

White Paper

Transparency in Government Contracts

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Executive summary

This paper looks at the latest
Transparency in Government
Contracts policies and the
guidelines for their implementation.

It then analyses the impacts that these have on both the buying and bidding organisations in how they manage their procurement and bid projects and how AWARD® can support and de-risk the additional processes required in order to comply with the policies.

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Introduction

Within the Coalition's 'Programme for Government', Section 16 – Government Transparency – begins with the following statement.

“The Government believes that we need to throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account. We also recognise that this will help to deliver better value for money in public spending, and help us achieve our aim of cutting the record deficit. Setting government data free will bring significant economic benefits by enabling businesses and non-profit organisations to build innovative applications and websites.”

This stance has now resulted in the establishment of several policies from Central Government related to transparency in the areas of procurement and contracting.

This paper looks at the effect that these policies have on both the bidder and buyer and in turn how AWARD®, Commerce Decisions evaluation software, can be used to support the additional requirements that these policies introduce.

Summary of the Policies

The new Transparency policies and the need to publish information on-line in relation to procurement/contracting by central Government have already come into force. They affect the following:

Tender documents for contracts

- over £10,000; Contract payments over £25,000;
- ICT contracts over £10,000;
- Central Government Contracts
- with a value in excess of £10,000.

Implementation of the policies

The diagram below has been sourced from the 'Transparency – Publication of Tender Documentation Guidance Note September 2011' and shows the tender documentation in scope under these policies.

Figure 1.

Potentially going to the market to buy i.e. via OJEU PINK or early advertisement in the media

- OJEU Contract Notice
- Advertisement in media
- Other formal announcement

Ready to publish tender document set

- Supplier selected & contract awarded
- Issue OJEU Contract Award Notice

Publish the contract (signed & sealed)

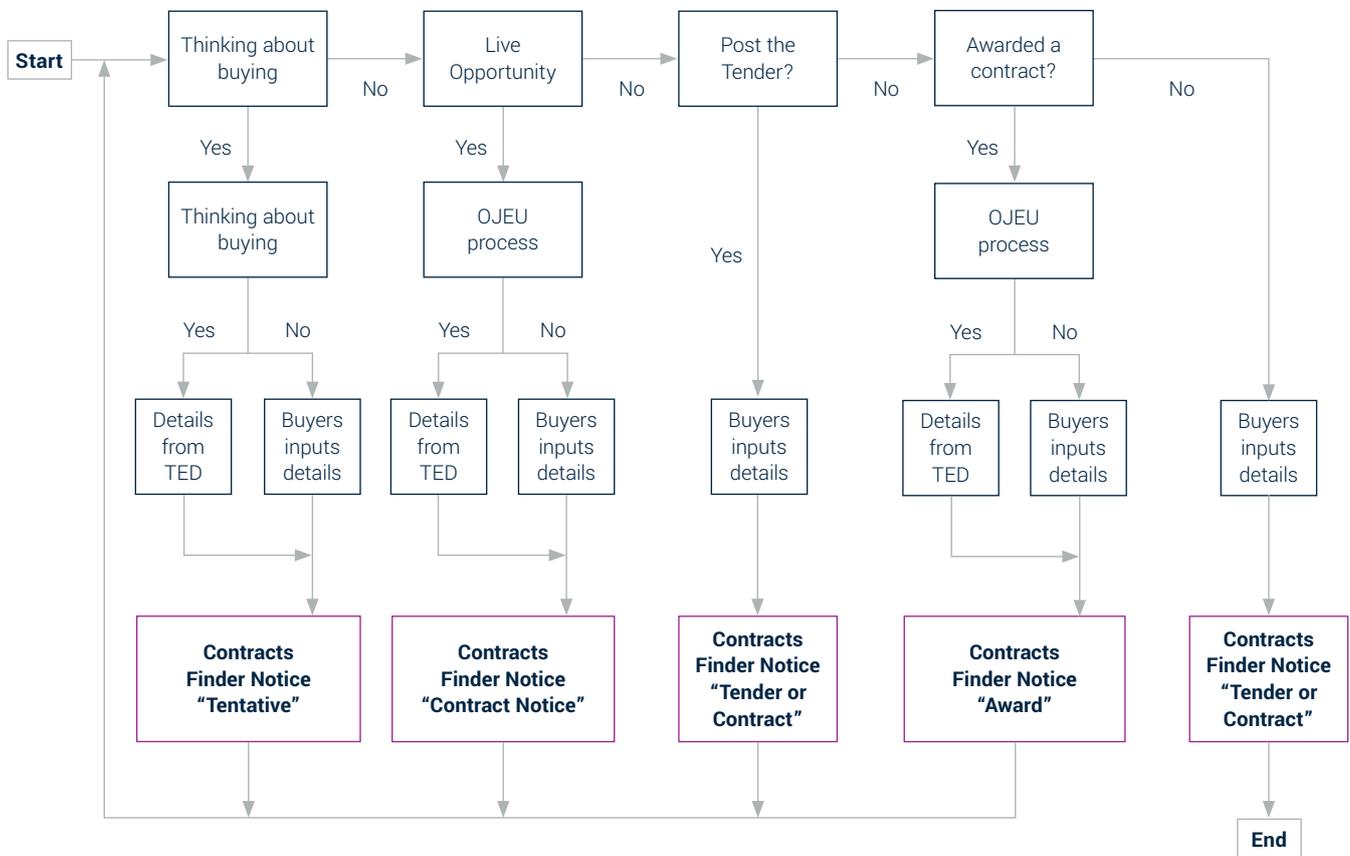
"Tentative"

