



## EENA Operations Document

# Managing the Tendering process

Title:	<b>Managing the Tendering process</b>
Version:	Final
Code:	1.5.1 Managing the Tendering Process
Publication Date:	13/05/2014
Status of the document:	Draft      For comments <b>Approved</b>



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## 1 Introduction

Most public authorities at some stage will engage in a tendering process as it seeks to procure goods and services from a private organisation. Public procurement can be defined as the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. It ranges from the purchase of routine supplies or services to formal tendering and placing contracts for large infrastructural projects by a wide and diverse range of authorities.

Regardless of the type or scale of the project being run, entering into the area of tendering can be daunting and can often lead to unintended consequences. There are many case studies where the tendering process was not conducted in the appropriate manner and this can lead to delays, cost over-run and in some cases legal challenges and costly court cases. It is very important that the public procurement function is discharged honestly, fairly, and in a manner that secures best value for public money. Contracting authorities (those public authorities who procure such goods or services) must be cost effective and efficient in the use of resources while upholding the highest standards of probity and integrity. Procurement practices are often subject to audit by national audit agencies also.

In a report conducted by the accountancy firm PwC in 2011<sup>1</sup>, it was noted that the UK, France, Spain, Germany, Poland and Italy are responsible for about 75% of all EEA public procurement activity, both in number of contracts and in value. The UK tops the list in value terms while France has the highest number of contracts.

The purpose of this document is to provide a reference source with relevant, clear and objective information for public authorities, emergency service organisations, PSAP management, the vendor/supplier community and any such stakeholder who are involved in the tendering process. The document intends to provide Such information is written for the purposes of the emergency service community but many of the reference materials are applicable from general procurement rules.

To achieve a full 360 degree view of the process, EENA has consulted with organisations on the demand side (the public authorities, ministries, emergency service organisations etc) and the supply side (the vendor community and consultants). These organisations have provided information without prejudice to any past, present or future tender that they may be involved in and thus, the information supplied by them is for the purposes of this document only. This document does not attempt to provide an exhaustive or detailed outline of their requirements nor is it a legal interpretation of the obligations they impose. It is essential that officials directly concerned with placing contracts are familiar with the provisions of the Directives and national obligations.

EENA is most grateful for the time, energy and thought-leadership provided by all the contributors and we hope that it is of value to those who will use it in their tendering programmes.

## 2 Abbreviations and Glossary

All definitions of terms and acronyms related to 112 are available in the 112 Terminology EENA Operations Document.<sup>2</sup>

## 3 European Procurement Legislation

Let's begin with one of the most important areas to be understood and which also is the cornerstone for decisions regarding the obligations and responsibilities for those you are conducting tendering programmes; the European legislation that governs the area of public procurement. Before we do this however, it should be noted that there are, most probably, national regulations regarding how public authorities conduct tenders and this should be carefully checked.

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<sup>1</sup> "Public Procurement in Europe; cost and effectiveness", March 2011

<sup>2</sup> [http://www.eena.org/ressource/static/files/2012\\_10\\_16\\_1-1-4\\_terminology\\_v1-2.pdf](http://www.eena.org/ressource/static/files/2012_10_16_1-1-4_terminology_v1-2.pdf)



In general, a competitive process should be carried out in an open, objective and transparent manner and should achieve best Value For Money ("VFM"). Essential principles arising from the Treaty<sup>3</sup> to be observed in conducting the procurement function include non-discrimination, equal treatment of participants, freedom of movement, freedom to provide goods and services as well as the general obligations of transparency of information and rules and proportionality. The Directives impose legal obligations on public authorities in regard to advertising and the use of objective tendering procedures for contracts above certain value thresholds. European Court of Justice case law implies a requirement to publicise and advertise such contracts of significant value to a degree, which allows parties in other Member States the opportunity to express an interest or to submit tenders.

