

**A GUIDE TO PROVIDING
GOODS,WORKS and SERVICES
to
BATH & NORTHEAST SOMERSET COUNCIL
DECEMBER 2014**

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N.B. Disclaimer: The following information is advice and guidance to interested organisations on how Bath & North East Somerset Council (B&NES Council) conducts its procurement processes. B&NES Council provides this information in good faith but accepts no responsibility for the accuracy of the information or for any subsequent changes, amendments, variations, etc. to any part of the information presented in the guide (published in August 2014) B&NES Council recommends that all organisations/Individuals obtain their own technical and legal advice on the on-going accuracy of such information beyond the date on which the guide was published.

If you require this information to be provided in a different format please email procurement@bathnes.gov.uk visit the Selling to the Council webpage.

Foreword

Welcome to the updated and revised version of the Bath & Northeast Somerset Council's guide for organisations who are already supplying, or who would like to supply the Council, with goods, works and services.

For those of you who have heard rumours that the legal frameworks which set the parameters on how we acquire goods, works and services are about to change, this guide takes all the changes into account. So if you've supplied the Council before please read this guide as things have changed and they will affect the way we do business with you.

We have aimed to make things clearer by removing extraneous text, putting in more diagrams and providing a glossary, together with a section on handy tips and reminders.

Improving transparency of the procurement processes and our involvement with organisations remains high on the list of priorities, not only driven by central Government but by our own standards as well.

We hope you find this guide useful and we welcome any comments and questions you may have. To communicate with us please contact the Corporate Procurement Team via the following methods

Corporate Procurement,
Bath and North East Somerset Council,
The Guildhall,
High Street
Bath
BA1 5AW

Telephone: 01225 477030

E-mail: procurement@bathnes.gov.uk

1 Think Local Procurement Strategy 2013-2017

The Council launched its *Think Local* Procurement Strategy in 2013 and one of the main strands of the strategy focusses on encouraging suppliers and potential suppliers within the B&NES area to work with the Council. This has many benefits ranging from obtaining best value for the Council to supporting the local economy with the associated benefits of thriving businesses and employment opportunities.

The strategy can be accessed at:

http://www.bathnes.gov.uk/sites/default/files/procurement_strategy_final.pdf.

However, there is one caveat which needs to be mentioned. Whilst we have major ambitions to increase the number of B&NES-based organisations, we have to work within the EU Procurement Directive, in particular for higher level contracts.

But what we can do is to work with organisations at the pre-procurement stage to ensure they are aware of opportunities, what procurement actually is, how they can get involved right at the start of the process. Accordingly, the Council is undertaking proactive supply market engagement activities. As part of this, the Council is working closely with the local branch of the Federation of Small Businesses (FSB) to support these activities. Information will be disseminated via our own website and through that of the FSB as well as other sources appropriate to the activity being undertaken.

We are also targeting social enterprise and voluntary and community sector organisations. To that end, we are now part of the new partnership 'Buy Local Buy Social' which brings together public sector procurers (including housing associations) and third sector organisations.

2 Encouraging SMEs

Whilst B&NES have a procurement strategy to Think Local – aimed at organisations in the B&NES area and SMEs, the EU procurement directive is explicit in the involvement of SMEs in procurement. To that end, whilst the UK does not require local authorities to split contracts into lots (ie, smaller packages making up one larger contract) to assist entry by SMEs, the authorities will have to state why they haven't done so in the contract notice. B&NES will encourage the use of lots to increase SME opportunities.

3 Working with Other Local Authorities

Bath & North East Somerset Council (B&NES) collaborative with other public bodies where there is synergy and tangible benefits have been clearly identified. Obviously, this is appropriate for some contracts and the decision to collaborate is currently taken on a case by case basis.

4 Market consultation

Under the previous procurement directive, there was some confusion as to whether or not public sector bodies could engage in market consultation prior to the commencement of a procurement exercise. Some enlightened public sector bodies took the view that so long as the engagement was not discriminatory then they undertook it, others took the view that it wasn't allowed, and some others didn't even consider it.

