



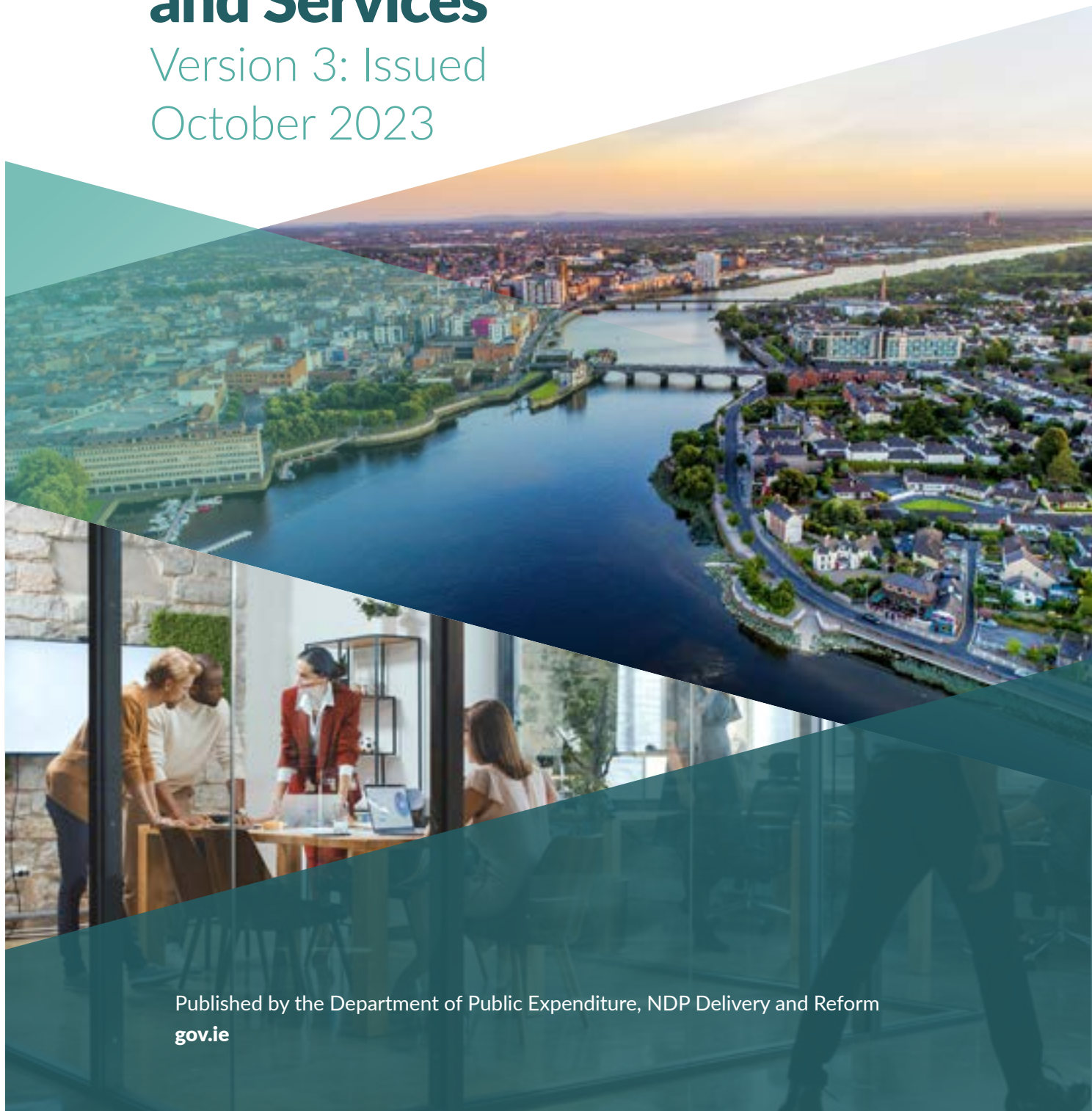
An Roinn Caiteachais Phoiblí
Sheachadadh PFN agus Athchóirithe
Department of Public Expenditure
NDP Delivery and Reform



Oifig um Sholáthar Rialtais
Office of Government Procurement

Public Procurement Guidelines for Goods and Services

Version 3: Issued
October 2023



Published by the Department of Public Expenditure, NDP Delivery and Reform
gov.ie

These guidelines are dynamic in nature and subject to periodic review and amendment. The up-to-date version shall be available on the Office of Government Procurement's website.

These guidelines replace the following previously issued guidelines in respect of goods and services:

- Public Procurement Guidelines - Competitive Process issued by the NPPP Unit of Department of Finance in 2010.
- Public Procurement Guidelines - Competitive Process issued by the NPPP Unit of Department of Finance in 2004.
- The Green Book on Public Procurement issued by the Department of Finance in 1994.

The guidelines are not a substitute for legal advice or a legal interpretation of Irish or EU law on public procurement. Legal or other professional advice should be obtained in relation to large or complex projects, or in relation to contracts with non-standard features, or if there is any doubt about the correct procedures to be followed.

Separate policy and guidance relating to works and works related services is published on the Construction Procurement Reform website where the Capital Works Management Framework (CWMF) provides a suite of best practice guidance, standard contracts and template documents.

Version 1 of National Public Procurement Guidelines for Goods and Services was published in July 2017. Version 2 was published in January 2019. Version 3 amendments include revised EU thresholds, new information on strategic procurement, eprocurement, new template outcome letters and summarises obligations under a new circular, 05/23. A number of minor amendments and additions were also applied.

Forewords

Public procurement is not only vital to a well-functioning Government, but also to an efficient economy. Procurement enables public money to be spent in an efficient, transparent, sustainable and strategic way. Well-managed procurement can lead to significant savings in public budgets as well as more investment. With a domestic spend of approximately €12 to €15 billion and a cross-European spend of €2 trillion, public procurement represents a huge opportunity for businesses of all sizes.

Public procurement is governed by EU rules and national regulations. These provide for an open, transparent, competitive and non-discriminatory public procurement environment. In Ireland, the Office of Government Procurement is responsible for developing the overarching policy framework in which public procurement is conducted. By setting out the principles and procedures suitable for use in public procurement, the policy framework facilitates a consistent approach to public procurement across the public service.

While these 'go-to' guidelines target public buyers, economic operators interested in competing for public contracts will also find them useful. The guidelines demystify the rules and procedures around public procurement. They emphasise that public procurement must be conducted in a fair and transparent manner that affords equal opportunities for competing suppliers.

I welcome the publication of these guidelines, which will enhance and promote best practice in public procurement. The easy-to-use format is suitable for those new to procurement, as well as seasoned procurement specialists.

Paschal Donohoe, T.D.

Minister for Public Expenditure NDP Delivery and Reform.



As Minister of State with responsibility for public procurement, I welcome the publication of these guidelines, which I know are a valuable resource for those involved in public procurement. In line with the Government's commitment to promote green and social procurement, these guidelines incorporate helpful information on strategic public procurement, including green, social, and innovation procurement.

The Government continues to drive change in public procurement. There is huge potential to use digitalisation to enhance public procurement, and to improve access, efficiency and transparency for both buyers and suppliers. The Government recognises the important contribution made by SMEs to the Irish economy, and the importance of SME participation in public procurement. We will continue to support businesses of all sizes to access these opportunities.

Leading on climate action is central to the Programme for Government and the Government's Climate Action Plan. Public procurement plays a key role in helping Ireland to transition to a greener economy, and these guidelines aim to support public buyers in this transition. Not only that, the guidelines will support best practice, standardisation and consistency in public procurement.

I welcome the new eTenders platform, which paves the way for further progress in the next decade of public procurement in Ireland. To further enhance the public procurement landscape over the coming years, we will continue to seek to identify opportunities to harness digital through eProcurement and eInvoicing.

Ossian Smyth T.D.

Minister of State at the Department of Finance and the Department of Public Expenditure, NDP Delivery and Reform with special responsibility for Public Procurement, Open Government and eGovernment.



As Government's Chief Procurement Officer, I would encourage anyone involved in public procurement to refer to this publication. It was first issued in 2017, after the 2014 EU Directives on public procurement became part of Irish law. This latest version of the Public Procurement Guidelines for Goods and Services is the third update to be published.

The guidelines provide an overview of the procedures and policies that govern public procurement in Ireland in a simplified and accessible form. The rules attached to the various stages of the procurement process, including specification, selection and award are clearly set out.

Intended as a toolkit for public buyers, the guidelines also serve as a general reference for suppliers and other procurement practitioners.

The guidelines account for recent changes in the public procurement landscape, including strategic procurement and Circular 05/23: Initiatives to assist SMEs in Public Procurement. The guidelines also examine how the State can best use public procurement for wider societal benefits.

The Office of Government Procurement will continue to develop and provide a range of guidance to support public buyers as we improve and transform public procurement in Ireland. I welcome these updated guidelines, which provide a comprehensive understanding to buyers and suppliers of how to navigate public procurement in Ireland.

Paul Quinn

Chief Procurement Officer,
Office of Government Procurement.



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Introduction

DEFINITION

1. Public procurement refers to the process by which public service bodies purchase goods, services or works from suppliers which they have selected for this purpose. It ranges from the purchase of routine goods or services, to large scale contracts for infrastructural projects and involves a wide and diverse range of contracting authorities.

PURPOSE OF GUIDELINES

2. The purpose of these guidelines is to promote best practice and consistency in the application of public procurement rules in relation to the purchase of goods, services and works. These guidelines form part of the National Public Procurement Policy Framework which consists of five strands:
 - Legislation (Directives, Regulations).
 - Policy (Circulars etc.).
 - Capital Works Management Framework.
 - General Procurement Guidelines.
 - More detailed technical guidelines, template documents and notes issued periodically by the Policy Unit of the Office of Government Procurement (OGP).
3. The guidelines set out the public procurement procedures, available to Government Departments and State bodies, which align with EU and national public procurement rules, including the 2014 Directives and 2016 Regulations. The guidelines are to support contracting authorities, including the OGP, the four key sectors (Health, Education, Local Government and Defence), individual Departments, Offices, commercial and non-commercial State bodies, and private entities which are subsidised 50% or more by a public body when awarding contracts for goods and services.
4. These guidelines are dynamic in nature and will be subject to amendments and review periodically. Updated versions will be published from time to time on the OGP's [website](#).

GOVERNMENT PROCUREMENT REFORM PROGRAMME

5. Procurement is a key element of the Government's Public Service Reform Programme. The State spends billions annually on goods, services and works. In this context, it is essential that the public service operates in a coordinated and efficient way.
6. The OGP commenced operations in 2014 and, together with the four key sectors, has responsibility for sourcing goods, services and works on behalf of the public service. In addition, the OGP also has responsibility for national procurement policy for the entire public service.
7. Government Departments and State bodies are encouraged to consult with the OGP prior to going to the market for goods, services and works.

EU PROCUREMENT DIRECTIVES AND NATIONAL REGULATIONS

8. To create a level playing field for all businesses across Europe, EU law sets out minimum harmonised public procurement rules. These rules govern the way public authorities and certain utility operators purchase goods, services and works. The rules are set out in three principal EU Directives which are transposed into national legislation and apply to tenders for public contracts whose monetary value exceeds the EU threshold. For tenders of a lower value which exceeds the national threshold, national rules apply. National rules must respect the general principles of EU law.
9. The three Directives are:
 - Directive 2014/24/EU on Public Procurement.
 - Directive 2014/25 on Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors.
 - Directive 2014/23/EU on the Award of Concession Contracts.

The Directives were transposed into Irish Law in 2016 and 2017 by way of the following Regulations:

- S.I. No. 284/2016 EU (Award of Public Authority Contracts) Regulations 2016.
- S.I. No. 286/2016 EU (Award of Contracts by Utility Undertakings Regulations) 2016.
- S.I. No. 203/2017 EU (Award of Concession Contracts) Regulations 2017.

10. The 2016 Regulations made mandatory the use of eprocurement in all procurement procedures. In line with the Regulations, the phased introduction of the digital tools necessary to allow contracting authorities meet their obligations in this regard has been ongoing since 2017. The Regulations mandated the items below, and the digital tools to support these are now available to contracting authorities.
- Mandatory notification and electronic access to tender documents.
 - Mandatory submission of tenders and requests.
 - The provision of ESPD exclusively in electronic form.
 - Contracting authorities must have recourse to eCertis.
 - Dynamic Purchasing Systems must be operated as completely electronic processes.
11. eForms are digital procurement notices such as prior information notices, contract notices and contract award notices, published by contracting authorities in relation to goods and services, works, utilities, concessions and defence contracts. New eforms were established under Commission Implementing Regulation (EU) 2022/2303 amending standard forms for the publication of notices in the field of public procurement. As with the existing notices, the new notices contain mandatory fields, which contracting authorities must complete, as well as discretionary or optional fields which a contracting authority may choose to complete. The new eforms must be implemented on Ireland's national eprocurement platform, eTenders, from 25 October 2023. The new eforms will reduce contracting authorities' administrative burden when publishing notices, support better data capture and analysis and, make it easier for suppliers to find notices relevant to their area of business.
12. Contracting authorities are not obliged to require electronic means of communication in the submission process in the following situations:
- Due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications.
 - The applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority.
 - The use of electronic means of communication would require specialised office equipment that is not generally available to contracting authorities.
 - The procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means.
13. Where a contracting authority does not use electronic means of communication for one of the reasons set out above it must indicate in its report of the procurement process the reasons why it did not use electronic communications.



Key Principles

EU TREATY

14. The rationale for the EU public procurement regime is to open up the public procurement market and to ensure the free movement of goods, services and works within the EU. This is reflected in primary EU law where the EU Treaty on the Functioning of the European Union (TFEU) promotes the fundamental principles of non-discrimination, free movement of goods and services and freedom of establishment. These principles are reinforced in secondary EU law by the EU Directives on public procurement which set out precise rules and procedures designed to ensure equal treatment, mutual recognition, proportionality and transparency in the awarding of public contracts. The EU Directives on public procurement are transposed into national law by Member States. Transposition in Ireland, is by way of Statutory Instrument (S.I.).
15. Even in the case of procurement which might not be subject to the full scope of the Directives, the European Commission (EC) and the Court of Justice of the European Union (CJEU) have ruled that the Treaty principles must be observed. CJEU case law implies a requirement to publicise contracts to a degree which allows parties in other Member States the opportunity to express an interest or to submit tenders.

ACCOUNTABILITY

16. Procurement transactions and decisions must in all respects be fair, equitable and ensure value for money. Contracting authorities must be able to justify decisions made and actions taken. Procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993 and the Local Government Reform Act 2014, and Accounting Officers are publicly accountable for expenditure incurred. Contracting authorities are responsible for establishing arrangements for ensuring the proper conduct of their affairs, including conformance to standards of good governance and accountability with regard to procurement.
17. A contract should be actively and effectively managed and monitored by the contracting authority. Active involvement in the management of the contract is essential to maximise value for money (VFM).

SEPARATION OF DUTIES

18. In organising the procurement function, contracting authorities must ensure appropriate separation of duties within the procurement cycle. For example, insofar as possible, ordering and receiving goods and services should be separate from payment for goods and services.

RISK ASSESSMENT

19. Contracting authorities should engage in risk assessment and management in procurement where:
- The value of the purchase is high.
 - The procurement process is complex.
 - Adverse consequences could significantly affect the operation of a contracting authority.
 - Delivering the contracting authorities core services to the community is significantly affected.
20. When risk is being considered with respect to procurement, contracting authorities should ensure that risk is assessed in relation to each category of goods and services with reference, for example, to the following factors:
- The nature of the supply market, for example does it favour the buyer or the supplier.
 - Probability of supply failure.
 - Impact on the organisation of supply failure.
 - Strategic importance to the organisation.

RECORD KEEPING

21. Appropriate records should be maintained by the contracting authority throughout the purchasing process and beyond for a minimum of three years. Records should provide an audit trail of the reasons for making a particular procurement decision. The type and detail of the record keeping will depend on the value of the procurement and the complexity or sensitivity of the particular purchasing issue. eTenders provides a detailed audit trail of the procurement process from a Contract Notice through to the Contract Award Notice. eTenders should not be used as a storage facility and that all relevant documentation records should be maintained off the platform by the contracting authority. Contracting authorities should be aware that document retention periods are subject to any other document retention legislation that a public body may be required to follow by law, for example, the National Archives Act 1986 or the General Data Protection Regulation Act 2018 along with further national rules set out in the Irish Data Protection Act 2018.

TRAINING AND PROFESSIONALISATION

22. There is an onus on each contracting authority to ensure that officials engaged in procurement are fully familiar with the relevant EU and national rules, and are compliant with these when buying goods, services or works on the State's behalf. The professionalisation of the procurement is a key feature of the procurement reform programme, with its importance recognised at EU level. These guidelines are one aspect of the drive to improve professionalisation. More information and links to websites that support professionalisation are provided in [Appendix 1](#).

CONFLICTS OF INTEREST

23. Contracting authorities are required to take appropriate measures to prevent, identify and remedy conflicts of interest in the conduct of a procurement procedure to avoid any distortion of competition and to ensure equal treatment of tenderers. A conflict of interest includes any situation where a relevant staff member has, directly or indirectly, a financial economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

24. The 2016 Regulations define a relevant staff member as a staff member of the contracting authority or, a procurement service provider acting on behalf of the contracting authority, who is involved in the conduct of the procurement procedure or, may influence the outcome of the procurement procedure.

25. Separately, public officials who occupy designated positions for purposes of the Ethics in Public Office Acts 1995 and 2001 have a statutory obligation to furnish an Annual Statement of Interests disclosing any interest held by the person and any interest held, to the person's actual knowledge, by their spouse or civil partner, a child of the person, or a child of a spouse, which could materially influence the person in relation to the performance of their official functions. Designated positions include certain directorships in public service bodies as well as positions of employment in the civil service and the wider public services that are remunerated at or above the level of a Principal Officer in the civil service. They also include positions of employment in the civil service and wider public service that are remunerated below the level of Principal Officer where the parent department or public body believe they should be included for reasons of transparency or to put beyond doubt that the Ethics Act apply to the position. This would include those that interface with the commercial sector or have responsibility for public procurement. Any form of personal interest which may impinge, or might reasonably be deemed by others to impinge, on a public officials impartiality in any matter relevant to his or her duties should be disclosed in writing to line management. Personal interest includes an interest of a relative or connected person. Line management must then decide if the exercise should be dealt with by another member of staff or seek further advice. Contracting authorities should consider carrying out conflict checks throughout the procurement process, for example, at the Selection Stage, when the identities of the candidate become known, and at the tender Evaluation Stage.

PUBLIC FINANCIAL PROCEDURES

26. As all administrators in Government Departments, Offices and public service bodies are responsible for managing and using State resources, it is essential that they have a clear understanding of the overall framework and underlying principles that govern the consumption of these resources. The [Public Financial Procedures](#) is a practical guide that sets out the public service financial management framework. It includes the relevant constitutional, statutory, parliamentary and administrative requirements, emphasises the need for economy, efficiency and effectiveness, and promotes good practice and high standards of propriety. The Public Financial Procedures state that in the case of goods and services, payment is due when the goods or services have been provided satisfactorily and the supplier has submitted their account. Additional guidance on advance payments is available [here](#).

CODES OF CONDUCT

27. Public officials are required to maintain the highest standards of probity in the performance of their duties and to comply with codes of standards and behaviour that apply in respect of them. Separate statutory codes of conduct have been developed across the public service including for the civil service, local authorities, State bodies and the HSE.

28. The Civil Service Code of Standards and Behaviour, for example, requires civil servants to conduct themselves with honesty, impartiality and integrity. Civil servants may not use their official positions to benefit themselves or others with whom they have personal, family, business or other ties, nor seek to influence decisions on matters pertaining to their official positions. Civil servants are not permitted to negotiate or arbitrate in any matter affecting a Government contract or the purchase from or sale of goods to the State where, in their private capacities, they are interested either as principals or as shareholders in a company being one of the principals in the matter under consideration.

ACCEPTANCE OF GIFTS/BRIBES

29. Public officials should not accept benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity. The actions of public officials should be above suspicion and their dealings with commercial and other interest should bear the closest possible scrutiny. The offering of a bribe and the acceptance of a bribe are both offences under the Criminal Justice (Corruption Offences) Act 2018. These provisions apply to persons in the public and private sectors. Corruptly accepting or attempting to obtain any gift, consideration or advantage as an inducement to, or reward for, doing any act or making any omission in relation to one's office or position is an offence.

COLLUSIVE TENDERING

30. Where a contracting authority suspects bid-rigging or collusive tendering, for example, where a number of competitors seek to conspire in secret regarding who might win a particular tender, such activities represent serious infringements of competition law and should be brought to the attention of the Competition and Consumer Protection Commission (CCPC).

31. The CCPC has published information material concerning bid-rigging on its website, including a guide for businesses, *Bid Rigging What you Need to Know*. A checklist and an accompanying information video are available [here](#).

32. It is an offence under the Criminal Justice Act 2011 for any person to withhold information which he/she/they knows or believes might be of material assistance in preventing the commission by any other person of a relevant offence, or securing the apprehension, prosecution or conviction of any other person for a relevant offence, without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of An Garda Síochána.



Encouraging SME Participation

SME ADVISORY GROUP

33. The SME Advisory Group meets on a quarterly basis so that the voice of Irish SMEs can be heard by Government and the OGP. Meetings are chaired by the Minister of State with responsibility for public procurement in Department of Public Expenditure, National Development Plan Delivery and Reform (DPENDR). Representatives include the OGP, the Department of Enterprise, Trade and Employment (DETE), Enterprise Ireland, InterTrade Ireland, CCPC, the Irish Business and Employers' Confederation (Ibec), the Small Firms Association (SFA), the Construction Industry Federation (CIF), Chambers Ireland and the Irish Small and Medium Enterprises Association (ISME).

EU LEGISLATION ON SME PARTICIPATION

34. The 2016 Regulations contain a number of provisions to make it easier for businesses and in particular SMEs to tender for public procurement contracts. Measures specifically designed to improve access for SMEs and start-ups include:

- The financial capacity criterion is generally limited to twice the contract value.
- Electronic methods of communications are mandated in parts of the tender process.
- The introduction of the ESPD a self-declaration form aimed at reducing red tape for suppliers.
- Discretion to divide public contracts into lots, with the provision that opting not to divide a contract into lots must be explained in the procurement documents or the report on the procurement process.
- Provision for consortia bidding may assist SMEs to participate in procurement procedures where they would not have the relevant capability or scale if they were to bid as sole tenderers.
- Explicit provision for premarket discussion with suppliers and independent experts, subject to safeguards against distorting competition or violating transparency and non-discrimination principles.
- Reductions in the time limits for receipt of tenders by approximately 30% compared to requirements under the 2006 Regulations.
- Member States are required to report back to the Commission every three years on SME participation in public procurement.

