section about what tendering is and how it differs from procurement. It explains the common methods of tendering in the construction industry and the common codes of practice that are referred to.

2.1 The difference between tendering and procurement

There is often confusion in the industry about the differences between tendering and procurement. The terms are sometimes used interchangeably without thought given to their actual meaning. They are distinct activities in the construction process and it is necessary to properly understand them to be able to explain the differences.

- **Procurement** is the overall act of obtaining goods and services from external sources (i.e. a building contractor) and includes deciding the strategy on how those goods are to be acquired by reviewing the client's requirements (i.e. time, quality and cost) and their attitude to risk.
- **Tendering** is an important phase in the procurement strategy but procurement involves much more than simply obtaining a price. Tendering is:
  - the bidding process, to obtain a price; and
  - how a contractor is actually appointed.

2.2. The main types of tendering procedures

There are three main types of tendering strategy which are common to the construction industry, although there may be subtypes of each. Note that the chosen procurement route should not affect the tendering strategy as each tendering strategy can be used within most procurement strategies.

2.2.1 Single-stage tendering

The most common type of tendering strategy is the single-stage competitive tender for obtaining a price for the whole of the construction works. Invitation to tender documents are issued to a number of competing contractors who are all given the chance to bid for the project based on identical tender documentation.

This is usually done at RIBA Stage 4 so that the tendering contractors receive the most detailed information to base their bid on. The bidding contractors are given a predetermined amount of time to submit their tenders. These are then analysed, in terms of cost and quality, before a single contractor is declared the preferred contractor. They then ultimately enter into a building contract with the client to deliver the tendered works.

2.2.2 Two-stage tendering

Two-stage tendering has become more common in recent years and is often used where time is constrained (as it enables design and tendering to overlap). It is also used if the design process would benefit from the technical input of a contractor in the later design stages. In this sense it is used to obtain the early appointment of a contractor.

The process involves first-stage tender enquiry documentation being issued to bidding contractors at RIBA Stage 2 or 3. Rather than requesting a bid for constructing the entire project (which is still in the process of being designed), the preferred contractor is chosen on the basis of the quality of their bid, the quality of their team and their preliminaries price and overhead and profits allowances. The preferred contractor then joins the design team on a consultancy basis using a pre-construction services agreement (PCSA). The preferred contractor then works with the professional team to complete the design, usually to RIBA Stage 4, before presenting a bid for the works at this stage. There are benefits and disadvantages of this route which are discussed in subsection 3.2.

2.2.3 Negotiated tender

A negotiated tender is effectively a single-stage tender with a single contractor who returns with an initial price. This is then negotiated with the client's professional team (usually the professional quantity surveyor (PQS)).

The benefit of this route is the speed with which a price can be obtained for the works. However, the competitive advantage of a formal bidding process is compromised. Also, many public bodies and government departments will not allow negotiated

tenders except in exceptional circumstances as it is difficult to prove that value for money in the current market has been achieved.

2.3 Early contractor involvement (ECI)

As buildings become more complicated, engineering evolves and building information modelling (BIM) becomes more widely used, the early engagement of a contractor is becoming much more important. In essence ECI is a form of negotiated tender but emphasis is put on the contractor as the lead designer from the outset of the project. This is beginning to be seen in infrastructure projects where the early appointment of a contractor can significantly affect the direction of the emerging design.

ECI involves the creation of a designer/contractor team led by the contractor. Methods to successfully achieve this are still in their infancy and, at present, methods of ECI are bespoke to a particular project. Contractor selection is similar to two-stage tendering as it is done not on a cost basis but rather on the quality of the team and bid. It is beyond the scope of this guidance note to address ECI in detail but readers should be aware of its uses and widening role in the industry.

2.4 JCT practice note

The JCT has recently updated its 2002 *Practice note 6 (series 2) main contract tendering* and retitled it *Tendering practice note 2012*. It now describes in detail the industry practice for tendering in the construction industry. The latest iteration of the practice note includes more of an emphasis on two-stage tendering methods and other 'non-lowest price' quality-led tendering methods. It also includes guidance on pre-qualification and some model forms, which can be used to ensure adherence to the industry standard.

The practice note likewise includes advice on how to deal with errors in tenders and is generally seen as best practice guidance to follow regarding tendering procedures. It is therefore important to ascertain what the latest iteration of the practice note is at the time of tendering and ensure it is followed.

2.5 BS 11000-1 Collaborative business relationships

The release of the British Standard (BS) 11000-1 *Collaborative business relationships: A framework specification* in 2010 has had a big impact on large infrastructure companies and strictly relates to partnering projects. The partner-selection phase gives guidance on how to select and evaluate proposed partner bids. It is beyond the scope of this guidance note to describe the standard in detail but for any large infrastructure PFI/PPP scheme the existence of the British Standard should be understood, particularly its effect on the partner-selection stage.

2.6 The RICS Construction Policy

At the time of writing the latest version of the RICS Construction Policy was published in March 2013. It also contains important guidance, particularly relating to current trends.

2.7 Reasons for robust tendering strategies

Robust tendering techniques can help to ensure positive tender results through:

1 accountability
2 auditability
3 ensuring everything has been picked up
4 parity
5 helping to reduce claims of corruption; and
6 ensuring that the correct price has been paid for the proposed works.

3 Practical application (Level 2 – Doing)

This section covers how general principles are put into practice to satisfy the 'doing' requirements of the Level 2 APC competency. It looks in more detail at the practical applications of tendering. It focuses specifically on tendering for main contractor services for construction projects but many of the principles will equally apply to tendering for consultancy services or PFI/PPP arrangements.

3.1 Producing the pre-tender estimate (PTE)

As a precursor to the tendering phase of the project there is a minimum amount of design work that has to be produced. This might be to a greater or lesser degree, depending on the chosen procurement route.

Before the tender action is carried out it is important to know the estimated cost of the project for two reasons: first, the client will want to know that they can afford the proposed development; and second, so there is a basis of comparison when the tenders are returned. This estimate is called the pre-tender estimate (PTE) and should be carried out in accordance with RICS' *New rules of measurement (NRM) 1: order of cost estimating and cost planning for capital building works*.

While the pre-tender estimate is not strictly part of the tendering process, it is important that it exists before the tender is carried out, otherwise analysis could be very problematic.

3.2 Choosing the most suitable tender strategy

In subsection 2.2 the three main types of tendering strategy were outlined. This section seeks to show how types of tendering strategy relate to different procurement routes.

Whist all three tendering strategies can be used with almost any procurement route, it is reasonable to state that some suit certain strategies better than others. A two-stage tendering strategy is useful where a quick start on site is required, as tendering and design can be overlapped. Therefore, it would seem a natural fit for construction management/management contracting procurement routes, which would support a quicker start on site.

