

# Review of International Procurement Procedures

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# REVIEW OF INTERNATIONAL PROCUREMENT PROCEDURES

## Introduction

Contractor selection is a crucial element in construction procurement (Drew & Skitmore 1993, p. 363). Contractors are selected through the tender process, which varies according to country, state and contracting organisation and is subject to individual differences. This paper reviews a range of international tender processes, highlighting the ethical features that govern these guidelines. The paper is part of a project to develop ethical guidelines for procurement for major contracting authorities. By reviewing tender guidelines we are able to gain an indication of the type of ethical standards reserved for procurement. The need for good business ethics in the tender process stems from the belief that 'good ethical practice' is critical in meeting organisational goals (Vee & Skitmore 2003, p. 125). Hence, an ethical tender process will select ethical contractors who are viewed as beneficial to the contracting authority.

## Background

The range of guidelines to be reviewed include:

- The American Institute of Architects (AIA) and the Associated General Contractors of America (AGC) Recommended Guidelines for Procurement for Design-Build Projects in the Public Sector
- The Private Finance Initiative Procurement Process in the National Health Service (UK)
- Public Procurement in the European Union: Guide to the Community Rules on Public Works Contracts
- Hong Kong Tender Procedures for Government Procurement
- Japanese Procurement Procedures for Public Works

The American guidelines' intent is to recommend to contracting authorities the procedures involved in the tender process (AIA & AGC 1995, p. 3). The AIA and AGC believe their guidelines will improve the selection process for design-build projects, benefiting public owners as well as the design and construction community by bringing uniformity and consistency to the design-build process (AIA & AGC 1995, p. 13). This publication provides insight to the recommended procedures from the contractors' point of view as opposed to the government contracting authority's view, which the European, British, Japanese and Hong Kong guidelines are based upon. The European Union guidelines provide recommendations to be utilised by a range of different countries. Its major focus is to coordinate national procedures for the award of public works contracts in order to open up these contracts to effective Community-wide competition (Public Works Contract, n.d.). This publication is in accordance with the European Commission Treaty, which does not specifically mention public procurement, however it does lay down fundamental principles that are generally applicable and which contracting authorities have to observe when awarding all contracts (European Commission 1998, item 1).

The Hong Kong guidelines apply to the procurement of construction/engineering works, stores and services, and to procurements covered by the World Trade Organisations' Agreement on Government Procurement (WTO GPA). The WTO GPA is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers (World Trade Organisation 1996). The Japanese guidelines also apply to procurements covered by the WTO GPA. In both guidelines the agreement applies to contracts worth more than specified threshold values.

The UK guidelines refers to the recommended tender procedure that the National Health Service must refer to when procuring works using the private finance initiative. Although this guideline and the American guideline refer to a type of procurement, the structure of the tender process is still valid when evaluating the ethical components of the international tender processes available. The UK guidelines are consistent with the procurement stages in 'A Step by Step Guide to the PFI Procurement Process' published by HM Treasury (UK Department of Health 1999, item 2.1).

Where common procurement guidelines are used, guidelines have been evaluated in terms of their relevance to construction works.

## **Comparison**

The tender documentation, communication procedures, selection process, selection panel, and presence of feedback and compensation were the main areas of concern in all of the guidelines. They will be used to evaluate the ethical component of the guidelines. By comparing each guidelines stance towards these areas of interest we can determine:

- The type of documentation used in the tender process, particularly the amount of standard documents, which provides an indication of the type of information provided to each tenderer or potential tenderer.
- The type of communication procedures afforded, this indicates the degree of regulated correspondence.
- The variety of selection process and criteria employed, this can greatly affect whom the contract is awarded to.
- Who comprises the selection panel and how it is chosen, which can designate the professionalism of the panel.
- Whether feedback and particularly the level of feedback provided, this can influence the development of the tender for successful candidates and the learning process for unsuccessful candidates.
- Whether compensation is administered, which may affect the tenderer's perceptions of the contracting authority and may help recover the costs of bidding.

The five Appendices contain statements of each guideline relevant to the chosen evaluation criteria. In the following assessment each evaluation criteria refers to appropriate columns in Appendix I to IV.

## **Procurement Documentation**

### ***Advertising tender notices***

Three of the five guidelines stipulate where the tender notices should be published, and whether variations of the tender notice are allowed. Guidance is provided to only three guidelines on how to word tender notices, though all of the guides stipulate the range of information that should be provided in the tender notices. Hence, it appears that it is uncommon amongst these guidelines for the advertising procedure of tender notices to be standardised and for all of the guides to be concerned about the type of project information provided.

### ***Clarity of information & non-discrimination***

Two procedures, the American and the Hong Kong guides, specify that the project requirements should display sufficient clarity and be easily comprehensible. The European Union guide stresses that discriminatory technical specifications are prohibited. Similarly, the Hong Kong guide specifies that tender documents should not be prepared with a view to creating obstacles to foreign trade and competition amongst competing tenderers.