However, under the new directives it is explicitly allowed and encouraged as the benefits to both the public sector bodies and the supply market are great. These benefits include helping to manage and understand the capacity and strength of the market, and for organisations to get involved in the procurement process, early on, in order to help contribute to the process.

5 Guiding Legislation and Principles

In addition to the EU Procurement Directive UK Public Contracts Regulations, the following legislation and principles govern how we undertake our procurement.

5.1 Best Value

Since April 2001 all local authorities have a duty of Best Value. Under this duty they are required to secure continuous improvement in the way in which they carry out their functions. Best Value recognises that good procurement practice is essential if local government is to obtain real improvements to service, cost and quality.

Other considerations also need to be addressed in obtaining best value. For example, it can also refer to assessing the whole-life cost of the goods, works or services contract, and can take into account the long term economic, social and environmental benefits.

5.2 Public Services (Social Value) Act 2012

Social, economic and environmental benefits are also required to be considered under the Public Services (Social Value) Act 2012 and this small Act complements the Best Value duty. This Act requires authorities to consider how the delivery of a service contract can add to the social, economic and environmental improvement of the area. An obvious example is whether a particular service contract can offer apprenticeships during the term of the contract.

5.3 Community Right to Challenge

Under the Localism Act 2011, communities within the B&NES area such as voluntary/community bodies, employees of the authority and parish councils are able to express an interest in running a local authority service.

The formal 'challenge' process starts when a group submits a written expression of interest available from the Council's website¹. B&NES will then consider and respond to expressions of interest which, if accepted, will trigger a procurement exercise for that service. The challenging body will then need to participate, alongside others, in a procurement process. Be warned - **there is no guarantee** that those organisations expressing the interest will be successful in any consequent procurement process.

Under the Act the authority has the right to set a time period in which interest can be expressed. B&NES have made the decision that expressions of interest will be considered each year from: 2nd January (or nearest working day) to 31st March. No expressions of interest will be considered outside of these dates and the authority also holds the right to reject applications received outside of the set period.

¹ <http://www.bathnes.gov.uk/services/business/selling-council/right-challenge-0>

For guidance on this Community Right to Challenge please go to the relevant pages on the B&NES's webpage.

Before submitting a challenge please contact the relevant officer in the Council to discuss your idea as it could save your organisation a great deal of time and resource in the long run.

5.4 Freedom of Information (FOI)

B&NES is a 'public authority' for the purposes of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Accordingly, certain information submitted to the authority by bidders may need to be disclosed in response to a request made under the Act. The authority may also decide to include certain information in the publication scheme which it is required to maintain under the Act.

Please be aware that what you might consider commercially sensitive information might not be considered sensitive under this Act. We could still be required to provide information if it relates to a tender submitted by your organisation under an FOI request.

5.5 Fair Processing Notice

This authority is under a duty to protect the public funds it administers and to this end we may use key trade creditors standing data and payments history data for the purposes of prevention and detection of fraud. We may also share this information with other bodies responsible for auditing or administering public funds for these purposes. Further information is available on the Bath & North East Somerset Council web site, www.bathnes.gov.uk, National Fraud Initiative within the A-Z.

6 EU Procurement Directive

The new EU Procurement Directive has substantially changed in some key areas but less so in others.

One of the fundamental changes is the abolition of the old Part A and Part B categories of contracts. In its place it is assumed that all contracts are subject to a full procurement procedure unless they fall into a specific exemption due to the type of service the contract will deliver. These exemptions are generally for contracts which will deliver health and social services and are defined by specific codes in the Directive. The Council cannot arbitrarily decide which contracts fall into the exemption.

These contracts have a higher threshold over which they are caught by an EU process and, accordingly, the process under which they will be let will be a 'light touch' one. The threshold is €750,000. The reason for this change is that is assumed that these type of contracts will not attract cross-EU-border interest.

For all other contracts the threshold remains at €200,000, approx £174,000.

The 'threshold' is the financial value of a contract over the life of the contract (not annually), above which the opportunity must follow the EU procurement rules when being let. [see section for all thresholds]

The procurement processes now available to public sector bodies are shown in table 1 below.