### 3.1 European Directive

The most recent legislation on public procurement rules is Commission Regulation No. 1251/2011<sup>4</sup> and amends Directives 2004/17/EC, 2004/18/EC and 2009/81/EC. It essentially only amended the threshold values that obligate the advertisement of tenders and therefore Directive 2004/18/EC should be studied also. It governs the areas of "works" such as buildings and civil engineering contracts, "supplies" such as goods and supplies and "services" such as property management, financial and ICT services.

In brief, Directive 2004/18/EC imposed obligations on contracting authorities to:

- advertise their requirements in the [Official Journal of the European Union](#) (OJEU);
- use procurement procedures that provide open and transparent competition;
- apply clear and objective criteria, notified to all interested parties, in selecting tenderers and awarding contracts;
- use broadly based non - discriminatory technical specifications;
- allow sufficient time for submission of expressions of interest and tenders.

It is a legal requirement that contracts with estimated values above the aforementioned thresholds (apart from some defined exceptions) be advertised in the OJEU and that these contracts are awarded in accordance with the provisions of the Directives. These thresholds, applicable from the 1st January 2012 and exclusive of VAT, depend on the type of contracts being awarded. For the sake of simplicity, these are outlined below:

Type	Value	Applicable to:
<b>Works Contract Notice</b>	- €5,000,000	Threshold applies to Central Government departments and Bodies, Local and Regional Authorities and Public Bodies.
<b>Supplies and Services - Contract Notice</b>	€130,000	Threshold applies to Central Government departments and Bodies.
<b>Supplies and Services - Contract Notice</b>	€200,000	Threshold applies to other Bodies such as Local and Regional Authorities and public bodies outside the Utilities sector.

Under the procurement Directives, services are divided into two categories described as 'priority' and 'non-priority' services. The 'priority' services are subject to the full provisions of the Directive. In the case of 'non-

<sup>3</sup> [Treaty on the Functioning of the European Union](#)

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:319:0043:0044:EN:PDF>



priority' services, the requirement is that they should be awarded without using restrictive technical specifications. For example the use of specifically branded products should be avoided. In addition, information on 'non-priority' contracts awarded should be notified to the Commission in the form of an Award Notice, indicating whether the notice should be published in the OJEU. The purpose of this provision is to help determine whether some or all of those services might be made subject to the full provisions of the Directive at a future date.

For the purposes of emergency and critical communication related-tenders, they would fall into the category of "priority" services and there would be subject to the full scope of the Directive.

### 3.2 Common Procurement Vocabulary

The Common Procurement Vocabulary (CPV) is a classification code developed by the EU Commission to describe thousands of types of works, supplies and services. It is being adopted as the official code for classifying public contracts and is maintained and revised by the Commission as markets evolve and develop and should be used by the contracting authority when listing the tender inside the OJEU.

The CPV can be accessed on the [Simap](#) website and the appropriate code should be used for describing the subject of the contract on the standard forms when advertising in the OJEU. The CPV classification is not in use by all EU countries at this time.

### 3.3 Choice of types of tendering procedures

The revised EU public sector Directives permit four tendering procedures:-

- 1) **Open.** Under this procedure all interested parties may submit tenders. Information on tenderers' capacity and expertise may be sought and only the tenders of those deemed to meet minimum levels of technical and financial capacity and expertise are evaluated. If there are minimum requirements it is important that they be made clear in the notice or the request for tenders (RFT) to avoid unqualified bidders incurring the expense of preparing and submitting tenders.
- 2) **Restricted.** This is a two-stage process where only those parties who meet minimum requirements in regard to professional or technical capability, experience and expertise and financial capacity to carry out a project are invited to tender.
  - As a first step, the requirements of the contracting authority are set out through a contract notice in the OJEU and expressions of interest are invited from potential tenderers. The contract notice may indicate the relevant information to be submitted or the information may be sought via a detailed questionnaire to interested parties. The document is normally called an RFI ("Request for information"). The objective of the document is to understand what potential vendors are interested in the tender, company information about them, capacity and capabilities and reference case study-type information. Normally the RFI document is not specifically technical and should also include information about the strategic vision for the tender. However the RFI should consider important issues such as innovation and provide the vendor with a sense of what levels of innovation are needed. During this phase its also common that vendors are invited to present their solutions and in turn, this will help to inform the contracting authority of the market capabilities and vendor competence.
  - The second step involves issuing the complete specifications and tender documents, also called RFQ ("Request for Quotation") with an invitation to submit tenders only to those who possess the requisite level of professional, technical and financial expertise and capacity. It is important to note that, as a basis for pre-qualifying candidates, only the criteria relating to personal situation, financial capacity, technical capacity,



