

CIVILSERVICE

Government Social Research Unit

GSR Professional Guidance

Procurement of Government Social Research



GSR Guidance

This guidance note is one of a series produced by GSRU. Other titles are:

1. Government Social Research Competency Framework; July 2005
2. GSR Professional Guidance: Ethical Assurance for Social Research in Government; September 2005, Updated April 2008
3. GSR Professional Guidance: Release Protocol for Government Social Research (in press).

They can be downloaded from the GSR website on www.gsr.gov.uk

Contents

Foreword	4
Section 1: Guidance on procurement of social research	5
Introduction.....	5
EU Procurement Rules.....	5
Key steps in EU Procurement.....	10
UK Procurement policy.....	12
Standard procurement procedure.....	12
Framework contracts/agreements	15
Freedom of information	16
Section 2: Question and Answer	17
The specification.....	17
Tendering techniques	18
Discussion with potential tenderers	20

Foreword

The purpose of this document is to summarise and reference the general procurement guidelines produced by the Office of Government Commerce (OGC) as they refer to government social research, and to clarify specific issues that have been highlighted as potentially difficult to interpret in securing value for money in procuring social research. Although the standards summarised here are the same standards that relate to the procurement of all goods and services, the guidance has been written specifically for those procuring social research in government. The final decisions are, of course, for departmental procurement units, who may seek further guidance from OGC. This note aims simply to clarify areas where experience has demonstrated that procurement of social research in line with OGC principles has caused difficulty or resulted in inconsistent practice.

The guidance is split into two sections. The first is a reference document, highlighting the key principles that need to be adhered to and sources of fuller guidance on these issues. The second is in the form of questions and answers; clarifying some of the key issues that have been found to be problematic in the procurement of government research in the past. Together, these form a guidance note that should help ensure consistency in the interpretation and implementation of OGC guidance across government social research.

This document has been written jointly by the Government Social Research Unit (GSRU) and OGC. Ultimate responsibility for procurement, and adherence to UK and EU procurement rules, lies with the procurement experts in each department. This document is intended only to guide and ensure consistency. If in doubt, the expertise within each department should be called in to clarify specific issues.

Paul Wiles

Head of the Government Social Research Service

Section 1: Guidance on procurement of social research

Introduction

It is not possible to present a simple guide to procurement for all social research. Depending on whether EU procurement rules apply, and which EU procurement route is being followed, different rules and procedures have to be followed. This section summarises the main features of procurement, and gives references to more detailed OGC guidance where appropriate so that the key steps that need to be considered are highlighted¹. The guidance is not meant to replace Departmental procurement procedures or the advice of procurement experts within departments, but simply to clarify where there has been confusion or discrepancy in the practice of Departments.

In general, if the estimated cost of a contract exceeds the threshold for EU Procurement Directives to apply it is advisable to ensure the assistance of procurement experts within your department.

EU Procurement Rules

Revised public procurement regulations came into force on 31 January 2006. These replaced the previous services contracts regulations with a single Public Contracts Regulations 2006. The new regulations have been designed to simplify, clarify and update the previous rules. In particular they provide for greater use of electronic procurement methods; they specifically include framework arrangements for the first time; and introduce a new competitive dialogue procedure. The new rules do not change the existing classifications of types of service.

Classifying social research

EU Procurement rules apply when public authorities seek to acquire goods or services of a value that exceeds set thresholds (at the time of writing this is £90,319 for most central government departments and agencies and £139,893 for other bodies including universities and most research councils). This is exclusive of VAT, but will include any university overheads. Information on current thresholds can be found at:
[http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds .asp](http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds.asp)

¹ OGC policy and practice guidance is now in the Policy and Standards Framework - [http://www.ogc.gov.uk/procurement - the bigger picture policy and standards framework.asp](http://www.ogc.gov.uk/procurement_the_bigger_picture_policy_and_standards_framework.asp)

In determining whether a contract is likely to meet the EU threshold or not, it is important to note that the estimated costs of separate contracts that will meet a single requirement should be aggregated, and this aggregated total compared to the threshold. For example, a series of surveys of different populations investigating the same issue should be aggregated.

Under EU procurement rules, government social research will typically fall into one of two service categories: 'market research and public opinion polling services' or 'research and development'.

