

Non-open procedure: direct award without public tender

The non-open procedure is a type of award in which the contracting authority selectively asks chosen companies to submit a bid without the invitation to tender being published publicly. It is primarily found in public procurement law for public contracting authorities, but is increasingly also used in the private procurement of larger companies. For buyers and suppliers, the procedure determines whether they get the chance to submit a bid at all – admission to the bidder circle is therefore often the most economically important step.

Key facts

- In the non-open procedure, only selected, previously identified companies are invited to submit bids.
- No public call for participation is issued; instead, there is a qualified pre-selection of bidders.
- Above the EU thresholds, the non-open procedure is only permissible under certain conditions.
- Typical advantages are shorter processing times, lower coordination effort and a high technical fit of the bidders.
- The key risks lie in the traceability of the selection, non-discrimination and documentation.
- In the private sector, free direct award to selected suppliers is common practice and less strictly regulated.

Definition: non-open procedure

The non-open procedure is a type of procurement process in which the contracting authority directly invites selected companies to submit bids without a prior public participation competition. It stands in contrast to the open procedure, in which any interested provider may submit a bid.

Distinction from the open procedure

In the open procedure, the invitation to tender is published publicly and anyone may submit a bid. In the non-open procedure, control lies with the contracting authority: it decides who is admitted to submit a bid. The transparency of result publication is often maintained, but the option for the market to participate is not. For suppliers, this means the key to the contract lies in a good supplier master register and early qualification.

- Open procedure: public announcement, any providers
- Non-open procedure: selective invitation, limited bidder circle
- Negotiated procedure: direct dialogue with bidders on content and prices

Non-open procedure and direct award

Direct award is the simplest form of procurement without competition: there is a single point of contact, no bidder competition and usually a short order confirmation. The non-open procedure goes one step further, as several selected providers compete, but none from outside can join. In the private sector, the

boundaries blur: in practice, a 'reduced bidder competition' with three to five invited suppliers is common, which functionally corresponds to the non-open procedure.

Legal framework and admissibility

In public procurement law, the non-open procedure is by no means the standard option. It is subject to strict conditions and documentation obligations, the breach of which can trigger review proceedings and loss of the award.

Conditions above the thresholds

Above the EU thresholds, the non-open procedure may typically only be chosen if the tender under the open or negotiated procedure yielded no suitable offers, the contract can only be performed by certain providers for technical or artistic reasons, or there is an urgent requirement that could not have been foreseen. The choice of procedure must be justified and documented. A legal or internal procurement review in each individual case is strongly recommended, as the details are legally sensitive.

- Unsuccessful preliminary procedures with documented reasons
- Only certain providers can deliver technically
- Unforeseeable urgency with a substantiated justification

Sub-threshold values and private procurement

Below the thresholds, the contracting authority's internal procurement policies are decisive; many public contracting authorities permit a non-open procedure there without lengthy announcement, but require documented bidder selection. In the private sector, essentially free design applies, limited by the company's own compliance, cartel and sustainability requirements. Suppliers who want to benefit here should always keep their supplier self-assessment and qualification documents up to date.

Methods and approach in the non-open procedure

The execution follows a clear sequence: selection of bidders, preparation of the procedure documents, setting of deadlines, bid opening, evaluation and award. The effort is lower than in the open procedure, but requires all the more care in bidder selection.

Selection of bidders and criteria

Selection should be based on comprehensible criteria: technical suitability, capacity, references, financial stability, delivery capability and sustainability criteria. A structured material classification and a sourcing wave plan help to define the right supplier pool for each product category and to proceed methodically. The selection must be documented so that, in the event of a dispute, it can be proven that no provider was discriminated against.

- Technical suitability and technical capacity
- Economic stability and creditworthiness
- References and delivery history
- Compliance and sustainability evidence

Process from request for quotation to award

In practice, the procedure runs in six steps: definition of requirements, compilation of the bidder circle, dispatch of the request for quotation, setting of deadlines, evaluation of bids against fixed criteria and

the award decision. Clear pricing with comparable calculation structures and, where applicable, a benchmarking clause creates transparency over the entire period. After the award, supplier ramp-up management usually begins for operational implementation.

Link with sourcing strategy

The non-open procedure should not be viewed in isolation. It is a tool within category and supplier strategy and fits well when a stable supplier base with high technical expertise exists and fast decisions are needed. Strategic alliances and purchasing cooperations can help to exploit synergies without unnecessarily widening the bidder circle.

Key KPIs and evaluation criteria

Measurable targets also apply to the non-open procedure. Without KPIs, it remains unclear whether reduced bidder competition is actually better than a broader market comparison.

Typical key figures

Key metrics include price reduction compared with the preliminary calculation, bid response rates, time-to-contract, the share of successful awards to existing suppliers and the rate of rejected quotations. In addition, category intelligence and benchmarking provide the comparison benchmarks for assessing whether the restricted tender was economically sensible.