Consequently, only two government-based guidelines are concerned with discrimination in the tendering process and only two guides believe clarity of information is important.

### ***Bid presentation***

One of the five guides stipulates that tender documents should be drawn up so the identity of the tenderers is unknown to the selection panel. One guideline stipulates that competitors should present bids in a common format for easy comparison. Another guide specifies that documentation should be kept to a minimum. Therefore, it is not uniform amongst the guides, but there is concern for how the bids are presented to the selection panel.

### ***Publishing evaluation criteria***

Three of the procedures indicate that the tender evaluation criteria and its order should be provided to the bidders. One of the two stipulates that when the contracting authority aims to award the contract to the lowest priced bid, this should be communicated in all tender documentation. It appears that providing tenderers with information on evaluation criteria is not considered important to two guides.

## **Communication**

### ***Regulated correspondence***

Two of the five guides indicate that the contracting authority should discuss negotiations with bidders in a non-discriminatory manner. One procedure stipulates that the contracting authority should establish clear avenues for communication and that information supplied to one bidder should be shared with others. One guide stipulates that discussions between the contracting authority and bidders should be regulated. Altogether, only three of the five guidelines are concerned about the lines of communication between the contracting authority and bidder.

Recommendations for ways to facilitate open and fair communication are suggested in two guides only: one guide allows for on-site explanation meetings for qualified bidders; one guide recommends that public-question and answer sessions may be arranged where all competitors are present or written questions and answers may be circulated to all competitors; the same guide recommends that each short-listed bid team should have the chance for direct and private communication with the contracting authority.

### ***Other communication issues***

Other communication issues raised include one guide indicating the importance of bidders being informed that their willingness to demonstrate and accept that they can deliver on a project and the proposed risk would play a key role in their bid's evaluation. One guideline stipulates that the contracting authority must not provide information about tender prices or technical proposals to any competing tenderers or any contractors. The same guideline stipulates that contracting authorities must not give conditional treatment to tenderers based upon past and future procurements, except those indicated in the project. The Japanese procedures indicate that every fiscal year after the national budget is formulated government agencies should publish information regarding procurement for the coming year. The range of communication issues highlighted suggests that each of the three guides is concerned with different aspects of communication in tendering. They appear to be designed to be advantageous to the bidder, or aid them in their tender choices.

## **Selection Process**

### ***Type of selection process***

The range of selection processes recommended by the guides includes: open tendering, competitive tendering, selective tendering, single tendering, restrictive tendering, pre-qualified tendering, and negotiated procedure. Only two of the five guides use one selection process. One procedure uses two selection processes, one guide uses three processes, and one guide uses five processes. Altogether, all of the guides differ in the type and number of selection process it recommends. For more details of what selection process each set of procedures employs, refer to Appendix I to V. It should be considered that the higher the number of selection processes used the more likely the contracting authority will find it difficult to administer the tender process.

### ***Contractor evaluation & contractor registration***

Three of the five guidelines recommend ways to evaluate potential tenderers through pre-qualification. One guide carries this out by measuring the contractor's trade registrations, economic and financial standing, and technical capability. One guide's criteria for contractor evaluation include: the ability of the competitor to carry out a project, the past performance of individual members, the experience of the project team and the contractor's financial capacity. The Japanese procedures stipulate that a contractor must register with the commissioning entity in order to participate in bidding. Registration requires annual evaluations using a 'Business Evaluation' system. The criteria for the Business Evaluation include: annual value of completed construction works by license classification, net worth, number of staff, business condition (financial statement analysis), number of technical staff, number of years in business, record of labour welfare conditions, record of safety performance, and number of qualified accounting clerks. The Japanese guideline is the most thorough in evaluating contractors and the only guideline that keeps annual profiles. The group of guidelines are ununiformed in their position towards evaluating contractors. Some appear to deem contractor evaluation more important than others, whilst others (two procedures) do not consider it necessary to recommend.

### ***Lowest price criterion***

Each guideline recommends the type of criteria for evaluating bids. Two of the guides state that the major criterion for evaluating bids is according to lowest price. One of the two guides states that although the contract is awarded to the lowest bidder, it is to the lowest bidder below an agreed ceiling price. The other guide states that the contracting authority should also award the contract to the most economically advantageous bid. This procedure is the only of the two that states that when contracting authorities resort to lowest priced selection, it must be stipulated on all tender notices.