Traditional projects are generally advanced to a far greater level of design detail before going to tender. As the contractor is therefore not responsible for the design, it generally supports a single-stage tender (unless the project is particularly complex, in which case it may benefit from the input of a contractor in the design stages).

Design and build projects pass a larger proportion of the risk and design responsibility onto the contractor, therefore a two-stage tender can benefit from a contractor's understanding of the project, so that they can positively influence the design.

A contractor will be part of the final stages of design before a contract sum is agreed and awarded. They can often be appointed under a PCSA as a consultant during the second stage of the tender.

There are many scenarios and different options. Table 1 outlines the advantages and disadvantages of how different procurement strategies relate to the three main tendering strategies.

3.3 RIBA Plan of Works/APM work plan

There are various work plans for the design and construction of a construction project. Previous versions of the RIBA Plan of Work reflected the natural position for tendering to be carried out in a traditional manner, usually after Stage F. The new plan of work (RIBA Plan of Work 2013) now recognises the changes in the industry and specifically the adoption of two-stage tendering techniques. It recognises that tendering can be carried out at various points throughout the design life of a building. There are also other plans of work, such as the Association of Project Management (APM) work plan and the Governance for Railway Investment Projects (GRIP) stages used by the Office of Government Commerce (OGC; used predominantly for infrastructure projects) and the OGC Gateway Process.

Table 2 maps the tendering procedures to the RIBA 2013 Plan of Work and the RIBA 2007 Plan of Work and the current OGC Gateways (applicable to projects).

Table 1: The effectiveness of certain tendering procedures for certain procurement routes

		Single-stage		**Two-stage**		**Negotiated**	
		Advantage	Disadvantage	Advantage	Disadvantage	Advantage	Disadvantage
Procurement route	Design and build	– Most competitive price	– Contractor not fully understanding project may lead to a higher 'risk allowance' – Programme implication to include tender period	– Increased contractor involvement in design – Some degree of competition – Ability to overlap design and tendering	– Lack of competitiveness during second stage – Programme implication to include a tender period (although this can be overlapped with design)	– Most contractor involvement in design process – No programme implication of tendering	– Lack of competitiveness – May not be suitable for public procurement contracts
	Traditional	– Most competitive price – The most linear form of tendering	– No contractor involvement – May lead to high levels of provisional sums and risk items on the client side – Programme implication to include tender period	– Contractor involvement may reduce outstanding design/construction risk – Ability to overlap tendering and design	– No incentive for contractor to mitigate risk as a traditional contract will leave most of the risk on the client side – Programme may have to accommodate a tendering period (if design and tendering cannot be overlapped)	– Contractor involvement throughout process will enable more effective mitigation of risk throughout the design process by the contractor – No tendering period required on programme	– No competition may result in high contract offers – May not be suitable for public procurement contracts
	Management route	N/A	N/A	– Some degree of competitiveness for preliminaries and overheads and profits compared to negotiated tender	– Increase to programme to accommodate tender period	– No tendering period required in programme	– No competition at all on preliminaries and overheads and profits and programme

Table 2: Tendering procedures mapped to common work plans

RIBA Plan of Work 2013	RIBA Plan of Work 2007	OGC Gateways	Single-stage timing	Two-stage timing	Negotiated timing
0 Strategic Definition	A Appraisal	1 Business Justification			
1 Preparation and Brief	B Design Brief	2 Delivery Strategy			
2 Concept Design	C Concept	3A Design Brief and Concept Approval	D&B possible at this stage	First stage any time from this point forward	Any time from this point forward
3 Developed Design	D Design Development		D&B possible at this stage		
4 Technical Design	E Technical Design	3B Detailed Design Approval		Second-stage negotiation	
Procurement flexible in 2013 plan of work	F Production Information				
	G Tender Documentation				
	H Tender Action	3C Investment Decision	Traditional usually at this point		

3.4 Setting up the tender

3.4.1 Selection of tendering contractors

The selection of the tendering contractors is an extremely important part of the tendering process as the quality of tender returns will only be as good as the quality of the tenderers on the list. It is advisable for project teams to start considering suitable contractors as soon as the project begins; this may initially be on the basis of previous experience, word of mouth or from meetings and presentations from contractors looking to secure new work.

There are three main types of contractor selection techniques:

- **Open tendering**: this allows anyone to express an interest to tender. The proposed tender opportunity is usually advertised in journals or on websites. Public procurement (also known as the Official journal of the European Union (OJEU) tendering) is a form of open tendering (albeit with some caveats as to suitable contractors).
- **Selective tendering**: this can be in the form of a shortlist drawn up by the project/client team or may be drawn from a pre-agreed framework/ approved-suppliers list. The key difference between this and open tendering is that selective tendering is not open to everyone and the list of suitable contractors is chosen by the project team. Once a project is likely to become a reality then a long list should be drawn up from all members of the design and client team.
- **Single contractor selection**: this works hand in hand with negotiation as a tender technique. A contractor is selected and then the negotiation process begins. It is basically a shortlist of one.

Once obvious unsuitable contractors are discounted from the long list, the next step is a formal contractor pre-qualification process. This may be a short interview or perhaps a pre-qualification questionnaire (PQQ) depending on the size and complexity of the project. The aim is to ensure that the proposed contractors have the relevant experience, the relevant financial standing (further financial checks may be necessary) and a suitable health and safety record.

It should also be ascertained early on whether the project is subject to OJEU tendering regulations. If it is, or if there is any doubt, then the OJEU rules must be followed. The UK government's standard form of PQQ is PAS 91 2013 Construction prequalification questionnaires. This is mandated for central government departments, and the government

recommends that the entire supply chain should also adopt it. It is therefore important that the guidance within this document is followed if OJEU rules are to be followed.

Also note that the JCT *Tendering practice note 2012* gives useful additional guidance on contractor selection.

3.4.2 The effect of OJEU tendering rules on tendering

The OJEU publishes tendering opportunities that are subject to public procurement rules set out by the European Union. The thresholds which dictate whether a project has to comply with OJEU rules change on a regular basis and, if the value of a tender exceeds these values, then it must be listed in the OJEU, which is now an online service (www.ojeu.eu).

3.5 Assessing a suitable tender period

It is important to give contractors a suitable period to respond to tender enquires. This period will vary on a project-by-project basis, but some of the key factors include:

- the complexity of the project
- the size of the project
- time of year (e.g. Christmas period); and
- market conditions.

It is also common for the first stage of a two-stage tender to have a shorter period than a single-stage tender. This is because the contractors only have to price preliminaries, overheads and profits and the qualitative part of the bid, whereas for a single-stage tender a contractor will have to fully understand and provide a formal quotation for the entire project. This means that they will need additional time to receive information back from their supply chain.

When there are programme pressures on a project it is not uncommon for the tendering period to be curtailed. This is a dangerous strategy because, if tenderers are not given enough time to properly consider and price the project, then the tender may be either artificially low (due to the contractor missing important information) or artificially high (if the contractor deems there to be too much risk attached to the project).