NATIONAL POLICY ON SME PARTICIPATION

35. DPENDR Circular 05/2023: Initiatives to assist SMEs in Public Procurement, issued in March 2023, sets out positive measures for contracting authorities to take to promote SME participation in public procurement. These measures include the following:

- Contracting authorities should ensure there is an appropriate focus on good practice and in line with the EU general principles of procurement.
- To promote transparency and assist SMEs in identifying potential opportunities, contracting authorities should consider publishing details on their websites of what they procure as well as information on existing contracts and future procurement plans.
- Contracting authorities are encouraged to consider, on a case-by-case basis, undertaking preliminary market consultations prior to tendering in order to better understand the range of goods and services on offer, market developments and innovation, what commercial models are available, the competitive landscape and the specific capabilities of SMEs etc.
- Contracting authorities are encouraged to consider sub-dividing contracts, including framework agreements, into lots to support SME participation.
- SMEs are encouraged to consider using consortia where they are not of sufficient scale to tender in their own right. Template tender and contract documents allow for consortia to tender for public procurement opportunities.
- Contracting authorities should use the open procedure, where reasonable and without compromising efficiency and value for money, for contracts valued below EU thresholds.
- Contracting authorities should ensure that selection criteria are relevant and proportionate to the circumstances of a particular contract and not be framed in such a way as to unduly narrow a field of eligible tenderers, including SMEs.

- Contracting authorities are encouraged to consider, on a case-by-case basis, the risk associated with the delivery of the goods or services to ensure that any turnover or financial capacity requirement is proportionate to the level of risk involved. For routine goods and services, public service bodies should not set company turnover requirements at more than twice the estimated contract value (and they can be lower).
- The 2016 Regulations provide for the use of procurement procedures that can facilitate innovation including Competitive Procedure with Negotiation, Competitive Dialogue and Innovation Partnership.
- Above threshold, contracting authorities may wish to consider the publication of a Prior Information Notice (PIN) on eTenders setting out their intentions with respect to planned procurements. Communicating long-term procurement plans to the market gives the market time to react and develop solutions. This is particularly important in the case of large and complex contracts and where SMEs might need time to find partners for joint or consortia bidding.
- Above threshold competitions must be advertised in the OJEU. Contracting authorities are required for which advertising of contracts in the OJEU is obligatory, contracting authorities are required to give appropriate feedback to companies who have participated in a public procurement competition. For all other contracts, contracting authorities are strongly encouraged to provide proportionate written feedback as a matter of good practice to assist suppliers in preparing future tenders.
- Contracting authorities, to the extent relevant, should take into account not just the acquisition costs but the whole lifecycle costs.
- Contracting authorities should only require such types and levels of insurance which are proportionate and reasonable in the context of the particular contract.
- Contracting authorities may wish to consider the use of a DPS for the procurement of commonly used goods, services or works which are generally available on the market. DPS remain open for suppliers (such as SMEs and new market participants) to apply for admission following its establishment.
- Contracting authorities must not use arrangements where candidates/tenderers are required to pay to access competitions for public contracts.
- Contracting authorities are encouraged to use the full range of eProcurement solutions to make public procurement more accessible to SMEs and limit the administrative burden on all suppliers. Further measures related to the use of eTenders include the following:
 - Contracting authorities are required to advertise all contract opportunities above the national advertising threshold on eTenders to promote SME participation as well as publish contract award information for all contracts over €25,000 (exclusive of VAT).
 - Contracting authorities should ensure that all tender notices and relevant data fields in eTenders are completed in a timely manner.
 - Contracting authorities should encourage suppliers to register accurate and detailed business information on eTenders to ensure maximum exposure to tendering opportunities within their sector.



Strategic Procurement: Social, Innovation and Environmental Considerations

STRATEGIC POLICY INSTRUMENT

36. The Government is committed to driving an ambitious reform programme designed to modernise the public service and improve public service delivery. Public procurement is a key element of this programme. In addition to its potential to assist in the delivery of improved public services, it can also act as a platform to add value by maximising the public policy impact that procurement can have in enabling wider community benefits in areas such as employment, training, assisting SMEs, promoting innovation, engaging social enterprises, environmental and social considerations. In this regard, contracting authorities are encouraged to consider how social and environmental issues can appropriately be integrated into the procurement process. The [European Green Deal](#) announced by the European Commission in December 2019 includes procurement amongst the approaches that may be used by public service bodies to lead the transition to 'a fair and prosperous society, with a modern, resource efficient and competitive economy when there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use'.

SUSTAINABLE DEVELOPMENT GOALS

37. Sustainable Public Procurement (SPP) can be defined as a 'process whereby public organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole lifecycle basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst significantly reducing negative impacts on the environment' ([UN Environment 2017](#)). The EU states that SPP seeks 'to achieve the appropriate balance between the three pillars of sustainable development – economic, social and environmental – when procuring goods, works or services, at all stages of the project' (https://ec.europa.eu/environment/gpp/versus_en.htm).

38. In 2015, EU Member States adopted the [Sustainable Development Goals](#) (SDGs), which are a universal call to action to end poverty, protect the planet and improve the lives and prospects of everyone, everywhere. The [2030 Agenda for Sustainable Development](#) sets out a 15-year plan to achieve these Goals. While all the SDGs are of relevance to SPP, the most direct link is with Goal 12: Ensure sustainable consumption and production patterns. This specifically includes a sustainable public procurement target: Target 12.7, Promote public procurement practices that are sustainable, in accordance with national policies and priorities.
39. Strategic objectives in Ireland's [National Implementation Plan for the Sustainable Development Goals 2022-2024](#) include embedding the SDG framework into the work of government departments and the work of local authorities.
40. [The Procura+ Manual – A Guide to Implementing Sustainable Procurement](#) provides guidance on how to develop and implement a sustainable procurement policy that addresses all three pillars of sustainable development.

ENVIRONMENTAL CONSIDERATIONS

41. Green Public Procurement (GPP) can be defined as a process whereby public and semi-public authorities meet their needs for goods, services, works and utilities by choosing solutions that have a reduced impact on the environment throughout their lifecycle, as compared to alternative products/solutions ('[Buying Green!](#)').
42. National green public procurement policy was set out in [Green Tenders - An Action Plan on Green Public Procurement](#) published in 2012 by the Department of the Environment, Community and Local Government and the Department of Public Expenditure and Reform (DPER). More recently, [Climate Action Plan 2019](#) included a number of actions relevant to GPP. In response to Climate Action Plan 2019, DPER published [Circular 20/2019: Promoting the use of Environmental and Social Considerations in Public Procurement](#). This Circular instructs government departments to consider using green criteria in procurement (where there are defined, quantifiable, verifiable and measurable criteria) and requires departments to incorporate relevant green procurement measures into their planning and reporting cycles. The value of GPP in addressing the climate challenge is reiterated in the [Climate Action Plan 2021 and Climate Action Plan 2023](#).

43. [Green Public Procurement – Guidance for the Public Sector, published by the Environmental Protection Agency \(EPA\)](#) in 2021, is accompanied by Irish GPP criteria for the ten priority sectors. These criteria were developed by adapting common EU criteria to reflect the Irish market and procurement practices. These criteria are designed to be directly inserted into tender documents and include information on how compliance can be confirmed, for example by reference to eco-labels or environmental product declarations. The sectors covered are: road transport vehicles and services; ICT products and services; food and catering services; cleaning products and services; design, construction and management of office buildings; indoor and outdoor lighting; heating equipment; energy-related products; paper products and printing services; textile products and services. Purchasing recommendations for professional services and electricity are also included in the Guidance.
44. In 2022, the OGP led development of [GPP Criteria Search](#), an online search tool that allows the user to rapidly find, select and download the Irish GPP criteria relevant to a specific procurement project. Available at <https://gppcriteria.gov.ie/>, this search tool is designed to simplify the process of including green considerations in public procurement. It greatly reduces the time required to find relevant criteria and copy them into procurement documents. It was developed in collaboration with the EPA and the Department of the Environment, Climate and Communications, and the design incorporates feedback from diverse end-users.
45. Each stage in the procurement process offers opportunities to reduce negative environmental impacts of the procurement. Once a decision has been taken by a contracting authority to incorporate environmental considerations into the procurement process, these considerations should be clearly signalled at all stages of the procurement process, from the business case and specification stages through to the selection, award and contract management stages.
46. Additional guidance is available to contracting authorities interested in buying goods and services with a lower environmental impact in the European Commission's [Buying Green! – A handbook on green public procurement](#).

SOCIAL CONSIDERATIONS

47. Public procurement can be used to encourage suppliers to perform actions that are focused on the inclusion of broader strategic policy objectives. In general, the inclusion of such considerations in a procurement process are most effective where the benefit is a primary requirement and therefore can be directly linked to objectives of the contract. In general, the social objectives should be clear and verifiable through the inclusion of an appropriate monitoring process. The appropriateness of including strategic policy considerations needs to be examined on a contract-by-contract basis. EU law allows Member States the option to take strategic policy considerations into account providing the fundamental principles of the Treaties are respected.
48. Circular 20/2019 highlights the possibilities for Departments to deliver wider social as well as environmental aims through public procurement. In this regard, contracting authorities are encouraged to engage with the OGP to use frameworks that include relevant social considerations.
49. Contracting authorities are advised to plan and carry out a proportionate level of consultation and stakeholder engagement before any decision is made on whether to use social clauses prior to the commencement of a procurement process.
50. This can be a complex area and the inclusion of social consideration at any stage in a procurement process may increase costs. Therefore, contracting authorities need to ensure that:
- Clauses are not discriminatory.
 - Value for money is not adversely affected.
 - Additional costs are not placed on smaller suppliers relative to other potential suppliers.
 - Social clauses are linked to the subject matter of the contract.
 - The targeted benefit is capable of being measured and monitored during the execution of the contract.

51. The OGP has developed an information note on Incorporating Social Considerations into Public Procurement available on the [OGP website](#). This note is primarily aimed at Government Departments and public service bodies, and pays particular attention to the role of policy departments, central purchasing bodies (CPBs), procurement officials and contracting authorities in the development and use of social considerations. The note outlines the various stages involved in the development of social considerations for use in public procurement such as planning and developing a business case, specifications and selection/award criteria through to contract management.
52. Additional guidance and examples of good practice have been made available by the European Commission to contracting authorities interested in engaging in socially responsible public procurement which includes a guide on taking account of social considerations in public procurement and a collection of 71 good practice case studies from across the EU – [Making Socially Responsible Public Procurement Work -71 Practice Cases](#).

INNOVATION CONSIDERATIONS

53. The European Commission has developed [Guidance on Innovation Procurement](#), which includes practical information on how to start and develop procurement of innovation projects.

LABOUR LAW

54. EU rules require tenderers to be compliant with relevant labour law in order to participate in a public procurement process. The Directive makes it clear that non-compliance with the relevant obligations may lead to exclusion of a tenderer from the procedure for the awarding of a public contract. The obligations on suppliers in relation to compliance with labour law are reflected in the template request for tender (RFT) and contract documents for goods and services that are managed by the OGP.

RESERVED CONTRACTS

55. The 2016 Regulations extend the concept of a sheltered workshop. Under the 2016 regulations, contracting authorities may decide to reserve the right to tender for any contract to a sheltered workshop which is now defined as one in which at least 30% of the employees are either disabled or disadvantaged (rather than disabled only which was the case under the 2004 Directives). The term disadvantaged is not defined in the 2016 Regulations. However, Recital 36 of Directive 2014/24 EU indicates that the term includes the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups.
56. Contracting authorities may also reserve certain contracts for health, social and cultural services (these contracts are specifically listed by CPV code in Regulation 77 of the 2016 Regulations) to organisations such as not-for-profit organisations which meet certain conditions, namely the pursuit of a public service mission linked to the delivery of the relevant services and reinvestment of profits in the organisation. The management and ownership structure of the organisation performing the contract should be based on employee ownership or participatory principles or have active participation from employees or stakeholders. The organisation should not have been awarded a contract for the services concerned in the preceding three years.

MINIMUM STANDARDS

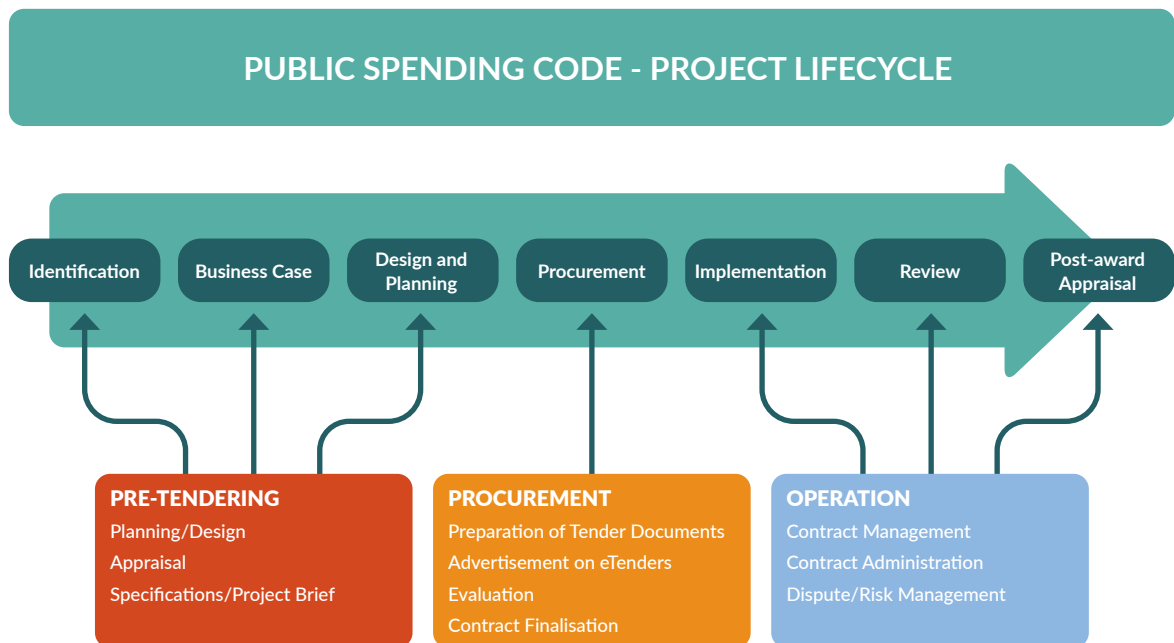
57. The 2016 Regulations require tenderers to comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or, the services provided that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law (see Appendix IX of these guidelines).
58. The requirement features in key aspects of the new rules at relevant stages in the procurement process, that is when applying the discretionary exclusion grounds, when deciding whether to award a contract to the most economically advantageous tenderer, when assessing abnormally low tenders and, where appropriate, in relation to subcontracting. Contracting authorities must also take appropriate measures to ensure contract performance is in accordance with these obligations.

ACCESSIBILITY

59. The 2014/24/EU Directive provides that technical specifications for the procurement of goods and services, as intended for use by people, are required to take into account accessibility, except in duly justified cases. Public service bodies are required to procure goods and services, including websites and mobile applications, so that they are accessible to persons with disabilities. These requirements are provided for in the Disability Act 2005, EU Directive 2016/2102 as transposed by S.I. No. 358/2020 and S.I. No. 163/2006 as well as in the 2016 Regulations.
60. The requirement for goods and services to be accessible may also be addressed in the award criteria used in the procurement procedure.
61. The Directive provides for the exclusion of a tenderer from participation in the procurement procedure if it has previously failed to meet the requirements related to accessibility for persons with disabilities.
62. S.I. No. 358/2020 requires public sector websites and apps be more accessible for people with disabilities. It was written for both public service bodies and for providers, and includes a description of the test procedures and evaluation methodology for each accessibility requirement in a form suitable for use in procurement.
63. The Directive provides that the use of digital communication used in procurement by public service bodies should take account of accessibility for persons with disabilities. This would include notices and documents on websites, as well as the websites themselves.
64. Guidance on addressing accessibility in the procurement of goods and services is set out in the [Code of Practice on Accessibility of Public Services and Information provided by Public service bodies](#) (S.I. No. 163/2006).
65. A further legislative development that will impact this area is Directive 2019/882, the European Accessibility Act (EAA). The EAA will introduce minimum and standardised accessibility requirements for certain products and services across the EU. The EAA will create new obligations for operators in both the public and private sectors, as well as Member States. The EAA must be implemented by 28 June 2025.

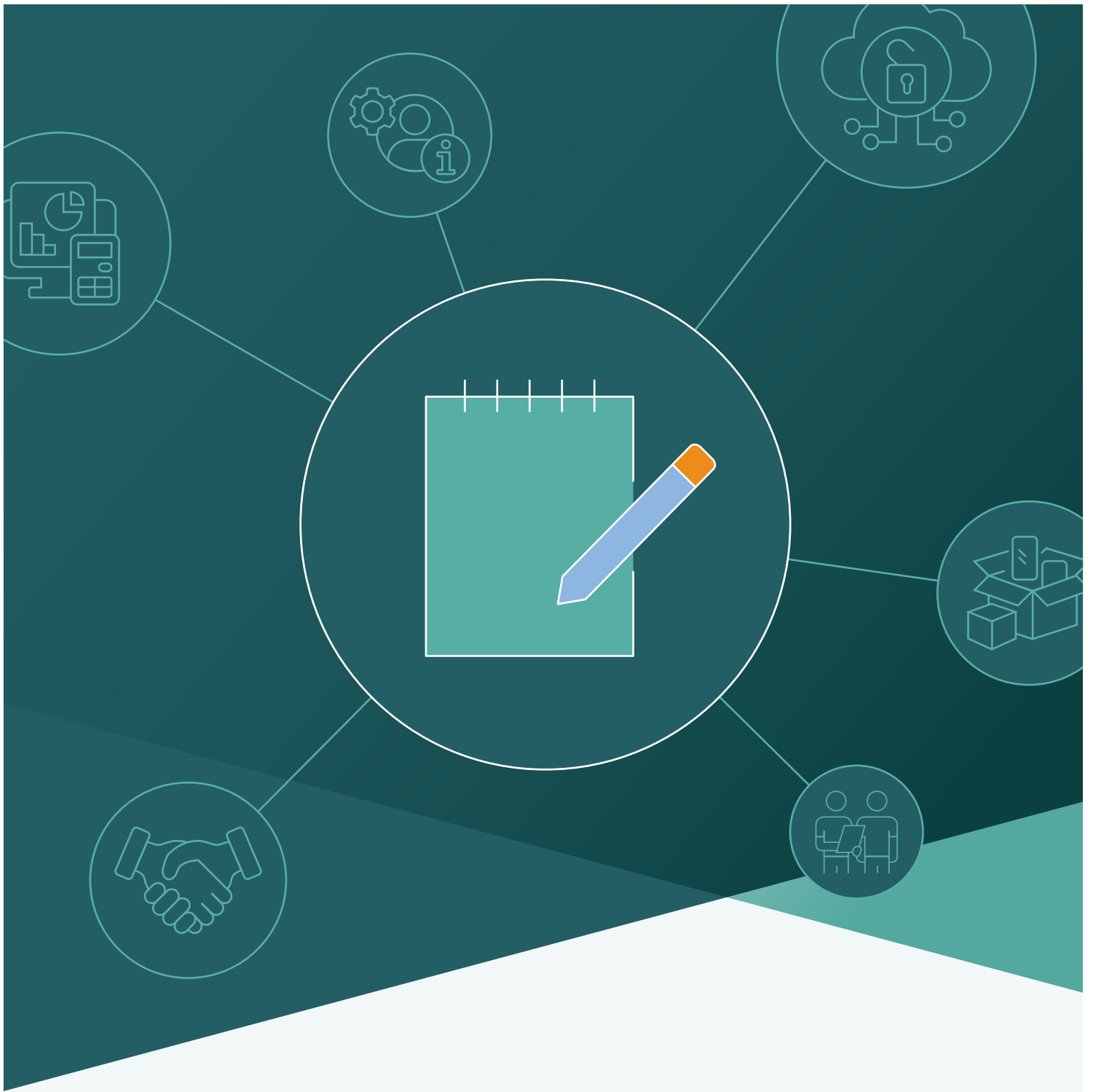


Main Phases of Public Procurement



66. These guidelines have been broadly structured to reflect the key phases of a public procurement project. The diagram is based on Public Spending Code project lifecycle. The pre-tendering phase (sometimes referred to as pre-market phase) comprises project planning and preparation. It may include preliminary market consultation (PMC) and/or the publication of a PIN by the contracting authority. The procurement or tendering phase and the operation phase will differ depending on whether the procurement is subject to national or EU rules but generally comprises:

- Preparation of tender documents.
- Publication of an advertisement or call for competition requesting expressions of interest or tenders.
- Evaluation of expression of interests and/or tenders in line with selection and award criteria.
- Notification to bidders of the outcome of the procedure and contract award.
- Operation entails the execution, management and monitoring of the contract post-award.



Pre-Tendering Phase

IDENTIFY NEED

67. The contracting authority should first establish if there is a clear business need for the goods, services or works to be purchased by making a business case. The procurement should be essential for the conduct of normal business or to improve performance. The Public Spending Code: A guide to Evaluating, Planning and Managing Public Investment provides guidance on the preparation and approval of a strategic assessment and preliminary business case.

STRATEGY

68. Contracting authorities should adopt a procurement strategy that will minimise casual or once-off purchases and promote best value. Contracting authorities should check if the OGP has existing or planned procurement arrangements which may meet their needs. If such an arrangement exists but is not used on this occasion, a contracting authority should document the reasons why as set out in Circular 16/2013.

PRELIMINARY MARKET CONSULTATION

69. The 2016 Regulations explicitly allow a contracting authority to conduct preliminary market consultations with suppliers and expert bodies before the start of a procurement process which may facilitate improved specifications, better outcomes and shorter procurement times. Preliminary market consultation can provide insight above the capacity of the market to deliver on the requirements of the contracting authority and the risks involved. It may also reduce procurement timescales during a formal procurement process. In addition, it has the potential to drive a more responsive market and allows suppliers to ask questions at an earlier stage prior to the commencement of the formal process.

70. It is essential, however, that this practice does not create advantages for certain suppliers or result in specifications and tender documents being drafted in their favour. Preliminary market consultation should be sufficiently broad to provide the contracting authority meaningful feedback on the relevant market. Request for information published as PMCs on eTenders should include Common Procurement Vocabulary (CPV) codes to reach the relevant suppliers.

71. If a preliminary market consultation is followed by a competition, it is important there is no basis for any assertion of bias, unfairness, discrimination or lack of transparency. Therefore, the process adopted and information received during preliminary market consultation should be clearly recorded in writing. Contracting authorities should take appropriate measures to ensure that participation by potential tenderers in preliminary market consultations does not distort competition, that any relevant information exchanged in the context of, or resulting from, the involvement of a tenderer in the preliminary market consultation is made available to all other participating tenderers, and the adequate time limits for receipt of tenders are fixed to ensure each tenderer has the opportunity to submit a tender.

72. To ensure transparency and fairness, the premarket phase must not extend into the tendering and award phases of a competition.