### ***Evaluation criteria***

The other three guides provide lists of criteria. The American guide's criteria includes: 1) excellence of proposed design and construction approach, 2) demonstrated satisfaction of program requirements, management plan for project, and 3) estimated cost of project. The British guide's evaluation criteria includes: 1) design and services, 2) affordability, 3) capital costs, 4) risk allocation, 5) value for money, 6) non-financial factors, 7) payment mechanism, 8) terms of contract, 9) guarantees, 10) contingency planning and 11) flexibilities and options. The Hong Kong guide's criteria includes: 1) technical and financial capability of tenderers and their past performance. Past performance records should include conviction records for employing legal workers and for site safety offences, environment and performance records, and any past history of claims exceeding \$100 million, 2) timely delivery or completion of the project, 3) compatibility with existing or planned purchases, 4) after sale support and service, 5) running and maintenance costs, and 6) fair market prices. Two of the three guides provide extensive lists of criteria compared to the remaining one

guide. In comparison with the two guides who use lowest price as the major criterion the three guides appear to be more concerned with factors other than price, although are ununiformed in what these other factors are. The American procedures appear to concentrate on the design and production of the project as well as price, as it is from the contractor's point of view. The British guide seems to focus on financial factors as well as price. The Hong Kong procedures appears to be highly concerned about the past performance of the contractors and their financial capability, yet is the only guide focussed on the project's maintenance costs and service support, hence the lifecycle of the project, as well as the price.

The American guide is the only guideline to recommend that the contractor should determine the significance of the price of the project at the beginning of the tender process.

The Japanese guideline is the only guide that recommends that a bid price be examined if it is exceedingly low.

### ***Monetary or performance guarantee/tender deposits & withholding money***

Two of the guidelines indicate that successful tenderers are required to provide the contracting authority with a performance bond or work guarantee or contract deposit. Only one of the two guides states it is mandatory. However in the guide that states it is not mandatory, it states that contracting authorities may include in the payment schedule the right to hold certain sums of money as retention money, which will not be released until the contract is completed or the contracting authority is fully satisfied. The remaining three guides mention nothing of bonds or guarantees. Hence, perhaps the act of requesting deposits, bonds or guarantees is unusual. Although it may be that the two guides are concerned about the guarantee of the work being completed, as both are designed for government contracting agencies.

### ***Non-discrimination in contractor selection & fair treatment in negotiations***

The European Union procedures is the only guide concerned with discrimination on the grounds of nationality in contractor selection, and ensuring equal treatment is afforded to all tenderers during negotiations. On the same theme, only one other guide indicates that the contracting authority should not divulge a bidder's negotiating position to its competitor, or use a bidder's negotiating position as a bargaining counter. Due to the European Treaty and the Member States that it serves, it is understandable that this guide is concerned with discrimination on the grounds of nationality. However, altogether only two of the five guidelines are concerned with fairness and discrimination during negotiations.

### ***Reserved bidder status***

The British procedures have a 'reserved bidder status'. Its aim is to allow the contracting authority to maintain a greater element of competitive pressure on the preferred bidder. It is the only guide that uses this practice, hence appears to be a rare practice.

## **Selection Panel**

### ***Choosing the selection panel***

The American procedures are the only guideline that provides recommendations on who should be included on the selection panel. The list of people includes design and construction professionals within the contracting agency who are familiar with the project and representatives who will use the facility. The only other guide that refers to the selection of the selection panel is the Hong Kong guide, which stipulates that the Financial Secretary appoint the Tender Boards. It also states the number of persons on the assessment panel and that contracting agencies should ensure only qualified persons are appointed to assess

technical specifications. Since only two guides stipulated who should be in the selection panel, it appears that there is little concern for the choice of the selection panel.

### ***Request external advisors***

Two guides recommend that other representatives should be used in the selection process as well as the selection panel. The American guideline highly recommends outside advisors. The British guideline recommends that the selection panel seek appropriate professional advice.

### ***Report on awarded contract***

The European procedures states that contracting authorities must draw up a report on the awarded contract providing information about the awarded candidate and unsuccessful candidates, reasons why the candidate was successful, and the reasons why the unsuccessful candidates were rejected. The rule to provide reports on awarded contracts is consistent with the European Union's Guide to the Community Rules on Public Works Contracts aim to ensure greater transparency in the award of public works contracts (European Commission 1998, item 1.5).

### ***Other selection panel issues***

There is a range of selection panel rules individual to each guide. Only one guide stipulates that the names of the selection panel should be made public prior to the tendering process. The European guide states that the contracting authority has the right to decide not to award a contract. In such cases the Office for Official Publications of the European Communities must be informed of this decision. The rule to decide not to award the contract appears to be uncommon amongst all of the five guides. Altogether it appears that not many guides are concerned with specific rules towards the selection panel.

### **Feedback**

All of the guidelines specify some kind of feedback to candidates, ranging from limited to candid responses.

### ***Feedback to unsuccessful competitors***

The American guidelines propose the fairest feedback options of the all of the guidelines. It recommends candid feedback should be provided to unsuccessful teams after the selection process, and that selection panel reports should be provided after each phase describing why successful competitors were selected. The European, Japanese and Hong Kong guidelines stress that unsuccessful tenderers should be provided with the reasons why they were unsuccessful.