During the PQQ period it is worth seeking the contractor's view on what they would consider to be an adequate tender period (depending on the tender route taken).

This responsibility goes both ways as contractors must ensure that, if they have agreed to respond to a tender, then they must start work on it straight away and give themselves enough time to properly complete the tender.

Setting the right tender period is also crucial to avoid contractors from withdrawing. If a contractor deems that they do not have enough time they are more likely to withdraw from the tender rather than risk submitting what they feel would be a substandard bid. Assurances that contractors will be submitting a tender should be sought at the PQQ stage.

It is not unusual for tender extensions to be requested by contractors during the tender process; this may be due to them underestimating the amount of work required to complete the tender, their current commitments, tender addenda being issued or leaving the tender too late. If an extension is granted then this extension must be given to all contractors so that an unfair advantage is not given. It is advisable for the project manager to build in a small amount of float into their programme for the possibility of a tender extension.

3.6 Producing/compiling the tender documents

The choice of procurement route and contract type will have a direct effect on how the tender documents are compiled. Under a traditional contract the design information, bills of quantities/schedule of works/ schedule of rates and preliminaries will be issued, whereas under a design and build contract the documents are compiled together in a document called the 'employer's requirements', which the contractor responds to with their contractor's proposals. The use of a bill of quantities will also be dictated by the choice of contract type.

Industry standard codes of practice (e.g. RICS' *Code of measuring practice*) should be dealt with within the tender documents and referred to where necessary.

Table 3 summarises the different types of information generally required for the different contract type.

It is therefore important to start the tender compilation process by producing a checklist of what is required, depending on the procurement route and contract type.

While the terminology may differ on a contract-by-contract basis, all tender enquiries should include the general information as described in subsections 3.6.1–3.6.9.

Table 3: Tender documents

Contract type	Information required
Traditional	Bills of quantities (depending on contract) or pricing document, preliminaries and design information.
Traditional with contractor designed portion (CDP)	As above plus employer's requirements for CDP.
Design and build contract	Employer's requirements.
Management contract	Bills of quantities (depending on contract) or pricing document, preliminaries and design information.
NEC contract	Depends on option used but generally works information, site information and contract data part 1.

3.6.1 Invitation to tender letter

This letter formalises that the contractor is being invited to tender on the project. It also describes the project, confirms the return date and the contact details for any queries that are raised.

3.6.2 Form of tender

This is the form that the contractor signs and returns with their proposed tender, in terms of both price and programme. Some tenders may also include a different form of tender for alternative proposals (i.e. contractors who may be able to achieve a reduced programme tender or who are offering an alternative design solution).

3.6.3 Contract conditions

This may include a commentary on the proposed contract conditions which may be dictated by bodies other than the client (e.g. funder's lawyer). It is also the logical place to include any proposed contract amendments.

3.6.4 Instructions to tenderers documents

Most tenders include an instruction to tenderers document (sometimes called conditions of tender) that sets out what is expected to be returned by the contractor and by what date. It also includes the proposed scoring mechanism, any applicable questionnaires, details for arranging site visits and details for submitting tender queries.

The instruction to tenderers document is distinct from the other documents in the tender package. The other tender documents eventually form the basis for the contract documents, whereas the instruction to tenderers does not. Therefore, any information that is likely to be part of the contract documentation should not be included in the instruction to tenderers but instead should be included in the preliminaries/employers requirements document.

This document also clarifies how errors are to be dealt with and should be clarified in accordance with the JCT *Tendering practice note 2012*. It will also often have information about the proposed dates for mid- and post-tender interviews so that tenderers can keep the probable dates free in their diaries.

The proposed scoring mechanism should be made explicit in the instructions for tenderers document. The split between proposed price and quality of bid should be confirmed. This may be shown as a percentage or may be broken down further, with the quality section perhaps having additional subsections. The scoring criteria will be project specific and should be agreed by the team before the tender is issued.

3.6.5 Project information (preliminaries/works information/employer's requirements)

Different contracts identify this document differently, but principally this is where the project is described in detail and where the contractual obligations that the contractor is being asked to undertake are outlined. It will include (but is certainly not limited to):

- setting the base date
- fluctuation procedures
- completion strategies (i.e. partial possession, sectional completion)
- the level of liquidated damages
- method of payment strategy
- performance guarantees strategy
- insurance strategy
- period of suspension
- dispute resolution strategy and alternatives
- collateral warranty requirements and strategy; and
- Joint Fire Code application, etc.

For design and build (or traditional contracts with a CDP) it will also include the level of design responsibility required.

The NEC version of this document is known as the Works Information and it is here that the procurement strategy is set out; therefore, if the project is design and build, then the narrative in this document will dictate to what level the design responsibility is required.

Any information that is required to be completed in the contract should be included here. The project information should also include the key supplementary information as appendices. These will vary on a project-by-project basis but a list of key appendix documents are set out in subsection 3.6.9.

3.6.6 *Design information*

The design information is the key consultant's design and specifications. This typically includes the architect, structural engineer and services engineer but may also include any specialist design information that is required for a particular project (e.g. acoustician or lighting specialist). This information should be presented to the contractor in a clear and concise manner, with cross-referencing to other documents where necessary.

A drawing/specification issue sheet should also be included so that the tenderer has all the necessary information. The tender documents should list the revision status of each document and drawing that comprise the tender documents.

3.6.7 *Pricing document*

The type of pricing document depends on the form of contract and the chosen procurement route. For a traditional project a full bill of quantities is a common pricing document (in accordance with RICS' *NRM 2: detailed measurement for building works*). However, a traditional contract may also be tendered on a specification and drawings basis, where it will be the contractor's responsibility to produce the quantities.

The pricing document may also be produced in accordance with RICS' *NRM 1: order of cost estimating and elemental cost planning*, giving the contractor the responsibility for producing the more detailed bills for package subtenders.

For a design and build contract the contractor is expected to return a contract sum analysis; this can be included in this section of the tender documents.

For term contracts, or tenders for frameworks, the pricing document may be a schedule of rates, which can be used to draw down work as required.

Any provisional sums should be listed and defined as being either a defined or undefined provisional sum (in accordance with RICS' *NRM 2: detailed measurement for building works*). Contractors should be asked to review the adequacy of the provisional sums from the information that they have at their disposal. It should also be made clear that, in the absence of any clarification, the definition of each of the provisional sums is deemed as accepted.

The contractor will generally not be required to price the cost of the work as part of a two-stage tender but they will required to price the preliminaries. Therefore, the tender documents should include a format for preliminaries to be presented. It is suggested that a preliminaries pricing document be based on RICS' *NRM 1: order of cost estimating and cost planning for capital building works* or *NRM 2: detailed measurement for building works*, which define in detail what is expected to be included in the contractors' preliminaries.