7 UK Public Contracts Regulations

Each EU Member State is obliged to transpose the Directive into their own national legislation. This legislation mirrors the Directive but allows for limited national variation; it also makes it a legal requirement.

Procurement Procedures (*table 1*)

Process	Key characteristics	Advantages	Disadvantages
Open	<ul style="list-style-type: none"> ▪ One stage process. ▪ The opportunity is advertised and any organisation can respond. ▪ The tender will require organisation information and a detailed response to be provided. ▪ Only the 'winning' bidder will be required to proof of organisational details. 	<ul style="list-style-type: none"> ✓ Less restricted as to who can respond ✓ Faster than a restricted process 	<ul style="list-style-type: none"> ✗ Bidder can still get excluded on mandatory exclusion criteria. ✗ Extensive resource required to complete the full tender if bidder is excluded on exclusion criteria.
Restricted	<ul style="list-style-type: none"> ▪ Two stage process ▪ Most commonly used process ▪ The opportunity is advertised and any organisation can respond to the pre-qualification questionnaire (first stage). ▪ Only those that pass the PQQ stage will be invited to complete the invitation to tender (second and restricted stage). 	<ul style="list-style-type: none"> ✓ Bidders only have to complete the first stage before expending the effort to complete the ITT stage. 	<ul style="list-style-type: none"> ✗ Takes longer than the open process. ✗ Organisations under-estimate the importance of this stage.
Competitive procedure with negotiation (New procedure)	<ul style="list-style-type: none"> ▪ Used for complex requirements, possibly including design or innovative solutions, or where a technical specification can't be 	<ul style="list-style-type: none"> ✓ Improved achievement of value for money by the authority through negotiating with bidders to achieve a solution 	<ul style="list-style-type: none"> ✗ Only used in exception circumstances where the open or restricted process would not be suitable.

	established with sufficient precision		✗ Time consuming for all parties.
Competitive dialogue	<ul style="list-style-type: none"> ▪ Used for complex requirements often around the nature of the contract, legal or financial complexity or because of the risks involved. 	<ul style="list-style-type: none"> ✓ Improved achievement of value for money by the authority through rounds of submissions to refine the final offer. 	<ul style="list-style-type: none"> ✗ Only used in exception circumstances where the open or restricted process would not be suitable. ✗ Time consuming for all parties.
Innovation Partnerships (New procedure)	<ul style="list-style-type: none"> ▪ Encouraging suppliers to develop works, supplies or services not currently available using the competitive procedure with negotiation (see above). ▪ May be constructed in phases to match research/innovation phases. 	<ul style="list-style-type: none"> ✓ Development of innovative solutions to complex problems where there is currently no product or service able to deliver the contract. ✓ Delivery of cutting-edge technology. 	<ul style="list-style-type: none"> ✗ Only used in exceptional circumstances. ✗ Potentially time consuming.