TIME

73. In the case of above threshold competitions for goods, services or works contracting authorities must also ensure that the timescale complies with, at least, the minimum periods specified in the 2016 Regulations (see Appendix V of these guidelines). In all cases contracting authorities should ensure that adequate time is allowed in a procurement programme and consider the nature of the specification and the complexity of the contract when setting timeframes for the return of tender responses. This should allow suppliers reasonable and sufficient time for submitting the necessary information and preparing tenders (taking into account holiday periods, etc.).

ESTIMATED COST

74. Establishing a realistic estimate of the value of all phases of the goods, services or works to be procured is essential as value determines which procurement procedure should be used. Estimating the value is also important for budgeting and planning purposes. When valuing a contract, the contracting authority must make a genuine estimate of the contract value at the date of publication of the Contract Notice, exclusive of VAT, taking into consideration the entire term of the contract, assuming all extensions and all options under the contract are exercised. Contracts without a fixed term should generally be valued on the basis of four-year anticipated supply. No project or purchase may be artificially split or subdivided to prevent it coming within the scope of national Regulations or EU Directives. The valuation of goods and services procured through both Framework Agreements and DPS must take into account the value of all potential call-off contracts under these arrangements over their lifetime. Where a project or purchase involves separate lots, the value of all lots must be included in the estimated value of the contract.

BUDGET APPROVAL

75. The contracting authority should establish whether funds are available to meet the purchase, and ensure that all necessary budgetary approvals are sought in adequate time.

CORRECT PROCEDURE

76. For contracts below the relevant EU thresholds, contracting authorities should follow the national rules as set out in these guidelines. For contracts above the relevant EU thresholds, the 2016 Regulations apply. The EU thresholds applying to public procurement for the period between the 1 January 2022 to the 31 December 2023 are set out in Appendix II. These thresholds are subject to revision by the European Commission every two years.

TEMPLATES

77. Contracting authorities should ensure that the correct template tender documentation is used. The standard template RFTs for goods and services are available to download [here](#). Templates for use in the procurement of works can be found [here](#).

SPECIFICATION

78. Contracting authorities should base their specification on the needs identified in the business case and ensure that the specification is clear, comprehensive and not discriminatory. In particular, specifications should use generic technical specifications and avoid proprietary brand names.

DOCUMENTATION

79. Contracting authorities should prepare tender documents, setting out the specification, award criteria and ensure compliance with procurement rules. Contracting authorities should carefully check all documents for completeness, accuracy and consistency prior to issuing. Clarity and completeness at this stage will help to reduce the need for clarifications later in the process. Contracting authorities must set out all the criteria that will be applied in the award process, together with the relative weightings of each. This is a vital part of the process. These criteria will form the basis against which tenders will be comparatively evaluated and are the key to an objective, transparent award procedure.

SUPPORT AND ADVICE

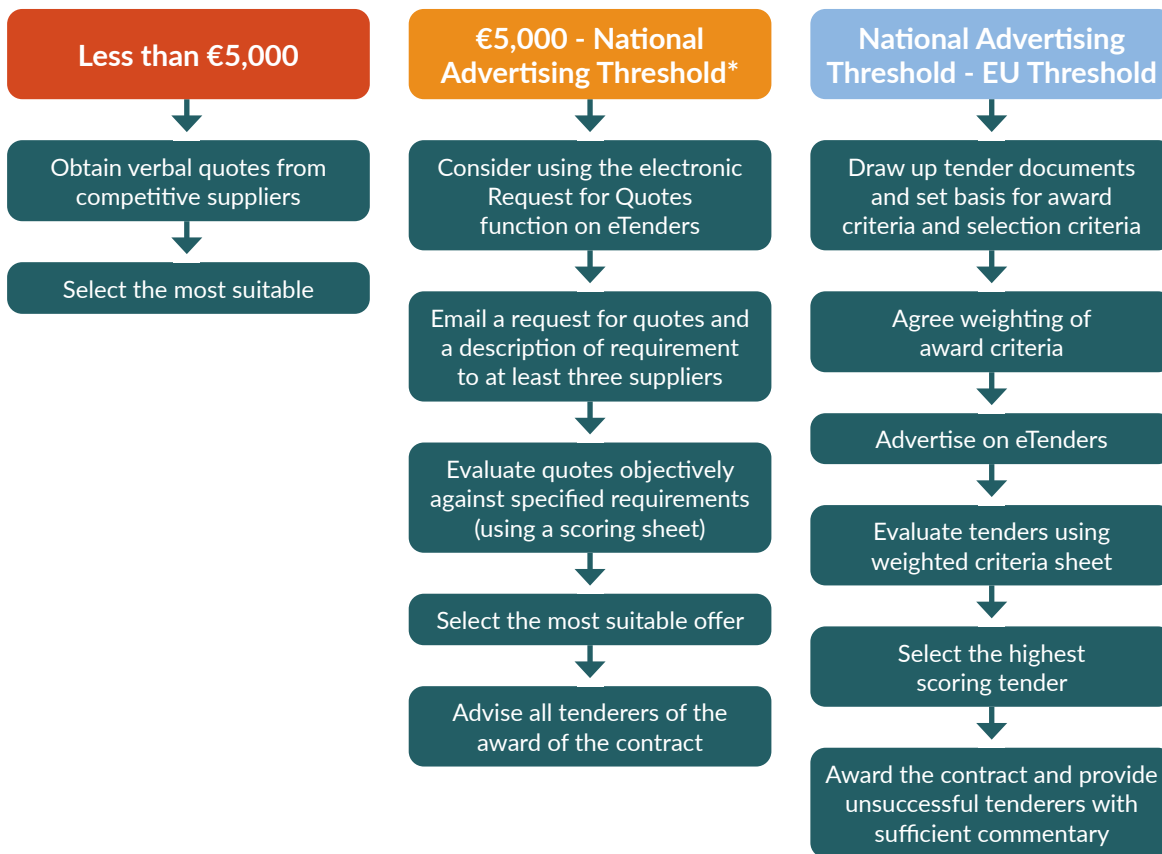
80. Contracting authorities may wish to liaise with the OGP and/or their own legal advisor in relation to the preparation of their tender documents.



Tendering Phase

Below Threshold – National Guidelines

STEPS IN BELOW THRESHOLD PROCUREMENT



*The national advertising threshold as set out in Circular 05/2023 can be found on the OGP website.

CHECK WITH THE OGP

81. Before undertaking any procurement procedure, public service bodies should contact the OGP to see if there are any existing or planned procurement arrangements which may meet their needs. The OGP is also available to provide procedural advice and administrative assistance with procurement processes.

- Contracts for goods and/or services with an estimated value between €5,000 and the national advertising threshold (exclusive of VAT) can be awarded on the basis of responses to written specifications (for example – issued via email) to at least three suppliers or service providers. The Quick Quotes facility on eTenders allows contracting authorities to search for appropriate suppliers using the CPV codes which match their particular procurement needs and may facilitate this process.

COMPETITIVE PROCEDURES

82. For contracts or purchases below threshold (which are not call-off contracts under a Framework Agreement or DPS) the specific procurement procedures set out in the 2016 Regulations do not apply and, contracting authorities should be guided by the following less formal procedures:

- Contracts for goods and/or services with an estimated value of less than €5,000 (exclusive of VAT) can be purchased on the basis of verbal quotes from one or more competitive suppliers (best practice is to seek a minimum of three quotes confirmed by email).

- Contracts for goods and/or services, with an estimated value at or above the national advertising threshold (exclusive of VAT) and up to the value of the EU thresholds should normally be advertised as part of a formal tendering process on eTenders using the open procurement process in line with [Circular 05/2023](#).

- Awards valued between €25,000 and the EU threshold (excluding VAT) require contract award information to be published on eTenders whether or not the competition was advertised or not on eTenders. This requirement is in line with Circular 05/2023.

TIME LIMITS

83. There are no prescribed time limits in relation to below threshold procedures. However, sufficient time must be permitted for preparation and submission of tenders to allow for genuine competition and SMEs to participate in the tender process. Contracting authorities should consider the complexity of a contract when placing time limits on the receipt of tenders.

EVALUATION

84. In relation to contracts with an estimated value in line with the national advertising thresholds and above, tender evaluation should be carried out by a team with the requisite competency. Transparency and objectivity is achieved by the publication of weighted criteria, including price, which allows a comparative assessment of tenders under each criterion. All tenderers should be informed of the result of a tendering process without delay.

NOTIFICATION

85. Contracting authorities are encouraged to give constructive feedback to unsuccessful tenderers. This encourages better tenders in the future and promotes competition in the market. From the point of view of tenderers this provides reassurance about the integrity of the process and helps them to understand and operate the different procedures and practices that apply in the public service. Care should be taken to ensure that confidential information such as the identity of other unsuccessful tenderers, prices or pricing strategies of other tenderers or information that could compromise the competitive situation or infringe the intellectual property rights of others, is not disclosed.
86. Template outcome letters for below threshold competitions are available in Appendix III and on the [OGP website](#). Contracting authorities should use these for all routine and low to medium risk procurements.

REPORTING NON-COMPETITIVE PROCEDURES (40/02 RETURNS)

87. It is a basic principle of public procurement that a competitive process should be used unless there are justifiably exceptional circumstances for not doing so, such as those that apply when using the Negotiated Procedure without Prior Publication.
88. In relation to contracts above €25,000 (exclusive of VAT) awarded without a competitive process, [Circular 40/2002](#) requires Government Departments and Offices to submit an annual report signed by the Accounting Officer to the Comptroller and Auditor General explaining why a competitive process was not used. A template for the annual report is set out in the Circular. A copy of each annual report also should be emailed to OGP via returns@ogp.gov.ie.



Tendering Phase

Above Threshold – EU Rules

CHECK WITH THE OGP

89. Before undertaking any procurement procedures, public service bodies should contact the OGP to see if there are any existing or planned procurement arrangements which may meet their needs. The OGP is also available to provide procedural advice and administrative assistance with procurement processes.

GENERAL REGIME

90. The procurement of all goods and most services requires the full application of the public procurement rules as set out in the 2016 Regulations. It is a legal requirement that contracts with estimated values equal to or above the EU thresholds must be advertised in the OJEU and awarded in accordance with the provisions of the 2016 Regulations. Any infringement of the terms of the Regulations can have serious legal and financial consequences for contracting authorities.
91. The 2016 Regulations also introduced a simplified award regime (a light-touch regime) for certain services, notably health, social, educational and cultural services, to take into account the specific nature of these services. See Appendix IV for details of the rules on using the Light Touch Regime.

PUBLICATION OF NOTICES

92. Standard OJEU procurement notices are available on eTenders from where the notices are automatically sent for publication in the OJEU. The accurate completion of publication notices is essential to ensure legal compliance and support reporting.

PRIOR INFORMATION NOTICE

93. Contracting authorities are encouraged to publish a PIN in the OJEU setting out their intentions with respect to planned procurements. The PIN is normally submitted by the contracting authority at the start of the budgetary year and sets out the categories of goods and services likely to be procured during the year. The period covered by the PIN should not be more than 12 months from the date on which it is published.

94. A PIN must contain the information listed in Part 2 of Schedule 3 of the 2016 Regulations. Publication of a PIN does not commit contracting authorities to purchasing or proceeding with a project if circumstances change. The purpose of a PIN is to alert the market to upcoming procurement opportunities and aids transparency for the benefit of suppliers. Publication of a PIN also permits a contracting authority to reduce the minimum time period for tendering if certain conditions are met (namely that the PIN was published between 35 days and 12 months before the date on which the Contract Notice was sent and that all the required information listed in Part 2 of Schedule 3 of the 2016 Regulations was contained in the PIN). In most cases, public service bodies will be required to follow up the publication of a PIN with a Contract Notice when they are ready to carry out the procurement exercise. However, sub-central contracting authorities may use a PIN as a call for competition provided certain conditions are met.

CONTRACT NOTICE

95. Contract Notices are generally used as the means of calling for competition in respect of all procedures and should be published in the OJEU (via eTenders). Contract Notices set out the key details of the procurement requirements and the type of contract being advertised. The information required in the Contract Notice is set out in Part 3 of Schedule 3 of the 2016 Regulations.

CONTRACT AWARD NOTICE

96. Within 30 days of the award of a contract, Framework Agreement or DPS a Contract Award Notice must be sent to OJEU via eTenders. In the case of a DPS, a Contract Award Notice is required to be published for each contract that is awarded from a DPS. The information required in a Contract Award Notice is set out in Part 4 of Schedule 3 of the 2016 Regulations. The legal obligation to publish a Contract Award Notice in the OJEU extends only to the award of the Framework Agreement itself and does not apply to the award of specific contracts under the Framework. However, in line with Circular 05/2023, contracting authorities are required to publish on eTenders contract award information for contracts awarded from a Framework where the value of that call-off contract exceeds €25,000 excluding VAT.

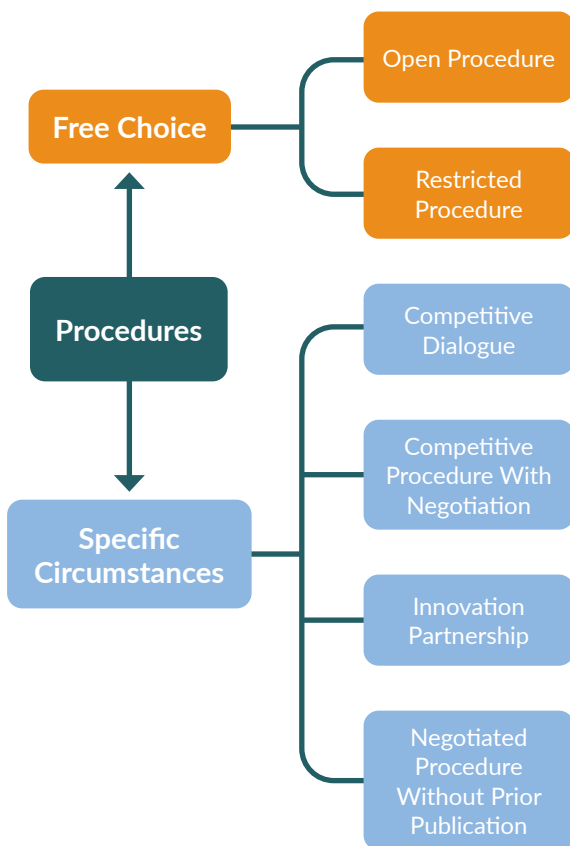
97. Contracting authorities may refrain from publishing certain information required in a Contract Award Notice where it release would impede law enforcement, be contrary to the public interest, would/harm the legitimate commercial interests of a particular tenderer or may prejudice fair competition between tenderers.

MINIMUM TIME LIMITS

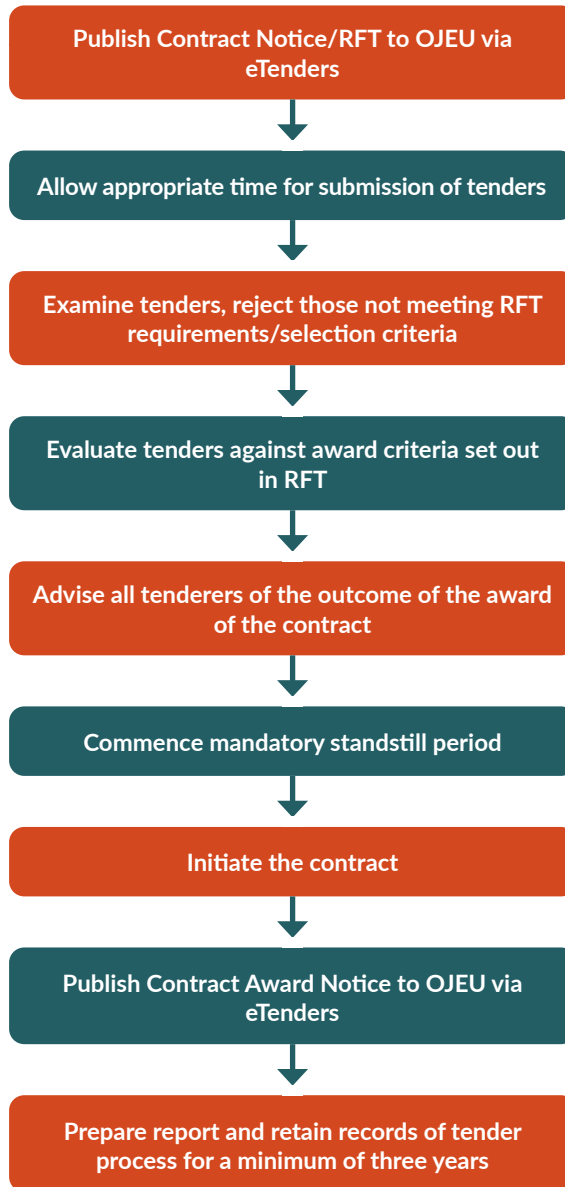
98. Minimum timelimits are set down for the different stages of the particular contract award procedure chosen in the 2016 Regulations. This flexibility speeds up simpler or off-the-shelf procurements but still permits longer timescales for requirements where tenderers will need more time to respond. The time limits in the 2016 Regulations are minimum time limits and contracting authorities should take into account the complexity of the tender and the volume of information that the tenderers are required to submit when setting any time limits. The minimum time limits are set out in Appendix V.

TYPES OF PROCEDURE

99. There are six award procedures that contracting authorities may use when awarding contracts under the 2016 Regulations.



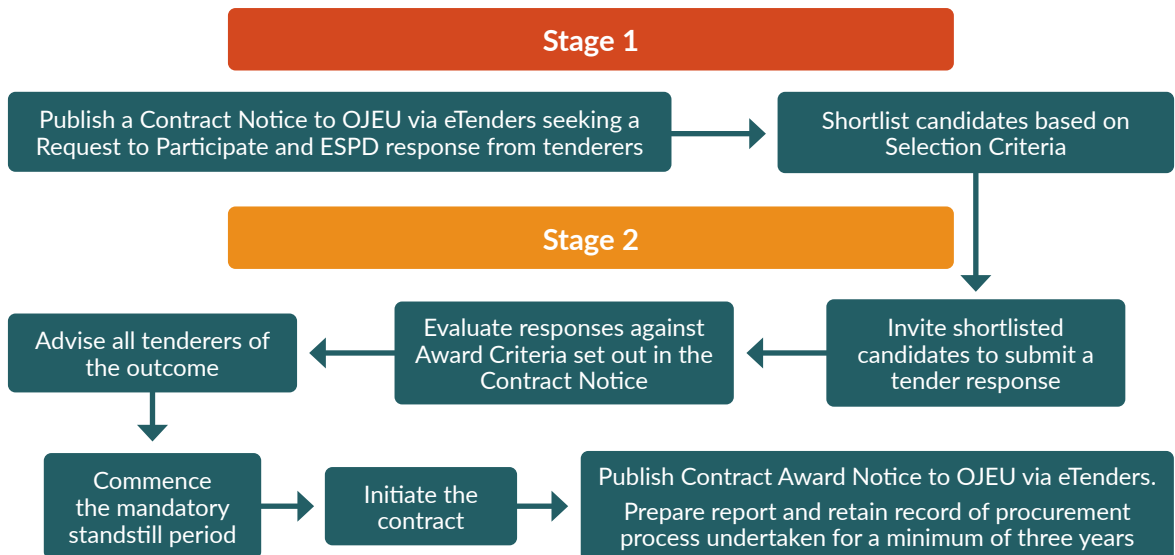
OPEN PROCEDURE



100. The Open Procedure is a single stage procurement where Contract Notice and RFT is published in the OJEU (via eTenders). The Contract Notice will clearly state the contract is being carried out using this procedure. All interested parties may submit tenders. It is important that the Selection Criteria and Award Criteria are made clear in the Contract Notice and the RFT so that all potential tenderers can understand how the procurement procedure will be run and how tenders will be evaluated. Only tenderers who are not disqualified on Exclusion Grounds and meet the Selection Criteria are evaluated against the Awards Criteria set out in the RFT.

- 101. The closing date for the receipt of tenders is generally no less than 35 days from the day after the date of dispatch of the Contract Notice to OJEU. Reductions in timescales are available in the following limited circumstances: if a PIN was issued within the relevant timeframe, where a state of urgency duly substantiated by the contracting authority renders the time limit impractical or, where public service bodies will accept a tender response electronically. A contracting authority may seek clarifications in relation to tenders submitted by tenderers.
- 102. Potential tenderers may be invited to a supplier information session to inform them about the requirements of the contracting authority. Any relevant information should subsequently be made available to all potential suppliers, including those who are not in a position to attend. A supplier information session will not be necessary for every tender exercise.
- 103. Template RFTs and contract documents for goods or services are available on the OGP [website](#) They should be used for all routine, and low to medium risk procurements.
- 104. Template outcome letters for goods or services are available on the OGP [website](#) and also in Appendix VI.
- 105. The Restricted Procedure is a two-stage procedure which involves a pre-qualification stage open to all interested parties who wish to submit a request to participate, and an award stage where candidates shortlisted at the pre-qualification stage are invited to submit tenders and are assessed against Award Criteria set out in the RFT.
- 106. The first stage requires interested suppliers to submit a Request to Participate and to self-declare via ESPD that they are not subject to any of the Exclusion Grounds (set out in Regulation 57 of the 2016 Regulations) and can meet the relevant Selection Criteria set for the competition. Once shortlisted, tenderers are granted a further 30 days to submit their tenders. Reductions in timescales are available in the following limited circumstances: if a PIN was issued within the relevant timeframe, where a state of urgency duly substantiated by the contracting authority renders the time limit impractical or where public service bodies will accept a tender response electronically.
- 107. The purpose of the Selection Criteria is to assess the capability of each candidate to carry out the required services or provide the required goods. The Contract Notice must state the number of candidates that will be invited to tender. If this is not done, all candidates who meet the Selection Criteria must be invited to submit tenders. A minimum of five candidates

RESTRICTED PROCEDURE



should be invited to tender (provided there is at least this number who meet the Selection Criteria). Unsuccessful candidates should be advised of the reasons they have not been selected. Records should be kept of this notification in accordance with the rules on

record keeping and retention of records under Regulation 84 of the 2016 Regulations. If candidates have not been advised at the end of the Selection Stage that they were unsuccessful, then this must be disclosed to them at the Standstill Stage, before the contract is concluded. Candidates who are shortlisted may be asked to provide evidence and supporting documents that they meet Selection Criteria and are not subject to any Exclusion Grounds as declared in the ESPD prior to being invited to tender.