The contractor's pricing document, whatever format that happens to be, should be included here. It is far better to include a more detailed breakdown of costs that can assist the analysis phase.

3.6.8 *Typical appendices*

Appendix information should be used carefully and should only include information that will be of benefit to the tendering contractors. It is sometimes tempting to throw in all the information available, but this will only serve to confuse the tenderer and may ultimately lead to their withdrawal or their request for an extension to the tendering timeline.

The following list includes examples of potential documents to include in the appendices to the project information, and is by no means exhaustive:

- health and safety documentation (pre-construction information)
- key surveys for the site building (drainage, asbestos, electrical, ecological)
- planning permission information
- building control documentation
- proposed warranty/parent company guarantee/ performance bond wording
- design responsibility matrix
- party wall agreements
- building condition surveys; and
- risk register (outline which risk the tenderers are expected to take on).

3.7 Considering how project-specific factors/abnormals influence a tender

While general procedures and guidance is important, it is also imperative to recognise that every project is unique. Project-specific factors and 'abnormals' must be considered in the tender documentation.

Before the tender documents are structured and produced the following questions should be considered; this list is by no means exhaustive but gives a flavour of the types of questions that should be considered:

1 Does the client have any internal procedures to follow that should be included in the tender documents?
2 Are there any land ownership issues that the tenderers should be aware of?
3 Are there any non-working times that the tenderers should be aware of when producing their programme? (This is particularly sensitive for schools and other educational facilities that may have exam periods to consider.)
4 Are there any third-party agreements to be aware of?
5 Will there be any concurrent activities on site (e.g. enabling works, furniture and fit out contracts) that may affect the contractor's programme)?
6 Has the phasing of the project been properly set out in the project information?

3.8 Issuing the tenders

The method of issuing the tender information has changed markedly in recent years with the adoption of electronic tendering techniques. This has made the process far simpler and less cumbersome. However, to properly understand the process it is important to review the traditional method of issuing tenders first.

3.8.1 Traditional issue

Traditionally, all tender documents would be assembled and boxed up into identical packages and issued to tenderers by post at the same time. This could include a huge amount of information, depending on the size of the tender, which could be very expensive. The tender would usually include a requirement to confirm receipt, so that the client knew that all tenderers had received the tender and had started to pay the necessary attention to the documentation.

This method is still used, particularly for smaller projects. There is some logic to this process when the tender documentation is more modest, as it saves the tenderers from printing out all the information once received.

3.8.2 Online e-tendering

There are a number of online tendering portals but all provide a similar service which is to issue, track and provide a portal for queries and return of tenders. The RICS guidance note *E-tendering* contains more information on this process. This guidance note does not seek to replicate the information contained in that guidance note.

Some of the benefits of e-tendering are obvious (such as the reduction in paper, printing and postage costs) but others may be less obvious. One benefit is the ability to track the time of tender opening (which could prove invaluable when a request for an extension to the tender period is submitted). Another benefit is the collation of tender queries in one place.

It is likely that the uptake of online tendering will increase and it is also probable that online tendering companies will keep adding additional features. It is therefore important to keep up to date with advances in online tendering technology.

3.9 During the tender process

3.9.1 Tender queries

Almost all tender processes will prompt questions from tenderers. This can be seen as positive and shows that they are reviewing the necessary documentation. The absence of any questions should cause some concern and should prompt enquiries as to whether tenderers are reviewing the tenders.

It is important that any tender queries raised are answered back to all tendering contractors and not just those that asked the question. This is to ensure that parity is maintained and that no one is given an unfair advantage. The name of the tenderer raising the query should not be mentioned. A collated response including the answers to a number of queries should be issued so that it is clear to tenderers that everyone is being fed the same important information, raised through tender queries.

With an online tendering system responding to queries is straightforward as it is usually done through the online portal. For a traditional tender the responses can simply be sent via correspondence (via a blind copy to ensure tenderers' identities are protected). Whatever the system for responding to queries, it should be clearly outlined in the instruction to tenderers section of the tender documents.

Remember that any important information issued as an addendum must be included in the contract documentation when forming the contract. It is therefore advisable to keep a secure list of tender queries and answers as they are raised and word them in a way that would be suitable as a contract document.

3.9.2 Tender addenda

Tender addenda are not desirable as they can give tenderers the impression of disorganisation within the project team. However, it is accepted that sometimes they are inevitable; this may be due to new information being made available after the tender submissions (e.g. the release of survey information or a change of client objectives).

Where it is known that some additional information is likely to be issued during the tender process then this should be clearly noted in the instruction to tenderers documentation so that tenderers expect additional information.

Tender queries may also necessitate an addendum being issued (e.g. if a tenderer asks for the release of a particular survey that is mentioned but is not included in the contract information). If a tender addendum is required then it should be issued as a soon as possible. As much information as possible should be included in a single addendum rather than issuing too many.

3.9.3 Mid-tender interviews

It is becoming more common for mid-tender interviews to be held, especially for larger, more complex projects. The benefits of mid-tender interviews are:

1 it is an opportunity to meet the people working on the tender
2 tenderers can raise queries in a face-to-face environment
3 it is often carried out on site, therefore can be combined with site visits
4 it is an opportunity for the client team to assess the progress of each of the tenderers to date; and
5 it is an opportunity to reaffirm commitment to the tender from both parties.

It is extremely important to remember that any important information which is disclosed during the course of the interviews should be formalised and issued as tender queries or a tender addendum to all tenderers. This will ensure all tenderers are given the same information

3.9.4 Tender withdrawals

Despite all the steps taken above it is still possible that one or more of the tenderers will withdraw from the tender process. This can happen for a number of reasons but typically because:

1 tenderers' work commitments pick up and they do not have the necessary resources to complete the tender response; and
2 having reviewed the information they do not think they will be competitive or believe the project is too risky.

If this happens then it is important to follow the client's process for tender withdrawals. Public procurement rules may differ from private clients as to whether another tenderer can be added to the list or whether the tender must continue with the remaining tenderers. If more than one tenderer withdraws then there is also the option of cancelling the tender and starting the process again with a new selection of tenderers.

If it is agreed that new tenderers can be introduced, then all tenderers should be notified and all tenders given any necessary extension (as agreed with the new tenderers).

3.10 Receiving tenders

3.10.1 Opening tenders

The method for submitting and receiving tenders should be clearly set out in the instruction to tenderers documentation. This should include a time, date and location for tenders to be sent. It should also name the person that the tender returns should be addressed to. It is common for clients to request hard copies of tender returns, even when using online tendering, for opening purposes.

Once the due date and time elapses no other tender returns should be considered as part of the opening process. Late tenders should certainly not be considered for public procurement projects. Private clients should be advised which tenders were late and if they wish them to still be considered then they must provide explicit instruction to do so.