Fig (i) – Restricted (2 Stage) process - PQQ element

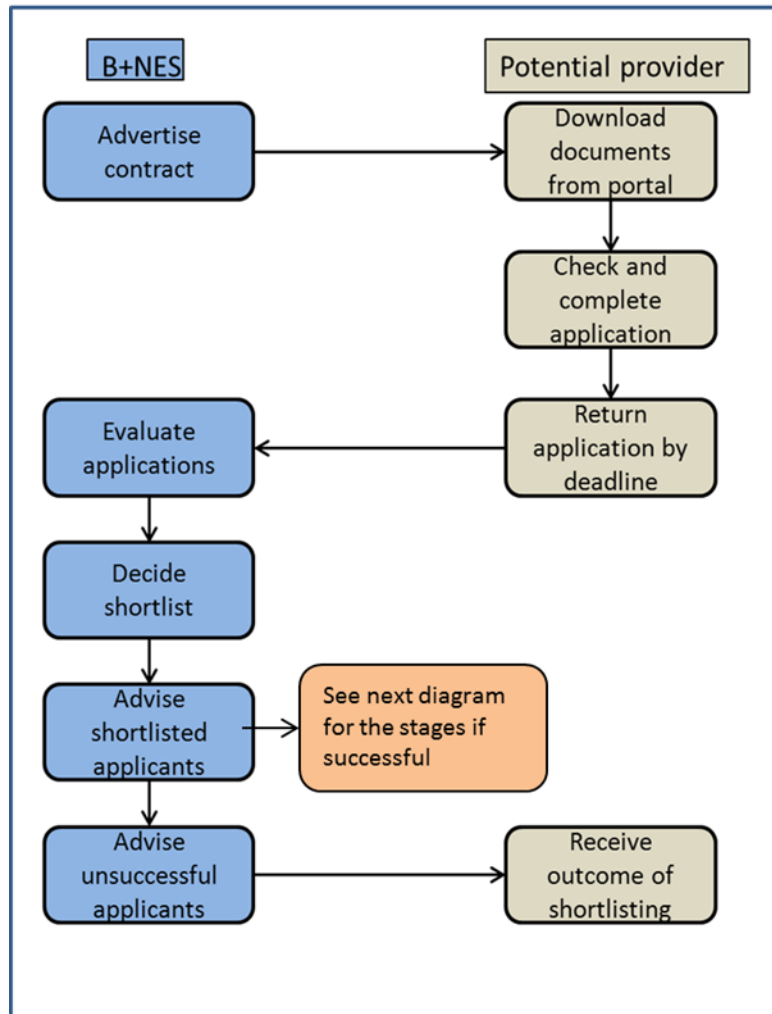
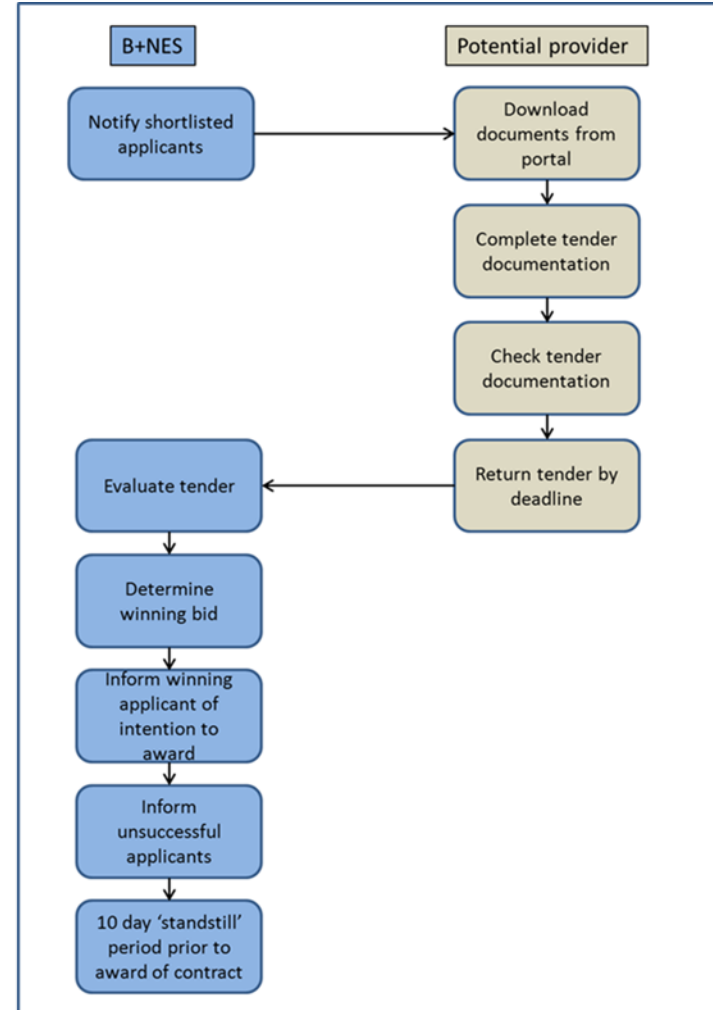


Fig (ii) – Restricted (2 Stage) process - ITT element



8 Time limits in the procurement process

Each procurement procedure has mandatory time limits associated with it and these have been reduced, and with a further option to shorten them should certain conditions apply (table 2). Conversely, when setting time limits, B&NES will also take into account the complexity of the contract and time required for organisations to respond. Take notice of any deadline dates that are stated in the tender documents as late submissions will not be accepted. Please note that the stated days are calendar days not working days.