EU classification Category 10 'market research and public opinion polling' includes the following:

- market research services
- survey services
- survey design services
- survey conduct services
- telephone survey services
- survey analysis services
- economic research services
- feasibility study
- social research services
- public opinion polling services
- statistical services
- customer satisfaction surveys.

'Research and development' services are Category 8 and include:

- research and development services and related consultancy services
- research and experimental development services
- research services
- experimental development services
- design and execution of research and development.

(Details of the EU classification codes can be found at:http://simap.europa.eu/codes-and-nomenclatures/codes-cpv_en.html.)

The two categories are not clearly distinct. Social research is specifically mentioned in the 'market research and public opinion polling services' category, and this should therefore be the default classification option. Where the primary purpose of research is to inform the development of a policy, service or product

and where there is an experimental element, for example testing an approach to, or a design of, a policy, service, delivery mechanism or product, the 'research and development' classification may apply.

Departments need to ensure that the choice of classification is clear and defensible, especially if a piece of work is to be classified as 'research and development'. Departmental procurement experts should be consulted in cases of doubt.

It is important to note that there is an exemption: 'research and development' services wholly paid for by the contracting authority and where the results are to be made available to others are excluded from the EU procurement rules. 'Market research and related services' are not. This should not, however, influence the decision as to how to classify the work to be undertaken.

Further information on the EU procurement rules can be found at:
OGC guidance: http://www.ogc.gov.uk/documents/Intro_to_EU.pdf

Advertising contracts

All contracts which are covered by the regulations must publish a contract notice in the Official Journal of the EU (OJEU). The number of days the contract has to be advertised in OJEU will depend on the type of procurement procedure being followed (details can be found below under 'timetables').

There are four tendering procedures allowed for under the EU procurement rules:

1. The Open Procedure. Under which all those interested may respond to the advertisement in the OJEU by tendering for the contract.
2. The Restricted Procedure. Under which a selection is made from those who express an interest in tendering in respond to the advertisement in the OJEU. Only those selected are invited to submit a tender for the contract.
3. The Competitive Dialogue Procedure. Under which there is dialogue with those admitted to that procedure with the aim of developing one or more solution on which they will be invited to tender.
4. The Negotiated Procedure. Under which the terms of the contract are negotiated with one or more persons.

Public authorities have a free choice between the open and restricted procedures. Typically, the restricted procedure is the most commonly used. The competitive dialogue procedure is available for large or complex procurements, which cannot be awarded under the open or restricted procedures. In most cases it should be considered where previously the advertised negotiated procedure

would have been used. The negotiated procedure is only available in a very limited number of circumstances described in the regulations. Under restricted, competitive dialogue and negotiated procedures there are set number of participants to ensure a genuine competition: between 5 and 20 for restricted procedures and a minimum of 3 for the competitive dialogue and negotiated procedures.

A Prior Information Notice (PIN) can be published in OJEU in advance of a contract notice. Publishing a PIN can reduce the time required for the return of tenders, although this only holds when there has been at least 52 days between the publication of the PIN and the publication of the contract notice (see timescales, below). A PIN should contain as much information as would have appeared in a contract notice, but only needs to reflect what is known at the time the PIN is published. The PIN should not be published less than 52 days or more than 12 months before the contract notice is published.

It is possible for the whole of a department's research programme (detailing projects to be let in the forthcoming 12 months) to be advertised as a PIN in OJEU, providing the PIN is sufficiently clear, thereby cutting down the time it would take to tender the individual projects during the year.

Timescales

Further reductions in timescales are available where notices are submitted to the OJEU by electronic means and also where the authority offers full and unrestricted electronic access to tender documentation. These time savings are in addition to the time savings that can be achieved through the use of PINs. A summary of the timescales for EU procurement are detailed below.

As stated above, a PIN can only reduce the timescales if there has been at least 52 days between the publication of the PIN and the award of the contract notice. Generally, publishing a PIN will reduce the timescale of the open, restricted and negotiated procedures to 36 days, and no less than 22.