A tender opening form should be used (see example in Appendix A) and another qualified construction professional should be present to witness the opening of the tenders. The client and other members of the design team should also be invited to the tender opening.

Each tender should be opened and the general raw information noted on the tender opening form. This typically includes:

- the tender price (perhaps split into preliminaries, overheads and profit and prime cost)
- the proposed programme
- any key comments/exclusions
- any alternative tender offers; and
- a confirmation that all documents have been submitted or not.

Once all tenders have been opened then the tender opening schedule should be signed and dated by all parties present as this will eventually form part of the tender report.

3.10.2 Reviewing the tenders

The review and analysis of the submitted tenders must be carried out methodically and thoroughly to ensure parity for all tenderers and to ensure tender returns are reviewed on a like-for-like basis.

3.10.2.1 Checking for errors and conflicts

All tender returns should be checked for errors before any detailed analysis is undertaken. This involves a full arithmetical check for the pricing side of the tender return and a logic check for the rest of the tender. Apart from obvious arithmetical errors the key issues to be aware of are:

- obvious errors in programme dates
- any qualifications that render the tender null and void; and
- conflicts of interest (e.g. review proposed key subcontractors).

The JCT *Tendering practice note 2012* dictates the course of action if any arithmetical errors exist (depending on the form of contract being used). As discussed in subsections 2.4 and 3.6.4, the method of dealing with errors should have been outlined in the instruction to tenderers. The basic options are either to allow the contractors to correct their error or for the contractors to stand by their price.

If any other significant error or conflict is discovered then contact must be made with the contractor as soon as possible to clarify the qualification/issue. If it cannot be resolved then they must be made aware that they will be discounted from the tender process. If it can be resolved (e.g. if their conflict of interest can be dealt with by changing the proposed subcontractor) then the tenderer must confirm this in writing.

The tender returns should also be issued to all members of the design team for their feedback and input.

3.10.2.2 Raising tender queries and conflicts in information

Tenders should be reviewed in thorough detail by the entire client and design team and a list of post-tender queries sent to each of the tenderers. This is to ensure that prices are reviewed on a like-for-like basis.

From a qualitative perspective all team members should raise queries where additional clarification is required, where there is a conflict between information within the tender return or where key information seems to be excluded. Take care to ensure tenderers are not being given an opportunity to resubmit their tender. The queries must therefore be worded in such a way that the tenderers are restricted in their response.

3.10.2.3 Equalisation/normalisation process

The normalisation of the financial aspects of the tender returns is perhaps the most complex part of the tender analysis and requires someone highly skilled and experienced in reviewing tender returns to properly analyse them.

There are a number of methods and techniques at the disposal of the quantity surveyor to normalise the tender:

1 use an average of the submitted costs
2 use the highest price from the tender returns; or
3 use the cost plan allowance for that particular element.

Each method has its own advantages and disadvantages and there is no correct method – the key is to be consistent in the application. These can then be worked through with the preferred contractor upon selection.

Upon analysis, if there are any particular rates or costs that seem extremely out of place or unduly high or low then the tenderer's attention should be drawn to the item and they should be given a chance to confirm or explain the apparent disparity. No useful purpose is served in spotting a potential error in pricing or rates and keeping this from the tenderer. The idea of the tender analysis process is to ensure that the right price is being paid for the proposed project. There is therefore a duty to make tenderers aware of anything that seems to be an error.

If a bill of quantities or a pricing schedule is not used, then the price may be submitted in various formats (although it is recommended that a proposed form is included in the tender documents). This may give rise to variances in descriptions attached to prices in the pricing document. Queries may also be raised on the basis of the description to ensure a like-for-like comparison is carried out.

The pricing of preliminaries and overhead and profits must also be equalised. RICS' *NRM 1: order of costs estimating and cost planning for capital building works*

and *NRM 2: detailed measurement for building works* identify the structure that tenderers' preliminaries should take. The normalisation of tenders must ensure that all tenderers have priced the preliminaries in the same way, so that this element of the work can be ring-fenced.

If there are any provisional sums included in the tender then these must also be equalised. If any tenderers come back with concerns or queries regarding the adequacy of the provisional sum then it must be changed for all tenderers.

If daywork is to be used on the project then these submitted rates should also be analysed and taken into account in the overall tender analysis.

Design and build contractors will include a risk allowance within their tender return and this should reflect the completeness of design and residual risks. It is prudent to include the risk register in the tender documents, clarifying which risks the contractor is expected to take forward and which risks remain with the client. This register can then be used to base their priced risk allowances on and this can be analysed and normalised in a similar fashion to the works cost. As an example, if a tenderer has excluded a key risk that the other tenderers have priced for then this should be addressed and either excluded from all tenders (with the client's agreement) or the tenderer who has excluded it given a chance to include a price for taking the particular risk.

For overheads and profits the contractors should split their percentage rate to show the amount for overheads and the amount for profit. Any unreasonably low overhead and profits percentage can raise a valid query about how the contractor hopes to make a profit on the project.

3.11 Post-tender interviews

Post-tender interviews should only take place once the initial queries and equalisation process has taken place, as these analyses help to inform the tender interview process. The structure of the tender interview should be agreed in advance and all tenderers invited to interview should be given the same structure and same outline queries (although it is accepted that there will be some questions that are specific to only certain tenderers). It is also important to agree in advance which team members should attend the interview. This will differ depending on the type of tender and type of procurement route. For example, a two-stage tenderer would be interested in meeting the proposed second-stage negotiating team.

The post-tender interviews are a chance to properly understand the tenderer's proposals and raise any in-depth queries that could not be practically answered by correspondence. This might include discussing construction detailing, programme logic, method statements, understanding of costs and so on. It is also a chance to properly meet the proposed team for the project. For example, on a design and build contract you may expect to meet the proposed designers.

Any agreement made during the tender interviews should be confirmed in writing back to the tenderer, remembering that the correspondence may become part of the contract documents. If any significant information that comes out of the tender interviews could change the whole basis of the tender, then the other tenderers should be given the same information and given a chance to respond accordingly.

3.12 Checklist of further items to review

A detailed summary has been given of the main issues surrounding issuing and reviewing a tender. However, tenders can be bespoke and every issue may not have been taken into account. For convenience the following checklist details other issues that should also form part of the tender analysis.

Checklist

- Insurances are like-for-like (in the aggregate policies or each and every claim basis).
- The insurance certificates are provided for all insurance requested and are to the levels included in the tender. (Check the renewal date for insurance policies and remember to set a reminder to ask for renewal certificates at the appropriate time.)
- All qualifications and assumptions have been carefully reviewed. These have been issued to the design team, project manager and client for comment.
- Tender returns have been issued to all members of the design team for comment.
- Proposed subcontractors/suppliers have been checked for and comments retrieved from the design team. (If necessary request financial checks for any key subcontractors.)
- Priced risk registers included in the tender have been reviewed. Risks have been appropriately costed.

