

Making competition work for you – a guide for public sector procurers of construction

Key issues

This supplementary briefing identifies further guidance for those with responsibilities for maintenance and construction in the public sector

1. Introduction

Following on from briefing 07/42 'Firms identified in OFT investigation', this supplementary briefing identifies Office of Government Commerce guidance appropriate for all local government officers and members with responsibilities for maintenance and construction. The title of the document is 'Making competition work for you – A guide for public sector procurers of construction'.

An electronic version of this document can be found at www.ogc.gov.uk/documents/CP0144Making_CompetitionWorkForYou.pdf

2. Making competition work for you – A guide for public sector procurers of construction

The guide focuses on practical steps which can be taken, pitfalls to be avoided and risks which can be mitigated in order to achieve the benefits which come from competition at a time when efforts to achieve effective competition are focusing on whole-life costs and value as well as long-term partnerships between the public and private sector.

The need to ensure you have enough credible suppliers is highlighted to ensure competitiveness. In order to do this an understanding of the marketplace is needed. The guide recommends a 'community of practice' is established comprising a network of both procurers and suppliers who actively seek to work effectively together. The need to understand the capacity of suppliers to meet your needs is an important factor and a recurring theme in the guidance is the importance of good communication between local authorities and suppliers, a willingness to talk openly and honestly and the sharing of information.

Other practical steps recommended include local authorities publicising long-term construction and capital expenditure plans, providing feedback to suppliers on their past performance and being willing to ask for and learn from objective feedback from suppliers.

There are sections on collaboration between public sector organisations, EU procurement arrangements, aggregating contracts and managing the supply chain amongst others.

The section on mitigating the risks of anti-competitive behaviour describes some of the issues involved. The guidance recommends non-collusion clauses and/or certificates of independent bids are used, subcontractors are disclosed and the avoidance of obligatory bids as a condition of staying on approved list amongst other practical steps.

Things which may reflect suspicious bidding patterns are listed and include bids received at the same time with similar or unusual wording, bids containing less detail than expected and the lowest bidder not taking the contract.

The document concludes with a set of questions which raise a number of issues to be considered when procurement decisions are made.

Annex A of the guide provides a list of contacts and further sources of information.

3. OFT investigations

Although the Office of Fair Trading investigation into bid rigging in the construction industry is continuing and they have established a team to cope with the amount of work involved, no evidence of guilt on the part of the companies they are investigating has yet been issued.

4. Comments

This guidance is useful as a set of practical suggestions and can be used as a reminder of relevant issues as well as a brief introduction to the topic of procurement in construction. Annex A is useful as a list of more detailed guidance and organizational contacts.

APSE will be working with Constructing Excellence, the construction industry body working to improve the sector, over coming months and will be issuing a joint briefing later in the year as further advice to local authorities on how to work with private companies to ensure all arrangements maximize benefits for both parties whilst avoiding any chance of illegal activity.

APSE continues to recommend that all members remain vigilant when embarking on contract talks asking appropriate questions and keeping abreast of developments in the OFT investigation.

APSE would also remind members that OGC can provide a range of advice, guidance and best practice examples and should be used as a source of information.

Previous APSE briefings 07/22 'OFT investigations', 03/59 'Action against cartels prepared by Eversheds', 06-18 'OFT cartel busters unit investigation into Mowlem' and 06-41 'OFT report on waste competition' provide further information.

Two OFT press releases also provide information on the investigation - "OFT closes door on cartel leniency in construction bid rigging cases in England" (50/07) and "OFT makes 'fast track' offer in biggest ever UK cartel investigation" (49/07).

Phil Brennan
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