



LONGFORD COUNTY COUNCIL

Public Procurement Procedures

PREFACE:

Have a requirement for supplies, services or works? Preparing to run a tender competition? **WAIT** – there may not be any need to run a tender process because there may already be a Framework Agreement in place which can be used instead.

The **Office of Government Procurement (OGP)**, an office within the **Department of Public Expenditure & Reform**, has been established for the purpose of centralising procurement arrangements for common goods and services right across the Public Sector, including Local Authorities.

National Framework Agreements (established by the OGP):

The OGP has established a number of Framework Agreements and Contracts for goods and general services. The frameworks/contracts are available to Public Sector Bodies via the OGP website www.procurement.ie and most of the frameworks /contracts are open to Local Authorities.

The website provides access to full details of the framework contracts available to public sector Buyers. Buyers are required to register on the site and sign in on subsequent visits, in order to avail of the full range of information available. Every staff member involved in any way in procuring or ordering goods and services of any value should register on the website and when there is a requirement for goods or services check to see if there is a framework contract in place before embarking on a “local” procurement process.

Buyers can register here <http://www.procurement.ie/user/register>

The OGP frameworks/contracts available on the website <http://www.procurement.ie/> include

- Supply of Electricity
- Supply of Vans
- Placement of Advertising in the Print Media
- Supply of Stationery & Office Supplies
- Supply of ICT Consumables
- Supply of Copying Paper
- Supply of PPE
- Supply of Notebook & Tablet Computers
- Supply of Personal Computers
- Fuel Charge Cards
- Purchasing Cards

These are just some of the OGP Frameworks that have most relevance to Local Authority buyers. There are many more and the list is being added to constantly so buyers should check that website regularly for news on upcoming/scheduled frameworks/contracts.

Separately, the **Department of Public Expenditure & Reform** has developed procurement arrangements in the areas of Telecoms and Data Networking on behalf of public sector bodies. Framework Agreements have been established for the following:

- Supply of Fixed Voice and Voice over IP Services plus Associated Products and Associated Services (Landlines)
- Mobile Voice & Data Services (Mobile Phones)

Full details available at the following link <http://ictprocurement.gov.ie/>

The **Local Government Operational Procurement Centre (LGOPC)** based in Kerry County Council has responsibility for the operation of the local authority sector led Category Councils for (i) Plant Hire and (ii) Minor Building & Civil Works, as setup by the OGP

The LGOPC operates the SupplyGov website which provides access to Framework Agreements that have been established by the LGOPC acting as a central procurement authority on behalf of the Public Sector. The SupplyGov Frameworks are available for use by all Local Authorities.

National Framework Agreements (established by the LGOPC):

The LGOPC frameworks available on the website www.SupplyGov.ie include:

- Plant Hire Services,
- Road Making Materials (Supply only & Supply and place),
- Road Marking Services,
- Ready-Mix Concrete,
- Fuel Oil,
- Footpath & Roadway Restoration and Ancillary Works
- Energy Efficiency Retrofitting Works for Social Housing
- Housing Voids Panel
- Bitumen

Buyers must first register in order to view and use the Framework Agreements.

Why should Local Authorities use the Framework Agreements referred to above?

- It is Government Policy.
- Economy of scale should deliver better value for money.
- The advertising requirements have already been complied with and the procurement process completed (some of the Frameworks require the conducting of Mini-Competitions in order to drawdown from the Framework but Mini-Competitions are relatively straight forward to conduct).
- Ensures compliance with the provisions of the EU Directives for larger contracts and Circular 10/14 for smaller requirements. While it is not mandatory to use the OGP Framework Contracts the position is “comply or explain”. Unless there is solid evidence that better value for money has been achieved by going outside of the Framework Contract for goods or services it would be difficult to explain why the live Framework Contract was not used.

‘Circular 16/13 - Revision of arrangements concerning the use of Central Contracts put in place by the National Procurement Service 4. Where public bodies do not utilise central procurement frameworks they should be in a position to provide a value for money justification. Value for money justifications should take into account the full costs of running a public procurement competition. Public bodies must comply with their obligations under national law and guidelines.’

What if the supplies, general services, works or works related services required are not included in any of the established Framework Agreements?

Buyers should proceed to conduct an appropriate competitive process under EU and National rules. This Procedures document provides buyers with an overview of those rules.

**Procurement Officer,
Longford County Council**

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Introduction:

Procurement ranges from the purchase of routine supplies or services to formal tendering and placement of contracts for large infrastructural projects.

Prescribed procedures governing public procurement are set out principally in three EU Directives:

- **Directive 2014/24/EU** covering the award of works, supplies and services contracts (the “Classical”) implemented in Ireland by National Regulations entitled **S.I. No. 284 of 2016 European Union (Award of Public Authority Contracts) Regulations 2016**
- **Directive 2014/25/EU** covering the award of works, supplies and services contracts by entities operating in water, energy, transport and postal services sectors (**Utilities**) implemented in Ireland by National Regulations entitled **S.I. No. 286 of 2016 European Union (Award of Contracts by Utility Undertakings) Regulations 2016**
- Directive 89/665/EEC as amended by **Directive 2007/66/EC** outlining the avenues open to unsuccessful tenderers to challenge the decision made by a Contracting Authority (the “Remedies Directive”) implemented in Ireland by National Regulations entitled **European Communities (Public Authorities’ Contracts) (Review Procedures) Regulations 2010 (S.I. No. 130 of 2010)**

All of the above mentioned Directives and implementing Regulations apply only to contracts that are (or are expected to be) above the relevant EU advertising thresholds. For Supplies and Services Contracts the current EU threshold is €209,000 (excluding VAT) and for Works the current threshold is €5,225,000 (excluding VAT).