### ***Making public the winning contract***

The British procedures do not mention feedback to candidates, except that the winning Business Case is made public one month after the selection process, with commercially sensitive material omitted. The Japanese procedures are the only other guideline that recommends making public the results of the selection process. It specifies the name of the winner, and the amount of the contract be disclosed.

### **Compensation**

Four of the five procedures mention nothing of offering compensation to unsuccessful or successful candidates, indicating that it is an uncommon practice to be recommended by procurement/tender procedure guidelines. As per the American guidelines contractor-

focussed stance, it provides an in-depth recommendation as to what type of compensation should be provided to tenderers. It stresses that a stipend should be paid to unsuccessful tenderers, as stipulated in the tender notice. The winning competitor should be compensated what was spent on the final stage submission. If the contract does not proceed, the winning competitor should be compensated for the final stage costs at a minimum. If the contract goes partially forward and is terminated or suspended, the winning competitor should be compensated for the final stage submission and any work done up to the notice of termination or suspension. Plus, the owner should not use design and construction methods proposed by unsuccessful competitors without compensation.



# Results

The key features of the review are translated in the matrix below. The column headings indicate what features the guidelines recommend.

	Procurement Documentation					Communication			Selection Process										Selection Panel				Feedback		Compe nsation
	Advertising Tender Notices	Clarity of Information	Non-Discrimination	Concerned with Bid Presentation	Publishing Evaluation Criteria	Regulated Non-Discriminatory Correspondence	Not Give Tender Info to Competitors	Not Give Conditional Treatment	One or Two Selection Processes	Three or Five Selection Processes	Contractor Evaluation	Contractor Registration	Lowest Price Criterion	Evaluation Criteria Lists	Monetary or Performance Guarantee	Withholding Money till Completion	Non-Discrimination in Contractor Selection	Fair Treatment in Negotiations	Reserved Bidder Status	Choosing the Selection Panel	Request External Advisors	Report on Awarded Contract	Right Not to Award Contract	Feedback to Unsuccessful Competitors	Make Public the Winning Contract
AIA/AGC Recommended Guidelines		●		●	●	●			●		●		●						●	●			●		●
The PFI Procurement Process in the UK NHS	●			●	●	●			●				●				●	●		●				●	
Public Procurement in European Union	●		●		●	●				●	●		●			●	●				●	●	●		
HK Tender Procedures for Government Procurement		●	●	●			●	●		●			●	●	●				●					●	
Japanese Procurement Procedures for Public Works	●								●	●	●	●												●	●

## Conclusion

After reviewing the five international guidelines and comparing them in the matrix it becomes clear that little attention is paid towards:

- the communication process between tenderers and the contracting authorities, particularly ensuring open and fair lines of communication and correspondence between them;
- the governing of the selection panel, including the choice of the selection panel, and ensuring the panel seeks appropriate professional or outside advice;
- feedback towards unsuccessful and successful bidders at all stages of the tender process, and making public the conditions of the winning tender;
- providing compensation to unsuccessful bidders, in fact only the American guideline stipulated this ruling, it has relatively less influence than the other four guides because it is created by a non-government entity and is not compulsory;

The five guidelines differ in the type and number of selection processes it recommends, rate contractor evaluation/pre-qualification differently, and have their own particular selection process rules. It is clear from the matrix that the selection process is the main concern of all of the five guidelines. Hence, the regulation of the selection process that greatly affects the ethical level of the procedures, due to their overwhelming presence as portrayed by the matrix. However, the communication, feedback, selection panel and compensation issues raised imply that there are many other equally important ethical avenues for a set of tender procurement guidelines to consider if its intention is to maintain an appropriate ethical level. For instance, the better the type and amount of regulated correspondence between the candidates and contracting authority, the fairer the process. At present three of the five guides stipulated some kind of regulated correspondence was necessary.

Altogether, this review's findings suggest that a number of diverse countries (more so first world countries) are not designing their tender procedure guidelines with good business ethics in mind. This can be perceived as a stance towards ethics in the entire procurement process. In line with the goals of the project to develop ethical guidelines for procurement for major contracting authorities in Australia it will be necessary to compare the findings of this review with a review of national guidelines. Only then will the project be able to design a set of procurement guidelines that fills in the ethical flaws of national and international guides.