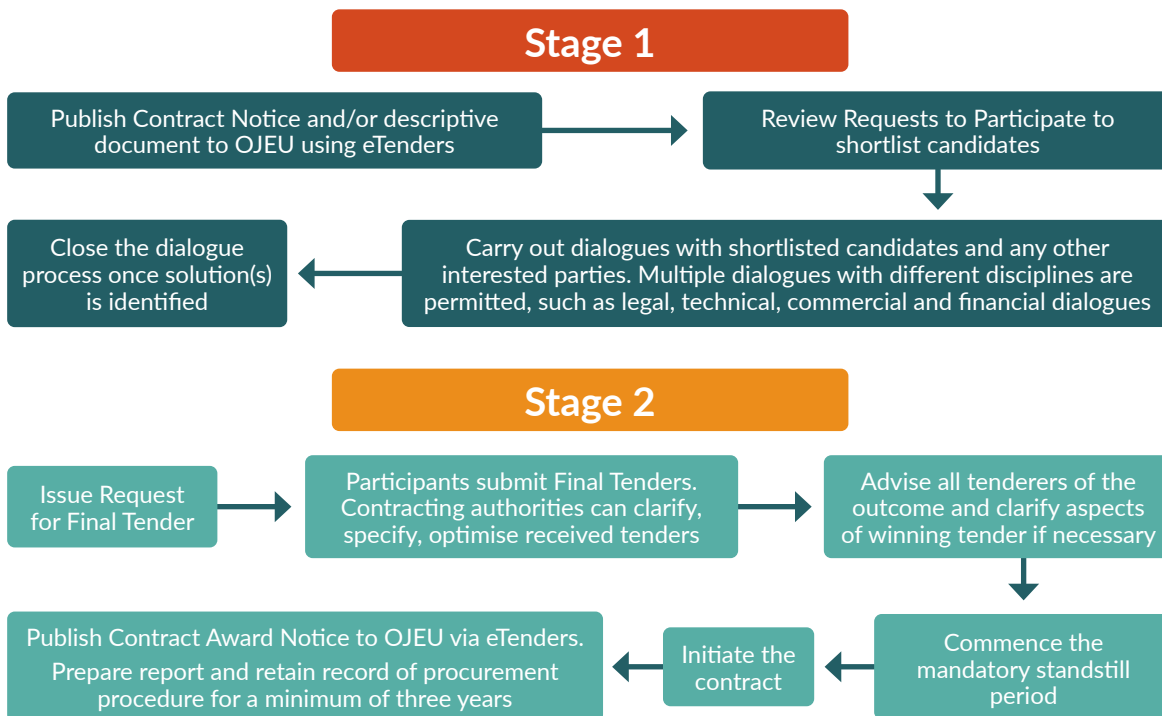
- 108. In the second stage, shortlisted candidates are invited to submit tenders and are assessed against the Award Criteria set out in the RFT, that is the most economically advantageous tender (MEAT).
- 109. It is important to bear in mind when using this or any of the other two-stage procedures that contracting authorities must offer unrestricted and full direct access to the procurement documents (RFT and draft contract) from the date of publication of the Contract Notice or the date on which an invitation to confirm interest is sent.

110. The Competitive Dialogue may only be used for goods, services or works contracts where one or more of the following circumstances apply:

- The needs of the contracting authority cannot be met without adaption of readily available solutions.
- The contract includes design or innovative solutions.
- The technical specifications cannot be established with sufficient precision.
- A contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attached to the goods, services or works.
- In response to an Open or Restricted Procedure where only irregular or unacceptable tenders were submitted.

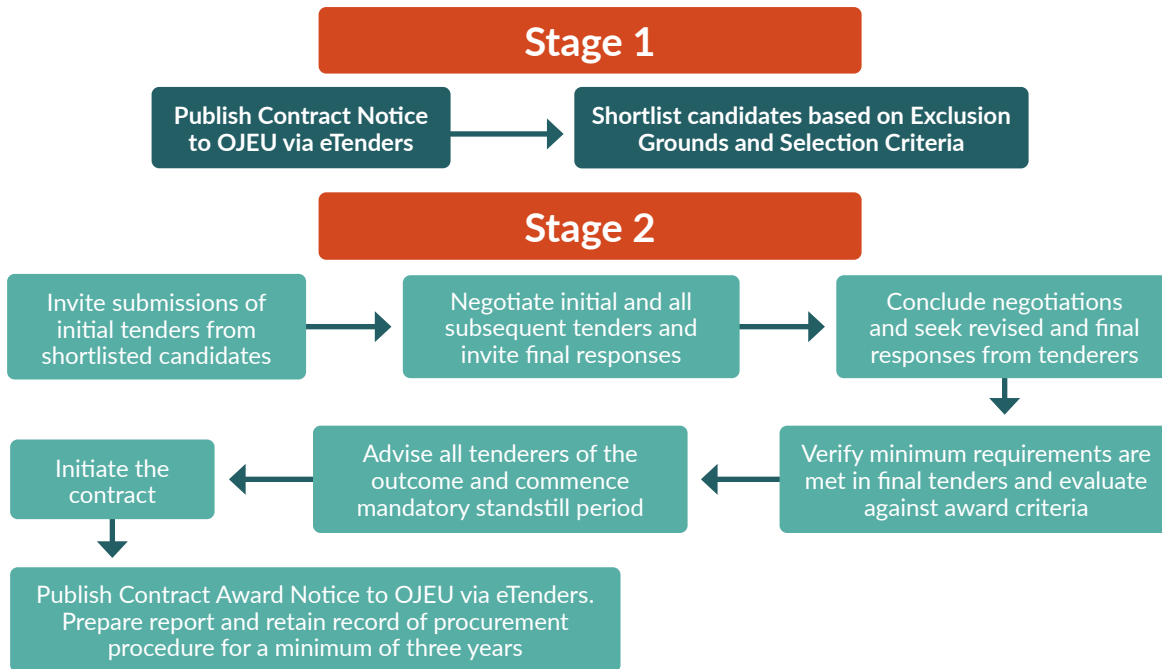
111. The Contract Notice must set out and define the needs and requirements of the contracting authority and it will make it clear that the Competitive Dialogue procedure is being used. The Contract Notice will also set out the Award Criteria which the contracting authority will apply during the dialogue stage.

COMPETITIVE DIALOGUE



112. A selection is made of those who respond to the Contract Notice and the contracting authority enters into dialogue with those selected to develop one or more suitable solutions for its requirements. The contracting authority may reduce the number of solutions throughout the dialogue and subsequently invite tenders on the basis of the specified solution(s).
113. The substantial or fundamental elements of the Contract Notice and/or of the descriptive document may not be modified during the award procedure. Those who respond to the Contract Notice are chosen following the same process as the Restricted Procedure above, including shortlisting of candidates following examination of their ESPDs. There should be a minimum of three candidates where feasible. A dialogue is commenced with the qualified participants with the aim of identifying and defining how the contracting authority's needs can be satisfied. The dialogue should be carried out individually with each of the participants ensuring the principles of equal treatment and transparency are adhered to and that a genuine competition has taken place. Contracting authorities must not provide information in a discriminatory manner which may give some participants an advantage over others. A contracting authority must respect the intellectual property rights of all candidates and protect the confidentiality of information provided by candidates to them. Contracting authorities must not disclose the proposed solutions of participants without their agreement. The complexity of the contract, coupled with the necessity to be able to compare several solutions and take decisions which can be subsequently be justified, requires that the application of the Award Criteria be based on written documents. Whether these documents are qualified as outline solutions, project proposals, tenders or other is not specified in the Directive. Contracting authorities must continue the dialogue phase until it can identify the preferred solution or solutions.
114. When satisfied about the best means of meeting its requirements the contracting authority issues an RFT and asks the participants to submit their final tenders which must be assessed on the basis of the Award Criteria set out in the Contract Notice or descriptive document. Once these final tenders have been received, the contracting authority may ask for clarification, specification, optimisation or additional information. These may not involve changes to the essential aspects, including the needs and requirements set out in the Contract Notice and/or descriptive document. The Regulations provides that 'these tenders shall contain all the elements required and necessary for the performance of the project'. They are, therefore, complete tenders. The most economically advantageous tender will then be selected. Post-tender negotiations are specifically permitted with the tenderer identified as having submitted the best tender. These negotiations may be carried out to confirm financial commitment or other terms contained in the tender provided this does not have the effect of materially modifying essential aspects of the tender including the needs and requirements set out in the Contract Notice and/or descriptive document and does not risk distorting competition or causing discrimination. A record of clear reasons for selecting this approach (as required under Regulation 84 of the 2016 Regulations) is required and commercial confidentiality is of key importance in employing this procedure. After conducting a Competitive Dialogue procedure, a contracting authority may be able to use a restricted procedure when the contract has to be renewed. However, contracting authorities should obtain legal advice before proceeding in this regard.
115. The Competitive Procedure with Negotiation may only be used for goods, services and works contracts where one or more of the following circumstances apply:
- The needs of the contracting authority cannot be met without adaption of readily available solutions.
 - The contract includes design or innovative solutions.
 - The technical specifications cannot be established with sufficient precision.
 - A contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attached to the works, goods, or services.
 - In response to an Open or Restricted Procedure where only irregular or unacceptable tenders were submitted.
116. The Competitive Procedure with Negotiation is a two-stage procedure that generally starts with a call for competition.

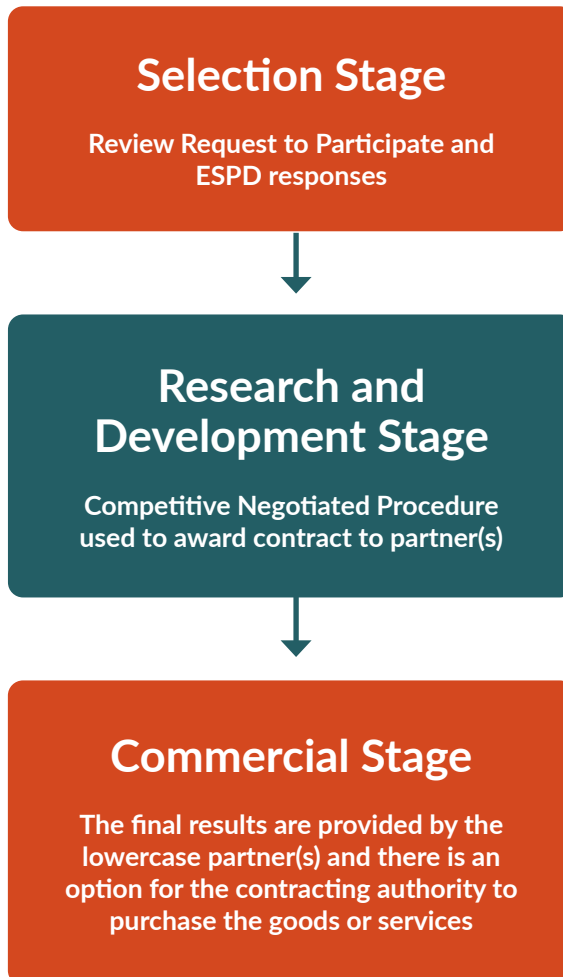
COMPETITIVE PROCEDURE WITH NEGOTIATION



- 117. The Contract Notice must make it clear that the Competitive Procedure with Negotiation is being used. There is an obligation on the contracting authority to provide a description of its needs, to specify the Selection Criteria and Award Criteria and to define the minimum requirements that must be met by all tenderers. The information provided by a contracting authority to tenderers must be sufficiently precise to enable them to identify the nature and scope of the procurement so they can decide whether or not to request to participate. Any supplier may make a request to participate. The request to participate must be accompanied by an ESPD response. Contracting authorities can limit the number of candidate it invites to participate.
- 118. Following assessment of the submitted requests to participate and ESPDs, the contracting authority will invite suppliers that meet the Selection Criteria to the initial tender phase. Only suppliers invited to participate may submit an initial tender which shall be the basis for the negotiations. This can be followed by several rounds of negotiation in order for the contracting authority to seek better offers. There is the possibility of reducing the number of tenders during the process by applying published Award Criteria as set out in the Contract Notice.
- 119. While a contracting authority may negotiate the initial and all subsequent tenders submitted by a tenderer, a tenderer's final tender cannot be negotiated. There is an obligation on contracting authorities to ensure equal treatment of all tenderers during the negotiations. Contracting authorities must not provide information in a discriminatory manner which may give some participants an advantage over others. Contracting authorities must inform all tenderers, who have not been eliminated, of any changes to the technical specifications and provide tenderers with sufficient time to modify or resubmit amended tenders.
- 120. A contracting authority must not disclose to other participants the confidential information communicated to it by a tenderer participating in the negotiations without the agreement of that tenderer.
- 121. Where the contracting authority intends to conclude the negotiations it must inform the remaining tenderers and set a deadline for receipt of revised tenders. It must assess the final tenders against the Award Criteria set out in the Contract Notice. No negotiation is permitted after the receipt of final tenders.
- 122. Contracting authorities may award contracts without negotiation on the basis of initial tenders submitted by tenderers where the contracting authority has reserved the possibility of doing so in the Contract Notice.

123. A record of clear reasons for selecting this approach (as required under Regulation 84 of the 2016 Regulations) is required and commercial confidentiality is of key importance in employing this procedure.

INNOVATION PARTNERSHIP PROCEDURE



124. Innovation Partnerships can be used where there is no existing good or service currently available on the market that meets a contracting authority's needs. Contracting authorities can set up innovation partnerships with one or several partners conducting separate research and development activities. The aim of an innovation partnership is the development of innovative goods, works or services and its subsequent purchase provided it corresponds to the performance levels and maximum costs agreed between the contracting authority and the participants. A record of clear reasons for selecting this approach is required.

125. Under this procedure, the Contract Notice must identify the need for an innovative good, service or works that cannot be met by purchasing goods, services or works already on the market and set out the minimum requirements that all tenderers must meet. This information must be sufficiently precise to enable suppliers to identify the nature and scope of the required solution.

126. Any supplier may make a request to participate in response to a Contract Notice. However, only those tenderers invited by the contracting authority following the assessment against the ESPD and Selection Criteria can participate in the procedure. A contracting authority, in selecting tenderers for an innovation partnership must apply criteria concerning the capacity of the candidate in the field of research and development and of developing and implementing innovative solutions.

127. There is the possibility of reducing the number of tenderers during the process by applying published Award Criteria. This must be set out in the Contract Notice.

128. A contracting authority must negotiate the initial and all subsequent tenders submitted by a tenderer. However, a tenderer's final tender cannot be negotiated. There is an obligation on contracting authorities to ensure equal treatment of all tenderers during the negotiations. Contracting authorities must not provide information in a discriminatory manner which may give some participants an advantage over others nor can they disclose confidential information communicated to it by a tenderer without the agreement of that tenderer. They must also inform all tenderers, who have not been eliminated, of any changes to the technical specifications and provide tenderers with sufficient time to modify or resubmit amended tenders.

129. An Innovation Partnership must set intermediate targets to be attainable by the participants and must provide for payment in appropriate instalments and on the basis of these targets. Based on targets provided the contracting authority may decide after each phase to terminate the innovation partnership, or, where there are several partners on the innovation partnership, provide an option to reduce the number of partners by terminating individual contracts.

130. The commercial stage of the resulting innovative good, service or works can then take place provided that they correspond to the performance levels and maximum costs agreed between the contracting authority and the participants. A contracting authority must define the arrangements applicable to intellectual property rights and must not disclose partners proposed solutions or confidential information without that partner's agreement.
131. The structure, duration and value of the different phases of the innovation partnership must reflect the degree of innovation of the proposed solution and the sequence of research and development activities required for a solution that is not already on the market.
- The aim of the procurement is the creation or acquisition of a unique work of art or artistic performance and can only be supplied by a particular supplier or service provider.
 - When competition is absent for technical reasons or due to the protection of exclusive rights, including intellectual property rights, there is only one possible supplier or services provider – these derogations can only be used where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.
 - For additional deliveries by the original supplier which are intended as either a partial replacement of supplies or installations or as the extension of existing suppliers or installations where a change of supplier would oblige the contracting authority to acquire suppliers having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance – the duration of such contracts shall not, as a general rule, exceed three years.
 - Where the goods are manufactured purely for the purposes of research, experimentation, study or development.
 - For supplies quoted and purchased on the commodity market.
 - For the purchase of supplies on particularly advantageous terms, from either a supplier definitively winding up a business or the receiver or liquidator of a bankruptcy, an arrangement with creditors or similar legal or regulatory procedure.
 - For repetition of similar works or services by the original supplier where such works or services are in conformity with a basic project for which the original contract was awarded – however, the original project must indicate the extent of any possible works and services and the conditions under which they will be awarded and can only be availed of during the three years following the conclusion of the original contract.
 - For service contracts where the contract follows a design contest and is awarded to the winner or winners of the design contest.

NEGOTIATED PROCEDURE WITHOUT PRIOR PUBLICATION

132. The Negotiated Procedure without Prior Publication can only be used in a limited number of narrowly defined circumstances. Regulation 32 sets out an exhaustive list of limited circumstances. The absence of a call for competition is a departure from the core principles of openness, transparency and competition and as such is a very exceptional procedure. Where one of these exemptions is invoked, the contracting authority must be able to justify the use of the exemption. It is important that there is an audit trail including, where relevant, justification for not having used the Open or Restricted Procedure.
133. This procedure may be used for the purchase of goods and services:
- Where no tenders, suitable tenders, requests to participate or suitable requests to participate have been submitted in response to an Open or Restricted Procedure and where the initial conditions of the contract are not substantially altered – a tender will be considered not suitable where it is irrelevant to the contract, is manifestly incapable without substantial changes of meeting the contracting authorities needs and requirements, it is to be or may be excluded under Regulation 57 or it does not meet the Selection Criteria.
 - In so far as is strictly necessary in cases of extreme urgency not attributable to the contracting authority and brought about by events unforeseeable by the contracting authority when the time limits for the Open, Restricted or Competitive Procedures with Negotiation cannot be complied with.

- A contracting authority may consider publishing a Voluntary Ex-Ante Transparency (VEAT) notice when using Negotiated Procedure without Prior Publication. In completing a VEAT the contracting authority must give sufficient information as to the justification for direct award of a contract without OJEU advertising and observe the minimum standstill period before the contract is awarded. This allows economic operators the opportunity to challenge the decision of the contracting authority and obtain pre-contractual remedies should a challenge be upheld.

RECEIPT AND OPENING OF TENDERS

134. Contracting authorities should ensure that proper procedures are in place for opening tenders to prevent any risk of abuse or impropriety at this stage.
135. eTenders facilitates the tracking of electronically received tenders and may be used for receipt and processing of tenders.
136. When tenders are not received electronically, a formal opening of tenders received must take place. At least two officials should open the tenders which should be date stamped and initialled when opened. In particular, the pages containing pricing details should be stamped and initialled. Tenders received after the deadline should be rejected and returned to their owners, with their arrival time recorded. Tenderers cannot submit modifications to their tenders after the closing date for receipt of tenders. The stamped and initialled prices are the prices that must be used in determining the price of the tender. A report on the tenders received, those present at the opening of the tenders, and the details of any tenders rejected and the reasons for the rejection should be produced, signed off at the appropriate level and placed in the project file.
138. External experts should sign confidentiality and non-disclosure agreements and comply with any other security or confidentiality requirements of the contracting authority and should return to the contracting authority all documentation, materials and notes received or made during the evaluation.

MANDATORY EXCLUSION GROUNDS

139. At the selection stage contracting authorities are required to exclude from further consideration any tenderers who have been convicted of specified offences. The mandatory Exclusion Grounds are where a tenderer has been convicted of one or more of the following offences:
- Participation in a criminal organisation.
 - Corruption.
 - Fraud.
 - Terrorist offences or offences linked to terrorist activities.
 - Money laundering or terrorist financing.
 - Child labour and human-trafficking related offences.
 - Breach of tax or social security obligations.
140. In relation to tax and social security obligations, there is a mandatory obligation to exclude a tenderer who has been subject to a binding and final legal administrative decision which found breach of obligations to pay tax or social security obligations. Where no such binding decision has been made the contracting authority may, at its discretion, exclude a tenderer where it can demonstrate by any appropriate means non-payment of taxes or social security contributions by the tenderer. Both can be remedied by the tenderer making full payment or entering into a binding arrangement with view to paying including where applicable any interest accrued or fines. The mandatory obligation to exclude tenderers also applies where the person convicted of any of these offences is a member of the administrative, management or supervisory body of the tenderer or has powers of representation, decision or control in the tenderer's organisation. There are derogations from the application of the mandatory exclusions for overriding requirements in the public interest, for example provision of vaccines in emergency public health scenario. A contracting authority can disregard tax and social security obligation breaches where the exclusion would be clearly disproportionate,

EVALUATION OF TENDERS

137. Review of tenders should be carried out by a team with the necessary competence. Team members must complete a Conflict of Interest form ahead of the evaluation to ensure that there are no conflicts and to allow for an evaluator be replaced where conflicts are identified. The team may include independent representation. External experts can be used in complex evaluations to provide advice or recommendations on the technical aspects of the tenders to the evaluation team.

that is where only minor non-payment amounts are involved.

141. Where a contracting authority becomes aware at a later stage in the process that a tenderer is subject to any of the mandatory Exclusion Grounds, the 2016 Regulations also allow for exclusion of the tenderer during the procurement procedure.

DISCRETIONARY EXCLUSION GROUNDS

142. Contracting authorities have discretion to disqualify candidates for competing in a public procurement competition for the following reasons:
- Where the contracting authority can demonstrate violations of environmental, social and labour law obligations including rules on accessibility for disabled person.
 - Bankruptcy.
 - Insolvency or winding-up procedures.
 - Assets being administered by liquidator or by the Court.
 - Arrangements with creditors.
 - Where the contracting authority can demonstrate grave professional misconduct.
 - Where a contracting authority has sufficiently plausible indications to conclude that a candidate has entered into agreements with other tenderers aimed at distorting competition.
 - Past poor performance where the candidate has shown significant or persistent deficiencies in a prior public contract which led to termination, damages or other comparable sanctions.
 - Where a conflict of interest cannot be remedied by any less intrusive means.
 - Where a distortion of competition arises from direct or indirect involvement in the preparation of the procurement procedure.
 - The tenderer has been guilty of serious misinterpretation in supplying information required for the verification of the absence of Exclusion Grounds or the fulfilment of the Selection Criteria, has withheld such information or is not able to submit supporting documents in relation to the ESPD.

- Where the tenderer has undertaken to unduly influence the decision-making process of the contracting authority or obtained confidential information which may confer upon it undue advantages in the procurement procedure or where the tenderer has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

143. Contracting authorities may exclude the tenderer at any time during the procedures. In applying discretionary Exclusion Grounds, contracting authorities should pay particular attention to the principle of proportionality.

SELF-CLEANING

144. The 2016 Regulations provide for a longstop date of five years from the date of conviction for the mandatory exclusionary grounds. The 2016 Regulations provide for a longstop date of three years from the date of the relevant event for the discretionary exclusion grounds.
145. Where any of the mandatory or discretionary exclusion grounds apply to a tenderer, it may utilise the self-cleansing mechanism under the 2016 Regulations to demonstrate its reliability despite the existence of relevant grounds for exclusion. Tenderers must not be excluded under the mandatory exclusion grounds or the discretionary exclusion grounds if they have provided sufficient evidence of each of the following: (i) by payment of compensation in respect of any damage caused, (ii) active cooperation with investigating authorities by clarifying the facts and circumstances, (iii) implementation of technical, organisational or personnel measures that are appropriate to prevent further misconduct. A tenderer should have the opportunity to provide evidence at tender stage on self-cleaning measures and must not be excluded if the evidence is considered sufficient. This self-cleaning option cannot, however, be extended in the case of exclusion from participation in procurement procedures because of a final court judgement. A contracting authority must provide a statement of reasons to the tenderer where it considers the measures to be insufficient.