"Contract Notice"

"Tender"

"Award"

"Contract"



Exemptions/Information not to be published

In order to protect the interests of both buyer and bidder, certain information should not be published online. For the buyer, this could be information contained in the documents shown below which, if released into the public domain, could compromise National Security for example. For the bidder, it is more about protecting their commercial interests – they are able to do this in-line with the FOI (Freedom of Information) Act guidelines.

The FOI Act provides:

- a. an absolute exemption for 'information provided in confidence' where disclosure of the information to the public would constitute a legally actionable breach of confidence; and
- b. an exemption under 'commercial interests' subject to a Public Interest Test for information that constitutes a 'trade secret' or where disclosure would prejudice the commercial interests of any bidder. The Public Interest Test considers if the release of information would be damaging to the commercial interests of Industry, or if the information is a trade secret.

These exemptions result in the need for redactions within the scoped tender documentation. Whilst the diagram shows no intention to publish bid documents specifically, the information in the bid documents could surface in the contract either in whole document form or extracts.

The ultimate responsibility for this redaction process lies with the buyer as they become the publisher in all cases. However, the bidder is able, using FOI guidelines, to highlight the areas within their bids that they believe should be excluded from any online publishing. This bidder redacting is carried out for the attention of the buying commercial/procurement team. The buyer is obligated to review this information but it remains at their commercial/procurement team's discretion whether to publish it or not.

Under the FOI Act, the buyer must consult with industry before any information is disclosed. If the buyer then decides to disclose the information, the company concerned must be advised and given two days notice in which to take legal action to prevent disclosure or make further representations to the buyer.

However, under the Transparency Policies, other than at the tendering stage, there is no absolute requirement to consult with industry. However, consultation is advised in the process guidance.

Other exemptions to the Transparency Policy include contracts for the procurement of Warlike Stores (weapons, munitions and similar hardware). Copyrighted information is not exempt from publication but the buyer must identify the elements that are covered by the supplier's copyright.

Impact on the Bidder

- For all procurements that fall into the criteria outlined earlier, bidders will receive notification that transparency applies. Once notified, they have to assume that their bid or elements of it could be published and placed in the public domain. Whilst no losing bid information is published, the bidder starts from a point of optimism that they will be the eventual winner. Therefore, this affects all bidders.
- Unless it is made absolutely clear to the bidder, at invitation, which proposal documents will form part of the final contract, their only safe course of action is to treat the entire bid proposal as potentially publishable. Therefore, this affects all proposal documents (potentially).
- The onus is on the buyer to decide what is and what isn't publishable and there could be no dialogue with industry prior to publication. If dialogue doesn't take place and a mistake is made it is not rectifiable as once the information is in the public domain it is too late. The only course of action that then remains for the bidders is a legal route, but the damage is already done.
- Although the Transparency Policy does not apply to sub contracts, where a bidder is bidding into a prime contractor, the bidder must advise the prime contractor of any elements of the bid which they wish to be redacted.
- The need for closer scrutiny and review of bids is required prior to their issue to make sure there is internal agreement on the elements redacted and agreement on the interpretation of the FOI guidelines used in redaction.
- Any clarifications process (pre or post bid submission) will also require the same level of scrutiny should clarifications be required.

In summary, the Transparency Policy brings greater commercial risk, cost and bid construction effort to a bidder when responding to invitations (Tender, Dialogue) or clarifications.