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# APPENDIX I

## The American Institute of Architects and the Associated General Contractors of America Recommended Guidelines for Procurement for Design-Build Projects in the Public Sector (1995)

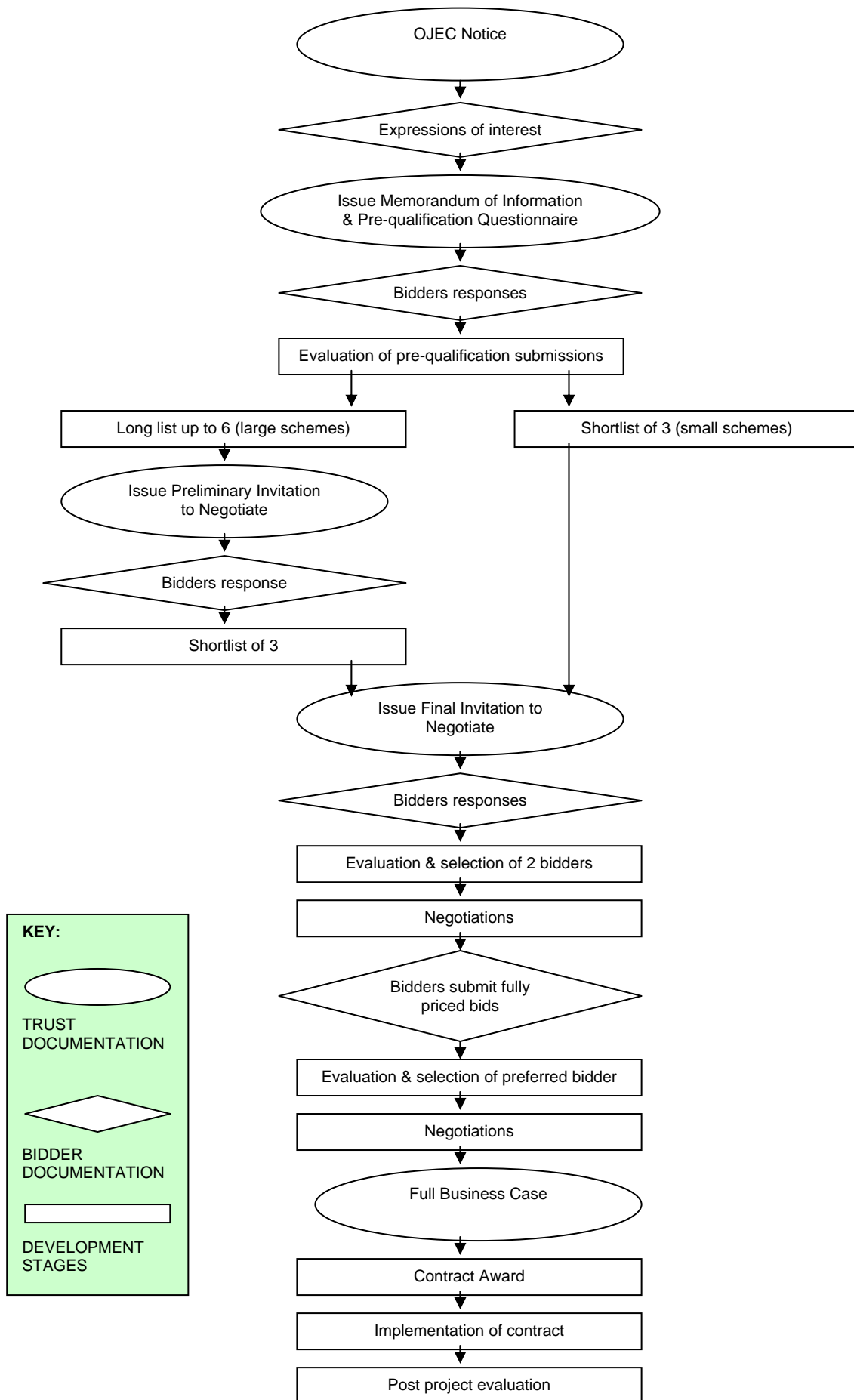
Procurement Documentation	Communication	Selection Process	Selection Panel	Feedback	Compensation
<p>Statement of project requirements should display sufficient clarity (p 7).</p> <p>Scope of work document should include: 1) program statements for facility; 2) equipment requirements; 3) other pertinent criteria; 4) site information; 5) any minority, women or disadvantaged business enterprise requirements; 6) an outline of specifications; 7) budget parameters; and 8) project schedule (p 8).</p> <p>Documentation required in submissions should be limited to the minimum necessary (p 10).</p> <p>Second Phase final selection criteria must clearly state what weight will be assigned to each criterion (p 9).</p>	<p>Discussions between owners and competitors should facilitate scheduled communication to avoid misunderstandings (p 8).</p> <p>Competitors and jurors should agree not to have communications about the project or selection other than permitted by the selection procedures (p 10).</p> <p>Public question-and-answer sessions may be arranged where all competitors are present, or written questions and agency answers may be circulated to all competitors (p 11).</p> <p>Each short-listed team may have the chance for direct and private communication with the owner's representatives, with each team receiving the same fixed amount of time (p 11).</p>	<p>Two phase selection process.</p> <p>First phase (pre-qualification): after receiving submittals a short list of 3-5 pre-qualified finalists is compiled (p 9).</p> <p>First phase criteria include: 1) ability of competitor to satisfactorily carry out project; 2) past performance of individual members; 3) experience of project team; and 4) financial capacity (p 9).</p> <p>Price quotations should not be considered at first stage (p 9).</p> <p>Second Phase (final) criteria include: excellence of proposed design and construction approach, demonstrated satisfaction of program requirements, management plan for project, and estimated cost of project (p 9).</p> <p>An owner must make the determination prior to the solicitation about the significance of the price of the project (p 9).</p>	<p>Should include design and construction professionals from within the government agency who are familiar with the project (p 10).</p> <p>Should include representatives who will use the facility (p 10).</p> <p>Outside advisors are highly recommended (p 10).</p> <p>Names of the jury members should be made public prior to initial solicitation (p 10).</p>	<p>Candid feedback to unsuccessful teams should be provided after the selection process (p 12).</p> <p>Written jury reports should be provided after each phase describing why the successful competitors were selected (p12).</p>	<p>A stipend should be paid to each of the unsuccessful design-build teams that complete the second phase requirements. The amount of the stipend should be stipulated in the initial solicitation (p 11).</p> <p>The winning competitor's total project compensation typically includes what was spent on the Phase Two submission (p 11).</p> <p>If the project does not proceed for any reason, the winning competitor should be compensated for the Phase Two submission costs at a minimum, on the same basis as the unsuccessful competitors (p 11).</p> <p>If the project goes partly forward and is terminate dor suspended, the winning team should be compensated for the Phase Two submission costs plus for its work up to the notice of termination or suspension (p 11).</p> <p>The owner should not use design, construction or other methods or concepts proposed by unsuccessful competitors without compensation to the competitor (p 11).</p> <p>Design work for a proposal should be the property of each individual design-build team unless and until the owner accepts the proposal (p 11).</p>