SELECTION CRITERIA

146. Where suppliers are not excluded from tendering for reasons based on the exclusion grounds, they are assessed based on information concerning their suitability to pursue a professional activity, economic and financial standing and/or as technical capacity and ability. At this stage, only the supplier's ability to perform the contract should be considered and not whether they have made the best offer or not. For Open Procedures, all tenderers that meet the Selection Criteria have a right to have their tenders evaluated at the award stage. For two-stage procedures (Restricted, Competitive Dialogue, Competitive Procedure with Negotiation, and Innovation Partnership), contracting authorities may limit the number of candidates to be invited to tender (or negotiate) based on the Selection Criteria but they must state this in the Contract Notice. Candidates have a right to be advised of the reasons they have not met the Selection Criteria. Records should be kept of this notification in line with contracting authorities' obligations under Regulation 8.
148. Any such requirements must be related and proportionate to the subject matter of the contract. In normal circumstances, the turnover requirement should not exceed twice the estimated contract value. To support competition and facilitate access for SMEs and start-ups, contracting authorities should endeavor to keep the turnover requirement to the lowest value to provide assurance of capacity to deliver. However, in duly justified circumstances, it is possible to apply higher requirements. The maximum yearly turnover limit for contracts based on a Framework Agreement, requiring a mini-competition, is calculated based on the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the Framework Agreement.
149. Tenderers must confirm, via their ESPD response, that they meet the minimum standards required by the contracting authority. They will generally be required to produce the necessary documentation (for example, bank statements, audited accounts, proof of professional indemnity, etc.) only when provisionally shortlisted in a Restricted Procedure or provisionally chosen as the successful tenderer in an Open Procedure. However, tenderers can be asked for this documentation at any stage in the procurement process where this is necessary for the proper conduct of the procurement process.

ECONOMIC AND FINANCIAL STANDING

147. The assessment of a tenderer's economic and financial standing is a key part of any procurement process because the contracting authority must be reasonably satisfied that a contractor will have the necessary economic and financial capacity to carry out any contract which may be awarded. Establishing the appropriate Selection Criteria that are relevant and proportionate to the subject matter of a particular contract is a matter for the contracting authority concerned but might include a minimum yearly turnover or asset to liability ratio. This is because the contracting authority is in the best position to gauge the appropriate levels of financial capacity that are appropriate to the needs and subject matter of the specific contract.

PROFESSIONAL AND TECHNICAL CAPACITY

150. Where a tenderer's professional and technical capacity is being evaluated, a contracting authority may request information, (for example, a list of the main services provided by the tenderer over the past three years) to show that the tenderer possesses the required professional and technical capacity to carry out the contract and that it possesses the necessary human and technical resources and experience to perform the contract. Where experience is specified as a selection criteria, it should not be framed in such a way as to unduly narrow a field of eligible tenderers (by specifying an exact work type or industry) or constitute a barrier to non-national tenderers. Contracting authorities may consider the previous experience of individuals in the case of a start-up business that has yet to establish a track record as a business entity. Where particular profiles of technical ability (that is educational and professional qualifications) are required, contracting authorities should request copies of the CVs of the tenderer's proposed project team for assessment against the required technical profiles. For example, if a contracting authority requires the tenderer's team to be headed by a project manager educated to degree level with a specified number of years' experience of project management or, a computer programmer to have a specific number of years' experience of a particular programming language, the requirements for such technical ability must be specified as a Selection Criteria, and the received curriculum vitae evaluated against the specified technical profiles. Tenderers can be asked in the RFT to confirm that the project team proposed in the tender will be the project team that will work on the project, and, that in the event of being awarded a contract, any changes to the project team will be made only after agreement with the contracting authority. Contracting authorities can choose to evaluate CVs and people's experience to carry out the required service at either the selection or award stage but not at both stages. Contracting authorities must ensure that in evaluating a CV they do so only once.

INSURANCE

151. Contracting authorities should only require such types and levels of insurance as agreed are proportionate and reasonable in the context of the particular contract. Factors considered by buyers for the supply of goods and general services should include: the risks involved, the value of the contract and the subject matter of the contract. The required insurance coverage will vary from contract to contract. Any requirement for insurance cover must be signaled in the tender documentation.
152. Documentary evidence of the required insurance will only be required when a candidate is being assessed for shortlisting in a Restricted Procedure or has been identified as a successful tenderer in an Open Procedure procurement competition. The candidate must demonstrate that it can obtain the relevant insurance in accordance with the requirements set out. The evidence required to pass this criterion is confirmation from an insurance provider that the candidate has the current required level of insurance. Alternatively, if the candidate does not currently have cover at the levels stipulated they must produce evidence from the insurance provider confirming that the candidate can obtain cover at the stated levels if awarded the contract.
153. In carrying out competitions for the acquisition of routine low-to-medium-risk goods and services, contracting authorities should refer to [Circular 05/2023](#) for guidance in relation to setting insurance level requirements. For bespoke and/or complex competitions or if the contracting authorities have concerns with regards to any aspect relating to the subject matter of the procurement then they should contact the [State Claims Agency](#) for assistance in specifying appropriate insurance types and levels. Complete the Insurance Risk Assessment Form and send it to the State Claims Agency. Please allow six working days for a response. Contracting authorities not covered by the State Claims Agency should contact their risk management department or relevant insurance advisor to determine the appropriate types and levels of insurance cover.

CONSORTIA AND SUBCONTRACTING

154. Companies, and in particular SMEs, are encouraged to consider forming a consortium, where they are not of sufficient scale to tender in their own right. The template RFT requires that there is a lead/primary contractor for all such groupings and undertakings who assumes full responsibilities for the delivery of the contract.
155. If a tender is submitted by a group of tenderers or involves subcontractors, each must show that they have the required economic and financial capacity and the professional and technical ability to perform the tasks assigned to them in the tender by completing an ESPD.
156. Contracting authorities cannot require groups of tenderers to take on a specific legal form at tender stage but they may require that a successful bidding consortium assume a specific legal form once the contract has been awarded to the extent that this is necessary for the specific performance of the contract.
157. Companies considering forming a consortium to bid for public service opportunities should seek legal advice in relation to the structure and operation of the consortium to ensure that it is fit for purpose and complies with their legal obligations particularly in relation to competition law. Specialist advice in relation to forming consortia is available from Enterprise Ireland and InterTrade Ireland. Suppliers should also consider the CCPC's [Guide on Consortium Bidding - How to comply with competition law when tendering as part of a consortium](#).
158. Tenderers can rely on the capacity of third parties (including subcontractors) to demonstrate compliance with the economic and financial standing requirements and/or the technical and professional ability requirements regardless of the legal nature of the link between the parties. However, a tenderer will only be able to rely on third party resources where that entity will perform the works or services for which its capacity is required. Tenderers will be obliged to produce a commitment indicating that they have the resources in question at their disposal.
159. Contracting authorities may ask tenderers to indicate in its tender whether it intends to subcontract any of the contract if its bid is successful. Contracting authorities will require the details of any subcontractors and to inform the contracting authority during the life of the contract if such details change. Subcontractors may, where specified be required to submit a separate ESPD response.

EUROPEAN SINGLE PROCUREMENT DOCUMENT

160. The ESPD is a self-declaration form introduced under the 2016 Regulations which is designed to provide preliminary evidence, instead of certificates issued by public authorities or third parties, that a tenderer is not in one of the situations in which it shall or may be excluded from a competition and that it meets the relevant Selection Criteria for a particular competition. Contracting authorities should not conclude contracts with tenderers unable to provide the relevant documentary evidence.
161. From April 2018, it is mandatory for contracting authorities to issue and receive the ESPD in electronic form. Since October 2018, tenderers are no longer required to submit supporting documents where the contracting authority, having previously awarded a contract or, concluded a Framework Agreement with the relevant tenderer, are already in possession of the documents. Contracting authorities may seek verification that the candidates/tenderers circumstances have not changed.
162. Contracting authorities are entitled to request all or part of the supporting documents at any time where they consider this to be necessary in order to ensure the proper conduct of the procedure. This might in particular be the case in a two-stage process in which a contracting authority makes use of the possibility to limit the number of candidates invited to submit a tender. Requiring the submission of supporting documents at the moment of selection of a candidate could be justified in order to avoid a situation where a candidate is unable at a later stage to provide supporting documents.
163. Where a tenderer/candidate relies on the capacities of other entities, a separate ESPD is required to be completed in respect of each of those entities.
164. A tenderer may reuse an ESPD response submitted previously for another competition where the tenderer confirms where it confirms that the information contained in that ESPD continues to be correct.

QUERIES

165. Candidates can raise queries or request clarification from contracting authorities in relation to tender documentation. The date and time for acceptance of queries must be set out in the Contract Notice.

166. If additional information or material is supplied to a candidate, on request or otherwise, it must be provided to all candidates.

CLARIFICATION

167. A contracting authority can, under the 2016 Regulations, in certain circumstances request the tenderer to submit, supplement, clarify or complete information where information submitted by a tenderer appears, to a contracting authority, to be incomplete or erroneous or where specific documents are missing. Legal advice should be obtained before a contracting authority seeks any such clarifications from tenderers.

AWARD STAGE

168. Where a tenderer meets the Selection Criteria, and otherwise meets the requirements set out in the RFT (that is, a compliant tender) then their tender is entitled to be given due consideration under the Award Criteria. In the event that the tender then proves to be the most economically advantageous tender under the Award Criteria, the contracting authority may, at any point up to the contract award, ask the successful tenderer to reconfirm any qualification information.
169. The awarding authority may, at its own discretion, decide not to award any contract and to cancel the entire contract award procedure at any time during the procurement process. In doing so, it must so notify tenderers of its decision and justify the decision.
170. The 2016 Regulations provide that the contract is awarded to the Most Economically Advantageous Tender (MEAT). To identify the most economically advantageous tender, the contract award decision should be based on:
- Price, or
 - Cost, using a cost-effectiveness approach such as lifecycle costing, or
 - The best price-quality ratio to be assessed on the basis of criteria including qualitative, environmental or social aspects, linked to the subject matter of the contract, or
 - Quality only where the cost element is fixed price.
171. Lifecycle costing (LCC) can be used to encourage more sustainable and/or better value procurements, which may save money over the long term although they may appear more costly on the initial purchase price. LCC includes all costs over the lifecycle of goods, services or works. It includes costs such as research and development, production, transport, use, maintenance and end-of-life disposal costs, but can also include costs associated with environmental externalities, such as pollution caused by extraction of the raw materials used in the product or caused by the product itself or its manufacturing, provided they can be monetised and monitored. The methods that contracting authorities use for assessing costs inputted to environmental externalities should be established in advance, in an objective and non-discriminatory manner, and be accessible to all interested parties. Such methods can be established at national, regional or local level, but they should, to avoid distortions of competition through tailor-made methodologies, remain general in the sense that they should not be set up specifically for the particular public procurement procedure. If a common method for the calculation of lifecycle costs is mandatory under EU law, this method must be applied, for example, when procuring motor vehicles. Where a contracting authority intends to use LCC in its procurement process, it must indicate in the procurement documents what data tenderers must provide and the method to be used to determine the lifecycle costs. See [Green Public Procurement – Guidance for the Public Sector](#) for more guidance on LCC.
172. In relation to quality, the contracting authority is required to adopt criteria linked to the subject matter of the contract, which might include:
- Delivery date or period of completion.
 - Delivery process.
 - Running costs.
 - Cost effectiveness.
 - Aesthetic and functional characteristics.
 - Accessibility.
 - Design for all users.
 - Technical merit.
 - After-sales service, (for example, the extent of advisory and replacement services).

- Organisation, qualification and experience of staff assigned to performing the contract where the quality of staff assigned can have a significant impact on the level of performance of the contract.
 - Social, environmental and innovative characteristics.
 - Any other relevant factors chosen by the awarding body.
173. The contracting authority must state in the procurement documents the relative weighting which it give to each of the criteria. Where it is not possible to provide weightings, a contracting authority must indicate the Award Criteria in descending order of importance. Objectivity and transparency are best achieved by the use of a scoring system or marking sheet based on the weighted criteria, indicating a comparative assessment of tenders under each criterion.

PRESENTATIONS

174. In Open or Restricted Procedures, tenderers may be asked to make a presentation on their proposals. These presentations should be used only as an aid to understanding and for purposes of clarifications and cannot be scored unless this is stated in the RFT. Such presentations are not an opportunity for post-tender negotiation on price or specifications. Negotiations of any kind cannot take place where an Open or Restricted procedure are used.

ABNORMALLY LOW TENDERS

175. The 2016 Regulations oblige contracting authorities to investigate tenders they consider abnormally low and to seek explanations from suppliers about the price or cost. In this context, acceptable from tenderers could include:
- The economics of the manufacturing process or the construction method.
 - The technical solutions chosen.
 - Any exceptionally favourable conditions available to the tenderer.

176. The contracting authority may reject the tender where the evidence supplied does not satisfactorily account for the low price. Rejection is mandatory in cases where the contracting authority has established that the abnormally low price or costs proposed results from non-compliance with all applicable obligations in the fields of environmental, social and labour applying under national and EU law and relevant international conventions at the place where the works are carried out or the services provided. Where it is found that the low price is the result of the State Aid, the contracting authority may reject the tender if the supplier is unable to prove that the aid is compatible with EU State Aid rules.

TAX CLEARANCE

177. It is a condition of a contract award that the successful tenderer(s) shall for the term of such contract(s), comply with all EU and domestic tax laws. Prior to the award of a contract, the successful tenderer is required to supply it Tax Clearance Access Number and Tax Reference Number to facilitate online verification of its tax status by the contracting authority. By supplying these reference numbers the successful tenderer acknowledges and agrees that the contracting authority has the permission of the successful tenderer to verify online its tax clearance status.
178. In relation to payments under public service contracts, the contracting authority is required to verify the tax clearance of contractors prior to making payment.

NOTIFICATION AND STANDSTILL PERIOD

179. As soon as possible after an award decision is made, the contracting authority must inform all tenderers of the outcome using a standstill letter for above threshold procurements.
180. The contracting authority will inform the preferred tenderer that it has been identified as the most economically advantageous tenderer, subject to the contracting authority being satisfied with the evidence provided by the preferred tenderer to support its ESPD response. A contracting authority will notify the preferred tenderer of the standstill period applicable.

181. The day after the contract decision notice is issued the standstill period will begin. The standstill period is 14 days where the notice is issued electronically or 16 days where the letter is sent by post. The standstill period will not commence until all relevant letters have been dispatched. This period is designed to ensure that the procurement procedures followed are open to review before the conclusion of a standstill period. The standstill process can be managed via eTenders. During the standstill period a contract cannot be concluded.
182. A compliant standstill letter must include the following information:
- The award criteria.
 - The name of the successful tenderer.
 - The score of the recipient.
 - The score of the successful tenderer.
 - Details of the reason for the decision, including the characteristics and relative advantages of the successful tender.
 - Confirmation of the date before which the contracting authority will not enter into the contractor Framework Agreement (that is, the date after the end of the standstill period).
183. It is not enough to state in a general way that the successful tenderer's response was superior to that of the unsuccessful tenderer. Rather the standstill letter should contain reference to specific matters, examples or facts, explaining the decision about relative advantage.
184. A set of model standstill letters for use in above threshold open competitions can be found in Appendix VI.

MANAGING THE CONTRACT

185. The following are standard steps that should be followed in managing a contract:
- Have a programme of checking goods or services against the contract specification.
 - Ensure that there are regular procedures for reporting and for identifying inadequacies/ poor performance and appropriate remedial action.
 - Maintain a record of supplier performance.

- Review the whole procurement process at the conclusion of the contract, not just the supplier's performance but also the effectiveness of the earlier stages. This review process can provide information for future procurements in respect of developing and specifying needs, supplier selection and contract management.

CONTRACTING MODIFICATION

186. A substantial modification of the provision of a public contract or Framework Agreement during its term will be considered a new award for the purposes of the 2016 Regulations and will require a new procurement procedure. Substantial modifications are those where the modification renders the contract or Framework Agreement materially different in character from the contract or Framework Agreement initially concluded. One or more of the following conditions must be met for a modification to be substantial:
- The modification introduces conditions which, had they been part of the initial procurement procedures, would have allowed for the admission of other candidates than those initially selected, allowed for the acceptance of a tender other than that originally accepted, or attracted additional participants in the procurement procedure.
 - The modification changes the economic balance of the contract or Framework Agreement in favour of the contractor in a manner which was not provided for in the initial contract or Framework Agreement.
 - The modification extends the scope of the contract or Framework Agreement considerably.
 - A new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than a review clause or universal or partial succession.

187. The 2016 Regulations set out the following list of changes which are specifically permitted during the life of a contract without a new procurement procedure:
- A contract may be modified irrespective of its monetary value and without a new procurement procedure where the modifications have been provided for in the initial procurement documents by way of clear, precise and unequivocal review clauses, which may include price revision clauses or options. A review clause (i) must state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and (ii) does not provide for modifications or options that would alter the overall nature of the contract or the Framework Agreement.
 - Where additional works, services or supplies by the original contractor, irrespective of their value, that have become necessary and were not included in the initial procurement where a change of contractor (i) cannot be made for economic or technical reasons, including requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, and (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority. The modification in question shall not exceed 50% of the value of the original contract price and where several successive modifications are made that limitations shall apply to the value of each modification. Consecutive modifications must not be aimed at circumventing the 2016 Regulations and a Contract Modification Notice must be published.
 - Where the need for modifications to a contract is brought about by circumstances which a diligent contracting authority could not have foreseen provided that the modification itself does not affect the overall nature of the contract, the modification in question shall not exceed 50% of the original contract price and where several successive modifications are made that limitation shall apply to the value of each modification. Consecutive modifications must not be aimed at circumventing the 2016 Regulations and a Contract Modification Notice must be published.
 - Where a new contractor replaces the original contractor following a corporate restructuring such as a merger, acquisition, takeover or insolvency provided the new contractor fulfils criteria for qualitative selection initially established and that this does not entail other substantial modification to the contract.
 - Where there is a change of contractor on foot of an unequivocal review clause.
 - Where the value of the modification does not exceed the relevant EU thresholds and does not exceed 10% (services/supplies) or 15% (works) of the initial contract value.
188. It is recommended that contracting authorities seek legal advice when modifying contracts based on any of the safe harbours set out in Regulation 72.

eINVOICING

189. eInvoicing (electronic invoicing) is the paperless transfer of invoices between two parties. eInvoicing Ireland is responsible for facilitating public service bodies in becoming compliant with European Directive 2014/55/EU (this Directive was transposed into Irish law by S.I. No. 258/2019). Coordinating the standards based, sector-led approach to eInvoicing, the programme is governed by a Steering Committee of senior management representatives from Health, Education, Central and Local Government, the OGP and the OGCI. eInvoicing Ireland engages with public buyers, suppliers and service providers to facilitate compliance with the Directive.
190. This Directive requires all public service bodies to be able to receive and process electronic invoices which comply with the European standard but does not prescribe how eInvoices should be sent. The Government has chosen the PEPPOL eDelivery network for transmission of eInvoices in accordance with the European Standard. The OGP eInvoicing and PEPPOL framework allows public service bodies access services and solutions which comply with the eInvoicing Directive and the national eInvoicing approach.
191. The Directive has created impetus for the ongoing digital transformation of public procurement across Europe and goes hand in hand with sustainable procurement and the green agenda. For further information in relation to eInvoicing please see [here](#).

CONTRACTING TERMINATION

192. The 2016 Regulations require contracting authorities to include provisions in all contracts that allow them to terminate the contract in the following circumstances:
- The contract has been subject to substantial modification that would have required a new procurement procedure.
 - When if it is discovered after contract award that the contractor should have been excluded under the mandatory exclusion provisions, for example, as a result of conviction for corruption.
 - Where the CJEU has declared that there was a serious infringement by the contracting authority of its obligations under the Regulations or the TFEU and accordingly the contract should not have been awarded to the contractor.

VERIFIABLE AUDIT TRAIL

193. Accurate written records (including computer records) are essential in demonstrating that proper ethical standards are observed. Therefore, appropriate records, for example, correspondence (both written and electronic), accounting records, minutes of any meetings and phone calls with suppliers, etc. should be maintained throughout the procurement process. eTenders provides a detailed audit trail of the procurement process from Contract Notice through to award notice and contract management. A checklist for assessing the necessary elements of a Procurement and Contract File is provided in Appendix VII.



Central Arrangements

FRAMEWORK AGREEMENTS

194. A Framework Agreement is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity. They are in effect umbrella agreements with one or more suppliers or, service providers, that set out rules under which specific purchases (call-off contracts) can be made during the term of the Framework Agreement. The most appropriate use of a Framework Agreement is where a contracting authority has a repeated requirement for goods or services but the exact quantities are unknown.
195. The benefits arising from Framework Agreements include administrative savings from reduced duplication of tendering and improved consistency and enhanced service levels. In line with Circular 16/13, public service bodies are encouraged to promote the use of Framework Agreements established by the OGP or other CPBs in the Local Government, Health, Education and Defence sectors. Government policy provides that public service bodies, where possible, should make use of all such central arrangements. Where public service bodies do not avail of these arrangements, they should be in a position to provide a value-for-money justification for not doing so.
196. The key features of Framework Agreements are:
- Individual contracting authorities or CPBs can establish Framework Agreements.
 - Framework Agreements are suitable for single or multiple suppliers.
 - Framework Agreements provide for the running of mini-competitions between framework members as required.
 - Framework clients (buyers) can directly drawdown goods or services in accordance with the rules set out in the Framework Agreement.
 - The maximum duration is four years (unless in exceptional circumstances justified by the subject of the Framework Agreement).
 - The terms and criteria for awarding contracts under a Framework Agreement must be published at the outset and must not change.
197. The obligation to publish a Contract Notice in the OJEU extends only to the award of the Framework Agreement itself and does not apply to the award of specific contracts under the Framework. However, in line with Circular 05/2023, contracting authorities are required to publish contract award information for all procurements over €25,000 (exclusive of VAT), including any contract awarded under a Framework Agreement, on the eTenders website on completion of the award whether the procurement was advertised on eTenders or not (for example, via email). This is a separate step to publishing on the OJEU aimed at facilitating measurement of SME participation in public procurement.
198. Contracts awarded under a Framework Agreement may have a completion date after the end of the Framework. It is important, however, that any such overhang should not act to distort the market.
199. When a Framework Agreement is being established on behalf of a group of contracting authorities by a CPB, the Framework Agreement must clearly indicate which contracting authorities are party to it. This can be done either by listing the contracting authorities in the Contract Notice or Framework Agreement documentation or describing them in a way that makes the scope and range of the Framework clear to market operators.
200. Although it is possible to use any of the five main competitive procedures when establishing a Framework Agreement, in practice the Open and Restricted Procedures are more commonly used. This is because Framework Agreements are generally more suited to the procurement of straightforward commodity and non-complex purchases. Framework Agreements may also be used for procurement below the EU thresholds.
201. Call-off contracts from an established Framework Agreement can be awarded by mini-competition or direct drawdown.
202. Direct drawdowns (awards made directly without reopening a competition among framework members) can be made based on objective and transparent procedures clearly set out in the Framework Agreement. For example, a contracting authority may opt to use a **cascade approach** for call-off where a contract is always offered first to the first ranked tenderer at the framework award stage and, if this party is not in a position to perform the contract it is then offered to the second ranked tenderer and so on. Alternatively the award of contract may **rotate** between framework members in a pre-determined order.