Public Procurement below the relevant EU threshold is, however, subject to National procurement rules that are set out in National Guidelines (**Public Procurement Guidelines – Competitive Process** published by the Department of Finance in 2004) and subsequent Circulars, the most recent being **Circular 10/14** issued by the **Department of Public Expenditure and Reform** in April 2014. Circular 10/14 replaced the **Department of Finance** Circular 10/10 issued in August 2010.

Most of the procurement activity in Longford County Council is for contracts that are below the EU thresholds and with that in mind **Circular 10/14** is essential reading for buyers.

The **Department of Finance Circular 33/06** dated 27th October 2006 provided for the use of new Forms of Construction Contracts and Standard Conditions of Engagement for Construction Consultants for all new public works projects (above and below the EU threshold). Use of the new Forms of Contract and Standard Conditions of Engagement is mandatory for all Public Authorities. Also see **Circular 01/16: Construction Procurement** – revision of arrangements for the procurement of public works projects.

The aim of this document is to set out the correct procedure to be undertaken dependant on what is being procured and the value of what is being procured.

This document gives an overview of the procedures to be followed and readers are strongly advised to consult the Public Sector Regulations (S.I. No. 284 of 2016) and the relevant Circulars before commencing a procurement process.

Procurement Basics:

Public procurement is built on two fundamentals: principles and procedures. There are five principles derived from the **Treaty of Rome** that established what would become the European Union and four procedures, defined in Directives issued by the European Parliament to ensure that the activities of public sector bodies in the Member States comply with those principles.

The principles (called the “core principles”) are:

1. Equality
2. Non-Discrimination
3. Mutual Recognition (meaning that qualifications earned in one Member State are recognised by the other EU Member States)
4. Proportionality
5. Transparency

Equality/Non Discrimination means:

- Applying the same rules to all
- Giving the same rights to all
- Making the same information available to all
- Making objectively fair decisions

Mutual Recognition must be given to:

- Professional qualifications from different countries
- Nationality
- Standards and specifications
- Performance capacity.

Proportionality means that all measures used have to be both necessary and appropriate in relation to the objective. In addition, no excessive or disproportionate conditions, criteria or rules are to be applied.

Transparency in public procurement applies to all aspects of procurement and contract award, in particular:

- Being open and transparent about all aspects of the procurement process
- Providing all the necessary information,
- Providing information on how tenders will be assessed,
- Advertising intentions and decisions (as per internal and EU requirements)

These principles affect all areas of European life but the ways in which they affect public procurement are largely defined in two Directives – **Directive 2014/25/EU** governing procurement in the utilities sector and, **Directive 2014/24/EU** governing the procurement of supplies, services and works by public sector bodies operating in the other sectors, including the Local Authority sector. From here on in this procedures document every reference to the EU Directive is a reference to **Directive 2014/24/EU** unless otherwise stated.

The EU Directive defines five procedures that aim to ensure the core principles are observed. They are:

1. **The Open Procedure** is a single stage procedure whereby an Invitation to Tender is published concurrently with the Contract Notice on the eTenders website (and where appropriate in the *OJEU*). The tender competition is open to any individual or company who wishes to participate. Tender submissions are first evaluated under suitability assessment criteria to ascertain whether or not the tenderers meet the minimum pass/fail standards.
Tenderers who pass the suitability assessment will then have their tenders evaluated under the tender award criteria. Tenderers who fail the suitability assessment are excluded from the competition.
2. **The Restricted Procedure** is a two stage procedure whereby in Stage 1 a contract notice is published on the eTenders website (and where appropriate in the *OJEU*) inviting interested parties to submit evidence of their suitability (in a suitability questionnaire). The submitted evidence is then evaluated to determine which applicants meet the minimum standard; those that do, as a general rule, are then qualitatively assessed for a place on a short list; and those on the short list may subsequently be invited to tender.

In Stage 2 an Invitation to Tender is issued to the qualifying candidates on the short list. Their tender submissions are evaluated under the tender award criteria.
3. **The Competitive Procedure with Negotiation**, can be used where needs cannot be met without adaptation of readily available solutions or where the contract includes design or innovative solutions. The Contracting Authority must indicate (and cannot change) minimum requirements and award criteria. The Contracting Authority must negotiate with those suppliers submitting initial offers and must seek a final tender from suppliers following completion of the negotiations.
4. **The Competitive Dialogue Procedure**, whereby an economic operator may submit a request to participate in response to a call for competition - the tender is advertised but, because the requirements are particularly complex or impossible for the Contracting Authority to define, the process does not proceed to the submission of proposals stage straight away. This process explicitly allows negotiation with the preferred bidder.
5. **The Innovative Partnerships Procedure**, a new procedure to encourage suppliers to develop works, supplies or services not currently available on the market. Contracts are awarded to one or more suppliers using a procedure which is similar to the competitive procedure with negotiation. This procedure may be conducted in phases to match the research/innovation process. Contracting Authority must make clear the position on intellectual property rights and must not disclose suppliers' confidential information without agreement.