In order to start the procurement exercise, a Contract Notice is sent, electronically by B&NES to the Official Journal of the European Union (OJEU). This Contract Notice will contain all pertinent information about the tender opportunity. The clock starts ticking when the Contract Notice is published by OJEU. The publication of the Contract Notice is often referred to as advertising the contract.

Increased use of Prior Information Notices (PIN) is made in the new EU directives particularly in shortening time limits on the return of submissions. The time limit table refers to a 'suitable PIN'. This means that a PIN was published and was (i) not intended to be the call for competition, (ii) was published not more than 12 months and no less than 35 days before the date of dispatch to OJEU of the contract notice; and (iii) the PIN contains certain brief information about the type and value of the contract. In essence, if an organisation has had sight of the relevant PIN then they should be in a good position to move quickly and respond to the shorter deadlines.

All tender documents including the specification and evaluation criteria should be published when the contract is advertised. The benefit is that potential bidders will have all the information at the outset and so make an informed decision whether or not to bid for the contract.

Time limits in the procurement process (table 2)

<i>Procedure</i>	<i>Stage</i>	<i>Minimum time limit</i>	<i>Exceptions</i>
Open	Complete tender	If electronic tenders – 30 days If non-electronic – 35 days	(i) if preceded by a suitable Prior Information Notice – 15 days (ii) if urgent – 15 days
Restricted*	Request to participate (PQQ)	30 days	(i) if preceded by a suitable Prior Information Notice – 15 days (ii) if urgent – 15 days
	ITT – tender	If electronic tenders – 25 days If non-electronic – 30 days	(i) if preceded by a suitable Prior Information Notice – 10 days (ii) if urgent – 15 days
Competitive procedure with negotiation	Request to participate (PQQ)	30 days	(i) if preceded by a suitable Prior Information Notice – 15 days
	Initial tender	If electronic tenders – 25 days If non-electronic – 30 days	(i) if preceded by a suitable Prior Information Notice – 10 days (ii) if urgent – 15 days
Competitive dialogue	Request to participate (PQQ)	30 days	None
	Initial/subsequent tenders	No explicit time limit	None

<i>Procedure</i>	<i>Stage</i>	<i>Minimum time limit</i>	<i>Exceptions</i>
Innovation partnerships	Request to participate (PQQ)	30 days	(i) if preceded by a suitable Prior Information Notice – 15 days
	Initial tender	If electronic tenders – 25 days If non-electronic – 30 days	(i) if preceded by a suitable Prior Information Notice – 10 days (ii) if urgent – 15 days

* please note that subject to further formal consultation, there might be a provision to shorten these timescales.

9 Award Criteria

Responses to the ITT part of a tender (through which ever procedure is used) will be based on the evaluation criteria applicable to that tender. The evaluation criteria will comprise a combination of price and quality and the tender will be evaluated on the 'most economically advantageous tender' (also known as MEAT) taking into account **both** price and quality. Under the new EU directives, the whole life cost of the goods or services should also be taken into account, where applicable. In addition, criteria relating to social as well as environmental impacts might be included where they relate directly to the delivery of the contract. The evaluation criteria and scoring matrix will be published at the same time as the other tender documentation.

However, in contrast to the ITT stage, the PQQ stage or 'PQQ element' of other procedures will include some mandatory exclusion criteria. The outcome is that if you are thinking of responding to a tender and if any of these relate to your organisation, it is not worth responding.

In addition to the mandatory exclusion criteria B&NES may exclude organisations on a discretionary basis.