relevant experience, expertise and competency of candidates set out in the revised Directive<sup>5</sup> are allowed. The RFQ document should contain a detailed description of the required solution and should also demonstrate to the vendor the nature, scope and extent of what is needed.

- It's important not to make the RFQ "fit for purpose". In other words, the RFQ should match the solution needed and be aligned with the overall scope. In general terms, the contracting should avoid specify particular hardware but rather outline what the functionality is required and what service parameters it should be able to meet. To achieve this, the functionality specifications should be obtained from a users' perspective (i.e. the call-taker, dispatcher etc). This will ensure that the specification is relative to the user. Remember, if the functionality is not well described in the document, there is an inherent risk that the solution purchased will not meet your requirements fully.
  - If there are special pre-qualification criteria required, these should be stated in the RFQ. For example, if the contracting authority requires that the new solution that is sought should interface with an existing product, then it should be clearly stated. the existing product should also be described clearly. Vendors will then be in a position to decide whether their products are "qualified" to meet the criteria. However, as a general principle, such pre-qualification criteria should be transparent and ideally kept to a minimum so as not to exclude potential vendors from responding
  - During the RFQ, the contracting authority should also be mindful of national legislation that may require specific features and functions in the solution sought. These should be described clearly so that the vendor can build it into the proposal.
- 3) **Competitive Dialogue:** This is a procedure, designed to provide more flexibility in the tendering process for more complex contracts. Contracting authorities should advertise their requirements and enter dialogue with interested parties and use the same criteria as those of the restricted procedure mentioned above. Through the process of dialogue with a range of candidates, a contracting authority may identify arrangements or solutions that meet its requirements. Excluding candidates from this dialogue should be done with reference to the award criteria that have been published.
- 4) **Negotiated:** In some countries, negotiated procedures are only used in limited circumstances such as where it is not possible to specify requirements for a service with the needed precision to enable vendors to respond with priced tenders or where an open, restricted or competitive dialogue has not attracted acceptable responses.

Normally contracting authorities using this methodology advertise and negotiate the terms of the contract and usually by using at least three candidates who have been met the pre qualification procedure. Contracting authorities can also decide not to advertise but this goes against the principles of openness, fair competition and transparency. Such reasons for not advertising may be because of extreme or critical urgency, when an open or restricted procedure has not attracted appropriate tenders or for the purchase of supplies on particularly advantageous terms (e.g. from either a supplier definitively winding up a business or the receiver or liquidator of a bankruptcy).

### 3.4 Conflicts of interest

The area of conflicts of interest can be an uncertain one and it is often an issue which can present legal issues with candidates claiming such conflicts. A confusing or unclearly written RFQ could potential cause conflicts of interest so the contracting should be mindful of this. Therefore, contracting authorities should be aware of potential conflicts of interest in the tendering process and should take appropriate action to avoid them. Care should be taken to ensure that the project specifications and criteria should be as open and generic as possible in order to avoid favouring any one solution or any one party. It is often worth

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<sup>5</sup> Reference: Articles 45 to 48 of 2004/18/EC.



identifying internal colleagues to "proof-read" documentation to ensure that the language within the tender documentation is generic so that there is equity amongst all the possible candidates. Also, avoid local company-specific terms or acronyms, as they can be misleading and misunderstood.

