

## **Guidance Note on engaging Advertising, Public Relations and Creative Design Services**

1. The purpose of this note is to provide guidance for public bodies on an approach to engaging advertising and creative design services which recognises the particular characteristics and conditions that exist in this market. The aim is to secure an outcome that serves the best interest of both the public bodies and the market participants in the procurement of these types of services.
2. The two most commonly used procedures used in tendering for public contracts are the open procedure and the restricted procedure. The following is an outline of considerations that are relevant regarding the type of procedure to be used in awarding advertising and creative design contracts. The guidance reflects the procedures set out in EU Directives on public procurement. These Directives have legal effect for projects above certain value thresholds<sup>1</sup> and must be observed. For projects below the thresholds the principles as set out here should be observed.

### **Open Procedure**

3. Under the open tendering procedure all parties who respond to an advertisement are issued with the tender documentation and are entitled to submit tenders. This may not be appropriate for markets which have a large number of suppliers or service providers and where compilation of tenders requires technical or specialised input involving significant time, effort and cost. If it is proposed to use an open procedure for the engagement of advertising or design services the tender documentation should contain as much detail regarding minimum pre-qualification criteria as possible, thus enabling ineligible agencies to exclude themselves from the process.

### **Restricted Procedure**

4. The restricted procedure is a two stage process. Firstly expressions of interest are sought and interested parties are asked to supply information on their qualifications, experience, technical, professional and financial capacity etc. Only those deemed to possess the requisite capacity and professional expertise are invited to participate in the second stage, i.e. the submission of tenders. This is deemed to be the more appropriate procedure for use in a standardised strategic approach to the engagement of advertising, public relations or creative design services.

**4.1** Contracting authorities should carefully consider their requirements in terms of their budget, specialisations required, agency size etc. Criteria for pre – selection will normally include qualifications and expertise of key management and design personnel, track record as indicated by particulars of projects for past and present

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<sup>1</sup> Approximately €154,000 for Government Departments and Offices, €236,000 for most other public bodies and €400,000/ €500,000 for entities in the utilities sector with effect from 1 January 2002, subject to bi-annual review.

clientele, financial standing as indicated by most recent annual accounts and turnover for up to three years.

**4.2** There is a need to maintain a balance between the appropriate number to be invited to tender to ensure reasonable opportunity for those in the market, the need to ensure adequate and fair competition, the costs to the trade in compiling tenders or “pitches” and the administrative effort and resources required on the part of contracting authorities in conducting the selection process. The EU Directives propose a minimum of five for submission of tenders under the restricted procedure. Those being invited to submit tenders should normally include the incumbent, if there is one, unless there are particular reasons for exclusion.

## **Creative Designs**

**5.1** It has been the practice of some public bodies to award contracts with creative design elements by an open procedure requiring the submission of strategic plans and original designs as part of the tendering process. Creation of designs is expensive and time consuming for agencies and design consultants. In addition, there is a danger of abuse of intellectual property rights in the use of this process.

**5.2** Public bodies should seriously consider whether creative proposals are really essential in the tendering process, given the tendency for subjective judgments, the high agency costs involved and the fact that very few, if any, designs submitted are actually used at the end of the process. It is a policy of some sections of the creative design market that original designs should not be submitted in a tendering process without payment. As a general rule, payment for costs incurred by a bidder in tendering for a public contract is contrary to public policy.

**5.3** It is recommended that the restricted procedure should be the norm in tendering for creative design contracts. The basis for pre-qualification and shortlisting of candidates must be fair, objective and transparent. Public bodies should provide a sufficiently comprehensive brief to which interested parties can respond<sup>2</sup>. Rather than original design ideas, samples of previous work and case histories should be sought. These together with details of agency credentials, should be sufficient to enable a public body to draw up a shortlist of candidates who will be invited to submit more detailed costed proposals. A process of clarification or elaboration of ideas and proposals may be appropriate to assist in reaching a final decision.

Government Contracts Committee

September 2003

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<sup>2</sup> In inviting tenders for public contracts normal policy and practice is not to give an indication of budgets available. Contracts for services such as advertising and public relations offer scope for very high expenditure in the use of different media. In inviting tenders for such services, it may be appropriate to indicate the budgetary limitations and invite proposals for a quantum of services within the budgetary limits.