- Price reduction in per cent versus previous period or budget
- Bid rate of invited bidders
- Time-to-contract in days
- Share of awards going to listed suppliers

Supplier evaluation after award

After the award, suppliers should be continuously evaluated on quality, delivery date reliability, response times and price development. This data in turn feeds bidder selection in the next non-open tender. An escalation process for delivery problems ensures rapid handling of disruptions before they endanger the supply chain.

Risks, controls and compliance

The biggest disadvantage of the non-open procedure is limited market transparency. Without clear controls, there is a risk of insufficient competitive intensity, compliance breaches and higher price pressure in the period that follows.

Typical risks

The main dangers include unnoticed loss of price advantage, dependence on a few suppliers, cartel law risks arising from collusion within the bidder circle, and review proceedings brought by unsuccessful external providers. In addition, opaque selection decisions can damage reputation in the market and make participation in future tenders unattractive.

- Loss of competitive and price pressure
- Dependence on a few providers
- Cartel law risks arising from collusion within the bidder circle
- Review proceedings and reputational damage

Controls and documentation

Remedies include a documented selection process, regular market tests, a clear budget and approval hierarchy, and functioning exception management for deviations from the standard process. Supplier risk management and supplier self-assessment provide insight into the creditworthiness, capacities and compliance of the restricted bidder circle. A VAT ID check as part of supplier qualification is also standard practice, to avoid inviting sham companies or duplicates.

Governance and escalation

A defined escalation process governs who decides in the event of disruptions to the award process – for example missed deadlines or participation by the wrong providers. Clear roles and four-eyes principles prevent personal relationships from inappropriately influencing bidder selection. A contracting authority that demonstrably works fairly and transparently also achieves good terms within a restricted bidder circle.

Current developments and digital implementation

Digitalisation, sustainability requirements and supply chain transparency are changing the non-open procedure. Tool support and integrated supplier data are becoming the standard.

Digitalisation of the award process

E-sourcing platforms, supplier enablement and structured supplier master data significantly shorten preparation. With AI-supported creation of requests for quotation, automatic supplier search by material classification and digital bid comparison, the process can be compressed into days rather than weeks. Dock appointment scheduling and deadline coordination are also mapped digitally in downstream processes.

Sustainability and supply chain transparency

Sustainability requirements and supply chain legislation increase the demands on documented selection and on supplier evidence. Supply chain mapping and reliable supplier risk management are often today a prerequisite for even being invited to private non-open awards. Topics such as blocked stock management and DPO effect simulation also play a role in assessing delivery reliability.

Practical example

A medium-sized mechanical engineering company urgently needs several highly precision sheet-metal cuttings in a special alloy. Since only a few providers have the necessary manufacturing technology and certification, the company chooses a non-open procedure with five invited specialist providers. Instead of a multi-week public tender, the process runs in three weeks – including supplier ramp-up management for the first series samples.

- Defined bidder circle based on technical certification and proof of capacity
- Fixed evaluation matrix of price, delivery reliability and technology
- Documented selection rationale for later audits
- Follow-up with structured supplier ramp-up management

Conclusion

The non-open procedure is an efficient instrument when technical expertise, speed and targeted bidder selection are paramount. It reduces effort and processing time, but in return demands particularly clean documentation and governance. Whether in public or private procurement: what matters are comprehensible selection criteria, a capable supplier base and continuous market observation. Those who create these conditions combine the advantages of direct award with sufficient competitive pressure. For suppliers, early qualification and presence in supplier master data pay off in order to be considered in restricted bidder circles at all.

Frequently asked questions

What is a non-open procedure?

In a non-open procedure, the contracting authority invites selected companies directly to submit bids without a public participation competition. Only this limited circle of bidders can submit offers. It is faster and more targeted than the open procedure, but requires a well-founded and documented selection of bidders.

When may a non-open procedure be used?

In the public sector above the EU thresholds, only under certain conditions, for example following unsuccessful preliminary procedures, where there is particular technical exclusivity, or in cases of unforeseeable urgency. Below the thresholds and in the private sector, the contracting authority's internal policies apply. If in doubt, admissibility should be checked on a case-by-case basis.

What is the difference between a non-open procedure and direct award?

In direct award, the contract is placed with a single supplier without competition. In a non-open procedure, several selected providers compete, with only external interested parties excluded. The non-open procedure therefore offers more price pressure, but remains considerably leaner than the open procedure.

What advantages does the non-open procedure offer buyers?

It saves time, reduces coordination effort and results in technically better-matched offers, since only qualified providers are invited. Time-to-contract values of just a few weeks are common in practice. It requires a well-maintained supplier master list and clean documentation of the selection.

What risks exist in the non-open procedure?

The main risks are reduced competitive and price pressure, dependence on a few suppliers, cartel law issues arising from collusion within the bidder circle, and review proceedings brought by unsuccessful external providers. Countermeasures include documented selection, regular market tests, benchmarking and clear governance rules.

How is a supplier admitted to the bidder circle?

Typically via a supplier self-assessment, qualification documents, references and, where applicable, audits. A well-maintained supplier master register with material classification is crucial for being considered during bidder selection. Up-to-date data and responsiveness accelerate admission.