### 3.5 Treatment of value-added tax

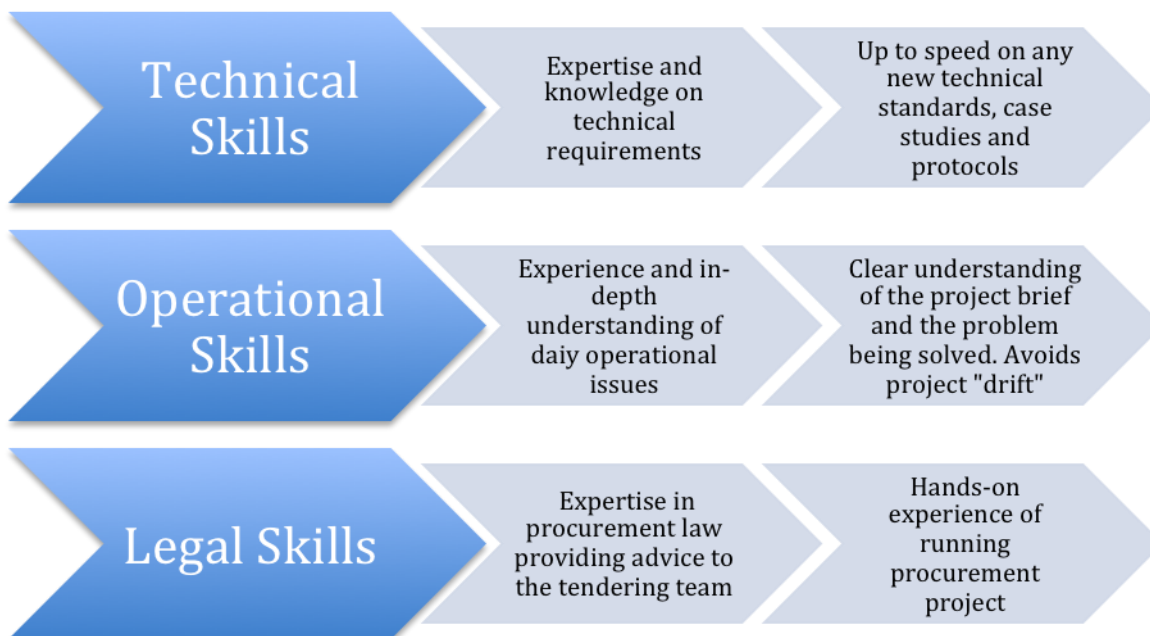
Tenderers should be invited to express their tender prices exclusive of VAT. VAT law provides for equal treatment in the supply of goods and services, therefore no competitive advantage or disadvantage should arise from the correct application of VAT rules.

### 3.6 Receipt and Opening of tenders

in terms of good practice, contracting authorities should ensure that proper procedures are in place for opening tenders. It is therefore advisable that tenders should be opened together and at the earliest possible time after the closing date. The contracting authority should have the correct procedures in place to prevent abuse or impropriety, and to safeguard against this, at least two officials of the contracting authority should be present and witness the opening of the tenders. The procedure should ensure that, there is a clear and formal independently vouched report of the tenders received. Tenders received after the closing time for receipt of tenders should not be accepted, unless there are clear and mitigating circumstances.

## 4 The Tendering Process - Defining your resources

To run any tender effectively and efficiently, the tendering authority needs to ensure that it has the optimum resources in place with the right skills. As such, the skills need to cover the technical, operational and legal challenges within a tender as well as the need to have procurement experience available. These are described below:



In terms of a tendering team, and depending on the scale and complexity of the project, it is often advisable to have a review of the process to ensure that the decisions taken are meeting all the obligations and avoid any future challenges by unsuccessful tenders. Such a review should be taken by an expert in the field and could be either inside or outside the organisation.





## 5 The Tendering Process - Your Needs Analysis and Scope

The most fundamental element of a procurement project, especially one involving the development of an emergency service/public safety service, is to have a very clear vision of what the issue that is being solved. Understanding the issue in depth will give rise to clarity when it comes to specifying what is required. To that end, undertaking a needs analysis with all the actors inside the operation is so important so that the requirements are specified and not the solution. There are many tools and templates to assist the development of a needs analysis but the more rigorous and thorough the needs analysis is, the better the outcome when it comes to writing a tender document.