Impact on the Buyer

- The buying Procurement/Commercial team will have to check a wider selection of tender documentation in order to ensure their interests are preserved, and review the areas highlighted by industry. This means Commercial will need to review technical and other non-commercial documentation;
- The buying Commercial team will have to redact the information located following the review above. They will have to manage document version control and the issues associated with changing industry documents;
- The onus is very much on the buying Commercial team to decide what is publishable and what isn't. A mistake in this area could lead to serious consequences internally with regard to National Security, or externally with regard to industry relations;
- As with a bidding organisation, the documents about to be published are likely to require some form of review and scrutiny internally by the buyer before publishing takes place.
- Internal agreement on the review of industry redacted areas and their own redacting should take place;
- The buying commercial team must apply similar discipline to the clarifications process.

In summary, the Transparency Policy brings greater commercial risk, cost and publication effort to the buyer when carrying out the actions required for transparency compliance.

Combined Impact on the Buyer and Bidder

The Transparency Policy has similar effects on both the buyer and bidder. There is greater effort, risk and cost to the procurement process for both. The delivery of greater value for money (i.e. the desired outcome of transparency) and the offset to this additional effort/cost may not be felt until the benefits of analysing the published information are clear and proven over time.

How are these requirements relevant to AWARD?

AWARD has been successfully deployed world wide, supporting Government procurement contracts for both buyer and supplier organisations whatever the level of project complexity.

It is true that these transparency requirements add another element that needs to be taken into account by all parties, but there is existing AWARD capability that is able to support both buyer and bidder in complying with and managing these new steps in the procurement process.

Document Control & Security

One of the key elements of AWARD is the documentation control and security functionality.

This functionality enables the following capabilities:

- Visibility Control (i.e. who is able to see what);
- Version Control;
- Document Grouping;
- Buyer and Supplier Documentation;
- Automatic Bid Segregation.

This functionality enables either a buyer or a bidder to manage all of the documentation associated with the process.

Document Searching & Linking

AWARD has a comprehensive document searching capability.

This functionality enables the following capabilities:

- Instant search capability over documents stored;
- Advanced querying or simple text entry searching;
- Reference linking (i.e. the ability to move around the documentation in a pre- designed way (Note: the bidder is able to design this));
- Logical presentation (i.e. as with popular internet search engines, the user is presented with a summary of 'hits' and the ability to drill down further into the documentation);
- Ease of use.

How can this AWARD capability support the requirements of the Transparency Policy?

The requirements created by the Transparency Policy that are applicable to both buyers and suppliers can be summarised into two elements:

1. Organisation of documentation;

2. Scrutiny/Review of documentation.

The AWARD document control and security capability takes care of requirement 1.

The AWARD document searching and linking capability takes care of requirement 2.

In addition, the maintaining of a clear audit trail in this area and the creation of a central store of information is also good practice if not deemed a full transparency process requirement. This is automatically delivered if deploying AWARD.

The Process

Around this software capability, a process is required. This may vary from project to project and AWARD is flexible enough to allow for that. In other words, there is more than one solution and a project is able to adopt the method that they feel suits best.

Process – Worked Example 1 (separate the information)

AWARD is commonly used to assist in the segregation of commercially sensitive information already. There may be things that only the buyer's commercial team should see – pricing for example.

A priced/unpriced bid is commonly requested by a buyer.

This can be supplied by a bidder in two ways:

- two versions of the whole bid (one with prices in it and one with prices removed);
- one version of the bid but the 'relevant' documents containing price provided separately.

Standard AWARD functionality supports the handling of information deemed sensitive by the buyer, and this could easily be extended to cover the areas now in scope under the Transparency Policy (National Security, names etc).

The same logic can also be applied to information deemed sensitive by the supplier (i.e. protection of their commercial interests in line with FOI Guidelines).

Either of the two variations of bid response can be used in a process solution (two versions or one version with additional documents).

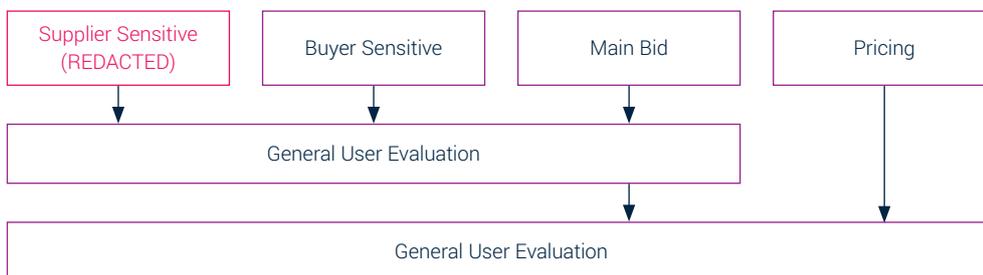
Below is a pictorial presentation of a process to support the transparency requirements using AWARD incorporating the logic above:

Figure 2. Supporting Transparency Requirements Using AWARD

1. Bid Preparation



2. Documentation Control & Evaluation AWARD



Note: AWARD enables a bidder to reference the sensitive elements from with main bid creating a seamless proposal