Mandatory exclusion criteria	Discretionary exclusion criteria
Organised crime	Violations of social, labour or environmental conventions (eg ILO convention 29 on forced labour),
Corruption	Plausible indications of agreements aimed at market distortion
Fraud	Conflicts of interest that cannot be remedied
Money laundering	Significant or persistent deficiencies in a prior contract performance
Terrorism	The organisation has tried to unduly influence the authority
Child labour offences	The organisation has provided misleading information
Human trafficking offences	It can be demonstrated the organisation's non-payment of taxes or social security contributions but where no binding legal decision has been taken
Binding legal decision for breach of legal obligations to pay tax or social security obligations (except where disproportionate)	

However, if organisations have provided sufficient evidence of reform they should not be excluded. For mandatory exclusion the maximum exclusion period is five

years and for discretionary exclusion it is three years. Should any evidence come to light indicating that the organisation should have been excluded, it is possible to exclude them at a later stage.

It is worth noting that if you are planning to sub-contract any element of the contract you are bidding for, then any sub-contractor is subject to the mandatory exclusion criteria.

10 Thresholds (Goods & Services) – (subject to change with revised CSOs)

Contract value	Procedure	Internal regs	EU procedure
Up to £5,000	Demonstrate best value by:- <ul style="list-style-type: none"> Using a Corporate Contract/Catalogue A local supplier A Purchase Card Enabled Supplier 	√	
Between £5,000 and £50,000	Demonstrate best value by:- <ul style="list-style-type: none"> Using a Corporate Contract Obtaining a minimum of 3 competitive quotes using Pro Contract with where possible 2 quotes from local suppliers Do not have to accept lowest cost – mindful of Best Value 	√	
Between £50,001 and EU limits*	Demonstrate best value by:- <ul style="list-style-type: none"> Using a Corporate Contract An appropriate Framework arrangement Obtain tenders (based on a price/social value/quality model) using an open tender process) 	√	
Over EU threshold approx £174,000			√
Specific health, social and limited other services Threshold – approx £500,000			√ light touch process

11 e-Procurement

There are some changes around the use of e-procurement portals but the overriding outcome is that they will be more widely used and use will be mandatory by 2017. The baseline for the start of this increased use of e-procurement portals is that all contract documentation must be available for download at the time of the contract notice; ie, the time the contract is advertised. B&NES already use an e-procurement portal (www.supplyingthesouthwest.org) and will continue to enhance their use of this system.

www.supplyingthesouthwest.org.uk

In order to access the documents relating any tender or request for quote over £10K you need to be registered on the portal. Registration is free and once you have posted a profile of your company, specifying what sort of opportunities you are interested in, you will then be alerted of any new advertised opportunities that may be relevant to you.

Once registered on the portal you will also be visible to the other authorities in the South West who use the portal. A word of caution, though, the different authorities use the portal in different ways so pay attention to the specific requirements of each authority if you are lucky enough to supply more than one authority.

Another advantage of registering on the portal is that when we arrange supply market engagement events this is one of the key sources of data which we use to get details of organisations to invite.

All contract opportunities are advertised via this portal. In addition, under the EU procurement directive, all contracts over the OJEU thresholds must also be advertised via OJEU.

For help on how to use the Portal and technical issues please contact [Due North Technical Support Team](#)² by [E-mail](#)³ or call: 0844 334 5204. Lines are open from 08:30 to 17:00 Monday to Friday, excluding English public holidays.

How to get the most out of www.supplyingthesouthwest.org.uk – handy tips

- Instead of using an individual's e-mail addresses which can cause difficulties when an employee is sick, on holiday or has left the organisation, it is useful when registering on the portal to have a dedicated multi-user e-mail address eg, info@yourbusiness.co.uk. By setting up this type of e-mail your notifications can always be received and checked by other members of your organisation that have access to the email account.

² https://www.supplyingthesouthwest.org.uk/procontract/help.nsf/frm_support?openform

³ support@due-north.com

- Some e-mail domains such as Hotmail and Yahoo automatically filter e-mail addresses that are not recognised or, have not been added to your contacts list. We recommend you check your spam filters regularly just in case.
- It is crucial that organisations leave plenty of time to submit their bids for quotes or tenders as late tenders will not be accepted. Be aware that the tender you are responding to might not be the only tender with the same closing date and time and the system can get slow. We advise you to upload documents the day before the deadline as you can amend your tender even once bids are submitted they can be amended, right up until the deadline.

