

eAuctions

OGC Guidance on Electronic Auctions in the new Procurement Regulations

January 2006



OGC Guidance on eAuctions

Electronic auctions in the new Public Contracts and Utilities Contracts Regulations

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1. Introduction

The new procurement directives include a specific provision on eAuctions – see Article 54 of the Public Sector Directive (2004/18/EC) and Article 56 of the Utilities Directive (2004/17/EC). This is the first time such a provision has appeared in the procurement directives. It is transposed in regulation 21 of the Public Contracts Regulations 2006 and regulation 20 of the Utilities Contracts Regulations 2006, which come into force on 31 January 2006.

2. What is an eAuction?

- 2.1 Electronic auctions (or electronic reverse auctions as they are sometimes called) are on-line auctions where selected bidders submit offers electronically against the purchaser's specification. All communication following and including the invitation to pre-qualified bidders to submit new prices and/or values must be instantaneous (electronic). Electronic auctions can be used for goods, services and works. Only price and quality elements which can be expressed as a value suitable for incorporation within a formula can be included at the auction stage. Other quality aspects must be assessed prior to the auction stage.
- 2.2 Further information about eAuctions is available at:
<http://www.ogc.gov.uk/index.asp?docid=1001034>

3. Are eAuctions suitable for all types of procurement?

- 3.1 The guidance referred to in paragraph 3 includes an eAuction decision tool, to help contracting authorities decide whether or not an eAuction is appropriate for their particular procurement. Most procurements that are of sufficient value to attract competition, with criteria which can be accurately specified and for which there is a competitive market are suitable for an eAuction.
- 3.2 The definition of an eAuction in the Directives makes it clear that "certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, may not be the object of eAuctions".

4. Won't eAuctions encourage contracting authorities to concentrate on price alone rather than most economically advantageous tender?

The Directives and Regulations make it clear that, before proceeding with an electronic auction, the contracting authority shall make an initial evaluation on the basis of the specified award criteria – which can include all criteria allowed under "the most economically advantageous" (value for money) option. Even the e-auction stage itself is not limited to price alone – it allows for other quantifiable aspects to be included.

5. What guidance is available on the e-auction process?

- 5.1 The European Commission has recently published detailed guidance on eProcurement generally and eAuctions in particular. It includes training demonstrators and can be accessed at: <http://europa.eu.int/idabc/en/document/3488/5585>.
- 5.2 Although software is readily available to run eAuctions in-house, OGC's advice is that expert assistance should be obtained, at least on the first few occasions that a contracting authority uses the eAuction process. A number of sources of such expertise are available to

contracting authorities, including an OGCbuying-solutions framework under which public bodies can contract managed eAuction and associated support services from an approved service provider. Further details can be accessed at:

http://www.ogcbuyingsolutions.gov.uk/RAF/raf_guidance.asp.

6. In which procurement procedures can an eAuction be used?

When stated in the contract notice, an eAuction may be used in conjunction with the open or restricted procedures. It can also be used in circumstances where open, restricted or competitive dialogue procedures cannot be brought to a satisfactory conclusion and the negotiated procedure with publication of a contract notice is adopted (contract notice is not needed if negotiation is limited to suitable candidates from the failed procedure). It may also be used on the reopening of competition within a framework agreement (a mini competition) and on the opening for competition of contracts to be awarded through a dynamic purchasing system as long as the intention to use them was stated in the original contract notice.

7. Can eAuctions be used in existing frameworks?

Yes, if their use was referred to in the setting up of the agreement but, if not, they can only be used with the consent of the existing framework suppliers.

8. What are the rules governing the conduct of eAuctions?

- 8.1 Expressions of interest are invited in accordance with one of the allowable procedures. After the selection process is completed, an evaluation is made using the award criteria specified in the contract notice or bid documents. Successful bidders are then invited simultaneously by electronic means to participate in the auction. The invitation states connection details and the date and time of the auction which cannot be sooner than two working days after transmission of the invitation. Where the auction is to be conducted in phases, the invitation to participate must state the number of phases and associated timetable.
- 8.2 Auctions must be based on lowest price or most economically advantageous offer as stated in the contract notice or bid documents. In the case of the most economically advantageous offer any 'quality' features of the bid (eg terms of delivery or warranty) carried forward to the e-auction stage must be capable of being expressed as a value (figure or percentage) which can be incorporated within the formula which will be used to rank bids. Limits to quality values arising from specified requirements must be stated in the specification.
- 8.3 The invitation to participate must be accompanied by the outcome of a full initial evaluation of the bid and details of the mathematical ranking formula to be used for the auction phase. Separate formulae must be provided for variant bids where these are permitted. Formulae must be based on the declared weightings (contract notice or supporting bid documentation) which, if initially expressed as a range, must be reduced to a single value. Ranking in respect of those aspects subject to auction must be visible to bidders during the eAuction stage. At the end of the auction, the initial evaluation is combined with changes to values arising from the auction to identify the winning bid.
- 8.4 The specification must provide information about the auction process, connection details and conditions of bidding, particularly minimum differences required for a new bid. Information to be provided during the course of the auction and when this will be made available electronically must also be detailed in the specification. The auction can be closed by fixing the date and time in the invitation to participate, when no new prices or values which meet the minimum difference criterion are submitted or when the specified phases are complete.

9. Won't eAuctions limit SMEs' ability to compete directly for public sector work?

Equipment needed to participate in electronic auctions is readily available at low cost and there is no obvious reason why their use should be detrimental to SMEs. These auctions can bring substantial benefits when used appropriately but there is no obligation to use them. The extent contracting authorities choose to use them should take account of the relevant market.

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January 2006