Minimum timescales required for EU tendering

Procedure	Standard tendering	With e-contract notice	With e-access to tender documents
Open	52 days	45 days	47 days (without e-contract notice)
			40 days (with e-contract notice)
Open (with PIN)	36-22 days	29-22 days	
Restricted – EOIs	37 days	30 days	
Restricted – ITTs	40 days	35 days	
Restricted – ITTs (with PIN)	36-22 days		
Negotiated – EOIs	37	30 days	
Negotiated – ITTs	not specified		
Negotiated (with PIN)	36-22 days		
Competitive dialogue – EOIs	37	30 days	
Competitive dialogue – ITTs	not specified		
Contract award	48 days		

For the restricted procedure, the 37 and 40 day periods can be reduced to 15 and 10 respectively under the *accelerated restricted* procedure, which can be used when it can be objectively determined that urgency means that the procurement cannot be achieved within the normal timescales.

Letting contracts

There is no obligation to let a contract after publishing a PIN or a contract notice in OJEU. However, all parties, including the OJEU, should be informed of the decision to withdraw the invitation.

When evaluating tenders, it is important not to use the same evaluation criteria for the selection of candidates following the publication of a contract notice and the assessment of tenders. The Commission takes the view that the selection and award stages are separate. The selection (Expressions of Interest) stage is to assess companies' personal positions, financial standing and technical capacity to the work. The award stage assesses the quality of the tenders. There should be no need to revisit earlier selection criteria at this stage as each tenderer will already have been deemed to have the capacity to do the work.

The EU regulations cover all aspects of the tendering process, including the specification and selection stages. However, if a contract is to be tendered under EU rules, project managers should work alongside procurement experts in their

department who should have more experience in adhering to these regulations. Failure to adhere to the regulations can result in action by suppliers in the High Court or action by the European Commission against the member state in the European Court of Justice.

There are restrictions on the use of post-tender negotiations under the open and restricted procedures. Any discussion that is likely to distort competition is ruled out, especially if this relates to price. This will generally rule out Best and Final Offers under the open and restricted procedures. However, discussions to clarify and supplement the content of tenders or the requirement in the specification are allowed, providing it can be shown not to discriminate.

EU regulations require departments to observe a 10 day mandatory standstill period before the award of the contract. At the start of this period the department will let all those who participated in the procurement who they propose to award the contract to and will let those tenderers know how their bid compared with the winning bid. Those participants then have the remainder of the standstill period to seek further debriefing or, if they feel aggrieved, to take action before the contract is awarded. The Regulations also require departments to debrief tenderers who request it, although this is good practice in all tender exercises. OGC have also produced some guidance on debriefing <http://www.ogc.gov.uk/documents/supplierdebrief.pdf>

Contract variation

Once a contract has been awarded, changes to the scope of the work are possible, although care must be taken.

If the change has the overall effect of reducing the scope of the contract, it is essential that departments are not vulnerable to claims that they misrepresented the volume of work to be conducted. A reduction in the cost of the contract can be negotiated.

If the change has the overall effect of increasing the scope of the contract, it is important that these changes do not take the resulting contract outside the scope of the original OJEU advertisement. For this reason, the wording of the original OJEU advertisement will be very important.

In cases of changes to the contract, specialist assistance is advisable.

Key steps in EU Procurement

1. Establish whether the proposed contract(s) will exceed the EU thresholds and so be subject to the EU Procurement Regulations.
2. If so, classify the proposed contract(s) as either market research or research and development; if it is the latter, decide whether the findings are to be published or not.
3. Decide whether the contract will be let under the open, restricted, competitive dialogue or, if justified, the negotiated procedure.
4. If required, publish a PIN in OJEU.
5. Advertise the contract notice in the OJEU, following the appropriate timescales.
Additional advertising. It is also possible to advertise the contract elsewhere at the same time as in the OJEU as long as exactly the same information and timescales are provided.
6. Send invitations to tender to all those interested (open procedure) or to a selected number (restricted and competitive dialogue procedures).
7. Select candidates based on pre-defined criteria. The criteria must be stated in the contract notice or tender, along with the relative weighting of each criterion or in descending order of importance.
8. Award contract using the 'Most Economically Advantageous Tender' award criteria (this is consistent with best value for money).
9. The procurement regulations require a 10 day standstill period at contract award stage to allow unsuccessful tenderers to challenge the decision. OGC guidance is forthcoming.
10. A contract notice should be sent to OJEU no later than 48 days after a contract has been awarded.
11. Inform all tenderers of the decision, offering briefing to unsuccessful tenderers in line with OGC guidance.

