

6. Public sector procurement of archaeological services and EU law

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Subterranean structure at Ardreigh, County Kildare (Valerie J Keeley Ltd)

Introduction

In the interests of an integrated market, fair treatment, equal opportunities, greater transparency and non-discrimination, the NRA is required to publish invitations to tender for contracted services throughout the European Union. This applies when the value of the service exceeds a certain financial threshold.

Archaeological mitigation associated with NRA-funded road schemes is currently deemed to be 'services' under EU procurement law (separate provisions apply to 'works'). The *Public Services Directive 92/50/EEC* came into force in Ireland on 1 July 1993. This requires that all public service contracts valued over a current financial threshold of €249,681 (at January 2002 but subject to review) must be advertised in the *Official Journal of the European Communities* (OJEC), and processed in accordance with the law as laid down in the Services Directive.

The OJEC advertisements take the form of PINs and contract notices. A PIN, or Prior Information Notice, is usually published at the start of a financial year by a commissioning

authority setting out what it proposes to purchase in the forthcoming year. The commissioning authority is not obliged, however, to go ahead with the purchase if circumstances change as the year progresses. The PIN is simply the first information for potential service providers and allows them to contact the commissioning authority, named in the PIN, with any queries concerning the work in prospect.

Three distinct tendering procedures are recognised under the Services Directive (and the other directives governing supplies and works): open, restricted and negotiated. Negotiated procedure is allowed only under exceptional circumstances and is not currently viewed as appropriate to the procurement of archaeological services for pre-development work. The open and restricted procedures are both applicable and either may be used.

Open procedure

Under the open procedure, all interested parties may submit tenders. A contract notice in the form of an Invitation to Tender (ITT) will appear in the OJEC and national/local press a minimum of 52 days after the publication of the PIN. (The contract notice can be published in less than 52 days but then an accelerated timeframe cannot be used.) Service providers may request the tender documents by phone, fax, e-mail or letter. They must be allowed at least 22 to 36 days from the date of issue of the ITT to request the documents and return them, completed. All tenderers must comply with the minimum requirements relating to financial standing and status, as detailed in Article 29 of the Directive. They may also be asked to supply information on previous relevant experience, technical capacity and other resources, as prescribed in Articles 30–35.

If a PIN has not been issued, then tenderers must be allowed at least 52 days from the publication of the contract notice in which to return completed tender documents.

Restricted procedure

Under the restricted procedure, only parties invited by the commissioning authority may tender. A contract notice appears in the OJEC at least 52 days after the publication of the PIN. In this case the contract notice is not an invitation to tender, rather an invitation to participate in a pre-qualification exercise. Service providers must be given a period of not less than 36 days in which to request a Pre-Qualification Questionnaire (PQQ) and return it to the commissioning authority. The information that service providers must detail in the PQQ relates to the minimum selection requirements as laid out in Article 29 of the Directive, on matters such as financial standing, bankruptcy, integrity and criminal history. In addition, empowered under Articles 30–35 of the Directive, the commissioning authority will ask for information on technical capacity, manpower and ability to deliver. In an archaeological context, this might reasonably include information on the service provider's previous excavations portfolio and publications record. This additional information will allow the commissioning authority to make a qualitative selection with weighting being applied to each of the criteria in the PQQ. Based on the results of the qualitative selection, between five and 20 candidates will be invited to tender, being allowed a period of not less than 26 days in which to return completed documents.



*Medieval ring-brooch from
Ardreigh, County Kildare
(Valerie J Keeley Ltd)*



*Medieval corn-drying kiln at
Ardreigh, County Kildare
(Valerie J Keeley Ltd)*

Contract award

Contracts are awarded on either the basis of ‘the most economically advantageous’ or ‘lowest price only’. Where the contract is awarded to the most economically advantageous, the award criteria must have been stated in the OJEC contract notice and/or in the tender documents. For archaeological services, criteria under which the tender is evaluated might include, for example, quality, technical merit, technical assistance, delivery date, human resources mobilisation, previous excavation record and publications history.

No matter which procedure is chosen, open or restricted, a contract award notice must be published by the commissioning authority in the OJEC within 48 days of award of contract.

Archaeological contracts below EU financial thresholds

In many cases, a commissioning authority will require archaeological services estimated to fall below the financial threshold that requires them to be published in the OJEC, that is less than €249,681. In these cases, each commissioning authority determines how it will best procure the services. Generally, for services that are estimated at between €635 and €63,487, at least three quotes must be obtained. Above that amount and below the prescribed threshold, a public tender process must be pursued, usually via advertisements in the national press.

Further information on EU procurement law and advertisements

European procurement law is complex and this short article has not dealt with many issues. The Public Services Directive 92/50/EEC and amendment Directive 97/52/EEC are available to read on-line or download from the Internet site of the European Commission <http://simap.eu.int>.

The OJEC database of daily tenders, including the archived list of all published contract notices relating to archaeological services for NRA/local authority road projects, can be viewed at <http://ted.publications.eu.int>. In addition, advertisements for archaeological services related to NRA road schemes may be found on the Irish public sector procurement portal at www.etenders.gov.ie.