



Hogan
Lovells

White Paper: AI and bids

David Hansom, Partner, 3 June 2026, Edinburgh



With AI increasingly acting as a bid writer, how do you develop questions that genuinely test organisations and should you rely on interviews more than written submissions?

Coverage

Times of change and how to respond

- Does it matter?
- Law and guidance on award criteria
- CA duties on evaluation
- How is AI being used in bid writing
- Issues to think about and potential solutions
- The answer



Does it matter?

What's the difference between a bid writer and AI?

■ Bid writer

- Should be provided with accurate information
- Works alongside bid team
- Typically has insurance
- Confidentiality agreements/ NDAs

■ AI

- Large Language Models draw from all public sources
- Can replace bid team
- Not insured / no recourse
- Not confidential if open system – more later



Law and guidance on award criteria

PCR (Scotland) and PA23

■ PCR

- Reg 67 (1)(a) – need Most Economically Advantageous Tender
- Reg 69 (7) – award criteria cannot confer an unrestricted freedom of choice upon CA; must ensure the possibility of effective competition; and be accompanied by specifications
- Reg 67(6) - linked to subject matter of the contract
- Reg 67 (8) - in case of doubt, CA must verify effectively the accuracy of the information and proof provided

■ PA23

- Most Advantageous Tender
- Section 23 - CA must be satisfied that criteria (a) relate to subject-matter of contract (b) are sufficiently clear, measurable and specific, (c) do not break rules on technical specs, and (d) proportionate means of assessment, having regard to the nature, complexity and cost of the contract
- No express equivalent to reg 67(8)

Law and guidance on award criteria

PPN 017

■ Two roles

- How the public sector should buy AI
- Sensible guard rails to consider in procurements
 - Asking suppliers to disclose their use of AI in tenders
 - Controls to ensure suppliers do not use confidential CA information, or information not already in the public domain, as training data for AI systems
 - Additional due diligence to ensure suppliers have the appropriate capacity and capability
 - Procurements may take longer as a result

How is AI being used?

What we are seeing

■ Common trends

- Using AI in the creation of quality submissions
- Using AI to work out how to game pricing criteria
- “Too good to be true”
- Not checking answers
- Using AI to check scoring of their and other bidders
- Using AI to complain about procurement outcomes – the ChatGPT letter



Common issues

■ Risk areas for suppliers:

- Hallucination
- Misrepresentation / exclusion
- Copyright especially if generative AI
- Risk of inaccuracy / out of date material
- Confidential and personal information
- Overcommitment relative to price offered – set up for later failure

■ Risk areas for CA

- Bidder wins procurement when they should not – challenge risk and MEAT/MAT
- Risk of non-delivery / performance issues
- Misrepresentation and link to exclusion/debarment under PA23

CA duties on evaluation

Evaluation decisions require reasons to be given

- Majority of court challenges relate to evaluation
- Duties to give reasons for decisions e.g. standstill letters/ assessment summaries
- Public law duty to give reasons for decisions
- Extensive record-keeping provisions especially in PA23
- Must record decisions and explain in event of challenge
- Cross-examination on the reasons for the decisions taken and would need to be able to explain the process / how they were taken



How to manage risk

- **Clear policy for Suppliers on AI**

- **Ask questions that cannot be invented**

- “How would you?”; method statements; interviews/behavioural assessment
- Interviews not a magic bullet – snapshot in time, best team, evaluation discretion risk

- **Clear terms in procurement documents**

- Disclose use of AI
- Limits around large language models etc as needed
- Form of tender and declaration
- Provisions to obtain declaration from supplier on use of AI
- Right to exclude if a condition of participation and/or form of tender

- **Use clarifications, spot checks and audits / ongoing duty to disclose use**

Confidentiality

A note of warning

- Open vs closed systems
- Procurement almost always needs commercially sensitive and/or confidential information
- Suppliers are usually protective of information
- What assurance that information will be protected from onward disclosure?
- Loss of legal privilege (see US case law)
- Personal data
- Competitor pricing – competition law issues
- What later uses of information entered into the system?



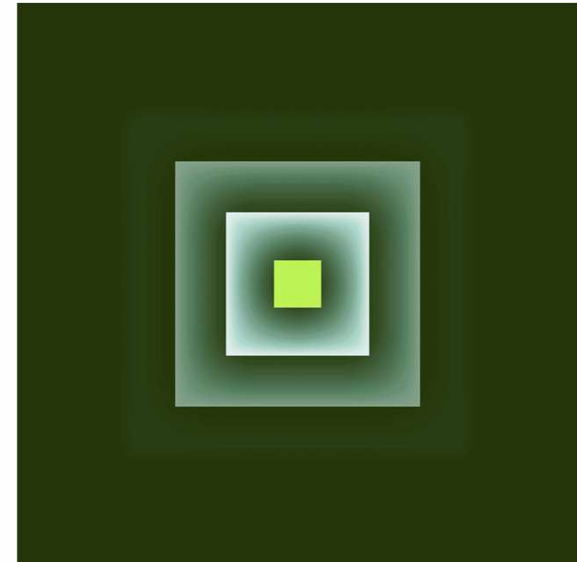
The answer

■ For CAs

- Ask questions that cannot be hallucinated
- Interview/behavioural assessment not a magic bullet
- Use clear statements in associated tender documents
- Declarations in form of tender and exclude for misrepresentation
- Evaluate bids against criteria and raise clarifications early
- You will need longer to check!

■ For suppliers

- Check the tender rules on use of AI
- Double check your answers
- Think about confidentiality
- Be clear you can deliver what is promised





Hogan
Lovells

Any questions?

David Hansom
Partner

david.hansom@hoganlovells.com

+44 (0)207 296 5086

+44 (0)7500 708619

hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2026. All rights reserved.