UK Procurement policy

When a contract is not required to be let under the EU rules, UK Procurement Policy applies. This requires that value for money is sought in all public procurement, and that this is achieved through competition unless there are compelling grounds to the contrary.

Even when EU Rules do not apply, EC Treaty principles (non-discrimination, equal treatment, transparency, mutual recognition and proportionality) still apply. Some degree of advertising – commensurate with the scale of the contract – is likely to be necessary with most contracts to demonstrate transparency, although this might only involve the advertisement of the departmental research programme. Managing Public Money, Annex 4.4 sets out the general principles on procurement: http://documents.treasury.gov.uk/mpm/mpm_annex4.4.pdf

Standard procurement procedure

A proportion of government social research projects will not reach the threshold for the application of EU procurement rules. In this case, standard procurement procedure will be implemented. Each department will have its own procedures and guidelines for procuring social research, but the lack of consistency in procurement practice between government departments has caused difficulties with contractors who work regularly for government and has caused them to raise questions about the integrity of the process. It is clearly important that government treats potential contractors equitably and does not jeopardise public confidence in the integrity of the process. The practice below interprets OGC guidance to ensure best practice in the procurement of government social research.

Expressions of Interest

There is no standard way across departments of eliciting expressions of interest. However, many departments have found the time delay on asking for expressions of interest for individual projects unacceptable, as it can add 4 to 6 weeks on to the tendering process. Contractors too have suggested this can be an extra and unwelcome burden, especially where extensive information is sought. A more effective method of eliciting expressions of interest, in most cases, is to incorporate this process within the publication of a research programme. Most departments use a pro-forma which individuals or organisations can complete to express their interest in being invited to tender for particular pieces of work or work in particular areas.

Tendering

Unless there is a strong, justifiable reason, all contracts should be awarded as the result of a competition. Even where the EU procurement rules do not apply

public bodies are bound by the EU Treaty obligations to achieve transparency. The Commission has issued this Interpretative Communication which explains how these obligations can be met <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:179:0002:0007:EN:PDF>

Informal competition

For contracts of low value, typically below £10,000², it is common practice to use some form of informal competition, as it is unlikely to be cost-effective to carry out a formal tendering exercise. However, even with low-value contracts, it is important to test the market in some way, by telephone, email or in writing. At least 3 organisations / individuals should be invited to quote and a note of their quotes and the reasons for the choice of contractor kept on file.

Formal competition

Formal competition will involve inviting a number of organisations or individuals to bid for a piece of work. A number of documents need to be prepared for this, including:

- a formal invitation to tender
- a specification for the work
- a formal declaration of offer, to be completed and signed by the tenderer (i.e. the contract letter)
- a copy of the proposed terms and conditions.

All firms invited to tender must receive identical information. If any additional information is given to a potential tenderer, it is essential that all other tenderers receive the same information at the same time.

There is no set timescale for the return of tenders. However, it should be borne in mind that comprehensive and well thought out proposals can take time, and busy researchers might be discouraged from tendering if the deadline is too tight. Inadequate time might result in poorer quality bids, less competition and therefore less value for money. Four weeks is the most common timeframe used by Departments, although this does extend to six to eight weeks in some Departments. Advance notice, for example in the form of annual, departmental research plans can help ensure that potential contractors are aware of forthcoming work and can plan their time appropriately.

Non-competitive contract

In exceptional circumstances, a non-competitive contract (also called a single tender action) can be awarded. The absence of competition makes it more difficult to establish value for money. It also denies the purchaser the opportunity to discover the strengths of other suppliers and can lead to allegations of bias.

² This figure varies between departments: the threshold is £5,000 in some departments and £40,000 in others.

Non-competitive tendering should only be conducted, therefore, where there is a strong business case for doing so, including where:

- only one organisation or individual has the unique or specialised expertise or skills required to conduct the work; has intellectual property rights on the approach; or controls the data
- continuity of knowledge with work done previously by a supplier is considered essential and/or will lead to better value for money
- the need for the work is exceptionally urgent caused by a genuinely unforeseeable circumstance and there is not enough time to carry out a competition (although in practice this can rarely be demonstrated).

When conducting a non-competitive tendering exercise, a specification should still be drawn up, and a costed tender received. The tender should be evaluated against predefined evaluation criteria and the costs compared to the costs of similar services.