3.13 Post tender

Following a full analysis and tender interviews a full post-tender estimate should be produced. This will take the equalised tender figures from each of the contractors and add on other cost centres to show a full project post-tender estimate. This will then show the equalised tenders on a like-for-like basis. The appropriate scoring mechanism should then be applied to come up with an overall score for the pricing element of the tender. The qualitative assessment should then be completed in line with the agreed scoring mechanism. An example is shown in Table 4.

Before publication the draft scoring should be discussed with the team and client and any necessary amendments made. Once a decision has been reached the findings should be included in a full tender report, which includes a recommendation for award of contract.

3.14 Tender report and notifying tenderers

Once the tender report has been issued and accepted by the client then all tenderers should be notified of the decision. Some clients will include a cooling-off period and public procurement rules will also dictate times for unsuccessful tenderers to raise objections.

The unsuccessful tenderers should be thanked for their time and effort and their scoring on both the qualitative and quantitative elements of the tender analysis, in relation to the winning tender, should be communicated to them. It is also good practice to invite the unsuccessful tenderers to meet in person so that the analysis of their tender return can be discussed in more detail.

Table 4: Example tender analysis table

	Pre-tender estimate (£)	Tender 1 (£)	Tender 2 (£)	Tender 3 (£)	Tender 4 (£)
Submitted tender		900,000	800,000	1,100,000	1,050,000
Normalisation adjustments		200,000	500,000	(100,000)	(150,000)
Total normalised tender/budget	**1,000,000**	**1,100,000**	**1,300,000**	**1,000,000**	**900,000**
Remaining client risk	**100,000**	100,000	100,000	100,000	100,000
Professional fees	**500,000**	500,000	500,000	500,000	500,000
Client direct items (i.e. furniture, fittings and equipment)	**200,000**	200,000	200,000	200,000	200,000
	1,800,000	1,900,000	2,100,000	1,800,000	1,700,000

4 Practical considerations (Level 3 – Advising)

This section covers the more common difficulties or complexities which may influence advice regarding the selection of a tendering route.

A chartered surveyor should consider the following when advising on tendering procedures, and in particular when analysing tender returns and making recommendations.

4.1 Tender-scoring techniques

It is imperative that the proposed scoring mechanism is disclosed in the instructions to tenderers document and that this process is adhered to. There are many tender-scoring techniques used and many are bespoke and produced for a particular tender. The split between quality versus price will be dictated by a number of factors which could include:

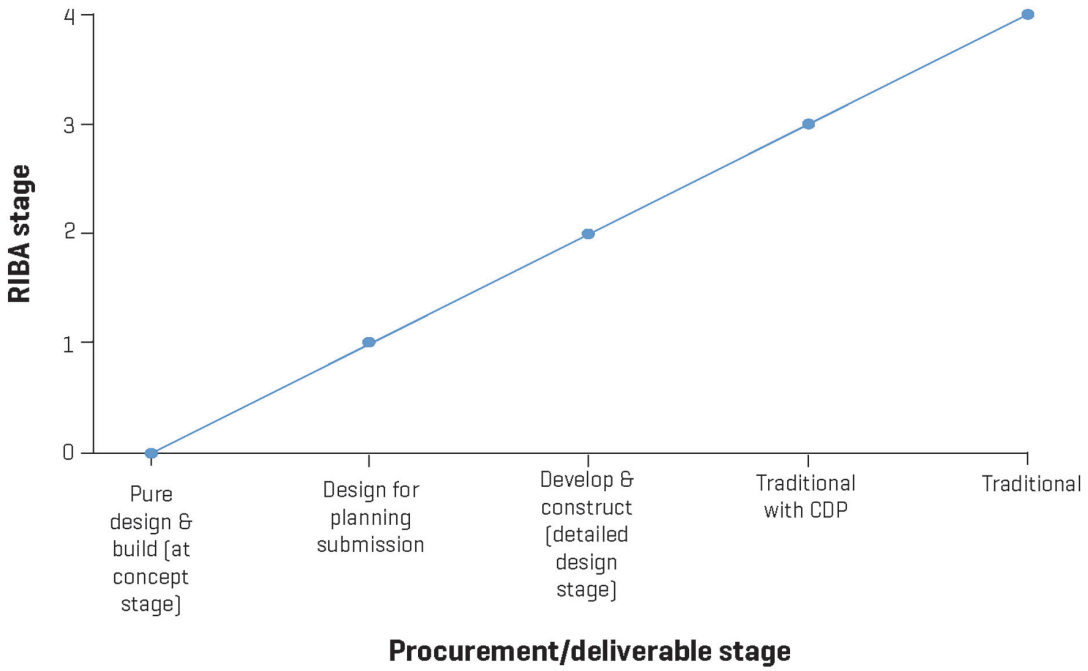
1 whether the tender is a single, two-stage or negotiated tender
2 the complexities of the project; and
3 the chosen procurement route.

4.2 Advice on tendering strategies (timing of tender action)

Subsection 3.3 maps various plan of works against tendering strategies. Remember that tendering can occur at any time during the design process. A pure design and build project could be tendered at RIBA Stage 1, with the contractor taking responsibility for completing the concept design against the high-level employer's requirements. The scoring and analysis for this type of tender would be very different to the scoring and tender analysis of a single-stage tender, with bills of quantities, at the end of RIBA Stage 4.

The timing of tender action will be dictated mainly by the amount of input required from the contractor. If the tender is simply to build in exact compliance with the fully designed tender document then the time for tender action would be different to a tender to design the concept and take responsibility for the design of the building. Figure 1 illustrates (in a simplistic form for illustration purposes) the link between design requirement and the optimum time for tender action.

Figure 1: Tendering time



4.3 Managing and reporting: tender and negotiation processes and outcomes

Section 3, Practical application (Level 2 – Doing), reviews the management and reporting techniques for a single- or two-stage competitive tender. A negotiated tender can be more innovative regarding both the process and report. The process is essentially the same as a competitive tender up to the submission of an invitation to tender. The nominated tenderer will receive the tender information, as they would in a competitive environment, and will take some time to price the work and propose a suitable programme, proposed team and, in certain cases, method statements. The client's surveyor will have a pre-tender estimate prepared, as they would do for a competitive tender for comparison purposes.

The difference with a competitive tender takes place at the submission of the initial price by the contractor. At this point the client team and contractor review the proposal and negotiate on the submitted tender. Any agreements, errors, changes and so on should still be formalised and recorded but, with the absence of any other tenderers, the process is not required to comply with the JCT *Tendering practice note 2012*, as long as the final contract documents pick up all the changes.

The biggest risk with the negotiated route is that the parties are too far apart in their assessment of a suitable price and cannot reach agreement. The tender documents should state that the client is not bound to agree a contract sum and can walk away if a price cannot be agreed.