NOTE: This procedures document concentrates on the two procedures that are generally used - the **Open Procedure** and the **Restricted Procedure**

Ethics in Public Procurement:

It is very important that the public procurement function is discharged with probity, transparency and accountability in a manner that secures best value for public money. Procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993 and Accounting Officers are publicly accountable for expenditure incurred.

The aim should be that individuals and organisations are trusted and respected by those with whom they deal and that business is conducted by all parties not only efficiently but in a fair and reasonable manner. Any form of personal interest which may impinge, or might reasonably be deemed by others to impinge, on a public official's impartiality in any matter relevant to his or her duties should be disclosed in writing to line management.

Public officials must 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 must be above suspicion and not give rise to any actual or potential conflict of interest and their dealings with commercial and other interests should bear the closest possible scrutiny.

Determining the Value of Contracts:

In deciding what procurement procedure to use it is compulsory to determine the estimated value of the requirement.

- It is necessary to go through the formal Tender process for Supplies and Service Contracts for amounts of €25,000 excl. VAT and above. It is necessary to go through the formal Tender process for Public Works Contracts and Works related Services Contracts for amounts of €50,000 excl. VAT and above.

DPER Circular 10/14 provides that buyers should, where reasonable and without compromising efficiency and value for money, consider breaking contracts into **lots** to enable small businesses to compete. Buyers must consider the aggregate value of the lots when deciding whether a contract needs to be advertised on eTenders and in the Official Journal of the European Union (OJEU)

Aggregation is also relevant where there is a repetitive requirement. If the contract is for goods or services that are likely to be required on an ongoing basis the value to be used is the estimated cost over a 48 month period.

Estimation of contract values for **OJEU** publication purposes must be realistic. If a contract, not advertised in the **OJEU**, attracts tenders in excess of the EU thresholds, there is a risk that the award could be subject to an interested party taking legal action for damages against the Contracting Authority. A Court may set aside any contract entered into and/or infringement procedures may be taken against Ireland. In such an event, the contracting authority would be required to justify the original estimation.

Life Cycle Costing;

The real contract value can only be fully determined when the "Life Cycle Costing" of the procurement is taken into consideration. Life Cycle Costing takes account of the total cost of ownership (for the working life of the item(s) and not only includes purchase price/acquisition cost, but also includes such costs as consumables, annual maintenance contracts, repairs/spares, warranty, end of life disposal, etc. In estimating the value of any procurement it is necessary to consider not only the initial purchase price but also the costs of ownership during the useful life of the item procured. This type of costing is sometimes referred to as Whole Life Cost.

All thresholds are exclusive of VAT
Use an estimate 10-20% less than threshold

Choosing the correct procurement Procedure – Supplies and General Services

Value	Procedure	Advertising
Less than €2,000	Quotation – one verbal quotation	Not Required
€2,000 - €25,000	Quotation – at least three quotations in writing. (Best practice - use the Quick Quotes facility available on eTenders)	Not Required
€25,000 - €134,000	Tender – Open Procedure (Restricted not allowed – see Circular 10/14)	Yes – on the eTenders website
€134,000 and up to the EU Threshold (currently €209,000)	Tender - Open or Restricted Procedure	Yes – on the eTenders website
Equal to or above the EU Threshold (currently €209,000)	Tender - Open or Restricted Procedure	Yes – In the Official Journal of the European Union (OJEU)

Choosing the correct procurement Procedure – Works and Works related services

Value	Procedure	Advertising
Less than €5,000	Quotation – at least one verbal Quotation	Not Required
€5,000 – €25,000	Quotation – at least three in writing (email acceptable)	Not Required
€25,000 - €50,000	Quotation – at least five in writing	Not Required
€50,000 - €250,000	Tender - Open Procedure (Restricted Procedure not to be used – see DPER CWMF GN 2.3 Section 1.2)	Yes – on the eTenders website
€250,000 and up to the EU Threshold (currently €5,225,000)	Tender - Open or Restricted Procedure	Yes – on the eTenders website
Equal to or above the EU Threshold (currently €5,225,000)	Tender - Open or Restricted Procedure	Yes – In the Official Journal of the European Union (OJEU)

There is a vast difference between the Supplies/Services financial threshold and the Works financial threshold – for Supplies/Services contracts the threshold is currently €209,000 and for Works the threshold is currently €5,225,000. When commencing a procurement process it is vital that the correct threshold is applied, in order to ensure compliance with the EU procurement rules. There are three types of contracts set out in the EU Directive;

- **Works contracts** - buildings and civil engineering works
- **Supplies contracts** - purchasing goods and supplies
- **Services contracts** – all the most commonly procured services, including advertising, property management, cleaning, management consultancy services etc.