## APPENDIX II

### The Private Finance Initiative Procurement Process in the United Kingdom National Health Service (1999)

Procurement Documentation	Communication	Selection Process	Selection Panel	Feedback	Compensation
<p>Advertise contract notice in the Official Journal of European Communities (OJEC) and may advertise in specialist press or national media (item 3.15 &amp; 3.17).</p> <p>The 'How to Follow EC Procurement Procedure and Advertise in the OJEC' provides guidance upon wording for the OJEC contract notice (item 3.21).</p> <p>The Memorandum of Information should provide enough information so the bidder can understand: the strategic context of the project; scope of the project; opportunities for private sector; conditions affecting staff transfers; procurement process to be used; timetable; intended allocation of risks; and Public Sector Comparator. And should include details of: The NHS Trust; the commissioning HAs or PCGs; other sources of income; existing property and sites; and the public sector team (item 4.11).</p> <p>Bidders should be made aware of the order of evaluation criteria (item 6.2).</p> <p>Competitors are asked to present bids in a common format for easy comparison (item 5.50).</p>	<p>Bidders should be clearly informed that their willingness to accept and ability to demonstrate that they can deliver on, the proposed risk allocation would play a key part in evaluating their bid (item 6.18).</p> <p>The NHS Trust should establish clear lines of communication with bidders to enable swift and effective changes of information (item 5.40).</p> <p>Information that is supplied to one bidder should be shared with other bidders (item 5.41).</p>	<p>Multiple stage selection process (Refer to Figure 1)</p> <p>The evaluation framework and criteria should be consistent at every stage (item 6.16).</p> <p>Criteria for evaluating Preliminary and Final Invitations to Negotiate include: design and services; affordability; capital costs; risk allocation; value for money; non-financial factors; payment mechanism; term of contract; guarantees; contingency planning; and flexibilities and options (item 6.19).</p> <p>When the preferred bidder has been selected the remaining bidder should be asked to accept reserved bidder status. 'Having a reserve bidder in place allows the NHS Trust to maintain a greater element of competitive pressure on the preferred bidder' (item 6.51).</p> <p>A fixed price must be agreed upon with the preferred bidder before the submission of the Final Business Case (item 6.54).</p> <p>The NHS Trust awards service contract on the basis of a bid that offers the lowest price or is most economically advantageous overall to the NHS Trust (item 6.7).</p> <p>The NHS Trust should not divulge a bidder's negotiating position to its competitor, or use one bidder's negotiating position as a bargaining counter with a competitor (item 6.39).</p>	<p>Procuring bodies should seek appropriate professional advice before undertaking procurement as well as reading the PFI Procurement Process in the NHS (item 1.3).</p>	<p>The NHS Trust must make public the final Business case one month after approval omitting commercially sensitive information (item 7.16-7.17).</p>	<p>No mention.</p>