The negotiations should focus on dealing with items with the biggest variance between parties, not only regarding cost but possibly also contractual items or programme issues. Once these bigger items are resolved the smaller items (i.e. dealing with a small variance in opinion of rates) are more easily overcome.

The client will require reassurance that they are obtaining both value for money and a competent contractor. The tender report should therefore make a clear statement on both of these issues. The report should also highlight the main issues that were discussed and agreed during the negotiation process.

4.4 Further advice on tender reports

Certain projects need a more detailed tender analysis. This would certainly be the case for PFI/PPP tenders, which need to focus on a far wider range of issues than a construction project (and are beyond the scope of this guidance note).

Particularly complex projects may require the tender report to communicate the following factors, depending on the project:

- what third-party actions are required going forward, perhaps as a condition to the recommendation (i.e. the tender recommendation may be on the basis that certain third-party actions are carried out)
- any outstanding contractual issues that might need resolution. A tender report may be produced on the basis of certain contractual caveats that will need to be resolved. This would particularly be the case for two-stage tenders, which will give some conditions regarding the final appointment of the contractor for the construction phase based on caveats being cleared
- alternative time tenders: a tenderer may propose an alternative time tender, which may have the added benefit of also having a reduction in preliminaries cost. To ensure parity the tenderer would have to become the preferred contractor with a compliant bid first. If the alternative tender was then accepted this would need to be properly communicated in the tender report; and
- for a two-stage tender the preferred contractor would typically have a limited appointment for the second stage of the contract only (perhaps under a PCSA for the second stage). The contractor's scope for the second stage should be clearly set out in the tender report with any conditions that are to be met also clearly set out.

4.5 Addressing project abnormals

Some projects will be of a particularly bespoke nature. Examples include joint ventures, where a contractor is stepping into a distressed project, where a contractor has entered into administration or projects that are part of a complex management contracting arrangement. Though this guidance note covers the majority of tenders it cannot deal with every eventuality related to tendering. Any particular abnormal situation needs to be dealt with on its own merits and discussed carefully before setting up the tender procedure.

4.6 Design-checking periods between tender returns and signing the contract

Some clients have seen the wisdom of introducing a design-checking period between the appointment of a preferred contractor and the signing the construction contract. This can be particularly useful for single-stage tender actions where the project is complicated or

involves a lot of design coordination. This allows the contractor a set period to review all the documentation after being named the preferred contractor, in order to either clarify their tender sum or suggest any adjustments. Some see this as giving contractors another attempt at their tender submission; some see it as a useful exercise to ensure that the tenderers have picked up anything they missed before they start building, rather than once they are on site.

As this allows the preferred contractor a greater understanding of the project and coordination, it therefore allows a greater degree of risk transfer to the contractor. The advantages of this process are that it provides the competitiveness of a single-stage tender but also gives the contractor the benefit of a two-stage process by allowing them to review with the team (in the position of preferred contractor).

4.7 The route from tender to contract

It has been suggested throughout this guidance note that cognisance of the final contract documentation is maintained throughout the tender stage. In its simplest form the contract documents will be exactly the same as the tender documents. If the tenderer submits a price that has no qualifications and no further information is issued, either in the form of answers to queries or addenda, then the tender documents can simply be relabelled as contract documents and appended to the chosen form of contract. This is a rarity and more often than not there will need to be some updates to the tender documents (particularly the employer's requirements/works information) to reflect the changes that took place throughout the tender process.

The simplest way of doing this is to append the query and answer sheets and tender addenda to the original tender documents, as long as they have been drafted in a manner that allows them to be appended in this fashion. The advantage of this approach is that it shows a clear audit trail from tender issue to contract that all parties will understand.

There are occasions when too many changes to the tender documents make it both undesirable and in some cases not possible to simply append the addendum and query information. In these cases a careful exercise must be carried out to update the tender documents to reflect the final agreements ready for contract. This will need to be carried out by both parties and may also involve the design team changing their documentation to suit. This is usually the case for a two-stage tender, as the tender documentation will be based on early design information and it is likely that significant changes will be made between the appointment of a second-stage contractor and the agreement of the contract sum.

4.8 Serial tendering

Serial tendering is more of a hybrid/advanced method tendering which combines a normal competitive tender (whether single or two-stage) with negotiation. It is often used for clients who have a number of phases of similar work. Where this is the case the original competitive tender will serve as a framework to negotiate following phases of work. If it is known that there will be additional phases then the original tender documentation can include a section for schedules of rates to be agreed so that negotiation of future phases can be based on prices obtained in competition.

The advantage of serial tendering is that the client knows that the contractor was selected in a competitive environment in the first phase; therefore, the basis of their follow-on negotiated tender should be sound. However, the disadvantage is that the pitfalls of negotiation still apply and as time goes on the basis of the original tender will no longer be applicable and would need to be renegotiated anyway.

4.9 Term contracts

Term contract tendering is generally for maintenance works, minor works and works for a client who has a continued supply of minor works which suits a schedule of rates. Tendering for such work is carried out on a schedule of rates basis for the common works taking place for the client; mini orders will then be provided for each discreet work, based on the tendered rates. The tendering strategy for term contracts is to demonstrate the competence of the contractors and to show that the priced schedule of rates represents value for money for the client.

4.10 Frameworks/approved-supplier lists

Many larger clients now use a framework of approved suppliers. Open tenders are usually advertised for firms to apply to be on a framework and eventually included on a smaller framework of contractors/consultants. Once the framework/approved list is agreed then any further work will only be selected from the framework/approved list. This is usually done in two ways.

- Calling off based on agreed fees: the framework invitation to tender may ask for fees scales or rates based on project size/complexity. These will

be agreed at the framework stage and then contractors are called off the list based on those rates with no further tendering necessary.

- Mini tenders: the second scenario is if the framework is in effect an approved-supplier list, whereby a shortlist is drawn from the approved-supplier list. The shortlisted firms then still have to go through the process of a mini competitive tender.

There are advantages and disadvantages to both methods which suit certain clients over others. The initial tender to get contractors onto a framework/approved list is very similar whether a framework or approved-supplier list is used. The focus should be on choosing a good spread of competent contractors who can handle a potentially high volume of work from one client.

The advantages of frameworks/approved-supplier lists include:

- they reduce procurement costs for large numbers of contracts for similar works; and
- they provide a greater continuity of potential work and thus increase competitiveness.

4.11 Are bills of quantities a barrier to collaboration?

Bills of quantities were historically a typical tender document in the UK construction industry. In recent times the popularity of bills of quantities has reduced as more collaborative approaches to tendering have increased. The criticism of bills of quantities is often that they can promote an 'us and them' mentality, as the bills can only be carried out at the end of the design process and reduce the chances for contractor input.

On the other hand, it can be argued that the bills of quantities were historically the 'guard dog' of the construction industry. Their production requires the project design to be analysed and interrogated for accuracy and completeness before issue to tender; this results in a more competent and complete set of tender information. There is certainly truth in this statement and a reduction in the quality of design information may be linked to the decline of bills of quantities.