12 Contract Monitoring

The procurement process doesn't stop with the award of the contract; ongoing contract management throughout the duration of the contract is a key part of the process and one which benefits the supplier, Council and end users.

Communication between the authority and the successful supplier will usually be channelled through the Responsible Officer (or contract manager). Dependent upon the requirements of the authority and the nature of the goods or services supplied, this may take the form of regular review meetings and or written/e-mail contact.

All organisations delivering contracts let by B&NES are monitored to ensure continued compliance with the specifications and the terms and conditions of the contract. The authority's drive to promote continuous improvement will often result in a positive developing relationship with organisations.

Under the terms of the contract explanations will be sought from contractors or organisations failing to meet the agreed levels of performance. Continuing poor performance could ultimately lead to early termination of the contract.

13 Handy Hints

Below is a selection of handy hints which we hope will assist you in selling to the council. The list might sound a little bossy and some of it very obvious but it is provided to give you some clear pointers. We've included it as, although we have processes to follow, much of it governed by the EU and UK regulations, we want to give organisations the best chance of being successful with any bid they submit.

Do register on www.supplyingthesouthwest.org.uk – all our opportunities are advertised through this e-portal and we also use it as a source of information for inviting organisations to our supply market engagement events.

Do come to any supply market engagement sessions relevant to the contract that we might hold – you should learn a lot about the proposed contract and will have the opportunity to feed back to us prior to a contract being advertised.

Do read the documentation provided carefully – check that you're in a position to apply for the contract.

Do raise a query through the e-portal if you're unsure about what is being asked. It's better to find clear up uncertainties early on rather than miss the point of a question and consequently miss out on marks.

Do follow the instructions on completing the PQQ and/or ITT – don't re-number sections or delete them.

Do remember that everything that is being asked for is applicable so don't leave a section blank or deem it not applicable.

Don't include information that isn't asked for, such as marketing or publicity material – it won't get read.

Do keep to any word counts stipulated.

Do make sure you have actually answered the question.

Do acknowledge any weak areas in your response and indicate what steps you are putting in place to rectify this.

Do sell yourself in the best possible light!

Don't assume that we already know about you if you already have a contract with B&NES – each tender is marked on its own merit.

Do make sure that the organisations that you include as to where we can obtain references from know they are being named in the PQQ and are happy to provide a positive reference.

Do double... triple... quadruple check that you have answered all the questions and have uploaded all the attachments requested. It can be good practice to get someone who is unrelated to writing the response to read it. If it makes sense to them, it is likely to make sense to us.

Do give yourself plenty of time to upload your response – it might not just be the tender you're responding to that is closing at the same time and the system can go a little slow.

Do make sure that you upload your response before the deadline – we don't accept late responses.

14 Useful Links and information

B&NES Selling to the Council - <http://www.bathnes.gov.uk/services/business/selling-council>

Supplying the South West e-procurement portal – www.supplyingthesouthwest.org.uk

Contracts Finder (Central Government procurement portal) - <https://online.contractsfinder.businesslink.gov.uk/>

Buy Local Buy Social - <http://www.buylocalbuysocial.com/>

Federation of Small Businesses - <http://www.fsb.org.uk/>

Winning the Contract

Winning the Contract is a free on-line procurement course hosted by *learnirect*. It helps organisations, in particular SMEs, learn about public procurement and how to bid for public sector contracts.

The course introduces organisations to the public sector; it explains the procurement process and offers practical advice to help suppliers identify new business opportunities. The course also introduces organisations to the key procurement processes, including:

- identifying the advantages and disadvantages of dealing with public bodies
- understanding how different types of contracts are defined, and advertised
- identifying the key stages in the tendering process
- searching for and finding public sector opportunities as well as helpful hints and tips on drafting and submitting bids.