Tender clarification meetings

Prior to the evaluation of the tenders, it can often be necessary to clarify certain aspects of a tender in order to better evaluate it against the pre-defined evaluation criteria. Tenderers need only be invited in for discussion where further clarity is needed to fairly evaluate bids. These meetings must be clearly documented for transparency.

Evaluating tenders

The evaluation criteria to be used to evaluate tenders received for a piece of work should be developed prior to the tendering process and included in the ITT, so potential tenderers are aware of the criteria to be used to judge their tender. No supplier should be invited to tender if they are not considered suitable to win the contract. If this is the case, no tenders should be rejected for reasons outside the tender evaluation criteria.

The evaluation of tenders must be systematic, thorough and fair, and must be seen to be so. Details of the evaluation of tenders can be requested under FOI. <http://www.ogc.gov.uk/documents/FOI.pdf>

Post-tender negotiation

Post-tender negotiation is the negotiation between the tenderers and the awarding body before the letting of the contract. It is only held with those tenderers potentially offering best value for money and is used to obtain further

improvements in those tenders. It is essential that post-tender negotiations do not put other tenderers at a disadvantage or distort the competitive process.

Post-tender negotiation should not be confused with tender clarification meetings, discussed above. They do not simply clarify what was in the tender, but are used to improve the tender to ensure best value for money. OGC recommend that post-tender negotiations should normally be conducted in the presence of experienced purchasing staff (i.e. Departmental procurement experts) to ensure the legality and fairness of the process. The process also needs to be fully documented so that a clear audit trail is left.

More information on post-tender negotiation can be found under EU procurement rules on page 10.

Framework contracts/agreements

Framework contracts and agreements are arrangements with suppliers that set out the terms (particularly price and quality) of contracts to be awarded during a specified period. Once a framework agreement has been established specific call-offs can be made for specific pieces of research throughout the duration of the agreement. They are often used by departments to enable pieces of work to be contracted quickly.

Frameworks can be awarded to single suppliers or to a number. If there is to be more than one, a minimum of three should be in the framework (provided that there are sufficient candidates who meet the selection criteria and who have submitted a bid). Where there are a number of suppliers, authorities can choose, where it is clear from the information provided by them, the supplier that best meets the authority's needs by applying the award criteria used when the framework was first established. If that is not the case, or where the authority needs to supplement the requirement in a small way, authorities are required to enter into a mini competition (in writing) with all suppliers on the framework capable of meeting the requirement. In practice, this is likely to mean that authorities should ensure that their frameworks do not have an excessive number of companies.

If there is a commitment to buy a specific amount of services from the supplier, this is a framework contract. When tendering for this, it needs to be treated in the same way as any other contract with respect to the EU rules. If there is no commitment to buy anything, it is a framework agreement and a contract would only be formed when a call-off was made under the framework. If the framework agreement is going to be worth more than the EU thresholds, the EU rules with respect to advertising and awarding the framework should be applied. If the original framework has been advertised in OJEU, it is not necessary to re-advertise any call-off under the framework, even if it exceeds the EU thresholds.

However, if the framework was not advertised in line with EU procurement rules and the contract exceeds the thresholds, then the EU rules will apply.

It is worth noting that departments can use the frameworks of other government departments in the acquisition of services where it is clear that the framework was advertised on behalf of such other bodies. (This can be done by generic descriptors, it is not necessary to specify each body individually.)

Under EU rules, Frameworks must be recompeted after 4 years. There should be no change to the Terms and Conditions during the lifetime of the contract.

More information can be found on:

http://www.ogc.gov.uk/documents/guide_framework_agreements.pdf

Freedom of information

There is a general right of access to information about all public contracts and procurement activity held by public authorities, subject to certain conditions and exemptions, such as commercial interest; information provided in confidence; and information intended for future publication.

Key issues that need to be considered in procurement are:

1. Tenderers should be aware of the implications of the FOI Act prior to submitting information.
2. Exceptions should be invoked if they will protect tenderers' legitimate commercial concerns.
3. Consultation with tenderers is appropriate if there is doubt about whether requested information could be commercially damaging.

ONS has produced guidance on implementing the Freedom of Information Act in both government statistics and government social research which includes a discussion of the issues associated with releasing information provided in tenders and contracts.