Competitive Process below EU Threshold Values:

It is a basic principle of public procurement that a competitive process will be used unless there are justifiable exceptional circumstances. Under the provisions of Circulars 10/14 and 02/16 buyers are required to advertise all contracts for supplies and services with an estimated value of €25,000 (exclusive of VAT) and upwards on www.etenders.gov.ie.

The National advertising threshold for works and works related services is €50,000 (exclusive of VAT). Buyers should, where possible, use the eTenders website to advertise tenders for purchases that are less than the National advertising thresholds. Buyers should be aware that for supplies of goods and general services that the eTenders system supports Quick Quotes for tenders under €25,000 (exclusive of VAT)

When awarding contracts that are below the EU threshold it is important to remember that even though the EU Directive does not apply to below threshold procurement the “core principles” from the Treaty of Rome **always** apply.

Competitive Process above EU Threshold Values:

EU Procurement **Directive 2014/24/EU** was transposed into Irish law on the 5th May, 2016 when the Minister for Finance made regulations entitled **European Union (Award of Public Authority Contracts) Regulations 2016**.

The thresholds in the Directives are revised by the European Commission, under the terms of the Directives, at two yearly intervals.

Tenders for works, supplies or services with an estimated value exceeding the thresholds must be advertised in the Official Journal of the European Union (OJEU) using the website link on the eTenders website. Completing the advert via the eTenders website automatically creates the EU Journal advert (the OJEU Notice).

For Local Authorities the current EU Thresholds above which advertising of contracts in the Official Journal of the European Union (OJEU) is obligatory are as follows:

- €209,000 (excluding VAT) for supplies and general services
- €5,225,000 (excluding VAT) for Works and works related services

Thresholds are revised every two years. The current thresholds apply up to 31st December 2017 inclusive.

Contracting Authorities must document progress of procedure and keep sufficient documents to justify decisions taken in **all** stages of the procedure such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiations, selection and award of the contract.

EU Procurement Notices:

Notices (i.e. PIN, contract notices and contract award notices) must not be published at national level before publication in the OJEU.

Call for Competition or Contract Notice:

A “Call for Competition” notice is used in the restricted procedure and a “Contract Notice” is used in the open procedure.

Contract Award Notice:

Every tender competition advertised in the **OJEU** must have either a **Contract Award Notice** or a **Cancellation Notice** published. It is required that a Contract Award Notice be issued to the **OJEU** within 30 days of awarding a contract.

Contracting Authorities must provide details of the contract awarded; the name and address of the successful tenderer; details of the winning price and the value or range of tender prices received.

Remember, Contract Award Notices published in the **OJEU** are for Contracts that are above the relevant EU threshold. However, under the provisions of **Circular 10/14** Contracting Authorities are now required to publish Contract Award Notices on the eTenders website for **all** contracts that are over €25,000 on completion of the award.

Cancellation Notice:

If a Contracting Authority is not proceeding with a call for competition for whatever reason, it must publish a Cancellation Notice in the OJEU.

EU Advertising Timescales:

European Advertising – Mandatory Timescales		
PROCEDURE <i>To award contracts or framework agreements</i>	RECEIPT OF EXPRESSIONS OF INTEREST	RECEIPT OF TENDERS
Open – Contract notice sent to OJEU electronically via eTenders without Tender Documentation. (Tender documentation to be sent in hard copy)	N/a	35 days
Open – Contract notice sent to OJEU electronically via eTenders with Tender Documentation provided on eTenders for download by Tenderers.	N/a	30 days
Restricted – notice sent electronically via eTenders	30 days	30 days
Mini-tenders within Framework Agreements that were established following advertisement in the OJEU	N/a	At least 10 days
Further reductions in the above timescales may be applied in the situation where a Prior Information Notice (PIN) was published not less than 35 days and not more than 12 months before the date of publication of the contract notice.		

For contracts below the EU thresholds there are no prescribed timescales but a reasonable time must be allowed to Tenderers for the preparation and submission of tenders. For construction projects the minimum time period for receipt of tenders for works projects above €50,000 (excluding VAT) and below the EU threshold, as a general rule, is 21 calendar days¹. In certain circumstances shorter time periods may be used, where justified, provided the time allowed is adequate to ensure genuine competition.

For contracts above the EU thresholds minimum time limits are set down for the different stages of the particular contract award procedure chosen. In all cases, the times specified in days relate to calendar days.

Request for Tender (RFT) Documents:

RFTs generally contain the following sections (this is not a prescriptive or exhaustive list):

- Background and summary of requirements
- Financial and invoicing arrangements
- Contact details for further information and query handling – as well as rules relating to same
- Instructions to tenderers in relation to submission of tenders
- Required format of tender responses
- Specifications (comprehensive and unambiguous descriptions) of the services, goods or works required.
- Conditions applicable to the contract including, for example, time for delivery, payments schedule, liability for defects, insurance provisions, settlement of disputes etc
- The RFT must state all of the criteria being applied in the award process, giving the relative weighting for each criterion.
- Obligations and restrictions imposed by the Contracting Authority
- Include the European Single Procurement Document (ESPD)

The following are some useful tips for Request for Tender (RFT) Documents:

- Buyers should be very clear in what they are looking for in order to ensure that they get tenders that fit their needs.
- Buyers must ensure that they set out the criteria on which the tenders will be evaluated.
- Buyers should not ask for something that they cannot mark – if it can't be marked leave it out.
- Buyers should avoid using ambiguous phrases that may be misinterpreted by the Tenderers, such as “quality of tender” etc. in the award criteria. They will have a better chance of getting what they want if they are very specific in stating exactly what they will measure (e.g. the extent to which the tender meets the technical requirements specified in a certain paragraph, etc.)
- It can be helpful to include a return check list (with tick-boxes) for Tenderers so that they can be sure that they have satisfied all requirements mentioned in the documents.
- Be sure to include timescales associated with the project early in the notice. This includes the latest date for submission of queries relating to the project and the closing date and time for submission of tenders.
- When uploading tender documentation, buyers should ensure that the size of the documents is kept as small as possible. This will allow the documents to be downloaded by respondents with slow internet connections. Buyers should upload tender documents in PDF format, which makes documents a little more difficult to alter than MS Word documents.

¹ Department of Public Expenditure & Reform CWMF Guidance Note 2.3 Section 3.2

Tender Specifications:

Clear definition of requirements

In advance of seeking tenders it is important that a clear and comprehensive scope of requirements is compiled, agreed and set. It is advised that the actual requirement is neither over nor under specified. Vigilance is required to ensure that the wording used is not unnecessarily restrictive in the sense that it could or would be construed to have been drafted in such a way as to limit the number of potential Tenderers.

Developing the specification

Technical dialogue with potential suppliers can be used prior to a call for competition to assist in developing a specification. If supplier input is required it must not result in adoption of a specification that favours one particular supplier. In order to avoid any accusation of discrimination, the technical dialogue with potential suppliers could be initiated by publication of a Prior Information Notice (PIN) in the OJEU, inviting firms to contact the Contracting Authority and in this way identify the parties to have discussions with.

In developing the specification, the following general principles must be observed;

- Specifications must not be discriminatory and should afford equal access.
- Specifications should be stated in functional performance terms or by reference to standards which should only be used for reference purposes and always qualified by “or equivalent”. The onus is on the tenderer to provide evidence that a particular offer is equivalent.
- Technical specifications should not refer to a specific make, source, process, trademark, patent, type, origin or product. If such a reference is unavoidable, always qualify with “or equivalent”.
- It is permissible to require compatibility with a particular named product if appropriate and necessary
- Specifications that are reverse engineered (i.e. where the spec is written to favour one supplier’s product) minimizes competitive advantage. This may have the effect of excluding some suppliers from the process and may leave it open to legal challenge.
- Specifications should be stated in minimum terms to allow for higher than specified offers to be considered. A solution which is an alternative to that specified in the contract documents can only be considered if the acceptability of variants is stated in the tender documentation and the award criteria is the most economically advantageous tender.
- If during the evaluation process, an item is chosen as preferred that is well above the original specification issued, **without being the cheapest or most economically advantageous tender**, there is an obligation to re-issue the modified specification to all suppliers, otherwise the unsuccessful tenderers may have cause for legal challenge

Deliverables

The scope of requirements should include the actual deliverables and thereby define the supplier's responsibilities, which depending upon the goods/services to be purchased or the works to be carried out, may include:

- What is the time-scale of the project?
- Is equipment installation required?
- Who will undertake any necessary modifications to existing systems?
- What on-going support is required?
- What response time is required?
- What training is required?

- Who is to provide project management?
- What is the implementation schedule?
- Names of the contact people in both user and supplier establishments?

Selection Criteria - Criteria for Candidate Selection:

Selection criteria are used for selecting the candidates who should be in a position to fulfil the requirements of the contract on offer and must not be confused with Award Criteria.

Articles 57 to 59 of EU Directive 2014/24/EU sets out the criteria for candidate selection

If there is a minimum requirement under any particular criteria that candidates have to meet then this must be stated in the documents. Where a Selection Criteria is to be marked the marking scheme must be clearly stated. Selection Criteria should be objective and measurable.

All criteria used must be appropriate, proportionate, non-discriminatory and reasonable; these articles

- deal with the “Personal Situation of the candidate or tenderer” and requires the Contracting Authority to exclude candidates convicted of participation in a “criminal organisation, corruption, fraud and money laundering”. This Article also permits exclusion for bankruptcy, professional misconduct or tax evasion.
- allow the Contracting Authority to set Selection criteria in relation to a candidates “Economic and Financial Standing”. Criteria may be used to measure the financial capacity of a candidate or tenderer. If it is reasonable to set a minimum level in relation to the current or previous turnover of a candidate or tenderer then this should be stated. If a buyer wants to inquire into the financial viability of a candidate they can ask for accounts to be submitted (really only useful if the buyer is competent to assess the accounts – otherwise don’t ask for them). DPER Circular 10/14 provides that in assessing the financial capacity of a supplier to do a job, buyers, as a matter of general policy, should not for routine (e.g. low-value, high volume) goods and services competitions set company turnover requirements at more than twice the estimated contract value. The turnover limit for Framework Agreements should be set in general vis-a-vis the likely size of individual contracts or draw-downs from the framework.
- allow the Contracting Authority to set Selection criteria in relation to a candidate’s “Technical and/or Professional ability” and measures the ability of the tenderer/candidate to perform the service/works. Such criteria may measure their:
 - Skills, efficiency, experience and reliability,
 - Educational and professional qualifications
 - List of similar contracts over a previous period of time that have been successfully completed
 - Resources available, both staff and equipment
 - Quality assurance system,
 - Details of order book,
 - Health and Safety record,
 - Average annual manpower