Figure 1: The NHS PFI Procurement Process



## APPENDIX III

### Public Procurement in the European Union: Guide to the Community Rules on Public Works Contracts (1998)

Procurement Documentation	Communication	Selection Process	Selection Panel	Feedback	Compensation
<p>Community-wide advertising of contracts to develop real competition between economic operators in all the Member States (item 2.1)</p> <p>Discriminatory technical specifications are prohibited (item 5.3).</p> <p>Three types of notices that must be submitted for publication in the Official Journal of the European Communities: the indicative notice, the contract notice, and the contract award notice (item 4.1).</p> <p>Notices must be drawn up in accordance with this Directive (item 4.2).</p> <p>The time limits specified in notices must ensure their expiry is in accordance with all member states (4.4).</p> <p>Notices may be published at community level after the national notice has been published. They must not contain extra information other than that published in the Official Journal of European Communities (item 4.5).</p> <p>The contract award notice must provide the criteria for the award of the contract (item 4.1).</p> <p>When contracting authorities resort to the criterion of awarding the contract to the lowest priced tender, this must be stipulated in all notices (item 6.5.1).</p> <p>Each criterion, which the contracting authority intends to use to determine the most economically advantageous offer, must be stated, either in the contract notice or in the contract documents. Where possible, the criteria should be listed in descending order of importance (item 6.5.1).</p>	<p>Discussions with candidates or tenderers may be held but only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting authorities and provided this does not involve discrimination (item 3).</p>	<p>Should apply objective criteria for the selection of tenders and award of contracts (item 2.1).</p> <p>Three types of contract award procedure: open procedure, restricted procedure and the negotiated procedure, the latter should be used in exceptional circumstances (item 3).</p> <p>An accelerated form of restricted procedure may be used in extreme urgency. Reasons for the use of this method should be published in the contract notice (item 3.2).</p> <p>The range of contractors invited to tender in the restricted procedures method must reflect the nature of the works to be carried out (item 6.3.1).</p> <p>The negotiated procedures must compare effectively between tenders and the advantages they offer and apply the principle of equal treatment between tenderers. Negotiated procedures can be with and without prior publication of a contract notice (item 3.3).</p> <p>It can be assumed that there is no discrimination on grounds of nationality when contractors are selected (item 6.3.3).</p> <p>The criteria to determine the good repute and professional capacity of the contractor include: trade registration, economic and financial standing, and technical capability (item 6.2).</p> <p>The criteria on which contracting authorities base the award of contracts must be either the lowest price or the most economically advantageous tender (item 6.5.1).</p>	<p>Contracting authorities must draw up a report on the contracted award, this includes: details of the contracting authority and the contract; names of candidates selected, with reasons; names of candidates rejected, with reasons; the name of the successful candidate; and in negotiated procedures, the circumstances justifying the use of this procedure (item 6.6).</p> <p>Contracting authorities may decide not to award a contract in respect of which a prior call for competition has been made, or to recommence the procedure. In such cases, they must inform the Office for Official Publications of the European Communities of their decision (item 3.5).</p>	<p>Unsuccessful candidates have to request feedback from the contracting authorities. Contracting authorities must, within 15 days of the request, provide the reasons why they were unsuccessful (item 6.3.4).</p> <p>If contracting authorities decide not to award a contract, or recommence the procedure, all candidates who request the grounds for this decision must be informed (item 3.5).</p>	<p>No mention.</p>