203. Mini-competitions involve inviting all framework members to participate. The contracting authority may use the option of a mini-competition where not all terms governing supply have been set out in the Framework Agreement. This allows the specification set-out in the Framework RFT to be more precisely formulated. This is still subject to the principle that the parties may under no circumstances make substantial amendments to the terms laid down in the Framework Agreement. Award Criteria and weightings (or weighting ranges) must be clearly stated in the documents sent to framework members in relation to a mini-competition. Mini-competitions can be fully managed on eTenders. All framework members capable of performing the contract must be invited to participate in a mini-competition. Contracting authorities must fix a time limit for submission of tenders long enough to allow tenders to be submitted. Tenders must be submitted in writing and shall not be opened until the timeframe for reply stipulated in the supplemental request for tenders (SRFT) has expired. The contracting authority shall award the mini-competition contract to the best tender on the basis of the Award Criteria specified in the procurement documents for the Framework Agreement.

eCATALOGUES

204. eCatalogues are expressly permitted by the 2016 Regulations. Contracting authorities can seek tenders in ecatalogue form or for a tender to include ecatalogues, provided this is made clear in a contract notice. The notice must specify the required technical format, equipment, and technical connection arrangements and specifications for the catalogue connection requirements, etc. Contracting authorities can seek tenders in the form of catalogues but these should not be a supplier's general catalogue. The catalogue must be adapted to the contracting authority's requirement.
205. Where a Framework Agreement has been established following the submission of ecatalogues, a contracting authority may, at mini-competition stage, allow the mini-competition to take place on the basis of an updated catalogue adapted to the requirements of the contract. The response time should be adequate to allow the supplier to respond.
206. eCatalogues may also be used under DPS.

DYNAMIC PURCHASING SYSTEMS

207. A DPS may be established to purchase commonly used goods, services or works generally available on the market. It is not suitable for one-off, bespoke and/or highly complex requirements. Contracting authorities, including CPBs, may set up a DPS. The DPS should be set up for identified requirements, which may be divided into categories of goods, services or works.
208. A DPS can streamline procurement for both suppliers and contracting authorities. Suppliers do not have to demonstrate suitability and capability every time they compete for a contract off a DPS. For contracting authorities, the award of individual tenders can be quicker than under some other procedures. The DPS is more flexible in some respects than the use of Framework Agreements, particularly as suppliers may apply to join it at any time during its period of validity. Dynamic participation means that suppliers, once on a DPS, may submit offers for each contract awarded under a DPS. As each contract is a separate procurement, suppliers can submit different offers each time.

SETTING UP A DPS

209. The 2016 Regulations resulted in the simplification and streamlining of the rules around the use of DPS. A contracting authority must publish a Contract Notice in the OJEU to make known its intentions to establish a DPS with suppliers allowed at least 30 days to respond. As with other procedures, contracting authorities may use a PIN to make known its intention and if reduced time limits may be applicable.
210. In common with other two-stage procedures, the initial set-up phase covers the assessment of Exclusion Grounds and Selection Criteria. All suppliers who pass this assessment must be admitted to the DPS. Suppliers can also apply to join the DPS at any point during the DPS' lifetime.

211. The Contract Notice must make it clear that a DPS is involved. The procurement documents must specify the nature of the DPS requirements, the approximate quantities or values envisaged, provide all information tenderers will need about the DPS and how it operates. The period of validity of the DPS must be stated on the Contract Notice. This period can be later amended (extended, shortened, terminated) subject to notification on the relevant OJEU standard form. This provides useful flexibility if the contracting authority's circumstances change or because of developments in technology or changes in the market.
212. The contracting authority must evaluate tenderers' requests to join the DPS within 10 working days of receipt of these responses. This may be extended to 15 days where justified, for example, by the need to examine documents or to verify whether the Selection Criteria have been met. Contracting authorities must ensure participants have unrestricted and full access to all the procurement documents as long as the DPS is in operation.

AWARDING FROM A DPS

213. Under a DPS, individual contracts are awarded at the second stage of the procurement process. The Award Criteria for the award of individual contracts must be set out in the original Contract Notice advertising the DPS. These criteria may be formulated more precisely for specific contracts. The minimum timescale for return of tender is 10 days. Where the contracting authority is a subcentral body, this time limit can be reduced by mutual agreement with all the suppliers in the relevant DPS category. The contracting authority may choose to require that tenders for a specific contract include ecatalogues, which should be adapted to the specific requirement. For award of contracts from a DPS, there is no obligation to undertake a standstill period, although there may be some benefits in doing so.
214. Contracting authorities can at any stage during the life of the DPS ask participants to provide a new or updated ESPD within five days of when the contracting authority makes a request.
215. There is a requirement to publish Contract Award Notice within 30 days of award for specific contracts awarded under the DPS. However, contracting authorities can choose to group DPS Contract Award Notices on a quarterly basis, which must be sent within 30 days after the end of each quarter.



Monitoring and Reporting

MEMBER STATES

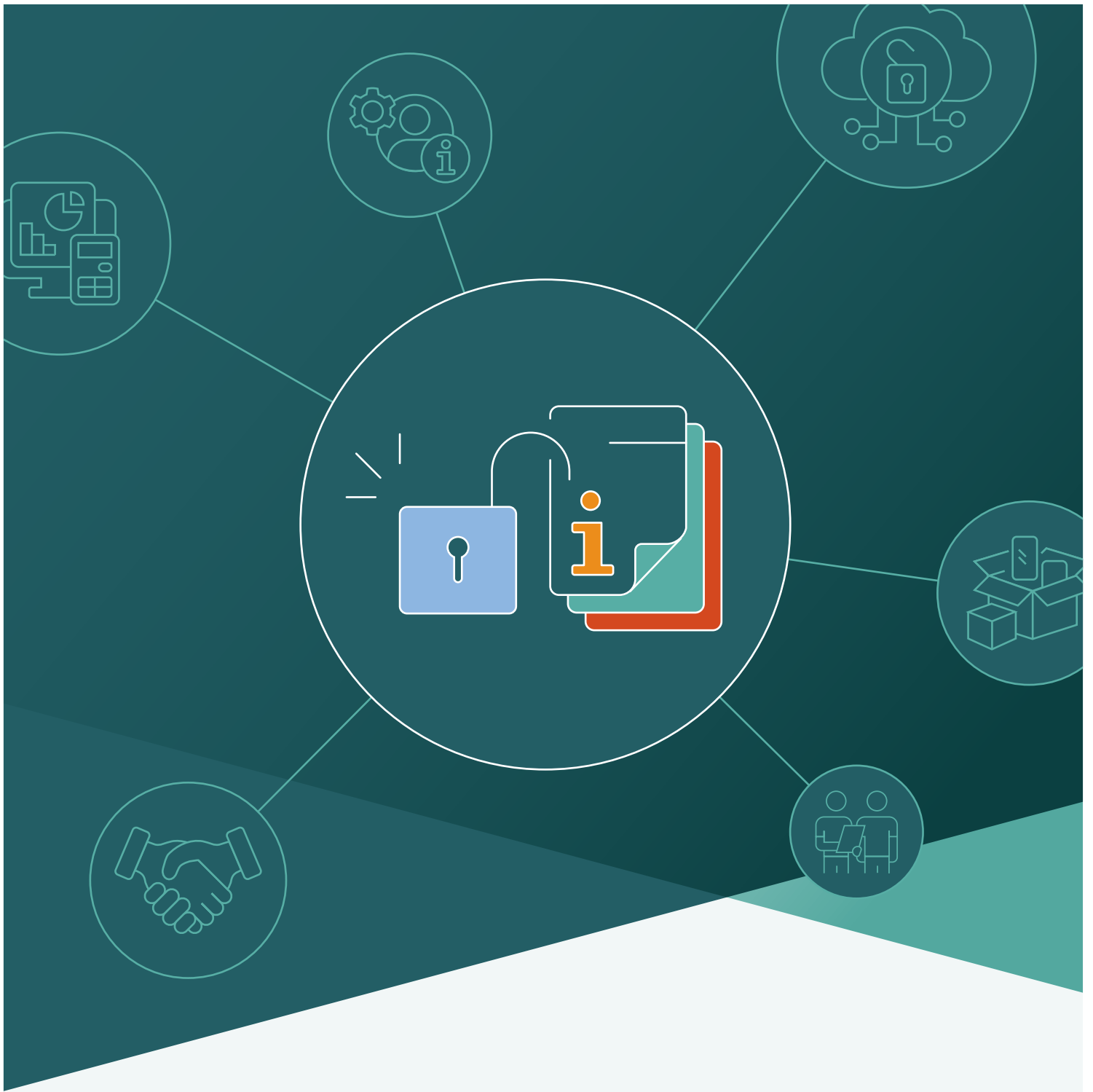
216. The EU Directives include monitoring and reporting arrangements aimed at improving the efficacy and uniform application of EU law in the field of public procurement. The State is required to submit to the European Commission a monitoring report every three years covering, where applicable:
- Information on the most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the procurement rules.
 - The level of SME participation in public procurement.
 - The prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.
 - A statistical report for above threshold contracts indicating an estimation of the aggregated total value of such procurement during the period concerned based on data available under national publication requirements or on sample-based estimates.
 - Information on their institutional organisation related to the implementation, monitoring and enforcement of the Directives, as well as on national initiatives taken to provide guidance on or assist in implementation of EU rules on public procurement, or to respond to challenges confronting the implementation of those rules.
217. The European Commission regularly issue a report on the implementation and best practices of national procurement policies in the internal market, based on [Member States' Reports](#).

CONTRACTING AUTHORITIES

218. Contracting authorities should consult the Public Spending Code and Public Financial Procedures in relation to implementation and post implementation of project management.
219. In relation to contracts above €25,000 (exclusive of VAT) awarded without a competitive process, Circular 40/02 requires Government Departments to send an Annual Report signed by the Accounting Officer to the Comptroller and Auditor General explaining why a competitive process was not used. A template for the Annual Report is set out in Appendix A of Circular 40/02. The Policy Unit in the OGP should also be copied with this report (email: returns@ogp.gov.ie).

220. Contracting authorities are obliged to maintain documentation, for at least three years from the date of the award of a contract, to record the progress of all procurement procedures, whether or not they are conducted by electronic means, and to justify taken at all stages of the procurement procedure, including the following:
- Communications with tenderers and internal deliberations.
 - Preparation of the procurement documents.
 - Dialogue or negotiations, if any.
 - Selection and award of the contract.
221. Contracting authorities (subject to EU and national law obligations) are required, at least for the duration of the contract, to keep copies of, and grant access to, all concluded contracts with a value equal to or greater than:
- €1,000,000 in the case of goods and service contracts.
 - €10,000,000 in the case of public works contracts.
222. Regulation 84 of the 2016 Regulations requires all contracting authorities to prepare a written report for every above threshold contract, Framework Agreement (other than mini-competitions), and on the establishment of every DPS. This report should be lodged in the project file and must contain the following information:
- The name of the contracting authorities.
 - The subject matter and value of the contract, Framework Agreement or DPS.
 - The results of the selection stage, that is the names of the successful candidates and reasons provided for selection, the names of unsuccessful candidates and reasons for non-selection.
 - The reasons for rejecting abnormally low tenders.
 - The name of the successful tenderer and the reasons why the tender was selected.
 - The name(s) of subcontractors and the share of the contract to be sub-contracted.
 - Justification, where appropriate, for the use of the Competitive Dialogue/Competitive Procedure with Negotiation.
 - For Negotiated Procedures without Prior Publication the circumstances which justify the use of those procedures.
 - The reasons for not awarding a contract or a Framework, or to establish a DPS.

- An explanation for not using an electronic submission.
 - Measures taken to address potential conflicts of interest of the evaluators.
 - An indication of the main reasons why the contracting authority considers there to be a justified case for requiring turnover there is greater than the standard permitted maximum of twice the estimated contract value.
 - The main reasons for the decision of the contracting authority not to subdivide the requirement into lots.
223. To the extent that the Contract Award Notice contains the information required under this Regulation, a contracting authority may refer to that notice.
224. Contracting authorities are required to send a copy of the above written report to the Minister for PENDING if requested to do so. The report may also be communicated to the European Commission at its request.
225. Contracting authorities are also required to send the Minister for PENDING a statistical report containing such information as the Minister may from time to time request in respect of procurement covered by the 2016 Regulations. This report shall be forwarded to the European Commission by the Minister every three years and shall include an estimate of the aggregate value of public procurement for the period to which the report relates.



Freedom of Information

226. Bodies subject to Freedom of Information legislation are required to provide the following details in relation to public procurement under the [Model Publication Scheme](#), published in July 2016:

- Procurement policies.
- A link to all current tender competitions on the eTenders website.
- Public contracts awarded including contract type, contractor, value, award date, duration and brief description (tabular format) over €25,000 (exclusive of VAT) for both ICT and other contracts.

227. This requirement does not extend to contracting entities operating under the Utilities Directive. In the case of those public service bodies the Utilities Directive provides that contracting entities should publish on eTenders including the indicative value, the duration of the contract and the winner.

228. Freedom of Information legislation applies to a wide range of public service bodies and information may be requested on records relating to a tendering procedure of a contracting authority covered by the Act. Certain records may be exempt from the provisions of the Act on various grounds including confidentiality, personal information or commercial sensitivity. Tenderers are normally requested to indicate, with supporting reasons, any information included within their tenders which they wish to be regarded as confidential. A contracting authority's FOI Decision Maker may consult with a tenderer before deciding on whether to disclose such information on the FOI request. However, no category of tender related records is subject to either release or exemption as a class. Therefore, each record must be examined on its own merit. To reduce the incidence of FOI requests, contracting authorities should endeavour to always provide a full objective assessment of the comparative strengths and weaknesses of tenders having due regard to commercial sensitivity. Further guidance on these exemptions and appropriate consultation procedures are available on the FOI Central Policy Unit's website. A general summary of the Information Commissioner's views on the treatment of tender-related records is set out in Appendix VIII.



Contacts

229. The OGP has a dedicated service delivery team committed to providing a user-friendly, high quality service.
230. All queries should be directed by telephone or email to the OGP Support Helpdesk. Where necessary the Helpdesk will liaise with the appropriate business unit within the OGP to ensure a timely response to all queries. Office hours are from 9:15 am to 5:15 pm Monday to Friday. The office is open all year except public holidays.
231. The contact details for the OGP Support Helpdesk are:
- Telephone support is available by calling 01 773 8000 during office hours. Calls received out-of-office hours will be addressed on the next working day.
 - Email support@ogp.gov.ie with queries. All queries and responses will be issued within office hours. Emails submitted outside of office hours will be addressed on the next working day. For Brexit-related queries, please email Brexit@ogp.gov.ie.
232. All customer queries relating to technical queries about the eTenders website should be directed to European Dynamics who are available to provide assistance and support via telephone and email services. Office hours are from 9:00 am to 5:00 pm Monday to Friday.
- Telephone support is available during office hours on +353 81 8001459.
 - Email support is available during office hours. Requests should be emailed to irish-eproc-helpdesk@eurodyn.com.
233. Visit www.ogp.gov.ie for the most relevant and up-to-date information on current and upcoming arrangements, general guidance and FAQs.



Glossary of New Terms

Circular Economy

The circular economy aims to keep materials, components, and products in use in the economy for as long as possible.

Circular Public Procurement

Circular public procurement is the process by which contracting authorities purchase goods, services or works that seek to contribute to closed energy and material loops within supply chains, whilst minimising, and in the best case avoiding, negative environmental impacts and waste creation across their whole lifecycle.

Green Public Procurement (GPP)

Green Public Procurement (GPP) can be defined as a process whereby public and semi-public authorities meet their needs for goods, services, works and utilities by choosing solutions that have a reduced impact on the environment throughout their lifecycle, as compared to alternative products/solutions.

Lifecycle Costing

Lifecycle costing (LCC) allows a contracting authority to calculate all of the costs that will be incurred during the lifetime of a good, service or works. In addition to the purchase price and associated costs of, for example, delivery and installation, it also includes operating costs such as energy, fuel, spares and maintenance, and the end-of-life costs such as decommissioning and disposal. The method of calculating such costs must be objectively verifiable and transparent.

National Threshold

The national financial thresholds for the procurement of goods, services and works, above which contracting authorities are required to publish a contract notice are available [here](#).

Sustainable Public Procurement

Sustainable Public Procurement (SPP) can be defined as a 'process whereby public organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole lifecycle basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst significantly reducing negative impacts on the environment'.



Frequently Asked Questions

What are the Procurement Directives?

The three Directives are:

- Directive 2014/24/EU on Public Procurement.
- Directive 2014/25 on Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors.
- Directive 2014/23/EU on the Award of Concession Contracts.

The Directives were transposed into Irish Law in 2016 and 2017 by way of the following Regulations:

- S.I. No. 284/2016 EU (Award of Public Authority Contracts) Regulations 2016.
- S.I. No. 286/2016 EU (Award of Contracts by Utility Undertakings Regulations) 2016.
- S.I. No. 203/2017 EU (Award of Concession Contracts) Regulations 2017.

Are there any other Directives which are relevant?

Another relevant directive is the eInvoicing Directive 2014/55/EU. eInvoicing is the paperless transfer of invoices between two parties. eInvoicing Ireland is responsible for facilitating public service bodies in becoming compliant with Directive 2014/55/EU (this Directive was transposed into Irish law by S.I. No. 258/2019).

Are there any exemptions from the 2016 Regulations?

The vast majority of public contracts above the EU thresholds are subject to the provisions of the 2016 Regulations. However, certain express exclusions to the procurement rules are specified in the Regulations as set out below:

- public contracts and design contests for the principal purpose of permitting the contracting authorities to provide or exploit public communications networks or to provide to the public one or more electronic communications services.
- the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable.
- property or any interest in or right over such property.
- the acquisition, development, production or co-production of programme material intended for audio-visual media services or radio media services, that are awarded by audio-visual or radio media service providers, or contracts for broadcasting time or programme provision that are awarded to audio-visual or radio media service providers.
- arbitration and conciliation services.
- certain legal services namely legal representation of a client by a lawyer in (i) an arbitration or conciliation or (ii) judicial proceedings; legal advice given in preparation of any of the foregoing proceedings or where there is a tangible indication that the matter to which the advice relates will become the subject of such proceedings; certain legal services provided by trustees or appointed guardians; and document certification and authentication services provide by notaries.
- financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC, central bank services or operations conducted with the European Financial Stability Facility and the European Stability Mechanism.
- loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments.
- employment contracts.
- certain civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations.
- public passenger transport services by rail or metro.
- certain political campaign services awarded by a political party in the context of an election campaign.
- public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision compatible with the Treaty of the Functioning of the European Union.
- research and development services under certain conditions specified in Regulation 14 of the 2016 Regulations.

It should be noted that concession contracts (governed by Directive 2014/23/EU), contracts awarded by public or private utility entities in connection with their utility activities (governed by Directive 2014/25/EU) and certain defence and security contracts (governed by Directive 2009/81/EC) are subject to separate procurement regimes which are outside the scope of these guidelines.

What are the rules in relation to public contracts between entities within the public sector?

The general rule is that public contracts between two or more public service bodies are still subject to the procurement rules set out in the 2016 Regulations in the normal way. By way of exception to this principle, CJEU case law has created two limited exceptions where public contracts between public service bodies may fall outside the public procurement rules.

Regulation 12 of the 2016 Regulations codifies the situations where public contracts between public service bodies fall outside the scope of the 2016 Regulations. There are two types of exempted public-public co-operation: vertical co-operation (commonly known as the In House Exception) and horizontal co-operation (commonly known as the Hamburg exception). It is recommended that contracting authorities obtain legal advice when seeking to rely on one of the exceptions set out in Regulation 12.

The 2016 Regulations provide that certain types of vertical arrangements between public service bodies fall outside the Regulations where the following conditions are fulfilled:

- the contracting authority exercises over the legal person concerned a control similar to that which it exercises over its own departments;
- more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and
- there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person

A contracting authority will exercise the required level of control where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person, or the control is exercised by another legal person, which is itself controlled in the same way by the contracting authority.

Regulation 12 also permits reverse In-House where the controlled company (which is a contracting authority in its own right) awards contracts to its parent and any other company controlled by the same parent, as long as there is no direct private capital participation in the legal person being awarded the public contract.

- Horizontal Co-operation: Hamburg Exception.

The 2016 Regulations also provide that certain types of horizontal arrangements fall outside the Regulations where the following conditions are met:

- the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that the public services they have to perform are provided with a view to achieving objectives they have in common.
- the implementation of that co-operation is governed solely by considerations relating to the public interest.
- the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.

What is eTenders?

eTenders (www.etenders.gov.ie) is Ireland's free-to-use national procurement portal. The OGP manages the portal and is responsible for setting policy on its content and functionality, with the day-to-day management, maintenance and development outsourced to an external provider. eTenders serves as a central facility for all contracting authorities to advertise public procurement opportunities and award notices, both nationally and in OJEU. eTenders can be used by the wider public sector including commercial and non-commercial semi-state bodies. Publicly funded voluntary and community groups can also use the platform for their procurements. There is no charge to contracting authorities or suppliers for use of eTenders.

eTenders allows contracting authorities complete OJEU notices which are then forwarded automatically to the OJEU. Both above and below threshold procurement opportunities can be advertised on eTenders, in the form of Prior Information Notices, Contract Notices and Contract Award Notices. eTenders also supports the provision of associated tender documents for download. Other functionality includes:

- a Q&A module to facilitate online clarifications of published tender documents.
- online submission of tenders.
- user and notice management facilities for contracting authorities.
- email alerts and response management facilities for suppliers.
- notice search and help functions.

What is eCertis?

eCertis is an online platform provided by the EU that helps users identify and recognise the certificates and proofs most commonly requested in relation to procurement procedures in different Member States. For example, a European company wishing to participate in a public procurement procedure, or a contracting authority that has to evaluate bids received from other Member States, can use eCertis to help understand what evidence is requested or provided by the other party. Contracting authorities in Ireland have had recourse to eCertis since 2018. Member States are obliged to keep the information provided on eCertis up-to-date.