RICS' *NRM 2: detailed measurement for building works* promotes an updated bills of quantities format but there is also an alternative, which is to produce pricing documents in accordance with RICS' *NRM 1: order of cost estimating and cost planning for capital building works*.

The death of bills of quantities has been predicted for some time but there will probably always be a place for a well-designed, single-stage tender action with a full bill of quantities in the UK construction industry. In the future the influence of BIM may assist in the production of the bill. It is also worth noting that bills of quantities are still commonplace further down the supply chain.

4.12 Does two-stage tendering promote collaboration?

The very nature of two-stage tendering means that collaboration is almost forced on the parties as they will be working together at some stage to complete the design and package tendering of the project. The problem is when two-stage tendering is not done properly or is carried out too late.

For two-stage tendering to work well it has to allow time for the contractor to sit with the design team and go through a significant amount of design to really show their influence. If the first stage is carried out too late in the process there will not be enough design time to let the contractor have an influence on the design.

There is also the risk that contractors see a two-stage tendering process as the opportunity to become ingrained in a project and then negotiate the price of the project higher than market value. It is therefore very important that the instructions to tenders make it clear what is expected from the second-stage contractor during the second stage and what will be deemed as a success.

4.13 The second-stage process

The procedure for undertaking the second stage has been purposely ambiguous simply because there are so many ways of carrying out the second stage of the tender. In many ways it depends on the amount of contractor input that is required in the second stage.

If the reason for the choice of a two-stage tender was simply a pricing exercise, used as a means to necessitate a quicker start on site (by overlapping design and tendering), then the contractor input to the design process will be minimal. On the other hand, the contractor may become the lead designer in the second stage and may be fully responsible for coordinating the design and the package tendering. The format and type of the second stage must be carefully considered by the client and design team before tender. The contractor's responsibilities should be carefully set out in a PCSA.

4.13.1 Target costs/guaranteed maximum price/share of saving mechanisms merits and pitfalls

One of the ways to avoid a contractor negotiating the price in the second stage is to introduce a target cost as part of the tender. The target cost is something which is familiar to management contracting routes but can be applied as part of a two-stage tender before the contract is let. The target cost of the project can be agreed as part of the first-stage tender negotiations and then the contractor can be rewarded (by way of a percentage share) by beating the target cost. This will incentivise them to work to the target cost. If they come above the target cost they will not receive any reward (and perhaps the project will not go ahead).

4.14 Agreeing contract conditions

One of the major stumbling blocks of any tender can be agreeing the contract conditions. It is therefore important that the contract conditions are clear and that they are agreed as early as possible in the process. If possible it is worth trying to agree the contract conditions as part of the pre-qualification questionnaire. Similarly, for repeat clients contract conditions may be similar to previous projects, so if these can be agreed beforehand it will influence the tender analysis period.

4.15 What impact does BIM have on tendering?

The industry's adoption of BIM will dictate the impact it will have on tendering. At BIM level 1 it will simply provide a more coordinated design: BIM models may be made available to tendering contractors so they can understand the complexities of the project in more detail. As BIM begins to extract quantities, it will provide more detailed and accurate bills of quantities for tenderers to price.

As BIM matures the expectation is that the whole project team will benefit from its adoption. At level 2 a more accomplished 3D environment with embedded data will be available, although still on separate models for different disciplines (this is government mandated by 2016). At level 3 BIM promises a fully integrated and collaborative process enabled by 'web services' utilising 4D construction sequencing, 5D cost information and 6D project lifecycle management information. This will mean that tendering analysis should be restricted to the comparative rates, overheads and preliminaries costs, as all parties will have access to the same coordinated design information. This was some way off at the time of writing but the industry hopes that it can replicate the manufacturing industry to some extent and take the prediction and risk out of tendering, with tender analysis being on the actual overhead costs, rates of material and labour and qualitative assessment of the bid and not on perceived risk.

4.16 Alternative tender submissions/ alternative scope options/value engineering and reduced programme tenders

While it is important to ensure compliant tenders are always issued so that a like-for-like comparison can be made, there is merit in allowing tenderers to submit an alternative tender submission in addition to a compliant tender. This may be for a shorter/longer programme, a different construction methodology or a different procurement route. It is essential to make it clear in the tender documents whether alternative tenders will be allowed or not and how they are to be dealt with. The usual method is to state that the alternative tender method will **not** be used in the evaluation process and not taken into account and will only be reviewed in more detail if they become the preferred contractor.

However, this could leave clients in a position where a very favourable tender is on offer but they are unable to take advantage of it, as the compliant tender did not compete well. To avoid this possibility the conditions of tender should make it clear that alternative tender submissions may be reviewed independently of the tender competition and can be explored by the client team separately to the tender evaluation. If any alternative tender submission is to be considered the other tenderers must be given an opportunity to submit a like-for-like alternative tender to maintain parity.

Alternative tender submissions are far more problematic for public procurement tenders and therefore should be avoided unless explicitly allowed for by the client. However, if a specific issue is to be a competition criterion (e.g. programme duration) then this should be made an explicit part of the tender evaluation criteria (i.e. allowing contractors to price alternative scope options for possible substitutions with the tendered scope).

4.17 Sharing value engineering proposals

There is both moral and legal uncertainty about how to deal with an unsuccessful tenderer's value engineering proposals, especially if the tender evaluation was not based on the tenderer's alternative tender submissions and value engineering proposals. Can the client then

resurrect an unsuccessful tenderer's value engineering options and propose them to the winning contractor? This is an especially difficult question if the losing contractor has proposed something bespoke which they may own the intellectual property rights on. If in doubt, take a lawyer's advice.

If the proposal is a widely available construction technique (e.g. changing from a concrete to a steel frame) then it would not be unreasonable to use the proposal. However, if the proposal is bespoke (especially if it has been developed specifically for the tender) then it would seem reasonable that a dialogue should at least be held with the unsuccessful contractor to ascertain whether they would have any objections to its use, making the issue transparent. If they refuse then further advice would need to be taken but there may also be a compromise, whereby the losing contractor is paid their tendering costs or is paid an agreed licence fee for the use of their idea.

It would not be acceptable to take the technology and use it without consultation with the unsuccessful tenderer as this could infringe their intellectual copyright. If in doubt take professional legal advice.

4.18 PFI/PPP

While PFI/PPP tenders are beyond the scope of this guidance note, please note that there are some major differences that need to be taken into account when holding a PFI/PPP tender competition.

Appendix A

Example tender opening form

Tender receipt and opening IN CONFIDENCE					
Job name: Job no.: Client:					
Tenderer	Prelims	Profit and overhead	Contract period	Comments	Position
Tenders opened in the presence of:					
		Date:			
Action:					

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