# APPENDIX IV

## Hong Kong Tender Procedures for Government Procurement (2004)

Procurement Documentation	Communication	Selection Process	Selection Panel	Feedback	Compensation
<p>Tender notices should follow procedures set out in General Regulations 103 to 105 (item 340a).</p> <p>Departments should use the standard form for various types of work contracts when inviting tenders: 'Articles of Agreement and General Conditions' (item 345a iv).</p> <p>All tenderers should be issued with: the Terms of Tender; General Conditions of Contract; Special Conditions of Contract; Officer to be Bound; tender specifications; bills of quantities; and detailed price schedules (item 345b).</p> <p>Tender specifications must be drawn up in a manner that meets the Government procurement principle of maintaining open and fair competition (item 350a) and transparency (Appendix III F).</p> <p>Tender documents should not be prepared with a view to creating obstacles to international trade or to competition amongst competitive tenderers (item 350a).</p> <p>Tender specification should be worded in easily comprehensible general terms (item 350b).</p> <p>Tender documents should be drawn up so the identity of the tenderers is unknown to the assessment panel (item 370a).</p> <p>The use of a marking scheme in tender evaluation and an outline of the selection criteria should form part of the tender documents (item 354g).</p>	<p>All communication regarding tenders must be classified RESTRICTED (TENDER) until a tender is chosen (item 305a).</p> <p>Government shall conduct negotiations with tenderers in a non-discriminatory manner (item 385a).</p> <p>Do not provide tenderers and contractors with information about other tenderer's prices or technical proposals (Appendix III Kl).</p> <p>Do not give tenderers and contractors conditional treatment base on liking past and future procurements, except for those already indicated in the tender (Appendix Kk).</p>	<p>Variety of processes used: open tendering, selective tendering, single and restricted tendering and pre-qualified tendering (item 315).</p> <p>A tender deposit is not normally required. Tender deposits are refunded to unsuccessful tenderers without interest (item 360).</p> <p>Successful tenderers may be required to pay a contract deposit or submit a performance bond before contract signing (item 362a).</p> <p>To protect Government' s interests, departments may include in the payment schedule the right to hold back a certain sum as retention money, which will not be released until the contract is completed or the Government is fully satisfied (item 363).</p> <p>Tender evaluation should refer to the specifications in the tender documents and the following criteria, as appropriate: 1) technical and financial capability of tenderers and their past performance. Past performance records should include conviction records for employing illegal workers, conviction records for site safety related offences, conviction records under the Employment Ordinance, environmental performance records, if applicable and any past history of claims for contracts with a value exceeding \$100 million; 2) timely delivery or completion; 3) compatibility with existing or planned purchases; 4) after sale support and service; 5) running and maintenance costs; and 6) fair market prices (item 370b).</p> <p>In recommending the acceptance of a tender to the tender board, departments should have value for money in mind (item 374f).</p>	<p>The Financial Secretary appoints Tender Boards each comprising not less than three persons (item 309c).</p> <p>An assessment panel consisting of no less than two persons should conduct tender evaluation.</p> <p>Departments should ensure that only properly qualified persons are appointed to assess technical submissions (item 370a).</p>	<p>In notifying unsuccessful tenderers of their outcome, departments have to include the reasons why the tender was unsuccessful (item 390b).</p>	<p>No mention.</p>



# APPENDIX V

## Japanese Procurement Procedures for Public Works (n.d.)

Procurement Documentation	Communication	Selection Process	Selection Panel	Feedback	Compensation
<p>Invitations for tender are published in the national gazette or in prefectures or cities own gazettes (item 1.5).</p> <p>The procurement notice includes the location, outline and time frame of the project, requirements for qualifying builders, deadlines for submission of applications for bidding, information on major construction materials and equipment to be procured, a contract point for detailed inquiries, and other information (item 1.5).</p>	<p>Every fiscal year after the budget is formulated, government agencies publish information regarding their procurement planned for the coming fiscal year (item 1.3).</p> <p>An on-site explanation meeting is held for qualified bidders (refer to figure 2).</p>	<p>Open and Competitive Bidding procedures are used (refer to figure 2).</p> <p>A firm must register with each commissioning entity required on order to participate in the bidding procedure through pre-qualification (item 1.1).</p> <p>Each registered firm is evaluated yearly using a 'Business Evaluation' This system evaluates technical, financial and other abilities of a construction company (item 1.4).</p> <p>Evaluation criteria for Business Evaluation include: annual value of completed construction works by License classification; net worth; number of staff; business condition (financial statement analysis); number of technical staff; number of years in business; record of labour welfare conditions; record of safety performance; and number of qualified accounting clerks (item 1.1).</p> <p>Interested potential bidders must confirm qualification. These requirements include a minimum score on the Business Evaluation, past records of performance in a similar project, and availability of a qualified and experienced engineer (item 1.7).</p> <p>A contract is awarded to the lowest bidder below a ceiling price (item 1.8).</p> <p>When a bid price is exceedingly low, it may be subject to examination (item 1.8).</p> <p>The commissioning entity requires a guarantee for the performance of the contract, either in the form of a monetary performance guarantee, or a work guarantee. The construction firm is free to choose among the types of monetary guarantees, but there is only one type of work guarantee available (item 1.9).</p> <p>The different types of Designated Competitive Bidding include: Public Invitation Designated Competitive Bidding and Project Interest Registration Designated Competitive Bidding (item 2).</p> <p>Other bidding systems being tested at present include: the Design-Build system; the Value Engineering System (VE); and the Technical Proposal Integrated Evaluation System (TPIE) (item 4).</p> <p>The VE system is a means of improving quality and reducing the cost. In VE in the post-contract phase, half of the cost savings achieved is often returned to the contractor (item 4.2)</p> <p>In the TPIE system the commissioning entity calls upon bidders to submit technical proposals in addition to price bids (item 4.3).</p>	<p>No mention.</p>	<p>Explanation of reasons for disqualification is made available within 7 days of the notice (refer to figure 2).</p> <p>The results of the bidding are published with the name of the winner and the amount of the contract (item 1.8).</p>	<p>No mention.</p>

Figure 2: Japanese Procurement Procedures: Open and Competitive Bidding (Standard Type)