How do I prepare a Request for Tender?

Template RFTs and contract documents can be found on eTenders for use in an Open Procedure. They should be used for all routine, non-bespoke and low to medium risk procurements. For bespoke procurements, or if the contracting authority has any concerns regarding any aspect of the procurement process or documentation, legal or other appropriate advice should be sought.

How do I publish in the OJEU?

Contracting authorities must publish their notices online via www.etenders.gov.ie or the EU public procurement website www.simap.europa.eu. There is guidance for users in completing online publication on both websites. eTenders has the functionality to allow contracting authorities to publish notices on the platform that will then be sent to the OJEU automatically.

Is publication of a Prior Information Notice (PIN) in the OJEU mandatory?

No, under the 2016 Regulations publication of a PIN is not mandatory. Publication is encouraged as an aid to transparency and as a means of enabling suppliers and service providers to prepare in advance to tender for upcoming contracts. Contracting authorities who publish a PIN with the required amount of information can avail of shortened minimum times for submitting expressions of interest or tenders.

Why is it important to get a specification right?

A poor specification can result in:

- non-compliance and potential challenge.
- no response from the market.
- poor value for money.
- buying the wrong thing or paying too much for the right one.
- having to re-do the procurement.
- inability to realise benefits.
- poor performance and difficulties in contract management.

What rules apply to the procurement of works and works-related services?

The 2016 Regulations apply to above threshold works procurements. For all works and works-related services (above and below the relevant thresholds) contracting authorities should consult the Capital Works Management Framework (CWMF). The CWMF is a structure that has been developed to deliver the Government's objectives in relation to public service construction procurement reform. The CWMF is for the use by contracting authorities involved in the expenditure of public funds on construction projects and related consultancy services. It includes a range of standard template documents and guidance material defining procedures to be followed for the procurement of works contractors and service providers such as architects, engineers, quantity surveyors, etc.

What remedies are available to suppliers if a contracting authority were found to have breached the 2016 Regulations?

If a court finds that the 2016 Regulations have been breached, it may:

- set aside, vary or affirm a decision of the contracting authority.
- declare the contract ineffective, impose alternative penalties on a contracting authority and make any necessary consequential orders.
- make an interlocutory order correcting an alleged infringement or preventing further damage.
- set aside any discriminatory, technical, economic or financial specifications in any of the procurement documents.
- suspend the operation of a decision or contract.

In addition, a tenderer may claim damages for its losses resulting from the breach.

What are the time limits for an unsuccessful tenderer to bring a claim?

The time limit for unsuccessful tenderers to bring a claim differ depending on whether their claim relates to a below threshold or above EU threshold procurement. For above EU threshold procurements, the rules in the Remedies Regulations and Order 84A of the Rules of the Superior Courts apply. An unsuccessful tenderer can bring a claim within 30 days from the day on which the tenderer first knew or ought to have known that grounds for starting the proceedings had arisen. The Court has a discretion to extend this where there is a good reason for doing so. Any claim for a declaration of ineffectiveness is required to be brought within the earlier of (i) 30 days after issue of an award letter to the unsuccessful tenderer, (ii) 30 days after the publication of a Contract Award Notice, or (iii) six months from the date of contract award.

For below EU threshold procurements, and contracts which otherwise fall outside of the Remedies Regulations, the time limits in the Remedies Regulations do not apply. These actions can be brought by way of normal judicial review under Order 84 of the Rules of the Superior Courts. These applications are to be made within three months from the date when the grounds for the application first arose.

What is the CPV?

The Common Procurement Vocabulary (CPV) is a detailed system of codes for describing goods, services and works to be advertised in the OJEU. It is available on www.simap.europa.eu.

What is the GPA?

The Government Procurement Agreement (GPA) is a formal agreement concluded by a number of Member States of the World Trade Organisation to observe an open and non-discriminatory public procurement policy and practice among its signatories. The EU and its Member States, as well as the major economies of the United States, Canada, Norway, Switzerland, Japan, Korea, Hong Kong (China) and Singapore are among the signatories giving a significant global dimension to the public procurement regime. Under the GPA, signatories undertake to give equal treatment and equal opportunity to suppliers and service providers from other signatory States.

What is the Tender Advisory Service?

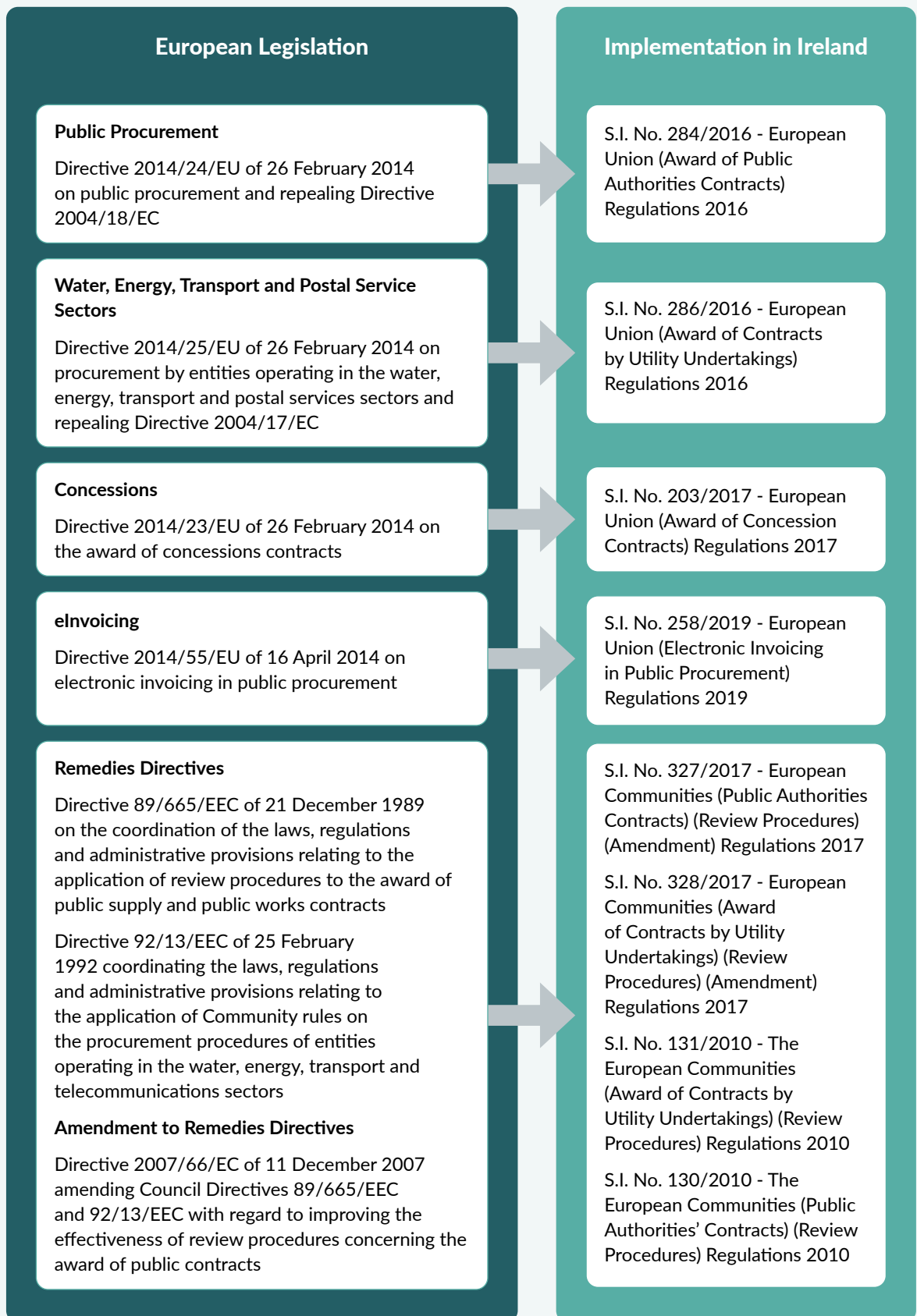
The Tender Advisory Service (TAS) was established by the OGP, in consultation with SME stakeholders, to address concerns in relation to perceived barriers for SMEs in competing for tender opportunities. TAS is an informal outlet, provided free of charge, to suppliers in order to raise concerns in relation to a live tender process carried out by the OGP or other public service contracting authorities.

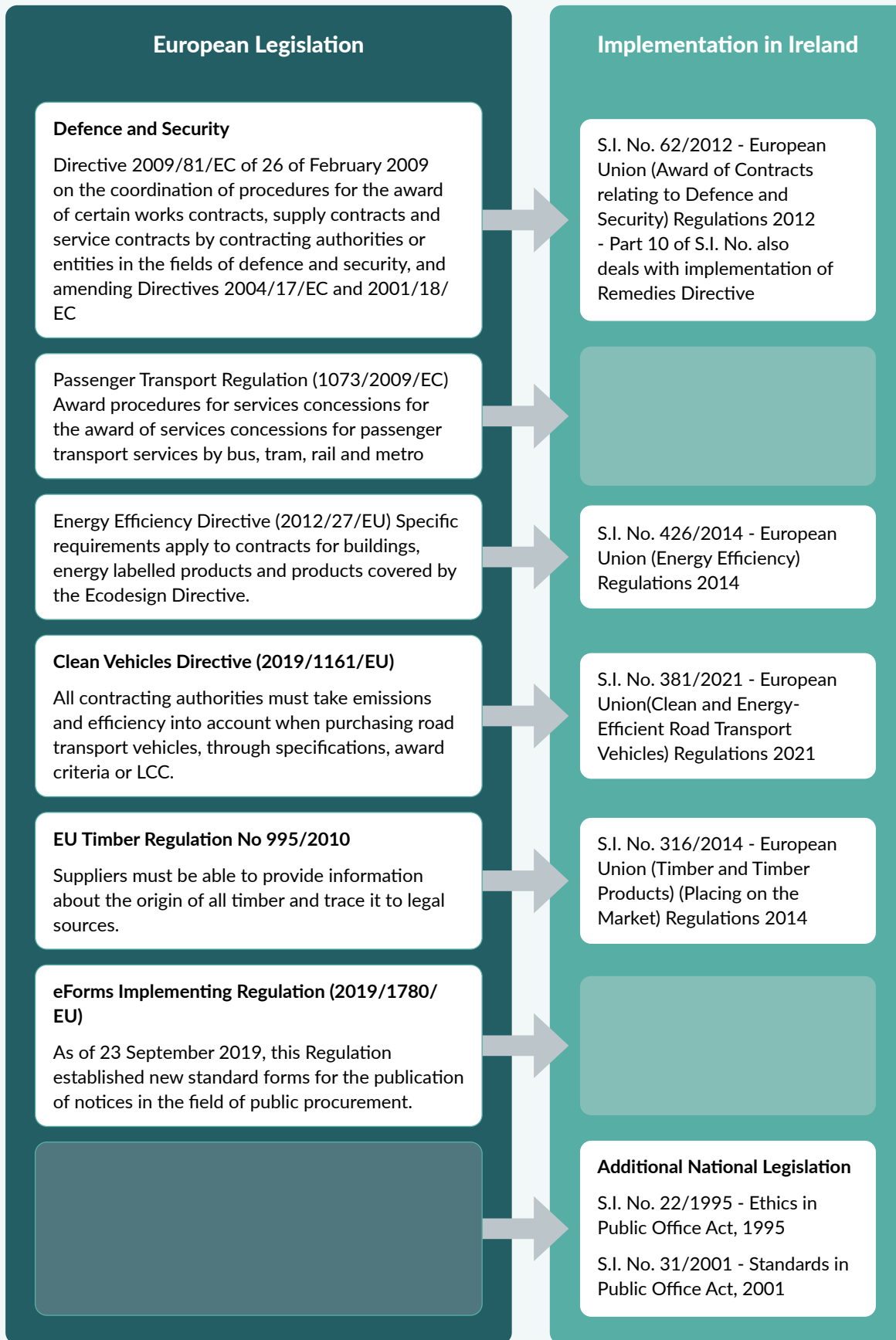
TAS can be used by individuals and companies in the following circumstances:

- where a Request for Tender (RFT) has been published.
- the supplier must have registered an interest in a specific live tender process.
- the supplier has sought answers to their queries through the normal clarification process with the contracting authority.
- where the supplier is not satisfied with the response from the contracting authority.

A TAS query must be submitted after the clarification process has been utilised and no less than six days before closing date for receipt of tenders to allow for concerns/issues to be fully communicated and processed by TAS. The service has been developed to assist suppliers and in no way impedes them from pursuing their rights formally under the remedies legislation. Further information is available [Tender Advisory Service](#).

APPENDIX I: Key Resources





Relevant Circulars

[DPENDR Circular 05/2023](#): Initiatives to assist SMEs in Public Procurement 2023

[DPER Circular 20/2019](#): Promoting the use of Environmental and Social Considerations in Public Procurement

[DPER Circular 24/2019](#): Update of the Public Spending Code: Guidelines for the use of Public Private Partnerships (PPPs) and Related Rules

[DPER Circular 08/2018](#): Construction Procurement Reform - amendments to the Capital Works Management Framework to reflect the introduction of Sectoral Employment Orders in the construction sector and amend the Comparative Cost of Tender exercise

[DPER Circular 01/2016](#): Construction Procurement - revision of arrangements for the procurement of public works projects

[DPER Circular 02/2016](#): Arrangements for Digital and ICT-related Expenditure in the Civil and Public Service

[DPER Circular 10/2014](#): Initiatives to Assist SMEs in Public Procurement 2014

[DPER Circular 13/2013](#): The Public Spending Code: Expenditure Planning, Appraisal & Evaluation in the Irish Public Service - Standard Rules & Procedures

[DPER Circular 16/2013](#): Revision of arrangements concerning the use of Central Contracts put in place by the National Procurement Service

[DPER Circular 05/2013](#): Procurement of Legal Services and Managing Legal Costs

[DOF Circular 1/2011](#): Model Tender and Contract Documents for Public Service and Supplies Contracts

[DOF Circular 02/2011](#): Additional Arrangements for ICT Expenditure in the Civil and Public Service

[DOF Circular 40/2002](#): Public Procurement Guidelines - Revision of existing procedures for approval of certain contracts in the Central Government sector

Information Notes

The OGP regularly publishes policy information notes. Information notes are subject to periodic review and amendment with the most up-to-date version published on www.ogp.gov.ie.

These notes are not intended as a substitute for legal advice or legal interpretation of Irish or EU law on public procurement.

Russian Sanctions August 2022

Brexit and Public Procurement – Updated July 2021

Covid-19 (Coronavirus) and Public Procurement – Updated September 2021

Corporate Procurement Plan – December 2020

European Single Procurement Document

General Data Protection Regulation – May 2018

Procurement Officer Role – January 2019

Social Considerations in Public Procurement – December 2018

Useful Websites

[Irish Statute Book](#)

[Irish Government website](#)

[Office of Government Procurement](#)

[Construction Procurement](#)

[eTenders](#)

[Office of the Government Chief Information Officer \(OGCIO\)](#)

[Department of the Environment, Climate and Communications](#)

[Department of Enterprise, Trade and Employment](#)

[Office of the Comptroller and Auditor General](#)

[Environmental Protection Agency](#)

[State Claims Agency](#)

[Freedom of Information](#)

[Office of the Information Commissioner](#)

[Standards in Public Office](#)

[Competition and Consumer Protection Commission](#)

[Supporting SMEs](#)

[Enterprise Ireland](#)

[InterTradeIreland](#)

[Ibec](#)

[ISME](#)

[Irish Human Rights and Equality Commission](#)

[Business and Human Rights](#)

[Organisation for Economic Co-operation and Development \(OECD\)](#)

[The Organisation for Security and Co-operation in Europe \(OSCE\)](#)

[European Commission Public Tendering Rules](#)

[European Commission Public Procurement](#)

[European Commission Social Procurement Guidance and Good Practice](#)

[European Commission Green Public Procurement](#)

[World Trade Organisation and Government Procurement Agreement \(GPA\)](#)

[Procura+ European Sustainable Procurement Network](#)

[European Institute of Public Administration](#)

[Tenders Electronic Daily \(TED\)](#)

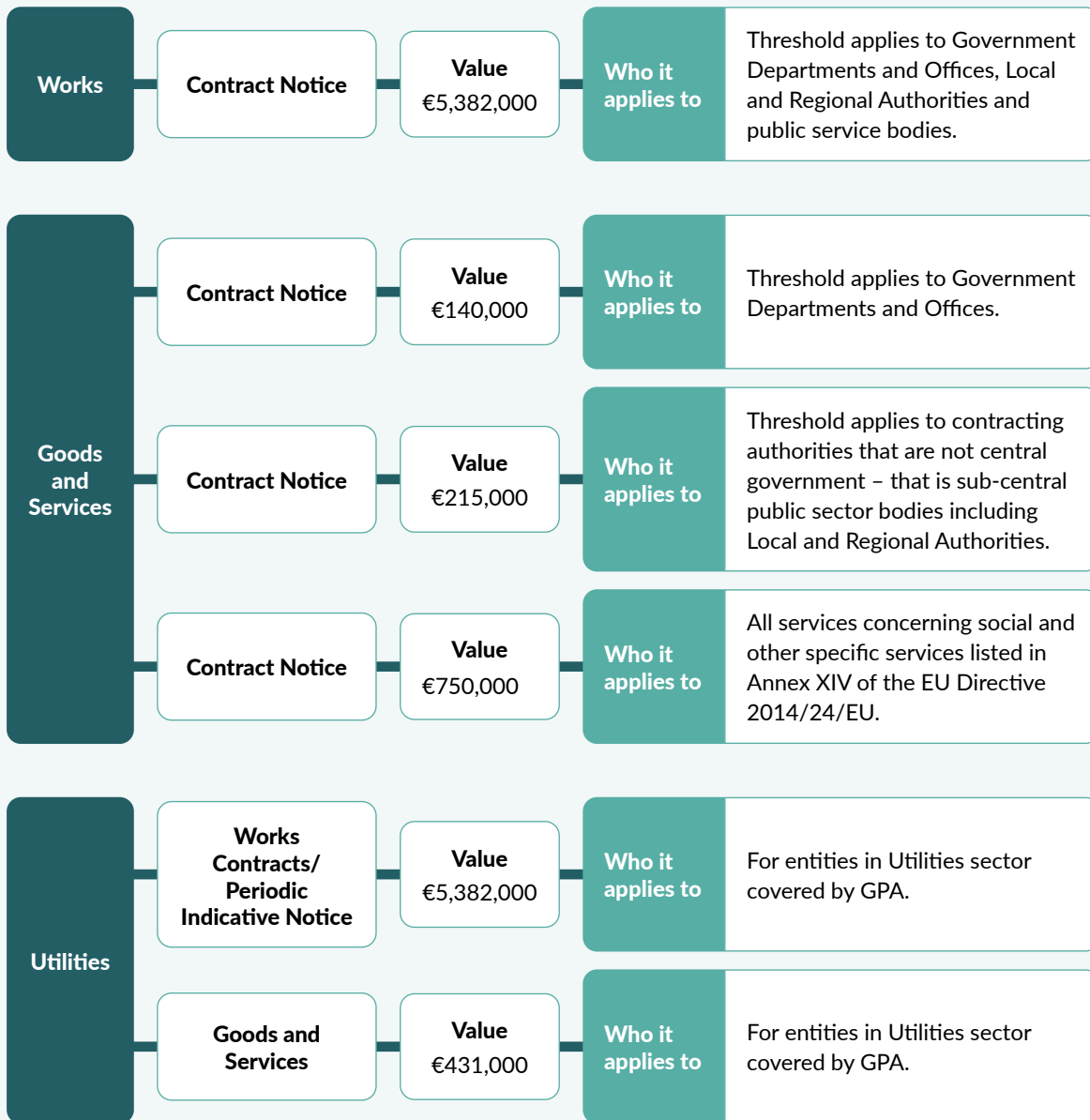
[Standard forms used in European public procurement can be accessed on-line via eNotices](#)

[European Structural and Investment Funds in Ireland](#)

[Case Law - Court of Justice of the EU and General Court](#)

APPENDIX II: EU Thresholds

Thresholds (exclusive of VAT) above which advertising of contracts in the OJEU is obligatory, applicable from 1 January 2022¹:



¹ Thresholds are revised every two years. Full and up to date thresholds are available on the EU public procurement website.

APPENDIX III:

Template Outcome Letters for Below Threshold – Open Competition

Template Outcome Letter A (below threshold)

Note: this letter is not for use in relation to mini-competitions run off a Framework Agreement

Letter to the preferred tenderer

[Company name]

[Address]

RE: Competition ref: [Insert reference]

Competition for [Insert title of Competition]

SUBJECT TO CONTRACT / CONTRACT DENIED

Dear [insert name],

I refer to your company's tender submitted on [date] in respect of the above mentioned competition and I am pleased to inform you that your tender has been identified by the [insert name of contracting authority] as the most economically advantageous.

Please note that no commitment of any kind, contractual or otherwise will exist unless and until a formal written contract has been executed for and on behalf of [insert name of contracting authority]. The identification of your tender as the most economically advantageous does not and will not give rise to any enforceable rights.

The [insert name of contracting authority] may cancel this public procurement competition at any time prior to a formal written contract being executed for and on [his / her / its] behalf.

I wish to take this opportunity to remind you that in line with the terms of the Request for Tenders, [insert appropriate text if additional documentary or other evidence is required in addition to the TCC] your company will be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of your tax status by [insert name of contracting authority].

Yours etc.

Template Outcome Letter B (below threshold)

Notice to unsuccessful tenderer at evaluation stage

[Company name]

[Address]

RE: Competition ref: [Insert reference]
Competition for [Insert title of Competition]

Dear [insert name],

I refer to your company's tender submitted on [date] in respect of the above mentioned competition and I regret to inform you that your tender was not successful on this occasion.

The decision reached by [insert contracting authority] is that the tender received from [insert name of preferred tenderer] is the most economically advantageous tender.

A 'STANDSTILL PERIOD' (AS DEFINED IN THE REMEDIES REGULATIONS) IS NOT APPLICABLE FOR BELOW THRESHOLD PROCUREMENT COMPETITIONS. HOWEVER A CONTRACTING AUTHORITY MAY ELECT TO PROVIDE A PERIOD WITHIN WHICH THE CONTRACT WILL NOT BE EXECUTED. INCLUDE THE FOLLOWING PARAGRAPH IF SUCH A PERIOD IS VOLUNTARILY BEING PROVIDED:

Please note that the [insert contracting authority] will not conclude a contract with [insert company name of company identified as successful tenderer] until on or after [date].

The following table sets the characteristics and relative advantages of the successful tenderer as compared with your tender:

Yours etc.

Award Criteria	Maximum marks available	Marks awarded to successful tender	Marks awarded to your tender	Characteristics and Relative advantages of the successful tenderer

APPENDIX IV: Light Touch Regime

While all goods and most services contracts above the relevant thresholds (and in the absence of an express exemption) require the full application of the public procurement rules, the 2016 Regulations allow for a simplified award regime for certain services, notably health, social, educational and cultural services, often referred to as services to the person, to take into account the specific nature of these services.