In the open procedure only the tenders of those deemed to meet the minimum levels for qualification will have their tender evaluated. The minimum levels for qualification must be published with the Contract Notice

In the restricted procedure only the submissions of those deemed to meet the minimum levels for qualification are invited to submit a tender. A Contracting Authority may opt to shortlist qualified candidates if this intention is indicated in the contract notice together with the number or range of candidates to be short listed. Shortlisting of candidates who meet the minimum qualification criteria must be carried out using non-discriminatory and transparent rules and the selection criteria must be made known to candidates in advance. The Directives require that a number sufficient to ensure adequate competition be invited to submit bids and indicate a minimum of five (provided there is at least this number who meet the qualification criteria) and up to a total of 20.

Much of the documentary evidence of a candidates/tenderers capacity to undertake a contract should not be sought early on in the tendering process, particularly in relation to tax clearance, turnover levels and insurances. Instead, candidates/tenderers should be asked to self-declare that they have the necessary capacity and that they will be in a position to produce the necessary documentary evidence when requested by the Contracting Authority. The documentary evidence should only be requested by the Contracting Authority when a candidate is being provisionally short listed in a restricted procedure or has been chosen as the successful tenderer in an open procedure.

Award Criteria:

Article 67 of Directive 2014/24/EU specifies that the criteria on which contracting authorities shall base the award of public contracts shall be either:

- Criterion for contract award is the **most economically advantageous tender**
- **Must** include price or cost using a cost-effectiveness approach, such as life cycle costing (e.g. environmental externalities provided their monetary value can be determined and verified)
- **May** include best price-quality ratio assessed on the basis of criteria including qualitative, environmental and/or social aspects linked to the subject matter of the contract

Also, matters that have been assessed at the Selection Stage cannot be revisited and assessed again at the award stage (this is often called “double dipping” and it is not permitted)

Template Tender Documents:

Template Documents for Construction Projects;

To view and download template tender documents for construction works and works related services (e.g. professional construction design services) buyers should login to the Construction Procurement website www.constructionprocurement.gov.ie.

This website consists of a Capital Works Management Framework which contains an integrated set of contractual provisions, guidance material, technical templates and procedures which cover all aspects of the delivery process of a public Works project. The documentation available for download includes Suitability Questionnaires, Instructions to Tenderers, Forms of Tender & Schedules, Forms of Contract, Model Forms and Guidance Notes.

There are ten forms of Contract for Public Works available, each of which is appropriate in different circumstances. In practice much of the procurement of works by Longford County Council will require the use of one of the following forms of contract:

- The **Short Public Works Contract** (PW-CF6) for projects valued at less than € 0.5m
- **The Public Works Contract for Minor Building and Civil Engineering Works Designed by the Employer** (PW-CF5) for projects valued between € 0.5 million and € 5 million.

The CWMF also includes Standard Conditions of Engagement for Consultants, together with their associated Invitations to Tender, Forms of Tender and Schedule, Model Forms and the Arbitration Rules. There are two forms of Conditions of Engagement for Consultants;

- **COE1** – Standard Conditions of Engagement for Consultancy Services (Technical)
- **COE2** – Standard Conditions of Engagement for Archaeology Services

The **Department of Finance Circular 33/06** directed that the new Forms of Construction Contracts and the Standard Conditions of Engagement for Construction Consultants be used for all public works projects. Use of the new Forms of Contract and Standard Conditions of Engagement is mandatory for all Public Authorities. Also see **Circular 01/16: Construction Procurement** – revision of arrangements for the procurement of public works projects.

Template Documents for Supplies and Services;

For Supplies and General Services the **Office of Government Procurement (OGP)** website www.procurement.ie provides access to a suite of tender documents to be used across the Public Service for the procurement of low to medium risk goods and services. Regulations, Circulars, guidelines and standard forms in relation to procurement of goods and general services are also available on the website

Best practice when conducting tender competitions is to download the template documents from the websites www.constructionprocurement.gov.ie and www.procurement.ie each time a buyer is preparing to conduct a tender process. This will ensure that the most up-to-date versions of the documents will be used.

Framework Agreements:

What is a Framework Agreement?

Article 33 (1) of the EU Directive 2014/24/EU defines a framework agreement as-

“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 envisaged.”

In effect, framework agreements are agreements with suppliers or service providers which set out the terms and conditions under which specific purchases can be made during the term of the agreement. The main advantage to framework agreements is that they provide a transparent and competitive mechanism whereby contracting authorities can award contracts to suppliers without the need to go through a full procurement process each time there is a requirement for supplies, services or works.

