

Delivering Best Value with SMEs



Open all values

In the second in a series of articles, **Ron Burges** looks at how small and medium-sized enterprises (SMEs) can take part in contract opportunities not advertised through the OJEU.

Last month I debunked the myth that all contract opportunities sent to the Official Journal of the European Union (OJEU) for publication are actually high value and beyond the capacity of micro-SMEs to satisfy.

This month I want to discuss contract opportunities that are not announced through the OJEU, including lower-value opportunities suitable for micro-SMEs (companies with fewer than 10 employees and a turnover of less than €2 million).

Recent actions by the European Commission against Member States have clearly identified the Commission's consideration that European Court of Justice (ECJ) case law confirms that even when the financial sum involved falls below the EU Procurement Directives thresholds (above which the full procedural requirements of the Directives apply), the contracting authority must now ensure a degree of advertising sufficient to ensure competition, to avoid discrimination on the grounds of nationality and to allow the impartiality of its procurement procedures to be reviewed.

The scope and form of such advertising depends on the

nature of the service and the extent to which a contract is of potential interest to regional, national or EU-wide service providers.

As a micro-SME you now have the right to know about all contract opportunities, so ask your local public authorities what they are doing to ensure that they comply with the ECJ judgment with regards to their openly advertising all lower-value contract opportunities. The Scottish Contract Regulations, which interpret the EU Procurement Directives into Scottish law, require all authorities in Scotland to openly advertise their lower-value contracts. To facilitate this, a new portal promoting lower-value opportunities within Scotland is due to be launched in the spring of 2008.

The web-based lower-value contract notice service Supply2.gov.uk, sponsored by the Enterprise Directorate, provides free access to lower-value contracts within a supplier's local area. The Official Journal also now accepts advertisements for lower-value contract opportunities. Other sources include public

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authorities' own websites and the publication *Contrax Weekly*.

Finally, companies that win new contracts are often soon on the lookout for suppliers to act as subcontractors. The actual contract may have been far too ambitious for your company, either due to overall value or the fact that it required distribution or delivery outside your area, but that does not mean that there are not opportunities to come from

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such contracts. There often are.

Keep your eyes open also for contracts that are open for tender that may subsequently require your products or services. For instance, if a public body is buying 2000 new computers, will they be requiring new desks to place them on? Does that new library building that is being advertised not need window cleaning or office cleaning? The website contract that has just been issued – will it require external design skills? Lateral thinking can bring many rewards.

Public authorities are also required by the European Commission to publish award notices in the OJEU for all high-value contracts and these notices should identify the winning bidder, in order to help SMEs seek subcontractor opportunities. It may be too late to gain part of that business but the same companies will be tendering and winning new business in the future, so promoting your company's skills set will not be a waste of time.

Some departments, for instance the Ministry of Defence, publish the names of companies involved during a procurement process prior to contract award, as an aid to potential subcontractors.

Good buying authorities will also encourage their main suppliers to adopt supply chain management practices that integrate SMEs into their supply chain. Ask the authorities you wish to work with if they have such a policy.

If they do not, suggest it is time they did.

Subscription to the OJEU is available through The Stationery Office (www.tso.co.uk/tendermatch), as is subscription to *Contrax Weekly* (www.tendermatch.com), which contains both OJEU and lower-value contract opportunities from UK public authorities.

I would also like to focus on how public bodies in your area and beyond could do more to

open their contract opportunities to SMEs.

Many local government and other public bodies talk about how they wish they could help SMEs gain better access to their contract opportunities, but claim that, unfortunately, they are unable to do so because of European Union procurement rules.

This, in fact, is not the case. EU rules are not a barrier and can actually be used to help SMEs gain entry to the public sector marketplace.

Unfortunately, few public bodies care to spend time investing in developing their procurement strategy so that it not only delivers best value for taxpayers, but also helps SMEs and increases the effectiveness of public procurement in delivering a better quality of life for everyone.

SMEs can and do bring significant benefits to the public sector by creating greater competition, providing innovative solutions and delivering lower prices with an often higher quality of service. They are also often far more flexible and specialised.

As stated above, the EU public procurement legislation can be used to improve SMEs' ability to supply the public sector. The regulations state that contracting authorities may waive such application in respect of lots whose estimated value, net of VAT, is less than approximately €80,000 (£60,000) for services and supplies, or as much as

€1 million for works, provided that the aggregate value of those lots does not exceed 20 per cent of the aggregate value of the lots as a whole.

The size of such contracts is perfect for SMEs, and, more importantly, they do not have to be let using the EU procurement processes.

So, why don't public bodies always use this allowance? Often it is because they do not know this option is available to them. Another reason may be that it is considered too resource intensive to have to let two contracts rather than one. However, given that the small value allowance does not require compliance with the Directives, this is not really the case.

Ask your local public sector organisations how their procurement strategy helps SMEs.

For instance, does it seek to ask:

- If there are elements best left outside the main contract and offered as a separate small contract?
- Whether it is really a good idea to place all of the work with one supplier? Would there, for example, be advantages in dividing it into lots? If so, be clear about how the requirement is to be divided.
- Should the contract be let in lots either on a product or geographical basis?

One way of helping this process would be if public bodies adopted an SME Charter setting out a clear commitment to SMEs, and then implemented this commitment through their procurement strategies.

My final advice is not to accept the idea that public purchasing practices cannot be changed. Use your representative trade bodies, Chambers of Commerce, Members of Parliament and other business representative groups to lobby and pressure for change. The changes and challenges outlined above can deliver, not only for your company and other businesses, but also for the benefit of the wider society. That surely is an aim worth pushing for.

Next month: Playing to win tenders

Part One of this series can be viewed online at: www.govopps.co.uk/magazine/previous/0709/openingdoorstosmes.pdf



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In summary...

- The web-based lower-value contract notice service Supply2.gov.uk, which is sponsored by the Enterprise Directorate, provides free access to lower-value contracts within a supplier's local area
- Public authorities are also required by the European Commission to publish award notices in the OJEU for all high-value contracts and these notices should identify the winning bidder
- EU public procurement legislation can be used to improve SMEs' ability to supply the public sector

What's your view?

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