This simplified regime is often referred to as the Light Touch Regime (LTR). There are 14 broad categories of social and other services to which the light touch regime applies and these are listed below. For more details of the precise services falling within this regime, contracting authorities should refer to Annex XIV of the EU Directive where the relevant CPV codes for these services are set out. The LTR applies to these services for contracts with an estimated value at or above a higher threshold of €750,000. Contracts below this value would typically not attract cross-border interest unless there are concrete indications to the contrary (such as EU financing for cross border projects).

In relation to contracts equal to or greater than €750,000 contracting authorities are required to:

- Publish a Contract Notice or a PIN in the OJEU.
- Publish a Contract Award Notice (or quarterly batches of award notices) in the OJEU.
- Comply with the basic Treaty principles of transparency, equal treatment and non-discrimination.
- Conduct the procurement in conformance with the information provided in the OJEU Contract Notice/PIN regarding any conditions for participation; the time limits for contacting/ responding to the authority; and the award procedure to be applied.
- Apply the rules in relation to Mandatory and Discretionary Exclusion Grounds.
- Use time limits for the submission of tenders which are proportionate and reasonable.
- The contracting authority may take account of relevant considerations including the need to ensure quality, continuity, accessibility, affordability and comprehensiveness of the services; and/or the specific needs of different categories of users such as disadvantaged or vulnerable users.

The contracting authority has the flexibility to use any process or procedure they choose to run the procurement, as long as it respects the other obligations above. There is no requirement to use the standard EU procurement procedures (open, restricted etc.) although contracting authorities can use those procedures if helpful, or tailor those procedures according to their own needs.

Where contracts are below the €750,000 threshold, there is no requirement to advertise in the OJEU or to publish a Contract Award Notice to OJEU. Contracting authorities are encouraged to use a public competitive process to ensure value for money when tendering. The procedure should be fair and impartial and comply with the general principles of EU law.

Services that fall within this category are explicitly listed (with CPV codes) in Annex XIV of Directive 2014/24/EU. The 14 categories of services are:

- Health, social and related services.
- Administrative social, educational, healthcare and cultural.
- Compulsory social security services.
- Benefit services.
- Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services.
- Religious services.
- Hotel and restaurant services.
- Legal services not excluded by Article 10(d) of Directive 2014/24/EU.
- Other administrative services and Government services.
- Provision of services to the community.
- Prison related services, public security and rescue services not excluded by Article 10(b) of Directive 2014/24/EU.
- Investigation and security services.
- International services.
- Postal service.
- Miscellaneous services

APPENDIX V:

OJEU Time Limits in the 2016 Regulations

	If electronic tender permitted	If urgent+	Where pin published*	If sub-central authority**
Open Procedure				
Minimum time limit for receipt of tenders	35 days	30 days	15 days	15 days
Restricted Procedure				
Minimum time limit for requests to participate	30 days	15 days	30 days	30 days
Minimum time limit for tenders	30 days	10 days	10 days	Minimum time limit for tenders to be set by agreement with tenderers. In the absence of agreement 10 days
Minimum time limit for receipt of tenders	25 days			
Minimum time limit for requests to participate		15 days	30 days	
Minimum time limit for tenders		10 days	10 days	
Competitive Procedure with Negotiation and Innovation Partnerships				
Minimum time limit for requests to participate	30 days	15 days	30 days	30 days
Competitive Procedure with Negotiation and Innovation Partnerships				
Minimum time limit for initial tenders	30 days	10 days	10 days	Minimum time limit for tenders to be set by agreement with tenderers.
Minimum time limit for receipt of initial tenders	25 days			
Minimum time limit for tenders		10 days	10 days	

	If electronic tender permitted	If urgent+	Where pin published*	If sub-central authority**
				In the absence of agreement 10 days
Competitive Dialogue				
Minimum time limit for requests to participate tenders 30 days No explicit time limits for submission of initial/subsequent tenders				

See notes below

These are minimum time limits. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities must take account of the complexity of the contract and the time required for drawing up tenders

- + This shorter time limit is allowed where a state of urgency duly substantiated by the contracting authorities renders the minimum impracticable.
- * This shorter time limit is allowed where contracting authorities have published a PIN which was not itself used as a means of calling for competition providing that all of the following conditions are fulfilled:
 - the PIN included all the information required in section I of the PIN notice referred to in the Public Contracts Regulations, insofar as that information was available at the time the prior information notice was published.
 - the PIN was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.
- ** sub-central contracting authorities means all contracting authorities which are not central Government authorities.

APPENDIX VI:

Template Outcome Letters for Above EU Threshold - Open Competition

Regulatory requirements relevant to template outcome letters					
Stage	Template Outcome Letter	Scenario	Description of Recipient's Tender	Relevant Regulatory Requirement(s)	Why and when to use this letter
Selection Stage	1.	The tenderer fails to comply with the rules of the RFT or the tenderer fails to meet the Selection Criteria contained in the RFT before the identification of the preferred tenderer.	Non-Compliant	Regulations 2(3) (a) and 2(4) of the Remedies Regulations	<p>Where a tender is non-compliant as it fails to comply with the requirements of the RFT or if the preferred tenderer has yet to be identified, this letter should issue to inform the tenderer concerned that they have failed to meet the Selection Criteria for example the RFT turnover requirement(s).</p> <p>This letter should issue at the earliest possible opportunity following the contracting authority's decision in respect of the above.</p> <p>Non-compliant tenders should not be brought forward for evaluation.</p>
Evaluation	Evaluation of tenders against Award Criteria set out in RFT				
Post – Evaluation	2.	The preferred tenderer is required to submit any evidence (if required, and unless already submitted to the Contracting Authority) in support of its ESPD response.	Preferred	Regulation 59(9) of the 2016 Regulations	Letter to the preferred tenderer requesting that they submit the Declaration of Personal Circumstances of the Tenderer and documentary evidence as stipulated in the RFT (ESPD) in order to verify that they meet the Selection and Award Criteria.
	3.	The preferred tenderer fails to provide documentation which supports its ESPD response (if requested by Template Outcome Letter 2) or fails to respond to the contracting authority's request for supporting documentation (if requested by Template Outcome Letter 2).	Preferred	Regulation 2(3) (a) and 2(4) of the Remedies Regulations	This letter is for when the preferred tenderer has submitted evidence in response to the contracting authority's request by way of Template Outcome Letter 2 but the evidence fails to meet the criteria set out in the RFT or the tenderer has not submitted the evidence requested by the deadline stipulated in Template Outcome Letter 2.

Stage	Template Outcome Letter	Scenario	Description of Recipient's Tender	Relevant Regulatory Requirement(s)	Why and when to use this letter
Outcome	4.	The tenderer has submitted a non-compliant tender and has previously been notified of same by way of Template Outcome Letter 1.	Non-Compliant	Regulation 55(1) (b) of the 2016 Regulations If the tenderer has not been definitively excluded (Regulation 2(4) of the Remedies Regulations) Regulation 6(2) of the Remedies Regulations may also apply	This letter is to notify an eliminated tenderer (which has previously been notified of its elimination by Template Outcome Letter 1) of the decision to award the contract to the successful tenderer.
	5.	The tenderer submitted a tender which fails to comply with the rules of the RFT (and has not previously been notified of same) and is also to be notified of the outcome of the competition.	Non-Compliant	Regulation 55(1) (b) of the 2016 Regulations Regulation 6(2) of the Remedies Regulations	This letter is for when the selection and award process is carried out simultaneously. This letter should provide the reasons for the rejection of the tenderer's tender.
	6.	Standstill letter to unsuccessful tenderer.	Unsuccessful	Regulation 55(1) (b) of the 2016 Regulations Regulation 6(2) and 6(3) of the Remedies Regulations	This letter is to notify the unsuccessful tenderer they were unsuccessful in the competition and also advising the tenderer of the applicable standstill period. This letter should set out the reasons the tenderer was unsuccessful including their score and the name, score, characteristics and relative advantages of the successful tenderer.
	7.	Standstill letter to successful tenderer.	Successful	Regulation 55(1) (b) of the 2016 Regulations	This letter is to notify the successful tenderer that its tender has been identified as the most economically advantageous and also to advise the tenderer of the relevant standstill period.

Template Outcome Letter 1: Letter to non-compliant tenderer or a tenderer who does not meet the selection criteria (where notification is sent before the award decision is made)

FOR USE IN AN OPEN PROCEDURE

Company name

Address

**RE: Competition ref: [Insert reference]
Competition for [Insert title of Competition]**

Dear (Insert name),

I refer to your company's tender submitted on [date] in respect of the above mentioned competition

[THE TWO SENTENCES BELOW ARE ALTERNATIVES. CHOOSE ONE AND DELETE THE OTHER.]

Your tender was deemed non-compliant with the terms of the Request for Tender (RFT) dated (insert date) for the following reason(s):

OR

Your tender did not meet the Selection Criteria as set out in the Request for Tenders (RFT) dated (Insert date) for the following reason(s):

INSERT THE FOLLOWING:

- i) REASON FOR FAILURE TO QUALIFY**
- ii) THE SPECIFIC SECTION(S) IN THE RFT BEING RELIED UPON AND**
- iii) LIST (IF RELEVANT) ANY DOCUMENTS NOT PRODUCED OR INFORMATION NOT**

PROVIDED IN COMPLIANCE WITH THE SECTION IN THE RFT.

I would like to take this opportunity to thank you for responding to the RFT and wish you success in the future.

Yours etc.

Note 1: AFTER THE AWARD DECISION IS MADE PLEASE SEND Template Outcome Letter 4.

Note 2: PLEASE DELETE AS APPROPRIATE THE TEXT WHICH IS

NOT RELEVANT TO YOUR LETTER.

Template Outcome Letter 2: Letter to the highest ranking tenderer seeking documentary evidence prior to award decision

FOR USE IN AN OPEN PROCEDURE

Company name

Address

RE: Competition ref: [Insert reference]

Competition for [Insert title of Competition]

SUBJECT TO CONTRACT / CONTRACT DENIED

Dear (insert name),

I refer to your company's tender submitted on [date] in respect of the above mentioned competition.

I wish to inform you that, subject to you providing us with (i) evidence sufficient to demonstrate your fulfilment of the Selection Criteria and (ii) the absence of Exclusion Grounds (Declaration as to Personal Circumstance of Tenderer in the form attached at Appendix [insert appendix number] of the RFT) in accordance with the terms of the RFT, your tender has been identified by the [insert name of the contracting authority] as the most economically advantageous.

We now invite you to provide this documentation, as required in part [insert], section [insert] of the Request for Tenders (RFT) dated [insert date]. The documentation should be provided as soon as possible but in any event no later than [insert the date by which the evidence must be produced].

I wish to take this opportunity to remind you that in line with the terms of the Request for Tenders, [insert appropriate text if additional documentary or other evidence is required in addition to the Tax Clearance Certificate] your company will be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of your tax status by [insert name of the contracting authority].

Please note that no commitment of any kind, contractual or otherwise will exist unless and until a formal written contract has been executed for and on behalf of [insert contracting authority]. The provisional identification of your tender as the most economically advantageous does not and will not give rise to any enforceable rights. The [insert contracting authority] may cancel this public procurement competition at any time prior to a formal written contract being executed for and on [his/her/its] behalf.

WHERE THERE IS MORE THAN ONE TENDERER CONCERNED, INCLUDE THE FOLLOWING TWO ADDITIONAL PARAGRAPHS:

Please note, prior to formally awarding the contract, the [insert contracting authority] will impose a standstill period and will not conclude a contract until on or after the standstill period has expired. Details in respect of the applicable standstill period will be provided in due course. Please note that this letter is not a standstill notice and no standstill period has yet commenced.

If we do not receive a satisfactory response to this letter on or before [insert date referred to above], we reserve the right to exclude your tender from further consideration and proceed to the next highest ranked tenderer.

Yours etc.

Template Outcome Letter 3: Letter notifying tenderer who fails to satisfactorily respond to Template Outcome Letter 2

FOR USE IN AN OPEN PROCEDURE

Company name

Address

RE: **Competition ref:** [Insert reference]
 Competition for [Insert title of Competition]

Dear [insert name],

I refer to your company's tender submitted on [date] in respect of the above mentioned competition

THE TWO SENTENCES BELOW ARE ALTERNATIVE. CHOOSE ONE AND DELETE THE OTHER.

I refer to your letter dated [date]. After assessment of the evidence submitted with your letter I regret to inform you that your tender failed to qualify because of:

INSERT THE FOLLOWING:

- i) REASON FOR FAILURE TO QUALIFY**
- ii) THE SPECIFIC SECTION(S) IN THE RFT BEING RELIED UPON AND**
- iii) LIST (IF RELEVANT) ANY DOCUMENTS NOT PRODUCED OR INFORMATION NOT PROVIDED**

IN COMPLIANCE WITH THE SECTION IN THE RFT.

OR

It is noted that you have not furnished a reply to our letter on [insert date] within the time specified and therefore I

regret to inform you that your tender has been excluded from this tender competition.

I would like to take this opportunity to thank you for responding to the RFT and wish you success in the future.

Yours etc.

Note: PLEASE DELETE AS APPROPRIATE THE TEXT WHICH IS NOT RELEVANT TO YOUR LETTER.

Template Outcome Letter 4: Standstill letter to non-compliant tenderer or a tenderer who does not meet the selection criteria and who has previously been notified by Template Outcome Letter 1.

FOR USE IN AN OPEN PROCEDURE

Company name

Address

RE: Competition ref: [Insert reference]
Competition for [Insert title of Competition]

Dear [Insert name],

I refer to your company's tender submitted on [date] in respect of the above mentioned competition and to my letter of the [date] informing you that your tender was not successful on this occasion and setting out the reasons why your tender was not successful. I enclose a copy of my letter for your convenience.

WHERE THE TENDERER HAS BEEN DEFINITELY EXCLUDED WITHIN THE MEANING OF THE REMEDIES REGULATIONS, THE FOLLOWING PARAGRAPH ONLY IS REQUIRED:

The decision reached by [insert contracting authority] is that the tender received from [insert name of preferred tenderer] is the most economically advantageous tender.

WHERE THE TENDERER HAS NOT BEEN DEFINITELY EXCLUDED WITHIN THE MEANING OF THE REMEDIES REGULATIONS, THE FOLLOWING SHOULD ALSO BE INCLUDED:

Please note that the [insert contracting authority] will not conclude a contract with [insert name of preferred tenderer] until after [date]. This standstill notice is issued as required by the Remedies Directive (2007/66/EC) and the implementing Irish Regulations (S.I. No. 130 of 2010 and S.I. No. 192 of 2015 and S.I 327 of 2017).

I would like to take this opportunity to thank you for responding to the RFT and wish you success in the future.

Yours etc.

Template Outcome Letter 5: Letter to non-compliant tenderer and/or tenderers who have not met the selection criteria when the selection and award process are carried out simultaneously

FOR USE IN AN OPEN PROCEDURE

Company name

Address

RE: **Competition ref:** [Insert reference]
 Competition for [Insert title of Competition]

Dear [insert name],

I refer to your company's tender submitted on [date] in respect of the above mentioned competition.

THE TWO SENTENCES BELOW ARE ALTERNATIVE. CHOOSE ONE AND DELETE THE OTHER.

Your tender was deemed non-compliant with the terms of the Request for Tender (RFT) dated [insert date] for the following reason(s):

OR

Your tender did not meet the Selection Criteria as set out in the Request for Tender (RFT) dated [insert date] for the following reason(s):

Insert the following:

- i) reason for failure to qualify**
- ii) the specific section(s) in the RFT being relied upon and**
- iii) list (if relevant) any documents not produced or information not provided in compliance with the section in the RFT.**

The decision reached by [insert name of contracting authority] is that the tender received from [insert name of preferred tenderer] is the most economically advantageous.

Please note that the [insert name of contracting authority] will not conclude a contract with [insert name of preferred tenderer] until after [date]. This standstill notice is issued as required by the Remedies Directive (2007/66/EC) and the implementing Irish Regulations (S.I. No. 130 of 2010 and S.I. No. 192 of 2015 and S.I. No. 327 of 2017).

I would like to take this opportunity to thank you for responding to the RFT and wish you success in the future.

Yours etc.

NOTE: PLEASE DELETE AS APPROPRIATE THE TEXT WHICH IS NOT RELEVANT TO YOUR LETTER.

Template Outcome Letter 6: Standstill notice to unsuccessful tenderer

FOR USE IN AN OPEN PROCEDURE

Company name Address

RE: **Competition ref:** [Insert reference]
Competition for [Insert name of Competition]

Dear [insert name],

I refer to your company's tender submitted on [date] in respect of the above mentioned competition and I regret to inform you that your tender was not successful on this occasion.

The decision reached by [insert contracting authority] is that the tender received from [insert name of preferred tenderer] is the most economically advantageous tender.

Please note that the [insert contracting authority] will not conclude a contract with [insert company name of company identified as successful tenderer] until after [date]. This standstill notice is issued as required by the Remedies Directive (2007/66/EC) and the implementing Irish Regulations (S.I. No. 130 of 2010 and S.I. No. 192 of 2015 and S.I 327 of 2017).

The following table sets out the score obtained by your tender, the score obtained by the successful tenderer in respect of each of the award criteria and the characteristics and relative advantages of the successful tenderer as compared with your tender:

Award Criteria	Maximum marks available	Marks awarded to successful tender	Marks awarded to your tender	Characteristics and Relative advantages of the successful tenderer

Yours etc.

Template Outcome Letter 7: Letter to the successful tenderer

FOR USE IN AN OPEN PROCEDURE

Company name

Address

RE: **Competition reference:** [Insert reference]
 Competition for [Insert name of Competition]

SUBJECT TO CONTRACT / CONTRACT DENIED

Dear [insert name].

I refer to your company's tender submitted on [date] in respect of the above mentioned competition and I am pleased to inform you that your tender has been identified by the [insert contracting authority] as the most economically advantageous.

The [insert name of contracting authority] will not conclude a contract with your company until on or after [date]. This standstill notice is issued as required by the Remedies Directive (2007/66/EC) and the implementing Irish Regulations (S.I. No. 130 of 2010 and S.I. No. 192 of 2015 and S.I. No. 327 of 2017).

Please note that no commitment of any kind, contractual or otherwise will exist unless and until a formal written contract has been executed for and on behalf of [insert name of contracting authority]. The identification of your tender as the most economically advantageous does not and will not give rise to any enforceable rights.

The [insert name of contracting authority] may cancel this public procurement competition at any time prior to a formal written contract being executed for and on [his / her / its] behalf.

Yours etc.

**APPENDIX VII:
CHECKLIST FOR
PROCUREMENT AND
CONTRACT FILE**

Checklist for Procurement and Contract File

- Regulation 84 report (if applicable)
- A request to engage external support or buy goods with reasons justifying decision
- A business case or cost benefit analysis
- All documentation that issues to the market including PIN, Contract Notice and RFT
- All clarifications sent to tenderers/candidates
- The report of the opening of the tenders
- A qualification report and list of candidates meeting the Selection Criteria
- The evaluation report
- The acceptance by senior management of the evaluation team's report
- The winning tender (or quotation)
- Unsuccessful tenders should be archived together with a copy of the RFT, the contract notice and the evaluation report
- The Contract Award Notice
- The award letter and standstill/regret letters to unsuccessful tenderers
- The signed contract
- For Framework Agreements, all correspondence, including orders, relating to individual contracts/ drawdowns - one file should be opened for the Framework Agreement and individual project files set up for each call-off contract established under the Framework
- The project management plan (including risk assessment)
- The minutes of all project management meetings
- All orders to the contract holder for work packages/services
- All requests for payment by the contract holder
- All requests for expenses, supporting documentation and vouched expense claims from the contract holder
- All acceptance notes for deliverables and services
- All correspondence with the contract holder
- The post-implementation review or reviews/reports by third parties

APPENDIX VIII:
DISCLOSURE
OF RECORDS -
INFORMATION
COMMISSIONERS

Summary of the Information Commissioner's views regarding disclosure of records relating to a tender competition given at conclusion of a ruling under Section 34(2)m of the Freedom of Information Act 1997 in Case 98188.

First, public service bodies are obliged to treat all tenders as confidential at least until the time that the contract is awarded.

Second, tender prices may be trade secrets during the currency of a tender competition, but only in exceptional circumstances, would historic prices remain trade secrets. As a general proposition, however, I accept that tender documents which "would reveal detailed information about a company's current pricing strategy" or about otherwise unavailable product information could fall within the scope of Section 27(l)(a) of the FOI Act even following the conclusion of a tender competition.

Third, tender prices generally qualify as commercially sensitive information for the purposes of Sections 27(l)(b) and (c) of the FOI Act. Depending on the circumstances, product information can also be considered commercially sensitive under Section 27(l)(b).

Fourth, when a contract is awarded, successful tender information loses confidentiality with respect to price and the type and quantity of the goods supplied. The public interest also favours the release of such information, but exceptions may arise (see *Telecom Éireann and Mr Mark Henry*, Case Number 98114).

Fifth, other successful tender information which is commercially sensitive (for example, details of the internal organisation of a tenderer's business, analysis of the requirements of the public body, or detailed explanations as to how the tenderer proposed to meet these requirements) may remain confidential. Disclosure in the public interest ordinarily would not be required, unless it were necessary to explain the nature of goods or services purchased by the public body.

Sixth, unsuccessful tender information which is commercially sensitive generally remains confidential after the award of a contract, and the public interest lies in protecting that information from disclosure.

I must stress, however, that no tender-related records are subject to either release or exemption as a class. Therefore, each record must be examined on its own merits in light of the relevant circumstances.

APPENDIX IX:
MINIMUM STANDARDS
– APPLICABLE
OBLIGATIONS IN
THE FIELDS OF
ENVIRONMENT, SOCIAL,
AND LABOUR LAW

The 2016 Regulations require tenderers to comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or the services provided that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law. The agreements and conventions listed are:

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise.
- ILO Convention 98 on the Right to Organise and Collective Bargaining.
- ILO Convention 29 on Forced Labour.
- ILO Convention 105 on the Abolition of Forced Labour.
- ILO Convention 138 on Minimum Age.
- ILO Convention 111 on Discrimination (Employment and Occupation).
- ILO Convention 100 on Equal Remuneration.
- ILO Convention 182 on Worst Forms of Child Labour.
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer.
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention).
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention).
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its three regional Protocols.

The requirement features in key aspects of the new rules at relevant stages in the procurement process that is when applying the discretionary Exclusion Grounds, when deciding whether to award a contract to the most economically advantageous tenderer, when assessing abnormally low tenders and, where appropriate, in relation to subcontracting. Contracting authorities must also take appropriate measures to ensure contract performance is in accordance with these obligations.

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An Roinn Caiteachais
Phoiblí agus Athchóirithe
Department of Public
Expenditure and Reform