Framework agreements can be with a single supplier or with multiple suppliers. The minimum number of suppliers in a multi-supplier Framework is three. Generally in multi-supplier Frameworks, draw-down contracts are awarded following the running of mini-competitions (mini tenders) between the members of the Framework. Mini-competitions must be run in accordance with the rules of the relevant Framework Agreement. The maximum term of a Framework agreement is four years.

Establishing a Framework Agreement:

The process for establishing a Framework Agreement includes all the features involved in conducting a standard tendering procedure. If the total value of the contracts to be awarded under the framework exceeds the EU thresholds then the advertising and procedural rules set out in the EU Directive must be followed. Frameworks are advertised using the standard OJEU notice.

Receipt of Tenders:

The Contracting Authority must provide, in the Tender Documents, details of the method for submission of Tenders, whether by delivery to a specified postal address (which includes post, courier and hand delivery) or on-line via the eTenders post box. The details should also include instructions to Tenderers on how the Tender Envelopes should be endorsed (i.e. "Tender for XYZ Project"). (See also paragraph on dealing with LATE tenders on page 18)

If the Tender is for the attention of a specific person or office in the Contracting Authority then this should be set out in the nominated postal address.

The Tender submission instructions provided in the Tender documents must be clear and unambiguous.

NB: Tenders must **not** be accepted by fax or e-mail for reasons of confidentiality.

All tenders must be stamped with the date of delivery and time of delivery marked on the envelope at the time it is received.

Receipts showing date and time a tender is received should be issued when a tender is delivered by hand.

Tenders received after the closing time for receipt of tenders should be marked "**LATE**"

All tenders received must be locked in a secure location, preferably in a safe with access available only to specified individuals.

Tender Opening:

Under no circumstances should tenders be opened before the closing date and time for submission of tenders has expired.

In the event that a Tender is not clearly marked on the envelope that it is a Tender and it is opened in error, a note to that effect should be made on the envelope and it should be signed by the person who opened it and countersigned by another staff member at Senior Executive Officer level or higher.

All tenders received on or before the tender closing deadline should be opened together and at the same time, once the final date and time for the submission of tenders has expired.

Tenders received after the deadline and marked “**LATE**” should not be opened unless in so far as is necessary to identify the name and address of the Tenderer. Having to open late tenders in order to establish the identity of the sender can be avoided by including an instruction in the Tender Documents requiring Tenderers to provide their name and address on the outside of the Tender submission envelope. The names of the Tenderers who submitted late tenders should be recorded. If a Tenderer requests that their late tender be returned to them, the tender submission envelope bearing the date stamp and time received **must always** be retained to provide evidence of time of receipt.

Tender Opening Threshold;

- Tenders for Works, Supplies and Services when the estimated value is less than **€100,000** (excluding VAT) should be opened with at least two Local Authority Officials present, one of whom should be Director of Services or Senior Executive Officer level.
- Where the estimated tender value of Tenders for Works, Supplies and Services is equal to or greater than **€100,000** (excluding VAT) the tenders shall be opened at a meeting of the Tender Committee of the Council with the Cathaoirleach and at least two other Elected Members present, together with at least two Local Authority Officials, one of whom should be Director of Services or Senior Executive Officer level.

Tender Committee Meetings should be convened following consultation with the Cathaoirleach. All Elected Members of the Council should be given prior notice of the meeting by email.

Tender Opening Meetings;

- At a Tender opening meeting each tender received on or before the tender closing deadline shall be opened.
- Each tender opened shall be marked with a unique identifying number and shall be date stamped and initialled by the Director of Services/Senior Executive Officer and one other Local Authority Official.
- The envelope(s) which contained the Tender should also be marked with the same identifying number. Care should be taken that envelopes are not separated from relevant tender documents. Envelopes should at all times be kept with the relevant tender documents.
- The Form of Tender containing the tender total should be initialled by each Member of the Tender Committee.
- Tenders should be listed on a Tender Sheet, in the order that they were opened.
- When all tenders that were received on or before the tender closing deadline have been opened and entered on the Tender Sheet, the Tender Sheet should be signed by those present at the opening of the tenders.
- Immediately following the Tender Opening Meeting all tenders must be placed in a secure location, with access available only to individuals who will be directly involved in the Tender Assessment.

Tender Assessment and Tender Report

A suitably competent team (a minimum of two people) should carry out the evaluation of tenders. The evaluation and award process must be objective and transparent and based solely on the published criteria. Tenders, which do not comply with the requirements, must not be considered.

Assessment teams must be properly briefed on the competition and must be made aware of the Selection and Award Criteria for the competition and the Marking scheme.

All recommendations on tenders are to be submitted to the Chief Executive or Director of Service, **as appropriate**. The recommendation should be accompanied by the original tenders, the relevant file and a written report outlining the following:

1. Names and addresses and amount of tender of those who tendered.
2. A recommendation as to which tender is to be accepted and the reason(s) for same.
3. Any other comments considered necessary

The EU Directive and the 2016 Regulations require that the Contracting Authority prepare a written report for every contract it enters into. The minimum information that must be contained in this report is set down in the Directive and in the Regulations.

Contracting Authorities must document progress of procedure and keep sufficient documents to justify decisions taken in **all** stages of the procedure such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiations, selection and award of the contract.