Also fundamentally important to running a tender is the breadth and depth of its scope. Without the defined scope, the tender can "drift" and cause untold difficulties down the line. This should not however exclude the opportunity to add in other related elements to the procurement exercise and thus save money in the long term. For example, if a new CAD system is being procured, would it make sense to also include upgrades to a LAN or WAN or similarly related infrastructure? Also, if the tender is for a new PSAP, scope out the volume of expected calls and related dispatches as well as the geographic footprint that is being served or shared with other PSAPs.

One other crucial piece of the scope is the balance between encouraging an innovative response from the suppliers and the need to be very specific on the needs. Whilst the latter is clearly important, care should be taken so as to ensure that innovation is not stifled. Are you in a position to engage with suppliers before the tendering process officially begins (when you will not be permitted to do so most likely)? Perhaps run an open day with a number of suppliers and discuss capabilities and possible advancements in technology. It should involve discussions outside of the incumbent supplier, which may bring many new opportunities and new perspectives.

When writing the tender document itself, the contract authority should ensure that the flow of information reads well and is clear to the supplier. Getting a colleague who is outside the project team to review it in advance could save time and effort later when it comes to clarification questions and will yield better quality responses from the suppliers. Be aware also of the costs associated by a supplier in responding to your tender and ensure that the document is clear, unambiguous and if possible, the costs of the tender have been reflected accurately in the published budget (or at least is in line with the internal budget if the budget figure is not being published). Thus hidden costs are avoided.

The tendering authority should also look for case studies from the supplier where similar deployments have been made. This will bring a sense of credibility and experience of the supplier and will allow the contract authority to check on how the deployment went from a peer colleague. One other method of bringing credibility is for the contracting authority to check if the supplier is a member of EENA and if there is any track record of the companies association with any of EENA's conferences or workshops.

In terms of timing, avoid publishing the tender document just before a holiday season (i.e. 24th December) as many suppliers could possibly exclude themselves from responding because of the lack of resources and capacity. The contracting authority should there give the vendors sufficient time to respond meaningfully. If insufficient time is given, it may reduce the overall quality and breadth of responses that you receive and would be counter-productive. There are time limits allowed for the receipt of tender responses specified depending on the type of procedure followed and contracting authorities should be aware of these as are subject to change from time to time. The elapsed days are specified in calendar days usually.

When responding to the tender, ensure that the response is clear and follows the flow of information that is requested. It is obvious to suggest that the mandatory criteria should be clearly recognised by the supplier and responded to in full but it is often such an oversight that can lead to the dismissal of the supplier from the competition. Avoid using "template" responses to the tender document where "stock answers" are simply copied and pasted into the response.

Additionally, the supplier should take care to outline clearly what functionality or service is excluded in the costs which it has outlined as its response and to make sure that any add-ons are itemised as costing extra. This will help to compare bids more easily and also show which items are not catered for within the solution offered by the supplier.



## 6 The Tendering Process - Defining your Criteria and Scoring System

There are in effect two methods to establish a scoring system; the lowest price method and the Most Economically Advantageous Tender (MEAT) method. The lowest price method is often used for straight-forward contracts and the contracting authority may reject the lowest bid if it is "abnormally low".

The criteria and weighting system should be indicated in the published tender documentation and the contracting authority should not apply any weighting to the criteria without the interested party being made aware. The MEAT scoring system should follow four main characteristics:

- They should be linked to the subject matter of the tender;
- They should be transparent and explicitly mentioned in the tender documents;
- They should comply with the fundamentals of EU law; and
- They should not give the contracting authority any unrestricted freedom of choice.