<http://www.knowledgenetwork.gsi.gov.uk/statnet/statnet.nsf/ac54bd08f13d0c8780256b2200530646/ccd89271ec6da3e880256df70057ef8d?OpenDocument>

In addition, the Department for Constitutional Affairs (DCA) and the Office of Government Commerce (OGC) have produced some joint guidance on procurement and FOI.

<http://www.ogc.gov.uk/documents/FOI.pdf>

Section 2: Question and Answer

1. Should departmental research programmes be announced?

Announcing research programmes in advance is good practice. In addition, announcing annual research plans on OJEU via a Prior Information Notice (PIN) can cut down the length of time required for advertising individual contracts in OJEU.

2. The research I am contracting will be published. Does this influence the application of the EU Procurement regulations?

Social research classified as 'research and development' that will be published and is being paid for wholly by the contracting authority is exempt from following the EU procurement rules. Social research classified as 'market research and opinion polling' is not exempt, regardless of whether or not it will be published. See Section 1 'Classifying Social Research' on pages 5 to 7 for more detail.

3. What is the most effective way of tendering a contract when there will be joint-funding/management of studies between departments?

Joint tendering can be avoided through the use of a 'Memorandum of Agreement' between departments. In this way, one department can conduct the tendering exercise and hold the contract, but in consultation with their co-funding departments. Money is simply transferred between departments using 'supplementaries'.

The specification

4. When should I reveal a budget in the specification?

There is no hard and fast rule for this. OGC policy and legal framework is designed to ensure value for money. Each tendering exercise should be judged on whether this will be achieved by disclosing or withholding the available budget for a piece of work. It is likely that the more detailed the specification for a piece of work, the less need there will be for a guide price. Specifications that leave the development and scope of a piece of work relatively open might benefit from a guide price, to keep the scope of the work within reasonable limits. It should be borne in mind that the OJEU advert has a field for the anticipated value of the contract.

It may be counter-productive to reveal budgets:

- in situations where obtaining innovative solutions is a key criterion and there is a flexible budget

- where there is flexibility in the budget with the possibility of extending it for solutions which will provide genuinely valued additional insights
- where there is risk of collusion between suppliers and there are concerns over control of this
- where it might interfere with future procurement plans
- where an auction is to be considered (e.g. eAuction).

5. When is it acceptable to ‘marriage broker’ the facilitation of consortia bids?

Increasingly, large research contracts require the resource of more than one contractor because of both the scale of the work and the range of expertise required. This can lead to departments wanting to ‘marriage broker’ consortia bids. OGC does not have a fixed policy on this. Any arrangement that ensures value for money, while at the same time retaining a fair competition, is acceptable. In marriage brokering the risks of promulgating unproductive relationships or distorting fair competition needs to be borne in mind.

6. Can I ask for details of contracts held with other clients as part of the procurement process?

Yes. Asking for references about other contracts held is standard practice in Government contracting, and is a logical way of assessing the candidates’ experience, technical capacity etc. The invitation to tender should indicate that the department might wish to approach a referred client and so their details should only be quoted with their consent.

Inviting organisations/individuals to tender

7. What will the effect of the Small Business Research Initiative be?

The Small Business Research Initiative (SBRI) was launched by the DTI in April 2001 as a voluntary cross-departmental programme which is primarily intended to stimulate and increase the demand for R&D from high-tech SMEs and to give them the opportunity to demonstrate that they have the ability to undertake and deliver high quality R&D to the public sector. The participating Government Departments agreed to a target of purchasing at least 2.5% of their external R&D from SMEs whilst still fully complying to UK domestic, EU and WTO procurement and competition rules.

Lord Sainsbury's Review of Government Science and Innovation Policies, October 2007, included recommendations for the SBRI to be reformed for greater performance and impact. Department for Innovation, Universities and Skills

(DIUS) is currently working with the Technology Strategy Board and the participating Departments on producing a new model which will initially be piloted with key Departments during late 2008 and will then be rolled out more widely to other Departments from April 2009."

Tendering techniques

8. Is it possible to have electronic-only tendering ('e-procurement')?

Yes, as long as the eTendering systems are in place and the department is confident that this process is not excluding potential bidders who could offer a better, more cost-effective, tender and that it will secure best value for money.