3. Transparency using AWARD



Explained

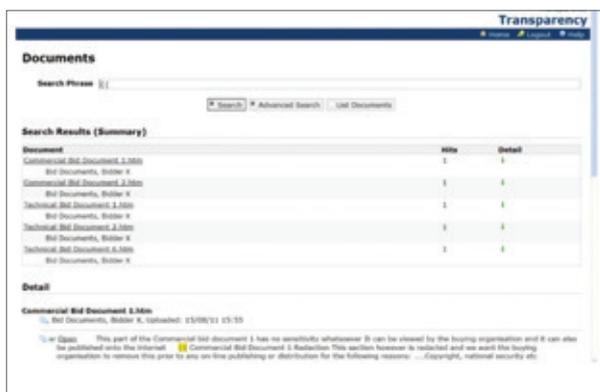
The method outlined above does not request two versions of the bid (a redacted and a non-redacted version) but a single bid that refers to some sensitive areas which are clearly able to be found and analysed. One drawback with requesting two bid versions would be that both versions would need to be compared to make sure that the only differences were the redactions and not anything in the proposal itself.

Process – Worked Example 2 (highlight the information)

As well as the data security/ segregation features shown in the first example, use can also be made of AWARD's powerful document searching capability to support these transparency requirements in a different way. If the supplier were to use a standard set of characters (requested by the buyer) to indicate the start and end points of redacted paragraphs within their documents, these could be easily located and reviewed by the buyer. AWARD is able to search the entire bid for all of the redacted information in a single click.

For example, all redacted information could be marked with a start '{{' and an end '}}'. Each document could then be reviewed and a publishable version created. The following screenshot shows how AWARD would search the bid documents for '{{' occurrences:

Five documents were found across the entire bid to have redaction. They are summarised initially and then the exact detail of the hit is shown beneath. A further click in the detail section takes the user to the exact point of the redaction in the document (see screenshot below).

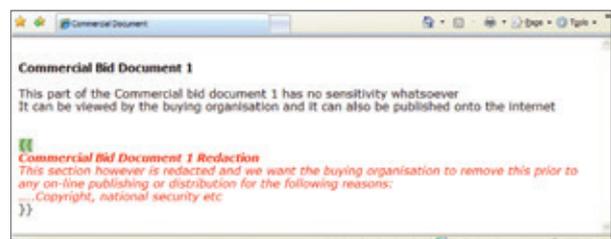


The Benefits in Summary

In either approach the benefits are the same. AWARD provides a clear process on how to highlight the areas of redaction and enable them to be reviewed in a controlled manner. The first solution enables a supplier to provide what it thinks will be the publishable version. The second solution enables a supplier to highlight clearly to the buying organisation the areas that should be omitted in any publishing of the bid. These approaches de-risk the possibility of wrong publication for both parties and reduce manual effort and the risk of error in that respect too.

For those clients new to AWARD, this element simply becomes another part of the evaluation process management tools that are provided within the software and services. For those clients already using AWARD, this simply becomes a format of response requirement with minor configuration enhancements.

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About Mike Ross

An experienced Principal Consultant and Requirements Analyst with 23 years IT-based consultancy experience. Mike joined Commerce Decisions in 2007 having worked previously as a freelance consultant with major consultancy firms such as PWC, IBM and directly for the Ministry of Defence.

With Commerce Decisions, Mike has had extensive experience in the deployment of AWARD® and the creation and implementation of a wide variety of decision-making schemes.

About Commerce Decisions

Commerce Decisions has been supporting strategic, high-risk procurements globally since 2001, and is at the forefront of best practice procurement. With a unique focus on complex evaluation, we have unrivalled experience in supplier evaluation and are a trusted provider of procurement services to the public and private sectors.

We deliver a robust and defensible procurement process to our clients, proven time and time again across many sectors including construction, transport, education, health, defence and facilities management procurements – to date, we have supported over 13,000 strategic projects, collectively worth over \$400billion. This enviable experience and in-depth knowledge has enabled us to develop proven methodologies, supporting clients to deliver the best possible outcome on strategic and complex procurement projects.

Headquartered in Oxfordshire, UK, and with offices in Canberra, Australia, and Ottawa, Canada, Commerce Decisions provides software and services to support the procurement and post contract review processes for both buyers and suppliers. For buyers we improve the efficiency and effectiveness of the evaluation process to make the best buying decision based on all the relevant criteria, underpinned by our AWARD® software. For bidders we improve the quality and timeliness of proposals to best meet the needs of the potential buyer and thereby give them the best chance of securing the contract, underpinned by our ADVANCE™ software.

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