For more complicated and possibly larger projects, the MEAT method is the best choice. For tenders being awarded on the basis of the MEAT, it should be the normal practice to have the evaluation of tenders carried out by a team with the requisite competency. This may include independent representation, i.e. a competent person from outside the area directly involved with placing the contract. Transparency and objectivity are best demonstrated by the use of a scoring system or marking sheet based on the relevant weighted criteria, including price, indicating a comparative assessment of tenders under each criterion. It is common to use an "up to five point" scale, where five points indicates a mandatory function while one indicates a "nice to have" function. Some contracting authorities use the expression shall or should, where shall indicates a mandatory function and should is a "nice to have" function. Normally, the vendor needs to be 100% compliant with the mandatory functions in order to be considered. Non-compliance with mandatory requirements can result in dismissal from the tender.

As an aid to understanding and clarity, it may be appropriate to invite the most competitive tenderers to attend a meeting and present or elaborate on its proposal, particularly if it is for technical or consultancy projects. However, the contracting authority should be careful with such a meeting so as to avoid any issues that might be construed as changing the published tender specifications.

As is normal with tenders, the balance between quality and price needs to be struck and therefore MEAT is a valuable scoring methodology. If the contracting authority decides to put a value on the solution sought, this information should be transparent and should not change. Awarding tenders to the lowest price supplier can have knock-on effects and therefore price should not be the sole determinant. Quality and support are other possible criterion to consider.

Regardless of this, the contracting authority should be very clear in its scoring system and also should be clear if it is intending not to accept and award the tender to the lowest price supplier.

## 7 The Tendering Process - Handling Clarifications

In terms of handling clarification questions, the methodology and timing of doing so should be clearly outlined in the tender document. This should be set at a reasonable time in terms of the overall tender timetable and could be done via email or via a conference call. Whatever method is used, it is advisable to ensure that the clarification questions and responses are noted in writing and copied (blind copied) to all the suppliers. The contracting authority should also have the capacity to ensure that any clarification questions are handled quickly and clearly. This will increase the overall level of transparency and ensure that all advice or clarifications are visible to all.

The contracting authority should also be mindful of the need to protect the intellectual property rights of the vendors and ensure that best efforts are maintained when it comes to protecting confidential information.



## 8 The Tendering Process - Awarding a Contract

Depending on the type of contract being awarded and procedures chosen by the contracting authority, the awarding of the contract should be done carefully. Initially indicating whom the "preferred supplier" is and thus indicating to the other suppliers that they have been unsuccessful would be a useful step to take.

The contracting authority should also outline to the unsuccessful suppliers as to why they had been selected and compare their submission to that of the successful supplier. Not in terms of specifics but outlining why they had received a lesser score than the "preferred supplier".

Also before the awarding of any contract, the contracting authority should allow for a "standstill period" whereby the preferred supplier is notified and then the unsuccessful suppliers can consider the explanation as to why they were not selected. Such a cooling-off period will also give the unsuccessful supplier with the opportunity to appeal the decision of the contracting authority.

On a practical basis, the contracting authority should be mindful of parts of the solution sought that are dependant on each other, particularly when the contract is being negotiated with the preferred supplier. For example, if the contract was for the reconditioning of full PSAP, the IT infrastructure would undoubtedly needed to be changed. This will in turn mean that civil engineering works would be needed and most likely, this would be completed only after a public/local authority granted permission. If the permission was slow being granted, it could affect the delivery timetable and this result in a penalty for the vendor. Such external 3rd party dependencies need to be considered when negotiating the contract with the preferred supplier with the possibility of contingency relief periods to offset potential delays. Of course, such contingency periods would carry a cost and therefore they should be included as a mandatory requirement to that the proposals are evaluated equally.