9. What is an eAuction?

Electronic reverse auctions (eAuctions) are a procurement technique that use secured Internet-based technology to allow competitive negotiation in real time. OGC reference:

http://www.ogc.gov.uk/documents/OGC_Guidance_on_eAuctions.pdf

10. When can I use an eAuction for procuring social research?

Because of the complexity of research projects, e-tendering will very rarely be appropriate in government social research. An eAuction will only be appropriate when there is little in terms of quality between those invited to tender and the research brief is very straightforward – a very unusual situation. OGC's guidance for the suitability of eAuctions states:

- *The contract must be suitably attractive to the supply base to attract competition*
- *You must be prepared to change supplier*
- *The product/service must be definable and accurately specified*
- *You must award the contract to the supplier with the lowest bid at the event, unless:*
 - *You have genuine concerns on the day of the supplier's ability to deliver for the term of the contract at the price bid*
 - *Your incumbent supplier's bid was not significantly more expensive as to balance any costs there might be of changing supplier.*

Discussion with potential tenderers

11. Is it acceptable to have meetings with potential suppliers before inviting tenders?

Yes. Holding general discussions with potential bidders about the scope of the work and what the research community has to offer is perfectly acceptable, as long as the process does not unfairly divulge information to one supplier about the requirement in advance of a competition.

When undertaking a tendering exercise under the EU procurement rules it is essential to ensure equality of treatment at every stage of the procurement. This would normally preclude any one-to-one meetings with potential tenderers after advertising in OJEU, although a meeting with all prospective tenderers at the same time is acceptable. It is also acceptable to answer technical queries about the work, as long as the answer is shared with all those interested in tendering. If it is not possible to develop the specification without one-to-one meetings, there might be a justification in using the competitive dialogue or negotiated procedure, which would enable a discussion/negotiation of the terms of the requirement individually with those selected to negotiate.

When not following the EU procurement route, one-to-one meetings might be necessary to protect original ideas from individual bidders. In this situation, additional information provided to one tenderer must also be provided to all bidders and there should be no suggestion of one contractor having any advantage in the procurement process. The exception to this is if the information requested is specific to an individual approach, and the release of the information would undermine the intellectual property rights of that bidder.

12. Is it acceptable to have meetings with potential bidders during a competitive tendering exercise?

Once procurement has officially commenced, it is critical that any information divulged to one tenderer is divulged to all on an equal basis (e.g. via open days or via written material sent to all bidders). This is to ensure fair competition throughout the process. One-to-one discussions/clarification meetings are, therefore, only acceptable if there are sufficient safeguards to ensure that there had been equal treatment. Queries are best submitted in writing before a pre-specified date, and the responses shared with all potential tenderers, again as long as this does not breach intellectual property.

Under EU rules, the Open and Restricted procedures assume that there should be no need for detailed discussions about the requirement once the procurement is in process. Where this cannot be done, authorities should

consider the Competitive Dialogue procedure which allows for such discussions or, where it can be justified, one of the derogations which allow the Negotiated procedure to be used, under which there are no such restrictions.

13. Is it acceptable to have meetings with preferred bidders after the receipt of a tender, either to clarify or modify their bid?

This is a complex issue that varies depending on the procurement process being undertaken. In sum, when following EU rules it is possible to have a post-tender clarification meeting, but there are strict rules on post-tender negotiation, which specifically rule out any negotiation on price.

Under the Open and Restricted procedures there should be little need for detailed discussions once tenders are received, as they should be considered final. Clarification is permitted, but no discussion can take place that could distort competition.

If interviews are considered necessary, it is not necessary to interview those tenderers who clearly failed to meet the requirements of the exercise as assessed during the tender evaluation stage of the exercise.

14. Is there any standard guidance on the debriefing of unsuccessful tenderers?

The OGC has a guide entitled 'Supplier Debriefing' which gives guidance on talking to unsuccessful tenderers. Under EU procurement rules unsuccessful tenderers are entitled to a formal debrief and the content is set out in statutory instruments. There is no necessity to give feedback for contracts below the EU threshold, but it is good practice to do so and can be a means of broadening the field of suppliers in future competitions by clarifying what the purchaser expects. <http://www.ogc.gov.uk/documents/supplierdebrief.pdf>

15. What happens if I find out the contractor gave false information in the tender?

If tenderers provide information which subsequently proves to be incorrect, and the information materially affects the contract, then it would be a matter for contract law. Depending on the impact of the false information, the contract could be void, or at least open to renegotiation. You should consult your Departmental lawyers.