NOTE: In accordance with the **Local Government Act 2001** (Section 151), a **Chief Executive Order** is required for the acceptance of a tender.

Notifying Tenderers and Disclosure of Information

Notifying Successful and Unsuccessful Tenderers:

The decision on a tender process must be notified to all concerned candidates and tenderers as soon as possible after the decision is made.

In circumstances where **Directive 2007/66/EC** applies (for contracts above the EU thresholds) no contract can be executed or take effect until at least sixteen (16) calendar days after the day on which the unsuccessful Tenderers have been sent the appropriate notice (“Standstill Notice”) informing them of the result of the competition. This period is called the “Standstill Period”.

The Standstill period of 16 days can be reduced to 14 days where all concerned tenderers and concerned candidates are informed electronically.

Details to be included in a Standstill Notice:

The Details to be included in a Standstill Notice are set out in the Remedies Regulations entitled **European Communities (Public Authorities’ Contracts) (Review Procedures) Regulations 2010** (S.I. No. 130 of 2010) which implemented the **Remedies Directive 2007/66/EC** in Ireland.

A Standstill Notice must give sufficient information to enable an unsuccessful candidate or tenderer to decide whether there are grounds for seeking a review.

A standstill Notice must inform concerned tenderers and concerned candidates of:

- Decisions reached - Regulation 6 (2) (a) S.I. No. 130 of 2010
- The exact standstill period - Regulation 6 (2) (b) S.I. No. 130 of 2010
- A summary of the reasons for rejection - Regulation 6 (2) (c) S.I. No. 130 of 2010

For Tenderers who have submitted an admissible tender Regulation 6 (3) of S.I. No. 130 of 2010 requires that the reasons for rejection shall include:

- Characteristics and relative advantages of the tender selected as the successful tender
- The name of the successful tenderer or parties to a framework
- A statement as to why works, supplies or services are deemed not to meet performance or functional requirements

The Standstill notice must inform an unsuccessful tenderer or candidate that no contract will be entered into before 16 days have elapsed from the day after the tenderer or candidate is sent the Notice. This may be reduced to 14 days if the Standstill Notice is sent electronically.

Where a restricted procedure is used a Standstill notice must be issued after each phase of the competition.

Where the Standstill Notice does not include all the required information then the Standstill period only commences when all the required information is forwarded to all tenderers and/or candidates.

Entering into a contract before the expiry of a valid Standstill Period can have serious repercussions for a Contracting Authority, including the setting aside of any contract entered into and the award of damages (including punitive damages) against the Contracting Authority to **ALL** affected candidates or tenderers. A Contracting Authority must be very careful and not commit to entering a contract with any Tenderer before the expiry of the Standstill Period. All correspondence with the preferred Tenderer should be headed "**Subject to Contract - Contract Denied**" and the opening line of any correspondence should read as follows "**this is not a Letter of acceptance; the Contracting Authority has not accepted your Tender**". Furthermore, it is of the utmost importance that works should not commence until after the Standstill Period has expired.

Extending a Contract:

The Directive allows for the extension of contracts in certain limited circumstances. The circumstances in which contracts may be extended are set out in the EU Directive. As a general rule the provisions in the Directive confine extensions to 50% of the original value of contracts.

However, this is an area that buyers should be very wary of and they may need to seek legal advice on the matter before taking any decision on extending a contract that is subject to the Directive.

If the contract is below the EU thresholds it may be extended where **all** the following circumstances apply:-

- The extension of the contract could not be foreseen at the time that tenders were being sought. The additional works/supplies/services cannot be technically or economically separated from the original contract without major inconvenience.
- The value of additional works/supplies/services does not exceed 50% of the value of the original contract.
- The extension of the contract is approved by Chief Executive/Directors Order.

Modification of contracts/frameworks

- A contract/framework *may* change without re-advertisement in OJEU where:-
 - a) minor changes that do not affect its nature *and* do not exceed the relevant EU threshold *and* do not exceed 10% (services/supplies) or 15% (works) of the initial value
 - b) minor changes that do not affect its nature and are explicitly provided for in review or option clauses in the procurement documents
- A contract/framework *may* change without re-advertisement in OJEU where a new supplier replaces the original supplier as a result of corporate restructuring, merger, acquisition or insolvency provided this does not involve other 'substantial' modifications'
- A contract/framework *may* be modified without re-advertisement in the OJEU where:
- additional works, services or supplies that 'have become necessary' where a change of supplier would not be practicable (for economic, technical or interoperability reasons) and would involve significant inconvenience or substantial duplication of costs
- The change/modifications of the contract must be limited to 50% of the original contract, but the sum total of all successive modifications do not have to be kept within 50% limit
- the change that arises is unforeseeable by a 'diligent' authority, provided these changes do not affect its nature and value is less than 50%
- in these two cases the authority must publish in OJEU a 'Notice of modifications of a contract during its term'

Useful Links

Office of Government Procurement (OGP) www.procurement.ie/

EU Public Procurement website <http://simap.europa.eu>

eTenders www.etenders.gov.ie

Construction Procurement www.constructionprocurement.gov.ie

ICT www.ictprocurement.gov.ie

www.SupplyGov.ie (formerly LAQuotes.ie)