## 9 Reference material - EENA

To assist the contracting authority with specific related topics, EENA has published many documents over the past years on both operational and technical matters. These documents could be used as reference material for the scoping work mentioned in chapter 5 above. These documents are available on the EENA website and can be accessed via the links below:

- [EENA Operations Committee documents](#)
- [EENA Technical Committee documents](#)

For example, the table below outlines some of the operational and technical information that is available on the EENA website:

Subject	Question	Link to available resource material
<b>Contingency</b>	I need to understand more about contingency plans for my control room; where do i go?	<a href="#">EENA document on Contingency Plans</a>
<b>112 Models</b>	Where can I study alternative models for call	<a href="#">EENA presentation on country models in Europe</a>



	handling/dispatch?	
<b>Moving to NG112</b>	Where can I find information about moving towards Next Generation 112?	<a href="#">EENA document on Transition Models</a>
<b>112 access for people with disabilities</b>	I need to increase access for people with disabilities, where can I find out more?	<a href="#">EENA document on 112 Access for disabled citizens</a>
<b>Technology</b>	I need to learn more about the types of control room technology; where do I go?	<a href="#">EENA document on PSAP technology</a>

In addition to the above material, there are many other sources of reference material available from EENA such as the information provided at EENA Conferences. These are available [here](#). Specifically, there were some presentations made at the 2013 EENA Conference during the "Managing the Tendering Process" session and these are available to download [here](#).

Also, but reserved exclusively for EENA members, is the annual EENA PSAP Organisation in Europe document which is a comprehensive overview of the PSAP structure and organisation in the Europe. A brief extract of the document by way of example is available on the EENA website.<sup>6</sup>

## 10 The Tendering Process - Summary of Quick Tips

Below is the summary of quick tips, which should be borne in mind when conducting a Tender:

1. Ensure a thorough analysis of your needs is conducted before beginning the process. Engage the widest possible research to get the most recent up to date information available.
2. Use the EENA documentation such as PSAP trends, national reform information and conference presentations when carrying out your research;
3. Do not lead by the technology; define your functional requirements and boundaries clearly and scope out the possibility of doing other similar works at the same time; it could reduce costs later;
4. Ensure specific items such as system upgrades are fully covered in the scope, are fully costed and are included in the final contract.
5. Be aware of the relevant international standards such as Quality, Business Continuity, Security and consider them as relevant acceptance criteria for vendors to have.
6. Ensure the tender design and evaluation team have the required skill sets i.e. technical, operational, procurement, legal etc; do not be afraid to get your decision and justification peer reviewed;
7. When looking at the solution provider, ensure they have the relevant experience on similar projects, obtain references and think about asking for "case study" experiences on a similar scale/topic;
8. Ensure the solution provider is up to speed with the most recent information (such as NG112) and is a member of organisations such as EENA;
9. If you intend to use consultants to assist and advise you during the process, ensure they too are up to speed on all the relevant subject material. EENA has many members who can provide consultancy assistance. Ensure your consultant is a member of EENA also.
10. Be aware of the time constraints (and holiday periods) when setting deadlines for RFIs/RFQs;

<sup>6</sup> [http://www.eena.org/ressource/static/files/psaps\\_in\\_europe\\_eena\\_publication\\_2011\\_abstract1.pdf](http://www.eena.org/ressource/static/files/psaps_in_europe_eena_publication_2011_abstract1.pdf)



11. Ensure that if you are responding to a RFI/RFQ that you fully understand the requirements, especially any mandatory ones set by the awarding authority;
12. Ensure the criteria and scoring matrix for awarding the tender is clear and understood; this is relevant for both the awarding authority and the vendor.

**11 EENA recommendations**

<b>Stakeholders</b>	<b>Actions</b>
European Authorities	Ensure the relevant legislation is clear and easily transposable into national law. Where relevant, issue guidance material to assist national authorities.
National Government	Ensure that there are sufficient support systems in place to assist the emergency service organisations to run their tender.
National / Regional Authorities	Offer whatever assistance is required by the emergency service organisation and ensure all the individuals responsible for procurement are up-to-speed on the necessary best practices.
Emergency services	Adhere to all national and European procurement legislation.

**12 EENA Requirements**

<b>Requirements</b>
Ensure that the tender is line with the EENA Operational and Technical Recommendations (i.e. NG112 Long Term Definition document)
Ensure that the vendor is aware of best practices, is up to speed on the latest technologies and is a member of EENA
Ensure that the procurement process is clear, transparent and is compliant with the relevant national and EU legislation